



**Brighton & Hove  
City Council**

# **AUDIT & STANDARDS COMMITTEE ADDENDUM**

**4.00PM, TUESDAY, 16 APRIL 2013**

**COUNCIL CHAMBER, HOVE TOWN HALL**



## **ADDENDUM**

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# **AUDIT & STANDARDS COMMITTEE**

Agenda Item 96

Brighton & Hove City Council

<b>Subject:</b>	<b>Amendments to the Code of Conduct for Members</b>		
<b>Date of Meeting:</b>	<b>16 April 2013</b>		
<b>Report of:</b>	<b>Monitoring Officer</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Oliver Dixon</b>	<b>Tel: 01273 291512</b>
	<b>Email:</b>	<b>oliver.dixon@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>All</b>		

## **FOR GENERAL RELEASE**

Note: The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that the proposed amendments to the investigation procedure needed preliminary consideration by a members' working group held shortly before the committee meeting date.

### **1. SUMMARY AND POLICY CONTEXT:**

1.1 When the new code of conduct was adopted in July 2012, it was on the basis that it should be reviewed in the light of experience. Officers have been monitoring the operation of the new code and this report proposed some changes to include the corporate values, to simplify the declaration of interests rules and to require co-operation with investigation into unauthorised disclosure of information.

### **2. RECOMMENDATIONS:**

2.1 That the Committee approve in principle the proposed amendments to the Code of Conduct for Members

2.2. That the Committee recommends Council to agree the amendments to the Code of Conduct for Members as set out in Appendix 1 to this report.

### **3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

3.1 Full Council, agreed the existing code of conduct for Members in July 2012. Officers have been monitoring the application of the code in practice and discussed some modifications to the code with the Working Group of Members consisting of Cllrs Leo Littman, Ann Norman and Jeanne Lepper and Dr David Horne, an Independent Member.

3.2 The three areas that were considered important in terms of modification to the rules cover the new corporate values, a duty to co-operate with investigations into unauthorised disclosure of information, declaration of interests and duty to have regard to advice from Officers.

### **3.3 Corporate Values**

3.3.1 The Council has adopted new corporate values as part of the Corporate plan. These include respect, collaboration, efficiency, openness, creativity and customer focus. As these are meant to guide and influence behaviour, it is important that they are reflected in the Code of Conduct for Members and employees. As they are high level principles, rather than specific rules, it is considered more appropriate to include these in the preamble to the Code rather than the body of the Code itself.

### **3.4. Duty to Co-Operate with Investigations**

3.4.1 One of the recommendations of the Investigations into the unauthorised disclosure of information undertaken in the autumn of 2012 was the need to include an express duty to co-operate with investigations into leaks, including to provide access to all relevant material. This was one of the recommendations from the peer review undertaken by Southampton City Council. The revised code incorporates this as a new paragraph 4 (c) of the code as shown in Appendix 1.

### **3.5. Officer advice**

3.5.1 Paragraph 7 of the code requires Members, when reaching decisions, to have regard to any relevant advice provided by the Chief Finance Officer or the Monitoring Officer when they are acting pursuant to their statutory duties. This was taken from the previous mandatory code. Under the new standards regime, this is no longer prescribed. As this is not prescribed by regulations. It is considered appropriate that advice provided by the Chief Executive is added to these, especially when the Chief Executive is providing advice in her capacity as Head of Paid Service under section 4 of the Local Government & Housing Act 1989 regarding to workforce matters. Paragraph 7 of the Code has therefore been amended in the attached appendix 1.

### **3.6 Declaration of interests**

3.6.1 The one area which has given rise to most difficulties concerns the arrangements for registering and declaring interests. The introduction of separate rules for disclosable pecuniary interest and other interest with their own requirements and definitions has made the new system difficult to navigate. Some of it, in particular around disclosable pecuniary interest is mandatory. The rest is for the Council to change as it sees fit. In reviewing the code the approach adopted has been to formulate something that (a) complies with the law; (b) reflects good practice and principles of high standards of conduct and (c) is reasonably easy to implement in practice. This has not proved easy but it is hoped that the proposed changes will at least be simpler.

3.6.2 The proposed amendments include the following changes:

(i) Require all interests, other than de minimis level interest, to be declared at all meetings. This provides one rule for all situations and avoids the confusion caused by having to declare “other” interests whether they are registered or not but not having to declare disclosable pecuniary interests when they are registered. The latter are arguably more important giving to an anomalous situation. The new rules will simplify this by requiring all interests (except those covered by the sensitivity exemption) have to be declared.

(ii) A member whose interest is financial or relates to property or is so significant that a Member of the public would think their judgement of the public interest may be affected will be treated as having a prejudicial interest and required to leave the room. This avoids the confusion as to whether members should leave the meeting or not, which is currently left to the Member’s discretion. The new rules will limit Members’ exclusion to cases where the public is likely to question the Member’s involvement.

3.7 It is hoped that these changes taken together with the various guidance approved by the Committee will assist the Council in promoting high standards of conduct in more practical ways.

#### **4. COMMUNITY ENGAGEMENT AND CONSULTATION**

4.1 The Monitoring Officer has consulted a cross-party member’s working group, together with the Independent Person, on these proposals.

#### **5. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

5.1 There are no financial implications arising from this report.

*Finance Officer Consulted: Anne Silley*

*Date: 05/04/13*

##### Legal Implications:

5.2 The proposed amendments to the Code are consistent with the requirements of the Localism Act 2011.

*Lawyer Consulted: Abraham Ghebre-Ghiorghis*

*Date: 05/04/13*

##### Equalities Implications:

5.3 There are no equalities implications arising from the proposed changes, but the code requires Members to avoid doing anything which could result the Council to breach its duties under the Equalities Act 2010 and to treat others with respect.

##### Sustainability Implications:

5.4 None

Crime & Disorder Implications:

5.5 None

Risk and Opportunity Management Implications:

5.6 The proposals, by simplifying some of the rules, will avoid Members, inadvertently, breaching the code.

Public Health Implications:

5.7 None

Corporate / Citywide Implications:

5.8 The proposal helps to portray the authority as a modern council, by making its internal processes as efficient as possible.

**SUPPORTING DOCUMENTATION**

**Appendices:**

1. Revised Code of Conduct for Members

**Background Documents**

1. Existing Code of conduct for Members.



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### PART 8.1 CODE OF CONDUCT FOR MEMBERS

#### INTRODUCTION

This code has been prepared and adopted by Brighton & Hove City Council (“the authority”) in accordance with Section 27 Localism Act 2011.

The authority’s code applies to you if you are an elected Member of the authority or a co-opted Member with voting rights.

Any person may make a written complaint that you have acted in breach of the code. Investigation of any such complaint may lead to sanctions being applied to you.

You should make sure that you are familiar with the requirements of the code, including any guidance issued by the Authority’s Audit and Standards committee. It is your responsibility to make sure that you comply with the code. You should regularly review and update your register of Members’ Interests.

If in any doubt, you should seek advice from the authority’s monitoring officer or from your own legal adviser. In the end, however, the decision and the responsibility are yours in each case.

#### The Council’s Corporate Values

The Code of conduct should be read alongside six corporate values adopted by the Council. These are:

- **Respect:** Embrace diversity with kindness and consideration and recognise the value of everyone
- **Collaboration:** Work together to contribute to the creation of effective and successful decision making forums, working groups and partnerships across the council and beyond
- **Efficiency:** Work in a way that makes the best and most sustainable use of the council’s resources’
- **Openness:** Share and communicate with honesty about the council and its decisions and activities
- **Creativity:** Have ideas that challenge the ‘tried and tested’, use evidence of what works and listen pro-actively to feedback from constituents and others
- **Customer Focus:** Do your part to help the council deliver on its ‘Customer Promise’ to colleagues, partners and customers; the council aims to listen,

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to be easy to reach, clear, treat everyone with respect and act to get things done

### Other relevant policies and documents

Documents forming part of the constitution issued by the authority which include some particularly relevant guidance on, or requirements relating to, conduct, include:-

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- Part 3.2 – Council Procedure Rules
- Part 8.3 - Arrangements regarding the register of Members' Interests
- Part 8.2 - Practice Note – Use of Council Facilities
- Part 8.5 - Protocol for Members regarding Planning Applications
- Part 8.7 - Code of Conduct for Member/Officer relations
- Guidance on the use of social media
- Guidance on confidentiality
- Anti-Fraud and Corruption Strategy,
- Whistleblowing Policy

*You should familiarise yourselves with the above documents.*

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### BRIGHTON & HOVE CITY COUNCIL CODE OF CONDUCT FOR MEMBERS (Adopted 19 July 2012)

On their election or co-option to Brighton & Hove City Council, members are required to sign an undertaking to comply with the authority's Code of Conduct.

#### Part 1 – General provisions

##### Introduction and interpretation

1. (1) This Code applies to **you** as a member of the authority, when acting in that capacity.

(2) This Code is based upon seven principles fundamental to public service - set out below. You should have regard to these principles as they will help you to comply with the Code.

<b>Principles fundamental to Public Service</b>
<b>Selflessness</b> 1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.
<b>Integrity</b> 2. Members should not place themselves in situations where integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour. Members should show integrity by consistently treating other people with respect, regardless of their race, age, religion, gender, sexual orientation, disability or position, for example as an officer or employee of the authority.
<b>Objectivity</b> 3. Members should make decisions in accordance with the law and on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.
<b>Accountability</b> 4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.
<b>Openness</b> 5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.
<b>Honesty</b> 6. Members should declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.
<b>Leadership</b> 7. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

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(3) If you need guidance on any matter under this Code you should seek it from the authority's monitoring officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.

(4) It is a criminal offence to fail to notify the authority's monitoring officer of a disclosable pecuniary interest, to take part in discussions or votes at meetings, or to take a decision where you have disclosable pecuniary interest, without reasonable excuse. It is also an offence to knowingly or recklessly provide false or misleading information to the authority's monitoring officer.

(5) Any written allegation received by the authority that you have failed to comply with this Code will be dealt with by the authority under the arrangements which it has adopted for such purposes. If it is found that you have failed to comply with the Code, the authority has the right to have regard to this failure in deciding:-

- (a) whether to take action in relation to you; and
- (b) what action to take.

(6) In this Code—

'authority' means Brighton & Hove City Council

'Code' means this Code of Conduct

'co-opted member' means a person who is not a member of the authority but who:-

- (a) is a member of any committee or sub-committee of the authority; **or**
- (b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority; **and**
- (c) who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

'meeting' means any meeting of -

- (a) the authority;
- (b) any of the authority's or its committees, sub-committees, joint committees, joint sub-committees, or area committees;

'member' includes a co-opted member.

'register of members' interests' means the authority's register of members' pecuniary and other interests established and maintained by the authority's monitoring officer under section 29 of the Localism Act 2011.

### Scope

2. (1) Subject to sub-paragraph (2), you must comply with this Code whenever you act in your capacity as a member or co-opted member of the authority.

(2) Where you act as a representative of your authority—

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- (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
- (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### General obligations

3. (1) You must treat others with respect.

(2) You must not—

- (a) do anything which may cause your authority to breach any of its the equality duties (in particular as set out in the Equality Act 2010);
- (b) bully any person;
- (c) intimidate or attempt to intimidate any person who is or is likely to be—
  - (i) a complainant,
  - (ii) a witness, or
  - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

4. You must not—

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

(c) refuse or fail -

- (i) to cooperate with official council investigations into alleged unauthorised disclosures of confidential information, (whether or not such alleged unauthorised disclosures have been made by yourself or by another member); or

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(ii) to provide full access to all material that in the view of the investigating officer may be relevant to such an investigation.

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

6. You—

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

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(iii) champion the needs of all residents.

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

(a) your authority's chief finance officer;

(b) your authority's monitoring officer; or

(c) your authority's chief executive and head of paid service

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where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

### Part 2 – Interests

#### Disclosable pecuniary interests (“DPI”s)

**NB** It is a criminal offence to fail to notify the authority’s monitoring officer of a disclosable pecuniary interest, to take part in discussions or votes at meetings, or to take a decision where you have disclosable pecuniary interest, without reasonable excuse. It is also an offence to knowingly or recklessly provide false or misleading information to the authority’s monitoring officer).

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### 8. Notification of disclosable pecuniary interests

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

(2) A 'disclosable pecuniary interest' is an interest of yourself or your partner (which means spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners) within the following descriptions:

<i>Interest</i>	<i>description</i>
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the 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. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	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— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of 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	Any tenancy where (to M's

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knowledge)—

(a) the landlord is the relevant authority; and

(b) the tenant is a body in which the relevant person has a beneficial interest.

### 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.

These descriptions on interests are subject to the following definitions;

'the Act' means the Localism Act 2011;

'body in which the relevant person has a beneficial interest' means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

'director' includes a member of the committee of management of an industrial and provident society;

'land' includes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

'M' means the person M referred to in section 30 of the Act;

'member' includes a co-opted member;

'relevant authority' means the authority of which M is a member;

'relevant period' means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) of the Act;

'relevant person' means M or any other person referred to in section 30(3)(b) of the Act;



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'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000() and other securities of any description, other than money deposited with a building society.

### 9. Register of interests

(1) Any interests notified to the Monitoring Officer will be included in the register of interests.

(2) A copy of the register will be available for public inspection and will be published on the authority's website.

### 10. Non participation in case of disclosable pecuniary interest

(1) If you are present at a meeting of the authority, or any committee, sub-committee, joint committee or joint sub-committee of the authority, and you have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting:-

- (a) you may not participate in any discussion of the matter at the meeting;
- (b) you may not participate in any vote taken on the matter at the meeting;
- (c) you must disclose the interest to the meeting;
- (d) if the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

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**Deleted:** (d) if the interest is registered, you may choose to disclose the interest to the meeting¶

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Note: In addition, Council Procedure Rule 27 requires you to leave the room where the meeting is held while any discussion or voting takes place.

### 11. Offences

(1) It is a criminal offence to:-

- (a) Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election;
- (b) Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register;
- (c) Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting;
- (d) Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest;
- (e) 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.

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

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12. **Personal interests** (1) In addition to the disclosable pecuniary interests defined above, you must, within 28 days of—

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- (a) this Code being adopted by or applied to your authority; or
- (b) your election or appointment to office (where that is later)

notify the Monitoring Officer in writing of the details of any interests which are:-

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(i) any body, organisation or association

- (a) exercising functions of a public nature; or
- (b) directed to charitable purposes;

of which you are in a position of general control or management (such as trustee, secretary or chair;)

Deleted: (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), ¶

(ii) any body one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

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(iii) any gift, benefit or hospitality with a value in excess of £50 which you have accepted as a member from any person or body other than the authority.

(2) Where:

(a) you have an interest of a type described at sub-paragraph 12(i) or (ii) above in any business of your authority; or

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(b) a decision in relation to a business of your authority might reasonably be regarded as affecting your well-being or the well-being or financial position of a “relevant” person (see definition of a relevant person at “(3)” below) 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; and

(c) you attend a meeting of your authority at which the business is considered;

(i) you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent; and

(ii) If the interest is a prejudicial interest, you should leave the room where the meeting is taking place

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(iii) For the purposes of this code “prejudicial interest” means a personal interest which consists of a financial or property interest or an interest which is so significant that a reasonable person might consider as likely to prejudice your judgement of the public interest.

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(3) In sub-paragraph (2)(b), a relevant person is—

- (a) your spouse or civil partner;
- (b) a person with whom you are living as husband and wife; or
- (c) a person with whom you are living as if you are civil partners.

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(4) Sub-paragraph (2) only applies where you are aware or ought reasonably to be aware of the existence of the interest.

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(5) Where you have a disclosable interest but, by virtue of paragraph 14 below, sensitive information relating to it is not registered in the public version of your authority's register of Members' interests, you must indicate to the meeting that you have a disclosable interest, but need not disclose the sensitive information to the meeting.

(6) For the avoidance of doubt nothing in this paragraph of this code requires a Member to register or declare a personal interest that is shared with ordinary Members of the public living or working in the area (such as having bins collected) or arises simply from being a Member of the Council (such as Members' allowances) or is otherwise de minimis.

### 13. Interests arising in relation to overview and scrutiny

In any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where:-

- (a) that business relates to a decision made (whether implemented or not) or action taken by another of your authority's committees, sub-committees joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken,

You may only attend a meeting of the overview and scrutiny committee for the purpose of answering questions or giving evidence relating to the business, and you must leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.

### 14. Sensitive information

(1) Where you consider that the information relating to any of your disclosable interests, whether these are disclosable pecuniary interests or personal interests, is sensitive information, and your authority's monitoring officer agrees, the monitoring officer shall not include details of the interest on any copies of the register of members' interests which are made available for inspection or any published version of the register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's Monitoring Officer asking that the information be included in the register of members' interests.

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(3) In this Code, "sensitive information" means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

### **15. Dispensations**

(1) The Audit and Standards committee, or any sub-committee of the Audit and Standards committee, or the Monitoring Officer, after consulting the Chair of the Audit and Standards Committee and the Independent Person may, on a written request made to the monitoring officer of the authority by a member, grant a dispensation relieving the member from either or both of the restrictions on participating in discussions and in voting, in cases described in the dispensation. Before requesting a dispensation, members should first seek a suitable substitute member to attend the meeting in his/her place.

(2) A dispensation may be granted only if, after having had regard to all relevant circumstances, the standards committee, its sub-committee, or the Monitoring Officer—

(a) considers that without the dispensation the number of persons prohibited by paragraphs 10 and/or 12 from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;

(b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;

(c) considers that granting the dispensation is in the interests of persons living in the authority's area; or

(d) considers that it is otherwise appropriate to grant a dispensation.

(3) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.

### **16. Voluntary Registration of Membership of Private Clubs**

You may provide written notification to the authority's Monitoring Officer of your membership of any private club and of any subsequent change or addition to your membership.

<b>Subject:</b>	<b>Review of procedure for investigating alleged breaches of members' code of conduct</b>		
<b>Date of Meeting:</b>	<b>16 April 2013</b>		
<b>Report of:</b>	<b>Monitoring Officer</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Oliver Dixon</b>	<b>Tel: 01273 291512</b>
	<b>Email:</b>	<b>oliver.dixon@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>All</b>		

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Note: The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that the proposed amendments to the investigation procedure needed preliminary consideration by a members' working group held shortly before the committee meeting date.

**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 In September 2012 the council adopted a new procedure for investigating alleged breaches of the members' code of conduct, following the implementation of a revised standards regime required by the Localism Act 2011.
- 1.2 Since the procedure was introduced, a number of suggestions for improvement have been made. Accordingly, this report seeks the Committee's approval for proposed amendments intended to shorten the procedure in certain cases but without affecting the fairness of the outcome.

**2. RECOMMENDATIONS:**

- 2.1 That the Committee approve the proposed amendments to the procedure for investigating alleged breaches of the members' code of conduct, as set out in the body of the report and as illustrated in the flow chart at Appendix 1.

**3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

- 3.1 Audit & Standards Committee approved the existing investigation procedure on 25 September 2012.
- 3.2 Since then, the procedure has been followed in respect of all complaints about member conduct. On two occasions the alleged conduct has resulted in a Standards Panel hearing to determine the matter. Based on these experiences, a number of suggestions have been put forward that could lead to faster resolution in certain cases, without compromising the fairness of the overall process.

- 3.3 Under current arrangements, the Monitoring Officer – in consultation with the Independent Person – decides initially how the allegation should be dealt with, and if he commits the matter for investigation, the subsequent report by the Investigating Officer (IO) **must** be referred to a Standards Panel, regardless of the IO’s finding.
- 3.4 A situation may arise where the IO makes a finding of ‘no breach’, and both the complainant and subject member agree with this outcome. As things currently stand, there is no scope to conclude the matter other than by referring it to a Standards Panel, even in the situation described.
- 3.5 Apart from the significant administration involved, a Panel requires the attendance of three Members, the Independent Person, the IO, a legal adviser and, potentially, the complainant, subject member and their witnesses. To avoid unnecessary expense and time commitment, **it is proposed that** Standards Panels be reserved for those cases where –
- the IO finds there has been a substantive breach of the code (see further at paragraph 3.6 below);
  - the IO finds there has been no breach but the complainant disagrees; or
  - the subject member agrees with the finding of no breach but wishes to have the matter formally determined at a Panel
- 3.6 Under the proposal, a distinction is drawn between a ‘substantive’ breach, which would be referred to a Panel; and a ‘technical but minimal’ breach, which the Monitoring Officer could decide to settle informally. The latter class of breach is where the conduct complained of does on a strict interpretation amount to a breach of the code, but little or no culpability attaches to the subject member. For example, a member might make an administrative error on their declaration of interests form by recording correct information about an interest they may have but in the wrong section of the form. Technically, this contravenes the code because the member has made a false (or partially false) declaration, but if an investigation found this to be an innocent mistake which the member undertook to rectify forthwith, the breach would be minimal.
- 3.7 If the MO, in consultation with the IP, considered that it would not be in the public interest to refer a technical but minimal breach to a Panel, he would recommend to the parties that the matter be settled informally. Either party would, nonetheless, reserve the right to have the matter referred to a Panel for determination.
- 3.8 There are two over-arching principles associated with this proposal, in each case to further the public interest:
- (i) At any point during an investigation into an alleged breach, the Monitoring Officer may consult the parties as to whether they would accept an informal settlement as an alternative to formal resolution; and

- (ii) Even where the parties did agree to settle informally, or where an investigation found a breach to be 'technical but minimal', the Monitoring Officer – in consultation with the Independent Person – would reserve the right to refer the matter to a Standards Panel, where considered appropriate;

3.9 Where a matter is settled informally, the outcome would still be reported to the Audit & Standards Committee, but without naming the parties.

3.10 A flow chart illustrating the revised procedure, as proposed in this report, is set out at Appendix 1.

#### **4. COMMUNITY ENGAGEMENT AND CONSULTATION**

4.1 The Monitoring Officer has consulted a cross-party member's working group, together with the Independent Person, on these proposals.

#### **5. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

5.1 If approved, the proposal could shorten the investigation procedure and obviate the need for a Standards Panel in some cases, resulting in a potential reduction in the resources allocated to this procedure.

*Finance Officer Consulted: Anne Silley*

*Date: 05/04/13*

##### Legal Implications:

5.2 The statutory framework for standards requires a local authority to have arrangements for investigating and deciding on alleged breaches of the code (section 28(6) of the Localism Act 2011), but does not prescribe the content; that is a matter for the authority itself. It is therefore open to the council to revise its arrangements as it sees fit. At Brighton & Hove, that task falls to the Audit & Standards Committee.

*Lawyer Consulted: Oliver Dixon*

*Date: 05/04/13*

##### Equalities Implications:

5.3 None

##### Sustainability Implications:

5.4 None

##### Crime & Disorder Implications:

5.5 None

Risk and Opportunity Management Implications:

5.6 An opportunity exists to streamline the investigation procedure by settling certain cases without the involvement of a Standards Panel.

Public Health Implications:

5.7 None

Corporate / Citywide Implications:

5.8 The proposal helps to portray the authority as a modern council, by making its internal processes as efficient as possible.

**SUPPORTING DOCUMENTATION**

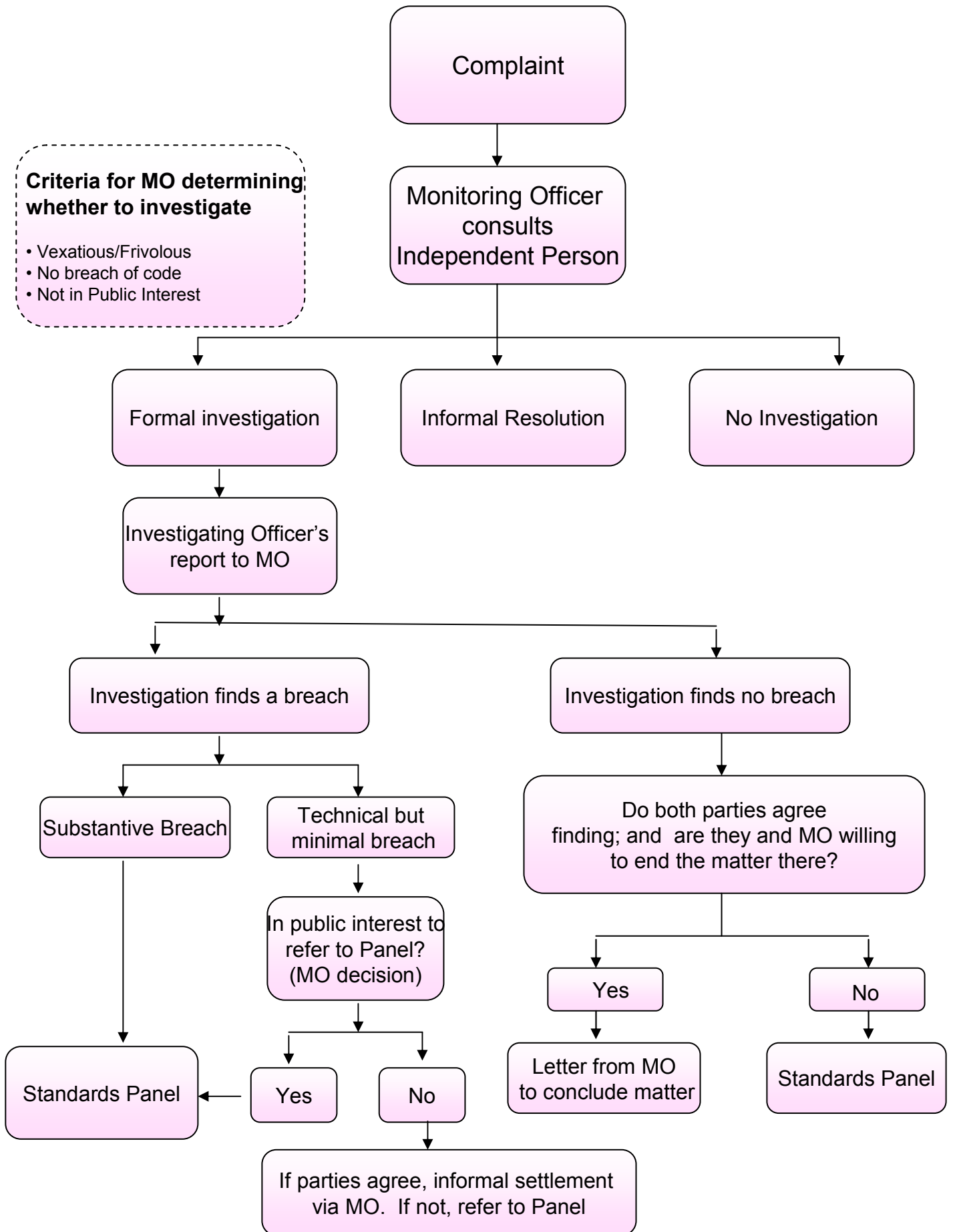
**Appendices:**

1. Flow chart of proposed new investigation procedure

**Background Documents**

1. Localism Act 2011, part 1, chapter 7







<b>Subject:</b>	<b>Social Media Protocol for Members and Social Networking Policy for Employees</b>		
<b>Date of Meeting:</b>	<b>Audit and Standards Committee 16<sup>th</sup> April 2013</b>		
<b>Report of:</b>	<b>Head of Law and Monitoring Officer</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Abraham Ghebre-Ghiorghis</b>	<b>Tel: 291500</b>
	<b>Email:</b>	<b>Abraham Ghebre-Ghiorghis@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE.**

Note: The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that while it was necessary to make progress on the implementation of the decisions taken by the committee at their meeting of 22/1/13, it was also necessary to consult on this report and appendices at the recent meetings of the Informal Chairs and the Standards Working Group.

**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 The purpose of this report is to bring to the Audit & Standards Committee a protocol on the use of social media by members and a social networking policy for employees which have been drafted following the decisions the Committee took at its meeting on 22<sup>nd</sup> January 2013.
- 1.2 Those decisions were taken with the intention of improving the way the council manages confidential information.

**2. RECOMMENDATIONS:**

- 2.1 That the committee approves the Social Media Protocol for Members at Appendix 1.1 to this report.
- 2.2 That the committee approves the Social Networking Policy for Employees at Appendix 1.2 to this report.

**3. BACKGROUND INFORMATION**

- 3.1 At its meeting on the 22<sup>nd</sup> January 2013, the Audit and Standards Committee received a report referring to an investigation that had been carried out by the Monitoring Officer. This investigation took place following a series of unauthorised disclosures of confidential information.
- 3.2 The report asked members to note that the investigation, supplemented by an informal peer review carried out by Southampton City Council, had identified that

the fundamental issue was the council's organisational culture. This culture was seen to shape and influence Member and Officer expectations and behaviour.

- 3.3 The recommendations, which were accepted by the members, focused on this aspect. The members agreed in principle that the wide range of action points detailed in the appendix to the report, which were aimed at improving the council's management of confidential information, should be implemented.
- 3.4 As a part of the recommendation on adopting this broad approach, the report stated that there were a number of policies, procedures and protocols on ways of working that needed to be looked at and updated.
- 3.5 The Audit and Standards Committee members on 22<sup>nd</sup> January 2013 also accepted a recommendation regarding these documents. They agreed that proposed new protocols and suggested revisions to the various existing codes and protocols should be submitted to them for approval.
- 3.6 The proposed versions of two of these documents – a Social Media Protocol for Members (new) and a Social Networking Policy for Employees (based on an existing informal guidance document) - are attached at Appendices 1.1 and 1.2 respectively.

#### **4. ENGAGEMENT AND CONSULTATION**

- 4.1 Prior to accepting the recommendations of the report taken to their meeting of 22<sup>nd</sup> January 2013, members had noted that the outcome of the investigation and recommended actions were taken to the Leaders Group on 7th January 2013 for consideration. The proposed actions and implementation schedule were endorsed there.
- 4.2 Detailed consultation with Human Resources, Communications and ICT has taken place on the content of the Social Media Protocol for Elected Members and the Social Networking Policy for Employees.
- 4.3 Consultation has also recently taken place on these two documents at the Informal Chairs meeting and the Standards Working Group.

#### **5. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

- 5.1 The proposed actions set out involve changes to working practices, codes, protocols and culture, all of which are expected to be achieved within existing departmental revenue budgets.

*Finance Officer Consulted: Anne Silley Date: 26/03/13*

##### Legal Implications:

- 5.2 None other than that set out at paragraph 1.2 of the Summary above; the council has a duty to ensure that it has appropriate arrangements in place to ensure that those parts of its business which are confidential remain confidential.

*Lawyer Consulted: Andy Couper*

*date: 05/04/13*

Equalities Implications:

- 5.3 There are no equalities implications arising from the report.

Sustainability Implications:

- 5.4 There are no sustainability implications arising from the report.

Crime & Disorder Implications:

- 5.5 There are no crime and disorder implications arising from the report.

Risk and Opportunity Management Implications:

- 5.6 The adoption of appropriate protocols and policies following the investigation will set a framework for improvement to the council's corporate governance. Observance of these documents will lessen the risk of unauthorised disclosure of confidential information.

Corporate / Citywide Implications:

- 5.7 The attached documents, among other things, give direction on dealing with information that is confidential and must remain confidential. Compliance with them should, along with implementation of the other actions agreed by members at their meeting in January, help to promote an increase in security as well as properly managed openness and transparency at the council.

**6. REASONS FOR REPORT RECOMMENDATIONS**

- 6.1 Acceptance of the recommendations and adoption of the Code and Policy will represent a continued implementation of the broader decisions the committee took on improving the way the council manages confidential information at its meeting on 22/1/13.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

- 1.1 Social Media Protocol For Members
- 1.2 Social Networking Policy For Employees

### **Documents in Members' Rooms**

**None**

### **Background Documents**

**None**

## **SOCIAL MEDIA PROTOCOL FOR MEMBERS**

### **Purpose of this protocol**

Social media is one of the most important and growing means of communication for individuals and businesses. The Council welcomes Members' increasing use of social media and would like to facilitate this by giving proper advice and support. The Audit and Standards Committee has also, recognising the potential issues that social media raises, asked for some guidance so that Members have greater clarity as to what is and is not acceptable. This protocol is intended to provide such guidance and complements the general rules under the Code of Conduct for Members. As members might expect, the basic position is that the same standards of behaviour and conduct apply online as would be expected offline.

### **What are social media?**

Social media is the term to describe websites and online tools which allow people to interact with each other by creating their own content. The content could, for example, be blogs, videos or short messages, know as tweets, via twitter.

On social media sites users share information, discuss opinions and may create interest groups or pages. Ultimately people use these sites and tools to build online communities and networks which encourage participation and engagement.

It is not a requirement for members to have a Facebook or Twitter account or use other forms of social media. However, If you are already using or planning to use social media in connection with your work as a Councillor, or are already using such media in your private capacity, these guidelines will be relevant.

### Social Media can be used:

- To support councillors in performing their community leadership role
- To keep in touch with local views and opinions
- For political campaigning
- For campaigning on local issues

### Types of Social Media:

- Blogging and microblogging – online journals – Twitter is an example of microblogging, where entries are limited to 140 characters
- Online Forums – people with similar interests sharing information and opinions – AccyWeb is an example
- Social networking sites – these facilitate connections between who already know each other, often in a social context, but are increasingly

## Appendix 1.1

used by businesses to promote their products or services- Facebook is an example

- Video and photo publishing – sharing videos and photographs worldwide – Flickr is an example

### **Things to bear in mind from the beginning:**

- Any form of communication is capable of being misunderstood. While the use of social media should not in theory be more susceptible to this problem than any other form of communication, something about the immediacy of social media seems to magnify the problem.
- By the nature of such media, “misfiring”, or being misunderstood, particularly with regard to something that is perceived as being more controversial than it was intended to be, is likely to lead to rapid and wide broadcasting of that apparently “controversial”, misunderstood item.
- There are no special, additional legal or ethical burdens relating to the use of social media. The same rules apply here that govern the rest of your behaviour as a councillor – you just need to think about them in this new context.
- Although the best use of social media is conversational in tone, publishing to the web is still publishing. What you’ve said on the web is written down and it is permanent. Most pitfalls will be avoided if your online content is accurate, informative, balanced and objective. If in any doubt, speak to the Monitoring Officer, or a member of the Legal Services Team.
- This doesn’t mean that members cannot, in the appropriate context, communicate politically. This is expected of a councillor, but you should be careful not to say anything that you wouldn’t be comfortable repeating or justifying, for example, at a public meeting.
- 

### **Some general legal issues:**

- **Libel** – If you publish an untrue statement about a person which is damaging to their reputation, they may take a libel action against you. The same thing may happen if, for example, someone else publishes something libellous on your website, you know about it and don’t take swift action to remove it. A successful libel claim could result in the award of damages against you,
- **Copyright** – Placing images or text on your site from a copyrighted source (for example extracts from publications or photos), without obtaining permission, is likely to breach copyright laws. Therefore don’t publish anything you are unsure about, or obtain prior permission.



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Again, a successful claim for breach of copyright would be likely to lead to an award of damages against you.

- **Data Protection** – Do not publish the personal data of individuals unless you have their express permission.
- **Bias and Predetermination** – if you are involved in making planning, licensing or other quasi-judicial decisions, do not say anything through social media (or indeed anywhere) that suggests you have completely and irrevocably made your mind up on an issue that is due to be formally decided upon. While your likely view on a particular application may be well known, you need to be able to show that you attended the committee or hearing prepared to take on board and weigh all the evidence and arguments, and were genuinely persuadable to a different view. If you weren't, the decision may be later challenged as invalid. If a person has suffered some sort of detriment as a result of such an invalid decision, they may have a claim against the council for damages.

### **Social Media and the Code of Conduct for Members generally:**

- Aspects of the Code of Conduct for Members will apply to your online activity in the same way as they do to any other written or verbal communication you may engage in. The key to whether your online activity is subject to the Code is whether you are, or even just appear to be, acting in your capacity as a councillor rather than as a private individual.
- Councillors can have “blurred identities”. This can happen where you have a social media account where you comment both as a councillor and as an individual. Although you may be clear in your mind that you are acting in a private capacity it may be less clear to others. This can also mean that your views can be taken as being those of your organisation or party (rather than you personally) when this may not be the case.
- One way of avoiding blurring of the lines between your personal and councillor life, and avoiding some of the potential problems related to the Code of Conduct, may be to consider keeping your online accounts as a councillor separate from those where you communicate in a personal capacity. This is a decision for each member and some Members may find the convenience of having one account outweighs the advantages of separate accounts. The council's Communications Section, in particular the Social Media Officer, can help you with more specific advice if needed.

**Particularly Relevant Elements of the Members' Code of Conduct:**

- **You must treat others with respect** - do not use social media to make personal attacks or indulge in rude, disrespectful or offensive comments.
- **You must comply with equality laws** – do not publish anything that might be seen as racist, sexist, ageist, homophobic or anti-faith.
- **You must not bully or intimidate anyone** – do not say anything, particularly if it is part of a series of similar comments about a person or on a theme that might be construed as bullying or intimidation, whether the comments relate to a council employee, a fellow-councillor or anyone else.
- **You must not bring the council into disrepute** – you should not publish anything that could reasonably be perceived as bringing yourself as a councillor, or the council in general, into disrepute.
- **You must not disclose confidential information** - you must not, in your usage of social media, just as in any other circumstances, 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.

Members are referred to paragraph 4 of the Members' Code of Conduct for a fuller exposition on non-disclosure of confidential information. There is a perception that inadvertent leaks of the council's confidential information are more likely to take place when a councillor is using social media, rather than, say, when they are carefully drafting a letter for publication in the local paper. This may be because of the more immediate, conversational, off- the cuff nature of much social media communication. Whether this is true or not, members must be careful to apply exactly the same Code of Conduct standards to their social media communications as they would to statements made in a more formal context.

One of the council's most important values is to conduct its business with openness. The inseparable, complementary "other side of the coin" to the council being open in its dealings is for councillors and employees to be clear about what is confidential and make sure it stays confidential.

There is separate more detailed guidance on confidential information available on the Wave or from the Monitoring Officer. If in any doubt, Members should seek advice.

## **Staying out of Trouble - Some Do's and Don'ts**

### **Some Do's**

- set appropriate privacy settings for your blog or networking site – especially if you have a private, non-political blog
- keep an eye out for defamatory or obscene posts from others on your blog or page and remove them as soon as possible to avoid the perception that you condone such views
- be aware that the higher your profile as an elected member, the more likely it is you will be seen as acting in your official capacity when you blog or network
- Consider keeping your personal and elected member profile on social networking sites separate and maintain appropriate professional boundaries
- ensure you use council facilities appropriately; if you use a council provided blog site or social networking area, any posts you make will be viewed as made in your official capacity
- be aware that you will be seen as acting in your official capacity if you publish information that you could only have accessed by being an elected member
- feel able to make political points, but be careful about being too specific or personal if referring to individuals. An attack on individuals may be seen as disrespectful, whereas general comments about another party or genuine comments on policy are less likely to be viewed as disrespect.

### **Some Don'ts**

- Blog in haste, particularly in circumstances where your judgement might be impaired; for example if you have consumed alcohol.
- make unguarded statements which could lead to potential liability
- post comments that you would not be prepared to make on paper or face to face
- use council facilities for personal or political blogs
- request or accept a Brighton & Hove City Council employee or contractor providing services to the council as a “friend” on a social networking site where this suggests close personal association. For the avoidance of doubt, this does not apply to sites which are intended as a neutral, professional connections registry (such as LinkedIn.)
- use social media in any way to attack, insult, abuse, defame or otherwise make negative, offensive or discriminatory comments about council staff, service users, their family or friends, colleagues, other professionals, other organisations, or the council
- publish confidential information that you may have learned or had access to as part of your role as an elected member. This includes personal information about service users, their families or

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friends or others e.g. contractors, council staff as well as City Council related information

- represent your personal views, or those of any political party or interest group you belong to, as being those of the council, on any social medium
- browse, download, upload or distribute any material that could be considered inappropriate, offensive, defamatory, illegal or discriminatory
- make conspicuous, excessive and continuous use of social media technology during the course of a Council or committee meeting so that you give the impression to the public of not being respectful of the proceedings and, more seriously, taking decisions that are not based on full engagement with the facts and arguments.

### **General**

The Council wishes to encourage Members' use of new technology, including social media. This guidance is intended to help Members use social media in a way that avoids legal and reputational risk.

The Monitoring Officer and the Social Media Officer in the Communications Team are happy to help Members by providing additional advice and guidance as appropriate. Training is also available to individual Members or Groups on the use of social media.

**Abraham Ghebre-Ghiorghis**

**Monitoring Officer**

**April 2013**

## **Social Networking Policy for Employees**

### **1. Introduction**

- 1.1 Social Media includes the various online technology tools that enable people to communicate easily via the internet to share information and resources. Social media includes, but is not limited to, blogs; wikis; RSS feeds; social networking sites such as Facebook and LinkedIn; micro blogs such as Twitter; photo sharing sites such as Flickr; and video sharing sites such as YouTube.
- 1.2 The widespread availability and use of social networking applications brings opportunities for the council to better understand, engage and communicate with its customers, partner agencies and the communities it serves.
- 1.3 This Policy supports the council's stated purpose, ambition and values by enabling the organisation to make best use of these technologies and so improve the way it does business. It also sets out a behavioural framework for staff members to ensure that the considerable benefits that accrue from using social media are adequately balanced against our legal responsibilities and the need to safeguard the council's image and reputation.

### **2. Purpose**

- 2.1 The purpose of this policy is to:
  - ensure staff members are aware of their responsibility to comply with good practice and the law for example in relation to data protection, confidentiality, libel, copyright, safeguarding of children and vulnerable adults, harassment and discrimination so that the council is not exposed to legal and governance risks
  - support safer working practice by setting standards of good practice and behaviour in the use of social media
  - ensure the reputation of the council and its staff is not damaged
  - ensure children, young people and vulnerable adults are safeguarded by reducing the risk of positions of trust being abused or misused
  - minimise the risk of misplaced or malicious allegations being made against those who work with vulnerable groups
  - ensure users of social networking media are able to clearly identify where information provided via such applications is legitimately representative of the council.
  - enable staff members to distinguish between the use of social media in their work and personal lives.
  - ensure the use of social media is aligned to the council's corporate communications strategy

### **3. Scope**

- 3.1 This policy applies to all employees (except those based in schools who are covered by their own school's social media policy), apprentices, volunteers, casual and other non-contracted workers such as agency workers and external contractors providing services on behalf of the council. These individuals are collectively referred to as 'staff members' in this policy.
- 3.2 This policy cannot cover all eventualities and, therefore, staff members should consult their line manager if they are in any way unsure about what is, and isn't, acceptable use of social media.

### **4. Legal Framework**

- 4.1 All individuals working on behalf of the council are bound by a duty of confidentiality to protect the confidential information they have access to during the course of their work. Disclosure of confidential information on social media, or by any other means, is very likely to be a breach of the council's Code of Conduct for Employees and, in certain circumstances, could amount to a breach of contract which may lead to dismissal. It may also be a breach of the general law.
- 4.2 Confidential information includes, but is not limited to:
- Person-identifiable information, e.g. employee or service user records protected by the Data Protection Act 1998
  - Information divulged in the expectation of confidentiality
  - Brighton & Hove City Council business or corporate records containing organisationally or publicly sensitive information i.e. that which would not be disclosable under the Freedom of Information Act 2000.
  - Any commercially sensitive information such as information relating to commercial proposals or current negotiations.
- 4.3 Other laws relating to discrimination, defamation, harassment, safeguarding and copyright will also apply to information posted on social media.
- 4.4 Staff members need to be aware that they will be held personally responsible if they break the law when using social media (for example by posting something defamatory). The council may also be held liable for the acts of its staff members whilst working for the council.

### **5. Definition of Social Media**

- 5.1 Social media is the term commonly used for websites which allow people to interact with each other in some way by sharing information,

opinions, knowledge and interests. Social networking websites such as Facebook, are perhaps the most well known examples of social media but the term also covers other web based services such as blogs, mircoblogs such as *Twitter*, chatrooms, forums, video and audio podcasts, open access online encyclopaedias such as *Wikipedia*, *message boards*, *photo document*, social bookmarking sites such as *del.icio.us* and content sharing sites such as *flickr* and *YouTube*.

5.2 This definition of social media is not exhaustive. The internet is a fast moving technology and it is impossible to cover all circumstances or emerging media. However, the principles set out in this policy must be followed irrespective of the medium.

5.3 For the purpose of this policy, the term social media also applies to the use of communication technologies such as mobile phones, cameras, PDAs / PSPs or other handheld devices and any other emerging forms of communications technologies.

## **6. Principles - Social Media Practice**

6.1 When using social media whether in a business or personal context staff members need to be aware that everything they post online is public, even with the strictest privacy settings. Once something is online, it can be copied and redistributed and it is easy to lose control of it. They should therefore assume that everything they post online will be permanent and will be shared.

6.2 They also need to be aware that they:

- must keep their personal and professional lives separate and always maintain appropriate professional boundaries
- are responsible for their own actions and conduct and should avoid behaviour which might be misinterpreted by others or which could put themselves in a position where there is a conflict between their work for the council and their personal interests
- must use social media in a professional, responsible and respectful way and must comply with the law in their on-line communications
- must not engage in activities involving social media which might bring the council into disrepute
- must not represent their personal views as those of the council on any social medium
- must not discuss on social media personal information about service users, their family members, council staff or any other professionals or organisations they interact with as part of their job with the council
- must not name or otherwise identify council staff, service users, former service users or their family members, colleagues etc in social media conversations
- must not use social media or the internet in any way to attack, insult, abuse, harass, defame or otherwise make negative, offensive or discriminatory comments about council staff, service users, their

- family members, colleagues, other professionals, other organisations, or the council
- must not browse, download, upload or distribute any material that could be considered inappropriate, offensive, defamatory, illegal or discriminatory
- should not blog in haste, particularly in circumstances where their judgement might be impaired; for example if they have consumed alcohol

## **7. Use of Social Media by the Council**

7.1 Social media is widely used to communicate news and information about the council and the organisations it works with to residents, businesses and charities across the city. The main four social media sites it uses are:

- Flickr
- Youtube
- Twitter
- Facebook

7.2 Before a council social media account can be set up, managers must consult the council's Marketing team and submit a project brief outlining how the use of social media would benefit the service, the social networking sites it is proposed to use and how they will be maintained and monitored.

7.3 If approved, managers must submit a design brief for the new site to the Graphic Design team to ensure it complies with the council's corporate branding. The council's Communication team will then set up the new site.

7.4 All new social media sites will be trialled for three months. The council's Communications team will provide an induction session and ongoing support and guidance for those who will be using the site. This is to ensure that the service makes best use of the site and that the council's image and reputation is protected.

7.5 Social media sites not being used efficiently or not providing any benefit for residents will be removed by the Communications team. Similarly, any site set up without prior approval will be disabled and/or removed. For further information contact the council's Social Media Officer or a member of the Communications team.



## **8 Guidelines for those authorised to use Council Social Media Sites**

8.1 Staff members must not use any social media tool for council business unless they have first received training from the council's Communications team.

8.2 Those authorised to use social media in the workplace for business purposes have a responsibility to use the tools in a professional and responsible manner. In general terms, this means complying with the requirements set out in this Policy, the council's Acceptable Use of ICT Policy and Corporate Communications Protocol.

8.3 However, staff members need to be aware that when using social media for business purposes, they are acting as ambassadors for the council. What they say and post online will directly impact not only on their personal reputation but also on the reputation and image of the council. Therefore they should also ensure that they:

- identify themselves and their role within the council
- ensure any comments are neutral in tone, factual and clear at all times
- do not undermine the integrity or impartiality of Brighton & Hove City Council in anything they write
- do not express personal views and/or advocate a particular position on a subject, especially on issues associated with party-political controversy.
- correct personal mistakes promptly and don't alter previous posts without indicating that they have done so
- don't provoke negative discussions
- respect the views expressed by their audiences and only remove negative or aggressive comments as a last resort
- never become "friends" with those they come into contact with as part of their work for the council in ways which could lead to a conflict of interest or give rise to potential security and privacy issues
- ask and secure express permission before publishing any documents and/or reporting on social media any conversations that are meant to be private, confidential or internal to Brighton & Hove City Council
- don't cite or make reference to colleagues, clients, other third parties etc or post photographs of other people without their express consent

8.4 If staff members are in any doubt about what is, and isn't, acceptable to post on a social media site, they are strongly advised not to post it until they have sought advice from their manager.

8.5 Staff members need to be aware that the information they post on social media websites and associated documents can be subject to Freedom of Information requests.

- 8.6 Failure to comply with the above may result in social media sites being removed and disciplinary action being taken against those involved (see section 11 “Breaches of the Policy”).

## **9. Guidelines on the Personal Use of Social Media**

### General

- 9.1 As the use and popularity of social media grows, the line between what is public and private, personal and professional can become blurred.
- 9.2 It is important therefore that staff members are aware that their actions on their personal webspace could have an adverse impact on their professional role and/or on the council’s image and reputation.
- 9.3 In the event that a staff member’s online activities impacted on the council, this would no longer be a private/personal matter but would become a matter of concern for the council. This would lead to the matter being investigated in accordance with the council’s Disciplinary Procedure and could result in disciplinary action being taken against the individual concerned.
- 9.4 Appendix A sets out the guidelines that staff members should follow in order to avoid any potential conflict between their personal use of social media and their role with the council.

### Personal Use of Social Media at Work

- 9.5 Personal use of social media sites is permitted at work but must be within the individual’s own time i.e. during lunch breaks. Any use *must not* adversely affect business priorities or network performance.
- 9.6 Staff members must not edit open access online encyclopaedias such as *Wikipedia* in a personal capacity at work. This is because the source of the correction will be recorded as the council’s IP address and the intervention will, therefore, appear as if it comes from the council itself.

## **10. Monitoring the Use of Social Media**

- 10.1 The council has systems in place to enable it to monitor all discussions and comments made about the council or related subjects on social media sites.
- 10.2 Staff members need to be aware that these tools are used on a daily basis and enable the council to see online conversations on both professional and private profiles that are open to the public.

## **11. Breaches of the Policy**

- 11.1 The council reserves the right to close any social media applications or remove any inappropriate content published by staff members which may adversely affect the reputation of the council or put it at risk of legal action.
- 11.2 Any breach of this policy will be viewed as a serious matter and may lead to the publishing rights of the staff member(s) involved being suspended whilst the matter is investigated.
- 11.3 Any breach will be investigated in line with Brighton & Hove City Council's Disciplinary Procedure and this could result in disciplinary action, including the possibility of dismissal, being taken against the staff member(s) concerned.
- 11.4 Contracted providers of Brighton & Hove City Council services must inform the relevant council's Head of Service immediately of any breaches of this policy so that appropriate action can be taken to protect confidential information and limit the damage to the reputation of the council. Any action against such breaches should be according to the contractors' internal disciplinary procedures.
- 11.5 In the event of a serious breach of the Council's Social Networking Policy amounting to a breach of the law, the council will be obliged to report this to the Police or other external agency as appropriate.

## **12. Links to other Policies**

- 12.1 This policy should be read in conjunction with the following policies:
  - Code of Conduct for Employees
  - Acceptable Use of ICT Policy
  - Data Protection Guidelines
  - Corporate Communications Protocol

## **Appendix A**

### **Guidelines for Staff Members when using their own Personal Social Media/ Webspaces**

1. Be aware of the dangers of putting personal information such as addresses, home and mobile phone numbers, email addresses etc. onto social networking sites.
2. Ensure that you set the privacy levels of your personal sites at the maximum and opt out of public listings on social networking sites to protect your privacy.
3. Keep your passwords confidential, change them often and be careful about what is posted online. It is a good idea to use a separate email address just for social networking so that any other contact details are not disclosed.
4. Do not identify yourself as a staff member of Brighton & Hove City Council or as a service provider for the City Council. This is to prevent information on these sites being linked with the council. Staff may add a disclaimer such as “these are my own views and opinions and not those of my employer”. In general, problems will be avoided if members of staff do not use their personal social media accounts to comment on council services and functions; this will help prevent any blurring of their private and official roles.
5. Taking the steps outlined in paragraphs 1 to 4 will avoid the potential for you to be contacted by service users, their families or friends or other third parties outside of the working environment and will reduce the chances of you becoming a victim of identity theft.
6. When using social media for personal purposes, you must make it clear that what is posted is not representative of the views and opinions of the council. Do not use of the council’s e-mail address, corporate, service or team logos or brands or other council identification on your personal webspaces.
7. Ensure you regularly review your social networking sites to ensure that information available publicly about you is accurate and appropriate. It is also good practice to close old accounts as they may contain information about you. New staff should do this when they join the council.
8. Do not give your personal contact details including details of any blogs or personal social media sites or other websites to service users, their

## Appendix 1.2

families or friends or other third parties connected to the council e.g. contractors, elected members.

9. You must not establish or seek to establish social contact via any personal social media/other communication technologies with any service users or ex-service users, their families or friends or other third parties connected to the council e.g. contractors, elected members in circumstances suggesting close relationships that are incompatible with the need for appropriate professional independence and detachment.
10. You must consider carefully 'friend requests' from service users, their families or friends or others e.g. contractors, elected members and accept them only if you are quite sure this will not put you in the position of having a real or apparent conflict of interest in relation to the fact that in your working life you are a council employee. For the avoidance of doubt, this policy would not preclude use of media which have a neutral "business registry" type purpose and which do not suggest close association (such as LinkedIn.)
11. You must not use any information that you obtain in the course of your work for the council for personal gain or pass it on to others who may use it in such a way.
12. You must not disclose any politically sensitive information.
13. Never publish confidential information that you may have learned or have access to as part of your job. This includes personal information about service users, their families or friends or others e.g. contractors, elected members, Brighton & Hove City Council staff as well as City Council related information. This requirement continues after you have left employment.
14. Similarly, do not publish photographs, videos or any other types of image of service users and their families or images depicting staff members wearing council uniforms or clothing with council logos or images identifying sensitive council premises (e.g. care homes) on personal webspace.
15. Do not use council email addresses and other official contact details for setting up personal social media accounts or for communicating through such media.
16. Be extremely cautious about inviting work colleagues to be 'friends' in personal social networking sites. Social networking sites blur the line between work and personal lives and this may make it difficult to maintain professional relationships or it may be embarrassing if too much personal information is known in the work place.

## Appendix 1.2

17. Do not use personal webspace to raise or discuss a complaint or grievance about the council, your manager, colleagues etc. There are formal procedures in place for progressing these within the council.

April 2013

<b>Subject:</b>	<b>Code of Conduct for Member/Officer Relations; and Code of Conduct for Employees</b>		
<b>Date of Meeting:</b>	<b>16 April 2013</b>		
<b>Report of:</b>	<b>Monitoring Officer</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Oliver Dixon</b>	<b>Tel: 01273 291512</b>
	<b>Email:</b>	<b>oliver.dixon@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE**

Note: The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that the proposed amendments to the codes in question needed preliminary consideration by a members' working group held shortly before the committee meeting date.

**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 This report seeks approval for minor amendments to the council's Code of Conduct for Member/Officer Relations, and Code of Conduct for Employees.
- 1.2 The amendments reflect new arrangements for handling confidential information; the council's revised corporate values; and the latest senior management structure.

**2. RECOMMENDATIONS:**

That the Committee –

- 2.1 Agree the council's Code of Conduct for Member/Officer Relations as amended and set out at Appendix 1.
- 2.2 Agree the council's Code of Conduct for Employees as amended and set out at Appendix 2.
- 2.3 Recommend each of these codes to Full Council for approval.

### **3. RELEVANT BACKGROUND INFORMATION:**

- 3.1 The Code of Conduct for Member/Officer Relations and the Code of Conduct for Employees form part of the council's constitution and are subject to periodic review, to ensure they remain relevant and up to date.
- 3.2 Following a review in early 2013, it is proposed to amend both codes to take account of recent developments affecting the council's corporate governance, comprising:
- (i) new arrangements for handling confidential information, as reported separately to Audit & Standards Committee on 16 April 2013 (see agenda item 100);
  - (ii) the council's six organisational values; and
  - (iii) the senior management structure introduced on 1 April 2013
- 3.3 The proposed Code of Conduct for Member/Officer Relations, as amended, is set out at Appendix 1.
- 3.4 The proposed Code of Conduct for Employees, as amended, is set out at Appendix 2.

### **4. COMMUNITY ENGAGEMENT AND CONSULTATION**

- 4.1 The codes referred to in this report were considered by a cross-party working group of members, as well as the Independent Person, on 4 April 2013.

### **5. FINANCIAL & OTHER IMPLICATIONS:**

#### Financial Implications:

- 5.1 It is not expected that the amended codes will have any significant financial implications for the council.

*Finance Officer Consulted: Anne Silley*

*Date: 08/04/13*

#### Legal Implications:

- 5.2 Changes to the council's constitution of the type described in this report must first be considered by Audit & Standards, then referred to Full Council for approval. (Article 13 03 of the constitution refers). This requirement is reflected in the recommendations above.

*Lawyer Consulted: Oliver Dixon*

*Date: 08/04/13*

#### Equalities Implications:

- 5.3 None specific to this report



Sustainability Implications:

5.4 None

Crime & Disorder Implications:

5.5 None

Risk and Opportunity Management Implications:

5.6 None

Public Health Implications:

5.7 None

Corporate / Citywide Implications:

5.8 As amended, both codes take account of the council's organisational values. As regards the Code of Conduct for Member/Officer Relations, the key value is respect.

**SUPPORTING DOCUMENTATION**

**Appendices:**

1. Code of Conduct for Member/Officer Relations, as amended.
2. Code of Conduct for Employees, as amended.



## PART 8.7 CODE OF CONDUCT FOR MEMBER/OFFICER RELATIONS

### 1. Introduction

- (a) An effective and productive working relationship between Members and officers is critical to the successful operation of the Council's business. This code deals with the Member/officer interface in general terms and then refers to the working relationship between Members and Chief Officers, senior officers and other officers who formally advise the Council.
- (b) Excellent working relationships between Members and officers are required both to deliver high quality services to local people and to maintain public confidence in the machinery of local government in Brighton & Hove.
- (c) For the purposes of this Code, Chief Officer means the Chief Executive, the Executive Directors of Finance and Resources, Adult Services, Childrens' Services and of Environment, Development and Housing as well as the Director of Public Health, the Monitoring Officer and Head of Law, and the Assistant Chief Executive.
- (d) For the purposes of this Code, Deputy Chief Officer means Officers who report to Chief Officers other than clerical staff.

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### 2. Values

The manner in which members and officers interact should at all times be consistent with the council's organisational values, which are as follows:

- **Respect:** Embrace diversity with kindness and consideration and recognise the value of everyone. (See also paragraph 3 below)
- **Collaboration:** Work together and contribute to the creation of helpful and successful teams and partnerships across the council and beyond
- **Efficiency:** Work in a way that makes the best and most sustainable use of our resources, always looking at alternative ways of getting stuff done and asking, 'How can I improve that?'
- **Openness:** Share and communicate with honesty about our service and self, whenever appropriate. Accept where we have to change in order to improve
- **Creativity:** Have ideas that challenge the 'tried and tested', use evidence of what works, listen to feedback and come up with different solutions

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- **Customer Focus:** Adopt our ‘Customer Promise’ to colleagues, partners, members and customers. We will be easy to reach, be clear and treat you with respect, listen and act to get things done

### **3. Mutual Respect and Courtesy**

- (a) Respect is one of the Council’s organisational values. For the effective conduct of the Council’s business there must be mutual respect and courtesy in all meetings and contacts, both formal and informal, between Members and officers. The basic tenets of common courtesy apply in both formal and informal settings. This plays an important part in safeguarding the Council’s reputation and the regard in which it is held by members of the public.
- (b) It is important that both Members and officers remember their respective obligations to enhance the Council’s reputation and do what they can to avoid criticism of Members or officers in public. The quality of the interface between the two is vital in ensuring that the highest ethical standards permeate the Council in both its private and public dealings.
- (c) Members should be aware that officers are constrained in the response they may make to public comment from Members and should not abuse officers in public or through the press nor seek to undermine their position by abuse, rudeness or ridicule. This in no way reduces Members’ proper right and duty to criticise the reports, actions and work of a department or section of the Council where they believe such criticism is merited. If Members believe they have reason to criticise the work of an individual junior officer, the proper approach should be through the senior manager of the section or Chief Officer of the relevant department. Equally where officers feel they have good cause to criticise a Member, an approach by the relevant Chief Officer to that Member’s party whip, group leader or convenor is a sensible first step.

### **4. Roles and Responsibilities**

- (a) All Members have responsibilities towards the Council, effectively as trustees. No decisions on behalf of the Council can be taken by individual Members in law, but because the Council is organised into political groups certain Members will exert more influence and direction than others, namely the leadership of the largest group, and opposition groups. Committee/Sub-Committee Chairs will also exert influence and may provide guidance within the area covered by their Committees/Sub-Committees. The role of Committee/Sub-Committee Chairs is recognised in law for procedural purposes, for example chairing, meetings or exercising a casting vote. Whilst chairs of committees, liaise regularly with senior officers on

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significant matters and may be able to influence Officer decisions by expressing their views, by law they cannot make individual decisions on behalf of the Council. There is therefore no "chair's decision" as such except on procedural matters regarding the Committee or Sub-Committee they chair.

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- (b) Members are responsible to the electorate and may serve until their term of office expires or until it is ended before that, for whatsoever reason. Officers are employed by, and are responsible to, the Council. Their job is to give advice to Members and the Council and to carry out the Council's work under the direction and control of the Council, its Committees and Sub-Committees and the management of the Chief Executive and the relevant Chief Officers.
- (c) Officers are employed to advise the Council and to implement its decisions. Officer advice must be full and impartial and should include all relevant options. It must not seek to second-guess the decisions of Members, for example by excluding presumed unpalatable options, and must be clear and professional at all times. Members should respect officers' political neutrality at all times. But Members are entitled to reject officer advice and to give effect to their lawful policies even if these are clearly at variance with the views of officers. It is by this means that the largest group(s) are able to implement the policies for which they regard themselves as responsible to the electorate and the opposition groups are able to challenge them and put forward their own policies.

## 5. Political Activity

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- (a) Senior officers, except those specially exempted, cannot be local authority Members or MPs, nor can they "speak or publish written work for the public at large or to a section of the public with the apparent intention of affecting public support for a political party". Such officers are nevertheless able to engage in such activity to "such extent as is necessary for the proper performance of their duties". (Sections 1-2 of the Local Government and Housing Act 1989 and Local Government Officers (Political Restrictions) Regulations 1990.
- (b) Officers are employed by the Council not by Committees/Sub-Committees or individual Members and are subject to the application of the Council's employment policies and procedures including the Council's Code of Conduct for Officers.
- (c) National conditions of service provide that officers cannot be required to advise any political group of the Council, either as to the

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work of the group or as to the work of the Council. Neither can they be required to attend any meetings of any political group. Nonetheless it is common practice for party groups to give preliminary consideration to matters of Council business and officers may properly be called upon to support and contribute to such deliberations.

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- (d) Normally, only the Chief Officer will be expected to attend meetings, write reports or carry out other work relating to Council business (including technical assistance in drafting Notices of Motion) for a party political group. Subject to the Chief Officer's discretion, other senior officers may be invited to attend meetings, provide information, write reports and draft Notices of Motion, or carry out other work relating to Council business for party political groups. However, neither the Chief Officer nor any other officer can be instructed to do so nor can they be instructed to carry out any party political work. This provision covers meetings of or reports to a party political group or meetings designated for one party only. It is, of course, open to any Committee or any Sub-Committee to require reports from Chief Officers on matters within their terms of reference.
- (e) Officers must respect the confidentiality of any party group discussions at which they are present and should not relay the contents of any such discussions to another party group.

- (f) The Council recognises the need for regular liaison on matters affecting the Council between senior officers and the leadership of political groups, and on matters affecting committee functions, between senior officers and Committee/Sub-Committee Chairs and party spokespersons. This is vital to the workings of the Council, especially during times where there is no overall political control. The Chief Executive convenes and chairs meetings of the Leaders Group regularly to discuss matters of common interest.

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**6. Contact between Members and Officers**

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- (a) Regular contact between Members and senior officers is necessary to ensure the efficient working of the Council. In this context, it is the responsibility of Chief Officers to identify within each department the senior officers who should have regular contact with Members and this will depend upon the nature of the service they provide and the nature of the Member contact envisaged. However, Members should always bring major concerns about issues affecting a department directly to the attention of the Chief Officer concerned.
- (b) Serious problems can arise if Members bypass appropriate lines of communication to Chief Officers and their senior officers and, for example, deal with more junior members of staff to seek views on

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policy issues, non-routine business, or attempt to give instructions to staff. This has the effect of depriving Members of the formal, informed and accountable advice they have a right to expect from Chief Officers. It may also serve to undermine the formal accountability of staff to their line manager.

- (c) However, there are circumstances when Members may need direct contact with relatively junior staff, for example, with junior officers in a Housing District Offices when dealing with constituency casework presented by tenants and the contact is for the purpose of seeking factual information. Approaches by Members to junior officers are proper when casework is detailed and ongoing or matters are routine but, wherever possible, Members should keep Chief Officers informed by copying them (at least initially) into correspondence, e-mails etc., and routing general enquiries through them.

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**7. Information for Members**

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- (a) It is important that officers keep Members informed both about the major issues concerning the Council and, more specifically, about issues and events affecting the wards which Members represent. Ward Members should be informed about proposals which affect their area whether this concerns the declaration of a surplus property, a new traffic management scheme or a local planning application. Ward Members should also be invited to attend the opening of new Council buildings or road schemes or other similar ceremonies within their wards. It should also be borne in mind that Members who are not Members of a particular Committee/Sub-Committee may be able to attend and speak at meetings of Committees/Sub-Committees with the agreement of the Chair or person presiding at the meeting.

- (b) The unauthorised disclosure of information by Members, which they have gained as Members, when the information is confidential, is likely to be a serious breach of the Members' Code of Conduct, (see part 8.1 of The Constitution). Members will have signed a declaration of their intention to abide by the Code of Conduct when they took office. Confidential information, should not, therefore, be made available by the Member concerned to the press or public nor should it be passed onto another Member who cannot demonstrate a similar "need to know." There is separate more detailed guidance to Members and Officers regarding confidential information which can be accessed from the Wave.

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**8. Access to Information**

- (a) In accordance with the corporate value of openness, the default position of the council on access to information, as regards Members, Officers and, indeed, the public at large, is one of openness and transparency. The other, complementary side to this

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coin is that information that is genuinely confidential must stay confidential.

(b) Members have wide-ranging legal rights of access to documents in the possession or under the control of the Council and officers should implement requests for information from Members who need that information for the fulfilment of their duties as a Member.

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(c) Normally, officers will accept that Members do not ask for information without good reason and will not question the Member's "need to know". But in the words of relevant legal caselaw, a Member has no right to a "roving commission" and "mere curiosity or desire" is not sufficient. Nor, of course, can the Member exercise the right for some improper motive, e.g. to assist someone in litigation with the Council, its staff, suppliers or service users.

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(d) In rare cases therefore a Chief Officer may apply the "need to know" test. The Member will need to show why the information is necessary to fulfil their Council duties. Further guidance on the "need to know" issues is set out in the Appendix to this code. Where an officer considers that a Member has not established a "need to know" in support of a request for access to information and refuses to provide the information requested, the officer shall state the reasons for doing so. Where the Member is dissatisfied with the outcome the matter shall be referred to the Monitoring Officer for a decision.

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(e) A Member asking for complex or bulky information should be flexible in his or her demands if compiling and reproducing the documentation results in significant cost to a department. The Member will normally be able to view relevant material and to copy individual documents and retain them but may not make use of such information for an improper purpose or one unrelated to the Member's duties.

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(f) Specific guidance on a Member's rights of access to confidential Committee and Sub-committee reports is to be found at paragraph 10 of the Appendix to this code.

(g) Members are reminded of their duty not to disclose confidential information which they have gained access to as Members (see again paragraph 6(b) above of this Code). To do so is not only a breach of this code but is also very likely to be a serious breach of the Code of Conduct for Members. If any Member believes that he or she may have justification for disclosing confidential information, he or she must first seek advice from an appropriate officer such as the Monitoring Officer, Chief Finance Officer or Chief Executive.

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**9. Preparation of Officer Reports for Committees/Sub-Committees**

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- (a) Officer reports to Committees and Sub-Committees should be written by the Chief Officer or other officer authorised by him or her. All sensitive officer reports shall be discussed with the relevant Committee/Sub-Committee Chair at one of the regular meetings held with the Chief Officer.
- (b) However, the draft officer report belongs to the officer concerned and even if the Chair or another Committee/Sub-Committee Member in exceptional circumstances is unhappy with its contents it should not be amended by them save with the express approval of the Chief Officer. It is for the Chief Officer to determine when a draft officer report should be amended in the light of Members' views, taking advice from the Chief Executive, Monitoring Officer or Chief Finance Officer as appropriate.

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**10. Correspondence**

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- (a) Frequently Members and officers correspond and, where it is appropriate to regard the correspondence as non-confidential, it may be copied by either the sender or the recipient to others, subject to the provisions of paragraphs 9(b) to (d) below and to the requirement that correspondence should be courteous and wide circulation of it should not be employed as a means of administering a public rebuke to a Council officer.
- (b) Officers should not copy correspondence with a Member of one party to a Member of another party without consent. This does not prevent officers or Members copying correspondence to each other about casework across ward or interest group boundaries. Nor does it preclude a Chief Officer from advising a Committee/Sub-Committee Chair in general terms of an issue raised with the Chief Officer in correspondence, or otherwise, with a Member.
- (c) Members and officers must treat as confidential any personal information protected from disclosure by the Data Protection Act unless the disclosure is permitted under the Act or by other legislation.
- (e) Members should bear in mind that if they disclose any information which should have been regarded as confidential, this is very likely to be a serious breach of the Code of Conduct for Members, as mentioned at paragraph 7(g) above. If in doubt as to the status of the correspondence, the Member should check with the officer concerned before taking any steps to distribute it more widely.

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(f) Members and officers should be aware that their communications with each other on council business, unless such communications

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are covered by legal professional privilege or otherwise exempt under the provisions of the Freedom of Information Act 2000, may be liable to be disclosed to anyone making a request for information under the Act. Members and officers should only include in emails, for example, material that they would be comfortable to be associated with, if it found its way into the public domain.

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**11. Undue Pressure**

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- (a) Members need to be aware that it is easy for officers, particularly junior members of staff, to be overawed and feel at a disadvantage in their dealings with Members. Such feelings can be intensified where Members hold official and/or political office. Therefore, the usual point of contact for Members should be the relevant Chief Officer or Deputy Chief Officer.
- (b) A Member should not request an officer to do anything that she or he is not empowered to do, nor to cease any action which the officer is properly taking or proposes to take, nor to undertake work outside normal duties or outside normal hours, nor to provide information to which the Member is not entitled. Advice on the appropriateness of such requests is available from either the Chief Officer or the Monitoring Officer.
- (c) Similarly, an officer must neither seek to use undue influence on an individual Member to make a decision in their favour nor to raise personal matters to do with their job, nor make claims or allegations about other officers. The Council has formal procedures for consultation, grievance and discipline.

**12. Familiarity**

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- (a) Close personal familiarity between individual Members and officers can damage the principle of mutual respect. It could also, intentionally or accidentally, lead to the passing of confidential information or information which should not properly be passed between them, e.g. personal details. Such familiarity can also cause embarrassment to other Members and/or other officers and even give rise to suspicions of favouritism.
- (b) For the above reasons, it is evident that close personal familiarity should be avoided, and in any event must be declared both by the Member and the officer. Such declarations should be made by the officer to the officer's Chief Officer and by Members to the Chief Executive or Monitoring Officer.

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**13. Officers and Overview and Scrutiny**

- (a) Where an Overview and Scrutiny Committee exercises its powers to require officers to attend to answer questions or discuss issues it should also consider the seniority of officers it would be appropriate to require to appear before them, in order to ensure that more junior officers are not put under undue pressure. Guidelines on this matter are included in the Overview and Scrutiny Procedure Rules at Part 5 of the Constitution.
- (b) Overview and Scrutiny Committees should always bear in mind that when officers appear to answer questions their evidence should, as far as possible, be confined to questions of fact and explanation relating to policies and decisions. Officers may explain what the policies are, the justification and objectives of those policies as the decision makers see them, the extent to which those objectives may have been met, and how administrative factors may have affected both the choice of policy measures and the manner of their implementation. They may be asked to explain and justify advice they have given to Members prior to decisions being taken and/or decisions they themselves have taken under delegated authority.
- (c) As far as possible, officers should avoid being drawn into discussion of the merits of alternative policies where this is politically contentious. Any comment by officers on the Council's policies and decision makers' actions should always be consistent with the requirement for officers to be politically impartial.

#### **14. Redress and Breach of this Code**

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- (a) If a Member has a complaint about a junior or senior officer, it should be raised with the relevant Chief Officer. If the complaint concerns a Chief Officer it should be raised with the Chief Executive as Head of Paid Service. A complaint about the Chief Executive should be raised with the Leader, who will consider whether the issue can be dealt with as part of routine liaison, supervision and appraisal, or should be referred for formal action in accordance with Council procedures and the statutory provisions governing disciplinary action against Local Authority Chief Executives. This does not however preclude a Member from making public, at a Council meeting or in another appropriate way, a concern about the manner in which a Council department has acted, or dealt with a constituent, or a service has performed generally. Nor does it prevent Members at meetings of Committees or Sub-Committees being critical of officer advice or action or of the quality of reports before them. But the manner of such criticism should have regard to the guidance in respect of mutual respect and courtesy at paragraph 2 of this Code.

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- (b) If a Member considers that he or she has not been treated with proper respect or courtesy by an officer or that an officer is otherwise in breach of this Code, the Member may raise it with the officer's line manager or Chief Officer without delay if the Member fails to resolve it through direct discussions with the officer. A Member may raise the issue with the Chief Executive, after discussion with the relevant Chief Officer. If the issue still remains unresolved, appropriate disciplinary action may be taken against the officer.
- (c) If an officer has similar concerns about a Member, the officer should raise the matter with his or her line manager or Chief Officer as appropriate without delay, especially if the officer does not feel able to discuss it with the Member concerned. In such circumstances the Chief Officer will take such action as is appropriate either by approaching the individual Member and/or party group leader. The Chief Officer will inform the Chief Executive and the Monitoring Officer if the party group leader or a Committee/Sub-committee Chair becomes involved, or in any other case where that is appropriate.
- (d) If an officer is concerned that another officer is in breach of this Code, or if a Member is concerned that another Member is in breach of this Code, he or she should raise the issue directly with either their line manager or Chief Officer or with their party group leader. Similar redress may be sought as in the previous paragraph.

## 15. Conclusion

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- (a) Mutual understanding, openness and basic respect are the greatest safeguards of the integrity and reputation of the Council, its Members and officers.
- (b) If Members or officers have any concerns about the content of this Code, or wish any interpretation or advice upon its contents, they should contact in the first instance the Monitoring Officer or the Chief Executive.

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**APPENDIX - Access to Information – the “need to know”**

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1. The courts have given guidance on the circumstances in which a Member seeking information from an officer can be presumed to have a “need to know”.
2. Members are presumed to have a good reason for access to all written material relating to a function controlled by a Committee on which they serve. Also, a Member of a Committee would have a good reason for access to papers relating to the business of a Sub-Committee of that Committee.
3. A Member with a legitimate concern in a matter in which she or he is representing a constituent or other person or organisation may be able to demonstrate a “need to know” in relation to papers relevant to that matter, even if the Member concerned is not on the relevant Committee/Sub-Committee.
4. However, even where a Member is a Member of a Committee/Sub-Committee and wishes to see papers relating to the work of that Committee or a Sub-Committee of it, there will not be an automatic right of access to papers if the Member’s interest springs from something other than the wish to pursue rights as a Member of that Committee/Sub-Committee.
5. Party leaders may be able to demonstrate a “need to know” in respect of written material relating to all Committees/Sub-Committees.
6. Notwithstanding that the information requested may come within the above categories, an officer may refuse a request to provide the information if she or he has cause to think that the information may have been requested for an improper purpose or is otherwise unreasonable or is of a personally sensitive nature.
7. In this context, the courts have been critical of a request by a Member for details of many contracts, and have ruled that a request for details of a Chief Officer’s attendance at the office amounted to harassment.
8. An officer in judging whether a Member requesting information has a right to it is entitled to know the reasons for wanting it, and in the absence of cogent reasons is entitled to refuse. Where an officer considers that a Member has not established a “need to know” in support of a request for access to information and refuses to provide the information requested, the officer shall state reasons for doing so.
9. Members are entitled to have enough information to be able to perform their functions properly and the Courts will protect this position. Members should however bear in mind that unreasonable requests or pressure for information may amount to a breach of the Code of Conduct for Members.

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## 10. Access to Confidential Committee and Sub-Committee Reports

10.1 Members' rights of access to Committee and Sub-Committee reports are set out in paragraph 17 of the Access to Information Procedure Rules. Without prejudice to any rights that Members may have under those rules, this guidance or the law, the following practice and procedure should apply.

- (a) The Council's approach regarding access to Committee or Sub-Committee reports will be guided by the general principles of openness and transparency.
- (b) In the practical application of the principles, the Council will have regard to any legal duty of confidentiality and the need to be able to run its business as a responsible authority.
- (c) As far as possible, and to the extent that it is consistent with legal duties and good practice, the Council will endeavour to put as many of the reports as possible in the public part or, where this is not appropriate, to have an item in the open part that gives the public an indication of the nature of the issue.
- (d) As general rule the Chair of the Overview and Scrutiny Committee and all Group Leaders will be provided with copies of any part II reports to Committee or Sub-Committee meetings and there will be a presumption in favour Group Leaders and relevant Scrutiny Chair having access to part II reports.
- (e) In some cases, the matter under consideration may be such that it is necessary to limit the distribution of reports to Committee Members only or to restrict the copying, distribution, or retention of the reports by Members or Officers.
- (f) In exceptional cases, if the Chief Executive and the Monitoring Officer are of the opinion that significant legal, financial or commercial reasons exist, then the distribution of the reports may be restricted to the person/s making the decision. In coming to such a decision, the Chief Executive and the Monitoring Officer will have regard to the following:
  - Whether the distribution of confidential papers to persons outside the decision-makers would be likely to constitute a breach of any legal duty to which the Council is subject, whether such duty arises from legislation, court order, contractual duty or other express or implied legal obligation;

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- Whether the disclosure of the information would be likely expose the Council to financial loss;
  - whether the disclosure of the information would be likely to have a detrimental effect on any commercial negotiations;
  - whether the report includes sensitive personal information the disclosure of which would expose the council to legal or reputational damage;
  - whether the report contains matters relating to labour relations or negotiations with trade unions and the disclosure of such information would be likely to compromise those negotiations.
- (g) steps taken to limit distribution or restrict the manner of use shall be proportionate to the perceived risk. Depending on the Chief Executive and the Monitoring Officer's assessment, any such measures may include, but are not limited to:
- Circulating the report to the decision makers only;
  - Collecting the reports at the conclusion of the meeting;
  - Making arrangements for relevant Members to read the report at a pre-arranged venue and not take the report away;
  - Restricting any copying of the report.
  - Marking reports
- (h) Where a restriction or limitation on distribution is imposed under the above provisions, the Chief Executive or the Monitoring Officer shall inform the Group Leaders and the Chair of the Overview and Scrutiny Committee.
- (i) The procedure to restrict circulation of reports or the manner of use shall be applied only in exceptional circumstances and the presumption remains that Group Leaders and the relevant scrutiny chair would be entitled see part II reports.
- (j) The above procedures are without prejudice to any right that Members may have to access information and documents under the common law principle of "need to know."

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**NB**

**This code has not been the subject of a thorough review. Only minimal changes have been proposed at this stage to reflect the organisational values and refer to the need to respect confidentiality. A further, more detailed, review may be undertaken at a later stage.**

**PART 8.8 CODE OF CONDUCT FOR EMPLOYEES (OFFICERS)**

**Please take time to read this Code and make sure that you understand it. If you are unclear or want to know something specific, talk to your manager or your human resources division.**

**Introduction**

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You are employed by Brighton & Hove City Council and that means that you are a Local Government Officer. You and the services you provide are paid for by public money and therefore you are accountable to the public for your behaviour, actions and decisions. You must not only behave properly, you should also be seen to behave in a way that is beyond question.

The Council recognises that working in a public service is not easy. Every area is changing and it may be unclear to you what is acceptable and what is not. This Code is intended to explain your responsibilities and your rights as an officer.

As a council officer you are expected to achieve your personal best for our customers and for the city. To ensure that you understand what this means, the council has adopted six values that describe what you should aim to accomplish in the way you carry out your job. These are:

- **Respect:** Embrace diversity with kindness and consideration and recognise the value of everyone
- **Collaboration:** Work together and contribute to the creation of helpful and successful teams and partnerships across the council and beyond
- **Efficiency:** Work in a way that makes the best and most sustainable use of our resources, always looking at alternative ways of getting stuff done and asking, 'How can I improve that?'
- **Openness:** Share and communicate with honesty about our service and self, whenever appropriate. Accept where we have to change in order to improve
- **Creativity:** Have ideas that challenge the 'tried and tested', use evidence of what works, listen to feedback and come up with different solutions

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- **Customer Focus:** Adopt our 'Customer Promise' to colleagues, partners, members and customers. We will be easy to reach, be clear and treat you with respect, listen and act to get things done

This Code of Conduct underpins these six organisational values by setting out in more detail the standard of behaviour expected of you as an officer whilst you are carrying out your duties. There are other Codes which are important for you to understand and which you should read alongside this one.

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### **The Code of Conduct for Member–Officer Relations**

This deals with the relationship between you and Members of the Council (Councillors)

### **The Code of Conduct for Members**

A local code setting out standards of conduct and behaviour for Members of the Council

### **The Whistleblowing Policy**

This sets out a procedure for you to report actions, wrongdoings or serious failures

### **The Complaints Procedure**

A procedure for members of the public to complain about services or actions of the Council

### **The Anti-fraud and Corruption Strategy**

The Council's commitment to fighting fraud and corruption whether attempted from outside or inside the Council.

### **The Acceptable Use of ICT Policy**

A policy which sets the parameters for the appropriate work and personal use of Information and Communications Technology.

### **The Social Networking Policy for Employees**

A policy which governs the use of social media in both the work and personal use contexts

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## Scope

This Code of Conduct applies to you if you are an employee of Brighton & Hove City Council, whether employed on a permanent, temporary or casual basis, or if you are an officer holder. All officers must follow this Code. Deliberate breaches of the Code will be treated as a disciplinary offence. In some cases a breach of the Code may result in criminal prosecution. This code contains the following:

Section 1	Basic principles/definitions	Deleted: d
Section 2	Political neutrality/activity/restricted posts	
Section 3	Council policies and legal requirements	
Section 4	Outside commitments/ <u>Working Time Directive</u> /declaration of interests	Deleted: w Deleted: t
Section 5	Membership of closed organisations	Deleted: d
Section 6	Tendering/dealing with contractors	Deleted: d
Section 7	Using your position in the council	
Section 8	Corruption, fraud and dishonesty	
Section 9	Use of council facilities/resources	
<u>Section 10</u>	<u>Use of ICT</u>	Deleted: computers
<u>Section 11</u>	<u>Inventions/patents/copyright etc/conferences</u>	Deleted: 0
<u>Section 12</u>	<u>Appointing staff/discipline &amp; grievance</u>	Deleted: 1
<u>Section 13</u>	<u>Gifts</u>	Deleted: 2
<u>Section 14</u>	<u>Hospitality</u>	Deleted: /hospitality
<u>Section 15</u>	<u>Sponsorship, giving or receiving</u>	Deleted: 3
<u>Section 16</u>	<u>Information, openness and confidentiality</u>	Deleted: Sponsorship
<u>Section 17</u>	<u>Financial resources/regulations</u>	Deleted: 4
<u>Section 18</u>	<u>Role of the Monitoring Officer</u>	Deleted: .
<u>Section 19</u>	<u>Raising concerns</u>	Deleted: 5
<u>Section 20</u>	<u>Responding to complaints</u>	Deleted: 6
<u>Section 21</u>	<u>Useful information</u>	Deleted: 7
		Deleted: 18

## Basic principles & definitions

The basic principles on which this Code is built are that:

- you, your family or your friends must not gain financial or other benefits from the decisions or actions you take whilst working for the Council
- you must make decisions, choose purchases and award contracts on merit and in the best interests of the Council
- you will not accept money or other benefits from individuals or organisations that may, or may be seen to, influence your decisions
- you should always declare any interests you have outside work that relate to your work for the Council. You must always think how your actions would look to the residents of Brighton & Hove. Would they be seen to be in the best interests of the public? Would you be able to explain your role?

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- 1.2 If you are at all uncertain, you should be guided by the key principle that even if your actions, decisions or behaviour are proper, you are still sure that you are above suspicion and any appearance of improper conduct.
- 1.3 If you are unsure what is expected, you can raise the matter with your manager, [Executive Director](#), the Chief Executive, [the Head of Human Resources & Organisational Development](#), the Council's Monitoring Officer or the Head of Audit & Business Risk. (A list of contact numbers is given at the back of this Code.)

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### Definitions

- 1.4 Throughout this Code there are references to partners, close friends, relatives, close personal relationships.
- 1.5 All of these are in the context of you having a loyalty to another person that is in conflict with the job or action in which you are involved for the Council.
- 1.6 There is no formal definition of 'close personal friend' or whether partner includes ex-partners with whom you are still friends.
- 1.7 It is your responsibility to act openly, honestly and without bias. You must assess if a relationship may cause you to act or be seen to act inappropriately.
- 1.8 This Code is not an exclusive or definitive list.

## 2. Political neutrality

- 2.1 As an officer you work for the Council as a whole and not just the majority (or leading) group. Although most staff will have very little direct contact with Councillors, some staff will be asked to give advice to individuals or to Committees. This must always be done in a politically neutral way and you must be prepared to explain your advice to all political groups. You should also bear in mind that you may be called to account for your advice, for example to an overview and scrutiny committee.
- 2.2 Once a policy has been approved through the Committee or Full Council stages as appropriate, it is a lawful policy of the whole Council and must be adopted by you, regardless of your beliefs. You must not allow your personal or political opinions to interfere with your work. If you believe that a policy is unlawful, you should contact your [Executive Director](#) or the Monitoring Officer.
- 2.3 If you are asked by a Councillor to provide assistance on a matter that you feel is clearly political, or which does not have a clear link with the

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work of the Council, you should seek the advice of your Director or the Monitoring Officer.

- 2.4 If you are asked to attend any meetings of any political group of the Council, you should consult your Director before accepting the invitation.

### Political activity

- 2.6 You are not eligible to stand for office as a Councillor of Brighton & Hove City Council, but you may stand for office of another Council providing you are not in a politically restricted post (see paragraph below).

**Deleted:** 2.5 Political assistants appointed on fixed-term contracts in accordance with the Local Government and Housing Act 1989 are exempt from the political neutrality standards set out in paragraphs 2.1 to 2.4 above, although all other parts of this Code still apply to them.¶

### Politically restricted posts

- 2.7 Some officers, normally those in more senior positions, are in posts where political activity is restricted through the Local Government and Housing Act 1989. This Act prevents them from taking part in certain political activities outside their work. If this applies, you should have been informed in writing, although it may be included in your statement of terms and conditions of employment. You should, if this is the case, have been informed of the rules for claiming exemption. If you are not sure about your position, you should contact your manager or Human Resources.
- 2.8 The political activities which are restricted for these officers include:
- standing as a Member of Parliament, Member of the European Parliament or a Councillor in any local authority (other than a Parish Council)
  - holding office in a political party at any level, (except in limited roles concerned only with the internal membership of the party)
  - canvassing at elections
  - speaking in public or publishing any written or artistic work which appears to be intended to influence public support for a political party.
- 2.9 You need to be aware of your position in terms of political activity. If you are not sure whether an activity is subject to 'political activity restrictions', you should seek advice from your [Executive Director](#) or [Head of Human Resources & Organisational Development](#), who will consult the Monitoring Officer if necessary.
- 2.10 Violation of the statutory rules is a breach of contract and liable for investigation under the Council's Disciplinary Procedure.

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### 3. Council policies and legal requirements

- 3.1 As a Council officer, you must know the legal or statutory requirements of your job, and work within this framework at all times.
- 3.2 All members of the local community, service users and officers have the right to be treated fairly and impartially. As a Council officer you must comply with all Council policies relating to equalities issues and the requirements of the law.

### 4. Outside commitments/ Working Time Directive and declaration of interests

- 4.1 Your first work commitment is to the Council. If your job is graded at Scale SO1 (or its equivalent) or above, you should not engage in any other business or take up an additional appointment without written permission from your manager. If you are allowed to undertake work outside the Council, you must not use the Council's facilities for that work.
- 4.2 The Council is required to take all reasonable steps to ensure that workers do not exceed the maximum hours per week. The statutory maximum hours per week [as laid down by the Working Time Directive] is an average 48 hours over a 17 week period, extended in certain circumstances to a 26 or 52 week period. Whatever your grade or position the Council has a responsibility to ensure that you do not exceed the statutory maximum hours per week. If you have, at the time of appointment, or subsequently obtain, other employment you should declare this to your immediate manager. Normally, the Council will not seek to prevent you from working more than the statutory maximum but it will want you to confirm, in writing, that this your choice.
- 4.3 In addition to the statutory maximum, if you are above school leaving age but under 18 years and working a total of 4.5 hours per day or more you are required to have a 30 minute break during that time. This applies whether you work only for the Council or for several different employers. If you are a young person with more than one job which adds up to 4.5 hours per day or more you should also inform your manager.
- 4.4 If you are 18 years of age or over, you are entitled to have a 20 minute break for every working shift lasting 6 hours or more per day.

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## Declaration of personal / business interests: conflict of interests

- 4.5 You must declare to your manager any financial and non-financial interests that you consider could bring you into conflict with the Council's interests. Conflict may occur where the Council has entered into (or is going to enter into) a contract in which you, your partner or a relative has a financial interest. You may have a financial interest if, for example, you could:
- receive money or goods
  - have value added to a property
  - benefit from an increase in share value.
- 4.6 If you have shares in a privatised utility, such as British Gas, with which the Council will have dealings, you will not normally need to declare this involvement. It is ultimately a question of degree. You would be expected to declare any large shareholdings you may have in a company coming into contact with the Council.
- 4.7 A conflict of interest may also arise when you have a direct interest in the outcome of a Council decision. If this is the case, in order to protect yourself from any appearance of improper conduct you should inform your manager immediately that you are aware of the situation.
- 4.8 Conflicts of interest may occur in a number of circumstances. You should, for example, declare your involvement with an organisation which is grant aided by the Council if you have any part in the grant process.
- 4.9 You should also declare any involvement with an organisation or pressure group which may seek to influence the Council's policies.
- 4.10 If you are not sure whether you should declare such an interest and wish to discuss the matter in confidence, the Monitoring Officer or Head of Human Resources & [Organisational Development](#) can offer advice.
- 4.11 Although you can be offered advice about declaring interests, it is ultimately your responsibility: if you are not sure, then it is always best to declare an interest. Declared interests are kept on registers of interests. . It is important to remember that declaring an interest does not imply that you may act improperly, but that it could protect you from claims or the potential appearance of impropriety.

Note: The form on which declarations of interest should be made can be found on the Council's intranet.

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## 5. Membership of non-open / closed organisations

- 5.1 You must declare in the registers of interests membership of any organisation not open to the public without formal membership and commitment of allegiance, and that has secrecy about rules or membership or conduct. This includes membership of organisations such as the freemasons. Declaration of such membership is required in order to avoid allegations of conflict between an officer's job and their personal interests and allegiances.

## 6. Tendering / dealing with contractors

- 6.1 Orders and contracts must be awarded on merit by fair competition against other tenders and in accordance with the Council's Standing Orders. You must not show favouritism to any contractor. You must also make sure that no special favour is shown to current or recent former employers, officers or their partners, close relatives or associates in awarding contracts.
- 6.2 If you are involved in the tendering process and deal with contractors, you must be clear about the need for separation of client and contractor roles. You must also make sure that, if you are privy to confidential information on tenders or costs for either internal or external contractors, you do not disclose such information to any unauthorised party or organisation.
- 6.3 If, as part of your job, you are involved with or supervise contractors, and you have any kind of personal or other relationship with a contractor or potential contractor, the law states that you must disclose this relationship. Any such relationships should be disclosed to your manager and entered in the register of interests.

## 7. Using your position in the Council

- 7.1 You are entitled to expect fair and reasonable treatment by your colleagues, managers and Councillors. If you feel that you have been unfairly treated, discriminated against or harassed, you have the right to raise a complaint with the council.
- 7.2 In the same way, you are required to treat your colleagues and staff fairly. Not only is it a criminal offence to harass another person on any grounds, it is also a disciplinary offence in the Council.
- 7.3 You should not cause any person harassment, alarm or distress by using threatening, abusive or insulting language or disorderly behaviour, or by displaying any writing or signs, drawings, posters etc. which are threatening, abusive or insulting.
- 7.4 You are also entitled to be treated with respect by clients, service users and members of the public. If you feel that their behaviour is

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unreasonable in the circumstances, you are entitled to terminate the contact, providing that you do so without further antagonising the situation and that you give notice of your intention. You must always report such actions to your manager and make a record of the incident.

7.5 It is your responsibility to act reasonably and fairly.

## 8. Corruption

8.1 It is important that you are aware that it is a serious criminal offence for you to corruptly 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 the course of your work with the Council.

8.2 Under the Bribery Act 2010 it is an offence to request, agree to receive or accept a financial or other advantage intending that a relevant function or activity should be performed improperly as a result.

## 9. Use of Council facilities

9.1 You should only use Council facilities [such as accommodation, transport, stationery, postal service, ict etc.] provided by the Council for your use in your duties as an officer to carry out those duties and for no other purpose. In exceptional circumstances your manager may give you permission to use Council facilities but you should always obtain this authority prior to use.

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9.2 Telephones, both static and mobile, can be used for short urgent calls, for example in an emergency or to book a doctor's appointment. Telephones should not be used to give or receive personal calls which are not urgent.

9.3 The cost of any personal call made on a Council mobile phone must be repaid, regardless of whether it is within the agreed 'free time'. (To avoid mobile phones becoming a personal taxable benefit, you should repay the cost plus 5 %.)

## 10. Use of ICT

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10.1 There is a separate policy on the use of computers, email and internet facilities and you should refer to this policy for the rules governing acceptable use.

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## 11. Inventions / patents / copyright / publication of work / conferences

- 11.1 If you have invented or written something at work then as a general rule it belongs to your employer if:
- it has been written/made in the course of your normal duties
  - it has been made/written in the course of your duties and might reasonably be expected as part of your duties.
- 11.2 You must also make sure that you do not breach the copyright held by others so that if you wish to copy the work of others you should seek their permission and acknowledge the source.

### Conferences

- 11.3 You may be invited to address conferences or make presentations about your area of work. If you are asked to address a conference or make a presentation you must consult your manager before you accept the request, as there may be some occasions when the Council would not wish to be officially associated with the organising body. You must not personally accept fees for such work, but you may accept expenses and/or the ability to attend the full conference. There may be exceptions whereby your own time and resources are being used and you can be paid for the work. You should nonetheless seek your [Executive](#) Director's advice before accepting a fee, and should refer to the "Outside commitments/Working Time Directive and declaration of interests" section of this Code (section 4).

## 12. Appointing staff / discipline and grievance

- 12.1 If you are involved in making appointments you must make sure these are made on merit against an agreed person specification and in accordance with the Council's recruitment policy and procedures.
- 12.2 It is unlawful for you to make an appointment based on anything other than the ability of the candidate to undertake the work. In order to avoid any possible accusation of bias, you must not be involved in an appointment if you are related to an applicant, or have a personal relationship with them outside work.
- 12.3 It is also important that there is no suggestion of collusion among panel members. You should not be a member of a panel which includes your partner or someone with whom you have a close personal relationship.
- 12.4 You must not canvass on behalf of an applicant.
- 12.5 Similarly, you must not be involved in decisions relating to discipline capability, grievance procedures, pay adjustments or promotion for any other officer who is a relative, partner or close friend.

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### 13. Gifts

13.1 You must, at all times, avoid any occasion for suspicion and any appearance of improper conduct. Any gift, reward or benefit offered to you as a Council officer should generally be refused. You should report any offers of expensive gifts to your Head of Service, [Executive Director](#) or the Monitoring Officer. Gifts offered to you (whether or not you accept them) are to be recorded by you in the register as follows:-

(a) If the gift is of a nominal value of £25 or less, you have discretion as to whether or not to record the gift. Thus, for example, you would not normally record being given gifts mentioned in category (a) in paragraph 12.2 below, but it would probably be appropriate to record gifts in categories (b) and (c) even if worth less than £25.

(b) If the gift is of a nominal value of more than £25 you must record it.

Note 1: If your department or team has special rules about accepting / refusing gifts, you must also comply with those rules.

Note 2: The form on which gifts and hospitality should be registered can be found on the Council's intranet.

13.2 Gifts may only be accepted if they are:

(a) small and of modest value or of a promotional or advertising nature, e.g. calendars, diaries, pens and other similar articles (see also below)

(b) small gifts offered during official authorised hospitality, e.g. gifts on the conclusion of any courtesy visit of a type normally given by that organisation

(c) small gifts given by service users or clients. Where appropriate, such gifts should be shared between teams.

13.3 Gifts that are not acceptable must be declined or returned.

13.4 It is very important that any gifts or other promotional material (pens, calendars, diaries) which carry names or logos should not be used or displayed in public areas. This is to avoid unintentional promotion or endorsement of such products or services.

### 14. Hospitality

14.1 You may receive hospitality from other Councils, organisations or individuals as part of your work. You should avoid being personally entertained by those who want, or are likely to want, something from you or the Council. When hospitality is offered, you need to consider

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how this may be perceived by others. Hospitality must not be accepted from any parties concerned in a contract during the tendering period.

14.2 When considering offers of hospitality you should consider whether:

- the invitation comes from an organisation likely to benefit from the Council
- the organisation is seeking a contract with the Council, or already has a contract with the Council
- the hospitality is part of a conference, seminar etc. or is more of a social function
- the scale and location of the hospitality is relative to the event
- the event takes place outside normal working hours
- it is being offered on a frequent basis
- it is being offered just to you or to others as well.

14.3 All offers of hospitality, whether or not accepted, are to be recorded in the register of gifts and hospitality as follows:

- (a) You do not need to record any hospitality which is an integral part of a conference or seminar and is being offered to all delegates.
- (b) Otherwise, if the hospitality is
- (i) of a nominal value of £25 or less, you have a discretion as to whether or not to record the hospitality. It is suggested that you should record it unless it falls within the three acceptable categories mentioned at paragraph 12.8 below;
  - (ii) of a nominal value of more than £25 you must record it.

14.4 After consideration, you may wish to decline the hospitality. You may refer to this Code when you decline hospitality, and you should record in the register what was offered and refused by you. If the individual or organisation later comes under investigation, it will be important to know all the offers that were made, not just those accepted.

Note 1: If your department or team has special rules about accepting / refusing hospitality, you must also comply with those rules.

Note 2: The form on which gifts and hospitality should be registered can be found on the Council's intranet.

14.5 Below are some broad guidelines on what is generally acceptable and unacceptable.

#### 14.5.1 **Acceptable**

- modest working refreshments or meals provided that their purpose is to continue the work underway in the meeting
- attendance in an official capacity at functions to which invitations have been sent to other local authorities

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- attendance in an official capacity at functions arranged by local public service bodies and other public authorities.

#### 14.5.2 Unacceptable

- holidays or weekends away
- the use of a company flat or suite
- lunch with a developer who is applying for planning permission
- tickets to theatre, concerts or sporting events which are offered to you to influence your decisions in the Council and which you would not attend in an official capacity.

### 15. Sponsorship, giving or receiving

15.1 When an outside organisation wishes to sponsor activity, or is being asked to sponsor a Council activity, the basic conventions covering acceptance of gifts or hospitality apply. You must take particular care when dealing with suppliers or contractors or potential suppliers or contractors.

15.2 Where the Council wishes to sponsor an event or activity, then you, your partner, spouse or relative must not directly benefit from this sponsorship. If you think you may have some benefit from sponsorship, you must advise your manager before the sponsorship is agreed. This could protect you from potential allegations of favouritism or bias. Similarly, where the Council (through sponsorship, grant aid, financial or other means) gives support in the community, you must make sure that you give impartial advice and that there is no conflict of interest involved.

### 16. Information, openness and confidentiality

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16.1 Brighton & Hove City Council wants to ensure that it operates openly: this means that information should generally be available to the public. However, you should be aware that certain types of information are confidential and must remain confidential (even after you or the person concerned has left employment with the Council). Such types of information include:

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- personal information given in confidence
- information that might compromise the right of commercial confidentiality
- information that if disclosed might prejudice enforcement action
- information that the Authority is not allowed or required by law to disclose (e.g. under data protection legislation)
- information relating to the prevention, investigation or prosecution of a crime
- information that is defamatory

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- information that appears in the confidential part of committee or council reports – Part 2 papers, often printed on pink paper

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This list is not exhaustive

- 16.2 You should never pass on information, confidential or otherwise, for personal or financial benefit.
- 16.3 You should be clear about the scope of information to which you have access and the constraints and freedoms applicable.
- 16.4 If you are in any doubt about whether information is confidential or not you should consult your line manager or the council's Monitoring Officer.

## 17. Use of financial resources / financial regulations

- 17.1 You must make sure that you use the public funds for which you are responsible in a responsible and lawful manner and in accordance with the Council's Contract Standing Orders, Financial Regulations and Anti-fraud and Corruption Policies. If you feel there is evidence of financial impropriety, fraud or corruption you should contact the Head of Audit & Business Risk immediately.

## 18. The role of the Monitoring Officer

- 18.1 The Monitoring Officer is responsible for making sure that Councillors and officers act with propriety and within the law. He/she has a statutory responsibility to produce a report to full Council in the event of any possible illegality, maladministration or injustice coming to his / her attention. The Monitoring Officer in Brighton & Hove City Council is the Head of Law.

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## 19. Raising concerns

- 19.1 The Council takes any malpractice seriously and is committed to taking action when such practices are drawn to its attention. Examples of malpractice include bribery, fraud, corruption, gross negligence, risks to public safety or where capability is impaired by alcohol or drugs. There may be occasions when such practices are hidden or covered up and need to be drawn to the attention of the Council.
- 19.2 To make it easier for you to raise your concerns the Council has a procedure which allows you to raise your concern confidentially and, if necessary, outside your department. This is the Whistleblowing Policy and you can find this on the Council's intranet.

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- 19.3 If you feel that you cannot raise your concerns within the Council, then you can contact the charity Public Concern at Work (Tel. 020 404 6609), which is a registered charity independent of Brighton & Hove City Council whose services are free and strictly confidential.

## 20. Responding to complaints

- 20.1 Brighton & Hove City Council is committed to being open with its service users and to treating their complaints fairly. Information about the Council's complaints procedures is included in the Council's series of leaflets "Complaints, compliments, comments and suggestions" which are available at main Council reception points or from the Council's Standards and Complaints Team. This Team can also give you guidance on how to handle complaints.

## 21. Useful information

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- 21.1 Whistleblowing Policy - available from the Head of Human Resources & Organisational Development or Internal Audit  
 Equalities & Inclusion Policy - available from the Head of Human Resources & Organisational Development  
 Anti-fraud and Corruption Strategy - available from Internal Audit  
 Contract Standing Orders - available from Head of Procurement  
 Code of Conduct for Member–Officer Relations – available from the Head of [Law](#)  
 Code of Conduct for Members – available from the Head of [Law](#)

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All these documents are also available on the Wave. Search for **constitution** in the **Library** and click open **Constitution – all documents**

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 . Tel. 29-7329☎  
 Head of Legal & Democratic Services . Tel 29-1500☎  
 Internal Audit (Head of Audit & Business Risk) . Tel. 29-1323☎  
 Head of Human Resources & Organisational Development . Tel. 29-1290☎  
 Head of Health and Safety . Tel.29-1305☎  
 Head of Strategy Finance & Procurement . Tel. 29-1240☎

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<b>Subject:</b>	<b>Guidance for Members and Officers on Confidential Information</b>		
<b>Date of Meeting:</b>	<b>Audit and Standards Committee 16 April 2013</b>		
<b>Report of:</b>	<b>Head of Law and Monitoring Officer</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Abraham Ghebre-Ghiorghis</b>	<b>Tel: 291500</b>
	<b>Email:</b>	<b>Abraham.Ghebre-Ghiorghis@brighton-hove.gov.uk</b>	
<b>Wards affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE**

Note: The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that while it was necessary to make progress on the implementation of the decisions taken by the committee at their meeting of 22/1/13, it was also necessary to consult on the proposed guidance document appended to this report at the recent meetings of the Informal Chairs and the Standards Working Group.

**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 The purpose of this report is to bring to the Audit & Standards Committee an updated guidance document on confidential information for Members and Officers which has been drafted following the decisions the Committee took at its meeting on 22<sup>nd</sup> January 2013.
- 1.2 Those decisions were taken with the intention of improving the way the council manages confidential information.

**2. RECOMMENDATIONS:**

- 2.1 That the committee approves the Guidance for Members and Officers on Confidential Information appended to this report.
- 2.2 That a copy of the revised guidance be circulated to all Members following approval by the Committee.

**3. BACKGROUND INFORMATION:**

- 3.1 At its meeting on the 22<sup>nd</sup> January 2013, the Audit and Standards Committee received a report entitled "Managing Confidential Information". This referred to an investigation that had been carried out by the Monitoring Officer. The investigation took place following a series of unauthorised disclosures of confidential information.
- 3.2 The recommendations made in the January 2013 report were accepted by the members. The members agreed that the wide range of action points detailed in

the appendix to the report, which were aimed at improving the council's management of confidential information, should be implemented.

- 3.3 One of these recommendations was that proposed new guidance and suggested revisions to the various existing codes and protocols on this topic should be submitted to them for approval at a future meeting.
- 3.4 It was just over three years ago that the Standards Committee (of the 19<sup>th</sup> January 2010) approved the current version of the council's guidance document entitled "Guidance to Members and Officers regarding Confidential Information".
- 3.5 Following the decisions taken at the latest meeting of the Audit and Standards Committee of 22<sup>nd</sup> January 2013, a revised version of this document is appended to this report.
- 3.6 The proposed guidance attached is a result of a review of the existing 2010 document. It has been drafted as part of the overall exercise of producing the proposed new documents and revisions to existing documents that members are being asked to consider elsewhere on this agenda.
- 3.7 The proposed changes to the 2010 version of this guidance are minor and mainly cosmetic in nature. The opportunity has also been taken to ensure that cross references to and quoted extracts from other relevant documents, such as paragraph 4 (on confidentiality) of the Code of Conduct for Members, are consistent with any proposed changes to those documents.

#### **4. ENGAGEMENT AND CONSULTATION**

- 4.1 Prior to accepting the recommendations of the report taken to their meeting of 22 January 2013, members had noted that the outcome of the investigation and recommended actions were taken to the Leaders Group on 7<sup>th</sup> January 2013 for consideration. The proposed actions and implementation schedule were endorsed there.
- 4.2 Consultation has recently taken place on this guidance document at the Informal Chairs meeting and the Standards Working Group.

#### **5. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

- 5.1 The document attached to this report is one of a number to be considered by the committee which relate to the management of confidential information and the proposed actions set out in them involve changes to working practices, codes, protocols and culture, all of which are expected to be achieved within existing departmental revenue budgets.

*Finance Officer Consulted: Anne Silley Date: 26/03/13*

##### Legal Implications:

- 5.2 None other than those incorporated in the proposed guidance itself.

*Lawyer Consulted:*

*Name Andy Couper*

*Date: 08/14/13*

Equalities Implications:

- 5.3 There are no equalities implications arising from the report.

Sustainability Implications:

- 5.4 There are no sustainability implications arising from the report.

Crime & Disorder Implications:

- 5.5 In some cases the disclosure of confidential information or the obstruction of access to information may constitute an offence. Observance of the guidance will contribute to minimising such risks.

Risk and Opportunity Management Implications:

- 5.6 The adoption of appropriate protocols and policies and adherence to the guidance produced following the investigation will set a framework for improvement to the council's corporate governance. Observance of the contents of these documents will lessen the risk of unauthorised disclosure of confidential information.

Corporate / Citywide Implications:

- 5.7 The attached document gives direction on dealing with information that is confidential and must remain confidential. Compliance with it should, along with implementation of the other actions agreed by members at their meeting in January 2013, help to promote an increase in security as well as properly managed openness and transparency at the council.

**6. REASONS FOR REPORT RECOMMENDATIONS**

- 6.1 Acceptance of the recommendation and adoption of the guidance will represent a continued implementation of the broader decisions the committee took on improving the way the council manages confidential information at its meeting on 22/1/13.

## **SUPPORTING DOCUMENTATION**

### **Appendix:**

“Guidance for Members and Officers on Confidential Information”. April 2013.

**Documents in Members’ Rooms**  
**None.**

**Background Documents**  
**None**

## **Guidance for Members and Officers on confidential information**

### **1 Introduction**

**1.1** Openness is one of the council's six organisational values. The Council is therefore committed to the principles of openness and transparency in decision making. However, in the practical application of these principles, the Council needs to have regard to legal obligations, which, in some cases, may require information to be kept confidential. One potentially problematic issue that Members and Officers come across from time to time is the rights and obligations of Members regarding confidential information and the circumstances when such information may be disclosed. This note is intended as a general guidance to assist Members and Officers in dealing with such issues and covers the following topics:

- § What is “confidential information”;
- § Member’s rights to access confidential information;
- § Members’ duty of confidentiality;
- § The position regarding officers; and
- § Some “do’s and don’ts”.

### **2 What is confidential information**

**2.1** There is no legal definition of “confidential information” that is of general application. The confidentiality or otherwise of information therefore needs to be considered in the context of individual circumstances. However, by way of general indicative guidance, the following categories of information would normally be treated as confidential.

- (a) All reports that are in part II of Council or committee agendas (pink papers).
- (b) Matters concerning details of commercial negotiations.
- (c) Where there is a legal restriction on the disclosure of information (for example under the Data Protection Act, contractual obligations, a court order or pending legal proceedings covered by the sub judice rule).
- (d) Matters concerning terms and conditions of employment of individual officers or pending grievance or disciplinary proceedings.
- (e) Personal information concerning individual service recipients (for example child protection cases, benefits investigations etc).
- (f) Information which, given its nature, timing and context is such that a reasonable person would consider it to be confidential. (This would, for example, normally be the case when information is supplied to a Member by an Officer or another person and is clearly stated to be confidential). The disclosure of such information would normally tend to

have a detrimental effect on the interests of the Council, the service users or third parties involved.

- 2.2** Some information which would otherwise be confidential may nevertheless be subject to public rights of access under the law. This, for example, would include subject access under the Data Protection Act 1998, a specific request for access under the Freedom of Information Act 2000, access to accounts and records under the Audit Commission Act 1998 as well as access to meetings and documents under the Local Government Act 1972. Such rights may be general or limited to a “qualifying” individual. Some rights of access to information also have procedural requirements attached to them (such as the need to submit the request in writing.) It is therefore generally advisable for such requests to be forwarded to the relevant officer, even where the Member may have the information at his/her disposal.

### **3 Members’ rights to access confidential information**

- 3.1** The Council has a general commitment to openness and transparency. Members’ access to information and documents should therefore be restricted only where there is a good reason for doing so.
- 3.2** So far as the legal position is concerned, Members do not have unrestricted rights of access to all confidential information. Court judgements have shown that Members have a right to access information on a “need to know” basis. This entitles them to access information or documents that are reasonably necessary to enable them to discharge their functions as Members of the Council. This would cover their roles as members of committees, subcommittees or working groups as well as positions to which they are appointed by the Council as Members and also in their community Councillor roles. The right is limited to a need to know and a mere curiosity or desire to know is not sufficient. The courts have also held that there is no right to a “roving commission” to examine the books or documents of the Council.
- 3.3** An officer receiving a request is entitled to know the reasons why the information is needed so that a proper assessment of the “need to know” can be made. Where a Member is dissatisfied with the decision, the matter may be referred to the Monitoring Officer, who is authorised to make a final decision under the Code of Conduct for Member/Officer relations.
- 3.4** In addition to the rights that have evolved under case law mentioned at 3.2 above, Members have the same rights as ordinary members of the public, including those mentioned in paragraph 2.2 above.
- 3.5** The Council has developed a protocol for access to information. This forms part 7.1 of the Council’s constitution, which is available on the council’s website..

### **4 Members’ duty of confidentiality**

- 4.1** The Local Code of Conduct for Members provides under paragraph 4:

“You must not ---

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

- (i) you have the consent of a person authorised to give it;
- (ii) you are required by law to do so;
- (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third part agrees not to disclose the information to any other person; or
- (iv) the disclosure is ---

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority.

(b) prevent another person from gaining access to information to which that person is entitled by law.”

(c) refuse or fail -

(i) to cooperate with official council investigations into alleged unauthorised disclosures of confidential information, (*whether or not such alleged unauthorised disclosures have been made by yourself or by another member*);or

(ii) to provide full access to all material that in the view of the investigating officer may be relevant to such an investigation.

**4.2** The duty of confidentiality under the code applies only when a Member is acting in an “official” capacity. The information must therefore have been received and/or disclosed by the Member as a Councillor and not in a private capacity unconnected with the role of the Councillor. Subject to that, the duty is not limited to information supplied by officers or the Council; it covers information given to a Member by **any** person in his/her capacity as a Councillor.

**4.3** The code does not define what is confidential. However, what is clear is that it is not necessary for the person who supplied the information to have stated expressly that the information is confidential. For example, the fact that correspondence is not marked “confidential” does not necessarily stop it from being confidential. In many cases the fact that the information is confidential may be inferred from the subject matter and the surrounding circumstances. If you believe the material is confidential or you “ought reasonably to be aware of” the confidential nature of the information, the duty under the code applies. You may wish to consider the guidance under paragraph 2 of this note to help you form a view regarding confidentiality.

**4.4** **The fact that information given in confidence has been improperly made public does not mean that it loses its confidential nature and**

**can thereafter be recited in public with impunity. It is a breach of the code to disclose information of a confidential nature however it is acquired.**

**4.5 There is a public interest in Councils being able to rely on confidential information remaining so where the proper process has been followed. This would for example be the case where Members resolve that an item should remain exempt from disclosure.**

**4.6 Disclosure with consent:** The Code of Conduct refers to “the consent of the person authorised to give it” as a potential justification for the disclosure of confidential information. This would normally be the author of the document, the Executive Director or a senior officer of the department for the area or service. Alternatively, consent may be obtained from the Chief Executive. In appropriate cases, the officer may need to consult the chairman of the relevant committee or sub-committee before giving consent.

**4.7 Disclosure required by law:** Disclosure may be required by law. For example, the information could be required in connection with legal proceedings. Or the information could be required under one of the “exemptions from confidentiality” provisions of the Data Protection Act 1998. Also, under the Data Protection Act 1998 “Subject Access” regime, individuals, when they request it, are entitled to be provided with copies of all the information about themselves that is held by the organisation that the request is made to. In such cases the legal obligation to disclose overrides the duty of confidentiality.

**4.8 Disclosure for the purpose of obtaining advice:** You can disclose confidential information if the disclosure is for the purpose of enabling you to obtain professional advice, such as legal advice from a solicitor. However, your need to make sure that he/she agrees not to disclose the information to a third parties.

## **5 Is there “a public interest” defence?**

**5.1** Paragraph 4 (iv) of the Members’ Code of Conduct permits Members to disclose information “in the public interest.” However, the provision is much more restricted that may appear at first sight. It is subject to four conditions. These are that the disclosure:

- (1) must be reasonable;
- (2) must be in the public interest;
- (3) must be made in good faith; and
- (4) must be made in compliance with any reasonable requirements of the council .

**A. Reasonableness:** the first condition (reasonableness) requires consideration of matters such as:



- Whether you believe that the information disclosed, and any allegation contained in it, is substantially true. If you do not believe this, the disclosure is unlikely to be reasonable.
- Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.
- The identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for you to disclose the information to the world at large through the media.
- The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.
- The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.
- The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing, or is likely to re-occur.
- Whether the disclosure involves your authority failing in a duty of confidence owed to another person.
- **The legitimate expectations of third parties about the information being kept confidential are an important relevant factor when considering whether the disclosure is reasonable.**

**B. Public Interest:** the second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future:

- (a) A criminal offence is committed.
- (b) Your authority some other person fails to comply with any legal obligation to which they are subject.
- (c) A miscarriage of justice occurs.
- (d) The health or safety of any individual is in danger.
- (e) The environment is likely to be damaged.
- (f) That information tending to show any matter falling within (a) to (e) is deliberately concealed.

**In looking at whether disclosure is reasonable and in the public interest for the purposes of the code of conduct for Members, one has to take account of the Human Rights Act. In particular, article 10 (right to freedom of expression) and article 8 (right to respect for private and family life, home and correspondence.) Any interference with the public interest in disclosure has to be**

**balanced against the interference with the right of the individual to respect for their private life. Neither article 8 nor article 10 has any pre-eminence over the other .**

**C. Good Faith:** the third requirement, that the disclosure is made in good faith, will not be met if you act with an ulterior motive, for example, to achieve a party political advantage or to settle a score with a political opponent.

**D. Council's Reasonable Requirements :** The fourth requirement, that you comply with the reasonable requirement of your authority means that before making the disclosure you must comply with your authority's policies or protocols on matters such as whistle-blowing and confidential information and you must raise your concerns through the appropriate channels set out in such policies or protocols..

**5.2** Given the restrictions and qualifications set out above, you need to proceed with extreme caution before disclosing confidential information..

## **6 Position regarding officers**

**6.1** Like Members, Officers have a Code of Conduct. They are in any case subject to a duty of confidentiality under their contract of employment. The unauthorised disclosure of information is a disciplinary offence which in certain cases could lead to dismissal. In addition to the other express or implied conditions of contracts of employment, officers are, as stated above, subject to the Code of Conduct for Employees which forms part of the Council's constitution. In particular, paragraph 16 of the Code outlines the duties of officers, which are similar to the duties imposed on Members. They include the following:

*“You should be aware that certain types of information are confidential (and must remain confidential even after you or the person concerned has left employment with the Council). These include:*

- *personal information given in confidence*
- *information that appears in the confidential part of committee or council reports – e.g. Part 2 papers, often printed on pink paper*
  - *information that might compromise the right of commercial confidentiality*
  - *information that if disclosed might prejudice enforcement action*
  - *information that the authority is not allowed by law to disclose (e.g. under data protection legislation)*
  - *information relating to the prevention, investigation or prosecution of a crime*
  - *information that is defamatory*

*You should never pass on information, confidential or otherwise, for personal or financial benefit.*

*You should be clear about the scope of information to which you have access and the constraints and freedoms applicable.”*

## **7 Whistleblowing**

- 7.1 The Public Interest Disclosure Act 1998 gives employees and contract workers protection from detrimental treatment if, in the public interest, they “blow the whistle.” However, the types of disclosure that are protected by the Act are restricted. They include disclosure of a criminal offence, a breach of legal duty, a miscarriage of justice, damage to the health or safety of an individual, damage to the environment and any deliberate concealment of information tending to show any of the foregoing.
- 7.2 In order for the protection to apply, the disclosure has to be to the employer (i.e. the council itself) or some other person prescribed by regulations. The secretary of state has made regulations which prescribe, among others, the District Auditor, the Charity Commission, the Data Protection Registrar, the Environment Agency and the Health and Safety Executive. In some cases an employee may disclose information to a person not prescribed by the regulations, but only if he/she believes that the disclosure to the employer would result in the destruction or concealment of the information. Disclosure to a newspaper would therefore not be covered by the act in most situations.

## **8 Some “Do’s and Don’ts”**

- 8.1 By way of good practice, the following “Do’s and Don’ts” are suggested for Members.

### **“Do’s”:-**

- When seeking access to what you believe to be sensitive or confidential information, you should, in the first place, approach a senior officer, preferably at Executive Director or Head of Service level.
- Unless it is obvious from the context, you should always say what you need the information for so that a “need to know” can be established.
- It is usually better to ask for a briefing or advice from officers rather than demanding to see files or original documents. If you are not satisfied with the information, you could always ask for specific documents.
- One aspect of the need to know principle is proportionality. In asking for information and documents therefore you need to ensure that what you are asking (in terms of volume of documents, time needed to locate, research and collate the information etc.) is commensurate to your need to know.
- Information in documents held by the Council belongs to the Council corporately rather than to individual officers or Members. Members and officers therefore need to accept that they do not “own” information or documents and they should access them or disclose them only for the purposes of discharging their functions.

- If Members have concerns about matters of a confidential nature, they should raise them with the Chief Executive or the relevant Executive Director. If they have serious concerns and believe that disclosure would hamper a resolution of the matter, they may, in appropriate cases, raise the matter with the District Auditor or, in cases involving a criminal offence, the police. Disclosure of confidential information to the press is most likely to involve a breach of the code of conduct for Members and is rarely justified.
- Members should have regard to their fiduciary duty to the Council and council taxpayers and that they have joint responsibility to avoid the disclosure of information of a commercially sensitive nature. Any confidential information gained by Members in connection with pending or ongoing litigation should not be disclosed under any circumstances as this would amount to a breach of trust.
- Before asking for information of a confidential or sensitive nature you should always ask yourself whether you have a “need to know.”

**“Don’ts”:-**

- Never allow your party political interests to override the interests of the Council and Council Tax payers in the way that you deal with access to or the disclosure of information.
- Just because communication is not labelled “confidential”, you should not assume that it is for general release. You should always consider the circumstances.
- The disclosure of confidential information that does not come within the narrowly defined exemptions is a breach of the Code of Conduct. You should not try justify any such action by reference to other principles.
- Do not disclose information gained while serving in working groups or panels, which is not meant to be for public consumption. You should have regard to the guidance on working groups, which states that there is a presumption that information relating to the business of such groups is confidential.
- Members should avoid stepping into a role, which is more appropriate for officers, and Officers likewise should respect Members’ need to know and not withhold information unless there is good reason for doing so.
- Don’t take risks. If in doubt, ask!

**9 General**

- 9.1 This paper is meant by way of general guidance as does not attempt to cover all eventualities.

**Abraham Ghebre-Ghiorghis**  
**Head of Law and Monitoring Officer**  
**April 2013**

