



# WOKINGHAM BOROUGH COUNCIL

A Meeting of the **STANDARDS COMMITTEE** will be held at the Civic Offices, Shute End, Wokingham Civic Offices, Shute End, Wokingham RG40 1BN on **WEDNESDAY 29 JULY 2015 AT 8.00 PM**

A handwritten signature in black ink, appearing to read 'Andy Couldrick', written in a cursive style.

Andy Couldrick  
Chief Executive  
Published on 23 July 2015

This meeting may be filmed for inclusion on the Council's website.

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## **Our Vision**

***A great place to live, an even better place to do business***

### ***Our Priorities***

**Improve educational attainment and focus on every child achieving their potential**

**Invest in regenerating towns and villages, support social and economic prosperity, whilst encouraging business growth**

**Ensure strong sustainable communities that are vibrant and supported by well designed development**

**Tackle traffic congestion in specific areas of the Borough**

**Improve the customer experience when accessing Council services**

### ***The Underpinning Principles***

**Offer excellent value for your Council Tax**

**Provide affordable homes**

**Look after the vulnerable**

**Improve health, wellbeing and quality of life**

**Maintain and improve the waste collection, recycling and fuel efficiency**

**Deliver quality in all that we do**

## MEMBERSHIP OF THE STANDARDS COMMITTEE

### Councillors

Rob Stanton (Chairman)	Pauline Helliar-Symons (Vice-Chairman)	Chris Bowring
Ken Miall	Malcolm Richards	Beth Rowland

### Parish/Town Council Representatives

Roger Loader	Roy Mantel
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ITEM NO.	WARD	SUBJECT	PAGE NO.
1.		<b>APOLOGIES</b> To receive any apologies for absence	
2.		<b>MINUTES OF PREVIOUS MEETING</b> To confirm the Minutes of the Meeting held on 2 April 2015	5 - 8
3.		<b>DECLARATION OF INTEREST</b> To receive any declarations of interest	
4.		<b>PUBLIC QUESTION TIME</b> To answer any public questions  A period of 30 minutes will be allowed for members of the public to ask questions submitted under notice.  The Council welcomes questions from members of the public about the work of this committee.  Subject to meeting certain timescales, questions can relate to general issues concerned with the work of the Committee or an item which is on the Agenda for this meeting. For full details of the procedure for submitting questions please contact the Democratic Services Section on the numbers given below or go to <a href="http://www.wokingham.gov.uk/publicquestions">www.wokingham.gov.uk/publicquestions</a>	
5.		<b>MEMBER QUESTION TIME</b> To answer any member questions	
6.		<b>PARISH / TOWN COUNCIL QUESTION TIME</b> To answer any questions from Parish / Town Councillors	
7.		<b>UPDATE ON COMPLAINTS AND FEEDBACK</b> To consider a report setting out a summary of complaints received and activity since 2 April 2015	9 - 12

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| <b>8.</b>  | <b>REVISED PROCESS FOR THE CONSIDERATION OF CODE OF CONDUCT COMPLAINTS</b><br>To consider a suggested revised process for the consideration of Code of Conduct complaints                | <b>13 - 24</b> |
| <b>9.</b>  | <b>UPDATE TO THE MEMBER OFFICER PROTOCOL</b><br>To consider a proposed revised Member Officer Protocol   | <b>25 - 42</b> |
| <b>10.</b> | <b>ANY OTHER ITEMS WHICH THE CHAIRMAN DECIDES ARE URGENT</b><br>A Supplementary Agenda will be issued by the Chief Executive if there are any other items to consider under this heading |                |

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**MINUTES OF A MEETING OF THE  
STANDARDS COMMITTEE  
HELD ON 2 APRIL 2015 FROM 7.00 PM TO 8.40 PM**

**Committee Members Present**

Councillors: Rob Stanton (Chairman), Pauline Helliard-Symons (Vice-Chairman), Roy Mantel, Ken Miall, Malcolm Richards and Beth Rowland

**Officers Present**

Kevin Jacob, Principal Democratic Services Officer  
Andrew Moulton, Monitoring Officer and Head of Governance and Improvement Services  
Mary Severin, Deputy Monitoring Officer and Borough Solicitor

**25. MINUTES OF PREVIOUS MEETING**

The Minutes of the meeting of the Committee held on 21 January 2015 were confirmed as a correct record and signed by the Chairman.

**26. APOLOGIES**

Apologies for absence were submitted from Councillor Chris Bowring and Councillor Roger Loader.

**27. DECLARATION OF INTEREST**

There were no declarations of interest.

**28. PUBLIC QUESTION TIME**

There were no public questions.

**29. MEMBER QUESTION TIME**

There were no Member questions.

**30. PARISH / TOWN COUNCIL QUESTION TIME**

There were no Parish/Town Councillor questions.

**31. REVISED COUNCILLOR CODE OF CONDUCT**

The Committee considered a report on proposed changes to the Wokingham Borough Council Code of Conduct set out on Agenda pages 11 to 14 and a copy of the proposed revised Code of Conduct set out on Agenda pages 28 to 35.

Mary Severin, Borough Solicitor presented the report to the Committee. The proposed changes followed the Committee's request at the previous meeting that the current Code of Conduct be reviewed and in light of the objective of making continuous improvements, particularly in the area of declaration of interests. Members of the Committee were referred to pages 12 to 13 of the Agenda which set out key a summary of the proposed changes. The following points were highlighted:

- An objective of the redrafting process had been to make the Code easier for the public, Councillors and Officers to understand and operate. The proposed Code had been modelled on a draft Code of Conduct published by Paul Hoey Associates, a leading authority on Code of Conduct issues;
- The 'seven principles of public life', originally widely known as the 'Nolan Principles' had been removed from the body of the proposed Code of Conduct document and placed as part of the introduction. This reflected the Government's intention when

introducing the new ethical governance arrangements that local Codes of Conduct should be based upon the principles, but reduced the opportunity for spurious and difficult to assess complaints;

- The requirements of the Code around the declaration and registration of interests had been clarified.

Before inviting comments and suggestions from Members of the Committee, the Chairman commented that the process of revising the current Code had been an important piece of work and it was incumbent on the Committee to be clear and comfortable about what proposed. The following points were raised in the Committee's discussion:

- A number of members of the Committee commented that they felt the proposed revised Code was clearer to read and understand subject to the correction of a number of minor typographical errors. It was acknowledged that as members of the Standards Committee they had a higher level of awareness and experience of the Code than Councillors more generally and that it was also important to consider ease of use of the document from a non-expert Councillor's perspective;
- In response to a question, Kevin Jacob commented that it was intended in the future to make provision for Wokingham Borough Councillors to submit and amend their Register of Interests electronically;
- After discussion it was felt that the wording of paragraph 9.2.8.3 of the proposed Code should be amended to reverse the order of the words '*improperly*' and '*to*' as Councillors felt that this would make the meaning of the paragraph clearer;
- It was confirmed that all formal complaints had to be considered. There was provision within the process for consideration of complaints for the Monitoring Officer to not progress complaints which were of a vexatious or trivial nature;
- It was felt by Councillors that the issue of bullying remained a difficult issue to adequately define and formalise within the Code. Mary Severin commented that separate guidance for Councillors was to be drafted on the issue. This would be based upon guidance previously issued by the former Standards Board for England;
- Discussion took place regarding the wording of the proposed paragraph 9.2.8.5 which dealt with the disclosure of confidential information. Whilst some members of the Committee felt that the proposed wording was clear and fair, other members of the Committee felt that it did not sufficiently take account of circumstances where a Councillor might accidentally disclose confidential information or the circumstance where it would be reasonable to disclose information to a third party, for example if a safeguarding issue came to a Councillor's attention. On balance it was decided to amend the paragraph to read: *Councillors must not knowingly disclose information which they believe, or ought reasonably to be aware, is confidential or where disclosure is prohibited by law, unless it is with good cause, or they have the consent of the person authorised to give it, or they are required by law to do so*;
- It was felt that when agreed the Code of Conduct should be circulated to all Members as a separate document so that it would be immediately identifiable to Borough Councillors in addition to any training that might be offered;
- In response to a question, it was confirmed that if the proposed revised Code of Conduct was adopted by the Borough Council the Monitoring Officer would inform all of the town/parish clerks so that they could consider adapting it and adopting it as their own Code of Conduct.

## **RESOLVED:**

- 1) That the Standards Committee request that the Constitution Review Working Group recommend the revised Code of Conduct to Council subject to the amendments made at the meeting;
- 2) That following the adoption of the revised Code of Conduct, separate copies of the Code be circulated to all Borough Councillors and for information to all parish and town council clerks.

## **32. REVISED PROCESS FOR DEALING WITH MISCONDUCT COMPLAINTS**

The Committee considered a revised process for dealing with misconduct complaints against Councillors as set out on Agenda pages 37 to 52.

Andrew Moulton, Head of Governance and Improvement Services and Mary Severin, Borough Solicitor presented the proposed revised process to the Committee. Members' attention was drawn to Agenda pages 38 and 39 which summarised the changes and a number of specific questions to members of the Committee where its input was requested. Andrew Moulton explained that the proposed amendments had been drafted with the objective of seeking continuous improvement in the Council's process for misconduct complaints.

In discussion the following points were raised:

It was noted that a change was proposed to the process in the event that a Code of Conduct investigation concluded that there had been a breach of the Code of Conduct, (para 9.1.15 of the current process and para 9.1.14.2 of the proposed process). Under the proposed process the name of the Councillor subject of the complaint would be published in the event that a decision was taken by the Monitoring Officer to seek an informal resolution of the complaint. After discussion, the majority of the Committee felt that in those particular circumstances the name of the Councillor subject of the complaint should not be published and the existing process retained because the Councillor would have demonstrated good will in seeking to resolve the issue. It was felt that to publish in this specific circumstance would unfairly risk the reputation of the Councillor. Councillor Beth Rowland felt whilst she understood that point of view she felt that there was a need for a high degree of transparency and such information should be published.

A discussion also took place regarding the notification procedure to be followed after the receipt of a Code of Conduct complaint. Councillor Pauline Helliard-Symons stated that she did not feel that it was fair or appropriate to notify a Councillor that a Code of Conduct complaint had been made against them until a decision had been made by the Monitoring Officer on whether further action should be taken. Notification of the Councillor before the Monitoring Officer decision placed unnecessary distress on the Councillor. However, the majority of the Committee felt that they felt that it was important for any Councillor subject of a complaint to be notified as soon as possible as they would wish to know about the complaint. It also allowed for the subject Councillor to give an initial response which provided the Monitoring Officer with more information to make their initial decision on whether to take further action regarding the complaint.

Mary Severin highlighted that within paragraph 9.1.16.3 of the new process there was specific reference that there was no right of appeal by a subject Councillor against a decision of the Monitoring Officer or a Hearings Panel. Members of the Committee debated whether such a right of appeal should be added to the complaints process. A

number of members of the Committee supported the creation of a process in principle if it could be a simple process and it was noted that the Royal Berkshire Fire Authority had an appeals mechanism for Councillors as part of its Code of Conduct complaints process. Andrew Moulton commented that further work would need to be undertaken on this issue and that a further report could be presented to the next meeting of the Committee.

**RESOLVED:** That further work be undertaken on the proposed revised process for the consideration of misconduct complaints.

### **33. UPDATE ON COMPLAINTS AND FEEDBACK**

The Committee considered a report on Agenda pages 53 to 55 which set out a summary of the Code of Conduct complaints received and the actions taken between 21 January 2015 and 25 March 2015.

Andrew Moulton, Monitoring Officer and Head of Governance and Improvement Services presented the report to the Committee and highlighted the following points and updates to the report:

- Five new Code of Conduct complaints had been received since 21 January 2015;
- Three complaints related to Wokingham Borough Council councillors and two related to parish/town councillors;
- One complaint against a town/parish councillor was the subject of an ongoing investigation and no further was to be taken in respect of four complaints.

**RESOLVED:** That the report be noted.

# Agenda Item 7.

<b>TITLE</b>	<b>Update on Complaints and Feedback</b>
<b>FOR CONSIDERATION BY</b>	Standards Committee on 29 July 2015
<b>WARD</b>	None Specific
<b>DIRECTOR</b>	Andrew Moulton, Head of Governance and Improvement Services

## **OUTCOME/BENEFIT TO THE COMMUNITY**

To inform and feedback results of the Member Complaints process.

## **RECOMMENDATION**

To note the report and agree any further action the Committee may wish to take following analysis of the complaints.

## **SUMMARY OF REPORT**

Since the last meeting of the Committee on 2 April there have been no new complaints received. The cases previously reported have now been concluded.

Details are reported at Appendix A.

## Background

Under Section 9.1.13.5 of the Council's constitution, the Monitoring Officer provides a report to the Standards Committee, on a quarterly basis, which contains the following: the number and nature of complaints received; progress on any investigations and associated costs; and identify areas where training or other action might avoid further complaints. However the name(s) of the Member(s) will not be disclosed.

Since the last meeting of the Committee on 2 April 2015, there have been no new Code of Conduct complaints received and the cases previously reported as pending have now been concluded.

Under the Council's adopted policy for the consideration of Code of Conduct Complaints, the Monitoring has delegated authority to decide whether the complaint:

- a) can be resolved informally i.e. by mediation with the two parties before making a decision on whether the complaint merits formal investigation;
- b) requires investigation;
- c) should be referred to the Standards Committee;
- d) no further action should be taken.

## Analysis of Issues

Further details of the complaints are shown at Appendix A.

<b>Reasons for considering the report in Part 2</b>
If the Committee decides to discuss the specifics of individual cases it may be necessary to consider excluding the public if that would involve the disclosure of exempt information.

<b>List of Background Papers</b>
None.

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<b>Date</b> 20 July 2015	<b>Version No.</b> 1

**Appendix A - Code of Conduct Complaints – Outcome of Complaints**

<b>Date Received</b>	<b>Council</b>	<b>Summary of Complaint</b>	<b>Conclusion</b>	<b>Date Concluded</b>
05/02/2015	Parish	Failure to treat with respect Bullying Bring authority or office into disrepute	Referred for investigation  25/02/2015  Hearing Panel – 20/07/15	20/07/15  Breach on three grounds
03/03/2015	WBC	Bullying Failure to declare an interest	No further action	02/04/15
12/03/2015	WBC	Preventing access to information they are entitled by law Dishonest and deceitful behaviour bring his office into disrepute	No further action	08/04/15
12/03/2015	WBC	Preventing access to information they are entitled by law Dishonest and deceitful behaviour bring his office into disrepute	No further action	08/04/15
13/03/2015	Parish	Promote equality by not discriminating unlawfully against any person Failure to treat with respect Comprise or likely to compromise the impartiality of those who work for an authority.	No further action	29/04/15

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# Agenda Item 8.

<b>TITLE</b>	<b>Revised Process for the Consideration of Code of Conduct Complaints</b>
<b>FOR CONSIDERATION BY</b>	Standards Committee on 29 July 2015
<b>WARD</b>	None Specific
<b>DIRECTOR</b>	Andrew Moulton, Head of Governance and Improvement

<b>OUTCOME / BENEFITS TO THE COMMUNITY</b>
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To have a clear and open Councillor complaints process
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<b>RECOMMENDATION</b>
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To recommend the revised complaints process at para 9.1.13 to 9.1.16 of the Constitution to the Constitution Review Working Group for adoption by the Council.
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<b>SUMMARY OF REPORT</b>
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To review what was requested at the last Standards Committee with regard to the complaints process, to make changes to the current draft and to report back on information received since then.
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## **Background**

1. At the last Committee meeting, Members expressed a concern that Members who are found to be in breach of the code, but who are dealt with via the informal process by the Monitoring Officer, should not have their names published. Paragraph 9.1.14.2 has therefore been altered to reflect this concern.
2. Members also asked that Members be notified as soon as possible when a complaint is received against them. Paragraph 9.1.13.2 has been amended slightly to provide that Members be informed as soon as possible once a complaint has been received against them.
3. There were some typographical errors in the draft complaints process and these have been addressed.
4. Members also asked that officers look into provision of an appeal process and this was done by making enquiries of other unitary authorities, and also seeking advice from Paul Hoey, who is an expert on Members Code of Conduct matters.

## **Analysis of Issues**

The first problem with having an appeals process is that the Government, in repealing the old framework and introducing the new one via the Localism Act 2011, specifically omitted a statutory appeals process. The thought behind this was that Councils wanted a 'light touch' process, and in accordance with that, removed the more serious sanctions such as suspending a Councillor for a period of time. The idea, therefore, of an appeal in the current regime goes against the spirit of the legislation.

None of the other Unitary authorities have an appeal mechanism, for the reasons described above, and we could not find that there was one for Berkshire Fire and Rescue. However, some non unitary authorities did attempt an appeal mechanism against a Monitoring officer decision. We are told by Paul Hoey that he has yet to come across a single case where their Standards Committee disagreed with the Monitoring Officer's decision. He further reported that he had seen councils remove their appeals process because it was adding nothing to the process and merely delaying matters. He recommended instead that Standard Committees do an annual audit of all MO decisions, with more facts than is presently being reported to this Committee, so that they can reassure themselves that the MO took a reasonable decision and that the process was being applied correctly. This would be done in a way that would not raise false expectations of any prospective complainant (whether a Subject Member or a complainant), but simply to make sure the system was running as it should be. If the Standards Committee had any concerns, they could adjust the process in some way.

Another issue with having an appeal mechanism is that if a Subject Member is found not to be in breach of the Code, and an appeal is received, that Subject Member will be left uncertain for possibly a month or two until the appeal is determined. This

may cause unnecessary stress to Subject Members. Such stress would not, arguably be caused to a complainant in the same way. This does not 'sit' well with the Government's wish to have a lighter complaints process.

Finally, there will be an added cost to the Code of Conduct process in terms of more officer time, reports, time spent by panel members at another hearing, as well as the time incurred by a Subject Member.

If this Committee does, despite these arguments against an appeal mechanism, wish to have one designed into the complaints process, it should be designed in a way that is as simple as possible. The following is a suggested procedure:

- a) That someone independent of the original process review the application for appeal, and make a decision whether there is merit in having an appeal, or alternatively determine that there are no grounds for an appeal. Only a Breach or No Breach decision should be open to appeal, the sanction should not be open to appeal
- b) That if there is a decision that the matter should go forward to appeal, that only the issues which are disputed are looked into.
- c) That a separate panel of three members holds a hearing to look into those disputed matters.

#### **FINANCIAL IMPLICATIONS OF THE RECOMMENDATION**

***The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.***

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	0	0	0
Next Financial Year (Year 2)	0	0	0
Following Financial Year (Year 3)	0	0	0

#### **Other financial information relevant to the Recommendation/Decision**

None

#### **Cross-Council Implications** (how does this decision impact on other Council services, including properties and priorities?)

None

#### **Reasons for considering the report in Part 2**

<b>List of Background Papers</b>
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Draft of para. 9.1.13 of the constitution (the complaints process)
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<b>Date</b> 20 <sup>th</sup> July 2015	<b>Version No.</b> 1

### **9.1.13 Process for Considering Code of Conduct Complaints**

#### **9.1.13.1 Receipt and Acknowledgment of the Complaint**

Following receipt of a Councillor Code of Conduct complaint, the Monitoring Officer<sup>1</sup> will write to the complainant to acknowledge receipt of the complaint and provide them with a copy of this complaints process.

The complainant will be told that full details of their complaint, including the parts of the Code of Conduct which have allegedly been breached and their name, will be given to the Councillor they have complained about, (“the Subject Member”), subject to 9.1.13.5 below. (Anonymous complaints).

If the complaint relates to a Parish or Town Councillor, the Clerk to that Council will be informed. In the case of Subject Members who sit on more than one Council, the Monitoring Officer will seek clarification from the complainant if it is unclear which Council the Subject Member was acting for at the time of the alleged breach.

#### **9.1.13.2 Response of the Subject Member**

The Subject Member will **be informed of the complaint as soon as possible, and** be asked for **their** initial comments on the complaint. If the Monitoring Officer requires further clarification from the complainant in response to the comments made by the Subject Member, then these comments may be passed back to the complainant for further comment.

#### **9.1.13.3 Response of the Town or Parish Clerk**

If the complaint is about a Town or Parish Councillor, the Monitoring Officer shall seek the views of the Town/Parish Clerk about the complaint. Their view will be recorded in the Monitoring Officer’s summary and taken into account when a decision is made, under 9.1.13.4 below.

#### **9.1.13.4 Initial Decision of the Monitoring Officer**

The Monitoring Officer shall write a summary of the complaint and then, subject to consultation with an Independent Person and the Chairman<sup>2</sup> of the Standards Committee, have delegated authority to decide to:

- a) Take no action if there is clear evidence that there has been no breach of the Code of Conduct.
- b) Resolve the matter informally by asking the Subject Member to
  - take part in mediation with the complainant in order to settle the complaint, provided both the Subject Member and the complainant are willing to do so, and/or
  - make a written apology to the complainant which is acceptable to the Monitoring Officer and Chairman of the Standards Committee, and/or
  - attend training and/or

<sup>11</sup> Reference to the Monitoring Officer in this document includes the Deputy Monitoring Officer

<sup>2</sup> Reference to the Chairman of the Standards Committee includes the Vice-Chairman of the Committee

- correct an entry in the Members' Register of Interests or correct a declaration made; OR
- c) Require a formal investigation and a written investigation report by an Investigating Officer. The investigation report shall conclude whether there has been a breach of the Code of Conduct. Copies of the investigation report will be provided in confidence to the Independent Person, the Chair of the Standards Committee, and the Subject Member. OR
- d) Refer the complaint to the Standards Committee for a decision on whether options a), b) and c) above should [be](#) followed;

The decision by the Monitoring Officer will normally be taken within 10 working days of receipt of the complaint. Once a decision has been made by the Monitoring Officer the complainant, the Subject Member and the Town/Parish Clerk (if applicable) will be informed of the outcome as soon as possible.

#### **9.1.13.5 Anonymous complaints**

Anonymous complaints will not usually be considered. However it is recognised that in some exceptional circumstances some individuals may feel unable to reveal their identity. In these situations, complainants wishing to remain anonymous should be aware that their concerns may carry less weight, because the evidence may not be sufficient enough to [provide-allow](#) a successful investigation and fair result. The Monitoring Officer is authorised, subject to consultation with the Independent Person and Chair of the Standards Committee to accept or decline an anonymous complaint.

#### **9.1.14 Finding on Investigation**

##### **9.1.14.1 No Breach of Code of Conduct**

Where a formal investigation concludes that the Subject Member [has not](#) failed to comply with the Code of Conduct, the Monitoring Officer shall have delegated authority to decide not to take any further action.

If the Monitoring Officer makes a decision not to take any further action, he or she will advise the complainant, the Subject Member and the Town/Parish Clerk if applicable.

A summary of all investigations will be provided to the Standards Committee for information. However, where there is a determination that there has been no breach of the Code of Conduct, no names will be disclosed.

##### **9.1.14.2 Breach of Code of Conduct**

Where a formal investigation finds evidence that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with an Independent Person and the Chairman of the Standards Committee, shall make a decision to:

- a) Resolve the matter informally by asking the Subject Member to

- take part in mediation with the complainant in order to settle the complaint, provided both the Subject Member and the complainant are willing to do so, and/or
- make a written apology to the complainant which is acceptable to the Monitoring Officer and Chairman of the Standards Committee, and/or
- attend training and/or
- correct an entry in a register or correct a declaration made;

Where there has been a determination by the Monitoring Officer to resolve the matter informally, the Subject Member's name will not be disclosed

• OR

- refer the Investigating Officer's report to a Standards Committee Hearings Panel, constituted from members of the Standards Committee. The Hearings Panel will conduct a local hearing following the procedure in 9.1.15. below, and make a decision in accordance with 9.1.16.2 below.

The Hearings Panel will usually hear a complaint within two calendar months of the date that the Monitoring Officer received the final investigation report.

### 9.1.15 Procedure for Local Hearings

#### 9.1.15.1 Appointment, Composition and Terms of Reference of the Hearings Panel

The Monitoring Officer is required to convene a Hearings Panel from the membership of the Standards Committee as necessary. The Hearings Panel will therefore not have a fixed membership.

The Hearings Panel shall comprise three to five voting members of the Standards Committee.

If the complaint relates to a Town or Parish Councillor then a co-opted Town or Parish ~~Council~~ Councillor of the Standards Committee will also be part of the Hearings Panel, but will not have voting rights.

An Independent Person will be asked to attend any Hearings Panel and give advice to it in respect of the complaint as required by s28(7) Localism Act 2011.

#### 9.1.15.2 Pre Hearing Process

The date of the hearing will be arranged by the Monitoring Officer in consultation with the members of the Hearings Panel and the Subject Member.

Once the date for the Hearings Panel has been arranged the Subject Member will be notified and asked if they:

- wish to attend the hearing;

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- b) wish to be represented at the hearing by a solicitor, barrister or any other person;
- c) wish to submit any written evidence or documentation to be considered by the Panel. This must be sent no later than 3 working days prior to the hearing and will be passed to the complainant and the Investigating Officer for any comment. Additional evidence or documentation not submitted by this deadline may not be accepted by the Panel
- d) wish to call relevant witnesses to give evidence at the hearing. The Chairman of the Hearings Panel appointed at the meeting will have the final decision on how many witnesses may reasonably be needed.

The Hearings Panel will receive a report from the Monitoring Officer which will include a copy of the Investigating Officer's final report.

The Hearings Panel will be held in private and this will be confirmed at the hearing.

#### **9.1.15.3 Procedure for the Hearings Panel**

The procedure for the Hearings Panel will be as follows:

- a. Confirm the names and status of those attending. If the Subject Member is not present at the start of the hearing, and they had indicated their intention to attend, the Chairman shall ask the Monitoring Officer whether the Subject Member has provided any reasons why he or she would not be present. From the response the Hearings Panel will decide whether to make a determination in the absence of the Subject Member or adjourn the hearing to another date.
- b. The Investigating Officer, or in his/her absence the Monitoring Officer, shall present the Investigating Officer's report having particular regard to any points of difference identified by the Subject Member and why the Investigating Officer had concluded, on the basis of their findings of fact, that the Subject Member had failed to comply with the Code of Conduct. The Investigating Officer or Monitoring Officer may call witnesses as necessary in order to substantiate his/her findings.
- c. The Subject Member will then be given the opportunity to ask the Investigating Officer, or any of the witnesses, questions relating to the report or matters that have arisen during the witness statements.
- d. Members of the Hearings Panel, the Independent Person and the Monitoring Officer will then have the opportunity of asking the Investigating Officer, or any of the witnesses, questions relating to the report or matters that have arisen during the witness statements.
- e. The Subject Member will then be invited to respond to the Investigating Officer's report and provide evidence, either by calling witnesses or by making representations to the Hearings Panel as to why they consider that they did not fail to comply with the Code of Conduct.

- f. The Investigating Officer will then be given the opportunity to ask the Subject Member and any witnesses, questions relating to the representations made to the Hearings Panel.
- g. Members of the Hearings Panel, the Independent Person and the Monitoring Officer will then have the opportunity to ask the Subject Member, and any witnesses, questions relating to the representations made to the Hearings Panel.
- h. The Investigating Officer will then be given the opportunity to sum up.
- i. The Subject Member will then be given the opportunity to sum up
- j. The Independent Person will then be invited to comment and outline their view in respect of the complaint.
- k. The Chairman of the Hearings Panel will check with the other members of the Panel whether they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter. If it is decided that additional evidence is required before a determination can be made then the hearing will be adjourned and the Investigating Officer be asked either to seek and provide such additional evidence and/or undertake further investigation on any point specified by the Hearings Panel.
- l. If the Panel is satisfied that that they do have sufficient evidence to make a decision this will conclude the evidence gathering part of the hearing. The Investigating Officer, the Subject Member, the Independent Person and any witnesses that might be present will be asked to leave at this point, but the Democratic Services Clerk and Monitoring Officer will remain.
- m. The Panel will then determine the complaint on the balance of probabilities test. If the Panel determine that there has been a failure to follow the Code the Chairman [they](#) shall seek advice from the Monitoring Officer as to what action they believe should be taken against the Subject Member.

#### **9.1.16 Finding of the Hearings Panel**

##### **9.1.16.1 Finding of Non Failure to follow the Code of Conduct**

If the Hearings Panel determine that the Subject Member has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report then the complaint will be dismissed.

The decision notice stating the Hearings Panel's findings, in relation to a non-failure to follow the Code of Conduct, will be provided to the Subject Member, the Investigating Officer, the Monitoring Officer, and the Independent Person on a confidential basis. It will not be published on the Council's website or otherwise disclosed.

##### **9.1.16.2 Finding of Failure to follow the Code of Conduct**

If the Hearings Panel determines that the Subject Member has failed to follow the Code of Conduct then it can decide to take any or more of the following actions:

- a) Formally censure the Subject Member in writing for their failure to follow the Code of Conduct;
- b) Recommend to the Subject Member's Group Leader (or in the case of ungrouped Members, recommend to Council or to Committee(s) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- c) Recommend to the Leader of Council that the Subject Member be removed from the Executive, or removed from particular portfolio responsibilities;
- d) Instruct the Monitoring Officer (or recommend that the relevant Town/Parish Council, as appropriate) to arrange training for the Member;
- e) Remove (or recommend to the relevant Town/Parish Council that the Subject Member be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Town/Parish Council);
- f) Withdraw (or recommend to the relevant Town/Parish 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;
- g) Exclude (or recommend that the relevant Town/Parish Council exclude) the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee or Sub-Committee meetings; or
- h) Report its findings to the Crown Prosecution Service in respect of a Subject Member that has been found to have committed an offence under Rule 9.2.13.

#### **9.1.16.3 Publication of the Decision on Finding a Breach of the Code of Conduct**

Within 3 working days, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel. A copy of the decision notice will be sent to the complainant, the Subject Member (and, if applicable, the relevant Town/Parish Council) and the Independent Person. The decision notice will be available for public inspection, and published on the Borough Council's website.

If the complaint is directed at a Borough Councillor, the decision will be reported to the next convenient meeting of the Borough Council. [At the Council meeting](#), the report will be noted and there will be no discussion on the item. If the complaint is directed at a Town/Parish Councillor, the relevant Council will be requested to report the decision to its next Council Meeting.

The Subject Member has no right of appeal against a decision of the Monitoring Officer or the Hearings Panel.

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# Agenda Item 9.

<b>TITLE</b>	<b>Update to the Member Officer Protocol</b>
<b>FOR CONSIDERATION BY</b>	Standards Committee on 29 July 2015
<b>WARD</b>	None Specific
<b>DIRECTOR</b>	Andrew Moulton, Head of Governance and Improvement Services

## **OUTCOME / BENEFITS TO THE COMMUNITY**

That the public have confidence that appropriate measures are in place with regard to Councillor and Officer ethical standards.

## **RECOMMENDATION**

That the Committee endorses the minor updates to the revised Member/Officer Protocol (two additional appendices of Supporting Guidance) for onward submission to the Constitution Review Working Group and Council for final approval.

## **SUMMARY OF REPORT**

The purpose of a Member/Officer Protocol is to guide Councillors and Officers in their relations with one another in such a way as to ensure the smooth running of the Council.

Attached to this report in Appendix A is a proposed replacement Member/Officer Protocol as considered and supported by the Standards Committee at its meeting on 14 October 2014. This would replace the existing Member/Officer within Chapter 9.3 of the Council's Constitution.

Following discussion with the Corporate Leadership Team it was suggested that additional supporting guidance be provided (Appendix 5 - Role and Responsibilities of Members, and Appendix 6 – Role and Responsibilities of Members).

## Background

The existing Member/Officer Protocol was added to the Council's Constitution in 2007, but has not been significantly revised since that time. Since 2007 there have been major developments in ethical governance arrangements nationally including the implementation of the Localism Act 2011 which abolished Standards England and the nationally prescribed Model Code of Councillor Conduct. In July 2012, the Council adopted a new locally determined Code of Conduct.

## Analysis of Issues

The proposed amended document was previously considered and supported by the Standards Committee in October 2014. The Corporate Leadership Team suggested that it would be helpful for purposes of clarity to add appendices 5 and 6 which the Committee is now asked to support.

## FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

***The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.***

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	£0	Yes	Revenue
Next Financial Year (Year 2)	£0	Yes	Revenue
Following Financial Year (Year 3)	£0	Yes	Revenue

### Other financial information relevant to the Recommendation/Decision

N/A

### List of Background Papers

None

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<b>Date</b> 20 July 2015	<b>Version No.</b> 1.0

## **CHAPTER 9.3 - MEMBER / OFFICER PROTOCOL**

### **9.3.1 Preamble**

The relationship between Members and Officers is important to the successful working of the Authority. This relationship within Wokingham Borough Council is characterised by mutual respect and trust. Members and Officers should feel free to speak to one another openly and honestly. Nothing in this Protocol is intended to change this relationship. The purpose of this Protocol is to help Members and Officers to perform effectively by giving guidance in their respective roles and expectation of their respective roles and on their relationship with each other. This Protocol also gives guidance on what to do on the rare occasions when things go wrong and in its appendices, give supporting guidance in respect of specific subjects.

The Protocol must be read and operated in the context of any relevant legislation, the Member's Code of Conduct, Officer Code of Conduct and the Council's Whistleblowing Policy and Guidance. Nothing in this protocol overrides national legislation or these documents.

### **9.3.2 Roles of Members and Staff**

The respective roles of Members and Officers can be summarised as follows:

Members and Officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Members are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give advice to Members and the Council and to carry out the Council's work under the direction of Members through the Council, Executive and relevant committees.

Mutual respect between Members and Officers is essential to good local government and an important part of that is an understanding of these respective roles and responsibility.

### **9.3.3 Members' Responsibilities**

Members have three main areas of responsibility: determining the strategic policy of the Council and giving it political leadership, representing the Council externally, and acting as advocates on behalf of their constituents. It is not the role of Members to involve themselves in the day to day operation of Council services.

### **9.3.4 The Mayor, Deputy Mayor, Members of the Executive and Deputy Executive Members, Chairman, Vice-Chairman**

The Mayor, Deputy Mayor, Members of the Executive and Deputy Executive Members have additional responsibilities. Because of those responsibilities, their relationships with employees may be different from and more complex than those of Members without those responsibilities and this is recognised in the expectations they are entitled to have.

### **9.3.5 Opposition Members**

Members shall be given timely access to information that they require in their role as Members. As individual Members of the Council, all Members have the same rights and obligations in their relationships with employees and should be treated equally. This principle is particularly in the context of overview and scrutiny. However, where a political group forms an administration, either alone or in partnership with another group or groups, it is recognised that the relationship between Officers, particularly those at senior level in the organisation and the administration shall differ from that with opposition groups.

### **9.3.6 Officers**

The role of Officers is to give advice and information to Members and to implement the policies determined by the Council.

Certain employees e.g. Head of Paid Services, Monitoring Officer, Chief Financial Officer (Section 151) and the Statutory Chief Officers have responsibilities in law over and above their obligations to the Council and its Members which they must be allowed to discharge.

### **9.3.7 Expectations**

Members can expect from Officers:

- A commitment to the Council as a whole and not to any political group;
- A working partnership;
- An understanding of and support for respective roles, workloads and pressures;
- Timely response to enquiries and complaints;
- Professional advice not influenced by political views or preference, which does not compromise the political neutrality of employees;
- Regular, up to date information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions that they hold;
- Awareness and sensitivity to the political environment
- Respect, dignity and courtesy;
- Training and development in order that they can carry out their role effectively;
- Integrity, mutual support and appropriate confidentiality;
- That Officers shall not use their relationship with Members to advance their personal interests or to influence decisions improperly;
- That Officers shall at all times comply with the relevant Code of Conduct.

Officers can expect from Members:

- A working partnership;
- An understanding of and support for respective roles, workloads and pressures;
- Political leadership and direction;
- Respect, dignity and courtesy;
- Integrity, mutual support and appropriate confidentiality;
- Not to be subject to bullying or to be put under undue pressure. Members should have regard to the seniority of Officers in determining what are reasonable requests, having regard to power relationship between Members and employees and the potential vulnerability of Officers, particularly at junior levels;
- That Members shall not use their position or relationship with employees to advance their personal interests or those of others or to influence decisions improperly;
- That Members shall at all times comply with the relevant Code of Conduct.

### **9.3.8 If things go wrong**

Procedure for Officers

From time to time the relationship between Members and Officers may break down or become strained. Whilst it shall always be preferable to resolve matters informally, through conciliation by an appropriate senior Manager or Member, Officers should raise any concerns with the Monitoring Officer who will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than informally referring the

matter to the Leader of the relevant part group. More serious complaints may involve alleged breaches of the Member Code of Conduct and the process for the consideration of Member Code of Conduct complaints as set out in Chapter 9.1.12 of Constitution initiated.

Nothing in this process negates the right of Officers to make a Code of Conduct complaint directly if they wish.

#### Procedure for Members

In the event that a Member is dissatisfied with the conduct, behaviour or performance of an Officer, the matter should be raised with the appropriate manager or the relevant Director. Where the matter concerns a Director, it should be raised with the Chief Executive. Where the matter concerns, the Chief Executive it shall be raised with the Director Finance and Resources or with the Leader of the Council as appropriate.

**Supporting Guidance on Members' Access to Documents and Information**

1. This Guidance should be read in conjunction with the Access to Information Rules contained in Chapter 3.2 of the Council's Constitution.
2. Members may request Directors to provide them with such information, explanation and advice as they may reasonably need to assist them to discharge their roles as Members. This may range from general information about some aspect of the Council's services to specific information on behalf of a constituent. Where information is requested on behalf of a third party, it will only be provided if:
  - a) it is in the public domain, and
  - b) it is not barred by the Data Protection Act from being given.
3. Every Member of the Executive, the Overview and Scrutiny Committees, and/or any other committee or sub-committee has a right to inspect documents about the business of that committee or sub-committee or the Executive.
4. A Member who is not a Member of a specific Overview and Scrutiny Committee, other committee or sub-committee, or the Executive has rights of access to reports which are set out in the Access to Information Procedure Rules set out in Chapter 3.2.
5. Disputes as to the validity of a Member's request to see a document on a need to know basis will be determined by the Monitoring Officer. Officers should seek his/her advice if in any doubt about the reasonableness of a Member's request.
6. A Member should obtain advice from the Monitoring Officer in circumstances where he/she wishes to have access to documents or information:
  - a) where to do so is likely to be in breach of the Data Protection Act, or
  - b) where the subject matter is one in which he/she has a personal or prejudicial interest as defined in the Members' code of conduct.
7. Information given to a Member must only be used for the purpose for which it was requested.
8. It is an accepted convention that a Member of one political group will not have a need to know and therefore a right to inspect a document which forms part of the internal workings of another political group.
9. Members and Officers must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so.
10. When requested to do so, Officers will keep confidential from other Members advice requested by a Member.
11. Members and Officers must not prevent another person from gaining access to information to which that person is entitled by law.

**Supporting Guidance on Media Relations**

1. All formal relations with the media must be conducted in accordance with the Council's agreed procedures and the law on local authority publicity.
2. Press releases or statements made by Officers must promote or give information on Council policy or services. They will be factual and consistent with Council policy. They cannot be used to promote a political group.
3. Officers will keep relevant Members informed of media interest in the Council's activities, especially regarding strategic or contentious matters.
4. Before responding to enquiries from the media, Officers shall ensure they are authorised to do so.
5. Likewise, Officers will inform the Council's Communications Unit of issues likely to be of media interest, since that section is often the media's first point of contact.
6. If a Member is contacted by, or contacts, the media on an issue, he/she should:
  - a) indicate in what capacity he/she is speaking (e.g. as ward Member, in a personal capacity, as an Executive Member, on behalf of the Council, or on behalf of a political group);
  - b) be sure of what he/she wants to say or not to say;
  - c) if necessary, and always when he/she would like a press release to be issued, seek assistance from the Council's Communications Unit and/or relevant Director, except in relation to a statement which is party political in nature;
  - d) consider the likely consequences for the Council of his/her statement (e.g. commitment to a particular course of action, image, allegations of jumping to conclusions);
  - e) never give a commitment in relation to matters which may be subject to claims from third parties and/or are likely to be an insurance matter;
  - f) consider whether to consult other relevant Members; and
  - g) take particular care in what he/she says during the moratorium on publicity in the run-up to local or national elections to avoid giving the impression of electioneering, unless he/she has been contacted as an election candidate or political party activist.

**Supporting Guidance on Correspondence**

1. Correspondence between an individual Member and an Officer should not be copied to another Member unless the author expressly intends and states that this is the case or consents. Where correspondence is copied, this should always be made explicit, i.e. there should be no “blind” copies.
2. Official letters written on behalf of the Council should normally be in the name of the relevant Officer. It may be appropriate in some circumstances (e.g. representations to a Government Minister) for letters to appear in the name of an Executive Member or the chairmen of the Overview and Scrutiny Committees.
3. The Mayor may initiate correspondence in his/her own name.
4. Letters which create legally enforceable obligations or which give instructions on behalf of the Council should never be sent in the name of a Member.
5. When writing in an individual capacity as a ward Member, a Member must make clear that fact.

**Supporting Guidance on Access to Premises and Use of Council Resources**

1. Officers have the right to enter Council land and premises to carry out their work. Some Officers have the legal power to enter property in the ownership of others.
2. Members have a right of access to Council land and premises to fulfil their duties.
3. When making visits as individual Members, Members should:
  - a) whenever practicable, notify and make advance arrangements with the appropriate manager or Officer in charge;
  - b) comply with health and safety, security and other workplace rules;
  - c) not interfere with the services or activities being provided at the time of the visit;
  - d) if outside his/her own ward, notify the ward Member(s) beforehand; and
  - e) take special care at schools and establishments serving vulnerable sections of society to avoid giving any impression of improper or inappropriate behaviour.
4. The Council provides all Members with a number of services to assist them in discharging their roles as Members of the Council. These goods and services are paid for from the public purse. They should not be used for private purposes or in connection with party political or campaigning activities.
5. Members should ensure they understand and comply with the Council's own rules about the use of such resources, particularly:
  - a) where facilities are provided in Members' homes at the Council's expense;
  - b) in relation to any locally-agreed arrangements e.g. payment for private photocopying; and
  - c) regarding ICT security.
6. Members should not put pressure on staff to provide resources or support which Officers are not permitted to give. Examples are:
  - a) business which is solely to do with a political party;
  - b) work in connection with a ward or constituency party political meeting;
  - c) electioneering;
  - d) work associated with an event attended by a Member in a capacity other than as a Member of the Council;
  - e) private personal correspondence;
  - f) work in connection with another body or organisation where a Member's involvement is other than as a Member of the Council; and
  - g) support to a Member in his/her capacity as a councillor of another local authority.

## **Appendix 5**

### **Supporting Guidance on Role and Responsibilities of Members**

#### **1. The Role of Members**

Members have a number of roles and need to be alert to the potential for conflicts of interest which may arise between the roles. Where such conflicts are likely, Members may wish to seek the advice of senior colleagues, the relevant senior Officer(s), and/or the Monitoring Officer but the decision whether or not there is a conflict ultimately rests with the Member:

- a) collectively, Members are the ultimate policy-makers determining the core values of the Council and approving the Authority's policy framework, strategic plans and budget;
- b) Members represent the community, act as community leaders and promote the social, economic and environmental well-being of the community often in partnership with other agencies;
- c) every elected-Member represents the interests of, and is an advocate for their ward and individual constituents. He/she represents the Council in the ward, responds to the concerns of constituents, meets with partner agencies, and often serves on local bodies;
- d) some Members have roles relating to their position as Members of the Executive, Overview and Scrutiny Committees, or other committees and sub-committees of the Council.
- e) members of the Executive can have individual delegated powers. They may determine matters within their portfolios but implementation of their decisions is the responsibility of Officers;
- f) Members serving on the Overview and Scrutiny Committees monitor the effectiveness of the Council's policies and services, develop policy proposals and examine community issues. They also monitor local health service provision;
- g) Members who serve on other committees and sub-committees collectively have delegated responsibilities, e.g. deciding planning and licensing applications, which by law are excluded from the remit of the Executive.
- h) some Members may be appointed to represent the Council on local, regional or national bodies.

#### **2 The Responsibilities of Members**

As politicians, Members may express the values and aspirations of the party political groups to which they belong, recognising that in their role as Members they have a duty always to act in the public interest.

#### **Instructing Officers**

Members are not authorised to instruct Officers other than:

- a) through the formal decision-making process;

- b) where staff have been specifically allocated to give support to a Member or group of Members; and
- c) in the case of political assistants.

### **Financial Transactions**

Members are not authorised to initiate or certify financial transactions, or to enter into a contract on behalf of the Council.

### **Unlawful Actions**

Members must avoid taking actions which are unlawful, financially improper or likely to amount to maladministration. Members have an obligation under their code of conduct to have regard, when reaching decisions, to any advice provided by the Monitoring Officer or the Section 151 (Finance) Officer.

### **Impartiality of Officers**

Members must respect the impartiality of Officers and do nothing to compromise it, e.g. by insisting that an Officer change his/her professional advice.

### **Members Role in Appointments**

Members have a role in:

- a) the appointment of the Chief Executive, and Directors
- b) determining human resources policies and conditions of employment;
- c) determining requests for early retirement and redundancy pay;
- d) involvement in the appointment of political assistants;
- e) hearing and determining appeals; and
- f) a consultative role with staff side and the Trade Unions.

Members shall not act outside these roles.

If participating in the appointment of Officers, Members should:

- a) remember that the sole criterion is merit (other than in the case of political assistants where political consideration may apply);
- b) never canvass support for a particular candidate;
- c) not take part where one of the candidates is a close friend or relative;
- d) not be influenced by personal preferences; and
- e) not favour a candidate by giving him/her information not available to the other candidates.

## **Appendix 6**

### **Supporting Guidance on Role and Responsibilities of Officers**

#### **1 The Role of Officers**

Officers are responsible for giving advice to Members to enable them to fulfil their roles. In doing so, Officers will take into account all available relevant factors. Advice given by the Section 151 (Finance) Officer and Monitoring Officer in accordance with their Statutory functions must always be followed. All Officer reports for Members' attention, excluding reports relating to planning applications which are due to be discussed at the Planning Committee, should be circulated to the Section 151 Officer and Monitoring Officer for information and comment.

Under the direction and control of the Council (including, as appropriate, the Executive, committees and sub-committees), Officers manage and provide the Council's services within the framework of responsibilities delegated to them. This includes the effective management of employees and operational issues.

#### **2 Responsibilities of Officers**

Officers have a duty to implement decisions of the Council, the Executive, committees and sub-committees which are lawful, and which have been properly approved in accordance with the requirements of the law and the Council's Constitution, and duly minuted.

- a) Officers have a contractual and legal duty to be impartial. They must not allow their professional judgement and advice to be influenced by their own personal views.
- b) Officers must assist and advise all parts of the Council. They must always act to the best of their abilities in the best interests of the Authority as expressed in the Council's formal decisions.

- c) Officers must 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.
- d) 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.

### **3 The Relationship Between Members and Officers - General**

The conduct of Members and Officers should be such as to instil mutual confidence and trust:

- a) the key elements are recognition of and a respect for each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately;
- b) Members and Officers should not undermine respect for the other at Council Meetings, or at any other meeting they attend in their capacity as a Member or Council employee. A personal attack by a Member on an Officer, or on staff generally, at a formal or informal Member meeting will never be acceptable, nor will a personal attack by an Officer on a Member;
- c) Members should not raise matters relating to the conduct or capability of an individual Council Officer or Officers collectively at meetings held in public;
- d) informal and collaborative two-way contact between Members and Officers is encouraged. But personal familiarity can damage the relationship, as might a family or business connection;
- e) Members and Officers should inform the Monitoring Officer of any relationship which might be seen as unduly influencing their work in their respective roles;
- f) it is not enough to avoid actual impropriety. Members and Officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be perceived. Specifically, a Member should not sit on a body or participate in any decision which directly affects the Officer on a personal basis;
- g) Officers serve the Council as a whole. They have a duty to implement the properly authorised decisions of the Council;
- h) with the exception of political assistants, Officers work to the instructions of their senior Officers, not individual Members. It follows that, whilst such Officers will always seek to assist a Member, they must not be asked to exceed the bounds of authority they have been given by their managers. Except when the purpose of an enquiry is purely to seek factual information, Members should normally direct their requests and concerns to a Director, at least in the first instance;

- i) Officers will do their best to give timely responses to Members' enquiries. However, Officers should not have unreasonable requests placed on them. Their work priorities are set and managed by Directors. Members should avoid disrupting Officers' work by imposing their own priorities;
- j) Members wishing to see Officers in person should make appointments in accordance with any local service area protocol;
- k) Members and Officers will endeavour to give timely responses to each other's enquiries and requests;
- l) an Officer shall not discuss with a Member personal matters concerning him/herself or another individual employee. This does not prevent an Officer raising on a personal basis, and in his/her own time, a matter with his/her ward Member;
- m) Members and Officers should respect each other's free (i.e. non-Council) time.

#### **4 The Council as Employer**

Officers are employed by the Council as a whole.

#### **5 Mayor and Officers**

Officers will respect the position of Mayor and provide appropriate support.

#### **6 Executive Members and Officers**

Executive Members will take decisions in accordance with the Constitution and will not otherwise direct staff. Directors will be responsible for instructing staff to implement the Executive's decisions.

In addition to individual Members of the Executive, Directors (including the Section 151 Officer) and the Monitoring Officer have the right to submit papers to the Executive as a whole or to individual Executive Members for consideration.

Directors and Executive Members shall agree mutually convenient methods of regular contact. Before taking any formal decisions, the Executive will seek appropriate professional advice including, without exception, the Monitoring Officer and Section 151 Officer, and will not direct Officers in the framing of recommendations.

Before any formal decisions with a financial implication are taken by the Executive, the Section 151 Officer and the Directors for the service(s) concerned must be consulted. This is to ensure that those Officers who are budget holders:

- a) are aware of the proposed decision;
- b) have the opportunity to offer advice; and
- c) are subsequently able properly to authorise the financial transactions needed to implement decisions.

#### **7 Executive Individual Decisions**

An individual Executive Member who is minded to write or commission a report or to make a decision about a matter within his/her portfolio must ensure that those other Members and Officers who need to know of the matter are so informed. There is a particular requirement to involve other Executive Members on cross-cutting issues.

Executive Members when making decisions (whether collectively or individually) must state the reasons for those decisions. The written record of the decisions must include the reasons.

### **8 Officer Delegated Powers**

Officers taking decisions under their delegated powers must consult with the relevant Executive Member(s) in advance when the matter to which the decisions relate are likely to be sensitive or contentious, or have wider policy implications.

### **9 Officer Action**

At some meetings, a resolution may be passed which authorises a named Officer to take action between meetings in consultation with the chairman/Executive Member. In these circumstances it is the Officer, not the Member, who takes the action and is responsible for it. A Member has no legal power to take decisions, neither should he/she apply inappropriate pressure on the Officer.

### **10 Political Groups and Officers (excluding Political Assistants)**

The Chief Executive and Directors may properly be asked to contribute to deliberations of matters concerning Council business by political groups:

- a) Officers will not normally be expected to attend a meeting of a political group where some of those attending are not Members of the Council, particularly where there is a likelihood that matters of a confidential or political nature will be considered;
- b) Officer support will not extend beyond providing factual information or professional advice in relation to matters of Council business. Officers must not be involved in advising on matters of a wholly political nature, and therefore should not be expected to be present at meetings or parts of meetings when such matters are to be discussed;
- c) political group meetings are not empowered to make decisions on behalf of the Council, and conclusions reached at such meetings do not rank as formal decisions. The presence of an Officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so;
- d) where Officers provide factual information and advice to a political group in relation to a matter of Council business, this is not a substitute for providing all the necessary information and advice when the matter in question is formally considered by the relevant part of the Council;
- e) it must not be assumed that an Officer is supportive of a particular policy or view considered at a political group meeting simply because he/she has attended or provided information to the meeting;

- f) Officers will respect the confidentiality of any political group discussions at which they are present and, unless requested to do so by that party group, will not relay the content of such discussions to another party group or to any other Members. This shall not prevent the Chief Executive or a Director providing feedback to other Directors on a need-to-know basis;
- g) in their dealings with political groups, Officers must treat each group in a fair and even-handed manner;
- h) Members must not do anything which compromises or is likely to compromise Officers' impartiality;
- i) during discussions at political group meetings, Members should have regard to the Code of Conduct requiring them to treat others with respect, and to the provisions of this protocol regarding the need for mutual respect between Members and Officers to be maintained at all times. The Clerk to the meeting shall report any comments or behaviour he/she considers to be contrary to these provisions to the Chief Executive and Monitoring Officer;
- j) an Officer accepting an invitation to the meeting of one political group shall not decline an invitation to advise another group about the same matter. He/she must give substantially the same advice to each;
- k) an Officer who is not a Director shall not be invited to attend a party group meeting, but a Director may nominate another Officer to attend on his/her behalf;
- l) an Officer should be given the opportunity of verifying comments and advice attributed to him/her in any written record of a political group meeting;
- m) no Member will refer in public or at meetings of the Council to advice or information given by Officers to a political group meeting, and no Officer will refer in public reports to matters discussed by a political group meeting;
- n) any particular cases of difficulty or uncertainty in relation to this part of the protocol should be raised with the Monitoring Officer or Chief Executive, and the relevant party group leader.

## **11 Political Assistants**

These Officers have been appointed by the Council exclusively to provide support to each of the party groups. Their function is to assist the interests and work of the group to which they have been assigned. This is in contrast to all other staff whose duty is to serve the Council as a whole:

- a) political Assistants will be treated in accordance with and expected to observe all codes, policies and practices relating to the Council's staff. This includes the courtesy and consideration which the Council expects its Officers to show to one another;
- b) except for their immediate secretarial and clerical support, the assistants will have no line management responsibility or power of direction over other staff;

- c) political Assistants are not authorised to comment publicly on behalf of the Council as a whole, or to commit the Council to any particular course of action, but can comment on behalf of the party group to which they have been assigned;
- d) the level of access to Council documents and information shall be that enjoyed by Members.

## **12 Ward Issues and Officers**

To enable them to carry out their ward role effectively, Members need to be fully informed about matters affecting their ward. Directors must ensure that all relevant staff are aware of the requirement to keep local Members informed, thus allowing Members to contribute to the decision-making process and develop their representative role.

This requirement is particularly important:

- a) during the formative stages of policy development, where practicable;
- b) in relation to significant or sensitive operational matters;
- c) whenever any form of public consultation exercise is undertaken; and
- d) during an overview and scrutiny investigation.

Issues may affect a single ward. Where they have a wider impact, a number of Local Ward Members will need to be kept informed.

Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the wards affected should be invited to attend the meeting as a matter of course.

If a local Member intends to arrange a public meeting on a matter concerning some aspect of the Council's work, he/she should inform the relevant Officer. Provided the meeting has not been arranged on a party political basis:

- a) an Officer may attend but is not obliged to do so, and
- b) the meeting may be held in Council-owned premises.

No such meetings should be arranged or held during the moratorium on publicity during the approximate six week period between the notice of election and the election itself.

Whilst support for Members' ward work is legitimate, care should be taken if staff are asked to accompany Members to ward surgeries. In such circumstances:

- a) the surgeries must be open to the general public; and
- b) Officers should not be requested to accompany Members to surgeries held in the offices or premises of political parties.

Officers must never be asked to attend ward or constituency political party meetings.

It is acknowledged that some Council staff (e.g. those providing dedicated support to Executive Members) may receive and handle messages for Members on topics unrelated to the Council. Whilst these will often concern diary management, care should be taken to avoid Council resources being used for private or party political purposes.

In seeking to deal with constituents' queries or concerns, Members should not seek to jump the queue but should respect the Council's procedures and in particular locally agreed levels of service. Officers have many pressures on their time. They may not be able to carry out the work required by Members in the requested timescale, and may need to seek direction from their managers.

Under no circumstances should Members seek to use their positions to further their own personal interests as recipients of Council services.