

Part 5 – Codes of Conduct

Members' Code of Conduct

Introduction

Councillors represent local residents, work to develop better services and deliver local change. The public have high expectations of councillors and entrust them to represent our local area, taking decisions fairly, openly, and transparently. Councillors have an individual and collective responsibility to meet these expectations by maintaining high standards, acting in the public interest and demonstrating good conduct, and by challenging behaviour which falls below expectations. Importantly, councillors should be able to undertake their role as a councillor without being intimidated, abused, bullied, or threatened by anyone, including the general public.

Definitions

For the purposes of this Code of Conduct:

A “**councillor**” means a member or co-opted member of the Council or a directly elected mayor.

A “**co-opted member**” is defined in the Localism Act 2011 Section 27(4) as “a person who is not a member of the Council but who

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

Purpose of the Code of Conduct

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, Council officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

General principles of councillor conduct

Everyone in public office at all levels, all who serve the public or deliver public services (including ministers, civil servants, councillors and Council officers) should uphold the Seven Principles of Public Life, also known as the Nolan Principles (**Appendix A**).

Building on these principles, the following general principles have been developed specifically for the role of councillor.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with the Council's requirements and in the public interest.

Application of the Code of Conduct

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- you misuse your position as a councillor
- your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor.

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor. Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct.

Standards of councillor conduct

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

General Conduct

1. Respect

As a councillor:

- a. I treat other councillors and members of the public with respect.**
- b. I treat Council employees, employees and representatives of partner organisations and those volunteering for the Council with respect and respect the role they play.**

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the Monitoring Officer, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and Council employees, where concerns should be raised in line with the Council's Protocol for Member & Officer Relations.

2. Bullying, harassment and discrimination

As a councillor:

- a. I do not bully any person.**
- b. I do not harass any person.**
- c. I promote equalities and do not discriminate unlawfully against any person.**

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the Council's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

3. Impartiality of officers of the council

As a councillor:

- a. I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the Council.**
- b. I will have regard to any advice provided to me by the Council's officers and in particular the Council's statutory officers where such advice is offered pursuant to their statutory duties.**
- c. I will take account of the views of others but will reach my own conclusions and act in accordance with those conclusions.**
- d. I will give reasons for the decisions I make in accordance with any statutory requirements and any reasonable additional requirements imposed by the Council.**

Officers work for the Council as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

Decisions can be legally challenged if they are unreasonable. When considering any decision, you must have regard to any professional advice you have been offered. You must also give reasons for all decisions in accordance with statutory requirements and any reasonable requirements imposed by the Council. Where you disagree with officer recommendations in making a decision, you will need to take particular care in giving clear reasons for the decision.

If in any doubt, you should seek advice from the Monitoring Officer before taking any action.

4. Confidentiality and access to information

As a councillor:

- a. I do not disclose information:**
 - i. given to me in confidence by anyone**
 - ii. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless:**

1. I have received the consent of a person authorised to give it;
2. I am required by law to do so;
3. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or
4. the disclosure is:
 - a. reasonable and in the public interest; and
 - b. made in good faith and in compliance with the reasonable requirements of the Council; and
 - c. I have consulted the Monitoring Officer prior to its release.
- b. I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.
- c. I do not prevent anyone from getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the Council must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

5. Disrepute

As a councillor I do not bring my role or the Council into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or the Council and may lower the public's confidence in your or the Council's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring the Council into disrepute.

You are able to hold the Council and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the Council whilst continuing to adhere to other aspects of this Code of Conduct.

6. Use of position

As a councillor I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the Council provides you with certain opportunities, responsibilities, and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

7. Use of the Council's resources and facilities

As a councillor:

- a. I do not misuse council resources.**
- b. I will, when using the resources of the Council or authorising their use by others:**
 - i. act in accordance with the Council's requirements; and**
 - ii. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the Council or of the office to which I have been elected or appointed.**

You may be provided with resources and facilities by the Council to assist you in carrying out your duties as a councillor. Examples include office support, stationery, equipment (such as phones and computers), transport, access and use of the Council's buildings and rooms. These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the Council's policies regarding their use.

8. Complying with the Code of Conduct

As a Councillor:

- a. I undertake Code of Conduct training provided by or on behalf of the Council.**
- b. I cooperate with any Code of Conduct investigation and/or determination.**
- c. I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.**
- d. I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.**

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the Council or its governance. If you do not understand or are concerned about the Council's processes in handling a complaint you should raise this with the Monitoring Officer.

9. Interests

As a councillor I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the Council.

You need to register your interests so that the public, Council employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before)

an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in **Table 1**, is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from the Monitoring Officer.

10. Gifts and hospitality

As a councillor:

- a. I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the Council or from persons who may apply to the Council for any permission, licence or other significant advantage.**
- b. I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt.**
- c. I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**

In order to protect your position and the reputation of the Council, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case, you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact the Monitoring Officer for guidance.

Appendix A – The Seven Principles of Public Life

The principles are:

Selflessness

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

Integrity

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

Objectivity

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

Accountability

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

Openness

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

Honesty

Holders of public office should be truthful.

Leadership

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

Appendix B - Registering interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in Table 1 (**Disclosable Pecuniary Interests**) which are as described in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012". You should also register details of your other personal interests which fall within the categories set out in Table 2 (**Other Registerable Interests**).

"Disclosable Pecuniary Interest" means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

"Partner" means a spouse or civil partner, or 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.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A 'sensitive interest' is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
3. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

Non participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in Table 1, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Mayor and Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which **directly relates** to the financial interest or wellbeing of one of your Other Registerable Interests (as set out in Table 2), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not

remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which ***directly relates*** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise, you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
8. Where a matter arises at a meeting which affects:
 - a. your own financial interest or well-being;
 - b. a financial interest or well-being of a relative or close associate; or
 - c. a financial interest or wellbeing of a body included under Other Registrable Interests as set out in Table 2

you must disclose the interest.

In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied

9. Where a matter (referred to in paragraph 8 above) ***affects*** the financial interest or well-being:
 - a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
 - b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest,

you may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise, you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. Where you have an Other Registerable Interest or Non-Registerable Interest on a matter to be considered or is being considered by you as a Mayor & Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it

Table 1: Disclosable Pecuniary Interests

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

Subject	Description
Employment, office, trade, profession or vocation	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 council) made to the councillor during the previous 12-month period for expenses incurred by them in carrying out their duties as a councillor, or towards their election expenses. 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 made between the councillor or their spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council <ol style="list-style-type: none">under which goods or services are to be provided or works are to be executed; andwhich has not been fully discharged.
Land and Property	Any beneficial interest in land which is within the area of the council. “Land” excludes an easement, servitude, interest or right in or over land which does not give the councillor or their spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income.
Licenses	Any licence (alone or jointly with others)

	to occupy land in the area of the council for a month or longer
Corporate tenancies	Any tenancy where (to the councillor's knowledge): <ul style="list-style-type: none"> a. the landlord is the council; and b. the tenant is a body that the councillor, or their spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.
Securities	Any beneficial interest in securities* of a body where: <ul style="list-style-type: none"> a. that body (to the councillor's knowledge) has a place of business or land in the area of the council; and b. either: <ul style="list-style-type: none"> (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 councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were

* “**director**” includes a member of the committee of management of an industrial and provident society.

* “**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.

Table 2: Other Registrable Interests

You must register as an Other Registerable Interest:

- a. any unpaid directorships
- b. any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by the Council
- c. any body:
 - (i) exercising functions of a public nature
 - (ii) directed to charitable purposes or
 - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) of which you are a member or in a position of general control or management spouses/civil partners have a beneficial interest exceeds one hundredth of the total issued share capital of that class.

Protocol for Member/Officer Relations

1. Introduction

- 1.1 An effective working relationship between members and staff is critical to the successful operation of Council business. Excellent working relationships are required to deliver best value services to local citizens and to maintain confidence in local government in Lewisham. This protocol is designed to help members and staff to perform effectively by giving guidance on their respective roles and expectations and on their relationship with each other

2. Respective roles

- 2.1 Both members and Council staff are public servants. They are indispensable to each other. But their responsibilities are distinct. All members (including the Mayor) are responsible to the electorate and serve only so long as their term of office lasts. Staff are responsible to the Council as a corporate body, and not to any single member including the Mayor. Their job is to give advice to all members (including the Mayor) and to the authority, and to carry out the authority's work under the direction and control of the Council, its Executive and relevant committees.
- 2.2 Respect between members and staff, both personally and for their different roles is essential to good local government.

3. Members' roles

- 3.1 Members have five main areas of responsibility:
- (a) deciding on overall Council policy and giving the authority political leadership.
 - (b) making decisions within overall council policy (for example on planning applications, or on the establishment or closure of a school).
 - (c) monitoring and reviewing performance in implementing policy and delivering services.
 - (d) representing the area and the Council externally.
 - (e) acting as advocates on behalf of constituents.
- 3.2 Depending on whether they are members of the Executive or not, and on the committees to which they are appointed, members may exercise only some of these roles. However, it is not the role of members to involve themselves in the day-to-day management of the Council's services.
- 3.3 The Mayor, members of the Executive and committee chairs and vice chairs have additional responsibilities. Because of this their relationships with employees may be different from and more complex than those of councillors without those responsibilities. This is recognised in the expectations they are entitled to have. However, such members must still respect the impartiality of officers and must not ask them to undertake work of a party-political nature, or to do anything which will put them in difficulty in the event of a change in the composition of the authority.

- 3.4 As individual members, all councillors and the Mayor have the same rights and duties in their relationship with staff and should be treated equally. Members of overview and scrutiny committees are entitled to officer advice and support in the performance of their roles just as Executive members are entitled to officer advice and support in the performance of theirs.

4. Officers' roles

- 4.1 The role of officers is to give advice and information to members to inform their decision making and to implement the policies and decisions of the Council. In giving their advice, it is the responsibility of the officer to present their professional views and recommendations. Members must not pressurise an officer to make a recommendation contrary to their professional view or use undue pressure to seek to persuade an officer to withdraw a report.
- 4.2 In discharging their role as an officer of the authority, staff must act in a politically neutral way.
- 4.3 Certain officers, including the Head of Paid Service, Monitoring Officer, Chief Finance Officer, the Director of Children's Services, the Director of Adult Social Services, the Director of Public Health & Statutory Scrutiny Officer have legal responsibilities over and above their obligations to the authority and members of it. Members must respect these obligations and must not obstruct them in the discharge of these responsibilities or victimise them for discharging these legal duties.

5. Expectations

- 5.1 Members can expect from officers:
- (a) a commitment to the council as a whole and not only to any part of it, or to any political group.
 - (b) Respect and courtesy.
 - (c) The highest standards of integrity.
 - (d) A working partnership.
 - (e) An understanding of and support for respective roles, workloads and pressures.
 - (f) Timely responses to enquiries and complaints.
 - (g) Professional advice, not influenced by political views or preference, which does not compromise the political neutrality of officers.
 - (h) Regular up to date information that can be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions they hold.
 - (i) Awareness of and sensitivity to the political environment.
 - (j) Training and development in order to carry out their role effectively.
 - (k) Appropriate confidentiality.
 - (l) That they will not use their relationship with members to seek to advance their personal interests or to influence decisions improperly.
 - (m) Support for the role of councillors as the local representatives of the authority within arrangements made by the council to do so.

- (n) Compliance with the Employee Code of Conduct at all times.

5.2 Officers can expect from members:

- (a) Respect and courtesy.
- (b) The highest standards of integrity.
- (c) A working partnership.
- (d) An understanding of and support for respective roles, workloads and pressures.
- (e) Political leadership.
- (f) Not to be subject to bullying or to be put under pressure. Members must have regard to the seniority of officers in determining what are reasonable requests, having regard to the power relationship between members and officers and the potential vulnerability of officers, particularly at junior levels.
- (g) That members will not use their position or relationship with officers to seek to advance their personal interests or those of others or to influence decisions improperly.
- (h) Compliance with the Member Code of Conduct at all times.

6. Close personal relationships

- 6.1 Both members and officers should take care not to give the impression that their distinct roles have become blurred in some way. Maintaining confidence in the separation of these roles necessarily imposes limitations on behaviour. Close personal relationships between members and officers can confuse their separate roles and get in the way of the proper discharge of the authority's functions, not least in creating the perception in others that a particular member or officer may secure advantageous treatment.

7. Political Groups

- 7.1 The operation of political groups is an integral feature of local government. They have an important part to play in the development of policy and the political management of the authority. It is in the interest of the authority to support the effective operation of political groups. However, doing so can create particular pitfalls in terms of the impartiality of officers. This protocol sets out guidance to minimise the risk of that impartiality being compromised.
- 7.2 National Conditions of Service for Executive Directors and JNC officers provide that they shall not be required to advise any political group of the Council, either as to the work of the Group or as to the work of the Council, neither shall they be required to attend any meetings of any political groups. This should be without prejudice to any arrangements to the contrary which may be made in agreement with any officer which includes adequate safeguards to preserve the political neutrality of the officer in relation to the affairs of the Council.
- 7.3 The NJC for Local Government Services National Agreement on Pay and Conditions of Service provides that codes of practice for the official conduct and obligations of employees shall be locally determined. The Council applies a

similar provision to those applying to JNC officers, without the exception contained in the last sentence.

- 7.4 Sometimes, officers may be asked to write reports for a political group. Normally it should only be an Executive Director who is asked to do so. Occasionally, subject to the direction of the Executive Director, other senior employees in their Directorate may be asked to write reports for a political group. Neither the Executive Director nor any other officer can be compelled to write reports for (or attend) a meeting of a party-political group. Sometimes it will be appropriate for a senior officer to write a report for a political group where they represent an early stage in the decision-making process. A report relating to the choices to be made in the budget process might be an example. However, where a senior officer does write such a report for a political group, it should be written as if it was being prepared for the full Council, Executive or the relevant committee. Reports on matters of policy or principle, prior to decisions do not need to be so formally drafted.
- 7.5 The principles set out in paragraph 7.4 do not obviate the need for there to be close and regular liaison on matters affecting the Council between the Mayor, members of the Executive and committee chairs as appropriate on the one hand and Executive Directors and senior officers on the other.
- 7.6 Members and officers must always remember that decisions can only be taken in accordance with the Council's Constitution and that decisions taken by party political groups are not Council decisions. They must only refer matters for decision in accordance with that process.

8. Reports to Council, Executive or Committee

- 8.1 Under the Constitution adopted by the Council to comply with the Local Government Act 2000, decisions may be made by the Mayor or the Executive or members of it to whom the Mayor has delegated decision making power. In other cases, they may also be taken by the full Council or committees or sub committees. The Council's Constitution provides that member decisions may only be taken on the basis of a written report containing all relevant considerations. Reports to the Mayor, Executive (whether collectively or decision makers drawn from it,) or to a committee or sub committee should be written by the Executive Director or another officer authorised by him or her.
- 8.2 It is likely that a sensitive report would be discussed with the Mayor, lead member or committee chair and that member may make suggestions for inclusion in the report. However, the report is the officer's and even if the member is unhappy with its contents, it should not be amended by that member, save with the express approval of the Executive Director. If the report of the Executive Director is thought by the member to be inappropriate, then exceptionally that member should write his or her own report in addition to the report submitted by the Executive Director.
- 8.3 Where an officer attends a political group, they must inform the Monitoring Officer who will advise all other groups that the officer has attended and the

subject on which they have advised. If a report was prepared by the officer, they will supply a copy to the other political groups on request. Officers will respect the confidentiality of any matter which they hear in the course of attending a political group meeting.

9. Relationship between the Chair and Members of Committees and Officers

9.1 The Chair and Members of Council Committees must give Officers the opportunity to present any report and give any advice they wish to present or give.

10. Relationship between the Chair and Members of the Overview & Scrutiny Committee and its Select Committees and Officers

10.1 The Chair and members of the Council's Overview & Scrutiny Committee and its Select Committees must:

- (a) Seek the advice of the Monitoring Officer where they consider there is doubt about the lawfulness of a decision, or the Monitoring Officer or the s151 Officer where they consider a decision of the Mayor, or the Cabinet might be contrary to the Budget & Policy Framework.
- (b) When considering calling Officers to give evidence, liaise with the relevant Executive Director as to the most appropriate Officer to attend.
- (c) When asking Officers to give evidence, confine questions, so far as possible, to questions of fact and explanation relating to policies and decisions. Officers may be asked to give a professional opinion, but Officers must not be asked questions relating to political views.
- (d) Where they consider it appropriate, ask Officers to explain and justify advice given to executive members prior to decisions being undertaken and justify decisions they themselves have taken under the Council's Constitution.
- (e) Not question Officers in such a way as to be in breach of the Council's HR policies nor deal with matters which are of a personal or disciplinary nature.
- (f) At all times respect the political impartiality of the Officers.

10.2 Officers must:

- (a) Maintain political impartiality at all times when commenting on the Cabinet's/Council's policies and actions.
- (b) Be prepared to explain and justify advice given to Councillors of the Cabinet and the Council prior to decisions being taken and justify decisions they themselves have taken under the Council's Constitution and Scheme of Delegations.
- (c) Ensure that appropriate Officers appear before the relevant panel.

11. If things go wrong

11.1 From time to time the relationship may break down or become strained. In such cases, it will always be preferable to resolve matters informally.

Procedure for Mayor and Councillors

- 11.2 In the event that the Mayor or Councillor is dissatisfied with the conduct, behaviour or performance of an Officer then they should raise the matter with the appropriate Executive Director. Where the matter concerns an Executive Director, it should be raised with the Chief Executive. Where the matter concerns the Chief Executive, it should be raised with the Mayor. The Mayor may raise concerns about the Chief Executive with the Monitoring Officer.
- 11.3 If the Mayor or any Councillor is concerned about the way a service or part of it is performing as opposed to the conduct of a specific Officer, and if the concerns cannot be resolved through discussion with the manager of the service, then this should be raised with the Chief Executive.

Procedure for Officers

- 11.4 If an Officer wishes to raise a concern about the behaviour of the Mayor or a Councillor, they can either escalate it to their line manager, Executive Director or to the Council's Monitoring Officer.
- 11.5 Having been notified of a concern in this way, the line manager, Executive Director or Monitoring Officer will take appropriate action, including approaching the person concerned and raising with the Group Leader and/or Whip or referring the matter to the Monitoring Officer where there is a potential breach of the Code of Conduct.
- 11.6 Group Leaders and Whips should promote a positive atmosphere of trust, respect and understanding and must be prepared to deal with and seek to resolve any reported incidents of breaches of this Protocol by their Group Members. In the event of receiving a report of this nature, a Group Leader and/or Whip will actively consider the matter and seek to achieve a satisfactory outcome, reporting that outcome to the Officer who reported the issue.

12. Advice on the application of the Protocol

- 12.1 Advice on the application of this Protocol should be sought from either the Chief Executive or the Monitoring Officer.

13. Example Scenarios

Example Scenarios

What if ...

The chief whip of the majority group of the Council asks a junior officer to attend a meeting of her political group to brief members about the Council's draft budget.

Response:

The request should be directed to the Chief Executive or s.151 officer to decide. Briefings can be provided but not as an alternative to public debate or

decision and cannot be party political. When officers attend a group meeting, the difference between the Group and the Council must be respected and political discussion should not take place with the officer present. The offer should be extended to all political groups.

What if ...

A team manager facing disciplinary action contacts members he knows to complain about his perception of unfair treatment and to see if they can influence the outcome of his case.

Response:

A member should politely refuse assistance and refer the officer to his union. The member should report the approach to HR. Except at chief officer level, all employment matters are exclusively for officers to determine. It is a disciplinary offence to lobby members for support.

Employee Code of Conduct

1. Introduction

- 1.1 Officers of the Council provide services to the residents of Lewisham. We have an elected Mayor and Councillors who set the strategic direction and the policies of the Council. It is the responsibility of officers to deliver those policies, manage day-to-day operations, provide expert advice, and deliver public services within the Council's allocated budget, ensuring that the Council's decisions are carried out effectively.
- 1.2 Every officer is expected to behave in a highly professional manner and to offer the highest standards of service to the public. Officers must promote and maintain public confidence and trust in the work of the Council.

2. Definitions

- 2.1 For the purposes of this Code of Conduct:

A “**councillor**” means a member or co-opted member of the Council or a directly elected mayor.

A “**co-opted member**” is defined in the Localism Act 2011 Section 27(4) as “a person who is not a member of the Council but who

- (c) is a member of any committee or sub-committee of the Council, or;
- (d) is a member of, and represents the Council on, any joint committee or joint subcommittee of the Council; and

who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

3. Purpose of the Code of Conduct

- 3.1 The purpose of this Code of Conduct is to set out the standard of behaviour expected of all officers in carrying out their duties for the Council, including the ways in which they interact with elected councillors and senior management. The fundamental aim of this Code of Conduct is to create and maintain public confidence in the Council. It is designed to promote public confidence in the actions of officer and encourages officers not only to avoid actual impropriety, but to avoid suspicion or appearance of improper conduct.
- 3.2 If officers are in any doubt about the application of this Code of Conduct, they should seek advice from their line manager or from HR.

4. General principles of officer conduct

- 4.1 Everyone in public office at all levels, all who serve the public or deliver public services (including officers) should uphold the Seven Principles of Public Life, also known as the Nolan Principles (see **Appendix A**).

4.2 Building on these principles, the following principles have been developed for officers.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the Council.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I am politically neutral and unbiased.
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with the Council's requirements and in the public interest.

5. Our principles of conduct in detail

5.1 This section sets out your obligations in detail, which are the minimum standards of conduct required of you as an officer of the Council. Guidance is included to help explain the reasons for the obligations and how they should be followed.

Respect

As an officer of the council:

- a. I provide the highest possible standard of service to the public, and to the Council as a whole**
- b. I treat councillors and members of the public with respect.**
- c. I treat Council employees, employees and representatives of partner organisations and those volunteering for the Council with respect and respect the role they play.**

Respect means politeness and courtesy in behaviour, speech, and in the written word. Rude and offensive behaviour lowers the public's expectations and confidence in the Council and its officers.

The public have a right to the services that the Council provides. Officers should always perform their duties to the highest standard and treat members of the public politely and with dignity and respect, taking into account their individual needs.

If you provide personal/caring services to vulnerable people within the community, you must always act in a professional manner and treat service users with dignity and respect.

In return, you have a right to expect respectful behaviour from others. If you are subjected to abusive, intimidatory or threatening behaviour while performing your duties you are entitled to stop any conversation or interaction and report them to your line manager or the Monitoring Officer.

Bullying, harassment and discrimination

As an officer of the council:

- a. I do not bully any person.**
- b. I do not harass any person.**
- c. I promote equalities and do not discriminate unlawfully against any person.**

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Officers have a central role to play in ensuring that equality issues are integral to the Council's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

Officers must promote equality and diversity by not discriminating unlawfully against any person and by treating them with respect, regardless of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. All forms of discrimination, including bullying and harassment are unacceptable and contravene the Council's Respect and Dignity at Work Policy. Any breach of this policy will be treated seriously and will be dealt with under the Council's Disciplinary Policy.

Impartiality and Political Neutrality

As an officer of the Council:

- a. I am honest, impartial and independent at work regardless of my political views.**
- b. I am politically neutral and unbiased in the performance of my duties.**
- c. I respect the function of councillors regardless of the party they represent.**
- d. I act in accordance with the Council's Protocol on Member and Officer Relations**

Officers work for the Council as a whole and must be politically neutral (unless they are political assistants). You must ensure that the individual rights of all councillors are respected and must not allow your own personal or political opinions to interfere with your work.

You must not do anything which will compromise or is likely to compromise the impartiality of those who work for, or on behalf of, the Council. You should not be coerced or persuaded by others to act in a way that would undermine your neutrality.

Some officers are in politically restricted posts and are prevented by law from taking part in certain political activities outside their work. The political activities which are restricted for these officers covers the following:

- Standing as a candidate for election to the House of Commons, European Parliament or a 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 an election
- Speaking in public or publishing any written or artistic work which appears to be intended to affect public support for a political party.

If you are in any doubt about whether you hold a politically restricted post or whether any activity is political activity and covered by these rules, then advice should be sought from your Executive Director, Human Resources or the Monitoring Officer.

An effective working relationship based on mutual respect between officers and councillors is essential to the delivery of efficient and high-quality services to the community. However, close personal familiarity between officers and individual councillors can damage the relationship and prove embarrassing to other councillors and employees and should therefore be avoided. Officers must not seek to involve councillors in personal matters which relate to any aspect of their employment with the Council e.g., pay and grading, grievances etc.

Decision making and use of public funds

As an officer of the Council:

- a. I will give reasons for the decisions I make in accordance with any statutory requirements and any reasonable additional requirements imposed by the Council**
- b. I will use public funds entrusted to me in a responsible and lawful manner, ensuring value for money and in accordance with the Council's constitution**

Decisions can be legally challenged if they are unreasonable. When considering any decision, you must have regard to any professional advice you have been offered. You must also give reasons for all decisions in accordance with statutory requirements and any reasonable requirements imposed by the Council. Decisions must be taken in accordance with the terms of the Council's constitution and its Standing Orders.

You must ensure that you use any public funds entrusted to you in a responsible and lawful manner, ensuring value for money to the local community and avoiding legal challenge to the Council.

Confidentiality and access to information

As an officer of the council:

- a. I do not disclose information:**
 - i. given to me in confidence by anyone**
 - ii. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless:**
 - 1. I have received the consent of a person authorised to give it;**
 - 2. I am required by law to do so;**
 - 3. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
 - 4. the disclosure is:**
 - a. reasonable and in the public interest; and**
 - b. made in good faith and in compliance with the reasonable requirements of the Council; and**
 - c. I have consulted the Monitoring Officer prior to its release.**
- b. I do not improperly use knowledge gained solely as a result of my role as an officer of the Council for the advancement of myself or anyone known to me or to disadvantage or discredit the Council.**
- c. I do not prevent anyone from getting information that they are entitled to by law.**

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or

held by the Council must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations. If you are in doubt, advice should be obtained from your line manager or the HR Advisory Service.

You may only talk to the media or otherwise make public statements on behalf of the Council or your directorate if you have been authorised by your Executive Director to do so. Generally, if you are contacted by the press, you should refer the matter to the Council's Press Office who will deal with it as appropriate.

Disrepute

As an officer of the Council:

- a. I do not do anything in my professional or private capacity that could bring my role or the Council into disrepute.**
- b. I will disclose any criminal convictions**

As an officer of the Council, you should be aware that your actions might have an adverse impact on you and/or the Council and may lower the public's confidence in you or the Council's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring the Council into disrepute.

You must disclose to the Council such details as it may require of any criminal conviction, caution or bindover that are received during your employment with the Council. Failure to do so, for whatever reason, may be regarded as gross misconduct under the Council's Disciplinary Policy which could lead to dismissal from the Council's service.

• Use of position

As an officer of the Council, I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as an officer of the Council provides you with certain opportunities, responsibilities, and privileges, and you make choices and decisions all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

Use of the Council's resources and facilities

As officer of the Council:

- a. I do not misuse council resources;**
- b. I will, when using the resources of the Council or authorising their use by others act in accordance with the Council's requirements.**

You must use any equipment or facilities provided by the Council for use in the course of your employment in a proper and responsible manner. You must not

make personal use of the Council's property or facilities unless properly authorised to do so.

You must comply with the Council's Acceptable Use of ICT Policy and associated guides at all times. Failure to follow the Acceptable Use of ICT Policy will lead to disciplinary action under the Council's Disciplinary Policy.

Complying with the Code of Conduct

As an officer of the Council, I will comply with this Code of Conduct and the Council's policies and procedures.

It is extremely important for you as an officer to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the Council or its governance.

It is your responsibility to comply with this Code and all of the Council's policies and procedures as amended from time to time. Any breaches will be treated seriously and will be dealt with under the Council's Disciplinary Policy. If in any doubt employees should seek advice from their line manager or from HR.

Interests

As an officer of the Council:

- a. I register and disclose my interests**
- b. I will act in accordance with the Council's requirements in relation to outside and additional work**
- c. I will recruit others based on merit**

You must be able to demonstrate, should any questions arise, that your judgement and actions at work are objective and impartial and not affected or influenced by personal considerations arising from your commitments and/or activities outside work. You should not put yourself in a position where potential conflicts of interest may arise, or be perceived to arise, between your private interests and your responsibilities as an officer of the Council.

You must inform your line manager of:

- Any interests which conflict with the impartial performance of your duties or which could put you under suspicion of improper behaviour. These interests may be financial, personal or social interests and may be advantageous or have a detrimental effect on you. A non-exhaustive list of examples includes where you experience threats or pressure from others to act in a particular way in your official capacity; acting as a school governor within schools maintained by the Council; involvement with an organisation receiving grant aid from the Council; membership of an NHS Trust Board; involvement with an organisation or pressure group which may seek to influence the Council's policies. Membership of a trade union is exempted from this requirement.
- Any pecuniary interests (whether direct or indirect) in any contract which has been, or is proposed to be, entered into by the Council. Orders and

contracts must be awarded on merit, and no special favour should be shown to businesses in which you or anyone associated with you (e.g. friends, partners, relatives) have a financial interest.

- Any relationship you have with the Council's contractors, potential contractors or other external service providers.
- Any membership of any organisation not open to the public without formal membership and commitment of allegiance and which has secrecy about its rules or membership or conduct, for example freemasons.
- Any decision on allocation of Council services or resources from which you, your friends or family might benefit (e.g. allocation of Council housing or assessment of housing benefit).

You may have dealings with the Council on a personal level, for example as a Council taxpayer, tenant or applicant for planning permission. You should never seek or accept preferential treatment in those dealings because of your position with the Council or put yourself in a position that could bring the Council into disrepute, through for example non-declaration or non-payment of monies owing to the Council e.g. Council tax.

Officers graded at SMG1 and above must register any financial interests in the Council's register. Other employees below SMG1 who hold positions which are considered by the Chief Executive or the Monitoring Officer to be particularly at risk, such as commissioning, procurement and contract monitoring officers will also be required to register their financial interests. You must register your financial interest or subsequent changes by writing to the Monitoring Officer within 28 days of your appointment or change in your personal position of:

- any business carried on by you;
- the name of any firm in which you are a partner and the name of any company for which you are a remunerated director;
- the name of any corporate body which has a place of business or land in the Council's area where you have a beneficial interest in the class of securities of that body which exceeds the value of £25,000 or one hundredth of the total issued share capital of that body;
- a description of any contract for goods, services or works made between the Council and you, a firm in which you are a partner, a company of which you are a director or body of the description in paragraph (c) above;
- the address or other description (sufficient to identify the location) of any land in which they have a beneficial interest, and which is in the area of the authority;
- the address or other description (sufficient to identify the location) of any land where the landlord is the authority and the tenant is a firm in which they are a partner, a company of which they are a remunerated director, or a body of the description in sub-paragraph (d).

Any additional work (whether paid or unpaid) you wish to undertake must not conflict with the Council's interests, affect your ability to undertake Council work, breach employment legislation or in any way weaken public confidence in the Council. You must obtain written consent from your Executive Director (or in the case of chief officers, the Chief Executive) in advance if you wish to engage in other business, take up additional employment or work outside of the

Council. Where you have been given approval to undertake additional or outside work you must not undertake such work during your Council working hours, on Council premises or using Council facilities (e.g. computing equipment, telephones, vehicles and photocopying). You must not portray yourself as an employee or agent of the Council when undertaking such additional or outside work.

The Council recruits on merit and requires that appointments are made without bias and on the basis of clear assessment criteria. It is unlawful for you to make an appointment other than on the basis of merit and on 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 where you are related to an applicant or have a personal relationship outside work with them. Similarly, you must not be involved in any decision relating to the discipline, promotion, pay or conditions of another employee, or prospective employee, who is a relative or friend.

Gifts and hospitality

As an officer of the Council, I do not accept gifts or hospitality for work done in my official capacity.

It is a criminal offence for any officer to receive or give any gift, loan, fee, reward or advantage for doing or not doing anything or showing favour to any person in their official capacity. You must treat with caution any offer, gift, favour or hospitality offered to you. Gifts or hospitality shall include any opportunity to acquire goods or services at a price or on terms at which they are not readily available to the public.

You must comply with the Council's Code of Practice for Receipt of Gifts and Hospitality.

Where an outside organisation wishes to sponsor or is sought to sponsor a Council activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. You must take particular care when dealing with contractors or potential contractors. Where the Council wishes to sponsor an event or service, neither an officer nor any relative or friend must benefit from such sponsorship in a direct way without there being full disclosure to an appropriate manager of any such interest. Similarly, where the Council, through sponsorship, grant aid, financial or other means, gives support in the community, employees must ensure that impartial advice is given and that there is no conflict of interest involved.

Appendix A – The Seven Principles of Public Life

The principles are:

Selflessness

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

Integrity

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

Objectivity

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

Accountability

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

Openness

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

Honesty

Holders of public office should be truthful.

Leadership

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

Protocol on Member Use of IT

Acceptable Use of ICT Equipment

- 1.1 Council computers and ICT equipment are provided to assist members in their role as locally elected representatives.
- 1.2 ICT facilities are very useful tools for research and business. However, they are also full of risk. There are a number of reasons why guidance in respect of computers and ICT equipment is required. For example, any security breach of the Council's ICT network (and the systems and networks held on it), could have an extremely adverse effect on the Council, members, staff or the public.
- 1.3 Furthermore, while using such facilities, members could copy information and contravene copyright law or (without realising) allow someone to use the internet to attack computer systems and the Council network. Other risks include:
 - the transmission or introduction of computer viruses;
 - making defamatory or inappropriate remarks or negligent statements;
 - unwittingly making a contract;
 - sexual or racial discrimination;
 - criminal offences.
- 1.4 In addition, all members are bound by the provisions of Lewisham's Member Code of Conduct. Abuse of the Council's facilities, including IT equipment, amounts to a breach of the code. Members' attention is drawn to the contents of the Code of Conduct. The Code of Conduct may be amended from time to time and members will also be required to agree to comply with the amended code.
- 1.5 Members are reminded that the Council's Protocol for recording Council meetings applies to everyone attending an open meeting. For the sake of certainty, any councillors wishing to record the proceedings of an open public Council committee or Council sub-committee are bound by the provisions of that Protocol.
- 1.5 The following paragraphs (1.6, to 1.9) are intended to minimise such risks to members and the Council:
- 1.6 Members must not use Council ICT facilities for:
 - promoting private business activity, personal financial interests or commercial ventures;
 - promoting any political party, group, or campaigning organisation;
 - personal campaigning;
 - engaging in any activity which may result in actions for libel, defamation or other claims for damages;
 - any use which:
 - (i) contravenes any legislation (such as the Data Protection Act 2018, General Data Protection Regulations; the Computer Misuse Act

1990; the Copyrights, Designs and Patents Act 1988 (amended 2002); the Obscene Publications Act 1959 and 1964; the Anti-Terrorism, Crime and Security Act 2001; Equality Act 2010, or other legislation in force from time to time;

- (ii) breaches any of the general obligations set out in the Member Code of Conduct; or,
- (iii) breaches the council's ICT security policies.

1.7 ICT facilities are provided to members in order to assist them in Council related activities. However, provided that the terms of the Code of Conduct, and other member Guidance, are not broken, members may also use Council PCs for lawful personal purposes, for example surfing the internet to purchase goods and services. In such cases all associated risks and liability, including any costs, remain with the Member.

1.8 Members may download or install software from licensed sources which assist in their role as locally elected representatives (and does not breach any of the conditions outlined above). In such cases all associated risks and liability, including any costs (other than the costs of restoring the Council's standard software desktop), remain with the Member.

1.9 Members should ensure that they have duly licensed any software installed on Council ICT equipment.

1.10 Members are also provided with facilities enabling them to conduct their duties from home. When working from home, or remotely, members must not:

- allow any other person, including family members, access to the Lewisham ICT network;
- allow any other person, including family members, to use their user name and password.

1.11 The Council's network has been set up to automatically prevent users from accessing certain types of website including pornographic, homophobic, racist, on-line gaming, terrorist and computer-hacking sites.

1.12 However, members may occasionally find that they do encounter sites that contain this sort of material. If so, you must report this to the Shared Service Help Desk immediately.

1.13 Any material containing child pornography found on any Council computer system must by law be reported to the police.

1.14 Members are responsible for the content of any email sent from their username and in certain circumstances the Council may also be found liable for the content of such email, in which case action will be taken to recover any resultant penalties.

1.15 A disclaimer is automatically added to emails sent out from the Council in case it is wrongly addressed or reaches the wrong person. However, members must take steps to make sure that emails are addressed correctly. If a member finds

out an email has been received by someone other than the intended person, they must take steps to make sure that this does not happen again, and to secure its deletion by the unauthorised recipient if possible.

- 1.16 If a member receives an email that breaches the general obligations of the Member Code of Conduct or which breaks the law, they must inform the Monitoring Officer.
- 1.17 Emails and other personal information should be retained only for the minimum period necessary, and in accordance with the Data Protection Act 2018 and GDPR. Further details on the Data Protection Act and GDPR can be obtained from the Head of Information Governance.
- 1.18 It is important that members manage and store information to ensure its availability, confidentiality and integrity. Therefore members must regularly review all Council information (including files and Email messages and delete all redundant or irrelevant data.
- 1.19 Subject to reasonable notice, members must provide authorised representatives of the Council (for example computer technicians), with access to Council equipment. This access may be required for the resolution of faults, to replacement or upgrade equipment or the removal of equipment (if, for example the member ceases to be a member of the Council).
- 1.20 Members are also reminded of their duty to comply with investigations by regulatory services, e.g. police, audit, etc., if so required.

Social media policy

Members are required to comply with the Council's Member Social Media Policy in place from time to time.

Protocol on Planning and Lobbying

Introduction

1. The planning system involves taking decisions about the use and development of land in the wider public interest having regard, in particular, to the Development Plan. When such decisions are made the requirements of individuals (be they applicant or neighbour) must be balanced against the broader public interest. It is of fundamental importance that the planning system should not only be fair but should be seen to be fair.

Elected Members

2. Elected members set the Council's planning policy and determine planning applications and enforcement issues within the context of that policy. When elected members come to make a decision on a planning matter, they must:
 - act fairly and openly.
 - approach each application with an open mind.
 - carefully weigh up all relevant issues.
 - determine each application on its own merits.
 - avoid contacts with interested parties which might be taken to indicate that they were unduly influenced by one party or another.
 - ensure that there are clear and substantial reasons for their decisions, and that those reasons are clearly stated.
3. Elected members may delegate certain planning decisions to officers and where this is the case, officers will be bound to act in accordance with the principles set out in this paragraph.

Role of Officers

4. The function of officers is to advise and assist members in matters of planning policy and in their determination of planning applications and enforcement issues by:
 - providing impartial and professional advice.
 - making sure that all the information necessary for the decision to be made is given.
 - providing a clear and accurate analysis of the issues.
 - setting applications and enforcement issues against the broader Development Plan policies and all other material considerations.
 - giving a clear recommendation.
 - carrying out the decisions of Councillors in committee or sub committee.

Lobbying

5. There are two issues which may arise when a member has been lobbied. They are the issues of pre-determination and personal interest.

Pre-determination

6. Members are under an obligation to determine matters on their merits. That means that they must not make up their minds before receiving and reading any officer report, or before hearing any debate on the matter out of which new information may arise. The important issue is that the member's mind must not

be closed to consideration at the point of deliberation on a matter. Whilst a predisposition to a particular view may be legitimate, a closed mind at the point of considering a planning application would not be. The member must be open to persuasion.

7. Whilst a predisposition to a particular point of view is acceptable, a predetermination is unacceptable. To avoid compromising their position before they have received all the relevant information, members must:
 - avoid, as far as possible, meeting an applicant or potential applicant alone.
 - avoid making categorical statements in advance about whether they support or oppose the proposal.
 - not pressurise officers to make a particular recommendation in their report.
 - direct lobbyists or objectors to planning officers, who will include reference to their opinions, where relevant, in their report.
 - advise the Director of Planning and the Chair of the appropriate Planning Committee of the existence of any lobbying interest.
8. Where a member has been lobbied, they should report to the relevant committee that they have been lobbied and by whom. However, members must act in the public interest and not at the behest of any individual or interest. If the member feels that they no longer retain an open mind on the matter but that their impartiality has been compromised, they will need to decide whether to withdraw from the meeting.
9. Where a member decides that they want to act as a representative of their community, reporting and advocating the views of their constituents, it follows that they will no longer be acting impartially. In those circumstances, they should not seek to participate in any consideration of or vote on the matter.

Interests

10. Whether or not a Member may participate and vote on a planning matter depends on the nature of the interest that they hold. The situation may be summarised as follows.
 - A. Disclosable pecuniary interests: Where a Member of the Planning Committee has a disclosable pecuniary interest then that Member cannot participate in any discussion or vote in respect of that matter at Planning Committee or otherwise. They must declare the interest and withdraw from the room.

Members who are not members of the Planning Committee are similarly bound by the provisions relating to disclosable pecuniary interests and may not make any representations to the Committee on their own behalf or those of their constituents or others. They similarly must not attend during consideration of that item.
 - B. Other registerable and non-registerable interests: If a Member of the Planning Committee has an interest, other than a disclosable pecuniary interest, in a matter which is under consideration by Planning Committee, which would either:

- (i) constitute an interest that would need to be registered under the Council's Code of Conduct or
- (ii) which whilst not requiring registration would, be likely to affect the wellbeing of a member, their family, friend or close associate(s) more than it would affect those in the local area generally

then the Member should declare the interest but may stay and participate in the consideration of the matter and may vote unless the following paragraph (C) applies.

- (C) If the interest is such that a reasonable member of the public in possession of all the facts would think that the member's interest is so significant that it would be likely to impair their judgement of the public interest the member, should not participate in the decision-making process and should withdraw.
- (D) Members who are not members of the Planning Committee with such an interest may still attend to make representations to the Committee on their own behalf or on behalf of their constituents or others, provided a declaration of interest is recorded and as long as the Member leaves immediately after doing so.

11. Members with an interest that would preclude their attendance at a meeting during consideration of a matter, can still present views to the meeting, through other means:
- written representations in a private capacity. Such representations should disclose the existence and nature of the interest. Members must not seek preferential treatment, and representatives should be addressed to the officers not members.
 - the use of a professional representative to make representations.
 - arranging for another member to represent the views of constituents on matters in which a member has a prejudicial interest.

The advice of the Monitoring Officer should be sought as to whether an interest ought to be declared in cases of doubt.

12. Where a member receives relevant information in respect of an application which is not contained in the Director of Planning's report on the application, the member should secure that that information is made available to other members of the Committee, by advising the Director of Planning directly so that the information can be confirmed, rather than run the risk that the Committee might take a decision on the basis of information which subsequently proves to be incorrect.

Discussions with Potential Applicants

13. Members should note that breach of the requirements in relation to personal interest and for pre-determination may mean that the decision is rendered invalid if challenged in the courts.
14. Pre-Application meetings with potential applicants are encouraged to ensure beneficial development and to resolve matters which might otherwise lead to

the refusal of planning permission. However, to avoid such meetings being misunderstood, they should normally be at officer level and:

- where meetings are to involve elected members, they will be arranged by and attended by officers and will include the Chair of the relevant Planning Committee or their representative.
- potentially contentious meetings will be attended by at least two officers, including the Director of Planning or their representative.
- a note of the discussion will be taken and placed on file and made available for public inspection at the appropriate time.
- it will be made clear at such meetings that only personal and provisional views based upon the policies in the Development Plan documents and any other relevant documents forming the local development framework can be given and no commitments can be made which would bind or otherwise compromise the relevant Planning Committee or any member of it.

The Party Whip

15. Members cannot accept an instruction from anyone to determine an application in a particular way, as they must determine the issue on its merits. So, while they may give appropriate weight to the views of other members whether expressed in the committee meeting or in prior discussions, they must determine the application on its merits and should not take into account any fact which they are not prepared to state in open Committee. As a result, it is not appropriate for any party group to instruct its members to vote in a particular manner on an application or to apply or threaten to apply any sanction to any member who voted contrary to the Group's collective view. Where such a whip has been applied, members should declare it in exactly the same manner as they would declare any other attempt at lobbying.

Decisions Contrary to Officer Recommendation

16. From time to time, members of the relevant Planning Committee will disagree with the professional advice given by the Director of Planning. Development Control is not an absolute science and there can be genuine disagreement about the implications of a particular proposal. The Director of Law and Corporate Governance or their representative will be present at the Committee making the decision and will be able to advise if the facts simply cannot support the conclusion which the members have drawn, and the Committee is in danger of acting unreasonably. This advice may be given in public or private.
17. In cases where the Planning Committee decides for good and valid reason to depart from the Director of Planning's recommendation, the Committee must define the reasons for rejecting the officer's recommendation and those reasons must be recorded in the minutes of the meeting. Where it is not possible for the Committee to define those reasons with sufficient precision at that initial meeting, the Committee should adjourn the determination of the application to permit the appropriate officers to present to a subsequent meeting a Statement of Draft Reasons for its approval. Where an appeal arises against such a decision, officers will give support to the relevant Committee members in preparing evidence for the appeal, but it will be for members of the Planning Committee making the decision, to appear at any appeal hearing and give evidence of the reasons for the Committee's decision.

Site Visits

18. Site visits can be useful to identify features of a proposal, which may be difficult to convey in a written report, but site visits do delay the decision on an application. When a member feels that a site visit is essential, they can either make a request to the Director of Planning or request the relevant Planning Committee to defer the determination of the matter until a site visit has been held.
19. Site visits are:
 - fact finding exercises.
 - not part of the formal consideration of the application and therefore public rights of attendance do not apply.
 - to enable officers to point out relevant features.
 - to enable questions to be asked on site for clarification.

However, discussion on the application will only take place at the subsequent Committee, as all relevant parties may not be in attendance on site.

Gifts and Hospitality

20. Gifts and hospitality give rise to particular problems in respect of the credibility of the planning process and acceptance of gifts or hospitality by members or officers can be a very serious criminal offence. Members should have particular regard to the provisions of the Council's Member Code of Conduct. In particular they must immediately report to the Monitoring Officer any offer of gifts or hospitality and they should avoid any behaviour which might be taken as indicating that they are open to such offers.

Planning Application by Members or Officers

21. The impartiality of the planning process requires particular care when dealing with an application by anyone who might ordinarily be involved in the planning process. So, whenever any member or any officer who might be involved in the planning process submits an application to the Council for himself/herself or on behalf of any other person, they will:
 - inform both the Director of Planning and the Council's Monitoring Officer
 - take no part in processing or determining the application.

The Director of Planning will ensure that all such applications are determined at the appropriate committee meeting and not under any delegated powers.

Planning Applications by the Council

22. The Council itself requires planning permission to carry out or authorise development on land it owns. These applications will be considered by Planning Committee and are not delegated to officers.

Applicant and Public Representations at Planning Committee

23. The Planning Committee will approve procedures to ensure that where they receive representations from or on behalf of the applicant or from members of the public on a particular application, there is an opportunity for advocates both for and against the proposal to be heard in a balanced manner.

Complaints

24. Any issues or concerns arising from this protocol can be raised with the Chair of the appropriate Planning Committee or the Director of Planning. The Council also has a formal complaints system in operation, which can be used if necessary.

Training

25. All members are required to attend training arranged by the Director of Planning before sitting on any Planning Committee.

Voting

26. To be able to vote on any application before any Planning Committee, members must be present throughout the duration of the item being discussed.

Local Authority Code on Publicity

Introduction

1. This Code applies to all local authorities in England specified in Section 6 of the Local Government Act 1986 and to other authorities in England which have that provision applied to them by other legislation. Where the term “local authorities” is used in this Code it should be taken as referring to both those categories of authority. References to “the Act” are to the Local Government Act 1986.
2. Local authorities are required by section 4(1) of the Act to have regard to the contents of this Code in coming to any decision on publicity. Section 6 of the Act defines publicity as “*any communication in whatever form, addressed to the public at large or a section of the public*”. The Code therefore applies in relation to all decisions by local authorities relating to paid advertising and leaflet campaigns, publication of free newspapers and newssheets and maintenance of websites – including the hosting of material which is created by third parties.
3. Nothing in this Code overrides the prohibition by Section 2 of the Act on the publication by local authorities of material which in whole or in part appears to be designed to affect public support for a political party. Paragraphs 21 to 24 offer some guidance for local authorities on the management of publicity which may contain or have links to party political material.

Principles

4. Publicity by local authorities should:
 - be lawful.
 - be cost effective.
 - be objective.
 - be even-handed.
 - be appropriate.
 - have regard to equality and diversity.
 - be issued with care during periods of heightened sensitivity.

Lawfulness

5. Local authorities should ensure that publicity complies with all applicable statutory provisions. Paid-for advertising must comply with the Advertising Standards Authority’s Advertising Codes.
6. Part 3 of the Communications Act 2003 prohibits political advertising on television or radio. Local authorities must ensure that their publicity does not breach these restrictions.
7. Section 125 of the Political Parties, Elections and Referendums Act 2000 places a specific restriction on the publication by a local authority of material relating to a referendum under Part 7 of that Act, during the period of 28 days immediately before the referendum is held.

8. The Local Authorities (Conduct of Referendums) (England) Regulations 2012 prohibits local authorities from publishing material in the 28 days immediately before a referendum which expresses support for, or opposition to a particular answer to a referendum question relating to the constitutional arrangements of the authority.
9. The Local Authorities (Referendums) (Petitions) England Regulations 2011 prohibits local authorities from incurring expenditure to publish material which appears designed to influence people in deciding whether or not to sign a petition relating to the constitutional arrangements of the authority, or to assist others to publish such material.

Cost effectiveness

10. In relation to all publicity, local authorities should be able to confirm that consideration has been given to the value for money that is being achieved, including taking into account any loss of potential revenue arising from the use of local authority-owned facilities to host authority publicity.
11. In some circumstances it will be difficult to quantify value for money, for example where the publicity promotes a local amenity which is free to use. In such a case authorities should be able to show that they have given thought to alternative means of promoting the amenity and satisfied themselves that the means of publicity chosen is the most appropriate.
12. If another public authority, such as central government, has issued publicity on a particular topic, local authorities should incur expenditure on issuing publicity on the same matter only if they consider that additional value is achieved by the duplication of that publicity. Additional value might be achieved if locally produced publicity gives a local context to national issues.
13. The purchase of advertising space should not be used as a method of subsidising voluntary, public or commercial organisations.
14. Local authorities should consider whether it is appropriate to seek advice from economic analysts, public relations experts or other sources of expert advice before embarking on a publicity campaign involving very large expenditure.

Objectivity

15. Local authorities should ensure that publicity relating to policies and proposals from central government is balanced and factually accurate. Such publicity may set out the local authority's views and reasons for holding those views but should avoid anything likely to be perceived by readers as constituting a political statement or being a commentary on contentious areas of public policy.
16. Any publicity describing the Council's policies and aims should be as objective as possible, concentrating on the facts or explanation or both. Local authorities should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy. It is acceptable for local authority publicity to correct erroneous material which has been published

by other parties, despite the fact that the material being corrected may have been published with the intention of influencing the public's opinions about the policies of the authority. Such publicity should seek to explain the facts in an objective manner.

17. Where paid-for advertising is used by local authorities, it should be clearly identified as being advertising. Paid-for advertising, including advertisements for the recruitment of staff, should not be used in any publication owned or controlled by a political party.
18. Advertisements for the recruitment of staff should reflect the tradition of political impartiality of local authority employees and should not (except in the case of advertisements relating to the appointment of staff pursuant to section 9 of the Local Government and Housing Act 1989 (assistants for political groups)) refer to any political activities or affiliations of candidates.

Even-handedness

19. Where local authority publicity addresses matters of political controversy it should seek to present the different positions in relation to the issue in question in a fair manner.
20. Other than in the circumstances described in paragraph 34 of this Code, it is acceptable for local authorities to publicise the work done by individual members of the authority, and to present the views of those individuals on local issues. This might be appropriate, for example, when one Councillor has been the 'face' of a particular campaign. If views expressed by or attributed to individual Councillors do not reflect the views of the local authority itself, such publicity should make this fact clear.
21. It is acceptable for local authorities to host publicity prepared by third parties – for example an authority may host a blog authored by members of the authority or a public forum on which members of the public may leave comments. Maintenance by a local authority of a website permitting the posting of material by third parties constitutes a continuing act of publication by that local authority which must accordingly have a system for moderating and removing any unacceptable material.
22. It is generally acceptable for local authorities to host publicity, such as a blog, which itself contains links to external sites over which the local authority has no control where the content of those sites would not itself comply with this Code. This does not amount to giving assistance to any person for the publication of material which local authorities are not permitted to publish. However, particular care must be taken by local authorities during the period before elections and referendums to ensure that no breach of any legal restriction takes place. It may be necessary to suspend the hosting of material produced by third parties or public forums which contain links to impermissible material during such periods.
23. It is acceptable for publicity containing material prepared by third parties and hosted by local authorities to include logos of political parties or other organisations with which the third parties are associated.

24. It is acceptable for publicity produced or hosted by local authorities to include a logo associated with a particular member of the authority, such as a directly elected mayor, or leader of the authority. Publicity material produced by local authorities relating to a particular member must not seek to affect public support for that individual.
25. Where local authorities provide assistance to third parties to issue publicity, they should ensure that the principles in this Code are adhered to by the recipients of that assistance.

Appropriate use of publicity

26. Local authorities should not incur any expenditure in retaining the services of lobbyists for the purpose of the publication of any material designed to influence public officials, Members of Parliament, political parties or the Government to take a particular view on any issue.
27. Local authorities should not incur expenditure on providing stands or displays at conferences of political parties for the purpose of publicity designed to influence members of political parties to take a particular view on any issue.
28. Local authorities should not publish or incur expenditure in commissioning in hard copy or on any website, newsletters, newssheets or similar communications which seek to emulate commercial newspapers in style or content. Where local authorities do commission or publish newsletters, newssheets or similar communications, they should not issue them more frequently than quarterly, apart from parish Councils which should not issue them more frequently than monthly. Such communications should not include material other than information for the public about the business, services and amenities of the Council or other local service providers.
29. Publicity about local authorities and the services they provide should be freely available to anyone who wishes to receive such information in a format readily accessible and understandable by the person making the request or by any particular group for which services are provided.
30. All local authority publicity should clearly and unambiguously identify itself as a product of the local authority. Printed material, including any newsletters, newssheets or similar publications published by the local authority, should do this on the front page of the publication.

Equality and diversity, etc

31. Publicity by local authorities may seek to influence (in accordance with the relevant law and in a way which they consider positive) the attitudes of local people or public behaviour in relation to matters of health, safety, crime prevention, race relations, equality, diversity and community issues.
32. Local authorities should consider how any publicity they issue can contribute to the promotion of any duties applicable to them in relation to the elimination of discrimination, the advancement of equality and the fostering of good relations.

Care during periods of heightened sensitivity

33. Local authorities should pay particular regard to the legislation governing publicity during the period of heightened sensitivity before elections and referendums – see paragraphs 7 to 9 of this Code. It may be necessary to suspend the hosting of material produced by third parties, or to close public forums during this period to avoid breaching any legal restrictions.
34. During the period between the notice of an election and the election itself, local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual members or groups of members. Publicity relating to individuals involved directly in the election should not be published by local authorities during this period unless expressly authorised by or under statute. It is permissible for local authorities to publish factual information which identifies the names, wards and parties of candidates at elections.
35. In general, local authorities should not issue any publicity which seeks to influence voters. However, this general principle is subject to any statutory provision which authorises expenditure being incurred on the publication of material designed to influence the public as to whether to support or oppose a question put at a referendum. It is acceptable to publish material relating to the subject matter of a referendum, for example to correct any factual inaccuracies which have appeared in publicity produced by third parties, so long as this is even-handed and objective and does not support or oppose any of the options which are the subject of the vote.

Guidance for Members on Outside Bodies

1. Members are appointed formally by the Council annually to serve on a range of outside bodies, including voluntary organisations, local government associations, and companies formed to provide specific local services such as SELCHP.
2. In carrying out a role, members act both as individuals and as representatives of the Council. This has implications for the members appointed as follows:
 - a) Positively
 - It entails acting according to the rules, Constitution and framework set by the outside body.
 - It entails making independent and personal judgments in line with their duty of care to the outside body.
 - It entails reporting back, at least annually, to the Council or relevant committee.
 - It entails behaving ethically and following as far as applicable the Lewisham Member Code of Conduct.
 - It entails taking an active and informed role in the management of the outside body's affairs.
 - b) Negatively
 - It does not entail representing the political party to which members owe their political loyalty.
 - It does not entail avoiding taking part in the outside body's discussions and decisions.
 - It does not entail looking at things simply from the Council's perspective.
 - It does not entail being there in name only and merely turning up to meetings.
3. The role of members on outside bodies may give rise to occasional uncertainty and perhaps to conflicts of interest. The attached Appendix offers a simple legal guide on the responsibilities of members and officers. Members are asked to read the guide and if there are issues arising from their particular situation at any time, to contact the Director of Law and Corporate Governance for advice.
4. Members (and officers) are under a specific obligation as a result of the 1995 Local Authorities (Companies) Order to report back to the Council on their involvement in outside companies to which they have been nominated by the Council. That obligation is best met by an annual report to the Mayor and Cabinet and/or relevant committee with an opportunity for questions, and an item on agendas allowing questions by prior notice. While the law now makes this a requirement for involvement in outside companies, it is self-evident that facilities for report back should apply to involvement in all outside bodies.
5. Members will appreciate that the guide and also the Lewisham Member Code of Conduct addresses some of the issues around the possibility of conflicts of interest. In essence, if the outside body comes into conflict with the Council and the member is a director or on the management committee of the outside body,

it is likely that the member's prime duty would be to the outside body in the conduct of the outside body's affairs. The member is however, also given certain specific dispensations in the Lewisham Member Code of Conduct to participate in the Council decision-making affecting the outside body to which he or she has been appointed.

6. If there is a major dispute between the Council and the outside body, then the member may be placed in an untenable situation. Before taking precipitate action, the member is advised to seek the advice of the Chief Executive or the Director of Law and Corporate Governance.
7. Ultimately, it is possible that the member may find they are unable adequately to carry out their responsibilities properly, both as a member of the Council and as a member or director of the outside body. But that would be an exception and should not deflect members generally from being prepared to participate in the management and running of outside organisations.

1. General

- 1.1 There are some general provisions which apply to members and officers who act in the role of company director, trustee or member of an incorporated body, such as the committee of management of an unincorporated voluntary organisation.
- 1.2 Members are under a duty to exercise independent judgement in the interest of the organisation in which they are involved. Whilst it is recognised that members and officers may have a commitment to representing the Council on the outside organisation, they must be aware that it is their responsibility to decide what view to take on any question before that organisation. Where a member or officer is partaking in an outside organisation in a representative capacity, they must declare that fact to the organisation. There will be a fine line to tread between their duty to the organisation and to the Council.
- 1.3 In the end, the member or officer in acting as a director/trustee or member of a management committee of an organisation, must act in accordance with the interests of that organisation. A mandate from the Council to vote one way or the other would put the member or officer in breach of the duty to the organisation. It is permissible to take account of the Council's wishes, but not to vote simply in accordance with them. The overriding duty in considering an item before the outside organisation is to vote in accordance with the interests of that organisation.
- 1.4 Members and officers must also ensure that avoidable loss is not incurred in managing the organisation. They cannot avoid this responsibility by not reading the papers or failing to ask for appropriate reports. They will be expected to seek professional advice where appropriate.

2. Companies

- 2.1 On incorporation a company becomes a separate legal entity which can hold property in its own right, enter into contracts and sue and be sued in its own name. The company is distinct from its shareholders and members. In the case of a limited liability company, the liability of members of the company is limited to the amount they paid or agreed to pay when they joined the company. This can be as little as £1.
- 2.2. Companies limited by shares are those which have a share capital (e.g. 1000 shares of £1 each). Each member holds shares and receives a share in the profits made by the company according to the value of the shares held. Shares can be sold. Companies limited by guarantee are those where there is no shareholding. Instead each member agrees that in the event of the company being wound up they will agree to pay a certain amount. This may also be as little as £1. This form of company is the most usual in the public and voluntary sector particularly where charitable status is sought.
- 2.3 The management of a company is generally the responsibility of a board of directors. The powers of the directors are usually set out in the company's Articles of Association (the rules each company has to govern its internal management). Sometimes even though a company has been incorporated, the directors may be referred to as members of the committee of management, governors or even trustees. However, this does not change their status as directors. Conversely, sometimes officials are called directors but they are not members of the board. Again their status will not be affected. Directors are those who are appointed by the company to act in that capacity.

Directors' Duties

- 2.4 A director is an agent of the company. Their prime duties are as follows:
- (1) A fiduciary duty to the company (not individual shareholders) to act honestly and in good faith and in the best interests of the company as a whole. Directors are therefore in the position of "quasi trustees" who must take proper care of the assets of the company. The fiduciary duty of the director towards the company is very similar to the fiduciary duty of Councillors to the Council Tax payers of the borough.
 - (2) A general duty of care and skill to the company, but a director requires no greater skill than might reasonably be expected of someone of that individual's particular knowledge and experience. A director is not deemed to be an expert, but is expected to use due diligence and to obtain expert advice if necessary.
 - (3) Like a councillor in respect of Council decisions, the director is under a duty to exercise independent judgement though it is permissible for them to take account of the interests of a third party which they represents. In such a case the director must disclose that position and tread a fine line between the interests of the company and the party represented (in this case the Council). The director cannot vote simply in accordance with a Council mandate. To do so would be a breach of duty.

- (4) No conflict. There may be actual or potential conflicts between the interests of the Council and the interests of the company. In the most serious circumstances the only proper way for the conflict to be resolved may be for the Councillor to resign either from the company or from the Council.
- (5) Directors are not allowed to make a private profit from their position. They must therefore disclose any interests they or their family may have in relation to the company's contracts. Whether they are then allowed to vote will depend on the Articles of Association.
- (6) Directors must ensure compliance with the Companies Acts in relation to the keeping of accounts, and that the relevant returns are made to the Registrar of Companies. Failure to do so incurs fines and persistent default can lead to disqualification as a director.

2.5 Directors' Liabilities

- (1) The company's identity must clearly be shown on its stationery. The company number, place of registration, registered office address and if any of the directors' names are shown then they must all appear. Non-compliance is an offence and the directors and company officers can be fined.
- (2) A company can only act within the scope set out in its Articles of Association (the document which sets out the objects of the company). Those directors knowingly causing the company to act beyond those activities will be liable personally. In very limited circumstances it is possible for the actions of the directors to be ratified by the members of the company.
- (3) A director may also be liable for breach of trust, if they misapplies the money or property of the company. Directors may also be liable if they fail to take action to prevent the breach of a co-director of which they are aware.
- (4) In the event of failure to act in accordance with the best interests of the company, or if a director uses their powers improperly or makes a personal profit from their position as director, then the director may be personally liable for loss to the company and may be required to give to the company the personal profit made.
- (5) If the level of skill and care shown by a director falls below that which could be reasonably expected and the company suffers loss, the director will be liable for the loss incurred. However, if it believes the director acted honestly and reasonably, a Court may excuse the director the liability.
- (6) If a director knows or ought to know that there is no reasonable prospect of the company avoiding liquidation, a Court may require that director to contribute to the company's assets on liquidation if the company continues to trade. This is known as wrongful trading. No such order will be made if the Court is satisfied that the director took all reasonable steps to minimise the loss to the creditors. If a director has concerns about the company's financial position they would be

well advised to inform the other directors and seek advice from the company auditors. They should try to ensure that further debts are not incurred.

- (7) A director will also be liable if to their knowledge the company carries on business with intent to defraud creditors or any other person, or for any other fraudulent purpose. Fraudulent trading can also lead to disqualification from acting as a director.
- (8) All cheques and similar documents which purport to be signed on behalf of the company must bear the company name. Where they do not, the director signing on behalf of the company may be liable to a fine and may also be liable to the payee if the company fails to honour the cheque. It is therefore wise for directors to make sure that all documents they sign on behalf of the company state very clearly that they act as agent for the company, (e.g. Director, for and on behalf of).
- (9) A third party who enters into a contract on the assumption that a director has power to bind the company, may be able to claim damages against the director if it subsequently transpires that the director had no such power. Directors would be well advised to ensure that contracts are approved by the board and that the authority to enter into any contract has been properly delegated before signing it.
- (10) Though company liability ceases on dissolution the liability of the directors (if any) may still be enforced after dissolution.

2.6 Indemnities

- (1) Directors cannot be indemnified against liability arising out of negligence, default, or breach of duty or trust. However, the company's Articles of Association may allow for directors to be indemnified by the company in respect of the cost of defending such proceedings if the director is granted relief by the Court or acquitted. It is lawful for companies to purchase insurance to protect its directors against claims of negligence, breach of duty, trust, default. Directors would be well advised to ensure that such a policy of insurance is maintained at all times.
- (2) The Council has power to provide indemnity and/or insurance for the Mayor and councillors acting as directors on the nomination of the Council. Generally it is prudent for members who act as directors to ensure that the company takes out and maintains an appropriate policy of insurance. However, where appropriate, the Council will consider giving individual members such indemnity and insurance, having considered all the factors associated with the particular instance.

2.7 Local Authorities (Companies) Order 1995

- (1) This Order, made under the Secretary of State's powers contained in Part V Local Government & Housing Act 1989, sets out rules concerning local authorities' involvement in "regulated companies" which are subject to extensive

controls, and their involvement in other companies where a number of rules apply.

- (2) “Regulated companies” are those which are controlled or influenced by the local authority. “Influenced companies”, under the effective control of the local authority, will be subject to capital finance regime and special propriety controls. In broad terms, the test as to whether companies are local authority influenced is whether the local authority has the right to or in fact does exercise a dominant influence over the company in question.
- (3) The original concept of controlled, influenced and minority interests in companies were introduced by the 1989 Act.

“Influenced” means at least 20% local authority interest plus one of a number of business relationships being satisfied. Perhaps the most significant are (broadly) where the company derives over 50% of its turnover from the Council, or the company is located on local authority land leased or sold for less than best consideration.

“Controlled” means over 50% local authority interests, and “minority” less than 20% interest.

The concepts in the 1989 Act still stand, but the Order introduces the term “regulated”.

- (4) Members who are directors of outside companies to which they have been nominated by the Council are under the following obligations:
 - (a) that the remuneration they receive from the company should not exceed that received from a local authority, and should be declared;
 - (b) to give information to Councillors about their activities as required by the local authority (save for confidential information); and
 - (c) to cease to be a director immediately upon disqualification as a Councillor.

Under the Local Government & Public Involvement in Health Act 2007, the Secretary of State has power to regulate activity of local authority entities, and at a date yet to be agreed Part V of the 1989 Act will be repealed. Until such time, the provisions of the 1995 Order above apply.

3. Limited Liability Partnerships (LLPs)

- 3.1 LLPs are a form of vehicle that gives the benefits of limited liability but allows its members the flexibility of a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the members will be limited.
- 3.2 It would be unusual for members to be appointed by the Council. If members are to be appointed to a limited liability partnership members should take advice on the implications from the Director of Law and Corporate Governance before doing so.

3.3 LLPs are not available to charities.

4. Charities

4.1 To be a charity an organisation must operate for a charitable purpose. These are defined in the Charities Act 2011 and include:

- (a) the prevention or relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the advancement of health or the saving of lives;
- (e) the advancement of citizenship or community development;
- (f) the advancement of the arts, culture, heritage or science;
- (g) the advancement of amateur sport;
- (h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- (i) the advancement of environmental protection or improvement;
- (j) the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;
- (k) the advancement of animal welfare;
- (l) the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services;
- (m) any other purpose recognised as or analogous to charitable purposes.

4.2 The Charity Commissioners may also grant charitable status to an organisation set up for an analogous purpose. It must operate for the public benefit and have exclusively charitable purposes. An organisation which operates for political purposes will not qualify for charitable status.

4.3 To register as a charity the organisation must submit its Trust Deed (usually the Articles of Association of a company limited by guarantee) to the Charity Commissioners for approval. If they are satisfied that the organisation is charitable it will be registered as such.

4.5 Those who are responsible for the control and administration of a charity are referred to as its trustees, even where the organisation is a company limited by guarantee even though they are not strictly trustees. Trustees of a charity retain personal liability, and can only delegate if the trust deed authorises them so to do.

Trustees' Duties

4.7 Charitable trustees owe duties of compliance, prudence and care. They are as follows:

Compliance

- To ensure that the charity complies with legal requirements and those of the Charity Commissioners, and that the charity submits annual reports and accounts;
- To ensure that the charity acts within the terms of its governing document;
- To act with integrity, avoiding personal conflict of interest.

Prudence

- To ensure that the charity is and will remain solvent.
- To use charitable funds and assets reasonably, and only in furtherance of the charity's objects.
- To avoid undertaking activities that might place the charity's endowment, funds, assets or reputation at undue risk.
- To take special care when investing the funds of the charity or borrowing funds for the charity to us.

Care

- To use reasonable care and skill in their work as trustees.
- To take external professional advice on all matters where there may be material risk to the charity, or where the trustees may be in breach of their duties.
- Trustees must not make a private profit from their position. They must also perform their duty with the standard of which an ordinary, prudent businessperson would show. Higher standards are required of professionals, and in relation to investment matters.

4.11 Trustees' Personal Liability

- (1) If in doubt, always consult the Charity Commissioners. A trustee who does so will avoid personal liability for breach of trust if they act in accordance with the advice given.
- (2) Generally though, a trustee incurs personal liability if they:
 - acts outside the scope of the trust deed.
 - falls below the required standard of care.
 - makes a personal profit from the trust assets.
- (3) In such circumstances the trustee will incur personal liability for losses incurred.
- (4) Trustees can be liable personally to third parties because unlike a company, a trust has no separate identity from the trustees. Trustees are however, entitled to an indemnity from the trust assets, provided they act properly in incurring the liability. Trustees remain personally liable once they retire (e.g. if they have entered into a contract on behalf of the trust) and should therefore seek an indemnity from their successors. If the charity is a company however, the trustees for the time being will be responsible.
- (5) Trustees may be liable to fines if they do not comply with the duty to make returns etc.

4.12 Indemnities

An indemnity can be given from the trust fund provided the trustee has acted properly and within their powers. Trustees may take out insurance to protect themselves against personal liability but not for criminal acts, fraud etc. There will be no problem if the trustees themselves pay the premiums but if they are

paid out of the charitable funds the trustees will need the consent of the Charity Commissioners unless the trust deed allows it.

5. Committees of Management

Unincorporated Associations

- 5.1 Groups which are not charitable trusts or limited companies are “unincorporated associations” and have no separate legal identity from their members. The rules governing the members’ duties and liability will be set out in a Constitution, which is simply an agreement between the members as to how the organisation will operate. Usually the Constitution will provide for a management committee to be responsible for the everyday running of the organisation. An unincorporated organisation may be charitable and may register as a charity.
- 5.2 Property will have to be held by individuals as the organisation has no existence of its own.

Duties

- 5.3 Broadly, Management Committee members must act within the Constitution, and must take reasonable care in exercising their powers.

5.4. Liabilities

- (1) Generally, the Management Committee members are liable for the acts of the organisation, but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there are not enough funds, the Committee members are personally liable for the shortfall.
- (2) If one person is appointed by the Constitution to act as the agent of the organisation for certain purposes, then that person acts as the agent of all the members, who have joint liability for the agent’s actions.
- (3) Members of the Committee of Management will have personal liability if they act outside the authority given to them or if they do not comply with statute e.g. the payment of employees’ tax etc.

Indemnities

- 5.5 Members will be entitled to an indemnity if they act in accordance with the organisation’s Constitution and are not at fault. It is possible to obtain insurance but if the organisation is to pay the premium it must be permitted by the Constitution.

Licensing Remote Hearing Protocol

1. Introduction

- (a) The Licensing Act 2003 and the Licensing Act (Hearings) Regulations 2005 and The Gambling Act 2005 and The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 permit hearings to be held via remote means including (but not limited to) video conferencing, live webcast, and live interactive streaming. Where a hearing is accessible to the public through such remote means the hearing takes place in public whether or not members of the public are able to attend the hearing in person.
- (b) The following protocol sets out how such meetings will be conducted.
- (c) The Chair has the discretion to amend this Protocol in any given case where they consider it appropriate to do so.
- (d) For the purposes of this Protocol:
 - an “**in person hearing**” is when all parties are in the same room;
 - a “**hybrid meeting**” is when some of the participants are in the same room but at least one of the other parties to the hearing participates via remote means;
 - a “**remote hearing**” is when all parties to the hearing participate via remote means.

2. Applications for “in person” meetings

- (a) The default position of the council is to hold remote hearings unless the Chair determines that it is in the interests of justice to hold a hybrid meeting or a meeting in person.
- (b) Any request from a party to hold a hearing in person or a hybrid meeting should be submitted to Governance and Committee Services. All requests must set out the reasons for the request.
- (c) Requests will be considered and determined by the Chair on a case-by-case basis. The overriding factor in deciding on the style of the hearing is to ensure a fair hearing. The Chair will consider the Public Sector Equality Duty set out in the Equality Act 2010 when making any decision. Any decision to refuse a request will be recorded in writing with reasons for the decision and will be read out at the start of the agenda item it relates to.

3. Preparation for remote hearings

- (a) All Applicants, Responsible Authorities and other persons who have submitted a valid representation (“**Parties**”) must at least 5 working days before the start of the hearing, state whether:
 - a. they will attend the hearing;
 - b. they will be represented by someone else (e.g. councillor / MP / lawyer);

- c. they think that a hearing is unnecessary (if, for example they have come to an agreement before the formal hearing);
 - d. if they want another person to appear at the hearing (not to represent them), a request for permission for the person to attend, and details of their name and how they may be able to assist the authority in relation to the application.
- (b) In addition, the Parties must provide their email addresses and contact telephone numbers to Governance and Committee Services no later than 5 working days before the hearing is scheduled to take place.
- (c) Parties must let the licensing authority know as soon as possible (by a notice no later than 24 hours before the start of a hearing, or orally at the hearing) if they wish to withdraw their representation.
- (d) All Parties and their advisers will be provided with a link to access the meeting prior to the commencement of the hearing. Only these Parties will be able to participate in the hearing (together with their advisers) provided they have registered in advance. The link provided to the Parties and their advisers must not be shared.
- (e) A link for the general public to watch the meeting will be available on the Council's website.

4. Attendance at hearings

- (a) A Member in remote attendance is present and attends the hearing, including for the purposes of the hearing's quorum, if at any time all three of the following conditions are satisfied, those conditions being that the Member in remote attendance is able at that time:
 - (i) to hear, and where practicable see, and be so heard and, where practicable, be seen by, the other Members in attendance;
 - (ii) to hear, and where practicable see, and be so heard and, where practicable, be seen by, any members of the public entitled to attend the hearing in order to exercise a right to speak at the hearing; and
 - (iii) to be so heard and, where practicable, be seen by any other members of the public attending the hearing.
- (b) A Member in remote attendance will be deemed to have left the hearing where, at any point in time during the hearing, any of the conditions for remote attendance contained in 4(a) above are not met. In such circumstance the Chair may, as they deem appropriate:
 - (i) adjourn the hearing for a short period to permit the conditions for remote attendance of a Member contained in 4(a) above to be re-established;
 - (ii) count the number of Members in attendance for the purposes of the quorum; or
 - (iii) continue to conduct the hearing in the absence of the Member in remote attendance.

- (c) Where a Member is required to leave the hearing, the means of remote attendance and access is to be severed whilst any discussion or vote takes place in respect of the item or items of business which the member or co-opted member may not participate.
- (d) A party entitled to attend the hearing in order to exercise a right to speak is in remote attendance at any time if all three of the following conditions are satisfied, those conditions being that the member of the public in remote attendance is able at that time:
 - (i) to hear, and where practicable see, and be so heard and, where practicable, be seen by, Members in attendance;
 - (ii) to hear, and where practicable see, and be so heard and, where practicable, be seen by, any other members of the public entitled to attend the hearing in order to exercise a right to speak at the hearing; and
 - (iii) to be so heard and, where practicable, be seen by any other members of the public attending the hearing.
- (e) A party in remote attendance will be deemed to have left the hearing where, at any point in time during the hearing, any of the conditions for remote attendance contained in 4(d) above are not met. In such circumstance the Chair may, as he or she deems appropriate:
 - (i) adjourn the hearing for a short period to permit the conditions for remote attendance contained in 4(d) above to be re-established;
 - (ii) suspend consideration of the item of business in relation to the party's attendance until such time as a following item of business on the agenda has been transacted and the conditions for the party's remote attendance have been re-established or, on confirmation that this cannot be done, before the end of the hearing, whichever is the earliest; or
 - (iii) continue to conduct the hearing in the absence of the party in remote attendance.

5. Conduct during remote hearings

The following rules must be followed by all Parties to ensure the remote hearing can be conducted fairly:

- (a) all participants should join the meeting link promptly before the advertised start time;
- (b) participants will be placed in the waiting room until the commencement of the meetings;
- (c) after the advertised start time has passed no registered Parties will be allowed to join the hearing, except in exceptional circumstances, when permitted by the Chair;
- (d) all Parties must only address the hearing when invited to do so by the Chair;
- (e) all Parties must keep their microphones on mute unless they are speaking;

- (f) if a Party wishes to speak, they should use the “raise hand” facility. The Chair has the discretion to invite the party to make their comment at an appropriate stage in the hearing;
- (g) if a Party has a question for another party, this must be addressed to the Chair who will have the discretion to ask the relevant party to respond.
- (h) for ease of referencing by all participants:
 - a. any Party wishing to make suggestions as to the conditions that may be imposed in the event of the application being granted should do so by reference to the schedule of proposed conditions set out in the Conditions Schedule annexed to the Agenda papers. In so doing, they should use the same numbering in that Schedule;
 - b. when referring to the hearing papers, participants should give the page and paragraph number where appropriate.
- (i) If the Chair is made aware that a hearing is not accessible to the public through remote means at any time when it is legally required to be accessible to the public, due to any technological or other failure of provision, then the Chair shall adjourn the hearing immediately. If the provision of access through remote means cannot be restored within a reasonable period, then the remaining business will be considered at a time and date fixed by the Chair.
- (j) If a party, who has not given prior notice of their intention to attend the hearing is absent from the hearing, the hearing may be adjourned or held in the party's absence. Where the hearing is held in the absence of a party, the party's application, representation or notice submitted by that party will still be considered.
- (k) The Chair may require any party attending the hearing, who in their opinion is behaving in a disruptive manner, to leave the hearing at which point their access to the remote hearing will be terminated. The Chair may refuse to permit that person to re-join the meeting or permit them to return only on such conditions as the Chair may specify.
- (l) At any point during the hearing Members may retire into a separate private remote meeting accompanied by the Legal Advisor to deliberate. At this point in the proceedings the meeting will be adjourned however all Parties should remain available should Members have any questions.
- (m) When the private deliberations have ended Members will re-join the Live public meeting.
- (n) At the end of the hearing the Chair will close the hearing, and the livestream will be ended.
- (o) Please refer to the Guidance for Interested Parties which can be found on the Council's website: [Lewisham Council - Licensing – guidance on making a representation](#).