

## **PART 5**

# **CODES AND PROTOCOLS**

# **CODE OF CONDUCT FOR MEMBERS**

## **Preamble to Code of Conduct for Members**

Trafford Council's current Code of Conduct for Members was adopted by the Council on **19 September 2012** (and amended **25 November 2020**). The Code sets out the conduct expected of Members of the Council, both elected and co-opted.

Underpinning the Code of Conduct are the seven principles set out in section 28(1) of the Localism Act 2011. These principles define the standards that members should uphold and serve as a reminder of the purpose of the Code of Conduct.

### **The General Principles**

- **Selflessness**
- **Integrity**
- **Objectivity**
- **Accountability**
- **Openness**
- **Honesty**
- **Leadership**

# THE CODE OF CONDUCT

## Part 1 General provisions

### 1. Introduction and interpretation

- 1.1 This Code applies to you as a member of the Council.
- 1.2 It is your responsibility to comply with this Code. If you fail to do so it may result in a sanction being applied by the Council. Failure to take appropriate action in respect of a disclosable pecuniary interest may result in a criminal conviction and a fine not exceeding level 5 on the standard scale and /or disqualification from office for a period of up to 5 years.
- 1.3 In this Code - “meeting” means any meeting of:
- (a) the Council;
  - (b) any of the Council’s committees or sub-committees, joint committees or joint sub-committees;
  - (c) the Executive or any committee of the Executive.
- 1.4 “Member” includes a co-opted member and an appointed member.

### 2. Scope

- 2.1 Subject to sub-paragraphs (2) and (3), you must comply with this Code whenever you are acting as a member or co-opted member of the Council or an appointed member of a joint committee, and, references to your official capacity are construed accordingly.
- 2.2 This Code does not have effect in relation to your conduct other than where it is in your official capacity.
- 2.3 Where you act as a representative of the Council—
- (a) on another relevant authority, including the Greater Manchester Combined Authority, the Greater Manchester Fire & Rescue Authority and the Greater Manchester Waste Disposal Authority, you must, when acting for that other authority, comply with that other authority’s code of conduct; or
  - (b) on any other body, you must, when acting for that other body, comply with this Code, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### 3. General obligations

- 3.1 You must not:

- (a) do anything which may knowingly cause the Council to breach the Equality Act 2010;
- (b) be abusive to any person;
- (c) intimidate or attempt to intimidate any person who is or is likely to be:
  - (i) a complainant,
  - (ii) a witness, or
  - (iii) involved in the administration of any investigation or proceedings,in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council.
- (e) raise trivial or malicious allegations against other Members of the Council.

#### **4. You must not harass anyone**

- 4.1 Harassment is any unwelcome behaviour or conduct, with no legitimate workplace purpose, which makes someone feel offended, humiliated, intimidated, frightened and / or uncomfortable at work. Harassment can be experienced directly or indirectly (such as being in the room while unacceptable conduct is being displayed and being affected by it), and can occur as an isolated incident or as a course of persistent behaviour.
- 4.2 It is important to note that even unintentional behaviour can still be classed as harassment. Harassment is essentially about what the recipient deems to be offensive, not about what was intended. You should be aware, therefore, of the impact your conduct has on others and that what may seem harmless to you can be offensive to someone else.
- 4.3 Harassment can occur through physical contact or through oral or written comments (including ones made online). The following list provides some examples but it is, by no means, exhaustive:
  - Unwelcome physical contact such as touching or invading 'personal space';
  - Inappropriate remarks or questioning such as comments about someone's appearance, lewd comments, and offensive jokes (such as ones of a racial, sexual or sectarian nature);
  - Intrusive questioning, including the persistent discussion of a person's sexual practices, misogynistic behaviour, sexual orientation or religious beliefs (either directly or with others); and
  - Sending unwelcome emails, messages or notes; circulating or displaying explicit or inappropriate images.

## **5. You must not bully anyone**

5.1 Bullying is inappropriate and unwelcome behaviour which is offensive and intimidating, and which makes an individual or group feel undermined, humiliated or insulted. Again, it is the impact of any behaviour rather than the intent which is the key.

5.2 Bullying usually arises as a result of an individual misusing their power (usually derived from status or some other position of strength) and, again, can occur through all means of interaction. Bullying tends to be a pattern of behaviour or can be a one off serious incident that becomes objectionable or intimidating. The examples in the following list are, by no means, exhaustive:

- Unwelcome physical, verbal or non-verbal conduct;
- Intimidating behaviour including verbal abuse or the making of threats;
- Making someone's working life difficult;
- Disparaging, ridiculing or mocking comments and remarks;
- Physical violence; and
- Deliberately excluding an individual from conversations, work or social activities, in which they have a right or legitimate expectation to participate.

## **6. You must not:**

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:

- (i) you have the consent of a person authorised to give it;
- (ii) you are required by law to do so;
- (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
- (iv) the disclosure is:
  - (a) reasonable and in the public interest; and
  - (b) made in good faith and in compliance with the reasonable requirements of the Council; or
  - (b) prevent another person from gaining access to information to which that person is entitled by law.

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

**8. You:**

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of your authority:
  - (i) act in accordance with the Council's reasonable requirements; and
  - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- (d) must, in the event that a complaint or allegation has been raised against you, comply with any formal standards investigation as outlined in the **"Arrangements for dealing with complaints about the Code of Conduct for members"** within the constitution.

**9.**

- (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by**
  - (a) The Council's chief finance officer; or
  - (b) The Council's monitoring officer,where that officer is acting pursuant to his or her personal statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.**

**Part 2 - Disclosable pecuniary interests**

**10. Notification of disclosable pecuniary interests**

- 10.1 Within 28 days of becoming a member or co-opted member, you must notify the Monitoring Officer of any 'disclosable pecuniary interests'.

*[Note: Standing orders require existing members and co-opted members of the Council to notify the Monitoring Officer of disclosable pecuniary interests within 28 days of the adoption of the Code]*

10.2 A 'disclosable pecuniary interest' is an interest of yourself or of your partner if you are aware of your partner's interest, within the descriptions set out in the table below.

10.3 "Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made or provided within the 12 month period prior to notification of the interest in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation Act) 1992 (a).
Contracts	Any contract which is made between you or your partner (or a body in which you or your partner has a beneficial interest) and the Council -  (a) under which goods or services are to be provided or works are to be executed: and  (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of Trafford Council.
Licences	Any licence (alone or jointly with others) to occupy land in the area of Trafford Council for a month or longer.

Corporate Tenancies	Any tenancy where (to your knowledge) - (a) the landlord is the Council: and  (b) the tenant is a body in which you or your partner has a beneficial interest.
Securities	Any beneficial interest in securities of a body where - (a) that body (to your knowledge) has a place of business or land in the area of Trafford Council; and (b) either - (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you or your partner has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

#### 10.4 For the purposes of the above

- (a) "a body in which you or your partner has a beneficial interest" means a firm in which you or your partner is a partner or a body corporate of which you or your partner is a director, or in the securities of which you or your partner has a beneficial interest.
- (b) "director" includes a member of the committee of management of an industrial and provident society.
- (c) "land" excludes an easement, interest or right in or over land which does not carry with it a right for you or your partner (alone or jointly) to occupy the land or receive income, and
- (d) "securities" means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

## **11 Non participation in case of disclosable pecuniary interest**

11.1 If you are present at a meeting [of the authority, or any committee, sub-committee, joint committee or joint sub-committee of the authority, or the executive or committee of the executive] and you have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting,

- You must not participate in any discussion of the matter at the meeting.
- You must not participate in any vote taken on the matter at the meeting.
- If the interest is not registered, you must disclose the interest to the meeting.
- If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

*[Note: In addition, Standing Orders require you to leave the room where the meeting is held while any discussion or voting takes place, and in the case of a registered (as well as unregistered interest) to disclose it to the meeting].*

11.2 Where an executive member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the executive member must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter.

## **12 Offences**

12.1 It is a criminal offence to

- Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
- Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register
- Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting
- Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest
- As an executive member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer within 28 days of the interest
- As an executive member discharging a function acting alone, and having a disclosable pecuniary interest in a matter, taking any steps in relation to such a matter.
- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting

- 12.2 The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

### **Part 3 - Other interests**

#### **13 Notification of personal interests**

- 13.1 In addition to the disclosable pecuniary interests notifiable under the Localism Act 2011, you must, within 28 days of -
- (a) this Code being adopted by or applied to the Council; or
  - (b) your election or appointment to office (where that is later),  
notify the Monitoring Officer in writing of the details of your other personal interests, where they fall within the categories set out in paragraph 11(2) below for inclusion in the register of interests.
- 13.2 You have a personal interest in any business of your authority where it relates to or is likely to affect –
- (a) any body of which you are in a position of general control or management and to which you are appointed or nominated by your authority;
  - (b) any body -
    - (i) exercising functions of a public nature;
    - (ii) directed to charitable purposes; or
    - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),of which you are in a position of general control or management;
  - (c) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £100.

#### **14 Disclosure of interests**

- 14.1 Subject to paragraphs 14.4 to 14.7, where you have a personal interest described in paragraph 13.2 above or in paragraph 14.2 below in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of the personal interest, and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- 14.2 You also have a personal interest in any business of your authority where a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial

position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral ward, affected by the decision;

14.3 In paragraph 14.2, a relevant person is –

- (a) a member of your family or any person with whom you have a close association; or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in paragraph 13.2(a) or (b).

14.4 Where you have a personal interest in any business of the Council which relates to or is likely to affect a body described in paragraph 13.2(a) or 13.2(b)(i), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

14.5 Where you have a personal interest in any business of the Council of the type mentioned in paragraph 13.2(c), (gifts and hospitality) you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

14.6 Where you have a personal interest but, by virtue of paragraph 18, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

14.7 Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

## **15 Non participation in case of prejudicial interest**

15.1 Where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where 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 your judgement of the public interest and where that business –

- (a) affects your financial position or the financial position of a person or body described in paragraph 14.3 ;or
- (b) relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 14.3.

- 15.2 Subject to paragraphs 15.3 and 15.4, where you have a prejudicial interest in any business of your authority—
- a) You must not participate in any discussion of the matter at the meeting.
  - b) You must not participate in any vote taken on the matter at the meeting.
  - c) If the interest is not registered, you must disclose the interest to the meeting.
  - d) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.
- [Note: In addition Standing Orders require you to leave the room where the meeting is held while any discussion or voting takes place].*
- 15.3 Where you have a prejudicial interest in any business of the Council, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise and you leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.
- 15.4 Subject to you disclosing the interest at the meeting, you may attend a meeting and vote on a matter where you have a prejudicial interest that relates to the functions of your authority in respect of—
- (a) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
  - (b) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay; and
  - (c) any ceremonial honour given to members.
  - (d) housing, where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease;
  - (e) an allowance, payment or indemnity given to members;
  - (f) setting council tax or a precept under the Local Government Finance Act 1992.
- 15.5 Where, as an executive member, you may discharge a function alone, and you become aware of a prejudicial interest in a matter being dealt with, or to be dealt with by you, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter, or seek improperly to influence a decision about the matter.

## **16 Interests arising in relation to overview and scrutiny committees**

In any business before an overview and scrutiny committee of the Council (or of a sub-committee of such a committee) where—

- (a) that business relates to a decision made (whether implemented or not) or action taken by the executive or another of the authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken, you may attend the meeting of the overview and scrutiny committee for the purpose of explaining the reasons for the decision, or answering questions or giving evidence relating to the business, but you cannot participate otherwise in the discussion or in any vote on the matter.

### **Part 4 - General Matters relating to Parts 2 and 3**

## **17 Register of interests**

Subject to paragraph 18 any disclosable pecuniary interests or personal interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the authority's website.

## **18 Sensitive interests**

This paragraph applies where you consider that disclosure of the details of a disclosable pecuniary interest or a personal interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees. In these circumstances, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have a disclosable pecuniary interest, the details of which are withheld under Section 32(2) of the Localism Act 2011.

## **19 Dispensations**

The Council may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest or a prejudicial interest.

## Two Stage Public Interest Test for Complaints

Best Practice requires the Council to publish a clear and straight forward public interest test for allegations.

The Model Code of Conduct (“the Code”) for Councillors sets out the high standards of behavior which the public expects from its elected representatives. The Members Complaints procedure allows anyone who is interested the opportunity to inform the Council when they believe a Member has breached the Code.

The complaints procedure is crucial in achieving standards of conduct that meet public expectations. Through this process the Council aims to support proper decision making, the proper use of public resources, and to maintain public confidence in the Council and the democratic process itself. Undertaking investigations that do not support these wider benefits is not in the public interest.

The Council is of the view that our limited resources should not be used to investigate matters which are trivial or which have little or no impact upon the public. It is important that we focus our investigations on matters that are serious and are capable of undermining the relationship between councilors and the public they serve such as; corruption, bullying, damaging the Councils public Image, bringing the Council into disrepute, or the misuse of power in public office.

Where we are satisfied that a complaint is supported by direct evidence which, substantiated, would suggest that a breach may have taken place the public interest is considered in deciding whether a complaint against a Councillor can and should be investigated. We consider the public interest again during the course of an investigation to ensure that it should continue and when determining whether a matter should be referred to the Standards Committee (SC) or an Independent Investigator (II) for further consideration.

There is no widely accepted definition of public interest, but it has been described as “something which is of serious concern and benefit to the public“. The public interest therefore relates to something which has an impact on the public and is not merely a matter the public finds to be of interest or a matter that impacts solely on an individual (although an individual may be more directly impacted by the matter than the wider public).

The public in this context does not necessarily mean the entire population of Trafford. It may refer to a distinct section of the public such as a small community or interest group.

The published public interest factors we may take into account are set out below:

- The seriousness of the breach
- Whether the member deliberately sought personal gain for themselves or another person at the public expense
- Whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to another

- Whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity

## **Considerations**

When taking any of the above factors into account, relevant considerations can include the circumstances of the complaint; the extent to which the councillor was responsible for, or was to blame for, the alleged breach; whether the alleged conduct was premeditated and/or planned and whether the alleged conduct has caused harm or impacted on another person, group or body. Views expressed by the complainant, or any other person affected by the alleged conduct, relating to the impact and effect will also be considered. Other considerations may be:

- Whether there is evidence of previous similar behaviour on the part of the member
- Whether the Councillor has been the subject of any previous complaints or investigations, or been referred to the SC for a similar matter and if the alleged conduct ongoing, repeated or is there evidence of escalating behaviour
- Whether the investigation or referral to the SC or II is required to maintain public confidence in elected members in Trafford.
- Whether investigation or referral to a SC is a proportionate response.
- Whether it is likely that the breach would lead to a sanction being applied to the member and whether the use of resources in carrying out an investigation by an II or hearing by a SC would be regarded as excessive, when weighed against any likely sanction.

Public interest should not be decided on the basis of resource alone but this is a relevant consideration when making an overall assessment. A balanced view should be taken and consideration of the outcomes of previous cases considered by the SC will be helpful in achieving this.

The list is not exhaustive and not all factors will be relevant to every case.

## **Arrangements for dealing with complaints about the Code of Conduct for members**

### **1. Introduction**

1.1 This procedure applies when a complaint is received that a member, co-opted member or Parish Council Member has or may have failed to comply with the Code of Conduct for Members.

1.2 The person making the complaint will be referred to as “the complainant” and the person against whom the complaint is made will be referred to as the “subject member”.

1.3 No member or officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.

### **2. Making a complaint**

2.1 A complaint must be made in writing either by post or e-mail to the Monitoring Officer.

2.2 The Monitoring Officer will acknowledge receipt of the complaint within five working days of receiving it and, at the same time, write to the subject member (and in the case of a complaint about a parish or town councillor to the Clerk of the council also) with details of the allegations (subject to any representations from the complainant on confidentiality, which are accepted as valid by the Monitoring Officer). The subject member may, within five working days of receipt, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint should be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued the initial assessment of the complaint.

### **3. Initial Assessment of Complaint**

3.1 The Monitoring Officer will review the complaint and, following consultation with the Independent Person take a decision (initial assessment) as to whether it merits investigation, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint.

The complaint will be rejected if;

- The complaint is not against one or more named members or co-opted members of the council or a parish or town council within its district;
- The subject member was not in office at the time of the alleged conduct.
- The complaint, if proven, would not be a breach of the Code of Conduct under which the subject member was operating at the time of the alleged misconduct.

3.2 If the complaint has not been rejected on any of these grounds the Monitoring Officer will then go on to apply the following criteria in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected;

- Whether a substantially similar allegation has previously been made by the complainant to Standards for England, or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority;
- Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;
- Whether the allegation is anonymous;
- Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and
  - i. The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations and
  - ii. Whether in all the circumstances there is no overriding public benefit in carrying out an investigation.
- Whether the complaint appears to be malicious, vexatious, politically motivated or tit for tat;
- Whether the complaint suggests that there is a wider problem throughout the authority;
- Whether it is apparent that the subject of the allegation is relatively inexperienced as a member or has admitted making an error and the matter would not warrant a more serious sanction;
- Whether training or conciliation would be the appropriate response.

The Monitoring Officer will consult with the Independent Person and then give his/her decision on how the complaint will be dealt with. The Monitoring Officer may in exceptional circumstances refer the question of how to proceed to a sub-committee of the Standards Committee.

#### **4. Additional Information**

4.1 The Monitoring Officer may require additional information to come to a decision and may request information from the subject member. Where the complaint relates to a parish or town councillor, the Monitoring Officer may also inform the Clerk of the council of the complaint and seek the views of the Clerk before deciding whether the complaint merits formal investigation or other action. In

appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation.

4.2 Such informal resolution may involve the subject member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the subject member or the authority (in appropriate cases) makes a reasonable offer of local resolution, but it is rejected by the complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

4.3 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the police or other prosecuting or regulatory authority, in addition to any action taken pursuant to the Code.

## **5. Confidentiality**

5.1 If a complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the initial assessment stage.

5.2 As a matter of fairness and natural justice the subject member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the complainant's identity if on request from the complainant, or otherwise, they are satisfied that the complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the complainant's identity being disclosed.

5.3 If the Monitoring Officer decides to refuse a request by a complainant for confidentiality, they will offer the complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the complainant's wish to have his or her identity withheld from the subject member.

## **6. Investigation**

6.1 The Monitoring Officer will appoint an investigating officer where a complaint merits formal investigation. The investigating officer may be a council officer, an officer from another council, or an external investigator.

6.2 The investigating officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost effective use of council resources and shall be interpreted in line with these principles.

6.3 The Investigating Officer will ensure that the subject member receives a copy of the complaint – subject to the Monitoring Officer decision on confidentiality.

6.4 At the end of their investigation, the investigating officer will produce a report and will send a copy of that report to the Monitoring Officer. The investigating officer may, before that, produce a draft report and send copies to the complainant and to the subject member, for comments. The investigating officer will take such comments into account before issuing their final report to the Monitoring Officer.

## **7. Investigating officer finding of no failure to comply with the Code of Conduct**

7.1 Where the investigating officer's report finds that the subject member has not failed to comply with the Code of Conduct, the Monitoring Officer (in consultation with the Independent Person) will review the investigating officer's report and if satisfied, will confirm the finding of no failure to comply with the Code of Conduct.

7.2 The Monitoring Officer will write to the complainant and the subject member (and to the Clerk of the council, where the complaint relates to a parish or town councillor), with a copy of the decision and the investigating officer's report.

7.3 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the investigating officer may be asked to reconsider the report and the conclusions.

## **8. Investigating officer finding of sufficient evidence of failure to comply with the Code of Conduct.**

Where the investigating officer's report finds sufficient evidence that the subject member has failed to comply with the Code of Conduct, the Monitoring Officer will review the investigating officer's report and will then having consulted the Independent Person either send the matter for local hearing before the hearings panel or seek local resolution.

### **8.1 Local Resolution**

If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Independent Person and the complainant and seek to agree a fair resolution. Such resolution may include the subject member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee (and the Clerk to the council if appropriate) for information, but will take no further action. If the complainant or the subject member refuses local resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a local hearing without further reference to the complainant or the subject member.

### **8.2 Local Hearing**

Where, in the opinion of the Monitoring Officer, local resolution is not appropriate or the complainant and/or subject member refuses to co-operate, then the Monitoring Officer will report the investigating officer's findings to the hearing panel which will conduct a local hearing before deciding whether the subject member has failed to

comply with a Code of Conduct and, if so, what action (if any) to take in respect of the subject member.

The Council has agreed a procedure for local hearings which is attached as Annex 1 below.

## **9. Constitution of the Hearing Panel**

The Hearing Panel is a sub-committee of the council's Standards Committee. The Council has decided that it will comprise of at least one of the independent Members co-opted to the Standards Committee and three members of the council drawn from at least two different political parties. Where the complaint is about a parish or town council member, the hearing panel will endeavour to include at least one of the parish or town council members co-opted to the Standards Committee.

The Independent Person is invited to attend all meetings of the Hearing Panel and their views must be sought and taken into consideration before it takes any decision on whether the subject member's conduct constitutes a failure to comply with the code of conduct and as to any action to be taken following a finding of failure to comply with the code.

The quorum for the Hearing Panel will be two voting members.

## **10. The Independent Person**

The Independent Person must be a person who is eligible under the Localism Act 2011 to be appointed, has applied for the post following advertisements of a vacancy for the post, and has been appointed by a positive vote from a majority of all the members of the council at a meeting of the full Council.

## **11. Action**

Where a Hearing Panel find that a subject member has failed to comply with the code of conduct, the Council has delegated to the Standards Committee and the Standards Committee has delegated to the Hearing Panel such of its powers to take action in respect of subject members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Hearing Panel may –

- Publish its findings in respect of the subject member's conduct;
- Report its findings to Council (or to the parish or town council) for information;
- Recommend to Council that the subject member be censured;
- Recommend to the subject member's group leader (or in the case of ungrouped members) recommend to Council) that he/she be removed from any or all committees or sub committees of the council;
- Recommend to the Leader of the Council that the subject member be removed from the Executive, or removed from their portfolio responsibilities;

- Instruct the Monitoring Officer to (or recommend that the parish or town council) arrange training for the subject member;
- Recommend to Council (or recommend to the parish or town council) that the subject member be removed from all outside bodies, appointments to which they have been appointed or nominated by their council;
- Withdraw (or recommend to the parish or town council that it withdraws) facilities provided to the subject member by the council such as a computer, website and/or e-mail and internet access); or
- Placing such restrictions on the subject members access to staff which may be reasonable in the circumstances

## **12. Withdrawal of a Complaint**

In the event that a complainant withdraws a complaint at any time prior to a decision having been made by a Hearings Panel, the Monitoring Officer may, following consultation with the Independent Person, decide that no further steps be taken in respect of that complaint but shall, in taking such a decision take into account any issues which may arise under Paragraph 3.1(c) of the Code of Conduct.

## **13. Revision of these Arrangements**

The Council may by resolution or delegation to the Monitoring Officer agree to amend these arrangements and has delegated to the Chair of the Hearing Panel the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the efficient, effective and fair consideration of any matters.

## **14. Appeals**

Subject to judicial review or a decision of a Local Government Ombudsman, there is no right of appeal against the decision of a Monitoring Officer or of the hearing panel.

## **15. Publication of Decision Notice**

Following the completion of an investigation culminating in a decision from the Monitoring Officer or hearing panel, a decision notice shall be published on the Council's website no later than 10 working days after the decision is reached. Prior to publication, notification of the decision and a draft decision notice is to be sent to the Complainant and the Subject Councillor within 5 working days of the decision being made for comment and to propose amendments. Following consideration of comments and proposed amendments by the Complainant and Subject Councillor, the final decision notice will be signed off by either the Monitoring Officer or the Chair of the hearing panel and published. The decision notice will include;

- the date of the decision,
- the decision maker,
- a summary of the complaint,
- the relevant sections of the code of conduct,

- a statement of the facts considered,
- the independent persons view,
- the decision makers decision and reasoning,
- sanction, if any, resulting from the decision

## **ANNEX 1**

### **HEARING PROCEDURES**

#### **Interpretation**

- 1 'Member' means the member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the member's nominated representative.
- 2 'Investigating officer' means the Monitoring Officer or other investigating officer, and his or her nominated representative.
- 3 Hearing Panel means the sub-committee of the Standards Committee dealing with a hearing under this procedure.
- 4 'Legal advisor' means the officer responsible for providing legal advice to the Hearing Panel. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

#### **Representation**

- 5 The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Hearing Panel, another person.

#### **Legal advice**

- 6 The Hearing Panel may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Hearing Panel should be shared with the Member and the Investigating officer if they are present.

#### **Setting the scene**

- 7 After all the members and everyone involved have been formally introduced, the Chair should explain how the Hearing Panel is going to run the hearing.

#### **Preliminary procedural issues**

- 8 The Hearing Panel should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

#### **Making findings of fact**

- 9 After dealing with any preliminary issues, the Hearing Panel should then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigating officer's report.

- 10 If there is no disagreement about the facts, the Hearing Panel can move on to the next stage of the hearing.
- 11 If there is a disagreement, the Investigating officer, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Hearing Panel's permission, the Investigating officer may call any necessary supporting witnesses to give evidence. The Hearing Panel may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigating officer. The Hearing Panel may also arrange for the attendance at the hearing of such witnesses as it considers appropriate.
- 12 The Member should then have the opportunity to make representations orally or in writing to support his or her version of the facts and to call any necessary witnesses to give evidence (subject to any limit placed on the number of witnesses by the Hearing Panel) .
- 13 At any time, the Hearing Panel may question any of the people involved or any of the witnesses, and may allow the Investigating officer to challenge any evidence put forward by witnesses called by the Member.
- 14 If the Member disagrees with most of the facts, it may make sense for the Investigating officer to start by making representations on all the relevant facts, instead of discussing each fact individually.
- 15 If the Member disagrees with any relevant fact in the Investigating officer's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Investigating officer is not present, the Hearing Panel will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Hearing Panel may then:
  - a continue with the hearing, relying on the information in the Investigating officer's report;
  - b allow the Member to make representations about the issue, and invite the Investigating officer to respond and call any witnesses, as necessary; or
  - c postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating officer to be present if he or she is not already.

All questions asked of the Investigating officer, Member and any witnesses shall be directed through the Chair of the Hearing Panel.

- 16 The Hearing Panel will usually move to another room to consider the representations and evidence in private.
- 17 On their return, the Chair will announce the Hearing Panel's findings of fact.

### **Did the Member fail to follow the Code?**

- 18 The Hearing Panel then needs to consider whether or not, based on the facts it has found, the Member has failed to follow the Code of Conduct.
- 19 The Member should be invited to give relevant reasons why the Hearing Panel should not decide that he or she has failed to follow the Code.
- 20 The Hearing Panel should then consider any verbal or written representations from the Investigating officer.
- 21 The Hearing Panel may, at any time, question anyone involved on any point they raise in their representations.
- 22 The Member should be invited to make any final relevant points.
- 23 The Hearing Panel will then move to another room to consider the representations.
- 24 On their return, the Chair will announce the Hearing Panel's decision as to whether or not the Member has failed to follow the Code of Conduct.

### **If the Member has not failed to comply with the Code of Conduct**

- 25 If the Hearing Panel decides that the Member has not failed to comply with the Code of Conduct, the Hearing Panel will consider whether it should make any recommendations to the authority.

### **If the Member has failed to comply with the Code**

- 26 If the Hearing Panel decides that the Member has failed to comply with the Code of Conduct, it will consider any verbal or written representations from the Investigating officer and the Member as to:
  - a whether or not the Hearing Panel should impose a sanction; and, if so
  - b what form any sanction should take.
- 27 The Hearing Panel may question the Investigating officer and Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
- 28 The Hearing Panel will then move to another room to consider whether or not to impose a sanction on the Member and, if so, what the sanction should be.
- 29 On their return, the Chair will announce the Hearing Panel's decision.

### **Recommendations to the authority**

- 30 After considering any verbal or written representations from the Investigating officer, the Hearing Panel will consider whether or not it should make any

recommendations to the authority, with a view to promoting high standards of conduct among members.

### **The written decision**

31 The Committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision shortly after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.

### **Standards Committee hearing panel - The pre-hearing process**

The pre-hearing administrative processes will normally be carried out in writing by an officer from Democratic Services under the guidance of the legal adviser appointed for the hearing.

The officer providing administrative support to the panel, in consultation with the chair of it, will:

1. provide a copy of the hearing panel's procedures to the subject member
2. outline the subject member's rights and responsibilities
3. propose a date for the hearing
4. ask for a written response from the subject member by a set time to find out whether they:
  - i) disagree with any of the findings of fact in the investigation report, including the reasons for disagreement
  - ii) want to be represented at the hearing by a solicitor, barrister or any other person.

*[The panel will normally give permission for members to be represented by people who are not lawyers, but may refuse permission if the representative is directly involved in the matter being determined]*

- iii) want to give evidence to the panel, either verbally or in writing
  - iv) want to call relevant witnesses to give evidence to the panel
  - v) can attend the hearing on the proposed date
  - vi) want any part of the hearing to be held in private
  - vii) want any part of the investigation report or other relevant documents to be withheld from the public
5. send a copy of the subject member's response to the monitoring officer and invite the monitoring officer to say by a set time whether they want:
- i) to be represented at the hearing
  - ii) to call relevant witnesses to give evidence to the panel
  - iii) any part of the hearing to be held in private
  - iv) any part of the investigation report or other relevant documents to be withheld from the public
  - v) to invite any other witnesses the panel considers are appropriate

The chair of the panel, in consultation with the legal adviser to the panel should then:

- confirm a date, time and place for the hearing
- confirm the main facts of the case that are agreed
- confirm the main facts which are not agreed
- confirm which witnesses will give evidence
- outline the proposed procedure for the hearing
- provide this information to everyone involved in the hearing at least two weeks before the proposed date of the hearing unless the parties agree otherwise

Members are responsible for meeting the cost of any representation at a panel hearing.

# EMPLOYEES' CODE OF CONDUCT

## Introduction

The public is entitled to expect the highest standards of conduct from all employees who work for the Council. This Code outlines existing laws, regulations and conditions of service and provides further guidance to assist the Council and its employees in their day to day work.

## Status of the Code

The aim of the code is to lay down guidelines for employees which will help maintain conduct of the highest standard such that public confidence in their integrity is maintained.

## Who the Code is aimed at

The Code applies to all Council employees.

Inevitably some of the issues covered by the code will affect senior, managerial and professional employees more than it will others.

## 1. Standards

- 1.1 Local government employees are expected to give the highest possible standard of service to the public, and where it is part of their role, to provide appropriate advice to councillors and fellow employees with impartiality. Employees will be expected, through agreed procedures and without fear of recrimination, to bring to the attention of the appropriate level of management any deficiency in the provision of service. Employees must report to the appropriate manager any impropriety or breach of procedure. The Council, acting in accordance with the provisions of the Public Interest (Disclosure) Act 1998 has approved its own "Whistleblowing" Policy (available from the Corporate Director of Governance and Community Strategy).

## 2. Disclosure of information

- 2.1 It is generally accepted that open government is best. The law requires that certain types of information must be available to elected members, auditors, government departments, service users and the public. The authority itself may decide to be open about other types of information. Employees must be aware of which information their authority is and is not open about, and act accordingly.
- 2.2 Employees should not use any information obtained in the course of their employment for personal gain or benefit, nor should they pass it on to others who might use it in such a way.

- 2.3 Any particular information received by an employee from a councillor which is personal to that councillor and does not belong to the authority should not be divulged by the employee without the prior approval of the councillor, except where such disclosure is required or sanctioned by the law.
- 2.4 Information concerning any employee's private affairs shall not be supplied to any person outside the employment of the Council unless the consent of the employee concerned is obtained first.
- 2.5 Information concerning any service user's private affairs shall not be supplied to any person outside the employment of the Council unless the consent of the service user concerned is obtained first.
- 2.6 No employee shall communicate to the public/media the proceedings of any Council or Executive meeting nor the content of any private document relating to the Council unless required by law or expressly authorised to do so.

### **3. Political neutrality**

- 3.1 Employees serve the Council as a whole and not just the political group in power. It follows they must serve all councillors and not just those of the controlling group, and must ensure that the individual rights of all councillors are respected. The only exception to this are Political Assistants appointed in accordance with s9 of the Local Government and House Act 1989.
- 3.2 The individual rights of all Councillors must be respected. On occasions senior officers may be requested to advise or brief political groups. They must make their Chief Officer aware, through their Head of Service, and seek advice to ensure that they do this in ways which do not compromise their political neutrality.
- 3.3 Employees must follow every lawful expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work.
- 3.4 Political assistants appointed on fixed term contracts in accordance with the Local Government and Housing Act 1989 are exempt from the standards set in paragraphs 3.1 to 3.3.
- 3.5 Under the provisions of the Local Government and Housing Act 1989 certain post holders are prevented from engaging in public political activity.
  - 3.5.1 The Act specifies three categories of posts to which the political restrictions apply:-
    - (i) Specified posts:-

- Head of the Authority's paid service (i.e. Chief Executive)
- Statutory Chief Officers
- Non-Statutory Chief Officers
- Monitoring Officer
- Deputy Chief Officers
- Political Assistants
- Officers designated under S100G(2) of the Local Government Act 1972.

(ii) Posts where the remuneration is or exceeds scp 44

(iii) Posts where the duties include:-

- advising the Council, the Executive Committees or Sub-Committees on a regular basis;
- speaking on behalf of the Authority to journalists or broadcasters.

3.5.2 Employees whose posts are listed under paragraph (ii) or (iii) above have the right to apply to be exempted from the political restrictions. Details of the procedure for claiming exemption can be obtained from the Corporate Director of Strategy and Resources.

3.5.3 The restrictions to be applied to holders of politically restricted posts are as follows:-

- (i) The post holder is disqualified from membership of the House of Commons, European Parliament and Local Authorities (excluding Parish and Community Councils).
- (ii) The post holder may not announce that (s)he is, or intends to be a candidate for election to the House of Commons.
- (iii) The post holder shall not act as an election agent or sub-agent for a candidate for election.
- (iv) The post holder shall not be an officer of a political party or member of any Committee, if such membership requires participation in the general management of the party or acting on behalf of the party in dealings with persons other than members of the party.
- (v) The post holder shall not canvass on behalf of a political party or candidate for election.
- (vi) The post holder shall not speak in public with the intention of affecting public support for a political party.

- (vii) The post holder shall not publish any written or artistic work intended to affect public support for a political party (excluding the display of a poster in his/her dwelling or on his/her vehicle).

3.5.4 Where an employee holds a politically restricted post, certain restrictions on political activity are incorporated by statute into their contract of employment and must be complied with. Irrespective of whether or not they hold a politically restricted post, all employees must follow every lawfully expressed policy of the Council.

## **4. Relationships**

### **4.1 Councillors**

Employees are responsible to the authority through its senior managers. For some, their role is to give advice to councillors and senior managers. Mutual respect between employees and councillors is essential to good local government. Close personal familiarity between employees and individual councillors can damage the relationship and prove embarrassing to other employees and councillors and should therefore be avoided.

### **4.2 The Local Community and Service Users**

Employees should always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the authority.

### **4.3 Contractors**

All relationships of a business or private nature with external contractors, or potential contractors, should be made known to the appropriate manager. Orders and contracts must be awarded on merit, by fair competition against other tenders, and no special favour should be shown to any businesses including those run by, for example, friends, partners or relatives.

4.4 Employees who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors should declare that relationship to their Head of Service/Corporate Director.

4.5 If an employee becomes aware that a contract in which (s)he has a pecuniary interest, whether direct or indirect has been, or is proposed to be entered into by the Local Authority they must notify the Corporate Director of Governance and Community Strategy in writing of their interest as soon as possible.

## **5. Appointment and other employment matters**

- 5.1 Employees involved in appointments should ensure that these are made on the basis of merit. It would be unlawful for an employee to make an appointment which was based on anything other than the ability of the candidate to undertake the duties of the post. In order to avoid any possible accusation of bias, employees should not be involved in an appointment where they are related to an applicant, or have a close personal relationship outside work with him or her.
- 5.2 Similarly, employees should not be involved in decisions relating to discipline, grievance, promotion or pay adjustments for any other employee who is a relative, partner, etc.
- 5.3 (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 director/head of service or an officer nominated by him/her.

## **6. Outside Commitment/Off duty Conduct**

- 6.1 Employees graded SO1 and above must obtain written consent from their Head of Service to take any outside employment. All employees should be clear about their contractual obligations and should not take outside employment which conflicts with the authority's interests.
- 6.2 An officer's "off duty" hours are his/her personal concern. Employees should not place themselves in a position where their public duties and private interests conflict or where their private interests take precedence.

## **7. Personal interests**

- 7.1 Employees must notify their Director/Head of Service of interests that they consider could bring about conflict with the authority's interests.
- 7.2 Employees must notify their Director/Head of Service of any financial interests which could conflict with the authority's interests.
- 7.3 Employees must notify their Director/Head of Service or the Monitoring Officer (as appropriate) of their membership of any organisation not open to the public without formal membership and commitment of allegiance and which has secrecy about rules or membership or conduct e.g. Masonic lodges.

## **8. Equality issues**

8.1 All employees should ensure that policies relating to equality of opportunity as agreed by the council are complied with in addition to the requirements of the law. All members of the local community, customers and other employees have a right to be treated fairly.

## **9. Separation of Roles During Tendering**

9.1 Employees involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the authority. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness.

9.2 Employees in “contractor” or “client” roles must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.

9.3 Employees who are privy to confidential information on tenders or costs for either internal or external contractors should not disclose that information to any unauthorised party or organisation.

9.4 Employees should ensure that no favour is shown to current or recent former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

## **10. Gifts and Hospitality**

The area of gifts and hospitality can be a particularly difficult area and specific guidance on this issue is attached as an Appendix to this Code.

## **11. Corruption**

11.1 Employees must be aware that it is a serious criminal offence for them corruptly to receive or give any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or disfavour, to any person in their official capacity.

## **12. Use of Financial Resources**

12.1 Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner. They should strive to ensure value for money to the local community and to avoid legal challenge to the Council.

### **13. Sponsorship – Giving and Receiving**

- 13.1 Where an outside organisation wishes to sponsor or is seeking to sponsor a local government activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.
  
- 13.2 Where the Council wishes to sponsor an event or service neither an employee nor any partner, spouse or relative must benefit from such sponsorship in a direct way without their being full disclosure to an appropriate manager of any such interest. Similarly, where the Council through sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

## **APPENDIX TO EMPLOYEES' CODE OF CONDUCT**

### **GUIDANCE FOR OFFICERS ON GIFTS AND HOSPITALITY**

#### **1. INTRODUCTION**

1.1 These Guidelines supplement the law, the Council's Code of Conduct for Employees (Constitution, Part 5) and the guidance set out by the National Joint Council for Local Government Services.

1.2 Officers should be aware of, and observe, the provisions of the National Agreement on Pay and Conditions of Service, which state:

“Employees will maintain conduct of the highest standard, such that public confidence in their integrity is sustained. Local codes of practice will be developed to cover the official conduct and the obligations of employees and employers.”

The area of gifts and/or hospitality is one where adverse perceptions can easily arise, even when unjustified. So as to maintain public confidence, and for the protection of officers themselves, it is particularly important that the following guidelines are observed.

1.3 The reputation of local government depends greatly not only on the conduct of its officers, but also on what the public believes about their conduct. Officers are expected to use common sense in assessing any situation where improper influence could be construed. Accordingly they should not do anything in their capacity as an officer which could give rise to accusations of improper influence, or which might not seem to the public to be justified.

1.4 These guidelines are intended to assist officers to reach the right decision in any particular case. If officers find themselves in any doubt about the right course of action to take, they can, and should, seek advice from more senior colleagues.

#### **2. GIFTS**

2.1 In almost every case, the acceptance by an officer of a gift from a person who has, or may seek to have, dealings with their Authority could be viewed by the public with understandable suspicion. It would leave both the officer and the Council extremely vulnerable to criticism. An officer should, therefore, actually decline any gift offered to them or to a member of their family, either directly by, or in a manner indirectly attributable to, the following categories of person:

- Any person who has dealings with the Authority;
- Any person seeking to have dealings with the Authority;
- Any person who has applied, or may apply, to the Council for planning permission or any other kind of decision.

In cases where refusal might cause embarrassment, these guidelines can be cited as a reason.

2.2 There are a number of limited exceptions to the above rule, as follows:

- Small gifts of only token value, (i.e. no more than £5) often given to a wide range of people by way of trade advertisements, e.g. calendars, diaries, tape measures and similar small office items;
- Small gifts of only token value, given on the conclusion of a courtesy visit e.g. to a factory or other premises.
- Small gifts where the officer concerned (and perhaps their partner) is a personal friend of the donor and where refusal would be regarded as churlish. In such cases, however, whilst the gift may be accepted, a letter should be sent by the officer concerned, explaining the problems of accepting such gifts.

2.3 **If there is any doubt about whether a gift should be accepted, it should be politely and tactfully refused.**

2.4 Where gifts and / or hospitality have been offered, but declined by the intended recipient, for their own protection the intended recipient may wish to record the offer and their response in the book referred to in Para 2.7 below.

2.5 All officers should be aware that Section 117 of the Local Government Act 1972 expressly forbids the acceptance by an officer/employee of any fee or reward other than their proper remuneration. Any person contravening this provision would be liable, if convicted, to a fine not exceeding Level 4.

2.6 In the event of an officer receiving, without warning, a gift which does not fall within the exceptions listed in Para. 2.2 above, this should immediately be reported to the appropriate Head of Service/Director. That officer should then decide whether the gift should be returned, or whether it could be forwarded to some charitable or other deserving cause. In the latter case, the Head of Service/Director should inform the donor what has happened and why, and request that such gifts not be sent in future.

2.7 A central record is maintained in the Democratic Services Section of all gifts received. In cases falling within Para 2.6 above, action should be taken to ensure that notification is given to the Corporate Director of Governance and Community Strategy or one of the Democratic Services Officers so that the gift can be recorded in the book provided.

### **3. GIVING AND RECEIVING HOSPITALITY**

3.1 A number of general principles should be borne in mind when the question of offering hospitality arises.

- The hospitality must be justifiable as being in the public interest.
- The hospitality should be on a scale appropriate to the occasion

- Parsimoniousness and extravagance should both be avoided.
- 3.2 In the case of offers of hospitality, there should generally be no cause for concern if the offer is made by another non-commercial public body and, in some cases with key partners with whom the Council are engaged in an established relationship (and subject to 3.3 below).. In all other cases, offers of hospitality must be treated with caution.
  - 3.3 Officers must refuse offers of hospitality where any suggestion of improper influence is possible. Special caution is necessary where hospitality is offered by a person or body having or seeking business with, or a decision from, the Authority, and most especially where the offer is made to an individual officer.
  - 3.4 Hospitality should only be accepted where a number of criteria are satisfied: it is on a scale appropriate to the circumstances; it is reasonably incidental to the occasion and not extravagant; and it is apparent that no cause could reasonably arise for adverse criticism about acceptance. As indicated above, adverse public perception is as important as the facts of the case in deciding whether or not it is appropriate to accept hospitality.
  - 3.5 Whenever hospitality is provided to an officer, the circumstances and the type of hospitality should be notified to the Corporate Director of Governance and Community Strategy Officer so that it can be recorded in the book held by Democratic Services.
  - 3.6 A number of examples of acceptable and unacceptable hospitality respectively are given below.

#### Acceptable

- (a) An offer of modest light refreshments following a site inspection.
- (b) Invitations to attend functions where the officer represents the Council (e.g. events where the Officer is officially representing the Council, dinners involving invitations to speak, opening ceremonies, trade shows, etc.) or where they attend by virtue of their professional position.
- (c) Hospitality offered by other non-commercial public bodies or partner organisations (subject to the conditions outlined in paragraph 3.3 above).
- (d) A working lunch of modest standard provided to enable the parties to continue to discuss business.

#### Unacceptable

- (a) Entertainments unconnected with Council business or holidays
- (b) Personal invitations to have evenings out with representatives from a company or firm which has dealings with the Council.
- (c) Offers of hotel accommodation or use of a company flat.

## OVERVIEW AND SCRUTINY PROTOCOLS

Overview and Scrutiny is a statutory function of all Local Authorities who operate an Executive-led model of governance. It is independent from the Council's decision making process.

Overview and Scrutiny is an essential part of ensuring that local government remains effective and accountable. At Trafford, this is undertaken by a group of Councillors who sit on Scrutiny Committees.

The aims of Overview and Scrutiny are -

- To review activity with the aim of improving the quality of public services
- Ensure that public money is spent wisely
- To hold Executive Councillors to account
- To influence future policy changes locally.

The Overview and Scrutiny protocols are designed to ensure good practice and the effective functioning and continuity of the Scrutiny function. By agreeing such protocols Overview and Scrutiny, the Executive and the Corporate Management Team, as well as colleagues from partner organisations, undertake to work efficiently and effectively in order to enhance democratic decision making process at Trafford Council.

There are three designated Overview and Scrutiny Committees, namely: Scrutiny Committee; Health Scrutiny Committee; and Children and Young People's Scrutiny.

In general terms, the way that the Scrutiny Committees will operate is based on the following principles.

Scrutiny Committees are responsible for:

1. Developing the work programme
2. Commissioning work to be undertaken
3. Considering reports and recommendations prior to their referral to the Executive
4. Holding Executive Members to account
5. Monitoring the implementation of recommendations

### **How Overview and Scrutiny will work with the Council's Executive, Corporate Management Team and Partners**

In order to discharge their functions effectively, the Overview and Scrutiny Committees are able to review areas of service provision, as they see fit, in line legal powers such as the Local Government Act 2000, Health and Social Care Act 2001, Crime and Disorder Act 2006, NHS Act 2004, Flood and Water Management Act 2010, Localism Act 2011 and the Health and Social Care Act 2012.

## **Developing the Work Programme**

Each Overview and Scrutiny Committee is responsible for determining its own Work Programme and the final decision to place an item on the work programme will be exercised by the Committee's Chair. The Work Programme will be informed by the Council's and the Local Strategic Partnership's Priorities to ensure that Overview and Scrutiny input complements the work of the Executive and the Trafford Partnership. Health Scrutiny work programmes will be developed taking into account the plans and programmes of health commissioners and providers.

All elected Members, Corporate Leadership Team, the Executive and Partners are able to request that a review be undertaken. However, the suggestion of a review does not mean that it will be undertaken. All requests must be made via Democratic Services. Once received, these requests will be considered by the Chairs and Vice Chairs and a series of tests will be applied to ensure that it is suitable or otherwise to progress. If the Chairs and Vice Chairs deem it appropriate, the review will be suggested to the relevant Scrutiny Committee to agree. Scrutiny Members are free to conduct a review in a way they see fit taking into consideration the resources they have at their disposal and other items of importance on the work programme.

If the suggested review is not appropriate, communication will be made to those that suggested the review stating why it is not to be progressed and, in some cases, may be referred to ward Members or the Executive to consider further.

It is the responsibility of Scrutiny Members to develop a clear work programme for the coming municipal year and these will be agreed by the relevant committee and kept under review throughout the year.

## **Review Work**

The Committee undertaking a scrutiny review will involve the relevant Executive Member and member of the Corporate Leadership Team or a nominated deputy, if appropriate, within the scoping of Overview and Scrutiny reviews. However, the final decision for determining the scope and method of undertaking a review lies with the relevant Overview and Scrutiny Committee. This requires officers supporting the project to have regard to the status of Overview and Scrutiny as independent from the corporate decision making process.

In the event that a review crosses two or more Executive portfolios it is the responsibility of the Executive Members involved and their Corporate Directors to agree a Lead Executive Member and Lead Corporate Director.

Whilst evidence is being gathered, either through background research and/or talking to relevant stakeholders, Overview and Scrutiny undertake to keep the Lead Executive Member and Lead Corporate Director or their deputy informed at reasonable intervals by agreement.

The Executive undertakes to provide Overview and Scrutiny with any information which is reasonably requested in a format which is accessible for Members and non-specialist officers within an agreed time-scale. Furthermore, Overview and Scrutiny's right of access to information is set out in the Access to Information

Procedure within the Council's Constitution and the Overview and Scrutiny Committee undertakes only to request that information which is crucial to the work of the Committee.

In order to aid the efficient sourcing of information at the project scoping stage the Lead Corporate Director or their Deputy will be asked to agree a key contact officer from whom relevant information can be sourced from.

The responsibility for drafting the report and its recommendations lies with the Scrutiny Committee that commissioned the review or project. When the draft report and recommendations have been produced, the opportunity will be given to all stakeholders and relevant Executive Member/s and relevant Member/s of the Corporate Leadership Team to comment upon the draft report and recommendations within an agreed timescale. This may also include, depending on the review undertaken, an opportunity to comment on an interim report and again, comments must be provided within the given timescale. It is important that deadlines for comments are met if Scrutiny reports are to have impact and be delivered in a timely way.

If the Committee receives comments from any stakeholder which necessitate the amendment of the report, it is the responsibility of the Chair to agree necessary changes which commissioned the review.

Once a Scrutiny review has concluded and the report has been finalised following comments from stakeholders, it must be agreed at a formal meeting of the Scrutiny Committee which commissioned it or via an appropriate delegated arrangement. The report will then be presented to the next available meeting of the Executive for noting.

### **Reporting to the Council's Executive**

All Overview and Scrutiny reports will be considered by the Executive except the Annual Report which is to be considered by Council.

When a scrutiny report is presented to the Council's Executive, the Chair of the relevant Committee will normally attend the meeting to present the report and answer any questions relating to it.

### **The Executive's Response**

It is the responsibility of the Lead Executive Member with the Lead Corporate Director to coordinate its formal response to the report in a manner which the Executive sees fit. This may include liaison with partners either individually or through the Local Strategic Partnership.

The relevant Scrutiny Committee has the responsibility to receive the Executive's response and will normally invite the relevant Executive Members/s and Corporate Director/s to a meeting of the Committee to provide a response in respect of the planned actions to the recommendations made.

The Executive undertake to provide Overview and Scrutiny Committees with their final response to the recommendations within 28 days of receiving the report, unless otherwise with the Committee's agreement.

### **Monitoring of Recommendations**

It is the responsibility of the Scrutiny Committee which commissioned the review to establish that the Executive has implemented the agreed recommendations within Council policy and practice. The timing of the review should be agreed with the Executive. To this end, the Committee is able to call an Executive Member/s and Corporate Director/s to Committee in order to provide Scrutiny Members with relevant updates at the request of the Committee's Chair.

It is the role of the Lead Executive Member and the Lead Corporate Director to coordinate any updates to planned actions which are to be presented to the relevant Scrutiny Committee.

### **Confidentiality**

All members of Overview and Scrutiny Committees, including Co-opted Members have a responsibility to keep information on policy development under consideration by the Executive confidential until any final recommendations have been formally presented to the Executive.

Members and co-opted Members are bound by the Council's Code of Conduct. Although there is no sanction over the conduct of a non-voting co-opted member they will be requested to sign up to an agreement on confidentiality and conduct.

The Chair of a Committee shall indicate that confidentiality is required of any co-opted member on a particular piece of work. It should be formally recorded that they have understood this is a requirement. The option shall be available for a co-opted member to inform the Committee that they cannot be bound by confidentiality. In this instance the co-opted member will be requested to withdraw and not be included within any correspondence relating to that matter.

### **Roles and Responsibilities**

#### **Statutory Scrutiny Officer**

The role of the Statutory Scrutiny Officer, as defined by the Local Democracy, Economic Development and Construction Act 2009 is:-

- To promote the role of the authority's overview and scrutiny committee or committees;
- To provide support to the authority's overview and scrutiny committee or committees and the members of that committee or those committees
- To provide support and guidance to
  - members of the authority,

- members of the Executive of the authority, and
- officers of the authority.

The role of the Statutory Scrutiny Officer is currently held by the Governance Manager.

### **Chairs and Vice-Chairs of the Overview and Scrutiny Committees**

The following key attributes are important to ensure that Lead Scrutiny Members support Overview and Scrutiny to discharge its functions effectively and efficiently. Their role is to :-

- Retain an overview of the Scrutiny Work Programme
- Uphold and promote the general principles of Overview and Scrutiny.
- Agree the draft scope of a review or project
- Keep members of the Committee informed on the progress of reviews;
- Be responsible for the content of the draft review report;
- Be responsible for the outcomes of scrutiny reviews
- Be a key contact in relation to the progress of a review
- Uphold and promote the general principles of Overview and Scrutiny.

### **Members of Overview and Scrutiny Committees**

The following key attributes are important to ensure that Overview and Scrutiny is able to discharge its functions effectively and efficiently:-

- To identify possible overview and scrutiny reviews;
- To support the progress of scrutiny reviews;
- To make formal recommendations based upon the evidence found during the course of reviews;
- To be responsible for the outcomes of scrutiny reviews;
- To uphold and promote the principles of Overview and Scrutiny.

### **Non-Executive Members Participating in Overview and Scrutiny Work**

At certain times within the municipal year, Non Executive Members may be afforded the opportunity to participate in Scrutiny work subject to the agreement of Committee Chairs. To this end, those Members will be required to fulfil the same role and responsibilities as all Members of Scrutiny Committees.

### **Co-opted Members of Overview and Scrutiny Committees and Working Groups**

Overview and Scrutiny values its co-opted members and they will be afforded the same status as Members of the Scrutiny Committees.

## **Members of the Executive**

The following key attributes are important to ensure that Executive Members support Overview and Scrutiny to discharge its functions effectively and efficiently. Their role is to :-

- Attend Overview and Scrutiny Committees and other meetings as requested;
- Provide Overview and Scrutiny Committees with the information they require to enable them to undertake their reviews – this includes information on how current policy is being implemented and future policy development;
- Respond to the recommendations within Overview and Scrutiny Review reports within the given time-scale;
- Be held to account for Executive decisions;
- Uphold and promote the principles of Overview and Scrutiny.

## **Corporate Leadership Team and Their Deputies**

The following key attributes are important to ensure that Corporate Leadership Team and their deputies support Overview and Scrutiny to discharge its functions effectively and efficiently. Their role is to :-

- Facilitate the sharing of information with Members of Overview and Scrutiny Committees;
- Attend Overview and Scrutiny Committees or other meetings as requested or if unable to attend to ensure that another officer attends in their place – the substitute officer must be able to answer questions relating to the policy area under review.
- Uphold and promote the principles of Overview and Scrutiny.

## **Democratic Services Officers**

The following key attributes are important to ensure that Democratic Services Officers who explicitly support Overview and Scrutiny to discharge its functions effectively and efficiently. Their role is to:-

- Support Scrutiny Members in their roles
- Provide overall project and programme management of the Overview and Scrutiny process
- Provide independent impartial advice to all Overview and Scrutiny councillors, Executive Members, officers of the Council and partner organisations
- Uphold and promote the general principles of Overview and Scrutiny
- Seek the advice of the Statutory Scrutiny Officer where appropriate.

## **Other Officers of the Council participating in Overview and Scrutiny Work**

The following key behaviours are important to ensure that officers who support Overview and Scrutiny to discharge its functions effectively and efficiently. Their role is to :-

- Attend Overview and Scrutiny Committee meetings as requested by their senior officers
- Provide Overview and Scrutiny members with the information they have requested to complete their reviews and projects – this may be written or verbal information
- Ensure feedback to their senior officers following Overview and Scrutiny Committee meetings
- Uphold and promote the general principles of Overview and Scrutiny.

### **Members of the Public**

The following key attributes are important to ensure that members of the public who support Overview and Scrutiny to discharge its functions effectively and efficiently:-

- To provide Overview and Scrutiny with the information/evidence it needs in relation to a review or project.

### **Representatives from Partner Organisations**

In determining its work programme Overview and Scrutiny will aim to make a significant contribution to the delivery of the Council and the Local Strategic Partnership's priorities and as such, this may involve working with a range of public, private and voluntary sector partners to include the health and criminal justice service.

Representatives from partner organisations undertake to provide Overview and Scrutiny with any information which is reasonably requested in a format which is accessible for Members and non-specialist officers within an agreed time-scale.

The following key attributes are important to ensure that partner organisations who support Overview and Scrutiny to discharge its functions effectively and efficiently:-

- To work closely with Overview and Scrutiny and provide them with the information/evidence it needs in relation to a review or project in a timely fashion
- Recognise the unique role of Overview and Scrutiny and value its independence
- Provide comments on the report and its recommendations within an agreed timescale
- Attend informal and formal meetings to provide evidence
- Respond to the draft report and its recommendations within the agreed timescale
- Uphold and promote the general principles of Overview and Scrutiny.

### **Role and Responsibilities of Health Partners**

Due to the existence of specific legislation in relation to the scrutiny of local health and social care providers a separate Health Scrutiny Protocol is contained within **Appendix 1**.

### **Role and Scope of a Scrutiny Working Group**

Where the Overview and Scrutiny Committee has agreed to commission work to a working group, the Chair and Vice-Chair of that Committee retain the overall

responsibility for agreeing the final scope of the review and the final report to be presented to the Executive. However, they will discuss the management of the review with the Chair of the Working Group.

### **Membership of Working Groups**

In establishing a Working Group it should normally be the intention that the membership of the group seeks to provide balance in terms of political affiliation. However, it is recognised that this may not be possible or practical for all reviews. The commissioning Scrutiny Committee will determine this before the work begins

Working Groups do not have to be made up solely of members of Overview and Scrutiny Committees – additional members can be co-opted onto the group who could include:

- Experts within a relevant field;
- Non-Executive Councillors with an interest in or knowledge about a subject matter subject to the Chair's agreement;
- Representatives from public, voluntary and private sector partners;
- Members of the public who can bring their views and perspectives to the working group.

### **Undertaking a Scrutiny Project**

In determining the scope of the review, the Chair of the Working Group will establish how to conduct the review in consultation with the Democratic Services Officer and Working Group members.

### **Reporting By Working Groups**

Once the work of a Working Group has concluded the report will be presented to the relevant Scrutiny Committee which commissioned it.

The Chair and Vice-Chair of the Working Group will normally present the report to the relevant Committee and seek agreement of it prior to its presentation to the Executive.

## **HEALTH SCRUTINY PROTOCOL**

The aim of the Health Scrutiny Protocol is to agree and set out working arrangements between the Health Scrutiny Committee (HSC), key NHS partners and Healthwatch Trafford and the Older Person's Champion on how to best deliver the duties placed on them by legislation and to deliver the best services for constituents of the borough.

It is important to ensure that such protocols are reviewed, in consultation with our health partners, every two years to ensure that they are fit for purpose. The protocol reflect the guidance issued by the Department for Health in June 2014.

This broad protocol includes:

- Working with Local Health Bodies including the Health and Wellbeing Board (HWB)
- Working with HealthWatch Trafford
- Working with the Older Persons Champion
- Service Redesign/Change

### **Working with Local Health Bodies**

The commissioning and delivery of local health services is important in order to improve and maintain the health of the Borough's residents in addition to reducing health inequalities.

As such, there is value in these bodies cooperating in accordance with the following principles:

- Develop a shared understanding of each other's roles, responsibilities and priorities;
- Exchange information gathered to avoid duplication, to share learning and to inform each other's programme of work and undertake joint work, where appropriate;
  - Work in a climate of mutual respect and courtesy;
  - Respect each other's independence and autonomy.

This protocol has been designed to guide the relationship between Trafford's Health Scrutiny Committee, local NHS bodies, Health and Wellbeing Board (HWB) and Healthwatch Trafford to aid communication, co-operation and understanding.

### **Requests for Information**

The provision of timely and accurate information is essential in order to allow Health Scrutiny Members to discharge their functions effectively. All requests for information will be made by those officers providing support to Health Scrutiny

Members. This is to provide assurance to partners that the request is to enable Scrutiny Members to undertake a piece of effective and targeted scrutiny. In order to provide information relating to the planning, provision and operation of local health commissioners and providers that the HSC requires so that it can carry out its functions. This may include commenting on NHS Plans, proposals and consultations, and carrying out health scrutiny reviews (excluding patient and NHS employee identifiable personal information or information that is non disclosable by law)

**That HWB, Trafford Clinical Commissioning Group, University Hospitals South Manchester, Central Manchester University Hospitals, Greater Manchester West Mental Health and Pennine Care FT will -**

- Provide the HSC with that information within 28 days;
- Respond to HSC reports within 28 days;
- Provide reports to the Committee by the deadline set, typically 5 clear days prior to the meeting.

**That the HSC will –**

- Co-ordinate the development of a rolling work-programme in consultation with NHS Trusts and patient representative groups.
- Arrange for agendas, reports and minutes to be distributed to the CCG and the Trusts, where appropriate, at least 5 working days before the meeting
- Invite the Trust and CCG representatives to meetings giving adequate and appropriate notice. The HSC acknowledges that some Members of the CCG are practicing GP's and that they will need to ensure appropriate practice cover. To this end, the HSC will ensure, as far as is practically possible, that as much notice is given to require CCG attendance at HSC meetings. This also places a responsibility on the CCG to acknowledge their responsibility to attend HSC meetings and make appropriate arrangements.
- Provide a lead officer/single point of contact for all the Trusts.

**Working with HealthWatch Trafford**

This protocol is designed to guide the relationship between Trafford's HSC and HealthWatch Trafford to aid communication, co-operation and understanding.

The HSC and the Healthwatch Trafford share common aims of improving health, reducing health inequalities and improving access to, and the quality of, local health and social care services. As such there is value in the bodies co-operating in accordance with the following principles.

- Develop a shared understanding of each other's roles, responsibilities and priorities;

- Exchange information gathered to avoid duplication, to share learning and to inform each other's programme of work and undertake joint work, where appropriate;
- Work in a climate of mutual respect and courtesy;
- Respect each other's independence and autonomy.

### **Requests for Information**

#### **Healthwatch Trafford will -**

Provide information relating to patient experience and associated matters which enable the HSC to carry out its functions (excluding patient and Healthwatch Trafford employee identifiable personal information or information that is non disclosable by law).

#### **The HSC will –**

- Co-ordinate the development of a rolling work-programme in consultation with NHS Trusts and patient representative groups.
- Arrange for agendas, reports and minutes to be distributed to Healthwatch Trafford and the Trusts, where appropriate, at least 5 working days before the meeting
- Invite the Healthwatch Trafford representatives to meetings giving adequate and appropriate notice.

Provide a lead officer/single point of contact for Healthwatch Trafford.

### **Referrals from Healthwatch Trafford to the HSC**

The Local Government and Public Involvement in Health Act 2007 legislated the referral of social care matters to the HSC from Healthwatch Trafford.

In order to fulfil this duty the HSC will –

- Acknowledge receipt of the referral within 20 working days and consider the matter at the next available HSC meeting
- Keep the referrer informed of the committee's actions in relation to the matter.
- Decide whether or not to exercise any of its powers such as, but not exclusively, in relation to requesting information of health bodies, requesting the attendance of key officers at a future HSC or writing to the secretary of state.
- Arrange for agendas, reports and minutes of the HSC, where appropriate, be dispatched to the Healthwatch Trafford, at least 5 working days before the meeting.

### Referrals from the HSC to the Healthwatch Trafford

On occasion, the HSC may become aware of an issue that is best placed to progressed by Healthwatch Trafford.

In order to support the undertaking of this work Healthwatch Trafford will -

- Acknowledge receipt of the referral within 20 working days and consider the matter at the next available Healthwatch Trafford meeting;
- Keep the referrer informed of the Healthwatch Trafford actions in relation to the matter;
- Advise the HSC in writing as to whether the Healthwatch Trafford intends to take further action in response to the referral, or the reasons for no further action being taken.

### Working with Trafford Council's Older People's Champion

The Older People's Champion is an elected Member who is appointed to improve older people's services and are willing to work together and use their influence to stand up for the interests of older people. They have a role in ensuring older people have access to information about local services and plans for older people. All appointed representatives will be committed to rooting out age discrimination in access to treatment and services helping to improve health outcomes for residents.

The Older People's Champion will endeavour to keep the HSC updated at regular intervals with any information relating to the commissioning or delivery of health and social care services which negatively impacts on older residents.

In order to put the relationship between the Older Person's Champion and the HSC on a more formal footing it will follow a similar protocol to that of referrals to Healthwatch Trafford.

### Referral from the Older People's Champion to the HSC

In order to support the undertaking of this work the HSC will -

- Acknowledge receipt of the referral within 20 working days and consider the matter at the next available HSC meeting;
- Keep the referrer informed of the HSC actions in relation to the matter;
- Advise the Older Person's Champion in writing as to whether the HSC intends to take further action in response to the referral, or the reasons for no further action being taken.

### Referral from the HSC to the Older People's Champion

In order to support the undertaking of this work the Older People's Champion will -

- Acknowledge receipt of the referral within 20 working days and consider the matter with the support of colleagues at the Council and amongst NHS partners;

- Keep the HSC informed of their actions in relation to the matter;
- Advise the HSC in writing as to the initial outcome of their inquiry and, with the agreement of the HSC Chair, place the matter on the next available HSC agenda.

### **Service Redesign/Change**

A significant part of the liaison between the HSC and local health bodies and Healthwatch is in respect of changes to health services. The following sets out a joint protocol to identify 'substantial variation/development' and to approve public engagement activity in relation to NHS service change

The HSC plays a key role in scrutinising NHS service change and ensuring that local Commissioners engage appropriately with local people. Additionally, it performs a specific function by identifying whether a service change should be considered a 'substantial variation'. This paper sets out the processes around this which are in line with the legislation and Health Scrutiny Guidance issued in 2014.

### **'Substantial variation'/ Substantial development**

There is no specific definition of substantial variation or substantial development outlined in the legislation. Instead it is recommended that the local NHS and the HSC should work to the same definition of substantial variation so that judgements about the need to consult are likely to be similar.

The following circumstances have been used to determine substantial variation or developments some time:

- Changes in accessibility of services
- The impact of the proposal on the wider community
- The degree to which patients are affected
- Changes to service models and methods of service delivery

The Health Scrutiny guidance requires that Health Commissioners and Scrutiny Committees should adopt the following approach where there is a proposal for a substantial development of a health service in an area or for a substantial variation in the provision of such services.

1. The relevant health body must consult the HOSC and inform them of:
  - The proposed date by which the health body intends to make a decision as to whether to proceed with the proposal; and
  - The date by which the health body requires the HOSC to provide any comments.
2. The Health Body must inform the HOSC of any changes to the dates provided and make public any changes to these dates
3. The HOSC will provide comments on the date as required above.

4. Where the HOSC's comments include a recommendation to the health body and that body disagrees with that recommendation
  - The Health Body must notify the HOSC of the disagreement;
  - The HOSC and the health body must take such steps that are reasonably practicable to try and reach agreement in relation of the subject in relation to the recommendation
5. Where the HOSC intends to make a report to the Secretary of State for Health it must:
  - Either inform the Health Body of its decision to make this report and the date by which it proposes to do this;
  - Or, state the date by which it proposes to make this decision as to whether to exercise its power. The HOSC must make the decision on the date stated and it must also inform the Health Body of its decision.

In cases where the Health Body is a service provider and the proposals relate to services which the Clinical Commissioning Group or the National Commissioning Board is responsible for arranging the provision of consultation must be carried out by the responsible commissioner.

Where the proposals for change are to be carried out by more than one health body the duties around consultation may be discharged by those bodies jointly or by one or more of those bodies, on behalf of those bodies.

# **Member/Officer Relations Protocol**

## **1.0 INTRODUCTION**

- 1.1 The aim of this Protocol is to guide Members and Officers of Trafford Council in their relations. It is hoped the Protocol will help build good working relationships between Members and Officers as they work together.
- 1.2 A strong, constructive and trusting relationship between Members and Officers is essential to the effective and efficient working of the Council.
- 1.3 It is recognised that relationships between Members and Officers are very varied and can often be complex. Therefore, this Protocol does not seek to be comprehensive and may not cover all situations. However, it is hoped that the framework it provides will serve as a guide to dealing with a wide range of circumstances.
- 1.4 This Protocol forms a key part of the Council's approach to corporate governance and its commitment to uphold standards in public life.

## **2.0 INTERPRETATION OF THE PROTOCOL**

- 2.1 Members and Officers must observe this Protocol at all times.
- 2.2 The provisions of this Protocol will be interpreted having regard to the requirements of the Members' Code of Conduct, the Officers' Code of Conduct, the Council's Whistle Blowing Protocol and the Council's policies, procedures and processes.
- 2.3 Where there is a conflict or discrepancy between this Protocol and the Codes and Policies referred to in 2.2 above then those Codes and Policies shall have precedence. Conventions will also be taken into account in cases of conflict or discrepancy. Any questions over interpretation will be decided by the Monitoring Officer in consultation with the Chief Executive.
- 2.4 It is recognised that, in the period preceding any Council Election or by-election, specific protocols are in place. These protocols will take precedence over this Protocol where there is again conflict or a discrepancy.
- 2.5 This Protocol does not affect or interfere with any rights or protection which a person may have in law.

## **3.0 THE ROLE OF MEMBERS**

- 3.1 Members are accountable to the electorate who determine the people they wish to represent them on the authority. Therefore, this Protocol recognises that Members are elected to serve the people of Trafford.

- 3.2 Members, as politicians, may express the values and aspirations of their party political groups but they must recognise that in their role as Members they have a duty to always act in the public interest.
- 3.3 Members may have a number of roles within the Council and need to be alert to the possible conflicts of interest that may arise.
- 3.4 At all times Members should be aware that the role they are performing may impact upon the nature of their relationship with Officers and the expectations that Officers may have of them.
- 3.5 Members are mainly responsible for:
- the political direction and leadership of the Authority
  - the determination of policies, plans and strategies
  - deciding matters to give effect to or implement those policies, plans and strategies particularly in service delivery terms
  - performing the Council's regulatory functions
  - monitoring and reviewing, primarily through the Executive and Overview and Scrutiny functions, the Council's performance in implementing its policies, plans and strategies and in delivering its services
  - participation in partnership working
  - representing the Council on national, regional and local bodies and organisations
  - representing the views of their communities and individual constituents
- 3.6 Some Members will have additional responsibilities relating to their membership of the Executive, Overview and Scrutiny Committees or other committees and sub-committees. The holding of these roles will involve a different relationship with certain Officers in areas where the Member has particular roles and responsibilities.
- 3.7 Members who serve on committees and sub-committees collectively have delegated responsibilities. These responsibilities may include deciding quasi-judicial matters which by law are excluded from the remit of the Executive.
- 3.8 Officers can expect Members:
- to act within the policies, practices, processes and conventions established by the Council
  - to work constructively in partnership with Officers acknowledging their separate and distinct roles and responsibilities

- to understand and support the respective roles and responsibilities of Officers and their associated workloads, pressures and reporting lines
- to give political leadership and direction and to seek to further their agreed policies and objectives with the understanding that Members have the right to take the final decision in issues based on advice
- to treat them fairly and with respect, dignity and courtesy
- to act with integrity, to give support and to respect appropriate confidentiality
- to recognise that Officers work to the instructions of their senior Officers and not to individual Members
- not to subject them to intimidation, harassment, or put them under undue pressure. Members will have regard to the seniority of Officers in determining what are reasonable requests, having regard to the relationship between the Member and Officer, and the potential vulnerability of Officers, particularly at junior levels
- not to request them to exercise discretion which involves acting outside the Council's policies and procedures
- not to authorise, initiate, or certify any financial transactions or to enter into any contract, agreement or undertaking on behalf of the Council or in their role as a Member without proper and lawful authority
- not to use their position or relationship with Officers to advance their personal interest or those of others or to influence decisions improperly
- to comply at all times with the Members Code of Conduct, the law, the Constitution and such other policies, procedures, protocols and conventions agreed by the Council.

### 3.9 It is important that Members of the Authority:

- respect the impartiality of Officers and not undermine their role in carrying out their duties
- do not ask Officers to undertake work, or act in a way, which seeks to support or benefit a particular political party or gives rise to an Officer being criticised for operating in a party political manner
- do not ask Officers to exceed their authority where that authority is given to them in law, by the Council or by their Managers

### 3.10 The Head of Paid Service, the Monitoring Officer and the Chief Finance Officer (section 151 Officer) and other Statutory Officers have specific responsibilities placed on them by law. These responsibilities go beyond their

obligations as employees of the Council. Where an Officer is discharging his/her responsibilities under any statutory office a Member or Members shall not:

- interfere with or obstruct the Officer in exercising those responsibilities
- victimise any Officer who is discharging or has discharged his/her responsibilities of the Statutory Office

#### **4.0 THE ROLE OF OFFICERS**

4.1 The primary role of Officers is to advise, inform and support all members and to implement the lawfully agreed policies of the Council.

4.2 Officers are responsible for day-to-day managerial and operational decisions within the Council. Members should avoid inappropriate involvement in such matters.

4.3 In performing their role Officers will act professionally, impartially and with political neutrality. Whilst Officers will report a Members' view on an issue, the Officer should not be influenced or pressured to make comments, or recommendations which are contrary to his professional judgement or views.

4.4 Officers should:

- implement decisions of the Council and its subordinate bodies which are lawful, which have been properly approved in accordance with the requirements of the law and the Council's constitution, and are duly recorded.
- work in partnership with Members in an impartial and professional manner
- assist and advise all parts of the Council. Officers must always act to the best of their abilities in the best interests of the authority as expressed in the Council's formal decisions.
- respond to enquiries and complaints in accordance with the Council's standards
- be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for Members, the media or other sections of the public.
- act with honesty, respect, dignity and courtesy at all times
- provide support and learning and development opportunities for Members to help them in performing their various roles
- not seek to use their relationship with Members to advance their personal interests or to influence decisions improperly

- comply, at all times, with the Officer Code of Conduct, and such other Policies or Procedures approved by the Council

4.5 Officers have the right not to support Members in any role other than that of Member, and not to engage in actions incompatible with this Protocol. In particular, there is a statutory limitation on Officers' involvement in political activities.

4.6 Some Officers may be appointed to local, regional or national bodies because of their particular skills and expertise. They may be appointed specifically to represent the Council or in their personal capacity.

## **5.0 THE RELATIONSHIP: GENERAL**

5.1 Members and Officers are servants of the public. They are indispensable to one another. However, their responsibilities are distinct. Members are accountable to the Public, whereas Officers are accountable to the Council as a whole.

5.2 At the heart of the Codes, and this Protocol, is the importance of mutual respect. Member/Officer relationships are to be conducted in a positive and constructive way. Therefore, it is important that any dealings between Members and Officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position nor seek to exert undue influence on the other party.

## **6.0 THE RELATIONSHIP: OFFICER/CHAIR**

6.1 Officers and Committee Chairs will inevitably need to work closely together. 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, to carry out their duties in respect of the Council as a whole, or to undermine public trust and confidence in the Council.

6.2 It must be remembered that officers within a Service are accountable to their Director and that whilst Officers should always seek to assist a Chair (or indeed any Member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Director.

## **7.0 THE RELATIONSHIP: OVERVIEW AND SCRUTINY BODIES**

7.1 It is accepted that in carrying out the Council's overview and scrutiny functions Members may require an Officer to attend to answer questions or to discuss issues.

7.2 It is recognised by this Protocol that challenge in a constructive and non-confrontational way is important in ensuring policies and performance are meeting the Council's strategic objectives. Therefore, nothing in this Protocol is intended to stop Members holding Officers to account for decisions made

under delegated powers. Nor is it intended to affect the Council's overview and scrutiny functions

- 7.3 When deciding whether to require an Officer to attend, the body will consider the seniority of the Officer it would be appropriate to invite. There is a presumption against inviting Officers outside the senior Officers' range to attend in this capacity. Requests for Officer attendance should be made to the Director concerned. Such requests should indicate in broad terms the areas which Members will want to discuss, and should give reasonable notice of the dates when attendance is needed
- 7.4 Where an Officer attends such a body his/her contribution should be confined to matters of fact and explanation. However, an Officer may be asked to explain and justify advice which he/she has given prior to a decision having been taken, including decisions taken by him/her under delegated powers.
- 7.5 Officers should not be drawn, overtly or covertly, into discussions of a political nature which would be inconsistent with the political neutrality requirement. Any questioning of an Officer should not be reasonably interpreted as constituting harassment.
- 7.6 In overview and scrutiny proceedings the capability or competence of Officers must not be questioned. The distinction needs to be drawn between reviewing the policies, performance and decisions of the Council or its services and the appraisal of staff's individual performance. The latter is not a function of overview and scrutiny bodies.
- 7.7 The approach here is consistent with the Overview and Scrutiny Procedure Rules as set out in the Council's Constitution.
- 7.8 In applying this part of the Protocol, account will be taken of any guidance agreed by Overview and Scrutiny bodies provided that guidance is consistent with the principles of this Protocol.

## **8.0 POLITICAL GROUPS**

- 8.1 The Chief Executive, together with Directors and Heads of Service and occasionally other employees all with the permission of the Chief Executive may at times decide that it is appropriate to attend a political group meeting with a view to briefing and advising on the formulation of policy. This may be of his/her own initiative or at the request of a political group. However, the decision on whether he/she should attend is the Chief Executive's, in either case.
- 8.2 If the Chief Executive decides that he/she or another Officer may attend a political group meeting and it concerns a proposed significant policy change which is about to be presented to a meeting of the Council, Executive or committee, then he/she must offer the facility to all other political groups within the Authority, indicating the area of policy upon which he/she is offering to brief/advise. He/she will inform the leader of the political group with whom

he/she is having the meeting that he/she will be offering the facility to the other political groups.

8.3 Certain points must be clearly understood by all those participating in this 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 involved in advising on matters of party business. The observance of this distinction will be assisted if Officers are not expected to be present at meeting, or parts of meeting, when matters of party business are to be discussed;

(b) political group meetings, whilst they form part of the preliminaries to Council decision-making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such; and

(c) similarly, where Officers provide information and advice for a political 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 Cabinet or relevant committee when the matter in question is considered.

8.4 Special care needs to be exercised whenever Officers are involved in providing information and advice to a political group meeting which includes persons who are not Members of the Council. Such persons will not be bound by the Members' Code of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons Officers may not be able to provide the same level of information and advice as they would to a Members only meeting.

8.5 Officers must respect the confidentiality of any political group discussions at which they are present in the sense that they should not relay the content of any such discussions to another political group.

## **9.0 MEMBERS' ACCESS TO INFORMATION AND COUNCIL DOCUMENTS**

9.1 The Council's Constitution (Part 4) sets out in the provisions relating to Members' access to information. The key issue to note for the purposes of this Protocol is that Members should not put undue pressure on officers to release information and documents to which they are not entitled to have access. Reference should be made to the provisions relating to Members' access to documents contained in the Access to Information provisions inserted into the Local Government Act 1972, particularly the restrictions in s. 100F(2).

9.2 Members have a right to request from any Directorate relevant information or advice which they might reasonably need to assist them to discharge their functions as Members of the Council. This information can range from general

information regarding the Directorate's functions to specific enquiries on behalf of constituents.

- 9.3 Members have a statutory right to inspect documents relating to any business to be transacted in the open section of the agenda for a Council, committee or sub-committee meeting, irrespective of whether or not they are a Member of that committee or sub-committee. This right applies additionally to relevant background papers. The right does not, however, extend to documents which have been deemed to contain "exempt information" as defined in Schedule 12A, Part 1 of the Local Government Act 1972. Exemption categories are set out in Part 4 of the Constitution – Access to Information Procedure Rules. In respect of access to such information, a Member will normally be expected to justify a request in specific terms.
- 9.4 The common law rights of Members, which are broader, are based on the principle that any Member has a *prima facie* right to inspect Council documents insofar as his/her access to the documents is reasonably necessary to enable the Member properly to perform his/her duties as a Member of the Council. This is commonly referred to as the "need to know" principle. In respect of the Council / committee papers referred to above, a Member's "need to know" will normally be presumed.

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 for the "need to know". This question must initially be determined by the particular Director whose Service holds the document in question (with advice, if necessary, from the Corporate Director of Governance and Community Strategy).

## **10.0 CORRESPONDENCE BETWEEN MEMBERS AND OFFICERS**

- 10.1 Correspondence between an individual Member and an officer will not as a matter of course be copied (by the officer) to any other Member. Where correspondence is copied to another Member, this should be made clear to the original Member. In other words, a system of "silent copies" should not be employed. Members will, of course, bear in mind that officers will brief Chair and Executive Members on a regular basis as part of the ordinary decision making process.
- 10.2 Where an officer corresponds with a Member on a matter of general interest in his or her ward, it is in the best interests of the Council to ensure that other Members in the locality are informed of such matters. In these circumstances, copies of correspondence will normally be sent to all Members in the locality unless there is a reason why this is not appropriate (such as it involves an individual) or for a specific reason from the Member concerned.
- 10.3 Official letters on behalf of the Council should normally be sent out under the name of the appropriate officer, rather than under the name of a Member. It will be appropriate in certain circumstances (e.g. representations to a

Government Minister or other organisations) for a letter to appear under the name of a Member (this is most likely in the case of an Executive Member or Chair), but this should be the exception rather than the norm. Letters which, for example, create obligations or give instruction on behalf of the Council should never be sent out under the name of a Member. When Members use official Council notepaper, they should be careful to ensure that it is for the discharge of their duties as a Member and not in any private capacity.

## **11.0 WARD COUNCILLORS' REPRESENTATIVE ROLE**

- 11.1 Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the ward or wards affected should 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 should be notified at the outset of the exercise.
- 11.2 Officers will seek both to inform and to keep Members informed about any initiative which is being developed under their control. However, Members must be aware of the pressures on officers' time and that officers may exercise judgement as to how much information is provided.
- 11.3 If a meeting is being arranged by a Member(s) on a ward issue, they can decide not to invite other ward Members. Officers can be invited to attend such meetings. If an officer attends a meeting and a Member who was not present requests information about what was discussed the officer should provide this information, as long as the information is not commercially sensitive, does not breach Data Protection and or any confidentiality and should also inform the lead Executive Member.
- 11.4 When a meeting dealing with a ward issue is arranged by an external body, group or person, they can be advised of the Council's guidance for officers arranging meetings and encouraged to follow this guidance. Where a meeting is arranged and an officer is invited, but not all the relevant ward Members are invited, the officer should request an explanation from the organiser before agreeing to attend. If officers attend such a meeting where there is no adequate reason for the differing treatment of Members or if the meeting is 'political' (i.e. only Members from a specific party/parties are invited to attend), an equitable parity for the ward Members is not being provided. In such instances, officers should not attend the meeting, unless there is an overriding justification to attend, and they should communicate this to all relevant Members in advance of the meeting.
- 11.5 Officers will, if asked by local residents for advice on how to contact a Member, guide the resident in the first instance to approach their own Ward Councillors for the area where they live. On occasion residents may choose to contact a Member in another ward and/or from a different political party.
- 11.6 At all times, officers need to be mindful of the sensitivities when dealing with issues raised by residents and/or Members in order that information, particularly personal data, is treated with great care and not shared in an indiscriminate manner or in breach of Data Protection principles.

- 11.7 Members frequently receive correspondence from their ward constituents and are asked to respond to and help with a variety of issues as they arise. There is an expectation that Members will deal with issues arising within their own wards that are referred to them by constituents. Members will not deal with issues that originate from outside of their ward unless:
- the relevant ward councillors are unable to deal with the issue
  - the constituent expressly indicates that they do not wish to involve the ward councillors for their area
  - the Member concerned has another link to the ward, for example, as a Member of a Friends Group
- 11.8 In the event of any of the above scenarios being applicable, the Member concerned will advise the relevant ward councillors as a matter of courtesy. It is also recognised that there may be occasions where constituents contact the Mayor, the Leader of the Council, Opposition Group Leaders or Executive Members for assistance with a particular matter. In such instances, the protocol that Members from that specific ward will deal with matters from their ward will be applicable, unless any of the exceptions in the above paragraph are applicable.
- 11.9 Where a Ward Councillor has taken lead responsibility for communicating with or meeting with an individual or group over an issue that they raised, officers should ask that councillor if other ward councillors need to be made aware of the issue or invited to relevant meetings on the issue. If there is no need for the other ward members to be aware then officers may deal directly with the ward councillor who has taken lead responsibility, but will be bound by 11.3 above in relation to requests for information from other Members. If other councillors have been involved or the issue is of significance to the wider ward then all ward councillors should be involved.

## **12.0 CEREMONIAL EVENTS**

- 12.1 The Mayor, or in his/her absence, the Deputy Mayor, will be the appropriate person to lead Council ceremonial events and to represent the Council by invitation at ceremonial events of other organisations. Where an event is specifically associated with an Executive function, the Leader of the Council and the appropriate Executive Member should be invited.
- 12.2 Appropriate Executive Members and Chairs of Committees, or where they are not available, Vice-Chairs, should be invited to ceremonial events within the scope of their portfolio or committees. Where the relevant Executive Member is not available, the Leader of the Council should be invited to the event or another Member of the Executive.
- 12.3 Local Members should always be informed of, and where possible, invited to ceremonial events taking place within their wards. The same also applies to the leaders of the political groups.

12.4 Any Member taking part in a ceremonial event must not seek disproportionate personal publicity or use the occasion for party political advantage bearing in mind that the Member is representing the Council as a whole.

### **13.0 ACCESS TO PREMISES**

13.1 Officers have the right to enter Council land and premises in order to carry out their work. Some Officers have the legal power to enter property in the ownership of others.

13.2 Members have the right of access to Council land and premises to fulfil their duties.

13.3 When making visits as individual Members, Members should:

- notify and make advance arrangement with the appropriate manager or Officer in charge (unless this is not practicable);
- comply with health and safety, security and other workplace rules;
- not interfere with the services or activities being provided at the time of the visit; and
- notify ward Members beforehand if visiting somewhere outside his/her own ward.

### **14.0 USE OF COUNCIL RESOURCES**

14.1 All Members are provided with ICT to enable them to type, print and photocopy documents and stationary to assist them in discharging their roles as Members. These goods and services are paid for by public funds and should only be used for Council purposes.

14.2 Members should not ask Officers to provide resources or support which they are not permitted to give, for example support or resources

- which are to be used for business which is solely to do with a political party;
- for work in connection with a ward or constituency party political meeting or electioneering;
- for work associated with an event attended by a Member in a capacity other than as a Member of the Council;
- for private personal correspondence;
- for work in connection with another body or organisation where a Member's involvement is other than as a member of the Council; and

- which constitutes support to a Member in his/her capacity as a member of another authority.

## **15.0 BREACHES OF THE PROTOCOL**

- 15.1 Where a Member is dissatisfied with the conduct, behaviour or performance of an Officer, the matter should be raised with the appropriate Director or Head of Service. Where the Officer concerned is a Director, the matter should be raised with the Chief Executive, and in the case of a Head of Service with the appropriate Director. Where the employee concerned is the Chief Executive, the matter should be raised with the Monitoring Officer.
- 15.2 Where the relationship between Members and Officers breaks down or becomes strained, every effort will be made to resolve matters informally, through conciliation by an appropriate senior manager or Members. Officers will also have recourse to the Grievance Procedure or to the Council's Monitoring Officer, as appropriate, in certain circumstances. In the event of a grievance or complaint being upheld, the matter will be referred to the Chief Executive who, having advised the Leader of the Council and the other appropriate Group Leaders, will decide on the course of action to be taken, following consultation with the Standards Committee if appropriate.
- 15.3 Breaches of the Protocol by a Member may also constitute a breach of the Members Code of Conduct.

## **16.0 STATUS OF THIS PROTOCOL**

- 16.1 This Protocol was approved by Council on 22nd May 2013. It now forms part of the Council's Constitution. As such, it is binding on all Members including co-opted and independent Members, and Officers.
- 16.2 This Protocol shall apply, as appropriate and necessary, to any person appointed individually or on behalf of a body or organisation to advise support or assist the Authority in its work.

# **PLANNING AND DEVELOPMENT MANAGEMENT COMMITTEE CODE OF PRACTICE**

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## **1. Introduction**

**1.1** This Code of Practice is intended to guide the procedures by which Members and Officers of the Council deal with planning matters, and to set standards of probity and conduct which the residents of Trafford Council can expect. In this document all references to 'Planning Committee' should be taken to refer to the Planning and Development Management Committee or any successor body.

**1.2** As planning affects people's lives and private interests, it can often be very contentious. It is important that residents of Trafford and applicants for planning permission understand the system, have confidence in its integrity and transparency and that Members and Officers involved in the planning process avoid impropriety or even the suspicion of impropriety.

**1.3** Members must follow the Codes and Protocols in the Constitution of Trafford Council which cover such matters as declarations of interests, gifts and hospitality and the Protocol for Member/Officer relations. When dealing with planning matters they must also act in accordance with this Planning Code of Practice.

**1.4** A breach of these codes, whilst not usually amounting to a breach of criminal law, may adversely affect the standing of the Council. It could result in a decision being judicially reviewed, or in a complaint of maladministration being made to the Local Government Ombudsman. A breach of the Members' Code of Conduct can result in a complaint against a Member personally.

**1.5** If Members or Officers are in doubt about the application of the Codes they should seek advice from the Council's Monitoring Officer.

## **2. General Roles, Responsibilities and Conduct**

**2.1** Members and Officers have different but complementary roles in the planning process. Members of the Planning Committee have different roles to those of other Councillors.

### **Members of Planning Committee**

**2.2** There are 13 Members on the Planning Committee and they normally meet once a month.

**2.3** Members of the Committee are appointed at the Council's Annual General Meeting, held in May each year.

**2.4** Four Members of the Committee constitute a Quorum.

**2.5** Councillors who are Members of the Planning Committee are responsible for the determination of planning applications. The Committee must assess proposals against the development plan and all other material considerations and carefully

balance the benefits of proposed development with any adverse consequences. Members are required to consider all planning proposals in the wider public interest. Decisions are restricted to planning considerations, and cannot seek to control non-planning issues or duplicate other legislative controls. Decisions made by the Committee must be lawful.

**2.6** Councillors who are not members of Planning Committee can 'call in' applications, within geographical limits, thus requiring them to be considered by the Committee where the applications would otherwise be delegated to officers under the Scheme of Delegation. However, such requests must be supported by clear planning reasons why the case requires consideration by the Committee. The Chair of the Committee can call in any application to the Committee without geographical limit, but is still required to provide clear planning reasons. Members shall not put any pressure on Officers to make particular recommendations or decisions, nor to change recommendations or decisions in respect of any application. However, it is helpful if Members explain their concerns in relation to any application which they have called in with the case officer in advance of the Committee meeting.

### **Planning Committee Members shall:-**

**2.7** For and in meetings:-

- Exercise personal responsibility in deciding whether to declare any personal interest as defined in the Council's Code of Conduct in relation to any planning application that is before the Planning Committee for determination, and withdraw, if so required by the Code. If in doubt, Members shall consult and seek guidance from the Monitoring Officer in advance of the meeting.
- Act fairly and openly.
- Carefully weigh up all relevant planning issues before making a decision
- Make decisions purely on planning grounds in the public interest and not favour, or appear to favour, any person, company, group or locality. Whilst Planning Committee Members have a responsibility to their constituents, the decisions of that Committee must be based on the Development Plan and all other material planning considerations.
- Have reasons and justification for their position and resolutions (this is a requirement of the Code of Conduct)

**2.8** Planning Committee Members also have a personal responsibility to declare a personal or pecuniary interest as defined in the Council's Code of Conduct in any planning application so it can properly be brought before the Committee under the Council's Scheme of Delegation.

### **Non Planning Committee Members of the Council**

**2.9** Ward Councillors who do not sit on the Planning Committee will be allowed to speak at Planning Committee at the Chair's discretion. This opportunity shall not apply to delegated items unless they are referred to Planning Committee for

determination in accordance with the operation of the scheme of delegation and call in arrangements.

**2.10** Applications to be placed before the Planning Committee will be scheduled for the first available meeting. Applications will not be deferred to later Committee meetings on the grounds that an interested Member is unavailable to attend the scheduled meeting

**2.11** Ward Members should exercise personal responsibility in declaring an interest in planning applications where they are for example, affected by, are related to the applicant, or would have a pecuniary interest in, the proposals, so that it can properly be brought before the Committee under the Council's Scheme of Delegation. The weekly lists of planning applications are sent to all Members. If a Member receives a standard neighbour consultation letter from the Planning Service at their home address they should declare an interest. If in doubt, Members shall consult and seek guidance from the Monitoring Officer.

### **3. Planning Committee Meetings**

**3.1** Meetings of the Planning Committee will normally be held on the second Thursday of each month. Dates for Committee meetings can be found on the Council's website.

**3.2** All meetings will be held in public. However the public will be excluded from meetings whenever it is likely in view of the nature of the item to be discussed or the nature of the proceedings, that confidential information would be disclosed.

**3.3** Public speaking items will be taken first on the agenda. All other applications will be heard in the order in which they appear on the Agenda, other than in exceptional circumstances, and always at the discretion of the Chair. The procedure at the Planning Committee meetings is explained in paragraph 9 of this Code of Practice.

**3.4 The deadline to register for public speaking is 4.00pm on the day preceding the Planning Committee meeting.**

#### **Webcasting / Broadcasting of Meetings**

**3.5** The Council has no arrangements in place for the webcasting/broadcasting of Committee meetings. Members of the public wishing to film or record Committee meetings will need to agree arrangements in advance of the meeting with the Council's Democratic services team to ensure that the arrangements are compliant with the Council's obligations under the Data Protection Act 1998 and the Human Rights Act 1998.

**3.6** The Chair of the meeting has the discretion to terminate or suspend filming, if in the opinion of the Chair continuing to do so would prejudice the proceedings of the

meeting or if the Chair, on advice, considers that continued filming might infringe the rights of any individual.

### **Content of Ward Councillor Speeches**

**3.7** Comments by Ward Councillors should be limited to relevant planning issues.

These include:-

- Relevant national and local planning policies;
- Appearance and character of the development, layout and density;
- Traffic generation, highway safety and parking/servicing;
- Overshadowing, overlooking, noise disturbance, odours or other loss of amenity.

Ward Councillors should avoid referring to matters outside the remit of the Planning Committee, such as:

- Boundary disputes, covenants and other property rights;
- Personal remarks [e.g. applicant's motives or actions to date];
- Rights to views or devaluation of property.
- Competition between businesses/services
- Issues covered by other legislation e.g. Environmental Health

### **Officers**

**3.8** The function of Officers is to support and facilitate the Councillors in their work and to ensure that robust and lawful decisions are made. Planning decisions must be made in accordance with the Development Plan and other material planning considerations.

**3.9** The Head of Planning and Development makes decisions on the majority of planning applications under delegated powers and makes recommendations on more significant and contentious applications and other planning matters for decision by the Planning Committee. Officers will provide professional advice and will provide Members with a recommendation on whether or not planning permission should be granted, based on the Officer's assessment.

**3.10** In considering applications and in advising members of the public on planning policy, the determination of planning applications, enforcement and other planning matters, Officers must:-

- Act fairly and openly and avoid any actions that would give rise to an impression of bias
- Avoid inappropriate social contact with applicants and their agents, objectors and other interested parties

- Approach each planning application or issue with an open mind, avoiding preconceived ideas
- Carefully weigh up all relevant planning issues before making a decision
- Make decisions and recommendations purely on planning grounds having regard to the Development Plan and other material considerations
- Give professional, objective and consistent advice
- Carry out the decisions of the Committee insofar as they relate to the completion of any legal agreement, amendment to the officer recommendation e.g. the imposition of additional planning conditions..

## **4. Administrative Arrangements**

### **Planning Application Notification**

**4.1** All Members of the Council will be informed of the submission of all planning and related applications through the weekly list of applications published on the Council's website. This list will include basic details about the application. Further detail on the application, including relevant plans and documents, can be viewed on the Council's website.

### **Meetings with Applicants and Objectors**

**4.2** The Local Planning Authority does not organise public meetings in respect of any application. The statutory planning process which includes a procedure for notifying occupiers of land neighbouring an application site provides the opportunity for the public to make its views known about a proposal. In order to be taken into account in the final decision, all comments made by local residents and third parties must be made in writing (an email is sufficient). Representations comprise part of the public planning file and are published on the Council's website. Sensitive personal information is redacted but the name and address of the person making the representation is published.

## **5. Pre-Application Discussion and Enforcement Discussions**

**5.1** Local Planning Authorities are encouraged to enter into discussions and negotiations which can bring about improvements that can make an application acceptable, and thereby potentially speed up the planning process. Such pre-application discussions will normally take place at Officer level and Members shall wherever possible refer requests by applicants and third parties for such advice to Officers. If Members become involved in such discussions they should make it clear that their views are personal and provisional and they may wish to make a record of the discussion.

**5.2** All Officers taking part in such discussions shall:-

- Identify the decision-making process applicable to the application or issue under discussion
- Make it clear that only personal professional and provisional views can be expressed that will not bind the Council (Officers or Members) to reach a particular decision when determining the application
- Express views in the context of the Development Plan and other material planning considerations
- Be consistent in interpreting planning policies and Government guidance
- Where appropriate, advise applicants, neighbours and objectors on procedural matters.

## **6. Lobbying of Members of the Planning Committee**

**6.1** Lobbying is the process by which applicants, agents, neighbours, non-Planning Committee Members and other interested parties may seek to persuade Members of the Planning Committee to come to a particular decision. It is legitimate for them to approach Members of the Planning Committee (in person or in writing) and such discussions may help Members to understand the issues and concerns. As stated in the Nolan Committee Third Report “it is essential for the proper operation of the planning system that local concerns are adequately ventilated”.

**6.2** In responding to approaches of this kind, Planning Committee Members may publicly express an opinion provided that they keep an open mind at Planning Committee meetings and must not have closed their mind prior to hearing all the evidence and arguments which will be presented at the Planning Committee. They should explain their position in respect of probity if they express an opinion on a proposal before consideration at the Planning Committee. They should:-

- Explain the procedures by which representations can be made;
- Indicate that a decision will be taken only when all relevant planning considerations have been taken into account
- Explain the kinds of planning issues that the Council can take into account;
- Direct the public to report issues raised to the Officers so that their views can be considered. It is helpful if this takes place in advance of the Planning Committee meeting so that all relevant issues are fully considered before the agenda is published.

## **7. Planning Applications Submitted by Members and Officers**

### **7.1 Any application**

- made by any Elected Member of the Council; or
- made by an Officer of the Council; or
- in respect of which an Elected Member of the Council has been consulted as a neighbour; or
- in respect of development by or on behalf of the Council (where a single representation or more has been made contrary to the officer recommendation);

shall be determined by the Planning Committee.

**7.2** In respect of any such application any affected Member or Officer must declare the existence and nature of the interest or relationship in accordance with the appropriate Code of Conduct and withdraw from involvement in the decision. The affected Officer shall take no part in the processing of the application and any recommendations made to Planning Committee.

## **8. Planning Applications Submitted by the Council**

**8.1** It is essential that the Council treats applications for its own development (or a development involving the Council and another party) in the same manner as all other applications and that this is seen to be the case.

## **9. Conduct and Procedure of Planning Committee Meetings**

### **Officers' Reports to the Planning Committee**

**9.1** All planning matters considered by the Planning Committee will be the subject of appropriate written reports by the Head of Planning and Development incorporating his/her recommendations. Such reports shall be comprehensive but succinct in setting out the key planning issues to be considered in terms of the provisions of the Development Plan and other material planning considerations, the substance of any representations received and any planning history

### **Consideration of Planning Applications:-**

**9.2** Planning applications will be considered in the following manner:

a) Members will receive an additional information report outlining any late correspondence received on an application since publication of the agenda. This addendum must be considered by the Committee prior to making its decision on the application.

b) Public speaking:

Those who have made requests to speak in accordance with the relevant Protocol will be invited to speak in the following order:

- Objector (3 minutes)
- Supporter (3 minutes)
- Where the Chair considers that wider debate is necessary e.g. for Major Applications, the number of speakers for and against the Application and time allocated to speak will be at his/her discretion.

c) Other Elected Members of Council who the Chair has given permission to speak. Ward Members for the ward in which the development is located will normally be allowed to speak for 5 minutes each but the length of time granted for other interested Members to speak will be at the discretion of the Chair.

Once all speakers have made their representations concerning an Application, they will not be allowed to enter into debate with the Committee, unless invited to do so by the Chair.

d) The Planning Officer will respond as necessary.

e) The Chair will then open the debate by providing an opportunity for members of the Planning Committee to comment or ask questions of the Planning Officer or any other officer in attendance. The Planning Officer or others will be provided with the opportunity to respond.

f) When a Member of the Committee wishes to speak, he or she will indicate this to the Chair. No Member will speak unless called upon to do so by the Chair. When called upon to speak, the Member will address the meeting through the Chair. If two or more Members wish to speak the Chair will ask one to speak and the other(s) will remain silent. While a Member is speaking, other Members will remain silent until invited to speak by the Chair.

g) When the Chair considers all Members have had an opportunity to contribute he or she will take a vote on motions for or against the proposal which have been moved during the debate in the order in which they were proposed and seconded. If the motion is to do something other than agree the Officer recommendation set out in the report before Committee, planning reasons should be given at that time and before taking the vote.

h) The application will be determined by a simple majority vote by show of hands. All Members of the Committee, including the Chair, should cast a vote in favour or against the motion before the Committee. As Planning Committee is appointed for the purpose of making decisions on planning applications, it is not appropriate for Members to abstain.

i) If there are equal numbers of votes for and against, the Chair will have a second or casting vote. The Chair can only use a second or casting vote if he or she has participated in the original vote.

j) Following the vote, if the matter has been resolved. There must be no further discussion on the matter.

k) If the Committee makes a different decision to that recommended by the Head of Planning and Development, it must articulate and record in the minute the relevant planning reasons:

- If an application is refused against Officer recommendation, the Committee must provide the planning reasons for refusing planning permission
- If an application is granted against Officer recommendation, the Committee must suggest any conditions that it thinks should be imposed and the reason for those conditions
- Officers can be called upon to assist (e.g. suggest appropriate standard conditions) but cannot give reasons, only interpret the Committee's expressed views.
- The imposition of suitable planning conditions may be deferred and delegated to the Head of Planning and Development if it is not possible to deal with this comprehensively at the Committee.

**9.3** Following the Planning Committee meeting, the Head of Planning and Development will produce a Decision Notice reflecting the Committee's decision on the application. This will be sent to the applicant/agent and published on the Council's website

**N.B. If a Member joins a Planning Committee meeting after the presentation of an item has begun, then the Member should not take part in the debate or vote on that item.**

## **10. Conduct**

**10.1** The Chair of Planning Committee is responsible for the conduct of the meeting in accordance with the Rules of Procedure and for the effective delivery of business in a professional, courteous, transparent and timely manner. The Members of the Committee and Officers shall respect the role and behave in a manner that is commensurate with the high standards of conduct and propriety that are expected in public office.

**10.2** The Chair will seek to ensure that Members and Officers are treated in accordance with the Council's agreed Protocol on Member/Officer relations, with regard to:-

- The political neutrality of Officers

- The independence of Officers
- Mutual respect, courtesy, civility and professionalism with respect of differing views

**10.3** Where disturbance of the meeting occurs by way of public interference, the Chair may suspend proceedings until matters are resolved or in extreme situations may close the meeting to the public.

**10.4** Please be aware that the Code of Conduct applies to all Members at all meetings of the Council. Laws relating to remarks made about individuals apply at all meetings of the Council, whether or not they are being recorded or broadcast

## **11. Procedure**

**11.1** The Chair will ensure that the meetings of the Planning Committee are conducted in accordance with the Council's Rules of Procedure and safeguard that appropriate debate is able to take place in a structured and professional manner. The Chair should seek to avoid repetition or irrelevant debate.

**11.2** Appropriate Legal and Democratic Services Officers will be responsible for advising the Chair and the Committee on matters of procedure and protocol.

**11.3** Where Officers advise the Chair of material planning concerns or potential consequences of a particular course of action, or any potential liabilities or errors of fact, Officers shall be afforded reasonable opportunity to concisely explain those matters to Planning Committee before it reaches a decision.

## **12. Planning Committee Decisions Contrary to Officer Recommendation**

**12.1** From time to time the Committee will disagree with professional advice given by the Officers and may decide to determine an application contrary to that advice. When this occurs the Chair of Planning Committee will ensure that the following principles are followed:-

- Members shall clearly express the planning reasons for their decision and these will be recorded in the minutes.
- A Member proposing refusal of an application for which the Officer recommendation is approval shall state his/her reasons prior to the vote being taken.

## **13. Appeals against Council Decisions**

**13.1** Officers will organise and generally appear as witnesses at planning appeals and other proceedings on behalf of the Council. In some circumstances (such as

where specialist evidence is required) it may be necessary to appoint Consultants to appear for the Council.

**13.2** In giving evidence, Officers will present the best possible case on behalf of the Council while complying with the Royal Town Planning Institute (“RTPI”) Code of Professional Conduct. This Code requires that Planning Officers who are members of the Institute do not make statements purporting to be their own, but which are contrary to their bona fide professional opinion.

**13.3** Members can have an important role to play in appeals and may, within set deadlines, make written representations to the Inspector and may also appear at informal hearings or as a witness at public local inquiries. In doing so they should state whether they are acting in their local Councillor capacity or, representing the Council’s case.

**13.4** Where Planning Officers are unable to defend decisions on appeal (due to requirements of the professional conduct rules of the RTPI) the Planning Committee should be aware of this before the final vote is taken. In such cases it may be appropriate for Members of the Committee to attend any subsequent appeal hearing, and if necessary, to give evidence in support of the Council’s decision.

**13.5** Planning and Legal Officers will support Members attending or wishing to make representation at appeals and advise them on preparing and delivering evidence. Legal Officers will attend inquiries or assist in preparing representations when legal representation is required.

**13.6** Planning decisions are decisions made by the Council. It is therefore not normally appropriate for an elected Member to support an appellant at Appeal. If Members have concerns about delegated applications, the appropriate course of action is to call in the application to Planning Committee for determination.

## **14. Member Training**

**14.1** Members of Planning Committee should undertake training which, on occasions, should be offered to all Members of the Council.

**14.2** Members will be offered and required to attend core (compulsory) training (normally within three months of appointment to the Committee). This training will cover planning procedures, code of conduct and other subjects determined from time to time by Officers in consultation with the Chair.

**14.3** Attendance at training events will be recorded and published and monitored.

## **15. Review of Decisions**

**15.1** The Audit Commission's report "Building Quality" recommends that Councillors should visit a sample of implemented planning permissions to assess the quality of decisions. The purpose of such a review is not to change decisions, but to assess and improve the quality and consistency of decisions and thereby strengthen public confidence and assist in reviewing planning policy.

**15.2** The Planning Committee will undertake an annual review of a sample of planning decisions made by the Committee. The review will include examples from a range of development types and, where it is considered appropriate and beneficial, include visits to sites.

**15.3** The Planning Committee will consider the results of the review and decide whether it gives rise to the need for new policies, procedures and practices.

**15.4** The outcome of appeals against the decisions of the Council will be reported regularly to Planning Committee. The outcome of legal proceedings will also be reported regularly so that Planning Committee can review its own decision-making processes.