

Minutes of the meeting of the **Structural & Procedural Review Sub-Committee** held on **11 December 2001** when there were present:

Cllr R E Vingoe – Chairman

Cllr R F R Adams  
Cllr T G Cutmore  
Cllr D R Helson  
Cllr G A Mockford

Cllr C R Morgan  
Cllr P F A Webster  
Cllr Mrs M A Weir

### **OFFICERS PRESENT**

P Warren	Chief Executive
J Honey	Corporate Director (Law, Planning and Administration)
R Crofts	Corporate Director (Finance and External Services)
A Wyatt	Committee Administrator

### **89 MINUTES**

The Minutes of the Meeting held on 15 November 2001 were approved as a correct record and signed by the Chairman.

### **90 MODERNISING AGENDA**

The Sub-Committee considered the report of the Corporate Director (Law, Planning and Administration) on further matters to be considered with regard to a constitution for the revised political structure including the Budget and Policy Framework Procedure Rules, Overview and Scrutiny Procedure Rules, Officer Employment Procedure Rules, Code of Conduct for Members, Code of Conduct for Planning Matters, Protocol for Member/Officer Relations and Code of Conduct for Officers.

During consideration of each item the following points were made.

#### **BUDGET AND POLICY FRAMEWORK PROCEDURE RULES**

##### **(2) Process for developing the Framework**

- (a) It was agreed that in February each year, the Policy and Finance Committee would publish a programme for establishing the budget and policy framework for the following year, and that there would be no limit on the number of studies Overview and Scrutiny Committees could undertake.

- (d) It was agreed that the Policy and Budget Framework presented to Council would be available for public consultation for a period of four weeks.

**(3) Virement**

- 3.2 It was agreed that the current scheme of virements should be agreed subject to the consideration of financial standing orders at the next meeting of Structural and Procedural Sub-Committee.

**OVERVIEW AND SCRUTINY PROCEDURE RULES**

**1 What will be the number and arrangements for overview and scrutiny committees?**

(b)(iii) to read "To receive reports from the Leader/ Spokesperson at its first meeting after each Annual Council Meeting on the Council's priorities for the coming year and its performance in the previous year.

**3 Co-optees**

To read "Each Overview and Scrutiny Committee or Sub-Committee shall be entitled to recommend to Council the appointment of non-voting Co-optees.

**6 Who Chairs Overview and Scrutiny Committee Meetings?**

To read "Chairmen of Overview and Scrutiny Committees/Sub-Committees will be drawn from among the Councillors sitting on the Committee/Sub Committee and subject to this requirement, the Committee/Sub Committee may appoint such a person as it considers appropriate as Chairman provided that at least one Chairmanship shall be offered to a Party other than the political group forming the administration of the Council.

**7 Work programme**

To read "The Overview and Scrutiny Committees/Sub-Committees will be responsible for setting their own work programme and, in doing so they shall take into account the wishes of Members of that Committee."

**8 Agenda Items**

It was agreed that items 8.1 and 8.2 should be time limited to five working days. It was further agreed that the timescale in 8.3 should be clarified further to read "One working month".

**10 Reports from Overview and Scrutiny Committee**

(b) to read "If an Overview and Scrutiny Committee cannot agree on one single final report to the Council or the relevant Policy Committee as appropriate, then minority reports may be prepared and submitted for consideration by the Council or Policy Committee with the majority report.

In relation to (c) it was considered that the timescale should be brought into line with that under 8.3 as "One working month".

**11 Making sure that Overview and Scrutiny Reports are considered by the Executive or Policy Committee**

(a) it was considered again that the timescale involved should reflect that stated in 8.3 being "One working month". It was further considered that paragraph (b) should be deleted.

**13 Members and Officers giving accounts**

(c) it was considered that the timescale should be brought into line with point 8.3 being "One working month".

**14 Attendance by others**

Paragraph to read "An Overview and Scrutiny Committee may invite people other than those people referred to in paragraph 13 above to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and Members and Officers in other parts of the public sector and shall invite such people to attend."

**15 Call-in**

(a) it was considered that the decisions of policy committees or area committees or under joint arrangements should be made available to Chairmen of Overview/Scrutiny Committees within two working days.

*Exceptions*

Mindful of the need to insure that call-in was not abused, nor caused unreasonable delay, Members considered that no limitation should be placed on its use in the first instance.

*Call-in and Urgency*

It was agreed that political Group Leaders must agree on matters of urgency and decisions to be made rather than the Chairman of the Council.

**18 Matters within the remit of more than one Overview and Scrutiny Committee**

It was noted that the words “shall be considered by the Overview and Scrutiny Committee” were omitted from the penultimate line, before the words “for comment”.

In agreeing these changes, and also the remaining Rules and Codes of Conduct, it was further agreed that the term Chairman and Chair should be regularised throughout the documents, although both were considered acceptable as reference to the Chairman.

**RECOMMENDED**

(1) That the following (as amended and attached) be adopted within the New Constitution for the Council: -

- (a) Budget and Policy Framework Procedure Rules (Appendix 1)
- (b) Overview and Scrutiny Procedure Rules (Appendix 2)
- (c) Officer Employment Procedure Rules (Appendix 3)
- (d) Code of Conduct for Members (Appendix 4)
- (e) Code of Conduct for Planning Matters (Appendix 5)
- (f) Code of Conduct for Officers (Appendix 6)
- (g) Protocol for Member/Officer Relations (Appendix 7)
- (h) Protocol for Outside Bodies (Appendix 8)

(2) That the new Constitution in its entirety be presented to Full Council on 26 February 2002 for adoption with effect from 1 March 2002.

The Meeting closed at 9.00pm

Chairman.....

Date.....

**APPENDIX 1****BUDGET AND POLICY FRAMEWORK PROCEDURE RULES****1. The framework for decision making**

The Council will be responsible for the adoption of its budget and policy framework as set out in Article 4. Once a budget or a policy framework is in place, it will be the responsibility of the policy committees to implement it.

**2. Process for developing the framework**

The process by which the budget and policy framework shall be developed is:

- (a) In February each year the Policy and Finance Committee will publish a programme for establishing the budget and policy framework for the following year. Within this programme, it will identify strategic policy or resource issues on which it wishes to request studies by overview and scrutiny committees.
- (b) Within the overall programme, policy committees may identify studies they wish to request from overview and scrutiny committees related to policy issues on which they wish to make recommendations as part of the budget and policy framework.
- (c) Policy studies undertaken by overview and scrutiny committees should engage as widely as possible with citizens and stakeholders in the community and use a variety of methods to gauge public views. The results should be presented to the relevant policy committee, who will then draw on them in developing their proposals to Council.
- (d) The policy and budget framework presented to Council will be available for public consultation for a period of 4 weeks.
- (e) In approving the policy and budgetary framework, the Council will also specify the extent of virement within the budget and degree of in-year changes to the policy framework which may be undertaken by policy committees, in accordance with paragraphs 3 and 4 of these Rules (virement and in-year adjustments). Any other changes to the policy and budgetary framework are reserved to the council.

**3. Virement**

- 3.1 Financial Regulations shall provide a Scheme of Virement to enable policy committees, chief officers and their staff to manage budgets with a degree of flexibility within the overall policy framework determined by full council and therefore to optimise the use of resources.
- 3.2 The current Scheme of Virement provides:
- No amount provided in the several heads of the approved annual revenue estimates shall be diverted to other purposes for amounts up to £5,000 without the approval of the Corporate Director (Finance & External Services). Amounts of more than £5,000 but less than £10,000 require the approval of the relevant spending Committee.
  - Amounts of more than £10,000 need to be considered by both the spending Committee and Policy and Finance Committee.
  - A Committee proposing to vary its approved programme of capital expenditure by the addition, deletion or material modification of a project in that programme shall submit a recommendation to include justification for the variation and the financial effects thereof, through the Policy & Finance Committee for approval by the Council.
  - Nothing in these Rules shall prevent a Committee from incurring expenditure which is essential to meet any immediate needs, created by a sudden emergency or which is referable to Section 138 of the Local Government Act 1972 subject to their action being reported forthwith to the Policy & Finance Committee.

**4. In-year changes to policy framework**

The responsibility for agreeing the budget and policy framework lies with the Council, and decisions by policy committees or officers with delegated authority must be in line with it. No changes to any policy and strategy which make up the policy framework may be made by a policy committee or officer with delegated authority except changes:

- (a) which will result in the closure or discontinuance of a service or part of service to meet a budgetary constraint;
- (b) necessary to ensure compliance with the law, ministerial direction or government guidance;
- (c) in relation to the policy framework in respect of a policy which would normally be agreed by the Council following

consultation, but where the existing policy document is silent on the matter under consideration;

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**APPENDIX 2****OVERVIEW AND SCRUTINY PROCEDURE RULES****1. What will be the number and arrangements for overview and scrutiny committees?**

The Council will have the overview and scrutiny committees set out in Article 6 and will appoint to them as it considers appropriate from time to time. Such committees may appoint sub-committees. Overview and scrutiny committees may also be appointed for a fixed period, on the expiry of which they shall cease to exist.

- (a) The Council will have three overview and scrutiny committees which will perform all overview and scrutiny functions on behalf of the Council. Each committee will consist of a maximum number of nine members of the Council.
- (b) With in its remit under Article 6 of this Constitution the terms of reference of each overview and scrutiny committee will be:
  - i) the performance of all overview and scrutiny functions on behalf of the Council.
  - ii) the appointment of such sub-committees as it considers appropriate to fulfil those overview and scrutiny functions;
  - iii) to receive reports from the leader /spokesperson at its first meeting after each annual council meeting on the Council's priorities for the coming year and its performance in the previous year;
  - iv) to approve an annual overview and scrutiny work programme, including the programme of any sub-committees it appoints so as to ensure that the committee's and sub-committees' time is effectively and efficiently utilised;
  - v) where matters fall within the remit of more than one overview and scrutiny sub-committee, to determine which of those sub-committees will assume responsibility for any particular issue;
  - vi) to put in place a system to ensure that referrals from overview and scrutiny to policy committees either by way of report or for reconsideration are managed efficiently and do not exceed the limits set out in this Constitution;
  - vii) in the event of reports to policy committees exceeding limits in this Constitution, or if the volume of such reports creates



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difficulty for the management of policy committees business or jeopardises the efficient running of Council business, at the request of the policy committee, to make decision about the priority of referrals made.

- (c) Where the committee seeks to appoint or discontinue sub-committees, it may do so provided that it has consulted with interested parties, if appropriate. The extent and nature of consultation will depend on the nature of the proposed alterations. Any change will be reported to the proper officer and then to the next meeting of the Council by the chairman of the overview and scrutiny committee, so that the Constitution may be amended accordingly.

**2. Who may sit on overview and scrutiny committees?**

All councillors may be members of an overview and scrutiny committee. However, no member may be involved in scrutinising a decision which he/she has been directly involved.

**3. Co-optees**

Each overview and scrutiny committee or sub-committee shall be entitled to recommend to Council the appointment of non-voting co-optees.

**4. Meetings of the overview and scrutiny committees**

There shall be at least five ordinary meetings of each overview and scrutiny committee in each year. In addition, extraordinary meetings may be called from time-to-time as and when appropriate. An overview and scrutiny committee meeting may be called by the chairman of the relevant overview and scrutiny committee, by any four members of the committee or by the proper officer if he/she considers it necessary or appropriate.

**5. Quorum**

The quorum for an overview and scrutiny committee shall be as set out for committees in the Council Procedure Rules in Part 4 of this Constitution.

**6. Who chairs overview and scrutiny committee meetings?**

Chairmen of overview and scrutiny committees/sub-committees will be drawn from among the councillors sitting on the committee/sub-committee, and subject to this requirement the committee/sub-committee may appoint such a person as it considers appropriate as chairman provided that at least one Chairmanship shall be offered to a Party other than the political group forming the administration of the Council.

**7. Work programme**

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The overview and scrutiny committees/sub-committees will be responsible for setting their own work programme and in doing so they shall take into account wishes of members on that committee.

## 8. **Agenda items**

- 8.1 Any member of an overview and scrutiny committee or sub-committee shall be entitled to give 5 working days notice to the proper Officer that he/she wishes an item relevant to the functions of the committee or sub-committee to be included on the agenda for the next available meeting of the committee or sub-committee. On receipt of such a request the proper officer will ensure that it is included on the next available agenda.
- 8.2 Any 3 members of the Council who are not members of the overview and scrutiny committee may give 5 working days written notice to the proper officer that they wish an item to be included on the agenda of a relevant overview and scrutiny committee. If the proper officer receives such a notification, then he/she will include the item on the first available agenda of the relevant overview and scrutiny committee for consideration by the committee.
- 8.3 The Overview and Scrutiny committees shall also respond, as soon as their work programme permits, to requests from the Council and if it considers it appropriate, policy committees to review particular areas of Council activity. Where they do so, the Overview and Scrutiny committee shall report their findings and any recommendations back to the relevant policy committee and/or Council. The Council and/or the relevant policy committee shall consider the report of the overview and scrutiny committee within one working month of receiving it.

## 9. **Policy review and development**

- (a) The role of the overview and scrutiny committees in relation to the development of the Council's budget and policy framework is set out in detail in the Budget and Policy Framework Procedure Rules.
- (b) In relation to the development of the Council's approach to other matters not forming part of its policy and budget framework, overview and scrutiny committee or sub-committees may make proposals to policy committees for developments in so far as they relate to matters within their terms of reference.
- (c) Overview and scrutiny committees may hold enquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to any advisers, assessors and witnesses a reasonable fee and expenses for doing so.

**10. Reports from overview and scrutiny committee**

- (a) Once it has formed recommendations on proposals for development, the overview and scrutiny committee will prepare a formal report and submit it to the proper officer for consideration by the relevant policy committee (if the proposals are consistent with the existing budgetary and policy framework), or to the Council as appropriate (e.g. for the recommendation would require a departure from or a change to the agreed budget and policy framework).
- (b) If an overview and scrutiny committee cannot agree on one single final report to the Council or the relevant policy committee as appropriate, then minority reports may be prepared and submitted for consideration by the Council or policy committee with the majority report.
- (c) The Council or policy committee shall consider the report of the overview and scrutiny committee within 1 working month of it being submitted to the proper officer.

**11. Making sure that overview and scrutiny reports are considered by the executive or policy committee**

The agenda for policy committee meetings shall include an item entitled "Issues arising from overview and scrutiny". The reports of overview and scrutiny committees referred to the policy committee shall be included at this point in the agenda (unless they have been considered in the context of the policy committee's deliberations on a substantive item on the agenda) within 1 working month of the overview and scrutiny committee completing its report/recommendations.

**12. Rights of overview and scrutiny committee members to documents**

- (a) In addition to their rights as councillors, members of overview and scrutiny committees have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.
- (b) Nothing in this paragraph prevents more detailed liaison between the relevant policy committee and overview and scrutiny committee as appropriate depending on the particular matter under consideration.

**13. Members and officers giving account**

- (a) Any overview and scrutiny committee or sub-committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions. As well as reviewing documentation, in fulfilling the scrutiny role, it may require any

member of a policy committee and/or any senior officer to attend before it to explain in relation to matters within their remit:

- i) any particular decision or series of decisions;
- ii) the extent to which the actions taken implement Council policy; and/or
- iii) their performance.

And it is the duty of those persons to attend if so required.

- (b) Where any member or officer is required to attend an overview and scrutiny committee under this provision, the chairman of that committee will inform the proper officer. The proper officer shall inform the member or officer in writing giving at least 5 working days notice of the meeting at which he/she is required to attend. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the committee. Where the account to be given to the committee will require the production of a report, then the member or officer concerned will be given sufficient notice to allow for preparation of that documentation.
- (c) Where, in exceptional circumstances, the member or officer is unable to attend on the required date, then the overview and scrutiny committee shall in consultation with the member or officer arrange an alternative date for attendance to take place within a maximum of 1 working month from the date of the original request.

**14. Attendance by others**

An overview and scrutiny committee may invite people other than those people referred to in paragraph 13 above to address it, to discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and members and officers in other parts of the public sector and shall invite such people to attend.

**15. Call-in**

Call-in should only be used in exceptional circumstances. These are where members of the appropriate overview and scrutiny committee have evidence which suggest that the policy committee did not take the decision in accordance with the principles set out in Article 13 (Decision Making)

- (a) When a decision is made by a policy committee or an area committee or under joint arrangements, the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within 2 working days of being made. All chairmen will be sent copies of the

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records of all such decisions within the same timescale, by the person responsible for publishing the decision.

- (b) That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of 5 working days after the publication of the decision, unless an overview and scrutiny committee objects to it and calls it in.
- (c) During that period, the proper officer shall call-in a decision for scrutiny by the relevant committee if so requested by the chairman or any three members of the committee, and shall then notify the chairman of the policy committee of the call-in. He/she shall call a meeting of the committee on such date as he/she may determine, where possible after consultation with the chairman of the committee, and in any case within 5 days of the decision to call-in.
- (d) If, having considered the decision, the overview and scrutiny committee is still concerned about it, then it may refer for the matter to the next full Council.
- (e) If following an objection to the decision, the overview and scrutiny committee does not meet in the period set out above, or does meet but does not refer the matter, the decision shall take effect on the date of the overview and scrutiny meeting, or the expiry of that further 5 working day period, whichever is the earlier.
- (f) If the matter is referred to Full Council the record of decision shall be included for debate at the next Full Council meeting.

#### CALL-IN AND URGENCY

- (h) The call-in procedure set out above shall not apply where the decision being taken by the policy committee is urgent. A decision will be urgent if any delay likely to be caused by the call in process would seriously prejudice the Council's or the public's interests. The record of the decision, and notice by which it is made public shall state whether in the opinion of the policy committee the decision is an urgent one, and therefore not subject to call-in. Group Leaders must agree both that the decision proposed is reasonable in all the circumstances and that it be treated as a matter of urgency. In the absence of Group Leaders, the head of paid service or his/her nominee's consent shall be required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- (i) The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.

**16. The party whip**

- (a) When considering any matter in respect of which a member of an overview and scrutiny committee is subject to a party whip the member must declare the existence of the whip, and the nature of it before the commencement of the committee's deliberations on the matter. The declaration, and the detail of the whipping arrangements, shall be recorded in the minutes of the meeting.

**17. Procedure at overview and scrutiny committee meetings**

- (a) Overview and scrutiny committees and sub-committees shall consider the following business:
  - i) minutes of the last meeting;
  - ii) declarations of interest (including whipping declarations);
  - iii) consideration of any matter referred to the committee for a decision in relation to call in of a decision;
  - iv) responses of the policy committee to reports of the overview and scrutiny committee; and
  - v) the business otherwise set out on the agenda for the meeting.
- (b) Where the overview and scrutiny committee conducts investigations (e.g. with a view to policy development), the committee may also ask people to attend to give evidence at committee meetings which are to be conducted in accordance with the following principles:
  - i) that the investigation be conducted fairly and all members of the committee be given the opportunity to ask questions of attendees, and to contribute and speak;
  - ii) that those assisting the committee by giving evidence be treated with respect and courtesy; and
  - iii) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
- (c) Following any investigation or review, the committee/sub-committee shall prepare a report, for submission to the policy committee and/or Council as appropriate and shall make its report and findings public.

**18. Matters within the remit of more than one overview and scrutiny committee**

Where an overview and scrutiny committee conducts a review or scrutinises a matter which also falls (whether in whole or in part) within the remit of another overview and scrutiny committee, before submitting its findings to

the policy committee and/or Council for consideration, the report of the reviewing overview and scrutiny committee shall be considered by the other Overview and Scrutiny Committee for comment. Those comments shall be incorporated into the report which is then sent to that body for consideration.

**APPENDIX 3**

**OFFICER EMPLOYMENT PROCEDURE RULES**

**1. Recruitment and appointment**

(a) Declarations

- (i) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor or officer of the Council; or of the partner of such persons.
- (ii) No candidate so related to a councillor or an officer will be appointed without the authority of the relevant chief officer or an officer nominated by him/her.

- (b) (i) Subject to paragraph 3, the Council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- (ii) Subject to paragraph 3, no councillor will seek support for any person for any appointment with the Council.

**2. Recruitment of Head of Paid Service and Chief Officers**

Where the Council proposes to appoint a chief officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

- (a) draw up a statement specifying:
  - (i) the duties of the officer concerned; and
  - (ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) make arrangements for a copy of the statement mentioned in paragraph (1) to be sent to any person on request.

**3. Appointment of Head of Paid Service**



The full Council will approve the appointment of the head of paid service following the recommendation of such an appointment by a committee or sub-committee of Council.

**4. Appointment of Chief Officers and Heads of Service**

A committee or sub-committee of the Council will appoint chief officers and heads of service.

**5. Other Appointments**

- (a) Officer below head of service. Appointment of officers below head of service (other than assistants to political groups) is the responsibility of the head of paid service or his/her nominee, and may not be made by councillors.
- (b) Assistants to political groups. Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

**6. Disciplinary Action**

- (a) Suspension. The head of paid service, monitoring officer and chief finance officer may be suspended whilst an investigation takes place into alleged misconduct involving them. That suspension will be on full pay and last no longer than two months.
- (b) Independent person. No other disciplinary action may be taken in respect of any of those officers except in accordance with a recommendation in a report made by a designated independent person.
- (c) Councillors will not be involved in the disciplinary action against any officer below head of service except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to members in respect of disciplinary action.

**7. Dismissal**

Councillors will not be involved in the dismissal of any officer below head of service except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to members in respect of dismissal

**APPENDIX 4**

**CODE OF CONDUCT FOR MEMBERS**

**PART I**

**GENERAL PROVISIONS**

*Scope*

1. (1) A member must observe the authority's code of conduct whenever he -

(a) conducts the business of the authority;

(b) conducts the business of the office to which he has been elected or appointed; or

(c) acts as a representative of the authority,

and references to a member's official capacity shall be construed accordingly.

(2) An authority's code of conduct shall not, apart from paragraphs 4 and 5(a) below, have effect in relation to the activities of a member undertaken other than in an official capacity.

(3) Where a member acts as a representative of the authority -

(a) on another relevant authority he must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, he must, when acting for that other body, comply with the authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

(4) In this code, "member" includes a co-opted member of an authority.

*General Obligations*

2. A member must -

(a) promote equality by not discriminating unlawfully against any person;

(b) treat others with respect; and

(c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

3. A member must not -

(a) disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required by law to do so; nor

(b) prevent another person from gaining access to information to which that person is entitled by law.

4. A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

5. A member -

(a) must not be in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of the authority, -

(i) act in accordance with the authority's requirements; and

(ii) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed.

6. A member must when reaching decisions have regard to any relevant advice provided to him by -

(a) the authority's chief finance officer acting in pursuance of his duties under section 114 of the Local Government Finance Act 1988 or an equivalent provision in any regulations made under section 6(6) of the Local Government and Housing Act 1989; and

(b) the authority's monitoring officer acting in pursuance of his duties under section 5(2) of the Local Government and Housing Act 1989.

7. A member must, if he becomes aware of any conduct by another member which he reasonably believes involves a failure to comply with the authority's code of conduct, make a written allegation to that effect to the Standards Board for England as soon as it is practicable for him to do so.

## PART 2

### INTERESTS

#### *Personal Interests*

8. - (1) A member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 13 and 14 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers, or inhabitants of the authority's area, the well-being or

financial position of himself, a relative or a friend or -

- (a) any employment or business carried on by such persons;
- (b) any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- (c) any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
- (d) any body listed in sub-paragraphs (a) to (e) of paragraph 14 below in which such persons hold a position of general control or management.

(2) In this paragraph -

- (a) "relative" means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and
- (b) "partner" in sub-paragraph (2)(a) above means a member of a couple who live together.

*Disclosure of Personal Interests*

**9.** A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

*Prejudicial Interests*

**10.** - (1) Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.

(2) A member may regard himself as not having a prejudicial interest in a matter if that matter relates to -

- (a) another relevant authority of which he is a member;
- (b) another public authority in which he holds a position of general control or management;
- (c) a body to which he has been appointed or nominated by the authority as its representative;
- (d) the housing functions of the authority where the member holds a tenancy or lease with a relevant authority, provided that he does not have arrears of rent with that relevant authority of more than two months, and

provided that those functions do not relate particularly to the member's tenancy or lease;

(e) the functions of the authority in respect of school meals, transport and travelling expenses, where the member is a guardian or parent of a child in full time education, unless it relates particularly to the school which the child attends;

(f) the functions of the authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority; and

(g) any functions of the authority in respect of an allowance or payment made under sections 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989.

*Participation in Relation to Disclosed Interests*

**11.** A member with a prejudicial interest in any matter must -

(a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he has obtained a dispensation from the authority's standards committee; and

(b) not seek improperly to influence a decision about that matter.

**12.** For the purposes of this Part, "meeting" means any meeting of -

(a) the authority; or

(b) any of the authority's committees, sub-committees, joint committees, joint sub-committees, or advisory committees.

**PART 3**

**THE REGISTER OF MEMBERS' INTERESTS**

*Registration of Financial and Other Interests*

**13.** Within 28 days of the provisions of an authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his financial interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority's monitoring officer of -

(a) any employment or business carried on by him;

(b) the name of the person who employs or has appointed him, the name of any firm in which he is a partner, and the name of any company for

which he is a remunerated director;

(c) the name of any person, other than a relevant authority, who has made a payment to him in respect of his election or any expenses incurred by him in carrying out his duties;

(d) the name of any corporate body which has a place of business or land in the authority's area, and in which the member has a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;

(e) a description of any contract for goods, services or works made between the authority and himself or a firm in which he is a partner, a company of which he is a remunerated director, or a body of the description specified in sub-paragraph (d) above;

(f) the address or other description (sufficient to identify the location) of any land in which he has a beneficial interest and which is in the area of the authority;

(g) the address or other description (sufficient to identify the location) of any land where the landlord is the authority and the tenant is a firm in which he is a partner, a company of which he is a remunerated director, or a body of the description specified in sub-paragraph (d) above; and

(h) the address or other description (sufficient to identify the location) of any land in the authority's area in which he has a licence (alone or jointly with others) to occupy for 28 days or longer.

**14.** Within 28 days of the provisions of the authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his other interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority's monitoring officer of his membership of or position of general control or management in any -

(a) body to which he has been appointed or nominated by the authority as its representative;

(b) public authority or body exercising functions of a public nature;

(c) company, industrial and provident society, charity, or body directed to charitable purposes;

(d) body whose principal purposes include the influence of public opinion or policy; and

(e) trade union or professional association.

**15.** A member must within 28 days of becoming aware of any changes to the interests specified under paragraphs 13 and 14 above, provide written notification to the authority's monitoring officer of that change.

*Registration of Gifts and Hospitality*

**16.** A member must within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the authority's monitoring officer of the existence and nature of that gift or hospitality.

**APPENDIX 5**

**CODE CONDUCT FOR PLANNING MATTERS**

**GENERAL PRINCIPLES**

**Members and Officers must:-**

- \* at all times act within the law
- \* support and make decisions in accordance with the Council's Planning policies/Central Government advice and material Planning considerations.
- \* declare any direct or indirect conflicts of interest
- \* not become involved with a Planning matter, where they have a clear and substantial interest
- \* not disclosure to a third party, or use to personal advantage, any confidential information
- \* not accept gifts and hospitality received from applicants, agents or objectors outside of the strict rules laid down in the respective Member and Officer codes

**In Committee, Members must:-**

- \* base their decisions on material Planning considerations
- \* not speak or vote, if they have a clear and substantial interest in a Planning matter
- \* through the Chairman give details of and record their Planning reasons for choosing to depart from the Officer recommendation on an application and this must be recorded in the Minutes
- \* give Officers the opportunity to report verbally on any application

**Members should:-**

- \* not depart from their overriding duty to the interests of the District's Community as a whole
- \* not become associated, in the public's mind with those who have a vested interest in Planning matters
- \* not agree to be lobbied, unless they give the same opportunity to all other parties



- \* not depart from the Council's guidelines on procedures at site visits
- \* not put pressure on Officers to achieve a particular recommendation
- \* be circumspect in expressing support, or opposing a Planning proposal, until they have all the relevant Planning information

**Officers must:-**

- \* give objective, professional and non-political advice, on all Planning matters
- \* put in writing to the committee any changes to printed recommendations appearing in the agenda

**Note: Clear and Substantial Interests**

The test of whether an interest is clear and substantial is whether a member of the public, knowing the facts of the situation, would reasonably think that the Councillor might be influenced by the interest (Members' Interests. Local Government Ombudsman. April 1994).

**PROTOCOL**

**1.0 Introduction**

- 1.1 Members' conduct is governed by statute, the Council's Standing Orders and by the National Code of Local Government Conduct. Officers' conduct is covered by the District Council's Code of Conduct for Employees. This Code of Conduct gives additional guidance on the way that Members and Officers should carry out their duties and make decisions on Planning matters.
- 1.2 The District Council wants to ensure that all Planning decisions are made according to clear procedures that are known to all users of the Planning system. In this Code, references to "the Planning Committees" mean the Planning Services Committee and the Transportation and Environmental Services Committee, but the principles also apply to Public Consultation Meetings, Working Groups and Sub-Committees that may deal with Planning matters.
- 1.3 Planning decisions must be made on an objective basis, according to proper procedures. Members of the Local Planning Authority are elected to represent the whole Community in Planning matters. In deciding on Planning applications, Members must take into account any relevant views expressed by neighbouring occupiers, local residents and other third parties, together with all other material Planning considerations, including Central Government Policy and Guidance and the Council's own Local Plan Policy framework.

1.4 Planning decisions involve balancing a number of matters. This Code aims at fairness for all concerned in the Planning process, so that decisions are made according to proper Planning principles and not in response to the undue influence of individuals or groups, or the personal interests of Members or Officers.

**2.0 Acting within the Law**

2.1 The District Council's Planning responsibilities are defined by the Planning Acts and associated Regulations and Orders. The responsibilities of the Council's Planning Committees derive from that legislation and Councillors and Officers must at all times act within the law. The Council's Legal and Planning Officers must give advice and make recommendations designed to keep the Council within the law. In the end, however, Members must take responsibility for their actions and decisions.

2.2 In making decisions in respect of Planning applications, it should be recognised that the emphasis of Planning legislation is such that all Planning applications should be approved, unless there are sound and valid Planning reasons to support a refusal.

**3.0 Public Duty**

3.1 The Council's Planning policies are adopted in the interests of the whole Community following public consultation. They therefore reflect the overall public interest, rather than that of individuals or organisations. Members have a duty to their Constituents, including those who did not vote for them, but their over-riding duty is to the Local Community as a whole. Members and Officers should therefore support the Council's Planning policies and make decisions in accordance with them, unless there are sound and valid Planning reasons for not doing so.

**4.0 Pecuniary and non-pecuniary interests**

4.1 If a Member or his/her spouse has a direct or indirect financial interest in any Planning matter, he/she must declare that interest and may not speak or vote when the matter is discussed by the Planning Committees. If the interest is clear and substantial, the Member must withdraw from the meeting whilst the relevant Planning matter is discussed. A direct financial interest is one that affects a Member (or spouse) personally. An indirect financial interest is where a Member's (or spouse's) business partner, employer, or a company in which the Member (or spouse) has shares, stands to gain or lose.

- 4.2 Similarly, if a Member or his/her spouse has a clear and substantial non-financial, private or personal interest in any Planning matter, he/she must declare it and take no part in the discussion and decision on that matter. A private or personal interest arises where a Member has any kind of connection that might influence his/her judgement, even though there is no financial interest. For example: kinship, close friendship and membership of Clubs, Societies and other Organisations (including Freemasonry, Trade Unions and Voluntary Bodies). If the connection is minor, rather than clear and substantial, it must be declared, but the Member may still speak and vote.
- 4.3 In deciding whether an interest is clear and substantial, Members should consider whether members of the public, knowing the facts, would reasonably think they might be influenced by a personal interest. Members should avoid becoming associated in the public mind with representatives of the development industry, such as Landowners, Builders, Agents or Planning Consultants. A consistent record of supporting a particular Applicant or Agent, contrary to the Council's adopted Planning policies, could be seen as evidence of a private interest or connection.
- 4.4 Members do not need to declare membership of political groups, unless this represents a significant interest for a particular Planning matter. When considering Planning applications, however, Members must base their decisions on the adopted Local Plan and other material Planning considerations. Decisions reached for party political reasons are not unlawful but may be dismissed at Appeal, or overturned by the Courts or be subject of the finding of maladministration by the Ombudsman with the potential to incur costs against the Council for this fact alone. It is not appropriate to apply party whipping to decisions on Planning applications.
- 4.5 Officers must declare any personal or financial interests in any Planning matter before the Council, must not deal with such matters on behalf of the Council and must not give advice to Members or other Officers on them. An Officer with a personal or financial interest in a Planning matter must withdraw from any relevant Committee meeting whilst that matter is discussed. Planning Officers must maintain their professional integrity and should avoid becoming associated in the public mind with representatives of the development industry or environmental pressure groups.

## **5.0 Officer Member Relationships and Roles**

- 5.1 Officers and Members both serve the public, but they have different although complementary roles in dealing with Planning matters. In general, the Officers' role is to advise Members of the relevant Planning policies and other material considerations and the Member's role is to make Planning decisions on the basis of that advice.

- 5.2 Officers must give objective, impartial Planning advice, based on their professional judgement and not be compromised or influenced by political considerations, other than through the formal development of the Council's Planning politicise.
- 5.3 It is important that there is a good working relationship between Officers and Members, based on mutual understanding of and respect for their respective roles. This avoids delay and assists consistency in the Planning system. Regular training can help to achieve these objectives.

**6.0 Assisting Applicants and Objectors and Lobbying Members**

- 6.1 Members may assist applicants for Planning Permission, or objectors to such applications, by explaining the Planning process. Members may also describe the Council's adopted Planning policies, but should not offer an opinion whether a particular proposal is consistent with those policies without consulting an appropriate Planning Officer.
- 6.2 Behind the scenes lobbying can provoke suspicion that a Planning decision may be unduly influenced by a particular interest. Members must bear in mind that their over-riding duty is to the Local Community as a whole. Consequently, if they are willing to be lobbied by one party, they must give the same opportunity to all other parties. Alternatively, they can decline to be lobbied to the Officers.
- 6.3 Members must not agree to speak or vote for or against a particular Planning application, without having heard all relevant details in respect of the case. Applicants and objectors are entitled to expect that Planning decisions will be made on the basis of information and arguments available to the Committee. Late representations often have to be reported verbally to the Committee. If Members have given a prior commitment to vote in a particular way, they may be acting against natural justice and their duty to the whole Community.
- 6.4 If a Member has received information that is relevant to a Planning report, he/she must declare that information to the relevant Officer beforehand or to the Committee when that report is under consideration.
- 6.5 Members should act objectively when a planning matter is discussed at Committee. It follows that a Member should not become personally involved in particular Planning issues, nor organise support or opposition, lobby other Councillors, or act as an advocate. Members must not put pressure on Officers for a particular recommendation. If a Member has, nevertheless, agreed to represent the views of any person or organisation at a meeting of the Planning Committees, he/she must declare it to the Committee and must consider whether this constitutes a clear and substantial interest.

**7.0 Committee Procedures and Conduct of Meetings**

- 7.1 Pre-Committee briefing meetings between Officers and Members of the Planning Committees are not part of the formal Committee proceedings and, if held, must always be after the agenda has been set and Officer's recommendations made. The purpose of such meetings is to inform the Chairman/Vice-Chairman and spokespersons on Planning issues, the reasons for Officer recommendations and to give the Chairman an opportunity to give notice of potential problems, or the need for more information.
- 7.2 Planning decisions should be made on the basis of an Officer's written report, which should contain all the relevant information to enable the Committee to reach a reasonable decision. In the case of Planning applications, the report will be based on any appropriate National Planning Policy Advice and Guidance, Structure Plan Policy and Local Plan Policy and other material Planning considerations. The report will normally include the Officers' recommendation as to how the application should be decided, together with valid Planning reasons for that decision. Members must have good reasons based on material Planning considerations, if they decide to reject Officers' advice. Members must consider the professional advice given to them on Planning matters and if they reject that advice, must clarify the basis for their decision and both this and the decision itself should be recorded in the Minutes.
- 7.3 If the Committee decides that there are over-riding reasons for not accepting Officers' advice and the decision represents a departure from the Local Plan, it is particularly important that the reasons are clearly recorded and are based on valid Planning grounds.
- 7.4 A Committee decision on a Planning application, contrary to the Council's Planning policies, may result in an Appeal and a Public Inquiry. Officers must be prepared to explain and defend the Council's decisions. However, Officers who are appearing as expert witnesses for the Council are, if asked, obliged to give their bona fide professional opinions and, in certain circumstances, it may be that an Officer whose professional advice was not consistent with the Committee's decisions, may not be the best witness for the Council at an Inquiry, as the difference of opinion is likely to be revealed under cross-examination.
- 7.5 To facilitate debate at the Committee meeting, it would be advisable for Members to ask for information and clarification on specific points prior to the Committee meeting, particularly where points of detail are concerned.
- 7.6 At Committee, Officers should be given the opportunity to give verbal updates on the representations received, present additional information on introducing the item and present the recommendation accordingly.

- 7.7 The Chairman shall move all Officer recommendations unless any member indicates intention to move to the contrary.

**8.0 Committee Site Visits**

- 8.1 The purpose of site visits is to give Members, accompanied by Officers, first hand knowledge of a site and its surroundings, in relation to any development proposal or other Planning matter. A site visit is not part of the formal Committee proceedings and is not a forum for debate or making Planning decisions. Site visits are not open to the public as such and should not be used to canvass local opinions, or as an opportunity for lobbying or advocacy. Members should not express personal opinions during site visits.
- 8.2 In normal circumstances, there shall be no debate at that Meeting where a site visit is proposed after the introduction of an item and before debate.
- 8.3 The Council's approved Site Visit Procedure is reproduced at Appendix 1 and forms part of this Code of Conduct.

**9.0 Confidentiality**

- 9.1 There are valid reasons why some Planning information should remain confidential. Members and Officers must not disclose confidential Planning information which is prejudicial to the Council's interests, or its role as the Local Planning Authority and they must not use such information for personal advantage.

**10.0 Gifts and Hospitality**

- 10.1 The National Code of Local Government Conduct deals with gifts and hospitality offered to Members and Rochford District Council Code of Conduct for Employees includes rules and advice for Officers. Planning decisions can result in huge increases in the value of land and property, so the probity and integrity of the Officers and Members involved are vital to the maintenance of public confidence in the Planning system.
- 10.2 Officers and Members involved in the Planning system must abide by the respective codes in connection with gifts, rewards, favours or hospitality from applicants, agents or objectors, as this may be interpreted as an improper inducement, intended to secure a particular Planning decision. The offer of gifts or invitations must always be reported to the appropriate senior Officer of the Council.

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**PROCEDURE AT MEMBERS' SITE VISITS****Purpose of the Visit**

The purpose is to enable Members of the Planning Services Committee to reach a more informed decision by seeing the site itself and to have the proposal explained by the Officer who attends. Whilst it is primarily a fact finding procedure, there may be discussion of the merits of the application, but there will not be any voting or decisions taken. The expression of views by Members will assist the Officer in reporting the general feeling of those Members attending to the next meeting of the Committee. There is, however, no obligation on any Member to express a view at the site visit and its purpose is not for those Members attending to make a decision on the application, as the meetings are not convened in accordance with the Access to Information provisions of the Local Government Act 1972.

The holding of a site visit does not provide an opportunity for applicants or objectors to make representations. To allow representations would undermine the purpose of the site visit and might be construed as an indication of bias or unfairness, but Applicants/Agents will be given an opportunity to explain the proposals to assist Member understanding. If necessary, interested parties present will be advised by the Chairman that representatives cannot be heard.

**Attendance at Site Visit**

The following persons are entitled to attend a Committee site visit:

- (a) All Members of the Planning Services Committee;
- (b) Planning Officer(s) as appropriate;
- (c) Other District Council and supporting County Council Officers as appropriate – e.g. Highway Engineer, Archaeology Advisor;
- (d) Two representatives of the relevant Town or Parish Council
- (e) The Applicant and/or his Agent or Representative

**Organisation and Notification of Site Visits**

Members of the Council are notified in writing of the date and time of the visit as soon as possible following the decision at Committee to hold such a visit. A map showing the location of the site to be visited and, where necessary, a precise meeting place is provided.

Applicants/Agents are informed of the site visit and its purpose and asked to give free, unaccompanied access to the relevant part of the property. Applicants/Agents should not participate in the debate.

The Parish Council is informed of the relevant procedures and the limitations to their participation. The role of the Parish Council representations is to point out particular aspects of the site and surroundings, to respond to Members' questions in connection with this and to be a witness to proceedings,

including the information provided to the site visit, but not to take part in discussion of the merits of the application.

**Procedure at the Site Visit**

In order that visits are conducted in a consistent manner, the following procedure is followed:-

- (a) Assemble at the agreed time and place for each site;
- (b) Start time only at or after the time stated on the timetable;
- (c) In the absence of the Chairman or Vice-Chairman of the Planning Services Committee, Members elect a Chairman for the purpose of conducting the site visit in accordance with the adopted procedures;
- (d) The Planning Officer gives brief details of the proposal, highlighting the main aspects which need to be considered on site. A copy of the plans will be available;
- (e) At the conclusion of the visit, Members and Officers present converse in private to see if there is any further information Members wish Officers or Applicants/Agents to make available to the Committee, prior to the Meeting. However, there should be no discussion as to the relative merits of the application.

**Report to Committee**

An Officer report will include the fact that a site visit has taken place. Individual Members who attended the site visit can, of course, contribute their personal views during the subsequent discussion of the application by the Committee, before a decision is made.



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**APPENDIX 6****PROTOCOL ON MEMBER/OFFICER RELATIONS****1. Introduction**

- 1.1 Member/Officer relations at Rochford are generally good and the production of this protocol should further assist in this matter. The purpose of the protocol is to guide Members and Officers of the Council in their relations with one another. Production of this protocol should not affect the vast bulk of business which is successfully conducted between Officers and Members. It should simply serve to clarify the boundaries of the relationship should particular circumstances so require. For simplicity, the Chief Executive, Corporate Directors and Head of Service are referred to collectively as the "senior management".
- 1.2 Given the variety and complexity of such relations, this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise. It is hoped however that the approach which it adopts to these issues will serve as a guide to dealing with other issues.
- 1.3 This protocol is to a large extent no more than a written down statement of current practice and convention. In some respects, however, it seeks to promote greater clarity and certainty. The protocol can, of course, be updated to take on board new issues as they arise.
- 1.4 This protocol also seeks to reflect the principles underlying the respective Codes of Conduct which apply to Members and Officers. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of Local Government and they therefore demand very high standards of personal conduct.
- 1.5 A relevant extract from the National Code of Local Government for Members is reproduced below:
  23. "Both Councillors and Officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the Council. Their job is to give advice to Councillors and the Council, their Committees and Sub-Committees.
  24. Mutual respect between Councillors and Officers is essential to good Local Government. Close personal familiarity between individual Councillors and Officers can damage this relationship and prove embarrassing to other Councillors and Officers.

1.6 In line with the national Code's reference to "mutual respect", it is important that any dealings between members and Officers should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position.

## 2. Officer advice to Party Groups

2.1 There is now a statutory recognition for party 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. Officers may properly be called upon to support and contribute to such deliberations by party groups but should seek the approval of the Chief Executive or Corporate Director before accepting any such request.

2.2 The support provided by Officers can take many forms ranging from a briefing meeting with a Chairman or Spokesman prior to a Committee meeting to a presentation to a full party group meeting. Whilst in practice such Officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.

2.3 Certain points must however be clearly understood by all those participating in this type of process, Members and Officers alike. In particular:

(a) officer support in these circumstances must not extend beyond providing information and advice in relation to matters of *Council* business. Officers must not be present at meetings, or parts of meetings, when matters of *party* business are to be discussed.

(b) party 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; and

(c) similarly, where Officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant Committee or Sub-Committee or other recognised forum of the Council when the matter in question is considered.

2.4 Confidential items of business must not be discussed by or with Officers at party group meetings. In such circumstances, Officers must also exercise caution as regards matters of a sensitive nature when non-elected representatives not bound by the provisions of the National Code of Local Government Conduct are present.

- 2.5 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussions to another party group.
- 2.6 Any particular cases of difficulty or uncertainty in this area of Officer advice to party groups should be raised with the Chief Executive and/or Corporate Director (Law, Planning and Administration) who will discuss them with the relevant group leader(s).

### **3. Support Services to Members and Party Groups**

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

### **4. Members' Access to Information and to Council Documents**

- 4.1 Members are free to approach any Council Department to provide them with such information, explanation and advice (about that Department's functions) as they may reasonably need in order to assist them in discharging their role as Members of the Council. This can range from a request for general information about some aspect of a Department's activities, to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the senior management.
- 4.2 As regards the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law. Unless a Member of the Committee or Sub-Committee or there is a clear "need to know" as explained below, Members have no general right of access to documents relating to items which appear on the private (purple) agenda for meetings. The items include those which contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, the care of children, contract and industrial relations, negotiations, advice from Counsel and criminal investigations.
- 4.3 The common law right of Members is much broader and is based on the principle that any Member has *prima facie* right to inspect Council documents, *so far as his/her access to the document is reasonably necessary to enable the Member properly to perform his/her duties as a Member of Council*. This principle is commonly referred to as the "need to know" principle.
- 4.4 The exercise of this common law right depends therefore upon the Member's ability to demonstrate that he/she has the necessary "need

to know". In this respect a Member has no right to a "roving commission" to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the "need to know". This question must initially be determined by the Department which holds the document in question (with advice from the Corporate Director (Law, Planning and Administration)). In the event of dispute, the question fails to be determined by the relevant Committee – i.e. the Committee in connection with whose functions the document is held.

- 4.5 In some circumstances (e.g. a Committee Member wishing to inspect documents relating to the functions of that Committee) a Member's "need to know" will normally be presumed. In other circumstances (e.g. a Member wishing to inspect documents which contain personal information about third parties) a Member will normally be expected to justify the request in specific terms.
- 4.6 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 party 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 party group.
- 4.7 Further and more detailed advice regarding Member's rights to inspect Council documents may be obtained from the Corporate Director (Law, Planning and Administration).
- 4.8 Any Council information provided to a Member 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 a Member of the Council. This point is emphasised in the National Code of Local Government Conduct in the following terms:
- 26 "As a Councillor or a Committee or Sub-Committee Member, you necessarily acquire much information that has not yet been made public and is still confidential. It is betrayal of trust to breach such confidences. You should never disclose or use confidential information for the personal advantage of yourself or of anyone known to you, or to the disadvantage or the discredit of the Council or anyone else".
- 4.9 Wherever possible Officers will respond to Member requests for information which accords with the foregoing. However, Members should take account of the workload pressures and the approved business of the Council which may require an Officer to refer a request for information to the senior management of the Council or, when the individual or cumulative workload effect is significant, to a meeting of the relevant Committee or Sub-Committee. In such circumstances, Members may wish to employ the various arrangements in Standing Orders for the raising of Member business.

## 5. Officer/Chairman Relationships

- 5.1 The Chief Executive and senior management are employees of the whole Council, with overriding responsibility to the Council. Nevertheless, the Chief Executive and senior management will be expected to work closely with the Administration at any particular time.
- 5.2 It is clearly important that there should be a close working relationship between the Chairman of a Committee and the senior management, in particular the Lead Officer of a Committee or Sub-Committee and the Senior Officers who report to that Committee. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officers' ability to deal impartially with other Members and other party groups.
- 5.3 Whilst the Chairman of a Committee (or Sub-Committee) will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations there will be a duty to submit a report on a particular matter. Similarly, the appropriate member of senior management will always be fully responsible for the contents of any report submitted to his/her name. Any issues arising between a Chairman and a member of the Senior Management in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.
- 5.4 In relation to action between meetings, it is important to remember that the Council's arrangements only allow decisions (relating to the discharge of any of the Council's functions) to be taken by a Committee, a Sub-Committee, an Urgency Sub-Committee, or an Officer acting under delegated powers. The law does not allow for such decisions to be taken by a Chairman or indeed by any other single member. Arrangements currently exist under Standing Order 17 (Urgent Business) for securing authority to act on any matter which will not admit of delay. This decision-making route should only be used sparingly and, where it is used, a report must be prepared with the request for such action and submitted to the next available meeting giving an account not only of the action taken, but also of why the procedure was used.
- 5.5 It must be remembered that Officers within a Department are accountable to their Head of Service, Director of Chief Executive and that whilst Officers should always seek to assist a Chairman (or indeed any member), they must not, in doing so, go beyond the bounds of whatever authority they have been given by Senior Management.
- 5.6 In accordance with Standing Order 31(2) no Members can give an Officer an "instruction". The special relationship between Members and staff specifically supporting Members is to be determined by a Service Level Agreement.

**6. Correspondence**

- 6.1 Correspondence between an individual Member and an Officer should not normally be copied (by that Officer) to any other Member. Exceptionally, it may be necessary to copy the correspondence to another Member but the first Member should be informed. In other words, a system of “silent copies” should not be employed.
- 6.2 Official letters on behalf of the Council should normally be sent out over the name of the appropriate Officer, rather than over the name of a Member. It may be appropriate in certain circumstances (e.g. representatives to a Government Minister) for a letter to appear over the name of a Member, but this should be the exception rather than the norm. Letters which for example create obligations or give instructions on behalf of the Council should never be sent out over the name of a Member.

**7. Public Meetings organised by the Council and involvement of Ward Councillors**

- 7.1 Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Ward or Wards affected must as a matter of course be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members must be notified at the outset of the exercise.
- 7.2 Public meetings arranged by the Council will be presided over the Council or their nominee. The Leader of the Council or the relevant Committee Chairman would normally take precedence as first choice substitute.
- 7.3 Whilst respecting confidentiality requirements, Officers should ensure that Ward Members are kept informed of matters which are likely to be of interest and particularly where there is likely to be media interest.

**8. Clarification of matters affecting individual members**

- 8.1 The nature of Local Government law, business and “proper officer” roles is such that matters will inevitably arise which require the clarification of a Member’s involvement, interest or actions in that matter. The first stage of consideration of such matters will normally be a requirement on the Chief Executive as Head of Paid Services, the Corporate Director (Law, Planning and Administration) as Monitoring Officer of the Corporate Director (Finance & External Services) as Section 151 Officer, from time to time or in relation to services within the Directorate to discuss the matter with the Member. Members should be aware that such discussions will be necessary and will

generally require the present of a second representative of the Corporate Management Board and the Member's Group Leader. This procedure is designed for the protection of Members and Officers alike and should be respected as such.

**APPENDIX 7**

**CODE OF CONDUCT FOR OFFICERS**

**OFFICIAL CONDUCT**

**DISCLOSURE OF INTERESTS**

Employees must ensure that they declare, in writing to their Head of Service or Director, any matter or relationship which may be determined as relevant to the duties of their post. The Head of Service or Director will maintain a departmental record and ensure that it is reviewed annually. These records would be available for inspection on request.

In addition, employees must not deal with any work related matter specifically concerning their own personal interests, or those of a relative or close friend. In such instances, the appropriate Head of Service or Director should be advised immediately.

**SECONDARY EMPLOYMENT**

The Scheme recognises that, whilst Officers' off-duty hours are their own private concern, high standards of public confidence demanded in Officers' integrity require that their private interests must in no way conflict with or subordinate their duties as Local Government Officers. In particular, Officers above Scale 6 must not be employed by any other body whilst in the full-time employment of the Council unless they have the express consent of the Council.

The question of secondary employment was discussed by Council and the following policy was adopted.

**POLICY**

The question of private professional work is an area the Officer should personally clarify with their Head of Service, Director or the Chief Executive as appropriate. Conflict with and subordination of duty is the important factor to be considered.

No member of the Council's technical staff regardless of the grading of the post may act in a private capacity to draw plans for an outside individual or agency if those plans are to be submitted to the Council for approval. The fact that there may not be any financial reward involved for such work is immaterial.



The Council do not see any distinction of interest between higher and lower graded staff in this respect. It believes that in any event the consideration of such plans drawn by a member of staff would constitute a definite conflict of interests, which is unacceptable. Indeed, caution would need to be exercised by District Council staff in the preparation of plans which would be considered by a neighbouring authority as this too could cause conflict. Similarly, it would be unacceptable for staff to undertake legal work in a private capacity within the District.

Whilst the drawing of plans to go before the Council is a case apart and is specifically precluded, if it were the intention of one member of staff to provide professional assistance to another in some other way then such an arrangement must be disclosed to the Head of Service or Director and the matter brought to Committee for approval with the names of the Officers involved. It would be unacceptable for the Head of Service or Director to exercise any delegated powers in such circumstances.

On the face of it, there are certain types of secondary employment where there is no apparent conflict with the duties performed by the Council and which may be considered acceptable; bar work or football pools collection rounds might fit into this category. Even here, however, there may be areas of conflict; for example, if the member of staff concerned had to call on those same premises in connection with their Council duties.

Only a small number of examples have been given of types of secondary employment and their acceptability or otherwise.

Clearly, there are many forms of such employment and in order to remove any doubt as to possible conflict, all members of staff should consult their Head of Service, Director or the Chief Executive as mentioned above.

### **FEES AND ALLOWANCES**

Employees are permitted to retain all fees and allowances received for written articles, lectures and talks, or for duties as an examiner *undertaken in their own time* or in connection with the conduct of elections, subject to their having obtained the prior consent of their Head of Service, Director or the Chief Executive or the Finance and General Purposes Committee as appropriate. Any payments which fall outside the foregoing categories should be referred as and when they arise for consideration initially by the Head of Service or Director.

Separate sections deal with the Council's policy to discourage staff from involvement in political activity (see section on Political Restrictions of Certain Officers).

## **POLITICAL RESTRICTION OF CERTAIN OFFICERS**

The Local Government and Housing Act 1989 restricts the involvement of certain staff in political activity by amending their contracts of employment and disqualifying them for the purposes of certain elections. A politically restricted post means post holders cannot:

“hold office as a County or District Councillor, MP or MEP nor be a candidate, canvass on behalf of a candidate, hold any office in a political party or speak publicly or publish any articles on any party political matter. Politically restricted officers can be Parish Councillors but cannot canvass in elections to that office.”

The restrictions apply to the Senior Management Team and Deputies, all officers with delegated powers, all officers earning over Spinal Column Point 44 a year and all posts of a lesser salary identified as politically sensitive.

The term “Deputy Chief Officer” means any person who reports directly to a Head of Service for all or most of his/her duties provided it is not solely to give secretarial, clerical or support services.

“Politically Sensitive” is defined as applying to any officer who gives advice regularly to the Council, Committees, etc., or who speaks regularly on behalf of the authority to journalists or broadcasters.

Officers earning over Spinal Column Point 44 a year and those earning less than that figure but occupying politically sensitive posts have to be named on a list open to public inspection. Persons whose name appears on the list have been so advised and have the right to claim exemption by an appeal to the Independent Adjudicator.

The Personnel Section can explain the procedures involved.

## **STAFF ARE DISCOURAGED FROM INVOLVEMENT IN POLITICAL ACTIVITY**

Whilst the law specifically precludes certain staff from involvement in political activity, it has been the Council’s policy for many years to discourage this for staff at all levels. It believes firmly in the tradition in British democratic institutions that the permanent staff must remain impartial whatever the political complexion of the Council’s elected membership. It sees that political activity by employees at any level can bring the employee into conflict with the Council or raise questions of public confidence. These are the reasons for the Council’s caution and its advice to its staff.

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**APPENDIX 8****PROTOCOL FOR OUTSIDE BODIES****MEMBERS' AND OFFICERS' RESPONSIBILITIES & LIABILITIES**

Members and officers acting on outside bodies may attract personal liability depending on the legal nature of the body and the role fulfilled by the member or officer. The Council may only delegate its functions to committees or employees of the Council. This means that members can only represent the Council on outside bodies as observers or facilitators assisting in the exchange of information. Members cannot make decisions binding the Council. Members are therefore not allowed to represent Council in an executive capacity on an outside body. Members may serve on outside bodies in their personal capacity, provided that there is no conflict of interest with their duties as a member.

The following are intended to be some useful guidelines. It is a member/officer's responsibility to insure that they are aware of their liabilities and any insurance arrangements where they participate on outside bodies. Where uncertainty exists, seek guidance from the Corporate Director (Law, Planning & Administration) or independent legal advice.

1. The Council may only indemnify members/officers in certain prescribed instances:
  - Where an individual acts solely on behalf of the Council, within the terms of reference laid down by the Council and in pursuance of one of the Council's statutory powers or duties. This type of indemnity will mainly apply to officers of the Council.
  - Where the individual acts solely in an observational or advisory capacity in connection with the local authority's functions
  - Where the individual acts on behalf of a joint committee established by two or more Councils. Again this will mainly apply to officers.
  
2. The Council cannot indemnify any member who is:
  - A Company director of a Limited Company
  - A trustee under a Trust
  - A voting member of a Management Committee of an unincorporated association
  - A member acting beyond the duties of the Council and in their personal capacity.

3. A member's role on an outside body may occasionally give rise to a conflict of interest.

If a member is a director or on the management committee of an outside body, it is likely that their prime duty is to the outside body. This will not exclude the member from participating in Council decision making even when the outside body is directly affected, as membership of an outside body is not classed as a pecuniary interest. In some instances however a member may find that they are unable to properly carry out their functions as a member of Council and a member of the outside body. In such a case the member may consider resigning from one or other body. Members are advised to seek advice from the Chief Executive or Corporate Director (Law, Planning & Administration) before taking such action.

4. There are general duties that apply to members and officers whether they act in the role of company director or trustee or member of an unincorporated body.
  - The member or officer is under a duty to exercise independent judgement in the interest of the organisation in which they are involved. If the member or officer is involved in the outside body in a representative capacity, this must be declared to the outside body. A mandate from the Council to vote in one way or another would put the member or officer in breach of the duty to the organisation.
  - Members and officers must also ensure that avoidable loss is not incurred in managing the organisation. They must make sure that they have regard to all appropriate reports and papers. They are expected to seek professional advice where appropriate.
  - The member/officer must act in accordance with the rules, constitution and framework set by the outside body.
  - A report back, at least annually, must be given to the relevant committee or Council.
  - At all times members and officers must behave ethically, taking an informed role in the outside body's affairs.
  - Members must represent the Council and not the political party to which they owe their loyalty.
5. Before accepting a role in a decision-making capacity in any outside organisation consider the following:
  - How onerous are the responsibilities likely to be. Do you have the time and capacity to take them on?
  - Is there likely to be any significant conflict of interest between your role in the outside organisation and your council role. If so, consider refusing the office.
  - Assess the risk of things wrong which might give rise to personal liability. Things to consider include the nature and

function of the body and the amount of money with which it deals.

- In each case the issue of insurance must be considered. Find out if the external body has insurance and if so whether it would cover you. If not, would the organisation consider taking out insurance. If no insurance exists, this must be weighed in the decision to accept the appointment.
- Make sure that you are aware of your major responsibilities and liabilities. A guideline on the respective duties and liabilities in relation to companies, trusts and unincorporated associations, is available from the Corporate Director (Law, Planning and Administration)