



STANDARDS COMMITTEE

DATE: Monday, 23 July 2018
TIME: 10.00 am
VENUE: Council Chamber, Council Offices,
Thorpe Road, Weeley, CO16 9AJ

MEMBERSHIP:

Councillor Heaney (Chairman)
Councillor Bray (Vice-Chairman)
Councillor Bucke
Councillor S Honeywood

Councillor Nicholls
Councillor Steady
Councillor Whitmore

Most Council meetings are open to the public and press.

Agendas and Minutes are published on the Council's website www.tendringdc.gov.uk. Agendas are available to view five working days prior to the meeting date and the Council aims to publish Minutes within five working days of the meeting.

Meeting papers can be provided, on request, in large print, in Braille, or on disc, tape, or in other languages.

For further details and general enquiries about this meeting, contact Ian Ford on 01255 686584.

DATE OF PUBLICATION: Thursday 12 July 2018

AGENDA

1 Apologies for Absence and Substitutions

The Committee is asked to note any apologies for absence and substitutions received from Members.

2 Minutes of the Last Meeting (Pages 1 - 6)

To confirm and sign as a correct record, the minutes of the meeting of the Standards Committee, held on Monday 19 March 2018.

3 Declarations of Interest

Councillors are invited to declare any Disclosable Pecuniary Interests or Personal Interest, and the nature of it, in relation to any item on the agenda.

4 Questions on Notice pursuant to Council Procedure Rule 37

Subject to providing two working days' notice, a Member of the Committee may ask the Chairman of the Committee a question on any matter in relation to which the Council has powers or duties which affect the Tendring District **and** which falls within the terms of reference of the Committee.

5 Report of the Monitoring Officer - A.1 - Review of the Protocol on Member/Officer Relations (Pages 7 - 18)

To undertake a review of the Protocol on Member and Officer Relations, which was last adopted by the Standards Committee in September 2014 to ensure that it is current and reflects best practice.

6 Discussion Topics and/or Updates from the Monitoring Officer

The Monitoring Officer will give a quarterly update on Complaints.

Date of the Next Scheduled Meeting

The next scheduled meeting of the Standards Committee is to be held in the Council Chamber, Council Offices, Thorpe Road, Weeley, CO16 9AJ at 10.00 am on Wednesday, 3 October 2018.

Information for Visitors

FIRE EVACUATION PROCEDURE

There is no alarm test scheduled for this meeting. In the event of an alarm sounding, please calmly make your way out of any of the fire exits in the hall and follow the exit signs out of the building.

Please heed the instructions given by any member of staff and they will assist you in leaving the building and direct you to the assembly point.

Please do not re-enter the building until you are advised it is safe to do so by the relevant member of staff.

Your calmness and assistance is greatly appreciated.

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**MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE,
HELD ON MONDAY, 19TH MARCH, 2018 AT 10.00 AM
IN THE COUNCIL CHAMBER, COUNCIL OFFICES, THORPE ROAD, WEELEY,
CO16 9AJ**

Present:	Councillors Heaney (Chairman), Honeywood (Vice-Chair)(except items 26 (part) - 27), Bray, Bucke, Nicholls, Steady and Whitmore
In Attendance:	Lisa Hastings (Head of Governance and Legal Services & Monitoring Officer), Linda Trembath (Senior Solicitor (Litigation and Governance) & Deputy Monitoring Officer) and Ian Ford (Committee Services Manager & Deputy Monitoring Officer)
Also in Attendance:	Clarissa Gosling and John Wolton (Independent Persons)

21. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were received from Councillor J A Brown (with Councillor Whitmore substituting).

22. MINUTES OF THE LAST MEETING

The minutes of the meeting of the Standards Committee, held on 22 January 2018, were approved as a correct record and signed by the Chairman.

23. DECLARATIONS OF INTEREST

There were none on this occasion.

24. REPORT OF THE MONITORING OFFICER - A.1 - MANDATORY TRAINING FOR MEMBERS - ANNUAL UPDATE

There was submitted a report (A.1) by the Monitoring Officer which sought to update the Committee, as part of its agreed work programme, on the current position of mandatory training for Members and named substitute Members of the Council's Audit, Licensing & Registration, Planning and Standards Committees.

The report reiterated the Council's decision and constitutional requirement to make relevant training mandatory for Members, and their named substitutes, in respect of a number of the Council's Committees and also provided details of training undertaken and attendance to date.

Appendix A to the report provided details of those Members who had undertaken 1-2-1 Code of Conduct sessions with the Monitoring Officer, either following a recommendation from the Standards Committee, or following election to the Council. The Monitoring Officer confirmed that due to the type of matters considered by the Standards Committee, each topic involved consideration of the relevant factors and in doing so the Committee received a range of information to take into account. When hearings were required to determine the outcome of Members' Code of Conduct complaints a briefing was held with the members of the Committee beforehand.

Appendix B to the report provided details of the Planning Committee Mandatory Training for 2017/18. The Committee noted that the usual range of subjects had not been delivered, with concentration on determining applications and the Local Plan, as both of those sessions were essential to understanding the various considerations to be taken into account by the Planning Committee when making decisions on applications.

Appendix C to the report detailed the training record for the Licensing and Registration Committee. This year only one session had been delivered but it had covered a range of topics.

Appendix D to the report was the training record for the Audit Committee.

The Committee was reminded that to ensure that the training was successful and the application of the principles was understood by Members, each session tended to have a workshop style question and answer session at the end. This style had been adopted by the Licensing and Registration and Planning Committees' training sessions and had worked well for both Members and officers and had encouraged debate.

It was reported that recently, as part of the committee structure review, members of the Electoral Review Working Group had raised the requirements to attend mandatory training and the consequences for failing to do so. Whilst the Constitution required a Member to undertake mandatory training if they were a member of certain committees, the rules were silent on the consequences of failing to do so. It was acknowledged that in the majority of cases, if a Member had not undertaken mandatory training they would not take part in certain decision making. However, without the relevant Group Leader's co-operation this would be difficult to enforce if a Member failed to observe the rules.

The Electoral Review Working Group had therefore requested that the Monitoring Officer undertake a review of the constitutional requirements relating to attending mandatory training linked to committee membership. Due to falling within its terms of reference, the Monitoring Officer would consult the Standards Committee on any new proposals.

Following discussion by the Committee, it was moved by Councillor Whitmore, seconded by Councillor Nicholls and -

RESOLVED that the Standards Committee:

- (a) notes the contents of the report and its Appendices;
- (b) encourages Members of the Planning, Licensing and Registration and Audit Committees to attend organised mandatory training to comply with the constitutional requirement;
- (c) welcomes a review of the constitutional requirements relating to attending mandatory training linked to committee membership and requests that the Committee is consulted on any new proposals. Further that any such review should also examine the relationships/implications between Members' attendance at meetings and Members' allowances; and
- (d) that, in future, the Independent Persons be invited to attend Member training sessions on the Code of Conduct.

After further discussion it was moved by Councillor Bray, seconded by Councillor Steady and –

RESOLVED (e) that, the Committee at its first meeting after the District Council Elections in May 2019, receive details pertaining to the attendance of Members at the training sessions on the Members' Code of Conduct.

25. REPORT OF THE MONITORING OFFICER - A.2 - ANNUAL REPORT ON DECLARATIONS OF INTEREST AND ASSOCIATED MATTERS

There was submitted a report (A.2) by the Monitoring Officer which provided the Committee with an overview on the register of, and declarations of interests by, Members in the period 11 March 2017 to 28 February 2018. The report provided statistics and related information on -

- 1) the Register of Members' Disclosable Pecuniary Interests including a specific dispensation granted by the Monitoring Officer;
- 2) declarations of interest at meetings;
- 3) use of blanket dispensations;
- 4) declarations of offers/receipt of gifts and hospitality; and
- 5) revised declarations of interest with effect from April 2018.

The data had been collated from the Committee modern.gov IT system and from Members' submissions.

Having considered the information submitted it was moved by Councillor Bray, seconded by Councillor Bucke and:

RESOLVED that the contents of the report be noted.

26. REVIEW OF LOCAL GOVERNMENT ETHICAL STANDARDS BY THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

The Committee considered submitting a response to the stakeholder consultation by the Committee on Standards in Public Life on its review of local government ethical standards. The review was considering all levels of local government and its terms of reference were to:

- examine the structures, processes and practices in local government in England for:
 - maintaining codes of conduct for local councillors
 - investigating alleged breaches fairly and with due process
 - enforcing codes and imposing sanctions for misconduct
 - declaring interests and managing conflicts of interest
 - whistleblowing.
- assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government.
- make any recommendations for how they can be improved.

- note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation.

The consultation was due to end on 18 May 2018.

During the debate, the Committee requested that further consideration be given to whether the Council should register all Members of the Council, on their behalf, as data controllers with the Information Commissioner's Office rather than requiring Members to register on an individual basis and reimburse the fee. Although recent guidance had been issued by Officers, a number of the Committee had different interpretations of the current position and sought further guidance and clarification. The Monitoring Officer agreed to raise this with the Corporate Director for Corporate Resources.

Having considered the information submitted and questions asked in the consultation document it was moved by Councillor Bray, seconded by Councillor Heaney and:

RESOLVED that the Monitoring Officer be authorised to submit, in consultation with the members of the Committee, the Council's formal response to the stakeholder consultation by the Committee on Standards in Public Life on its review of local government ethical standards.

27. DISCUSSION TOPICS AND/OR UPDATES FROM THE MONITORING OFFICER

Prior to the update from the Monitoring Officer, the Chairman wished the Committee to discuss the matter of non-payment of Council Tax by Councillors which was receiving public interest.

Following debate by the Committee it was moved by Councillor Heaney, seconded by Councillor Bray and -

RESOLVED that:

- (a) the Standards Committee is disappointed that a number of Councillors have recently failed to pay Council Tax and reminds all District Council Members of the Guidance approved by the Standards Committee and issued last year and requests the Monitoring Officer to reissue the same;
- (b) Non-payment of Council Tax is regarded as a matter of bringing the Council into disrepute and failing to demonstrate several of the Nolan Principles, especially when Councillors receive a monthly allowance; and
- (c) this subject is included within the Standards Committee's response to the stakeholder consultation by the Committee on Standards in Public Life on its review of local government ethical standards, particularly in relation to the lack of sanctions.

Quarterly Complaints Update

The Monitoring Officer circulated to the Committee the quarterly schedule, which gave general details of complaints received, without providing any names, and went through them with the Committee.

General Notes – Matters arising through January to March 2018

The Monitoring Officer informed the Committee that, unfortunately, due to an increase in her workload/lack of capacity it had not been possible to finalise two of the pending complaints within the time scale specified in the Council's Complaints Procedure.

To that end the Deputy Monitoring Officer arrangements had been amended to provide additional resource to the Monitoring Officer.

Members were informed that Linda Trembath (Senior Solicitor) would assist with future matters relating to complaints and, in addition, a governance officer post to be shared with the Council's Section 151 Officer had been approved for recruitment.

Members were also informed that Ian Ford (Committee Services Manager) would be a further source of advice on matters relating to the Council's Constitution.

Requests for Dispensations

The Committee was advised that no requests for dispensations had been submitted to the Monitoring Officer since the last update to Members.

The Committee's Work Programme for 2018/2019

The Committee gave consideration to its work programme for the 2018/2019 Municipal Year.

Members had before them a suggested work programme which had been submitted by the Monitoring Officer.

It was moved by Councillor Nicholls, seconded by Councillor Bray and –

RESOLVED that the annual Work Programme for 2018/2019, as set out below, be approved –

20 June 2018 (provisional date)

- Review of Member and Officer Relations Protocol (contained within the Members' Constitution Booklet);
- Consultation on proposed changes to mandatory training requirements
- Quarterly Complaints update by Monitoring Officer

3 October 2018 (provisional date)

- Consider and approve recruitment arrangements for Independent Persons for appointment from May 2019
- Quarterly Complaints update by Monitoring Officer

16 January 2019 (provisional date)

- Review – update for the Committee on decisions and actions taken nationally for information and guidance

- Quarterly Complaints update by Monitoring Officer

20 March 2019 (provisional date)

- Update on Mandatory Training
- Annual Report on declarations of interest (meetings, gifts and hospitality)
- Work Programme 2019/2020
- Quarterly Complaints update by Monitoring Officer

The Committee was aware that individual matters might be referred to the above meetings by the Monitoring Officer in accordance with the Committee's Terms of Reference as necessary, for example an appeal against dispensation decision or a code of conduct hearing.

The meeting was declared closed at 1.02 pm

Chairman

STANDARDS COMMITTEE

23 JULY 2018

REPORT OF THE MONITORING OFFICER

A.1 REVIEW OF THE PROTOCOL ON MEMBER/OFFICER RELATIONS

(Report prepared by Lisa Hastings)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To undertake a review of the Protocol on Member and Officer Relations, which was last adopted by the Standards Committee in September 2014 to ensure that it is current and reflects best practice.

EXECUTIVE SUMMARY

The Protocol on Member/Officer Relations was adopted by the Standards Committee in September 2014 in accordance with its terms of reference.

The Protocol has initially been reviewed by the Monitoring Officer in consultation with the Chief Executive and Management Team to reflect the current working practices and enhance the Access to Information provisions. The amendments suggested for consideration by the Standards Committee when undertaking its review are:

- **to ensure the current wording is consistent with the Constitution;**
- **insert that any appropriate challenges between Members and Officers should be undertaken in a professional and respectful manner;**
- **clarify that Officer conduct will be dealt with in accordance with the Council's Human Resources Policies and Procedures; and**
- **insert provisions on the common law 'need to know' principle.**

RECOMMENDATION(S)

It is recommended that:

1. **Subject to any proposed amendments requested by the Standards Committee, that the revised Protocol on Member/Officer Relations as set out in Appendix A is approved and adopted.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The purpose of this protocol is to provide a guide to good working relationships between Members and Officers, defining their respective roles and outlining the principles that underpin their relationship.

This protocol also builds on the Council's good governance arrangements and promotes the maintenance of our Values with Councillors and staffing upholding personal integrity, honesty and respect for others.

FINANCE, OTHER RESOURCES AND RISK

Finance and Other Resources

Finance

None associated with the content of this report.

Risk

The Council must ensure that any Codes and Protocols are up to date with current policy, legislation, good practice and national guidance.

LEGAL

The Protocol follows best practice and assists the Council to fulfil its statutory duty to promote and maintain high standards of conduct for both members and officers.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following:

Equality and Diversity

Wards Affected: All

PART 3 – SUPPORTING INFORMATION

CURRENT POSITION

The success of the Council is greatly dependent upon the positive nature of the working relationship between Members and Officers. Mutual trust and respect between Members and Officers is essential to good local government. In 2014, the Standards Committee adopted the Protocol on Member/Officer Relations, which is contained within the Councils' Constitution.

The recent Local Government Association Peer Review feedback in its report that *"Member and Officer relationships are good. Members are engaged and well briefed on issues. They value the informal "all member briefings" that take place each month as well as the other opportunities to be involved."*

The existing Protocol is considered to still represent best practice however; following an initial review by the Monitoring Officer in consultation with the Chief Executive and his Management Team a few minor amendments are suggested for consideration by the Standards Committee in undertaking its review.

It is essential that the wording of all the Council's Codes and Protocols are up to date with its current policy and the legal position. Therefore, it is suggested that the role of Members is updated to ensure consistency with Article 2 of the Constitution and the position of the Chief Executive, as set in Article 12, is included due to importance in relation to staffing

matters.

An express principle is included stating any appropriate challenges between Members and Officers must be undertaken in a professional and respectful manner.

A new paragraph 5.3 is proposed for inclusion under the Access to Information section referring to the common law principle that councillors have the right to access information held by the Council where it is reasonably necessary to enable the member to properly perform their duties as a councillor. In some instances, it may be necessary for a councillor to demonstrate their 'need to know' and the paragraph provides some explanation on the principle and sets out who can request further justification before providing the information.

*“5.3 Members are entitled to receive information from Officers in a timely manner to reasonable requests for the purposes of undertaking their role as Ward Councillors, decision makers and performing functions, such as overview and scrutiny (**this is referred to as the common law ‘need to know’ principle**). Under common law principles councillors have the right to access information held by their authority where it is reasonably necessary to enable the member to properly perform their duties as a councillor.*

However, if the member’s motive for seeing documents is indirect, improper or ulterior this may be raised as a bar to their entitlement. Members are not, therefore, allowed to go off on ‘fishing expedition’ through their council’s documents. If a councillor is a member of a particular committee or sub-committee, then they have the right to inspect documents relating to the business of that committee or sub-committee. If not a member of that committee or sub-committee, the councillor would have to show good cause why sight of them is necessary to perform their duties (See R v. Clerk to Lancashire Police Committee ex parte Hook [1980] Q.B. 603). In such instances, the Chief Executive, Management Team, Section 151 or Monitoring Officers may request a member to demonstrate their ‘need to know’.”

In a few instances, unreasonable, frivolous and vexatious requests for information are received and the revised Protocol suggests that these matters would be referred to the Chief Executive or Monitoring Officer to respond to.

Subject to any additional observations the Standards Committee may have in undertaking the review of the Protocol at the meeting, it is recommended that the revised document as shown at **Appendix A** is approved and adopted for inclusion with the Constitution and circulated separately to all Members and Senior Managers.

APPENDICES

Appendix A – revised Protocol on Member/Officer Relations

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PROTOCOL ON MEMBER & OFFICER RELATIONS

INTRODUCTION:

The success of the Council is greatly dependent upon the positive nature of the working relationship between Members and Officers. Mutual trust and respect between both Members and Officers is essential to good local government.

The purpose of this protocol is to provide a guide to good working relationships between Members and Officers, defining their respective roles and outlining the principles that underpin their relationship.

The protocol also builds on the respective Codes of Conduct for both Members and Officers and through this promotes the maintenance of integrity, both real and perceived, of the Council as well as very high standards of personal conduct.

1. THE ROLES OF MEMBERS AND OFFICERS:

- 1.1 In fulfilling their roles, the elected Members and Officers are both jointly responsible for:
 - (a) acting honestly, with integrity and in the public interest; and
 - (b) open and transparent objective decision making;
- 1.2 In addition, **as set out in Article 2 of the Council's Constitution**, the elected Members **role is to** ~~are responsible for~~:
 - (a) ~~the initiation and direction of policy;~~ **UPDATED WITH CURRENT WORDING**
 - (b) ~~democratic accountability to the electorate for their actions and service delivery;~~
 - (c) ~~the scrutiny of Council services;~~
 - (d) ~~community leadership;~~
 - (e) ~~the promotion of partnership working; and~~
 - (f) ~~the presentation of Council policy.~~
 - a) **Collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;**
 - b) **Represent their communities and bring their views into the Council's decision-making process, i.e. become an advocate for their communities;**

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- c) Effectively represent the interests of their ward and of individual residents;
 - d) Respond to residents' enquiries and representations, fairly and impartially and assist in the resolution of concerns and grievances;
 - e) Be involved in decision-making for the people of the District as a whole;
 - f) Be available to represent the Council on other bodies; and
 - g) Contribute to the governance and effective management of the Council's business at meetings of the Council, Cabinet and other Committees and Sub-Committees, maintaining the highest standards of conduct and ethics.

1.3 In addition, the Officers are responsible for:

- (a) providing professional and technical advice that Members must have before them when formulating policy and when taking decisions;
- (b) lawfully implementing Members' decisions;
- (c) day-to-day administration, including staffing matters;
- (d) taking managerial and operational decisions in accordance with the Council's Scheme of Delegation;
- (e) the provision of information regarding Council services; and
- (f) undertaking public consultation.

2. **WORKING RELATIONSHIPS – UNDERPINNING PRINCIPLES:**

To be followed by **both Members and Officers** in fulfilling their duties:

- mutual respect and courtesy between Officers and Members;
- an awareness of each other's responsibilities and duties;
- no inappropriate criticism, intimidating behaviour or the creation of a threatening work environment of any kind from either Members or Officers.

(Grey)

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- Any appropriate challenges are to be conducted in a professional and respectful manner;
 - equal treatment, regardless of personal or political opinion (actual or perceived);
 - an adherence to the law and the lawful instructions and advice of others; and
 - an avoidance of close personal familiarity.

The above principles are designed to foster the good working relationships between Officers and Members that are essential to effective decision making and the delivery of services.

Alleged breaches of the Members' Code of Conduct are dealt with through the Council's Standards Committee and in relation to the Officer Code, by the Head of Paid Service, in accordance with the Council's Human Resources Policies and Procedures.

If an Officer is concerned about the conduct of a Member, they should report this to their senior manager, who will notify both the Head of Paid Service and the Monitoring Officer. These concerns could include public criticism of an Officer by a Member or unreasonable, frivolous or vexatious requests for information.

3. OFFICER APPOINTMENTS, PERFORMANCE AND POLITICAL NEUTRALITY:

- 3.1 The appointment of the Chief Executive (Head of Paid Service), the Monitoring Officer, the Chief Financial Officer, the Deputy Chief Executive/Corporate Directors and Heads of Service will be made in accordance with the Officer Employment Procedure Rules. All other appointments are made at the appropriate Officer level.
- 3.2 The **Main Functions and Areas of Responsibility of Officers** are set out in Article 12 of the Council's Constitution. The Position of the Chief Executive (Head of Paid Service) is to have overall corporate management and operational responsibility (including overall management responsibility for all officers).
- 3.3 Staffing matters (including discipline, training, setting and monitoring targets) are dealt with by the relevant managers, although the relevant Portfolio Holders/Cabinet Members will agree to targets in the case of the Chief Executive. All other targets are set at Officer level.
- 3.4 Members wishing to comment on an individual Officer's performance and/or deficiencies are usually expected to raise the matter with the relevant Deputy Chief Executive/Corporate Director in the first instance. Thereafter to the Chief Executive if unresolved.

(Grey)

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- 3.5 Officers are politically neutral, serve the whole Council and must avoid being identified with any political group. In order to safeguard this neutrality, Officers must avoid involvement in party political matters, such as campaigns in the

political arena. This assumes particular significance in the run up to ~~District Council and General~~ Elections. In their lives outside work, all politically restricted posts, which includes the Chief Executive, the Deputy Chief Executive/Corporate Directors and many Senior Officers are prevented from active political involvement.

3.5 OFFICER ATTENDANCE AND ADVICE TO PARTY GROUPS

- 3.5.1 The political parties represented on the Council hold regular group meetings. Officers do not usually advise at these meetings, but may be invited to give information. All invitations should be routed through the Chief Executive.
- 3.5.2 There is statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such items being considered by the relevant Council decision-making body. The support provided by Officers can take many forms, ranging from a briefing meeting with a Cabinet Member, Chairman or spokesperson (either jointly or individually) prior to a meeting, to a presentation to a full party group meeting. Whilst in practice such Officer support is likely to be most in demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.
- 3.5.3 The parameters for support to party groups and individuals must be clearly understood, and to assist in this the following applies:-
- (i) The Chief Executive will inform all party groups of the facility for an Officer to attend a party group meeting for a specific purpose and will decide, on request, which Officer may attend.
 - (ii) Support must not extend beyond providing information and advice in relation to Council business. Officers must not be involved in advising on matters of party business and should not, therefore, be present at group meetings when such matters are being discussed.
 - (iii) Party group meetings are not empowered to make decisions on behalf of the Council and therefore any conclusions reached at group meetings do not rank as a Council decision and cannot be interpreted or acted upon as such.
 - (iv) Advice provided to party groups on an issue does not act as a substitute for providing all the necessary information and advice to Members at meetings when that issue is being considered.

(Grey)

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- (v) The attendance of Officers at a party group meeting does not confer any official standing to that meeting.
 - (vi) Special care will be exercised when non-Members are in attendance at a group meeting.
 - (vii) The provisions of the Code of Conduct do not apply to non-Members and therefore the nature of advice, guidance and information given by Officers may not be the same as that given to a Members-only meeting.
 - (viii) Officers must respect the confidentiality of discussions at party group meetings and must not relay the content of these discussions to any other party group.

4. DECISION MAKING – PROVIDING AND CONSIDERING ADVICE

- 4.1 Decision-making by local authorities is closely regulated by law. The taking of a decision by the wrong person/body or in the wrong way can invalidate the decision from the beginning or leave it vulnerable to being challenged and overturned by a court.
- 4.2 In the event of challenge, attention may also be focussed on the information, professional advice and options made available to the decision-making body or individual prior to that decision being made. Reports and/or other papers placed before decision-making bodies or individuals must therefore contain the relevant facts, correct and complete professional advice and alternative options that may be open to the Council. Officers have the duty to ensure that all of the information on an issue for decision by Members is available, subject to the provisions in this protocol and the Constitution on access to information.
- 4.3 The Officers are responsible for providing those reports and/or papers, and the Monitoring Officer and Chief Financial Officer are required to ensure that their proper advice is placed before decision-makers.
- 4.4 Officers preparing reports for consideration by Council or its Committees do so in the best interests of the Council and not to promote the viewpoint of a particular Member or group of Members.
- 4.5 Reports to Cabinet are drafted by Officers but submitted in the name of the relevant Cabinet Member and will be prepared with their input. Members must recognise that Officers drafting reports on behalf of the Cabinet, delivering the administration's policies, must include all the relevant information, various options and highlighting financial considerations and legal powers, ensuring informed decisions are made, as a whole through the Head of Paid Service.

(Grey)

4.6 Officers have a duty to give advice to the Council and its Members using their professional technical knowledge and experience. This will be provided within the report and/or papers and at the meeting, if required.

4.7 Members are entitled to expect Officer attendance at meetings at an appropriate level of expertise to ensure adequate knowledge and advice on the subject matter under discussion. Officers in attendance at meetings will

always be fully briefed as far as is practical on the issues under discussion on an Agenda.

4.8 Such advice is given in good faith and will be in line with and reflect legislation, good practice, Council procedures, experience, professional and technical knowledge, and the Council's formally adopted policies.

4.9 Members are entitled to expect clear, concise and unambiguous information from Officers at all times to assist them in the decision making process. Officer's advice must be given in accordance with the Council's instructions through the decision making and review process set out in the Council's Constitution and should be taken into account by Members when considering an action or making a decision.

4.10 Officers are also expected to faithfully and conscientiously implement the lawful decisions of Councillors and properly take decisions delegated to them.

4.11 Officers and Members must ensure that the Council's responsibilities regarding notification of and publication of decisions are complied with, as set out in the Access to Information Rules of Procedure in Part 5 of the Council's Constitution.

4.12 In addition to legal challenges and implications, failure to follow the decision making principles may amount to breaches of both the Members' and Officers' Code of Conduct and lead respectively to action under the Standards Framework or to disciplinary proceedings.

5. ~~ACCESS TO CONFIDENTIAL~~ ACCESS TO INFORMATION

5.1 Both Members and Officers must adhere to the Access to Information provisions concerning **all information, including** confidential information set out in Part 5 of the Council's Constitution.

5.2 Disclosure of confidential information by either a Member or Officer will constitute a breach of their relevant Code of Conduct and the appropriate action will be taken. In addition, the Council could be exposed to a damages or compensation claim as a result of the disclosure.

5.3 **Members are entitled to receive information from Officers in a timely manner to reasonable requests for the purposes of undertaking their role as Ward**

(Grey)

Councillors, decision makers and performing functions, such as overview and scrutiny (*this is referred to as the common law 'need to know' principle*). Under common law principles councillors have the right to access information held by their authority where it is reasonably necessary to enable the member to properly perform their duties as a councillor.

However, if the member's motive for seeing documents is indirect, improper or ulterior this may be raised as a bar to their entitlement. Members are not,

therefore, allowed to go off on 'fishing expedition' through their council's documents. If a councillor is a member of a particular committee or sub-committee, then they have the right to inspect documents relating to the business of that committee or sub-committee. If not a member of that committee or sub-committee, the councillor would have to show good cause why sight of them is necessary to perform their duties (See *R v. Clerk to Lancashire Police Committee ex parte Hook* [1980] Q.B. 603). In such instances, the Chief Executive, Management Team, Section 151 or Monitoring Officers may request a member to demonstrate their 'need to know'.

6. SCRUTINY

The rules and procedures governing Officer and Member responsibilities in support of the Council's overview and scrutiny function are set out in Part 5 of the Constitution.

7. WORKING WITH THE MEDIA

7.1 Information provided to the media is governed by the Local Government Act 1986 and the Code of Practice on Local Authority Publicity. In particular:

Information should be:-

- Objective, factual and informative
- Non-party political or designed to affect public support for a political party

7.2 The functions of the Council are discharged corporately and it is not, therefore, appropriate for public resources to be used to promote the views of individual Members. This does not preclude, in the interests of public accountability, publicity of the views of individual Members when they are representing the Council.

7.3 Press releases containing comments by individual Members are similarly acceptable practice. The Communications & Public Relations Manager will provide the press with factual information but comment will only be provided by Officers with the prior consent of the Chief Executive and/or the relevant Portfolio Holder/Cabinet Member or the relevant Committee Chairman.

(Grey)

7.4 The principle that the Council cannot use public resources at any time to promote the views or policies of a particular party is heightened during **election periods**. During the period just before elections there are restrictions on local authority publicity and rules concerning media reporting of the election campaign, the so-called “purdah” period, is defined as beginning with the last date for publication of notice of the election. Prior to this period, guidance will be issued to both Members and Officers setting out the Council’s own version of the convention in the period leading up to the elections.