

PART 5

CODES AND PROTOCOLS

MEMBERS' CODE OF CONDUCT

PART 1 GENERAL PROVISIONS *Scope*

- 1** (1) A Member must observe the Authority's code of conduct whenever he/she:-
- (a) conducts the business of the Authority;
 - (b) conducts the business of the office to which he/she 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/she must, when acting for that other Authority, comply with that other Authority's code of conduct; or
 - (b) on any other body, he/she 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/she believes is of a confidential nature, without the consent of a person authorised to give it, or unless he/she 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/her official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his/her office or Authority into disrepute.
- 5** A Member:-
- (a) must not in his/her official capacity, or any other circumstance, use his/her 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/her 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/her duties under section 5(2) of the Local Government and Housing Act 1989.
- 7** A Member must, if he/she becomes aware of any conduct by another Member which he/she 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/her to do so.

PART 2
INTERESTS
Personal Interests

8 any (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/she is a Member;
- (b) another public authority in which he/she holds a position of general control or management;
- (c) a body to which he/she 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/she 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/she 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/her election or appointment to office (if that is later), a Member must register his/her 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/she is a partner, and the name of any company for which he/she 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/her election or any expenses incurred by him in carrying out his/her 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/she is a partner, a company of which he/she 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/she 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/she is a partner, a company of which he/she 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/she 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/her election or appointment to office (if that is later), a Member must

register his/her 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/her membership of or position of general control or management in any: -

- (a) body to which he/she 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.

MEMBERS' COMPLAINTS PROCEDURE

In the event of a complaint with regard to a particular service or officer reference should be made, in the first instance, to the responsible Corporate Director. If this does not achieve a satisfactory result then the matter should be taken up with the Chief Executive. Any matter relating to a Corporate Director should immediately be referred to the Chief Executive and in the event of any complaint with regard to that Officer, reference should be made to the Chairman and Group Leaders.

CODE OF CONDUCT FOR PLANNING MATTERS

GENERAL PRINCIPLES

Members and Officers must:-

- * at all times act within the law and in accordance with the Code of Conduct.
- * support and make decisions in accordance with the Council's planning policies/Central Government advice and material planning considerations.
- * declare any personal or prejudicial interest.
- * not become involved with a planning matter where they have a prejudicial interest.
- * not disclose 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 of Conduct.

In Committee, Members must:-

- * base their decisions on material planning considerations.
- * not speak or vote if they have a prejudicial interest in a planning matter and withdraw from the meeting.
- * through the Chairman, give details of their Planning reasons for departing from the Officer recommendation on an application which will 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: Prejudicial Interests

A Member has a prejudicial interest in a 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. (Members Code of Conduct, para. 10)

PROTOCOL

1 Introduction

- 1.1 Members' conduct is governed by statute and codes of conduct contained in the Council's Constitution. Officers' conduct is covered by the District Council's Code of Conduct for Employees. This code gives guidance on the way that Members and Officers should carry out their planning duties and make decisions on Planning matters.
- 1.2 The 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 Development Control Committee and the Planning Policy & Transportation Committee, but the principles also apply to public consultation meetings, working parties and panels 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 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 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 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 Prejudicial and Personal Interests

- 4.1 If a Member has a prejudicial interest in any planning matter, he/she must declare that interest and may not speak or vote when the matter is discussed by the Development Control Committee and he/she must withdraw from the meeting whilst the relevant planning matter is discussed.
- 4.2 If a Member has a personal interest in any planning matter this must be declared even if already included in the Register of Member Interests. This applies if the personal interest affects either the Member, his/her partner, relative, friend or employer.
- 4.3 A personal interest arises if the issue being discussed affects a Member more than other people in the area. Provided the interest is not prejudicial a Member can take part and vote in the determination of the matter.

- 4.4 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 policies, could be seen as evidence of a private interest or connection.
- 4.5 When considering planning applications, Members must base their decisions on the adopted Local Plan and other material planning considerations. Decisions reached for party political reasons are not consistent with a proper exercise of discretion and may be dismissed at appeal, or overturned by the courts or be the subject of a finding of maladministration by the Ombudsman with the potential to incur costs against the Council for this fact alone. It is not appropriate and will amount to maladministration to apply party whipping to decisions on planning applications.
- 4.6 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 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 policies.
- 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 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 and refer that party or parties 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, 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 Development Control Committee, he/she must declare it to the Committee and must consider whether this constitutes a prejudicial interest.

7 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. Officers must be prepared to explain and defend the Council's decisions. However, if asked, an Officer appearing at an informal hearing or public inquiry will be 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 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 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 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 at the Development Control Committee where, after the introduction of an item, a site visit is proposed, there shall be no debate.

8.3 The Council's approved Site Visit Procedure is reproduced below and forms part of this Code of Conduct.

9 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 Gifts and Hospitality

10.1 The Members' Code of Conduct deals with gifts and hospitality offered to Members and Rochford District Council's 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 Monitoring Officer of the Council.

PROCEDURE AT MEMBERS' SITE VISITS

Purpose of the Visit

The purpose is to enable Members of the Development Control 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 may assist the case officer. However, there is 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.

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 Development Control 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/Town Council is informed of the relevant procedures and the limitations to their participation. The role of the Parish/Town 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 Development Control 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.

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 unless it is with the authority of the Council in order to implement a decision which the Council has made. Members are therefore not allowed to represent the 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 is intended to provide some useful guidelines. It is a Member/officer's responsibility to ensure 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 (Internal Services) or independent legal advice.

1. The Council may only indemnify Members and Officers in certain circumstances as prescribed by the Local Authorities (Indemnity for Members & Officers) Order 2004.

The Council will provide an indemnity in relation to any action or failure to act by any Member or Officer which:-

- (a) is authorised by the Council and/or;
- (b) forms part of, or arises from, any powers conferred or duties placed upon that Member or Officer at the request, or with the approval of, the Authority, including acting as the Council's representative on an outside body;
- (c) arises in respect of the cost of defending any claim for an allegation of defamation by a Member or Officer acting in an official capacity (but not in respect of any punitive or exemplary damages or arising from malicious or injurious falsehood);
- (d) is in respect of any investigation, hearing or other proceedings for an alleged failure to comply with the Code of Conduct for Members but, if the Member is found to have breached the Code of Conduct, and where an appeal is unsuccessful, then that Member shall reimburse the authority or the Insurer for their costs incurred in relation to those proceedings.

The indemnity includes an act or omission subsequently found to be beyond the powers of the Member or Officer in question, but only to the extent that the Member or Officer reasonably and genuinely believed that the act or omission was within his/her powers at the time he/she acted.

The indemnity does not apply to the defence of any criminal proceedings brought against a Member or Officer unless specifically approved by the Council and then only on similar basis to that relating to proceedings for breaches of the code with regard to reimbursement.

2. 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. Where the Member has been appointed by the Authority as its representative this will not necessarily exclude the Member from participating in Council decision making, even when the outside body is directly affected, as Membership of an outside body need not be regarded as a prejudicial interest under the terms of the code of conduct. However, there may be circumstances where a prejudicial interest might arise and Members should seek advice if they are unsure of their position.

In some instances a Member may also 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 (Internal Services) before taking such action.

3. 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 must be made twice per year into the Members' Bulletin.

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.

4. 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 going 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. Always be aware of the added risks where an organisation employs staff.

In each case the issue of insurance should be considered. Find out if the external body has insurance and if so whether it would cover the key risks of the organisation as well as yourself. Find out if your liability is limited or unlimited.

If not, would the organisation consider taking out insurance. If no insurance exists, and indemnity does not apply, 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 (Internal Services).

OFFICERS' CODE OF CONDUCT

OFFICIAL CONDUCT

DISCLOSURE OF INTERESTS

Employees must ensure that they declare in writing to their Head of Service or Corporate Director any matter or relationship which may be determined as relevant to the duties of their post. The Head of Service or Corporate 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 Corporate Director should be advised immediately.

SECONDARY EMPLOYMENT

The Scheme recognises that, whilst Officers' off-duty hours are their own private concern, the 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, Corporate 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 does 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 Corporate 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 Corporate 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, Corporate 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, Corporate Director or the Chief Executive or the Policy, Finance & Strategic Performance 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 Corporate 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 Chief Officers 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 Chief Officer 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 **Human Resources Manager** 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 of 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.

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 Heads 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 that most commonly arise. It is hoped, however, that the approach adopted will serve as a guide to dealing with other issues.
- 1.3 This protocol is to a large extent no more than a written 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 that 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 Although no longer in force 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. Officers 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 principle of “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 are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings are not 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 does not 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 Members' Code of 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 with regard to Officer advice to party groups should be raised with the Chief Executive and/or Corporate Director (Internal Services) 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 only be used for Council business and never in connection with party political or campaigning activity or for private purposes.

4 Members' Access to Information and to Council Documents

- 4.1 Members have a right to inspect any document in the possession or under the control of the Council that contains material relating to any business to be transacted at a meeting of the Council. This right does not extend to exempt or confidential information.
- 4.2 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 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.

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 in 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 or an Officer acting under delegated powers. The law does not allow for such decisions to be taken by a Chairman or any other single Member. Arrangements currently exist under the Chief Executive's delegated powers for securing authority to act on any matter that will not admit of delay. This decision-making route will rarely be used but when it is, a report must be prepared and submitted to the next practicable 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, Corporate Director or 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 No individual Member can give an Officer an "instruction".

6 Correspondence

- 6.1 Correspondence between an individual Member and an Officer should not normally be copied (by that Officer) to any other Member. Where exceptionally it is necessary to copy the correspondence to another Member, this should be apparent from the original. 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 in the name of the appropriate Officer, rather than the name of a Member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to appear in 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 in 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 by the Chairman of 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 that are likely to be of interest, particularly where there is likely to be media interest.

8 Clarification of matters affecting individual Members

- 8.1 Any Member requiring clarification of a matter affecting them as an individual should speak to the Chief Executive and/or Monitoring Officer in the first instance or the Chief Finance Officer in relation to a financial issue.