

MEMBER CONDUCT COMMITTEE – 4TH DECEMBER 2017

Report of the Monitoring Officer

Part A

ITEM 5 REVIEW OF THE CONSTITUTION

Purpose of Report

To provide the Committee with a briefing about the annual review of the Council's Constitution and those parts of the Constitution that relate to the roles of the Committee.

Recommendations

1. That the Committee notes the report and the content of the current sections of the Constitution relating to member conduct and the handling of member conduct complaints.
2. That the Committee makes any recommendations regarding changes to the Council's Constitution relating to its roles that it wishes to see.

Reason

To enable the Committee's views to form part of the annual review of the Council's Constitution.

Policy Justification and Previous Decisions

The roles of the Committee include:

- monitoring the operation of, and advising the Council on, the adoption or revision of codes and protocols relating to standards issues
- overseeing the process for dealing with complaints that those codes and protocols have been breached and where necessary making determinations of specific complaints
- making recommendations on major amendments to the Council's Constitution which involve standards issues.

A report appears elsewhere on this agenda in relation to the Committee's review of the Planning Code of Good Practice.

Implementation Timetable including Future Decisions

The Council reviews the Constitution each year. As part of the review consultation is undertaken with officers and councillors. It is planned to submit the results of the review to the Cabinet on 15th February 2018 and Council on 26th February 2018. At its meeting on 11th September 2017, the Committee agreed to consider the Members' Code of Conduct for amendments. A request was forwarded to members of the Committee to put forward possible amendments for consideration at the next meeting (4th December 2017).

Report Implications

The following implications have been identified for this report.

Financial Implications

None

Risk Management

No risks have been identified with this decision.

Background Papers: None

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Parts of the Constitution Dealing with Member Conduct Issues

1. The Council's Constitution includes a section containing the Council's Codes and Protocols in relation to conduct. These are:
 - Members' Code of Conduct
 - Officers' Code of Conduct
 - Protocol on Member/Officer Relations
 - Monitoring Officer Protocol
 - Members' Planning Code of Good Practice
 - Protocol Presentations to Councillors.

The Officers' Code of Conduct falls within the remit of the Personnel Committee as it forms part of the terms and conditions on which staff are employed. However all 6 documents have been appended to the report for the Committee's information and can be found at Appendix A. A report appears elsewhere on this agenda in relation to the Committee's review of the Planning Code of Good Practice.

2. The Council has adopted a procedure for dealing with complaints that councillors have failed to comply with the requirements set out in these codes and protocols. A copy of the current procedure can be found at Appendix B. As part of the review of the Constitution officers will look at whether the document can be simplified. Complaints that officers have failed to comply with the requirements of the Officers' Code of Conduct or the Protocol on Member/Officer Relations would be dealt with through the Council's disciplinary procedures.

Issues for the Annual Review of the Constitution

Members' Code of Conduct:

- A. Additional category providing guidance around use of social media

Request by Councillor:

In regard to the review of the Members Code of Conduct due to be looked at the next Members Conduct Committee I would like to suggest that something is added in regard to the use of Social Media that members are using as a means to engage with residents and how it relates to the Member Code. Also included in that is retweets of tweets made by someone else suggests that you support that view and guidance in how this relates to Members Code of Conduct.

Officer Response:

The Code of Conduct is shared with the County Council and with some of the other District Councils and therefore cannot be amended without the agreement of the other relevant authorities. However, guidance can be issued in relation to the use of social media, for example, in the protocol on member / officer relationships.

Appendices

Appendix A. Current versions of the Codes and Protocols in relation to conduct that form part of the Council's Constitution

Appendix B. Current version of the arrangements for dealing with complaints about member conduct under the Localism Act 2011

CODES AND PROTOCOLS

20. Members' Code of Conduct	20.1
21. Officers' Code of Conduct	21.1
22. Protocol on Member/Officer Relations	22.1
23. Monitoring Officer Protocol	23.1
24. Members' Planning Code of Good Practice	24.1
25. Protocol on Presentations to Councillors	25.1

CHAPTER 20 MEMBERS' CODE OF CONDUCT

CODE OF CONDUCT FOR ELECTED AND CO-OPTED MEMBERS OF CHARNWOOD BOROUGH COUNCIL

The Members' Code of Conduct is intended to promote high standards of behaviour amongst the elected and co-opted members of the council.

Part 1 – General Provisions

Introduction

- 1.1 This Code applies to **you** as a member of Charnwood Borough Council ('the Authority').
- 1.2 You should read this Code in conjunction with the other relevant codes and protocols as detailed in the Constitution (including the Protocol on Member/Officer Relations, and the Members' Planning Code of Good Practice).
- 1.3 It is your responsibility to comply with the provisions of this Code and ensure all obligations are met.

Interpretation

- 1.4 In this Code:
 - 1.4.1 "**co-opted member**" means those members who are not elected members of the Authority, but who are co-opted.
 - 1.4.2 "**meeting**" means any meeting of:
 - (a) the Authority;
 - (b) the executive of the Authority;
 - (c) any of the Authority's or its executive's committees, subcommittees, joint committees, joint subcommittees, or area committees.
 - 1.4.3 "**member**" means any person being an elected or co-opted member of the Authority.

Scope

- 1.5 You must comply with this Code whenever you:

- 1.5.1 act in your capacity as a member or co-opted member of the Authority;
 - 1.5.2 conduct the business of the Authority (which, in this Code, includes the business of the office to which you are elected or appointed).
- 1.6 Where you act as a representative of the Authority:
- 1.6.1 on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - 1.6.2 on any other body, you must, when acting for that other body, comply with this Code of Conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

Part 2 – The Principles

- 2.1 In accordance with the requirements of the Localism Act 2011, you must have regard to the following principles and observe the following rules of behaviour:-

Principle 1 - Selflessness

Holders of public office should act solely in terms of the public interest.

Principle 2 - Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Principle 3 - Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Principle 4 - Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Principle 5 - Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Principle 6 - Honesty

Holders of public office should be truthful.

Principle 7 - Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

- 2.2. The above principles articulate the fundamental values of public service that underpin the conduct of members. The following provisions contained in this Code are derived from these principles and provide a set of enforceable minimum standards for the conduct that is expected of members and co-opted members of the Authority when they are acting in that capacity.

Part 3 – General Obligations

Respect

- 3.1 You must treat others with respect.
- 3.2 You must not:
- 3.2.1 do anything which may cause the Authority to breach any of the equality enactments;
 - 3.2.2 bully any person;
 - 3.2.3 intimidate or attempt to intimidate any person who is or is likely to be:
 - (i) a complainant;
 - (ii) a witness; or
 - (iii) involved in the administration of any investigation or proceedings;in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct;
 - 3.2.4 do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Authority.

Confidentiality

- 3.3 You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
- 3.3.1 you have the consent of a person authorised to give it;
 - 3.3.2 you are required by law to do so;
 - 3.3.3 the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - 3.3.4 the disclosure is:
 - (i) reasonable and in the public interest; and
 - (ii) made in good faith and in compliance with the reasonable requirements of the Authority.
- 3.4 You must not prevent another person from gaining access to information to which that person is entitled by law.

Reputation of the Authority

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

Use of your position and the Authority's resources

3.6 You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

3.7 You must, when using or authorising the use by others of the resources of the Authority:

- 3.7.1 act in accordance with the Authority's reasonable requirements;
- 3.7.2 ensure that such resources are not used improperly, (including use for political and party political purposes).

Publicity

3.8 You must have regard to any applicable Local Authority Code of Publicity made under the relevant legislation in existence at the time.

Decision making

3.9 When reaching decisions on any matter you must have regard to any relevant advice provided to you by officers of the Authority acting pursuant to their statutory responsibilities (including a proper officer designated by the Authority), or advisors to the Authority.

3.10 You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed.

3.11 You must follow the adopted corporate operational policies of the Authority.

Part 4 – Interests

A. Disclosable Pecuniary Interests

Definition

4.1 You have a Disclosable Pecuniary Interest in any business of the Authority if it is of a description specified in regulations made by the Secretary of State and the interest is:

- (a) yours;
- (b) your spouse's or civil partner's;
- (c) somebody with whom you are living as husband and wife or as if you are civil partners;

and you are aware, in the case of paragraphs (b) and (c) that that other person has the interest.

[Note: the regulations currently in force are attached but do not form part of the Constitution determined by the Authority, as they may be amended by the Government at any time.]

Declaring at and participation in meetings

- 4.2 If you are present at any meeting of the Authority, and you have a Disclosable Pecuniary Interest in any matter to be considered or being considered, and the interest is not a 'sensitive interest', at the meeting:
 - 4.2.1 you must disclose the interest to the meeting whether or not it has been registered;
 - 4.2.2 unless a dispensation has been given, you may not participate in any discussion of the matter at the meeting;
 - 4.2.3 unless a dispensation has been given, you may not participate in any vote taken on the matter at the meeting.
- 4.3 Where you have a Disclosable Pecuniary Interest in any business of your authority, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise, and you must leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.
- 4.4 Following any disclosure of a Disclosable Pecuniary Interest at a meeting which is not on the Authority's register or the subject of a pending notification, you must notify the Monitoring Officer in writing of the interest within 28 days beginning with the date of disclosure.
- 4.5 Where an executive member may discharge functions alone and becomes aware of a Disclosable Pecuniary Interest in a matter being dealt with or to be dealt with by him/her, the executive member must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter.

B. Personal Interests

Definition

- 4.6 You have a personal interest in any business of the Authority where either:
 - 4.6.1 it relates to or is likely to affect:
 - 4.6.1.1 any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Authority;
 - 4.6.1.2 any body:

- (i) exercising functions of a public nature;
 - (ii) directed to charitable purposes; or
 - (iii) one of whose principle purposes includes the influence of public opinion or policy (including any political party or trade union);
- of which you are a member or in a position of general control or management.

4.6.1.3 the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50 within the last 12 months.

or

4.6.2 a decision in relation to that business might reasonably be regarded as affecting your wellbeing or financial position or the wellbeing or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers, or inhabitants of the electoral division or ward, as the case may be, affected by the decision.

4.7 For the purposes of paragraph 4.6, a 'relevant person' is:

- 4.7.1 a member of your family or any person with whom you have a close association; or
- 4.7.2 any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
- 4.7.3 any person or body in whom such persons have a beneficial interest and a class of securities exceeding the nominal value of £25,000 or one hundredth of the total issued share capital of that body; or
- 4.7.4 any body of a type described in sub-paragraph 4.6.1.1 or 4.6.1.2.

Declaring at and participation in meetings

4.8 Subject to paragraph 4.10 below, where you have a Personal Interest in any business of the Authority and where you are aware or ought reasonably to be aware of the existence of the Personal Interest and you attend a meeting of the Authority where such business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of the meeting and prior to any discussion of the relevant item, or as soon as the interest becomes apparent to you.

4.9 Where you have a Personal Interest you may remain in the meeting, speak and vote on the matter unless to do so would compromise your impartiality obligations or any other obligations set out in this Code.

4.10 Where you have a Personal Interest, but, by virtue of paragraph 4.17, sensitive information relating to it is not registered in the Authority's Register of Members Interests, you must indicate to the meeting that you have a Personal Interest, but need not disclose the sensitive information to the meeting.

C. Personal Interests which might lead to bias

Definition

- 4.11 In addition to the requirements in relation to Disclosable Pecuniary Interests referred to in Section A of Part 4 of this Code, you have a Personal Interest which might lead to bias in any business of the Authority where:
- 4.11.1 you have a 'Personal Interest' as defined in paragraph 4.6 and 4.7 above; **and**
 - 4.11.2 that 'Personal Interest' is one which a member of the public with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
- 4.12 The provisions of paragraph 4.11 shall be applied in such a manner as to recognise that this Code should not obstruct a members' service on more than one local authority. For the avoidance of doubt, participation in discussion and decision making at one local authority will not by itself normally prevent you from taking part in discussion and decision making on the same matter at another local authority. This is on the basis that a reasonable member of the public will see no objection in principle to such service or regard it as prejudicing a member's judgement of the public interest and will only regard a matter as giving rise to a Personal Interest which might lead to bias in exceptional circumstances.

Declaring at and participation in meetings

- 4.13 If you are present at any meeting of the Authority, and you have a Personal Interest which might lead to bias in any matter to be considered or being considered, and the interest is not a 'sensitive interest', subject to paragraphs 4.14 and 4.15 below, at the meeting:
- 4.13.1 you must disclose the interest to the meeting (whether or not it is registered);
 - 4.13.2 unless a dispensation has been given, you may not participate in any discussion of the matter at the meeting;
 - 4.13.3 unless a dispensation has been given, you may not participate in any vote taken on the matter at the meeting.
- 4.14 Where you have a Personal Interest which might lead to bias in any business of your authority, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise, and you must leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.

4.15 Subject to you disclosing the interest at the meeting, you may attend a meeting and vote on a matter where you have a Personal Interest which might lead to bias, if the matter relates to:

4.15.1 housing, where you are a tenant of the Authority provided that those functions do not relate particularly to your tenancy or lease;

4.15.2 school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

4.15.3 an allowance, payment or indemnity given to members;

4.15.4 any ceremonial honour given to members; or

4.15.5 setting council tax or precept under the Local Government Finance Act 1992.

D. Registration of interests

4.16 Subject to paragraph 4.18 (Sensitive Interests), you must within 28 days of:

- (a) the adoption of this Code; or
- (b) your election or appointment to office as a member (where that is later);

notify the Monitoring Officer in writing of :

- (i) any Disclosable Pecuniary Interest, as defined in paragraph 4.1 above; and
- (ii) details of your Personal Interests where they fall within the category mentioned in paragraph 4.6.1 above.

4.17 Subject to paragraph 4.18 (Sensitive Interests), you must, within 28 days of becoming aware of any new Disclosable Pecuniary Interest or Personal Interest as referred to in paragraph 4.6.1, or any change to any such interest, notify the Monitoring Officer in writing of the details of that new interest or change.

E. Sensitive Interests

4.18 Where you consider that disclosure of the details of an interest could lead to you, or a person connected with you, being the subject of violence or intimidation, and the Monitoring Officer agrees, if the interest is entered on the Register, copies of the Register that are made available for inspection and any published version of the Register will exclude details of the interest but may state that you have an interest, the details of which are withheld.

F. Dispensations

4.19 To enable you to participate and vote on a matter in which you have a Disclosable Pecuniary Interest or a Personal Interest that might lead to bias,

the Member Conduct Committee may grant you a dispensation in accordance with rules and procedures established by the Authority.

THE RELEVANT AUTHORITIES (DISCLOSABLE PECUNIARY INTERESTS) REGULATIONS 2012

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992).</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to M's knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	Any beneficial interest in securities of a body where—

- (a)
that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and
- (b)
either—
 - (i)
the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
 - (ii)
if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

Note: Offences

It is a criminal offence to:

- (i) Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of your election;
- (ii) Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register;
- (iii) Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed at a meeting;
- (iv) Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest;
- (v) As a Cabinet member discharging a function alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer within 28 days of the interest;
- (vi) Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting.

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

CHAPTER 21 OFFICERS' CODE OF CONDUCT

1. INTRODUCTION

- 1.1 The Council believes that its activities demand the highest standards of confidence of the public and that this confidence will derive from the way in which the Council and its employees conduct themselves in undertaking its business.
- 1.2 It is, therefore, important for the Council to provide guidance on standards of conduct which is available to, and understood by staff at all levels, and this Code of Conduct has been prepared accordingly. Where examples are listed in the Code as guidance they are not intended to be exhaustive.
- 1.3 The Code is additional to appropriate statutes, sections of the National Scheme of Conditions of Service, the Council's Procedure Rules and Financial Regulations and any departmental rules of conduct that may be issued from time to time by chief officers.
- 1.4 The Code applies to all employees of Charnwood Borough Council and is incorporated into, and forms part of the contractual relationship between the Council and its employees. As such, it can be used in any proceedings under the Council's disciplinary and grievance procedures.

2. STANDARDS

- 2.1 All employees are expected to give the highest possible standard of service to the public and, where it is part of their duties, to provide appropriate advice to councillors and fellow employees with impartiality. All employees are expected to treat others with respect at all times.
- 2.2 Mutual respect between employees and councillors is essential to good working relationships. Close personal familiarity between employees and individual councillors can damage the relationship and prove embarrassing to other employees and councillors and should therefore be avoided.
- 2.3 Employees should always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the Council.
- 2.4 Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner. They should strive to ensure value for money.

- 2.5 Employees should deal with all matters with a level of competence appropriate to their role and in accordance with any professional codes of conduct which apply to them.
- 2.6 Employees who have serious and genuine concerns about any wrongdoing in the Council's work or decisions, should raise their concerns by specific reference to the Council's Whistleblowing Policy, without fear of harassment or victimisation.

2.7 **Equality Issues**

All employees should ensure that Council policies relating to equality issues in employment and service delivery are complied with, in addition to the requirements of the law. All members of the local community, customers and other employees have a right to be treated with fairness and equity.

2.8 **Dress and personal appearance at work**

Employees are reminded that standards of dress, personal appearance and hygiene, including standards required in the interests of health and safety, can be matters affecting public confidence and they should therefore make themselves aware of and comply with the expected standards for their particular employment.

3. DISCLOSURE OF INFORMATION

- 3.1 Employees must respect the confidentiality of any information they are given. Managers and supervisors should make themselves and their staff aware where information they come into contact with in the course of their employment is confidential. Employees should not prevent another person from gaining access to information to which that person is entitled by law.
- 3.2 Any information received by an employee from a councillor which is personal to that councillor and does not belong to the Council should not be divulged by that employee without the prior approval of that councillor, except where such disclosure is required or sanctioned by the law.
- 3.3 All information contained in personal data relating to members of the public and employees must be obtained, held and processed fairly and lawfully in accordance with the purposes of the Data Protection Act 1998 and must not be used or disclosed in any manner incompatible with that Act.
- 3.4 Employees should not use any information obtained in the course of their employment for personal gain of benefit, nor should they pass it on to others who might use it in such a way.

- 3.5 Employees should not contact the media or disclose information relating to the work of the Council to the media other than as part of their job or as an official spokesperson of the Council.

4. POLITICAL NEUTRALITY

- 4.1 Employees serve the Council as a whole but recognise the differences between the Council's functions and particularly the role of the Cabinet. They must, therefore, serve all councillors and not just those of the controlling group, and must ensure that the individual rights of all councillors are respected.
- 4.2 Subject to the Council's conventions, employees may also be required to advise political groups. They must do so in ways which do not compromise their political neutrality.
- 4.3 Employees, whether or not in a politically restricted post, must not allow their own personal or political opinions to interfere with their work.
- 4.4 Political assistants appointed on fixed term contracts in accordance with the Local Government and Housing Act 1989 are exempt from the standards set in paragraphs 4.1 to 4.3.

5. APPOINTMENT AND OTHER EMPLOYMENT MATTERS

- 5.1 Employees involved in appointment and promotions should ensure that these are made in accordance with the Council's Equal Opportunities Policy and Procedures on the basis of merit. In order to avoid any possible accusation of bias, employees should not be involved in an appointment where they are related to an applicant, or have a close personal relationship outside work with him or her, or seek to influence an appointment or promotion for any purpose.
- 5.2 Similarly, employees should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner or close friend.
- 5.3 Employees should not approach members on matters to do with reorganisations, their terms and conditions of employment or other employment matters except through procedures laid down in the employee handbook or agreed by the Head of Paid Service.

6. OUTSIDE COMMITMENTS

- 6.1 All employees should be clear about their contractual obligations and should not engage in any other business or take outside employment which conflicts with the Council's interests, for example, working with or for someone who does business or seeks to do business with the Council or obtain grants, consents or permits from the Council.

- 6.2 Officers on administrative, professional or technical grades above Scale 6 must not engage in any other business, such as any paid or unpaid employment or running a business, or take up any other additional appointment, without first receiving the express consent in writing of the Chief Executive.
- 6.3 The Council will not attempt to preclude any of its employees from engaging in any other businesses or from undertaking additional employment but any such employment must not, in the Council's view, conflict with or react detrimentally to the Authority's interests, or in any way weaken public confidence in the conduct of the Authority's business.
- 6.4 Employees should not use the Council's premises, facilities and other resources in connection with their outside commitments.

7. PERSONAL INTERESTS

- 7.1 Employees must declare in writing to their chief officer and also to the Chief Executive for recording in the Register of Interests, any non-financial interest that they consider could bring about conflict with the Authority's interests. For example:
- membership of another local authority with which the Council deals regularly
 - membership of any voluntary organisation, club or society that regularly seeks assistance from the council or to which the Council appoints representatives
 - membership of any organisation (other than a political party or a trade union) which seeks to influence the Council's policies and decisions.
- 7.2 Employees must declare in writing to their chief officer and also to the Chief Executive for recording in the Register of Interests, any financial interests which could conflict with the authority's interests. For example, employees should disclose any land, other than their home, or business in which they have an interest which is to be, or likely to be, the subject of a Council decision.
- 7.3 In addition, Section 117 of the Local Government Act 1972 requires employees to make a formal declaration about any contracts with the Council in which they or their partner have a pecuniary interest. This includes being employed by or receiving any kind of remuneration from a firm which has a contract with the Council. Such declarations should be made in writing to their chief officer and the Chief Executive. It is a criminal offence to fail to comply with the provision. The only exception to the legal requirement to disclose a pecuniary interest, is where the interest is so distant or small that no reasonable person would expect it to influence an employee who might have dealings with the firm concerned. In such cases it need not be disclosed.

- 7.4 Employees should declare in writing to their chief officer and also to the Chief Executive membership of any organisation which requires a commitment of allegiance and which is secretive about its rules, membership or conduct.

8. INVOLVEMENT IN CONTRACTS

- 8.1 Orders and contracts must be awarded on merit by fair competition against other tenders, in accordance with the Council's Financial Regulations and Contracts Procedure Rules. No special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against in awarding contracts.
- 8.2 Employees who are privy to confidential information on tenders or costs for contractors should not disclose that information to any unauthorised party or organisation.
- 8.3 Employees who engage or supervise contractors or have any other official relationships with contractors and have previously had or currently have a relationship in a business or personal capacity with contractors or potential contractors, should declare that relationship in writing to their chief officer and also to the Chief Executive for recording in the Register of Interests.
- 8.4 Employees in their official relationships with contractors and potential contractors should not conduct themselves in such a manner so as to convey that they are in a position of giving special favour, or in their dealings conduct themselves so as to directly or indirectly canvass or infer that they seek a gift, loan, fee, reward or advantage, or any offer of such.

9. GIFTS AND HOSPITALITY

- 9.1 Employees must be aware that it is a serious criminal offence for them to receive or give any gift, loan, fee, reward or advantage for doing or not doing anything or showing favour or disfavour to any person in their official capacity. Employees should advise their chief officer at the earliest opportunity of any such approach which is made to them.

Hospitality

- 9.2 Employees should only accept offers of hospitality if there is a genuine need to represent the Council. Offers to attend purely social or sporting functions should not be accepted unless there is a reasonable expectation for the Council to be represented. The acceptance of hospitality should be properly authorised in advance, formally accepted and registered, by informing the employee's chief officer and the Chief

Executive. Hospitality should be registered within 28 days of its acceptance.

- 9.3 When receiving authorised hospitality employees should be particularly sensitive as to its timing in relation to decisions which the Authority may be taking affecting those providing the hospitality. Employees should not accept hospitality, entertainment or working lunches from contractors and outside suppliers or people or organisations subject to decisions by the Council, such as environmental health, licensing and development control. Where visits to suppliers are required, employees should ensure that the Council meets the employees' costs of such visits rather than accept hospitality from suppliers.
- 9.4 Acceptance by employees of hospitality through attendance at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal and where the Authority is satisfied that any purchasing decision is not compromised. In those circumstances, employees are not required to register the hospitality.

Gifts

- 9.5 Employees should not accept personal gifts from contractors and outside suppliers or people or organisations subject to decisions by the Council, with the exception of items of token value such as pens, and diaries. It is a criminal offence for employees to receive any payment or reward in connection with their employment other than that received from their employer.
- 9.6 Each employee is personally responsible for decisions regarding the acceptance of hospitality or gift items. If there is any doubt such items should be refused and employees should seek advice from a more senior member of management or the chief officer.
- 9.7 Employees must register any gift of other than token value which cannot be politely refused by disclosing receipt of it to their chief officer and the Chief Executive. Registrations of gifts should be made within 28 days of their receipt.

Sponsorship – giving and receiving

- 9.8 Where an outside organisation wishes to sponsor or is seeking to sponsor a Council activity, whether by invitation, tender, negotiation or voluntarily, the requirements of this Code concerning the acceptance of gifts or hospitality apply. Particular care must be taken when contractors or potential contractors are potential sponsors to avoid the appearance that providing sponsorship is linked to the awarding of any contract.
- 9.9 Where the Council wishes to sponsor an event or service or where the Council through sponsorship, grant aid, financial or other means, gives

support in the community, employees must follow the requirements of this Code concerning conflicts of interest.

CHAPTER 22 PROTOCOL ON MEMBER/OFFICER RELATIONS

Purpose

1. The conduct of both members and officers is governed by the Codes of Conduct detailed in Part 5 of the Council's Constitution. The purpose of this Protocol is to guide both members and officers of the Borough Council in their relationships with each other.
2. The Protocol aims to provide greater clarity and certainty in the relationship between members and officers and, in doing so, to assist both in complying with their respective Codes of Conduct. Taken together, the Codes and this Protocol have the aim of promoting high standards of conduct by the Council's members and officers.
3. The Protocol cannot provide a definitive statement on every situation that members and officers may find themselves in, but offers guidance for a number of common situations. The Protocol does however set out the general principles which should govern the relationship between members and officers.

General Principles

4. The fundamental principles on which this Protocol is based are:
 - (a) the Council is a democratically-elected local authority delivering a range of services to the people of Charnwood;
 - (b) the Council is a single entity, a statutory corporate body;
 - (c) the separate functions of the Council such as the Cabinet, scrutiny and regulatory areas are just aspects of the Council as a single statutory corporate body;
 - (d) in everything they do, the members and officers of the Council are obliged to act within the law and in compliance with relevant standards and codes of conduct;
 - (e) dealings between members and officers should be based on mutual trust and respect;
 - (f) relationships between members and officers must exist on a professional basis only so that the ability of an officer to deal impartially with members or political groups could not be questioned;
 - (g) officers should not approach members on matters to do with reorganisations, their terms and conditions of employment or other employment matters except through procedures laid down in the employee handbook or agreed by the Head of Paid Service.
5. Derived from these fundamental principles, the following working arrangements apply, within the political context of the Council and the Leader and Cabinet model, to the respective roles of members and officers.

6. The role of Members

- (a) Members provide the political direction and leadership of the Council and are ultimately accountable to the people of Charnwood through the ballot box for their actions as Councillors.
- (b) The administration is ultimately accountable to the electorate for the effectiveness and delivery of those of its policies and plans which have been approved by the Council and will, therefore, have an interest in ensuring that services are delivered by officers in accordance with those approved policies and plans.
- (c) Members recognise that officers have the duty and right to provide appropriate professional advice and the right to have that advice recorded, so that all members are fully aware of the implications of their decisions.
- (d) The provision of professional advice by officers is the principal means by which members can gain assurance that their decisions comply with the law and relevant standards or codes of conduct.
- (e) Members are able to ask questions about the Council's decisions and performance both at formal meetings and informally. Members will have regard for an officer's level of seniority and area of responsibility in determining what are reasonable comments and questions.

7. The role of Officers

- (a) Officers serve the whole Council as a single statutory corporate body but recognise the differences between the Council's functions and particularly the role of the Cabinet.
- (b) Officers will, wherever practicable, provide support to all members in their representational role and act to uphold the rights of councillors set out in law and this Constitution.
- (c) Officers are free to take decisions within their area of responsibility which have been delegated to them but recognise that, where functions have not been delegated to officers, it is the right of members to take the final decisions in the light of their advice.
- (d) The advice provided by officers should be factual, honest and objective. The advice provided by officers and the actions they take should be politically neutral and undertaken without fear of intimidation or restraint.
- (e) The advice provided and actions taken by officers should be sensitive to the political aspirations and constraints of members but should not reflect, or be influenced by, those aspirations and constraints.
- (f) The advice given and actions taken by officers will have the ultimate aim of serving the interests of the Council as a whole, irrespective of whether the current emphasis of an officer's role is the Cabinet, scrutiny or regulatory.

Information and the political perspective

- 8. For the proper functioning of the Council as a whole, officers will normally be permitted to share information freely between themselves, irrespective of

whether the current emphasis of an officer's role is connected with the Cabinet, scrutiny or regulatory functions of the Council. Where the information has been supplied/received subject to a request for party political confidentiality an officer will be permitted to share that information with other officers only where he/she believes that to be necessary - for example for the purpose of verifying the legality, financial probity or procedural regularity of any proposed course of action disclosed by that information. The request for party political confidentiality will be confirmed to, and honoured by, any officers with whom the information is shared.

9. Where information is supplied to officers on a party political confidential basis, the officers will respect that confidentiality unless the officers believe that the proposed course of action appears to be in conflict with the law, or any relevant standards or codes of conduct, or would amount to an abuse of the processes of the Council.
10. Where party political confidentiality would be maintained in accordance with the preceding paragraphs, the officers may, nonetheless, seek to persuade the councillors requesting the confidentiality to agree to that information being shared with the other political groups on the grounds that it would assist the more effective functioning of the Council; however, in the absence of any such agreement to waive the confidentiality, the officers will continue to respect it.
11. Where there is a change in political administration, officers will act in relation to the new administration and opposition party or parties in the same way as they did for the old; and will continue to respect any continuing party political confidentiality.

The Cabinet and Scrutiny

12. Given the nature and purpose of the Council and the respective roles of members and officers it is accepted that officers, while remaining politically neutral, will inevitably give advice on a wider range of issues and on a more regular basis to the Cabinet. For its part, the Cabinet will continue to respect the political neutrality of officers and accept that officers are obliged to respond positively to any request from scrutiny for appropriate information and advice relevant to the issue being considered by scrutiny. When an officer requests it, the Cabinet will provide an appropriate Cabinet Lead Member or Members to attend a scrutiny meeting to explain a Cabinet decision and the reasons for it.

Decisions under delegated powers

13. The Scheme of Delegation in Part 3 of the Constitution sets out those functions which have been delegated to Officers to carry out. Members should not seek to improperly influence decisions taken by officers under delegated powers and should not ask them to exercise discretion which involves acting outside the Council's policies and procedures.

14. No executive powers are delegated to individual members, either as the Leader or as a member of the Cabinet. Although neither the Leader nor individual members of the Cabinet have any personal delegated executive powers, they may, nevertheless, develop a personal involvement in specific areas of Council activity. The term “Cabinet Lead Member” is used to describe councillors with any such involvement. The Cabinet may decide that there should be more than one Lead Member for any particular area of involvement.
15. The role of a Cabinet Lead Member includes:
 - (a) providing a point of reference for the Chief Executive, Strategic Directors or Heads of Service, as appropriate;
 - (b) providing a member perspective and opinion on any relevant proposals before (or likely to come before) the Cabinet;
 - (c) appearing, as appropriate, before any relevant scrutiny body on behalf of the Cabinet.
 - (d) sitting on the project boards of projects with significant financial, political and reputational risk.
 - (e) chairing Member Reference Groups which will be established in accordance with part 3.6 of the Constitution to guide and support the work of projects and other significant areas of work and provide a member view on matters referred to them.
16. Where an officer volunteers (rather than is required) to consult a Cabinet Lead Member before exercising his or her delegated powers, both will understand, and accept, that the final decision (and the responsibility which goes with it) remains with the officer. The same principles apply where authority to take a decision has been specifically delegated to an officer “in consultation with” one or more councillors, whether Cabinet Lead Member or otherwise. Although the process of consultation is required by the specific delegation of authority, this does not change the fact that the process is still one of consultation with, not specific approval by, the member(s) concerned.
17. Since consultation alone is involved, an officer can, theoretically, decide to proceed with his or her proposed course of action even in the face of some degree of objection from the member(s) consulted. However, an alternative course of action would be for the officer to decline to exercise the delegated authority and refer the decision back to the body, which conferred the authority on the officer.
18. In implementing any process of consultation, if the view of the Cabinet Lead Member does not agree with the professional view of the officer and the difference of view is material and cannot be reconciled, the officer should consider:
 - (a) seeking advice from the Head of Paid Service, Monitoring Officer or Chief Financial Officer as appropriate; and
 - (b) referring the issue to a meeting of the Cabinet or the body which conferred the delegated power.

19. Officers and Party Group Meetings

Officers cannot be required to attend political party group meetings. They will only do so by invitation, with the express authority of the Chief Executive whose decision will be final. The Chief Executive will have the right to nominate alternative or additional officers to attend at his or her sole discretion.

Where it is possible that persons other than elected members of the Borough Council will be present at a political party group meeting to which an officer has been invited, the Chief Executive will be informed beforehand, and he will take this into account in arriving at his decision(s).

20. Visits to Premises and Land

Members have the right to visit premises and land owned by the Council but should note that in the case of occupied Council houses and other leased or tenanted premises the permission of the lessee or tenant will be required. They should also make suitable arrangements with the Chief Financial Officer, Head of Finance and Property Services or the appropriate Head of Service who will pay particular regard to health and safety issues and to the sensitivity and timing of the proposed visit.

It should be noted:

- (a) that this right is only available to the extent that a member needs to visit premises or land to enable him or her better to fulfil his or her duties as a member; and
- (b) that these arrangements are not intended to restrict a member's rights as a member of the public.

21. Press Releases

Where an officer makes a press release on behalf of the Council, quotations accompanying such releases will be made by the Leader or Deputy Leader(s) or by the relevant Cabinet Lead Member or by an appropriate officer. In respect of press releases relating to the work of scrutiny, or the Council's other committees, quotations accompanying such press releases will be made by Scrutiny Chairs or the Chairs of the relevant committees in that capacity only. Similar considerations will be given to other media releases. All press releases will be expected to comply with both legislative requirements and the Code of Recommended Practice on Local Authority Publicity.

22. Inspection of Documents

A member is entitled to see such documents as are reasonably necessary to enable him or her to carry out his or her duties. There is, however, no general right to examine all documents of the Council; a mere curiosity or wish to see them is not sufficient. Furthermore, disclosure will be refused if a member's intent is other than in his or her public position and has an indirect motive, for example, a desire to assist a person in litigation with the Council.

In addition to a member's common law rights and the provisions of the Freedom of Information Act 2000, the Local Government Act 1972 provides a statutory right of access to documents. Any document which is in the Council's possession and contains material relating to any business to be transacted at a meeting of the Council, the Cabinet, a Committee or Sub Committee is to be open to inspection by any member. However, there is no right of inspection where it appears to the Monitoring Officer that a document discloses certain classes of exempt information as set out in Access to Information Procedure Rule 21.

Complaints

23. If a member has cause to complain about the conduct of an officer, they should make their complaint, preferably in writing, to the relevant Head of Service. If the complaint is about a Head of Service, it should be made to the relevant Strategic Director; if it is about a Strategic Director, it should be made to the Chief Executive and if it is about the Chief Executive to the Monitoring Officer. The complaint will be investigated and dealt with in accordance with the Council's disciplinary and capability procedures if required.

24. If an officer had cause to complain about the conduct of a member they may make a complaint to the Monitoring Officer if they consider that the conduct involves a breach of the Members' Code of Conduct. If an Officer considers that the conduct does not involve a breach of the Code of Conduct but is in breach of this Protocol or other Council codes and protocols, they should make their complaint, preferably in writing, to the Monitoring Officer. The Monitoring Officer will deal with the complaint in accordance with the procedure for non-Code of Conduct complaints in Part 4 of the Constitution. In both cases officers should seek the advice of the Monitoring Officer.

CHAPTER 23 MONITORING OFFICER PROTOCOL

1. The Monitoring Officer undertakes to discharge his or her responsibilities outlined in this protocol in a manner which will enhance the reputation of the Council. In general terms his or her ability to discharge these duties depends on excellent working relations with colleagues and Members but also the flow of information and access to debate particularly at early stages.
2. The following arrangements between the Monitoring Officer and colleagues and Members are designed to help ensure the effective discharge of their functions:
 - (a) If not a member of the Senior Management Team, the Monitoring Officer will have advance notice of those meetings, agendas and reports and the right to attend and speak.
 - (b) Advance notice of meetings whether formal or informal between the Chief Executive, Strategic Directors or Heads of Service and members of the Cabinet or Committee Chairs will be given to the Monitoring Officer where any procedural, vires or other constitutional issues are likely to arise.
 - (c) The Chief Executive, Strategic Directors and Heads of Service will alert the Monitoring Officer to all emerging issues of concern including legality, probity, vires and constitutional issues.
 - (d) The Monitoring Officer or his or her staff will have copies of all Council, Cabinet and committee reports to Members.
 - (e) The Monitoring Officer is expected to develop good liaison and working relations with the External Auditor and the Local Government Ombudsman including the giving and receiving of relevant information whether confidential or otherwise.
 - (f) The Monitoring Officer will have a special relationship with the Mayor, the Chairs of the Member Conduct and Scrutiny Committees and will ensure the Head of Paid Service and Chief Financial Officer have up-to-date information regarding emerging issues.
 - (g) The Monitoring Officer will, where appropriate, make enquiries into allegations of misconduct in the absence of a written complaint being received and if appropriate will make a written report to the Member Conduct Committee unless the Monitoring Officer considers a report is not warranted.
 - (h) The Head of Paid Service, Chief Financial Officer and Monitoring Officer will meet regularly to consider and recommend action in

connection with current governance issues and other matters of concern regarding probity.

- (i) In carrying out any investigation, the Monitoring Officer will have unqualified access to any information held by the Council and any employee who can assist in the discharge of his or her functions.
- (j) The Monitoring Officer will have control of a budget sufficient to enable him or her to seek Counsel's opinion on any matter concerning his or her functions.
- (k) The Monitoring Officer will be responsible for preparing a training programme for Members on the ethical framework subject to the approval of the Member Conduct Committee.
- (l) The Monitoring Officer will report to the Council from time to time on the Constitution and any necessary or desirable changes following consultation in particular with the Head of Paid Service and Chief Financial Officer.
- (m) In consultation with the Mayor, the Monitoring Officer may defer the making of a formal report under Section 5 of the Local Government and Housing Act 1989 where another investigative body is involved.
- (n) The Monitoring Officer will make a report to the Council from time to time as necessary on the staff, accommodation and resources he or she requires to discharge his or her functions.
- (o) The Monitoring Officer will appoint a deputy and keep him or her briefed on emerging issues.
- (p) The Monitoring Officer will make arrangements to ensure good communication between his or her office and Clerks to Parish/Town Councils.

CHAPTER 24 MEMBERS' PLANNING CODE OF GOOD PRACTICE

1 Introduction and purpose

- 1.1 The aim of this Code of Good Practice is to ensure that planning decisions are made openly, impartially, with sound judgement and for justifiable reasons. Sections in bold type highlight those parts of the Code which require councillors to do or not do something. Other sections of the Code provide information or clarification.
- 1.2 The Planning Code of Good Practice clarifies the Code of Conduct and legal requirements as they apply to planning matters and supplements the Code by clarifying issues such as pre-determination and bias which are not features of the Code but are very relevant to planning matters.
- 1.3 Councillors are encouraged to speak to officers about planning matters and to suggest how development proposals could be improved. The Planning Code and the protocol on presentations to councillors provides a framework in which positive engagement by councillors in the planning process can take place.
- 1.4 The Planning Code includes a number of requirements to provide details of correspondence and contacts to the Head of Planning and Regeneration. These are necessary so that all the information in relation to a planning proposal are on the planning file and can be available to the public and the Plans Committee or other relevant decision-maker.
- 1.5 If you do not abide by this Code of Good Practice, you may put:
- the Council at risk from complaints of maladministration or challenges about the legality of the planning decision; and
 - yourself at risk of a complaint to the Council's Monitoring Officer.
- 1.6 If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or Deputy Monitoring Officer and preferably well before any meeting takes place.

2. When the Code applies

- 2.1 This Code applies to all councillors and is relevant to all elements of the planning process. However the Code contains specific elements which relate only to formal decision-making by the Plans Committee or by full Council when it is taking planning decisions.

2.2 Each section of the Code will include an indication of whether it applies to all councillors or only to those involved in taking decisions. For simplicity the latter will be referred to as matters affecting the Plans Committee but it should be noted that they could include meetings of the Council when it is taking planning decisions. In addition, councillors should be aware that even if they are not appointed members of the Plans Committee they could be asked to act as a reserve for a particular Plans Committee meeting.

3. **Development Proposals and Interests under the Members' Code of Conduct**

(Application: All Councillors)

3.1 If you have an interest, as defined in the Members' Code of Conduct, in a planning matter disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Councillors. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.

3.2 In addition, if your interest is a disclosable pecuniary interest or an interest leading to bias, for example in cases where applications are made by you, your close associates or family or by a body of which you are a member, or on land which you own, notify the Monitoring Officer in writing as soon as you are aware of the matter and **do not:**

- participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority, except by using your rights to address the Plans Committee under paragraphs 4.3 and 4.14 of the Code of Conduct in respect of interests leading to bias only, and disclose the nature of your interest and leave the meeting after you have exercised any right under paragraphs 4.3 and 4.14 if you are present when the proposal is considered by the Plans Committee;
- sit in the public gallery when the matter is discussed by the Plans Committee;
- try to represent Ward views, get another Ward Member to do so instead;
- ask for an application to be considered by the Plans Committee rather than by officers under delegated powers, or ask another councillor to do so;

- **seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include using your position to discuss that proposal with officers or councillors in circumstances where other members of the public would not have the same opportunity to do so or seeking to unduly influence their decision on the matter.**

3.3 In the case of your own development applications:

- the proposal will always be considered by the Plans Committee and not dealt with by officers under delegated powers;
- **disclose a disclosable pecuniary interest and leave the meeting; and**
- you may think it advisable to employ a spokesperson to act on your behalf on the proposal in dealing with officers and any public speaking at the Plans Committee.

3.4 You are not prevented from seeking to explain and justify a proposal in which you have a disclosable pecuniary interest or an interest leading to bias, including your own applications, to an appropriate officer, in person or in writing where the public is able to do the same. You can also exercise your rights to address the meeting considering it under paragraphs 4.3 and 4.14 of the Code, but you will then have to withdraw from the room or chamber whilst the meeting considers it. This means that you cannot observe the meeting's consideration of it from the public gallery.

3.5 Councillors should not act as the agents for the development proposals of other people.

4. Decision Making

(Application: All Councillors)

4.1 The Council's Constitution sets out those matters which can be determined by the Head of Planning and Regeneration under delegated powers and the processes by which councillors can request that a planning application be considered by the Plans Committee rather than be determined by officers. If you request that a planning application is considered by the Plans Committee, that fact and the reasons given will be recorded on the planning file.

(Application: Plans Committee)

4.2 When considering planning applications you should:

- **only make decisions in accordance with the Development Plan unless material considerations indicate otherwise;**
- **come to your decision only after due consideration of all of the information before you. If you feel there is insufficient time to digest new information defer making a decision to a later meeting or if there is insufficient information before you, request the additional information;**
- **ensure that if you are moving, seconding or supporting a proposal contrary to officer recommendations or the Development Plan that you clearly justify the planning reasons for doing so before any vote is taken. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge;**
- **only vote or take part in the meeting's discussion on a proposal if you have been present to hear the entire debate, including the officers' introduction to the matter.**

5. Pre-determination and bias in the Planning Process

(Application: Plans Committee)

- 5.1 Section 25 of the Localism Act 2011 states that a conclusion that a councillor had, or appeared to have, a closed mind when taking a decision should not be reached just because of anything he or she had previously done that directly or indirectly indicated what view they had or might have on the matter. The new position means that councillors are freer to speak about planning applications and other matters and express their views about them.
- 5.2 The effect of the new legislation is that there is effectively a clean slate at the start of a meeting and anything a councillor said or did before then is disregarded in terms of whether he or she has pre-determined the matter or not. As a result more focus will be placed on the conduct of councillors at meetings when decisions are taken and councillors should seek to show that they have considered all the relevant information presented to them.
- 5.3 Decisions will still be open to challenge if councillors do have a closed mind when they take them, the decisions are unfair as a result of bias or are unreasonable.
- 5.4 Councillors who are members of the Plans Committee should consider all of the information presented to them at the meeting**

and reach a decision based on the Development Plan and relevant material considerations. By doing so they will be able to demonstrate that they did not have a closed mind at the meeting and that the decision has been reached on a reasonable basis. The same principles apply to all councillors and their role in agreeing Development Plan documents at full Council.

- 5.5 Councillors who are directly or indirectly affected by a decision, whether or not this amounts to an interest under the Members' Code of Conduct, must consider whether this results in a situation where there would be bias in the decision if they participated in it.
- 5.6 Councillors who do have a closed mind about an item and would not be able to change their view at the meeting should not take part in the consideration of that item.
- 5.7 Providing they follow the principles described in sections 5.4 to 5.6 above, the following provide examples of what councillors can do without being thought to have pre-determined the matter:
- parish and town councillors can fully take part in the consideration of planning applications at their parish/town council meetings and as members of the Plans Committee;
 - councillors are freer to raise any concerns they have about planning applications or Local Plan policies with officers and are encouraged to do so;
 - councillors can contribute to the debate on planning applications and the development of Local Plan policies and advocate for their views or the views of their constituents.

6 Parish/Town Councils and other consultee bodies

(Application: Plans Committee)

- 6.1 If you are a member of a parish/town council or other consultee body you are able to take part in both the debate on a proposal when acting as part of a consultee body and the determination of the matter by the Borough Council, provided:
- the proposal is not made by or does not substantially affect the financial position of the consultee body;
 - you make it clear to the consultee body that:
 - your views are expressed on the limited information before you only;
 - you must reserve judgement and the independence to make up your own mind on the proposal when it

comes before the Plans Committee, based on your overriding duty to the whole community and not just to the people in that area, ward or parish.

- 6.2 You should disclose the personal interest arising from your membership or role in the consultee body whether or not you were part of the consideration by the consultee body.

7 The Role of Ward Members

(Application: All Councillors)

- 7.1 When determining planning matters your duty is to the whole community not just to the people in your Ward area. You must ensure that decisions are impartial and you should not improperly favour, or appear to improperly favour, any person, company, group or locality, including the residents of your Ward.

- 7.2 Councillors who are not members of the Plans Committee may exercise their separate speaking rights as a Ward Member set out in Other Committee Procedure 12.12. However if you have a disclosable pecuniary interest or an interest leading to bias you will not be able to do this even under paragraphs 4.3 and 4.14 of the Members' Code of Conduct. If you do exercise speaking rights:

- advise the Head of Planning and Regeneration that you wish to speak in this capacity at least 24 hours before the meeting;
- you will not be able to vote on the matter;
- you should seat yourself in the place allocated to those addressing the Plans Committee;
- at or immediately prior to the meeting you should not circulate written information to the Committee.

8. Contact with Applicants, Developers and Objectors

(Application: All Councillors)

- 8.1 If you are contacted by applicants, developers or objectors:
- refer those who approach you for planning, procedural or technical advice to officers;
 - report in writing any contact with the applicant, objectors and other parties to the Head of Planning and Regeneration and request that it is recorded on the planning file.

(Application: Plans Committee)

8.2 If you are a member of the Plans Committee or otherwise likely to be involved in taking a decision on the matter:

- do not agree to any formal, private meeting with applicants, developers or objectors if you can avoid it;
- if you feel that a meeting or site visit would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Head of Planning and Regeneration to organise it;
- comply with the Council's protocol relating to presentations in Chapter 25 of the Council's Constitution. Officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Plans Committee.
- be aware of the rules relating to pre-determination and bias in section 5 of this Code; and
- if you subsequently take part in the Plans Committee meeting considering this matter, disclose those contacts to the meeting.

(Application: All Councillors)

8.3 Councillors are able to attend public meetings and presentations by applicants/developers which are open to the public. If you choose to attend:

- do ask relevant questions for the purposes of clarifying your understanding of the proposals;
- remember that the presentation is not part of the formal process of debate and that determination of any subsequent application will be carried out by the Plans Committee;
- be aware of the rules relating to pre-determination and bias in section 5 of this Code.

9. Lobbying of Councillors

(Application: All Councillors)

9.1 Do not accept gifts from any person involved in or affected by a planning proposal.

9.2 If a degree of hospitality is entirely unavoidable:

- ensure it is of a minimum;
- its acceptance is declared to the Monitoring Officer as soon as possible; and
- if its value is over £50 it is registered in accordance with the Members' Code of Conduct.

9.3 Explain to those lobbying or attempting to lobby you that you must follow the rules relating to pre-determination and bias in section 5 of this Code.

9.4 If someone attempts to lobby you:

- copy or pass on any lobbying correspondence you receive to the Head of Planning and Regeneration at the earliest opportunity;
- refer any offers made to you of planning gain or constraint of development, through a proposed Section 106 Planning Obligation or otherwise, promptly to the Head of Planning and Regeneration;
- inform the Monitoring Officer in writing if you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality); and
- comply with the Council's protocol on presentations.

10. Lobbying by Councillors

(Application: Plans Committee)

10.1 If you are a member of an organisation which has lobbied to promote or oppose a particular planning proposal, you will have a personal interest in that matter. If you lead or represent such an organisation it is likely that you will have predetermined the matter.

10.2 If you are a member of a general interest group, such as the Victorian Society, CPRE, Ramblers Association or a local civic

society, disclose a personal interest if it has made representations on a particular proposal and make it clear to that organisation and the Plans Committee that you have reserved judgement and the independence to make up your own mind on that proposal.

(Application: All Councillors)

- 10.3 You must not lobby fellow councillors regarding your concerns or views in such a way as to attempt to persuade them how to vote in advance of the meeting at which any planning decision is to be taken.**
- 10.4 Do not decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Councillor to do so. Political group meetings should never dictate how councillors should vote on a planning issue and the party whip should never be used.**

11. Site Visits

(Application: Plans Committee)

- 11.1 The purpose of site visits is to seek information and to observe the site and you should try to attend site visits organised by the Council where possible. Any information gained from the site visit should be reported back to the Plans Committee, so that all members of the committee have the same information.**
- 11.2 Ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.**
- 11.3 Do not hear representations from any other party. If you are approached by the applicant or a third party, direct them to the officer present.**
- 11.4 Do not express opinions or views on the merits of the proposal to anyone on site visits, including fellow councillors.**
- 11.5 Do not enter a site which is subject to a proposal other than as part of an official site visit unless:**
- you feel it is necessary for you to visit the site on more than one occasion or you are unable to attend the official site visit;**
 - you seek advice from an officer and ask them to organise the visit;**

- you have permission from the landowner or other relevant person to do so;
- you inform the Head of Planning and Regeneration in writing that you have done so and why (which will be recorded on the file);
- you ensure that you comply with the rules in respect of contacts in paragraph 8.1, and
- you disclose the fact of your visit at the Plans Committee meeting.

(Application: All Councillors)

11.6 If you visit a site for the purpose of considering any matters relating to a planning application and are subject to lobbying:

- report in writing the fact that you have done so to the Head of Planning and Regeneration and request that it is recorded on the planning file;
- ensure that you comply with the rules in respect of contacts and lobbying in this Code.

12. Public Speaking at Meetings

(Application: Plans Committee)

12.1 Do not allow members of the public or other councillors in the public gallery to communicate with you during the Plans Committee's proceedings (orally or in writing) other than through the scheme for public speaking, including during any break or temporary adjournment.

12.2 Do not respond inappropriately to comments made by members of the public and refer only to issues relevant to the planning matter.

12.3 Ensure that you comply with the Council's procedures in respect of public speaking contained in part 4 of the Constitution.

13. Officers

(Application: All Councillors)

13.1 Officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Employees and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result,

planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence.

- 13.2 You may discuss applications with case officers, but do not put pressure on officers to put forward a particular recommendation or consider an application in a particular way. This does not prevent you from asking questions, seeking guidance or submitting views to the Head of Planning and Regeneration which may be incorporated into any committee report.**

14. Training

(Application: Plans Committee)

- 14.1 You cannot participate in decision making at meetings dealing with planning applications if you have not attended the mandatory planning training prescribed by the Council.**

Members of the Plans Committee must attend the mandatory planning training, or its equivalent, at the start of each Council term to maintain their eligibility. Members of the Plans Committee are advised to attend the planning training meetings that take place every quarter.

Other councillors are allowed to substitute for members of the Plans Committee who are absent using procedures set out in the Committee Procedures. In order to maintain your eligibility to participate in meetings you must comply with the training requirements above and also have attended either at least one of the quarterly planning training meetings or at least one Plans Committee meeting held in the previous 12 months. If you lose your eligibility you must attend the mandatory planning training, or its equivalent, to regain it.

(Application: All Councillors)

- 14.2 Councillors are advised to attend the planning training sessions provided by the Council, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plan beyond the minimum referred to in paragraph 14.1 and thus assist you in carrying out your role properly and effectively.**

CHAPTER 25 PROTOCOL ON PRESENTATIONS TO COUNCILLORS

1. The Council recognises the need for Councillors to be well informed about issues affecting the Borough. It also recognises that third parties will have information about proposals that they wish to provide to councillors. However, there are circumstances where the provision of information, if handled inappropriately, can lead to problems. This is particularly the case where the Council is required to make decisions on an issue at some future date.

This protocol, therefore, regulates how information may be given to councillors in the form of a formal presentation in these circumstances. It is designed to complement the Members' Code of Conduct in Part 5 of the Constitution and the Members' Planning Code of Good Practice. In the event of any conflict between this protocol and those codes, the codes shall take precedence.

2. Any request by a third party (the definition of which shall include a councillor or an officer acting in another capacity) to make a formal presentation of information to councillors, other than in a meeting to which the Access to Information Rules in Point 4 of the Constitution apply shall be made either:
 - (i) to the Council's Monitoring Officer; or
 - (ii) to the relevant Strategic Director or Head of Service.

In the case of (ii) above, the relevant Strategic Director or Head of Service will refer the proposal to the Monitoring Officer for advice.

3. A request by a third party to make a formal presentation of information under 2. above shall be in writing, setting out the reason(s) for the proposed presentation, the subject matter, the councillors for whom the presentation is intended and any other relevant information.
4. The Monitoring Officer will consider each request and advise the relevant Strategic Director or Head of Service of the suitability of the proposed presentation having regard to this protocol, the information submitted, the available alternative methods of providing the information, the codes referred to in 1. above and any other material considerations.
5. The Strategic Director or Head of Service, taking account of the Monitoring Officer's advice, may agree or refuse the request or may agree to elements of the proposed presentation. Alternatively, he or she may refer the request to the Cabinet or a Committee (as appropriate to the proposal) together with the Monitoring Officer's advice, to agree or to refuse the request or to agree to elements of it.
6. Where a request is agreed, and the presentation proceeds, it shall do so strictly in accordance with the following rules:

- (i) A copy of this protocol will be supplied by the relevant Strategic Director or Head of Service to the third party concerned at least five days before the presentation.
- (ii) At least two officers shall be present at the presentation.
- (iii) A record of attendance at the presentation shall be made in accordance with the usual arrangements for Council, Cabinet and Committee meetings.
- (iv) Before the presentation starts, an officer will outline these rules, and thereafter will maintain compliance with them and will ensure that notes of what is said at the presentation are taken.
- (v) No Councillor shall be involved in making a presentation as a representative of the third party or otherwise.
- (vi) Before the presentation starts, all Councillors will be asked to disclose any interests in the matter, in accordance with the Members' Code of Conduct, and all disclosures made will be recorded as part of the notes referred to in (iv) above.
- (vii) The presentation is for information only and the third party must not seek to ascertain councillors' views on any issue nor lobby councillors for support.
- (viii) Councillors may ask questions for clarification purposes but must not offer any opinions on the merits or otherwise of any proposals.
- (ix) Councillors and all present must be aware that the presentation does not form part of the Council's decision making process and that the process of debate and determination of any matter arising will be carried out in accordance with the Council's normal procedures.

7. Where a request is refused, the body or individual taking that decision must give reasons.

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

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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. 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 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
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e-mail 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 speak to the Member 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 consider 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 and reserve members of the Member Conduct Committee to consider the complaint. 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 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 complaint to the Police as it 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, or another person appointed by the Monitoring Officer to carry out the investigation (the 'Investigator'), will conduct that investigation. 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 and reserve members of the Member Conduct Committee to consider the complaint. 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 and reserve members of the Member Conduct Committee to consider the complaint. 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 its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal 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;
- (v) 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, including the complainant and the Member, 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.

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 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 return. 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. 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.
- (i) 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.

After considering any verbal or written representations from the Investigator, the Panel will 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 within 10 working days of the date of the written notification of the Panel's decision.

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 Monitoring Officer will appoint members to a Panel from among the members and reserve members of the Member Conduct Committee to consider the complaint. The Panel will comprise 3 Borough Council members selected on the basis of political balance.

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.

18.11 The meeting of the Panel

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;
- (v) 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, including the complainant and the Member, 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.

The investigating officer 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 investigating officer may ask questions of the Member and any witnesses. The Panel may ask questions of the Member and any witnesses.

The investigating officer 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 return. On their return, the Chair will announce the Panel's decision.

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. 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 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.

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.

After considering any verbal or written representations from the investigating officer, the Panel will consider whether it should make any

recommendations to the Council, with a view to promoting and maintaining high standards of conduct among members which will be announced by the Chair.

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 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.

18.12 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. 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



