

## **OTHER PROCEDURES**

|            |  |             |
|------------|--|-------------|
| <b>16.</b> | <b>Financial Regulations</b>   | <b>16-1</b> |
| <b>17.</b> | <b>Officer Employment Procedures</b>   | <b>17-1</b> |
| <b>18.</b> | <b>Arrangements for dealing with complaints about member conduct under the Localism Act 2011</b> | <b>18-1</b> |
| <b>19.</b> | <b>Scheme of Members' Allowances</b>   | <b>19-1</b> |

## Chapter 16 . **FINANCIAL REGULATIONS**

|             |   |             |
|-------------|---|-------------|
| <b>16.1</b> | <b>Responsibilities of the full council</b>       | <b>16-1</b> |
| <b>16.2</b> | <b>Responsibilities of the cabinet</b>            | <b>16-1</b> |
| <b>16.3</b> | <b>Responsibilities of the Statutory Officers</b> | <b>16-1</b> |
| <b>16.4</b> | <b>Audit</b>                                      | <b>16-4</b> |
| <b>16.5</b> | <b>Specific financial responsibilities</b>        | <b>16-5</b> |

### **16.1 Responsibilities of the full council**

The full Council is responsible for adopting the Council's Constitution and Members' Code of Conduct and for approving the Policy Framework and Budget within which the Cabinet operates. This includes approval of the Council's Financial Regulations. It is also responsible for approving and monitoring compliance with the Council's overall framework of accountability and control set out in these Regulations and elsewhere in the Council's Constitution.

In adopting the Constitution and approving changes to it the full Council is also responsible for agreeing the scheme of delegation for decision-making, other than the delegation of executive functions to officers by the Cabinet, set out in the Responsibility for Functions section of the Constitution.

### **16.2 Responsibilities of the cabinet**

At Member level, the Cabinet is responsible for the finances of the Council. It is responsible for proposing the policy framework and budget to the Council, and for discharging functions in accordance with the policy framework and budget. Cabinet decisions may be delegated as set out in the approved scheme of delegation referred to above.

### **16.3 Responsibilities of the Statutory Officers**

#### **(a) Head of Paid Service (Chief Executive)**

The Head of Paid Service is responsible for the corporate and overall strategic management of the Council as a whole. He or she must report to and provide information for the full Council, the Cabinet, scrutiny bodies and other committees. He or she is responsible for establishing a framework for management direction, style and standards and for monitoring the performance of the organisation. The Head of Paid Service, with the Monitoring Officer, is responsible for the system of record keeping in relation to the decisions of the Council.

**(b) Section 151 Officer (Director of Finance, Governance & Contracts)**

The Section 151 Officer has statutory duties in relation to the financial administration and stewardship of the Council, which cannot be overridden. The statutory duties arise from:

- Section 151 of the Local Government Act 1972
- The Local Government Finance Act 1988
- The Local Government and Housing Act 1989
- The Accounts and Audit Regulations as amended.

The Section 151 Officer is responsible for:

- The proper administration of the Council's financial affairs
- Setting and monitoring compliance with financial management standards
- Advising on the corporate financial position and on the key financial controls necessary to secure sound financial management
- Providing financial information
- Preparing the revenue budget and capital programme
- Treasury management and banking
- Determining the Council Tax Base.

Section 114 of the Local Government Finance Act 1988 requires the Section 151 Officer, as the responsible financial officer, to report to the full Council, Cabinet and the Council's external auditor if the Council or one of its members of staff:

- has made, or is about to make, a decision which involves incurring unlawful expenditure
- has taken, or is about to take, an unlawful action which has resulted or would result in a loss or deficiency to the Council
- is about to make an unlawful entry in the Council's accounts.

Section 114 of the 1988 Act also requires:

- the Section 151 Officer to nominate a properly qualified member of staff to deputise should he or she be unable to perform the duties under Section 114 personally
- the Council to provide the Section 151 Officer with sufficient staff, accommodation and other resources, including legal advice where this is necessary to carry out the duties under Section 114.

The Section 151 Officer (together with the Monitoring Officer) is responsible for advising the Cabinet or full Council if a decision

is likely to be considered contrary to or not wholly in accordance with the budget. Such actions include:

- committing expenditure which is not affordable within the overall approved budget or cannot be financed in accordance with the approved reserves
- transfers between budgets which contravene the virement limits
- causing the total expenditure financed from Council Tax, grants and corporately held reserves to increase.

**(c) Monitoring Officer (Head of Governance & HR)**

The Monitoring Officer is responsible for promoting and maintaining high standards of conduct in all matters affecting the Council, including financial issues, and therefore provides support to the Standards Committee. The Monitoring Officer is also responsible under section 5 of the Local Government and Housing Act 1989 for reporting any actual or potential breaches of the law or maladministration to the full Council and/or to the Cabinet, and for ensuring that procedures for recording and reporting key decisions are operating effectively.

The Monitoring Officer must ensure that Cabinet decisions and the reasons for them are made public. He or she must also ensure that Members are aware of key decisions made by the Cabinet

The Monitoring Officer is responsible for advising all Members and members of staff regarding levels of authority in decision-making.

The Monitoring Officer is responsible for advising the Cabinet and/or full Council if a decision is likely to be considered contrary to or not wholly in accordance with the policy framework.

The Monitoring Officer (together with the Section 151 Officer) is responsible for advising the Cabinet or full Council whether a decision is likely to be considered contrary to or not wholly in accordance with the budget as detailed above.

The Monitoring Officer is responsible for ensuring the Constitution is updated as appropriate.

**(d) Directors and Heads of Service**

Directors and Heads of Service are responsible for ensuring that Cabinet members are advised of the financial implications of all proposals having a material financial impact and that the financial implications have been agreed in advance by the Section 151 Officer or his/her deputy.

It is the responsibility of Directors and Heads of Service to consult the Section 151 Officer or his/her staff on all financial matters and to seek and obtain approval on any matter liable to materially affect the Council's finances, before any commitment is incurred.

Directors and Heads of Service must report any suspected irregularity relating to the Council's assets and interests immediately to the Section 151 Officer who will ensure that an investigation is carried out.

**16.4 Audit**

The Head of Governance & HR is responsible for maintaining an adequate and effective internal audit function. The internal audit function will operate in accordance with the CIPFA Code of Practice for Internal Audit. The internal audit function is responsible for providing assurance on the Council's system of internal control. It examines, evaluates and reports on the adequacy of internal control as a contribution to the proper, economic, efficient and effective use of resources. Internal audit staff will undertake effective reviews of systems and procedures on a regular basis.

The Head of Governance & HR will nominate a head of internal audit who has the right to direct access to the Head of Paid Service, the Cabinet and the Audit Committee where necessary.

Internal audit staff have access at any reasonable time and have the authority to apply any test or check they deem necessary to the accounts, cash, securities or other properties or records which relate in any way to the operations of the Council and can require and receive such explanations from any Officer or Member as deemed necessary.

The external auditor has the statutory rights of access to all relevant documents under Section 6 of the Audit Commission Act 1998.

The basic duties of the external auditor are governed by Section 5 of the Audit Commission Act 1998, under which auditors need to satisfy themselves that:

- (a) the accounts are prepared in accordance with regulations made under Section 27 of the 1998 Act and comply with the requirements of all statutory provisions applicable to the accounts;
- (b) proper practice has been observed in compilation of accounts; and
- (c) the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

## **16.5 SPECIFIC FINANCIAL RESPONSIBILITIES**

### **(a) Contracts**

All members of staff must comply with the requirements of the Council's Contracts Procedure Rules. Their purpose is to set clear rules for the procurement of goods, works and services for the Council. This will ensure a system of openness, integrity and accountability where the probity and transparency of the process will be beyond reproach. In turn this will lead to better value for money and give confidence to all concerned that the Borough Council is fulfilling its fiduciary responsibilities.

Any officer, Member, agent of the Council or firm, whilst acting on the Council's behalf in relation to any contractual matter directly or indirectly concerning the Council, shall conduct themselves in such a manner that the independence and integrity of the Council and the Council's procedures are at all times maintained and are seen to be maintained. Failure to observe such standards of conduct will be regarded by the Council with the utmost gravity.

The Contracts Procedure Rules set out the requirements for tendering and procurement of goods and services. The principal requirements are:

- that for all situations below the values quoted refer to the value of the contract over the whole life of the contract.
- Before commencing any proposed procurement process with an estimated value of £25,000 or more, the appropriate Head of Service must consult the Contract Compliance Officer, relevant Cabinet Lead Member and the Head of Finance;
- Public Notice must be given if the estimated value of the contract exceeds £25,000;
- For goods and services estimated to cost over £5,000 and up to £75,000 the relevant Head of Service must obtain written quotations;

- For goods and services estimated to cost over £25,000 and up to £75,000 written quotations must be returned to and opened by the Contract Compliance Officer;
- Full tendering requirements, including compliance with relevant EU procurement directives, apply to goods and services estimated to cost over £75,000;
- For goods and services estimated to be below £500,000 in value which do not exceed the approved budget for the scheme or supplies in question, decisions on the awarding of contracts are made by the Chief Executive or his/her nominee;
- For goods and services of £500,000 in value or more or where the approved budget would be exceeded, decisions on the selection of contractors are reserved to Cabinet;
- Contracts below £100,000 in value can be signed by the Chief Executive, Directors and Heads of Service;
- Contracts of £100,000 in value or more must be made under the Council's seal.

For the purposes of The Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001, any contract with a value exceeding £100,00 entered into on behalf of the local authority in the course of the discharge of an executive function shall be made in writing. Such contracts must be made under the Common Seal of the Council.

The functions of the Contract Compliance Officer are assigned to the Chief Executive who will then delegate these to another officer and a deputy for the normal performance of this role. The current Contract Compliance Officer is the Director - Commercial and Economic Development..

The Contract Compliance Officer or the Deputy Contract Compliance Officer can agree waivers to the Contracts Procedure Rules for contracts up to £500,000 in value providing they comply with UK Legislation and EU Procurement Directives and will maintain a record of any decisions taken on waivers. The Contract Compliance Officer is responsible for maintaining the Council's Contract Compliance Rules and is authorised to make amendments to those rules as necessary. An up to date copy of the rules is available on the Council's intranet.

**(b) Capital Expenditure, excluding Capital Expenditure in respect of commercial property acquired for investment purposes**

Capital expenditure involves acquiring or enhancing non-current assets with a long-term value to the Council, such as land, buildings, and major items of plant and equipment or vehicles as well as the contribution or payments of grants to others to be used to fund capital expenditure. Capital assets shape the way services are delivered for the long term and may create financial commitments for the future in the form of financing costs and revenue running costs. The Council applies a de minimis level of £10,000 to identify capital items.

The Council approves the three-year Capital Plan. The Cabinet is able to make the following changes to the approved Plan:

- (i) virement between existing schemes as set out in (c) below;
- (ii) slippage or bringing forward of expenditure of up to £250,000 per scheme;
- (iii) addition of new schemes to the Plan where these are fully externally funded;
- (iv) addition of new schemes to the Plan where these are funded wholly or partly from the Council's resources and where the use of the Council's resources is up to £250,000 per scheme
- (v) approval of additions or reductions in the Council resources allocated to schemes so long as any increase does not mean that the total Council resources allocated to a scheme exceeds £250,000 where it did not before, and such increase is not more than £100,000 above the value of the original scheme
- (vi) approval of additions or reductions in the Council resources allocated to schemes where the original scheme was more than £250,000 and the change is less than £250,000.

If (v) or (vi) of the above conditions applies the Cabinet will not be able to make the change if in the view of the Section 151 Officer, the change significantly affects the scheme or the funding of the Capital Plan.

The Cabinet approves the release of funding for each project in the Programme which is over £100,000. The release of funding for projects below this level is approved in accordance with the Council's Financial Procedure Rules.



**(c) Capital Expenditure in respect of commercial property acquired for economic development or regeneration purposes**

Periodically the Council may invest in commercial property where such an acquisition supports the Council's economic development or regeneration objectives. Such investments (or divestments) may require actions in a time frame that is not naturally enabled by usual Council decision making processes.

The standard processes in respect of Capital Expenditure are therefore modified in respect of commercial properties that are acquired for investment purposes.

The Council approves the three-year Capital Plan. Funding for economic development or regeneration purposes will be explicitly (and separately) identifiable within the Capital Plan. Cabinet is able to make changes to the Capital Plan in respect of Capital Expenditure in respect of commercial property acquisition under the same conditions that apply to other capital expenditure.

Executive decisions relating to the investment and release of funding for the purchase of individual commercial properties, providing available funding exists within the extant Capital Plan, will be delegated to the Leader, or another Cabinet Member to whom the Leader may delegate authority.

Opportunity may allow the financially advantageous disposal of commercial properties. Approval of commercial property disposals will be delegated to the Leader or Cabinet Lead Member covering the finance portfolio, or other Cabinet Members to whom the Leader may delegate authority.

**(d) Virement**

Virement is the switching of resources between approved budget headings and cost centres.

The Council's scheme of virement covers both revenue and capital expenditure and is administered by the Section 151 Officer in accordance with the Budget and Policy Framework Procedure Rules. The detailed virement rules are contained within the Financial Procedure Rules.

Budget Holders are responsible for agreeing in-year virements within delegated limits, in agreement with either the Head of Finance, Section 151 Officer or Cabinet depending on the nature and value of the virement as set out in the Financial Procedure Rules.

Cabinet approval is required for:

- virement between the budgets of two or more Directorates where the amount is in excess of £100,000
- virement between individual projects within the capital programme where the amount is in excess of £100,000.

Virements should only be made where such a virement leaves the originating budget with sufficient funds to meet its commitments.

**(e) Use of Reserves**

Except in the case of:

- staffing decisions delegated to the Head of Paid Service which result in redundancy or salary protection costs.
- Other expenditure as may be identified by the Head of Paid Service up to a maximum of £50,000 in accordance with guidelines for use of the Reinvestment Reserve.

Cabinet approval is required for the use of the reinvestment reserve.

**(f) Write Off of Bad Debts**

All write-offs of individual debts over £50,000 must be authorised by Cabinet. Authorisation levels for bad debts below £50,000 are at officer level and are detailed in the Financial Procedure Rules.

**(g) Disposal of Assets excluding commercial property assets that were acquired for investment purposes**

Obsolete, non-repairable or unnecessary assets should be disposed of with a view to achieving the most economically advantageous outcome for the Council having regard to the transparency and cost effectiveness of the disposal method, the timeliness of disposal and the likely price achievable.

Where individual assets, (which are not land or buildings), valued over £100,000 need to be disposed of and written off Cabinet approval must be sought in advance. Items which are valued at or below £50,000 can be approved at officer level. Details of officer approval levels are contained in the Financial Procedure Rules.

Where land and property (buildings) assets with a freehold value of over £150,000 or a leasehold value of over £100,000 need to be disposed of or written off (excluding Right to Buy

applications) Delegated authority from the Leader or other Cabinet Member to the terms of the disposal must be sought in advance. Items which are valued at or below these amounts can be approved at officer level. Details of officer approval levels are contained in the Financial Procedure Rules.

**(g) Year-End Balances and Carry Forward**

The estimated level of year-end balances is determined by Council as part of the budgetary process. A year-end report giving details of variations from the planned budget is submitted to Cabinet by the Head of Finance.

Providing a request fulfills the requirements set out in the Financial Procedure Rules and the request is supported by the S.151 Officer then Cabinet can approve the carry forward of budget for specific items of expenditure.

**(h) Accounting Policies**

The Section 151 Officer is responsible for selecting accounting policies and ensuring that they are applied consistently.

**(i) Accounting Records and Returns**

The Section 151 Officer is responsible for determining the accounting records and returns for the Council.

**(j) The Annual Statement of Accounts**

The Section 151 Officer is responsible for ensuring that the Annual Statement of Accounts is prepared in accordance with the *Code of Practice on Local Authority Accounting in the United Kingdom* (the Code) and statutory requirements.

The Audit Committee is responsible for approving the Annual Statement of Accounts, which should include:

- a narrative statement
- a statement of Accounting Policies
- a statement of Responsibilities for the Statement of Accounts
- the Accounting Statements and notes to the Accounts

**(k) Financial Procedure Rules**

The Section 151 Officer is responsible for maintaining the Council's Financial Procedure Rules and is authorised to make amendments to those rules as necessary. An up to date copy of the rules are displayed on the Council's intranet. All members of

staff must comply with the requirements of the Financial Procedure Rules.

**(l) Members Allowances**

A Members Allowances Scheme must be approved annually by the Council and all payments to Members must be made in accordance with that approved scheme. The scheme can be found in the Constitution.

**(m) Capital Strategy and Treasury Management**

The Council prepares and maintains, as the cornerstones for effective management of capital expenditure and funding and treasury management, a Capital Strategy, a Treasury Management Statement, an Annual Investment Strategy and Minimum Revenue Provision Policy which are all approved by Council in advance of the financial year to which they relate each year and progress against them is monitored on a regular basis by Council.

The Audit Committee is responsible for ensuring effective scrutiny of the capital strategy and treasury management strategy and policies, and is required to provide comments to Council in advance of Council being asked to approved new or amended versions of these documents.

The detailed operational procedures are covered by the Treasury Management Practices document. The Section 151 Officer is the responsible officer for reviewing and maintaining the detailed operational procedures for Treasury Management.

## Chapter 17 . OFFICER EMPLOYMENT PROCEDURES

|              |  |             |
|--------------|--|-------------|
| <b>17.1</b>  | <b>Definitions</b>                                       | <b>17-1</b> |
| <b>17.2</b>  | <b>Recruitment and appointment</b>                       | <b>17-2</b> |
| <b>17.3</b>  | <b>Seeking support for appointment</b>                   | <b>17-2</b> |
| <b>17.4</b>  | <b>Recruitment of chief officers</b>                     | <b>17-2</b> |
| <b>17.5</b>  | <b>Appointment of head of paid service</b>               | <b>17-3</b> |
| <b>17.6</b>  | <b>Appointment of chief officers</b>                     | <b>17-3</b> |
| <b>17.7</b>  | <b>Other appointments</b>                                | <b>17-4</b> |
| <b>17.8</b>  | <b>Procedure for the appointment of chief officers</b>   | <b>17-4</b> |
| <b>17.9</b>  | <b>Appointment of assistants to political groups</b>     | <b>17-5</b> |
| <b>17.10</b> | <b>Disciplinary action</b>                               | <b>17-5</b> |
| <b>17.11</b> | <b>Dismissal</b>   | <b>17-7</b> |
| <b>17.12</b> | <b>Severance Packages and Special Severance Payments</b> | <b>17-7</b> |
| <b>17.13</b> | <b>List of chief officer posts</b>                       | <b>17-8</b> |

### **17.1 Definitions**

For the purposes of interpreting these rules the following definitions apply:

- (a) “Chief Officer” includes the following as defined by Section 2(6)–(7) of the Local Government and Housing Act 1989 (“the 1989 Act”); the Chief Executive and the Chief Financial Officer (statutory chief officers) and the remaining Directors (non-statutory chief officers) where “non-statutory chief officer” is defined as a person for whom the head of the authority’s paid service is directly responsible, and who in respect of all or most of his or her duties is required to report directly or is directly accountable to the head of paid service, and who in respect of all or most of his or her duties is required to report directly or is directly accountable to the authority, or a committee or sub-committee of the authority;
- (b) “Deputy Chief Officer” as defined by section 2(8) of the 1989 Act means any person who is required to report directly or is directly accountable to a Chief Officer, as defined above, in respect of all or most of his or her duties.

Both the above definitions exclude persons whose duties are solely clerical, secretarial or are otherwise in the nature of support services.

A list of the post titles of the Council’s Chief Officers is set out at the end of these Rules.

In addition, the section on disciplinary action applies to the Monitoring Officer and the requirements of the Council’s Pay

Policy Statement refers to chief officers as including both Chief Officers and Deputy Chief Officers as defined above

## **17.2 Recruitment and appointment**

### **Declarations**

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. A candidate who fails to declare such relationship will be disqualified from such appointment without notice.

No candidate so related to a councillor or an officer will be appointed without the authority of the relevant chief officer or an officer nominated by him/her.

Every Member and senior officer of the Council shall disclose to the Chief Executive or relevant Chief Officer any relationship known to that person to exist with a candidate for any appointment. It shall be the duty of the Chief Executive or relevant Chief Officer to report to the Council or to the Personnel Committee or any Member or officer to whom power has been delegated to make an appointment, any such disclosure made by a candidate, Member, or senior officer.

The Chief Executive or relevant Chief Officers shall keep a record of such disclosure made under this Rule.

Where relationship to a Member of the Council is disclosed, that Member shall withdraw from the meeting while the appointment is under consideration.

## **17.3 Seeking support for appointment**

The Council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.

No councillor will seek support for any person for any appointment with the Council.

#### **17.4 Recruitment of chief officers**

- (a) Where the Council proposes to appoint a Chief Officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:
- (i) draw up a statement specifying:
    - the duties of the officer concerned; and
    - any qualifications or qualities to be sought in the person to be appointed;
  - (ii) make appropriate arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified for it; and
  - (iii) make arrangements for a copy of the statement mentioned in paragraph 17.4(a) to be sent to any person on request.
- (b) Where a post has been advertised as provided in Rule 17.4(a), the authority shall:
- (i) interview all qualified applicants for the post; or
  - (ii) select a short list of such qualified applicants and interview those included on the short list.
- (c) Where no qualified person has applied, the authority shall make further arrangements for advertisement in accordance with Rule 17.4(b).

#### **17.5 Appointment of Head of Paid Service**

The full Council will approve the appointment of the Head of Paid Service following the recommendation of a panel appointed by the Personnel Committee, before an offer of appointment is made to any person. The panel must include at least one member of the Cabinet.

The full Council may only make or approve the appointment of the head of paid service where no well-founded objection has been made by any member of the Cabinet.

## **17.6 Appointment of chief officers**

A panel appointed by the Personnel Committee and comprising at least one member of the Cabinet will make permanent appointments to Chief Officer posts.

An offer of employment as a Chief Officer shall only be made if no well-founded objection to such offer has been received from any member of the Cabinet.

## **17.7 Other appointments**

Deputy Chief Officers - Appointment of Deputy Chief Officers will be the responsibility of the head of paid service or his/her nominee and will be made in accordance with the appointments and promotion policy. The appointing panel may include one member of the Cabinet.

An offer of employment shall only be made when no well-founded objection to such offer has been received from any member of the Cabinet. The process for doing so will follow that in Rule 17.8 below, adapted as appropriate. In particular if an objection is received from a member of the Cabinet, the head of paid service will consider the objection.

Officers below Deputy Chief Officer - Appointment of officers below Deputy Chief Officer (other than assistants to political groups) will be the responsibility of the head of paid service or his/her nominee.

## **17.8 Procedure for the appointment of chief officers**

The following process will apply after the panel appointed by the Personnel Committee has interviewed all short-listed candidates:

- (a) if the panel agree on a candidate suitable for the post, they will indicate their provisional intention to make an offer to the Chief Executive;
- (b) the panel will tell the Chief Executive the name of the candidate to whom they wish to make an offer together with any relevant particulars which the panel considers relevant in making the appointment;
- (c) the Chief Executive will notify each member of Cabinet within twenty-four hours of:
  - (i) the name of the person to whom the panel wish to make an offer;



- (ii) any other particulars relevant to the appointment notified by the panel;
- (iii) the period within which any objection to the making of the offer is to be made by any member of Cabinet.

The period of objection will be two working days. If the period of objection is to be shortened, then notification will be by telephone and e-mail.

If the Chief Executive notifies the panel that no objection has been received from Cabinet members within the objection period the provisional intention to make an offer will become a firm offer and, subject to Rule 4, the offer will be made without the need for the panel to re-convene.

If an objection is received from a member of Cabinet, the panel will re-convene to consider the objection. If the panel is satisfied that any objection received from Cabinet is not material or is not well-founded, they will confirm their decision and, subject to Rule 4, a formal offer will be made.

#### **17.9 Appointment of assistants to political groups**

Appointment of an assistant to a political group shall be made in accordance with the following rules:

- (a) no appointment to a post of assistant to a political group shall be made unless the Council shall have resolved to allocate a post of political assistant to each of the political groups of the Council which qualify for one;
- (b) no allocation of a post as assistant to a political group shall be made to a political group which does not qualify for one;
- (c) not more than one post of assistant to a political group shall be allocated to any one political group;
- (d) any decision required to be taken in the appointment process shall be taken by the Chief Executive or his or her nominee after consultation with the Leader of the Party (or his or her nominee) to which the post is allocated who shall be entitled to attend any interviews relating to the appointment.

## **17.10 Disciplinary action**

- 17.10.1** The head of paid service, monitoring officer and chief finance officer may not be dismissed as a result of disciplinary action unless the requirements set out in paragraphs 17.10.2 to 17.10.7 are complied with.
- 17.10.2** The authority must invite relevant independent persons to be considered for appointment to a Panel, with a view to appointing at least two such persons to the Panel.
- 17.10.3** In paragraph 17.10.2 a 'relevant independent person' means any independent person who has been appointed by the authority under section 28(7) of the Localism Act 2011 or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the authority considers appropriate.
- 17.10.4** Subject to paragraph 17.10.5, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 17.10.2 in accordance with the following priority order:
- (a) a relevant independent person who has been appointed by the authority and who is a registered local government elector within the authority's area;
  - (b) any other relevant independent person who has been appointed by the authority;
  - (c) a relevant independent person who has been appointed by another authority or authorities.
- 17.10.5** The authority is not required to appoint more than two independent persons in accordance with paragraph 17.10.4 but may do so.
- 17.10.6** The authority must appoint any Panel at least 20 working days before the relevant meeting, that being a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer (i.e. the head of paid service, the monitoring officer or the chief finance officer) for disciplinary reasons.
- 17.10.6** *Before* the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the authority must take into account, in particular:
- (a) any advice, views or recommendations of the Panel;
  - (b) the conclusions of the investigation into the proposed dismissal; and
  - (c) any representations from the relevant officer.

- 17.10.8** Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the Localism Act 2011.

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

### **17.11 Dismissal**

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

**Head of Paid Service, Monitoring Officer and Chief Financial Officer.** The full Council must approve the dismissal of the Head of Paid Service, Monitoring Officer or the Chief Financial Officer following the recommendation of a panel appointed by the Personnel Committee, before any notice of dismissal is given. The panel must include at least one member of the Cabinet.

**Chief Officers and Deputy Chief Officers.** Where a committee, sub-committee or panel is discharging the function of dismissal of any of these officers, at least one member of the Cabinet must be a member of that committee, sub-committee or panel.

Notice of dismissal to a Chief Officer or Deputy chief officer shall only be made where no well-founded objection from any member of the Cabinet has been received.

### **17.12 Severance Packages and Special Severance Payments**

Full Council shall vote on severance packages of £100,000 or over before they are approved. The information presented will clearly set out the components of the severance package (e.g. salary paid in lieu, redundancy compensations, pension entitlements, holiday pay and any bonuses, fees or allowances paid), and will separately identify any special severance

payments (ie. additional discretionary sums paid on top of statutory, contractual or other requirements).

Any special severance payments, of any value, made to the head of paid service must be approved by a panel appointed by the Personnel Committee which must also include at least two independent persons and, if part of a total severance package of £100,000 or over, will also require a full Council vote before approval as set out above.

### **17.13 List of Chief Officer posts**

- Chief Executive (Head of Paid Service)
- Director of Finance, Governance & Contracts (Chief Financial Officer)
- Director of Housing & Wellbeing
- Director of Customer Experience
- Director of Commercial & Economic Development

## **Chapter 18 ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT MEMBER CONDUCT UNDER THE LOCALISM ACT 2011**

|              |  |              |
|--------------|--|--------------|
| <b>18.1</b>  | <b>Introduction</b>  | <b>18-1</b>  |
| <b>18.2</b>  | <b>Making a complaint</b>  | <b>18-2</b>  |
| <b>18.3</b>  | <b>When a complaint is received</b>  | <b>18-3</b>  |
| <b>18.4</b>  | <b>Initial consideration of complaints by panels of the Member Conduct Committee</b>   | <b>18-6</b>  |
| <b>18.5</b>  | <b>Investigation of Complaints</b>   | <b>18-7</b>  |
| <b>18.6</b>  | <b>Hearings and Appeals</b>  | <b>18-9</b>  |
| <b>18.7</b>  | <b>Hearing Principles</b>  | <b>18-11</b> |
| <b>18.8</b>  | <b>Hearings by a Panel of Members of the Member Conduct Committee</b>                  | <b>18-11</b> |
| <b>18.9</b>  | <b>After the hearing and appeals</b>   | <b>18-13</b> |
| <b>18.10</b> | <b>Non-Code of Conduct Complaints - Before the meeting of the Member Conduct Panel</b> | <b>18-14</b> |
| <b>18.11</b> | <b>The Right of Appeal</b>   | <b>18-15</b> |

### **18.1 Introduction**

This procedure is the means by which the Monitoring Officer, and the Member Conduct Committee and its panels will deal with complaints that a member or co-opted member of an authority (the 'Member') has failed to comply with the Members' Code of Conduct of the authority concerned. The Member Conduct Committee is able to consider complaints involving alleged breaches of the Code of Conduct of Charnwood Borough Council and the 27 Town and Parish Councils in the Borough ('relevant authorities').

Complaints that members of the Borough Council have failed to comply with the Council's codes and protocols other than the Members' Code of Conduct are dealt with in accordance with a separate procedure which is contained within this document.

The precise conduct and order of events of a meeting of the Member Conduct Committee and its panels will be a matter for the Chair of the Committee or panel as he or she and the Committee or panel consider appropriate in the circumstances. In exercising their discretion, they must have regard to the objective of ensuring the fairness and good administration of the complaints process, and the principles of natural justice.

It may be necessary for a person other than the Monitoring Officer to carry out the functions assigned to the Monitoring Officer below. As a result, references to the Monitoring Officer below also include the Deputy Monitoring Officer, and any other

person appointed by the Monitoring Officer to carry out those functions.

The Council has appointed a number of Independent Persons, who are not councillors or council employees, to assist in the process for dealing with complaints. Appointment of the Independent Persons to be made by Full Council on recommendation from the Monitoring Officer. Independent Persons are consulted at each stage of the process by the Monitoring Officer so that an independent view of the complaint and any action proposed to be taken can be considered before any decision is taken. Members being complained about also have the right to consult an Independent Person.

## **18.2 Making a Complaint**

Charnwood Borough Councillors and the councillors of the 27 Town and Parish Councils in the Borough have to comply with a Code of Conduct.

Complaints that a councillor has not followed the requirements of the relevant Code must be made in writing, including by electronic means. Complaints by letter or e-mail should be addressed to the Monitoring Officer at the addresses below. A complaint form will be made available to assist complainants in making complaints. The complaint form will include provision for complainants to request that their name or details of the complaint should be withheld from the Member so that such requests can be considered by the Monitoring Officer who will decide whether to withhold that information or not.

Adrian Ward  
Monitoring Officer  
Charnwood Borough Council  
Southfield Road  
Loughborough  
LE11 2TT  
e-mail [adrian.ward@charnwood.gov.uk](mailto:adrian.ward@charnwood.gov.uk)

The Monitoring Officer will arrange for appropriate support to be provided to those complainants requiring assistance to put their complaint in writing, for example where they have a disability or English is not their first language.

Where it is unclear whether the complainant wishes to make a formal complaint, the Monitoring Officer will contact the complainant and determine what outcome the complainant is seeking. Where appropriate the Monitoring Officer will refer the complaint to the appropriate service or another authority to respond to.

Where a complaint that a Member has failed to comply with the Code of Conduct of a relevant authority is received the Monitoring Officer will write to the complainant to acknowledge receipt of the complaint within 5 working days and explain the process for dealing with the complaint.

### **18.3 When a complaint is received**

When a complaint that a Member has failed to comply with the Code of Conduct of a relevant authority is received, the Monitoring Officer will, subject to considering any requests to the contrary made by complainant, inform the Member and consider whether an informal resolution of the complaint, for example an offer by the Member to make an apology or undertake training, is practicable and appropriate. The Monitoring Officer will consult with one of the Independent Persons appointed by the Borough Council and consider, but not be bound by, the views of the complainant before concluding any informal resolution of a complaint.

Where a complaint that a Member has failed to comply with the Code of Conduct of a relevant authority is received that the Monitoring Officer believes is not resolvable informally, he or she will review the complaint and obtain any necessary information that he or she requires to determine whether the complaint merits further action or investigation. Subject to considering any requests to the contrary made by the complainant, the Monitoring Officer may request the Member to respond to the complaint where he or she thinks appropriate in reaching his or her decision. Normally the Monitoring Officer will seek to inform the Member that a complaint has been made about him or her at the earliest opportunity. The Monitoring Officer will consult with one of the Independent Persons appointed by the Borough Council before reaching his or her decision.

In determining whether a complaint merits further action or investigation, the Monitoring Officer will consider:

- (i) whether the complaint is about the conduct of a member or co-opted member of the Borough Council or one of the 27 Parish/Town Councils in the Borough who was in office and the Code of Conduct in force at the time of the alleged conduct;
- (ii) whether the conduct would, if proven, be a breach of the Code of Conduct;
- (iii) whether the complaint is sufficiently serious to merit further action.

Within 15 working days of a complaint that a Member has failed to comply with the Code of Conduct of a relevant authority being received, the Monitoring Officer will inform the complainant, the

Member and, where the Member is a parish or town councillor, the Clerk of the outcome of his or her initial consideration of the complaint. Following consultation with one of the Independent Persons appointed by the Borough Council, the Monitoring Officer may decide that:

- (i) an informal resolution of the complaint is appropriate, and no further action is required;
- (ii) the complaint does not merit further action or investigation having considered the issues set out in paragraph 3.3 above and no further action is required;
- (iii) the complaint merits investigation;
- (iv) the complaint merits further action other than an investigation, for example providing guidance or training for all councillors on a particular issue.

If the Monitoring Officer and the Independent Person disagree on the course of action to be taken and the complainant is not satisfied with the outcome of the Monitoring Officer's initial consideration of the complaint, he or she may request that the complaint is referred to a Panel of the Member Conduct Committee to determine whether the complaint merits further action or not.

If the Monitoring Officer and the Independent Person agree on a course of action other than that the complaint merits investigation, the complainant will be given 10 working days to appeal in writing, setting out the reasons why they disagree with the decision.

If an appeal is received from the complainant, the Councillor being complained about will be given 10 working days to submit their own written response should they wish to do so. The original complaint, the Monitoring Officer's fact-finding summary and the written appeal submissions from the complainant and Councillor being complained about will then be submitted to the Chair and Vice-chair of the Member Conduct Committee for consideration. Having considered the relevant documentation, either the Chair or Vice-chair has the option to refer the complaint to a Panel of the Member Conduct Committee for consideration, or to take no action.

If the complaint identifies criminal conduct, including offences relating to disclosable pecuniary interests, or a breach of other regulation by any person, the Monitoring Officer will refer the complainant to the Police or other appropriate regulatory body.

Anonymous complaints – The Monitoring Officer will only refer anonymous complaints for investigation or other action where they are accompanied by documentary, photographic or other evidence which indicates an exceptionally serious or significant



matter which can be satisfactorily dealt with without the need to interview the complainant.

Withdrawn complaints – The Monitoring Officer will consider requests by the complainant to withdraw a complaint. The Monitoring Officer will not refer for investigation or further action complaints which are withdrawn except where the public interest in taking action due to the seriousness of the complaint significantly outweighs the complainant's desire to withdraw the complaint and the complaint is accompanied by documentary, photographic or other evidence which indicates the matter can be satisfactorily dealt with without the need to interview the complainant.

The Monitoring Officer will consider requests by complainants that their identity and/or the nature of the complaint are withheld from the Member. As a matter of fairness and natural justice, Members should usually be told who has made a complaint against them and what the complaint is about. In exceptional circumstances the Monitoring Officer will agree to a request that the identity of the complaint should not be disclosed to the Member. The circumstances in which such requests will be agreed to are:

- (i) the complainant has reasonable grounds for believing that they will be at risk of harm if their identity is disclosed;
- (ii) the complainant is an officer who works closely with the Member and they are afraid of the consequences to their employment if their identity is disclosed;
- (iii) the complainant has provided reasonable evidence that they suffer from a serious health condition and there are medical risks associated with their identity being disclosed.

The Monitoring Officer will consider whether, in exceptional circumstances, not to provide the Member with all or part of the details of the complaint if to provide the information would be against the public interest or prejudice the investigation. The circumstances in which this might be appropriate are:

- (i) the Member is likely to attempt to intimidate the complainant or witnesses;
- (ii) the Member is likely to attempt to tamper with evidence and this is not outweighed by the fairness to the Member of being able to preserve evidence;
- (iii) the disclosure to the Member of details of the complaint is likely to result in the identity of the complainant becoming apparent and the Monitoring Officer has decided to withhold that information from the Member.

#### **18.4 Initial consideration of complaints by panels of the Member Conduct Committee**

Where a meeting of a panel is required, the Monitoring Officer will appoint members to the panel from among the members of the Member Conduct Committee to consider the complaint (reserves are permitted). The Panel will comprise 3 Borough Council members selected on the basis of political balance. If the Member is a Parish or Town Councillor, one of the Parish Members of the Committee will also be appointed as a non-voting member of the Panel.

Except in exceptional circumstances, an agenda for the meeting will be sent to the members of the Panel at least five clear working days before the meeting. In addition to the documentation supplied by the complainant, the agenda papers for the meeting will include a report by the Monitoring Officer setting out a summary of the information he or she has gathered, the views of the Independent Person who the Monitoring Officer has consulted, and, where applicable, the written appeal submission from the complainant, and a statement by the Member and the views of the Independent Person who the Member has consulted if the Member wishes these to be submitted.

Meetings of the Panel are subject to the provisions of Part VA of the Local Government Act 1972. The Monitoring Officer will consider whether the agenda papers include exempt information to which the press and public, including the complainant and the Member, should not have access. The Panel's decision will be recorded in the form of the minutes of its meeting having regard for any exempt information that it considered and communicated to the complainant, the Member and, where the Member is a parish or town councillor, the Clerk by letter.

The Panel will appoint a Chair from among its voting members. The Chair will deal with the following administrative matters prior to the consideration of any complaints:

- (i) ensuring the meeting is quorate (the Panel's quorum is three Borough Council members);
- (ii) dealing with any disclosures of interest;
- (iii) ensuring that the members of the Panel understand the procedure to be followed.

The Panel will come to one or more of the following decisions in respect of each complaint submitted to it:

- (i) to refer the complaint to the Monitoring Officer for investigation;

- (ii) to refer the complaint to the Monitoring Officer for other action;
- (iii) to refer the complainant to the Police as their complaint identifies a criminal offence;
- (iv) to take no action in respect of the complaint.

## **18.5 Investigation of Complaints**

### **(a) Investigation reports**

Where a complaint has been referred for investigation, the Monitoring Officer will appoint a suitable person to carry out an investigation (the 'Investigator'), which will be completed within a maximum period of six months. The Investigator may refer the complaint back to the Monitoring Officer where:

- (i) as a result of the investigation the Investigator believes that the complaint is materially more or less serious than was apparent when the investigation was begun;
- (ii) as a result of new evidence, the Investigator believes that a different decision about whether to begin an investigation would have been taken had that evidence been known;
- (iii) in cases where (i) or (ii) apply the Investigator will also consider factors such as whether during the course of the investigation there has been a failure to co-operate by people involved in the complaint, whether there have been further complaints about the conduct of the Member or other members of the relevant authority;
- (iv) the Member has died, is seriously ill or has resigned from the relevant authority and the Investigator believes that it is no longer appropriate to continue the investigation.

The Monitoring Officer will consider any referrals back from the Investigator or matters as set out in section 18.5(a) arising from his or her own investigation. Having consulted the Independent Person, the Monitoring Officer will review his or her decision on how the complaint should be dealt with, in accordance with the process set out in section 18.3. Where the decision to investigate a complaint was made by a panel, the Monitoring Officer will refer the complaint and the matters raised back to a panel.

Following receipt by the Monitoring Officer of the report on the outcome of an investigation, the Monitoring Officer will inform the complainant, the Member and, where the Member is a parish or town councillor, the Clerk of the outcome of his or her initial consideration of the report by letter. Following consultation with one of the Independent Persons appointed by the Borough Council, the Monitoring Officer may decide that:

- (i) the Member has not breached the code of conduct and no further action is required;
- (ii) the Member has breached the code of conduct but has taken appropriate steps to remedy the situation and no further action is required;
- (iii) the Member has a case to answer and the Investigator's report should be referred to a panel of the Member Conduct Committee for a hearing.

If the Monitoring Officer and the Independent Person disagree on the course of action to be taken and the complainant is not satisfied with the outcome of the Monitoring Officer's consideration of the investigation, he or she may request that the Investigator's report is referred to a panel of the Member Conduct Committee to determine whether the complaint should be referred to a hearing or not.

If a review of the Monitoring Officer's decision is requested, the Monitoring Officer will appoint members to the panel from among the members of the Member Conduct Committee to consider the complaint (reserves are permitted). The Panel will comprise 3 Borough Council members selected on the basis of political balance. If the Member is a Parish or Town Councillor, one of the Parish Members of the Committee will also be appointed as a non-voting member of the Panel.

Except in exceptional circumstances, an agenda for the meeting will be sent to the members of the Panel at least five clear working days before the meeting. In addition to the Investigator's report the Monitoring Officer will provide the views of the Independent Person who the Monitoring Officer has consulted and the views of the Independent Person who the Member has consulted if the Member wishes this to be submitted.

Meetings of the Panel are subject to the provisions of Part VA of the Local Government Act 1972. The Monitoring Officer will consider whether the agenda papers include exempt information to which the press and public, including the complainant and the Member, should not have access. The Panel's decision will be recorded in the form of the minutes of its meeting having regard for any exempt information that it considered and communicated to the complainant, the Member and, where the Member is a parish or town councillor, the Clerk by letter.

The Panel will appoint a Chair from among its voting members. The Chair will deal with the following administrative matters prior to the consideration of any complaints:

- (i) ensuring the meeting is quorate (the Panel's quorum is three Borough Council members);
- (ii) dealing with any disclosures of interest;

- (iii) ensuring that the members of the Panel understand the procedure to be followed.

The Panel will come to one of the following decisions in respect of each complaint submitted to it:

- (i) the Member has not breached the code of conduct and no further action is required;
- (ii) the Member has breached the code of conduct but has taken appropriate steps to remedy the situation and no further action is required;
- (iii) the Member has a case to answer and the Investigator's report should be referred to a panel of the Member Conduct Committee for a hearing.

## **18.6 Hearings and Appeals**

### Pre-hearing process

Where a hearing is required, the Monitoring Officer will undertake a pre-hearing process and then prepare a report for the Panel setting out the results of the process.

The object of the pre-hearing process is to enable the hearing to take place fairly and as efficiently as is reasonably practicable, through conveying to the Panel those aspects, issues and matters related to the Investigator's report and the observations or representations made or received in respect of it that are relevant to the matter which was the subject of the investigation. As such, the Monitoring Officer's covering report will concern itself with procedure and shall not contain any recommendation as to the outcome of the hearing.

The Monitoring Officer will invite the Member and Investigator to participate in the pre-hearing process. The Monitoring Officer will:

- (i) write to the Member enclosing a copy of the Investigator's report, where possible to inform the Member of the provisional date(s) of the Panel hearing and to request him or her to return the following information, within 14 days:
  - Member's response to the evidence set out in the Investigator's report;
  - Member's evidence relating to the allegation not previously submitted or identified in the Investigator's report;
  - Mitigating circumstances desired to be submitted by or on behalf of the Member;

- Arrangements for the Panel hearing (witnesses, representation, request for documents or matters to be considered in private, etc.);
  - Details of proposed witnesses which are wished to be called; and
  - Any views of an Independent Person sought by the Member which he or she wishes to submit.
- (ii) Upon receipt of the Member's comments in response to the Investigator's report, the Monitoring Officer will copy that response to the Investigator and request within 14 days the return of information relating to:
- Response to the Member's representations; and
  - Arrangements for the Panel hearing (witnesses, request for documents or matters to be considered in private, etc.).

The Monitoring Officer will produce his or her report on the outcome of the pre-hearing process. The report will:

- (i) collate the paperwork to be presented or submitted to the hearing
- (ii) identify the main facts of the case that are in dispute;
- (iii) identify those issues, where appropriate, that are not relevant to the Panel's hearing of the complaint;
- (iv) set out the views of the Independent Person(s) which have been sought by the Monitoring Officer and the Member (where the Member wishes those to be included);
- (v) list those witnesses which may be called to give evidence; and
- (vi) determine what papers (if any) are likely to be considered in the absence of press or public at the hearing and therefore exempted from publication prior to the hearing,

The Monitoring Officer will appoint members to the Panel from among the members of the Member Conduct Committee to consider the complaint (reserves are permitted). The Panel will comprise 3 Borough Council members selected on the basis of political balance. If the Member is a Parish or Town Councillor, one of the Parish Members of the Committee will also be appointed as a non-voting member of the Panel.

Except in exceptional circumstances, an agenda for the meeting will be sent to the members of the Panel, at least five clear working days before the meeting. The Monitoring Officer will provide the Member and the Investigator with a copy of the agenda. The Monitoring Officer will publish that part of the agenda which he or she considers does not contain exempt information.

## **18.7 Hearing Principles**

Hearings are not a court and, therefore, evidence will not be taken on oath and persons attending the Panel will not be expected to stand when addressing the meeting or giving evidence. However, the Panel remains quasi-judicial and the principles of natural justice will be applied. All comments or questions must be put to, or through, the Chair. The Panel will reach its decisions on the balance of probabilities based on the evidence presented to it.

The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person. The Panel may take legal advice, in private if necessary, from the Monitoring Officer at any time during the hearing or while they are considering the outcome. The substance of any advice given to the Panel should be shared with the Member and the Investigator if they are present.

During the course of the hearing, the Panel can ask the Monitoring Officer to obtain further information if the Panel decides that it requires that information in order to reach a decision. The hearing will be adjourned until the Monitoring Officer provides that information. The Panel can make such a request only once per hearing;

## **18.8 Hearings by a Panel of Members of the Member Conduct Committee**

The Panel will appoint a Chair from among its members. The Chair of the Panel will:

- (i) introduce those present;
- (ii) establish that the hearing is quorate (the Panel's quorum is 3 Borough Council members);
- (iii) deal with any disclosures of interest;
- (iv) ensure that the participants understand the procedure to be followed;
- (iv) ensure that the Member, if unaccompanied, was made aware that he or she could have been represented.

Meetings of the Panel are subject to the provisions of Part VA of the Local Government Act 1972. The Monitoring Officer will consider whether the agenda papers include exempt information to which the press and public should not have access.

If the Member is not present, the Panel will consider any indication from the Member that he/she would not be present, and any reasons provided. The Panel will then determine

whether to hold the hearing in the absence of the Member or adjourn the hearing to another date.

If witnesses are to be called and the Panel has decided that the hearing should be held in exempt session, the Monitoring Officer will advise the Panel as to whether such witnesses should only be permitted to be present when they are called to answer questions.

The Investigator will put the case against the Member and may call witnesses. The Member and/or his/her representative may ask questions of the investigating officer and any witnesses. The Panel may ask questions of the investigating officer and any witnesses.

The Member and/or his/her representative will put his/her case and may call witnesses. The Investigator may ask questions of the Member and any witnesses. The Panel may ask questions of the Member and any witnesses.

The Independent Person, if present, will give their views on the complaint, and may be questioned by the Investigator, the Member, or the Panel.

The Investigator will sum up first, followed by the Member and/or his/her representative. No new evidence may be introduced at this stage.

The Panel may withdraw to consider the case and come to a decision in private. The Monitoring Officer and the officer recording the proceedings will remain with the Panel. If it is necessary to recall either party to clarify certain points, both parties will be present. On their return, the Chair will announce the Panel's decision in respect of the material facts and whether they amounted to a breach of the code of conduct.

If the Panel finds against the Member, he/she will be asked if he/she wishes to respond to the finding before the Panel considers whether to impose a sanction. The views of the Investigator and the Independent Person regarding potential sanctions will also be sought.

If the Panel finds against the Member, the Panel may impose one or more of the following sanctions:

- (i) issue a formal letter to the Member setting out the breach of the Code which has been identified;
- (ii) censure the Member;
- (iii) make recommendations to full Council to remove the Member from committee(s) and other appointments unless these are subject to political balance requirements;



- (iv) where political balance requirements apply make recommendations to the relevant Group Leader to remove the Member from committee(s) and other appointments;
- (v) make recommendations to the Leader to remove the Member from the Cabinet or from the role of Cabinet Support Member
- (vi) recommend that the Member undertake training or issue an apology.
- (vii) recommend removal from outside body appointments (for Charnwood Borough Council appointments this would be subject to approval of Cabinet);
- (viii) withdraw specified facilities (IT equipment, internet access, email access) for a specified period;
- (vx) exclude the Member from council premises for a specified period, except where necessary to attend council or committee meetings.

Where the Member is a parish/town councillor the Panel's decision will be in the form of a recommendation to the relevant authority on what sanction to impose.

Once the Panel has sufficient information to enable it to determine whether a sanction should be applied and, if appropriate, what the sanction should be, the Panel may withdraw to consider the representations and evidence in private. On their return, the Chair will announce the Panel's decision.

The Panel will also consider whether it should make any recommendations to the authority, with a view to promoting and maintaining high standards of conduct among members which will be announced by the Chair.

### **18.9 After the hearing and appeals**

The Panel will announce its decision on the day. The Panel's decision and reasons will be recorded in the form of the minutes of its meeting having regard for any exempt information that it considered and communicated to the relevant parties by letter. The Panel will, wherever possible, issue its full written decision and reasons within 10 working days of the end of the hearing.

The written decision will be provided to the Member, the complainant, the Investigator and where the Member is a parish/town councillor, the Parish/Town Clerk. The written decision will, if a finding has been made that the Member had failed to comply with the Code of Conduct, provide information as to the Member's right to appeal against the finding

Where the Panel has determined that the Member failed to comply with the Code of Conduct, the Monitoring Officer will arrange for the publication of a notice of the Panel's findings and the Member's right to appeal in a local newspaper and on the Borough Council's website.

Where the Panel has determined that the Member did not fail to comply with the Code of Conduct, the Monitoring Officer will arrange for the publication of a notice of the Panel's findings in a local newspaper and on the Borough Council's website unless the Member requests that no notice is published.

If the Panel finds against the Member, the Member may ask for that decision to be reviewed by the Borough Council's Appeals and Review Committee. A request for a review must be made in writing, giving the reasons for the request, to the Monitoring Officer/Deputy Monitoring Officer within 10 working days of the date of the written notification of the Panel's decision.

On receipt of the review the Monitoring Officer/Deputy Monitoring Officer in consultation with the Independent Person will consider the validity of the appeal in terms of whether there has been a procedural breach or new evidence has come to light.

The appeal will normally be heard within 20 working days of the receipt of the written request stating the wish for the finding to be reviewed. The appeal will be conducted following the procedure set out in section 8 but will consider only material relevant to the reasons for the review request set out by the Member.

#### **18.10 Non-Code of Conduct Complaints - Before the meeting of the Member Conduct Panel**

The Monitoring Officer will make enquiries and, where he or she considers it appropriate, investigate any allegations of misconduct in accordance with the Monitoring Officer Protocol.

Any investigation will be conducted as quickly as is reasonably possible, having regard to the nature of the complaint. Unless it is inappropriate to do so, the Monitoring Officer will inform the complainant and the Member that the investigation is taking place, the matter being investigated and of the likely length of the investigation.

If, following an investigation, in the opinion of the Monitoring Officer there is no case to answer or the matter can be resolved by agreement of the parties involved, the Monitoring Officer will inform the parties involved and the Chair of the Member Conduct Committee of that finding.

If, following an investigation, in the opinion of the Monitoring Officer there is a case to answer and there is no possibility of the matter being resolved by agreement of the parties involved, the Monitoring Officer will:

- (i) prepare a report and inform the Member of the procedure which will be used;
- (ii) once the report is completed, inform the Member and send him/her a copy of the report;
- (iii) ask the Member or his/her representative to provide details of the evidence which he/she wishes to present at the hearing and the witnesses which he/she wishes to call at the hearing.

The Monitoring Officer's report will normally include:

- (i) details of the alleged misconduct;
- (ii) a summary of the investigation;
- (iii) the names of any witnesses and copies of any documentary evidence to be presented at the hearing.

The hearing process as set out in section 18.8 will be followed.

The Panel will consider what publicity is appropriate in connection with its decision. The Panel will ask for the views of the Member when considering what publicity is appropriate.

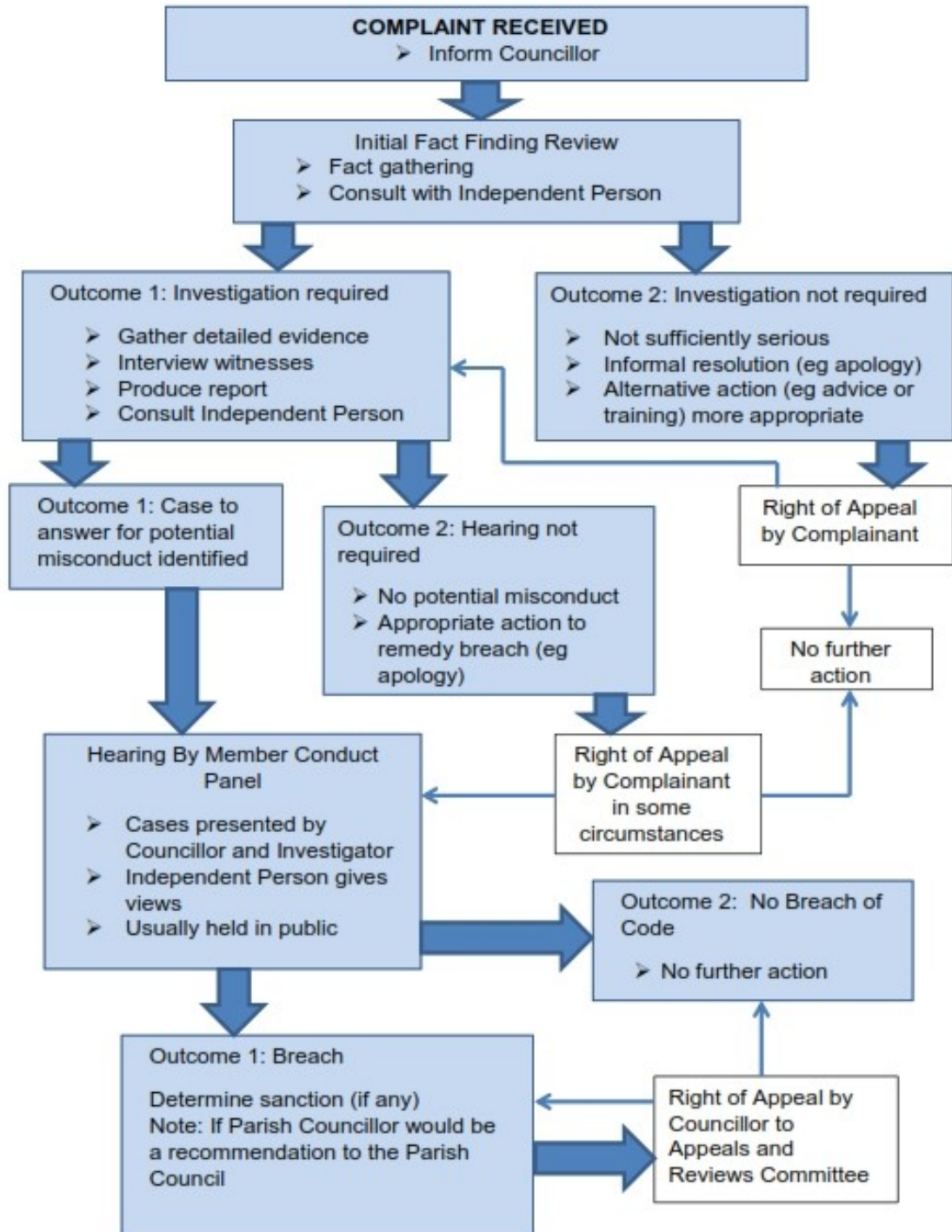
### **18.11 The Right of Appeal**

If the Panel finds against the Member, the Member may ask for that decision to be reviewed. A request for a review must be made in writing, giving the reasons for the request, to the Monitoring Officer within 10 working days of the date of the written notification of the Panel's decision.

The appeal will be heard by the Appeals and Reviews Committee only after the Monitoring Officer in consultation with the Independent Person has considered the validity of the appeal in terms of whether there has been a procedural breach or if new evidence has come to light. The appeal will normally be heard within four weeks of the receipt of the written request stating the wish for the finding to be reviewed.

The appeal will be conducted following the procedure set out in section 18.11 but will consider only material relevant to the reasons for the review request set out by the Member.

## MEMBER CONDUCT COMPLAINTS – SUMMARY OF PROCEDURE



## Chapter 19 . **SCHEME OF MEMBERS' ALLOWANCES**

|              |   |             |
|--------------|---|-------------|
| <b>19.1</b>  | <b>Introduction</b>                                   | <b>19-1</b> |
| <b>19.2</b>  | <b>Basic Allowance</b>                                | <b>19-1</b> |
| <b>19.3</b>  | <b>Special Responsibility Allowance</b>               | <b>19-1</b> |
| <b>19.4</b>  | <b>Basic Allowance Co-opted members</b>               | <b>19-2</b> |
| <b>19.5</b>  | <b>Carers Allowance</b>                               | <b>19-2</b> |
| <b>19.6</b>  | <b>Travel and subsistence allowances</b>              | <b>19-2</b> |
| <b>19.7</b>  | <b>Approved duties</b>                                | <b>19-2</b> |
| <b>19.8</b>  | <b>Renunciation</b>                                   | <b>19-2</b> |
| <b>19.9</b>  | <b>Part-year entitlements and ceasing of payments</b> | <b>19-2</b> |
| <b>19.10</b> | <b>Pensions</b>                                       | <b>19-3</b> |
| <b>19.11</b> | <b>Claims and payments</b>                            | <b>19-3</b> |
| <b>19.12</b> | <b>IT for councillors</b>                             | <b>19-3</b> |
| <b>19.13</b> | <b>Schedules</b>                                      | <b>19-3</b> |

### **19.1 Introduction**

In accordance with the Local Authorities (Members' Allowances) (England) Regulations 2003, Charnwood Borough Council has agreed the following scheme for members' allowances. In the scheme the term year means the financial year to which the scheme applies.

### **19.2 Basic Allowance**

Subject to paragraph 8, for each year a basic allowance as specified in schedule 1 to this scheme shall be payable to each councillor.

### **19.3 Special Responsibility Allowance**

- (a) Subject to paragraph 8, for each year a special responsibility allowance shall be payable to those councillors and co-opted members who have the special responsibilities that are specified in schedule 2 to this scheme. For those councillors who have more than one special responsibility allowance, the highest will be paid at 100% and the second or subsequent allowances will be paid at 50%.
- (b) Where a majority of councillors belong to the same political group (the controlling group), a special responsibility allowance shall be paid to at least one person who is not a member of the controlling group and has special responsibilities specified in schedule 2 to this scheme.

#### **19.4 Basic Allowance Co-opted Members**

Subject to paragraph 8, for each year, a basic allowance as specified in schedule 1 to this scheme shall be payable to co-opted members and Parish Members of the Member Conduct Committee.

#### **19.5 Carers' Allowance**

Expenditure incurred by councillors in providing childcare or in providing care for an elderly, sick or disabled dependent relative to facilitate their attendance at duties specified in the Regulations and approved by the Council shall be reimbursed in accordance with schedule 3 to this scheme.

#### **19.6 Travel and Subsistence Allowances**

Expenditure incurred by councillors in respect of travel and subsistence to facilitate their attendance at duties specified in the Regulations and approved by the Council shall be payable in accordance with schedule 4 to this scheme.

The travel and subsistence allowances set out in this scheme are available to the Co-opted and Parish Members of Council committees described in paragraph 3.

#### **19.7 Approved Duties**

Duties specified in the Regulations, together with specific duties approved by the Charnwood Borough Council in respect of which travel, subsistence and carers' allowances are payable are listed in schedule 5 to this scheme.

#### **19.8 Renunciation**

A councillor may by notice in writing given to the Head of Finance and Property Services elect to forego any part of his or her entitlement to an allowance under this scheme.

#### **19.9 Part-year Entitlements and Ceasing of Payments**

Councillors who are elected, or cease to be elected, part way through the Municipal Year shall receive their basic allowance pro-rata. The same provisions exist for those councillors who are appointed to a position attracting a Special Responsibility Allowance or who cease to hold a position attracting a Special Responsibility Allowance.

### **19.10 Pensions**

Members of the Council are not entitled to be eligible for membership of the Local Government Pension Scheme

### **19.11 Claims and payments**

Payment of basic and special responsibility allowances shall be made in monthly instalments of one-twelfth of the amounts specified in this scheme.

Claims for carers' allowance shall be in accordance with the conditions as specified in schedule 3 to this scheme.

Claims for travel and subsistence allowances shall be in accordance with the conditions as specified in schedule 4 to this scheme.

### **19.12 IT for councillors**

In addition to the allowances specified in the Local Authorities (Members Allowances) (England) Regulations 2003, Charnwood Borough Council has authorised the IT support to councillors set out in schedule 6.

### **19.13 Schedules**

All amounts in the following schedules are paid from 1st April 2023 to 31st March 2024.

#### **SCHEDULE 1**

#### **BASIC ALLOWANCES**

|   | <b>Allowance</b> |
|---|------------------|
| Councillor                                    | £5,902           |
| Parish Member of the Member Conduct Committee | £295             |

## **SCHEDULE 2**

### **SPECIAL RESPONSIBILITY ALLOWANCES**

#### **SPECIAL RESPONSIBILITY ALLOWANCES**

|   | <b>Allowance</b> |
|---|------------------|
| Leader  | £13,654          |
| Deputy Leader                                       | £9,556           |
| Cabinet Lead Members *                              | £5,462           |
| Cabinet Deputy Lead Members **                      | £2,341           |
| Mayor   | £7,646           |
| Deputy Mayor  | £1,911           |
| Independent Chair of Audit Committee                | £3,824           |
| Chair of Plans Committee                            | £4,095           |
| Leader of the Opposition                            | £4,578           |
| Chair of the Member Conduct Committee               | £1,639           |
| Chair of the Licensing Committee                    | £2,730           |
| Vice -Chair of the Plans Committee                  | £1,639           |
| Vice-Chair of the Licensing Committee (2)           | £820             |
| Chair of the Scrutiny Commission                    | £4,095           |
| Vice-Chair of the Scrutiny Commission               | £1,639           |
| Chair of Finance & Performance Scrutiny Committee   | £3,824           |
| Vice-chair Finance & Performance Scrutiny Committee | £1,530           |

## **SCHEDULE 3**

### **CARERS' ALLOWANCE**

A Carers' Allowance shall be payable for duties specified in the Local Authorities (Members' Allowances) (England) Regulations 2003 and approved by the Council subject to the following conditions:

- (i) The maximum hourly rate reimbursed for independent care of a child under the age of 14 shall be equal to the minimum wage.
- (ii) The maximum hourly rate reimbursed for the professional care of a dependent relative shall be equal to the Leicestershire County Council's hourly rate for a Home Care Assistant.
- (iii) Councillors must certify that the costs have been actually and necessarily incurred and the allowance shall be paid as a reimbursement of incurred expenditure against receipts.
- (iv) The allowance shall not be payable to a member of the claimant's own household.
- (v) The Head of Strategic Support shall be able to exercise discretion in respect of the above conditions in exceptional and justified



circumstances.

- (vi) Claims shall be made within four months of the duty to which it relates.

#### **SCHEDULE 4**

#### **TRAVEL AND SUBSISTENCE ALLOWANCES**

Travel and Subsistence Allowance shall be payable in respect of duties specified in the Regulations and approved by the Council (see Schedule 5). Claims shall be made within four months of the approved duties to which they relate.

In respect of travel the following may be claimed:

- (a) The actual cost of travel by public service must not exceed the ordinary or any available cheap fare. Standard class rail fare may be claimed. In the case of travel by ship, first class fare is applicable.
- (b) Deposit or portage of luggage and sleeping car accommodation subject to reduction by one-third of the subsistence allowance for that night.
- (c) Taxi-cab fares in cases of urgency or where no public service is reasonably available. The amount claimed shall not exceed the actual fare and any reasonable gratuity.
- (d) The cost of hiring a car which must not exceed the rate applicable to the members' own car.
- (e) Where a councillor uses his or her own motor car or motorcycle, the mileage rate claimed shall be as the rates available to staff (casual users) and agreed by the National Joint Council for Local Government Services (JNC) on an annual basis.

Current rates per mile are:

|            | Up to 10,000 miles | Over 10,000 miles |
|------------|--------------------|-------------------|
| Car        | 45p per mile       | 25p per mile      |
| Motorcycle | 24p per mile       | 24 per mile       |
| Bicycle    | 20p per mile       | 20p per mile      |

For journeys out of the county, councillors are encouraged to use rail travel. However, if they use their car, the cost claimed shall be the mileage rate above or the cost of standard return rail fare, whichever is the lower.

- (f) Where a councillor carries an official passenger, the additional mileage

allowance of 5p per mile per passenger set by HMRC applies.

In respect of subsistence:

Subsistence allowance for councillors shall be the same as for staff and in accordance with guidance from the Inland Revenue such that the Council will refund actual amounts spent in respect of subsistence where supported by receipts and provided that the amounts are reasonable. The following rates are considered by the Inland Revenue to be acceptable as a guideline as to whether actual expenditure is reasonable and also for payment as “flat rates” where receipts are not available:

In the case of absence not involving overnight stay, but not at the normal place of residence:

- (i) for more than four hours before 11am – Breakfast allowance - £4
- (ii) for more than five hours after this time, ending before 8.30pm – Lunch/Tea allowance - £5
- (iii) for more than five hours ending after 8.30pm – Dinner allowance - £8

Use will not be made of a “flat rate” in respect of overnight absence as all expenditure in that respect should be claimed based on actual expenditure only, supported by receipts. However, a flat rate (without the need for receipts) of up to £5 for incidental expenses resulting from overnight absence is claimable. Where possible, overnight accommodation should be booked by the Council so that the VAT element can be reclaimed.

Subsistence allowances may not be claimed where adequate refreshments are provided.

## **SCHEDULE 5**

### **APPROVED DUTIES OF THE COUNCIL**

The Council has agreed that an approved duty, for the purpose of the payment of travel (except those marked with an asterix \* for which travel expenses cannot be claimed), subsistence and carers’ allowances, is attendance at meetings of the following, where the councillor attending is a member of the relevant body or is acting as a substitute for such, or has been requested to attend to assist with the business being considered by the body:

- Council\*
- Cabinet\*
- Scrutiny Bodies\*
- Plans Committee\* and its site inspections
- Licensing Committee\* and its Sub-committees\*
- Member Conduct Committee\* and its Panels\*
- Audit Committee\*
- Personnel Committee\* and its Panels\*
- Appeals and Reviews Committee\* and its Panels\*

Joint Consultative Committee\*  
Housing Management Advisory Board\*

*\* NB. Travel expenses cannot be claimed for attending these meetings*

Meetings of all outside bodies to which the Council makes appointments and upon which the councillor serves as a representative of the Council or substitute representative.

Conferences authorised by committees or in accordance with the scheme of delegation.

Interviews for the appointment of staff.

The opening of tenders in accordance with the requirements of the Council's Constitution.

Attendance by Cabinet Members at meetings within the Borough that relate directly to their lead member role.

Attendance by the Mayor and Deputy Mayor at meetings and events, both inside and outside the Borough, that relate directly to their roles.

Such other meetings at which individual members have been appointed to represent the Borough Council other than as members of outside bodies, either by virtue of a specific resolution or in the capacity of Leader or Deputy Leader or as Chair or Vice-chair of a Committee.

Training sessions, briefings and other meetings certified by the Head of Governance.

Further to the above, the Council has agreed the following:

- (i) That travel allowance and carers' allowance, but not subsistence allowance be payable to a borough councillor in respect of attendance by invitation at a Parish Council or Parish Meeting to participate in the discussion of a Borough Council function.
- (ii) That travel and subsistence allowance and carers' allowance be payable to a borough councillor in respect of attendance at Borough Council premises or other establishments within the Borough on such occasions as they consider necessary in connection with the discharge of the Council's functions up to a limit of 15 occasions in each Council year. These are known as "duty days". This provision is an authorisation to carry out an approved duty of a councillor's own choice on 15 occasions of whatever duration and not 15 duty days which might be interpreted, for example, as 30 half days. Visits to the Council offices for IT support purposes should be classed as duty days if travel and subsistence or carers' allowances are to be claimed.

- (iii) That travel and subsistence allowance and carers' allowance be payable to a borough councillor in respect of full meetings of political groups held at Borough Council premises and specifically related to the business of the Borough Council on not more than 15 occasions in the period commencing with the day of the Annual Meeting of the Council in any year and terminating on the day preceding the Annual Meeting in the following year.”

## **SCHEDULE 6**

### **IT FOR COUNCILLORS**

On request, the Council provides all Councillors with a computer or a tablet device, a printer and appropriate software and support.

If a Councillor chooses to use their own device no payment is made for this.

No payments are made towards home broadband or other connectivity costs.