

The Council Meeting

Council Chamber, Town Hall
25 June 2012 at 7.00pm

Information for Members of the Public

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COLCHESTER BOROUGH COUNCIL

TO ALL MEMBERS OF THE COUNCIL

18 June 2012

You are hereby summoned to attend a meeting of the Council to be held at the Council Chamber, Town Hall on **25 June 2012 at 7:00pm** for the transaction of the business stated below.



Chief Executive

AGENDA

This is a Special Meeting of Council to consider the items of business set out below only.

Please note that the business may be subject to short breaks at approximately 90 minute intervals.

Pages

1. Welcome and Announcements

(a) The Mayor to welcome members of the public and Councillors and to invite the Chaplain to address the meeting. The Mayor to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Mayor's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched to off or to silent;
- location of toilets;
- introduction of members of the meeting.

2. Personal Interests of Members

Disclosures by Members under Council Procedure Rule 9(3) to 9(9) (if any).

3. Prejudicial Interests of Members

Disclosures by Members under Council Procedure Rules 9(10) and 9

(11) (if any).

(Note: Members should only declare personal and/or prejudicial interests on items that are to be considered at the meeting).

4. Adoption of a Members Code of Conduct in accordance with the Localism Act 2011

1 - 65

A... Motion that the decisions contained in the Monitoring Officer's report be agreed.

5. Exclusion of the Public

In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).



Council

Item
4

25 June 2012

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Adoption of a Members Code of Conduct in accordance with the Localism Act 2011		
Wards affected	Not applicable		

**This report requests Council to adopt new standards framework
in accordance with the Localism Act 2011**

1. Decisions Required

- 1.1 In accordance with section 27(2) of the Localism Act 2011 the Council adopts the Code of Conduct for Members at Appendix 2 to this report and that it comes into effect from 1 July 2012.
- 1.2 In accordance with section 28(6) of the Localism Act 2011 the Council adopts the “Arrangements” for dealing with allegations of failure to comply with the Code of Conduct for Members at Appendix 3 and paragraph 6.3 of this report and that they come into effect from 1 July 2012.
- 1.3 The Terms of Reference for the Standards Committee be agreed as detailed at Appendix 4 and that it comes into being on 1 July 2012.
- 1.4 In accordance with section 28(7) of the Localism Act 2011 that the Council appoints Mr Derek Coe to act as the Independent Person and such appointment to be for the period from 1 July 2012 to 30 June 2013.
- 1.5 The revised Council Procedure Rules at Appendix 5 to this report are adopted and come into effect from 1 July 2012.
- 1.6 Agree the arrangements for the granting of dispensations contained at paragraph 9.3 of this report.
- 1.7 That the Monitoring Officer be required to make all necessary changes to the Constitution to give effect to these changes.

2. Background

- 2.1 The Localism Act 2011 abolishes “the Standards Board regime”. This led to the abolition of Standards for England with effect from 1 April 2012 and the subsequent revoking of the Model Code of Conduct for Members and the requirement to establish statutory Standards Committees. Both the Model Code of Conduct for Members and the requirement for a statutory Standards Committee will be abolished on 1 July 2012.
- 2.2 Whilst the Localism Act itself contains most of the provisions, we have been awaiting regulations in relation to interests which form an integral part of the Code. These regulations (The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 were made on 6 June 2012 and come into force on 1 July 2012 (“the

Regulations”). Accordingly, all authorities are now required to have their new standards framework in place and operational for 1 July 2012.

- 2.3 At its meeting on 23 March 2012 the Standards Committee considered a report from the Monitoring Officer on a draft code, arrangements for dealing with complaints and details of the new register of Members interests. The proposals contained in the report were approved (subject to the Regulations being finalised and issued). The minutes of the meeting are attached to this report for information at Appendix 1.
- 2.4 The Public Law Partnership Governance Special Interest Group which comprises Monitoring Officers from across Essex has been working collaboratively to produce a common suite of documents for all authorities in Essex. The proposals contained in this report are consistent with this approach.

3. The Localism Act 2011

- 3.1 The Localism Act places a duty on authorities to promote and maintain high standards of conduct by members and co-opted members. In order to discharge its duty authorities are required to adopt a code of conduct for members and co-opted members of the authority which must be consistent with the seven Nolan principles. It is also a requirement that the code includes the authority’s requirements for the registration and disclosure of pecuniary and non pecuniary interests.
- 3.2 Arrangements are required to be put in place for dealing with allegations that Councillors have failed to comply with the code. The Localism Act also requires that the Monitoring Officer compiles and maintains a new register of Members Interests. The Act introduces Disclosable Pecuniary Interests which are required to be registered and disclosed at meetings. In addition, the Act requires the Council to appoint at least one Independent Person to act as an independent advisor and consultee.

4. The Code of Conduct

- 4.1 The Localism Act provides that only full council can adopt, revise or replace its Code of Conduct.
- 4.2 The Model Code of Conduct will be repealed with effect from 1 July 2012. As a consequence, personal and prejudicial interests will also be abolished from that date.
- 4.3 The Council is required to adopt a new Code of Conduct governing elected and co-opted member’s conduct when acting in that capacity. The Council has discretion regarding what it includes within its new Code of Conduct, provided that it is consistent with the seven Nolan Principles. The Regulations require the registration and disclosure of Disclosable Pecuniary Interests, which broadly equate to the current prejudicial interests.
- 4.4 Although the exact form of the Code is not prescribed it was agreed that we would participate in the county wide Code developed through the Public Law Partnership. This is to ensure that there was a consistency of approach adopted by all tiers of authorities across the county including parish and town councils, districts, boroughs, the county council and the unitaries. The Code of Conduct for Members attached at Appendix 2 to this report contains all the required provisions, brings forward the accepted behaviour obligations from the existing Code and includes the new requirements in relation to registration and disclosure of interests.

5. Arrangements for dealing with allegations that Members have failed to comply with the Code

- 5.1 The Localism Act requires that the Council adopts “Arrangements” for dealing with allegations of a failure to comply with the Code of Conduct both by Borough Council Members and Parish and Town Council Members of Parish and Town Council’s situated within the Borough of Colchester. Any such allegations can only be dealt with in accordance with the “Arrangements”.
- 5.2 The “Arrangements” must set out in some detail the process for dealing with allegations of failing to comply with the Code of Conduct and the actions which may be taken against a Member who is found to have failed to comply with the Code of Conduct. Our “Arrangements” are attached at Appendix 3 to this report.
- 5.3 The Standards Committee at its meeting on 23 March 2012 agreed:
- (a) That the Monitoring Officer be appointed as the Proper Officer to receive complaints for failure to comply with the Code of Conduct.
 - (b) That the Monitoring Officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation. He be instructed to seek resolution of complaints without formal investigation wherever practicable, and that he be given discretion to refer decisions on investigation to the Standards Committee where he feels that it is inappropriate for him to take the decision, and to report quarterly to the Standards Committee on the discharge of this function.
 - (c) Where the investigation finds no evidence of a failure to comply with the Code of Conduct, the Monitoring Officer be instructed to close the matter, providing a copy of the report and findings of the investigation to the complainant and to the member concerned and to the Independent Person, and reporting the findings to the Standards Committee for information.
 - (d) Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person be authorised to seek a resolution in appropriate cases, with a summary report for information to the Standards Committee. Where such resolution is not appropriate or not possible, he is to report the investigation findings to a Sub-Committee of the Standards Committee for a hearing.
- 5.4 At the Annual Meeting on 23 May 2012, Council agreed the formation and appointment of Borough Councillors to a new Standards Committee constituted under sections 101 and 102 of the Local Government Act 1972. The statutory Standards Committee constituted under the Local Government Act 2000 was chaired by an Independent Member and comprised Independent Members, Parish Representatives and Borough Councillors (all able to vote).
- 5.5 The new Standards Committee is required to be politically balanced and only Borough Councillors appointed to the Committee are able to vote. Parish Representatives and the Independent Person will be invited to be members of the Committee but will not be able to vote. The terms of reference for the Standards Committee are contained at Appendix 4 to this report. The new Committee will come into being on 1 July 2012 and the statutory Committee being abolished from the same date.

6. Independent Person

- 6.1 The “Arrangements” adopted by Council must include provision for the appointment by the Council of at least one Independent Person. Whilst the Localism Act provides that the Independent Person must be appointed through a process of public advertisement, application and appointed by a majority of all members of the Borough Council, a transitional arrangement has been introduced. This provides that until 30 June 2013 an authority may appoint a person who is currently the independent chair or member of its existing Standards Committee. After this date it will be required to undertake a recruitment process in accordance with the provisions contained in the Localism Act.
- 6.2 Due the very tight timescale it is proposed that the Council takes advantage of the transitional arrangements and appoints the independent chair of the existing Standards Committee Mr Derek Coe, to be the Council’s Independent Person under the Localism Act.

7. Interests

- 7.1 The Localism Act makes fundamental changes to members interests. Personal and Prejudicial Interests are abolished and are replaced with Pecuniary Interests and Non - Pecuniary interests. The Regulations define which Pecuniary Interests are specified as Disclosable Pecuniary Interests. These are set out at paragraph 6 in the Code.
- 7.2 The Monitoring Officer is required to maintain a register of interests of Borough Councillors, which must be available for inspection at the Borough Council’s offices and published on the Council’s website.
- 7.3 The Monitoring Officer is also required by the Localism Act to set up and maintain registers of interests for each Parish and Town Council within the Borough. The register is required to be available for inspection at a place within the Borough (Parish or Town Council’s offices) and published on the Borough Council’s website and, where the Parish or Town Council has a website, provide the Parish or Town Council with the information required to enable the Parish or Town Council to publish the register on its own website.
- 7.4 The Localism Act extends the requirement for registration and disclosure of Disclosable Pecuniary Interests to cover not just the member’s own interests, but also those of the member’s spouse or civil partner, or someone living with the member in a similar capacity (provided that they are aware of the interest).
- 7.5 Each elected or co-opted member must register all Disclosable Pecuniary Interests within 28 days of becoming a member. Failure to register or disclose a Disclosable Pecuniary Interest is made a criminal offence, but would not prevent the member from acting as a member.
- 7.6 In so far as the Code of Conduct which the Council adopts requires registration of other interests, failure to do so would not be a criminal offence, but merely a failure to comply with the Code of Conduct.
- 7.7 The Act prohibits Members with a Disclosable Pecuniary Interest from participating in authority business, and enables the Council to adopt a Standing Order requiring Members to withdraw from the meeting room. Attached at Appendix 5 to this report are revised Council Procedure Rules which have been amended to deal with the new interests etc.

8. Dispensations

- 8.1 The provisions regarding dispensations are significantly changed by the Localism Act. Currently, a Member who has a prejudicial interest may apply to the Standards Committee for a dispensation on 2 grounds:-
- (a) that at least half of the members of a decision-making body have prejudicial interests; and
 - (b) that so many members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter.
- 8.2 The Localism Act provides that a dispensation may in the future be granted in relation to a Member or a Co-opted Member with a Disclosable Pecuniary Interest only if after having had regard to all relevant circumstances, the Authority considers: –
- (a) that so many members of the decision-making body have Disclosable Pecuniary Interests in a matter that it would “impede the transaction of the business” ;
 - (b) that without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;
 - (c) that the dispensation is in the interests of persons living in the Authority’s area;
 - (d) that without a dispensation, no member of the Cabinet would be able to participate on the matter; or
 - (e) that it is otherwise appropriate to grant a dispensation.
- 8.3 Any grant of a dispensation must specify how long it lasts for, up to maximum of four years.
- 8.4 The Localism Act gives discretion for the power to grant dispensations to be delegated by the Authority to the Standards Committee or a Sub-Committee, or to the Monitoring Officer.
- 8.5 The Standards Committee at its meeting on 23 March 2012 recommended that Council delegates:
- (a) the power to grant dispensations on the grounds set out in paragraphs 8.2 (a) and 8.2 (d) to the Monitoring Officer, with an appeal to the Standards Committee; and
 - (b) the power to grant dispensations on the grounds set out in paragraphs 8.2 (b), 8.2(c) and 8.2(e) to the Standards Committee, after consultation with the Independent Person.

9. Strategic Plan References

- 9.1 The manner in which Council governs its business is an underpinning mechanism in the Council’s Strategic Plan aims to lead our communities in delivering high quality accessible services.

10. Financial Considerations

10.1 No direct implications.

11. Equality, Diversity and Human Rights Implications

11.1 An Equality Impact Assessment Statement has been prepared on the Constitution and is available on the Council website. The following link is to the Equality Impact Assessment: <http://www.colchester.gov.uk/CHttpHandler.ashx?id=2287&p=0>

12. Publicity Considerations

12.1 The Council is required by the Localism Act to publicise the adoption of its Code of Conduct in such manner as it considers appropriate. The Code of Conduct and the “Arrangements” etc will be included in the Council’s Constitution and will be published on the Council’s website.

13. Consultation Implications

13.1 No direct implications.

14. Community Safety Implications

14.1 No direct implications.

15. Health and Safety Implications

15.1 No direct implications.

16. Risk Management Implications

16.1 No direct implications.

STANDARDS COMMITTEE

23 MARCH 2012

Present :- Mr D. Coe (Independent Member) Chairman
Councillor Anderson
Councillor Arnold
Councillor Bartier
Mr Fitton (Deputy Chairman) (Independent Member)
Councillor Gamble
Councillor Spyvee

15. Minutes

The minutes of the meeting held on 25 November 2011 were confirmed as a correct record.

16. Standards After The Localism Act 2011

The Committee considered a report from the Monitoring Officer setting out the provisions of the Localism Act 2011 as it related to the standards regime and proposing a new framework for standards and governance issues in line with the provisions of the Localism Act 2011.

The Monitoring Officer explained that the proposals in the report had the support of the Leaders of the political groups on the Council. It was anticipated that the new framework would come into effect on 1 July 2012, but it was possible that this date may slip. Therefore if the new framework were adopted, at the Council's Annual Meeting the Council would need to reappoint the existing Committee and also appoint the new Standards Committee. The Monitoring Officer also stressed that not all the regulations on which the new framework would be based had yet been published. There would be no consultation on the outstanding regulations. However, the Council could not afford to wait until the regulations were published before preparing for the new framework.

Standards Committee

The Committee noted the proposals for a new Standards Committee, which would be a normal Committee of Council and politically balanced. The loss of independent members and voting parish members seemed contrary to the principles of localism and also would mean the loss of considerable expertise. Some concern was expressed by some members that the proposals risked introducing a political element into the determination of complaints. However it was anticipated that Group Leaders would take account of the need for the Standards Committee to determine complaints non-politically when considering appointments to the Committee. The Monitoring Officer explained that the Group Leaders had agreed to sign a protocol to work together to avoid politically based complaints. In addition the new system would be more flexible and would allow for complaints to be dealt with informally, where appropriate, with the aid of Group Leaders.

In respect of parish council representation, it was noted that it would have been open to the Council to proceed without any parish council representation, but that it was recommended that up to three parish councillors be co-opted as non-voting members. In addition, many borough councillors were also parish councillors and would be able to bring a parish perspective to the work of the Standards Committee.

The Committee considered that, in view of the sensitive and complex nature of the work of the Standards Committee, all Councillors sitting on the Committee or acting as substitutes should have received appropriate training.

RESOLVED that:-

- (a) The Council establish a Standards Committee comprising 7 elected members of the Borough Council, appointed proportionally and with draft terms of reference as attached to the Monitoring Officer's report;
- (b) That the Leader of the Council be requested to nominate to the Committee only one member who is a member of Cabinet;
- (c) That the Parish and Town Councillors be invited to nominate a maximum of three Parish Councillors to be co-opted as non-voting members of the Committee;
- (d) All members of the Standards Committee, including co-opted members and those acting as substitute members, to have undertaken appropriate training on the work of the Standards Committee and the Standards framework. The frequency and content of such training to be determined by the Monitoring Officer.

Code of Conduct

In respect of the Code of Conduct, the Committee noted the current ten General Principles and Model Code of Conduct would be repealed. The new Code of Conduct proposed would include provisions equating to paragraphs 3 to 7 of the current Code of Conduct, so in respect of behaviours the Code of Conduct would be much the same as the existing Code. However, the Code would also have to cover the registration and disclosure of interests; both disclosable pecuniary interests and other interests. However, in the absence of the necessary regulations, the appropriate part of the Code to cover interests could not be drafted. Therefore authority needed to be delegated to the Monitoring Officer, following consultation with the Leader of the Council and the Chair of the Standards Committee, to draft appropriate code provisions once the regulations were published. In the interim, the Code would require the registration and disclosure of interests which would currently constitute personal and/or prejudicial interests.

RESOLVED that:-

- (a) The Monitoring Officer be instructed to prepare and present to Council for adoption a draft Code of Conduct. The draft Code of Conduct should:-
 - (i) Equate to paragraphs 3 to 7 of the current Code of Conduct applied to member conduct in the capacity of an elected or co-opted member of the Council or its

Committees and Sub-Committees; and

(ii) Require registration and disclosure of interest which would today constitute personal and or prejudicial interests, but only require withdrawal as required by the Act in relation to Disclosable Pecuniary Interests.

(b) That, when Disclosable Pecuniary Interest Regulations are published, the Monitoring Officer, after consultation with the Chair of the Standards Committee and the Leader of the Council, add to that draft Code provisions which he considers appropriate for the registration and disclosure of interests other than Disclosable Pecuniary Interests.

Dealing with Misconduct Complaints

The Committee noted the proposed new arrangements for dealing with complaints of breaches of the Code of Conduct. It was for the Monitoring Officer, in consultation with the Independent Person, to decide whether a complaint should be pursued. It noted that the system gave the Monitoring Officer the opportunity to seek to resolve more trivial complaints without further reference to the Committee and welcomed this increased flexibility. This should also reduce the costs of dealing with complaints. It was also noted that under the new arrangements, in terms of sanction, where a member had found to be in breach of the Code of Conduct, the Committee could only apply the powers of self regulation. There was no power to impose a sanction of suspension, exclusion from office or loss of allowance.

The Committee noted the contents of paragraph 8 of Appendix C to the Monitoring Officer's report which detailed the action the Standards Sub-Committee could take where a member has failed to comply with the Code of Conduct. As the Sub-Committee would meet in public and its findings would be in the public domain (unless the standard exemptions applied), paragraph 8.1.1 was superfluous and the Committee directed it should be removed. In addition, it also directed that the sanctions at paragraphs 8.1.7, 8.1.8 and 8.1.9 should be subject to Council approval.

RESOLVED that:-

1. The Monitoring Officer be instructed to prepare and submit to Council for approval "arrangements" as follows:

(a) The Monitoring Officer be appointed as the Proper Officer to receive complaints for failure to comply with the Code of Conduct

(b) The Monitoring Officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation. He be instructed to seek resolution of complaints without formal investigation wherever practicable, and that he be given discretion to refer decisions on investigation to the Standards Committee where he feels that it is inappropriate for him to take the decision, and to report quarterly to the Standards Committee on the discharge of this function;

(c) Where the investigation finds no evidence of a failure to comply with the Code of Conduct, the Monitoring Officer be instructed to close the matter, providing a copy of the report and findings of the investigation to the complainant and to the member concerned and to the Independent Person, and reporting the findings to the Standards Committee for information;

(d) Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person be authorised to seek a resolution in appropriate cases, with a summary report for information to the Standards Committee. Where such resolution is not appropriate or not possible, he is to report the investigation findings to a Sub-Committee of the Standards Committee for a hearing;

(e) Council delegate to the Sub-Committee such of its powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include:

- Reporting its findings to Council (or to the Parish Council) for information;
- Recommending to Council that the member be issued with a formal censure or reprimand (or to the Parish Council)
- Recommending to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Panels of the Council;
- Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Instructing the Monitoring Officer to (or recommend that the Parish Council) arrange training for the member;
- Recommending to Council that the member be removed (or recommend to the Parish Council that the member be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Parish Council);
- Recommending to Council the withdrawal of (or recommend to the Parish Council that it withdraws) facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
- Recommending to Council that it exclude (or recommend that the Parish Council exclude) the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Panel meetings.

2. A meeting be arranged between the Chair of the Standards Committee and the Leader of the Council and representatives of Parish and Town Councils within the Borough to discuss how the new system can best be operated.

Independent Person(s)

The Monitoring officer explained the role of the Independent Person in the process. The Independent Person would have an advisory role rather than the statutory role the current Independent Members held. As matters stood, current Independent members would be excluded from being appointed as an Independent Person. However, it was suspected that this may change before the new arrangements came into force.

The Committee noted that a single advert would be placed for all Councils in Essex. It was confirmed that if the Borough's Independent Person was unable to act on a particular occasion, the Council could delegate the function to another Council's Independent Person. Therefore it was not necessary to appoint reserve Independent Persons.

The Committee sought confirmation on the employment status of the Independent Person and the Monitoring Officer undertook to seek advice from the Public Law Partnership on this point.

RESOLVED that:-

(a) The Monitoring Officer, in consultation with the Chair of the Standards Committee and the Leader of the Council, and with the advice of the Head of Corporate Management be authorised to set the initial allowances and expenses for the Independent Person and this function subsequently be delegated to the Standards Committee.

(b) The Monitoring Officer advertise a vacancy for the appointment of 1 Independent Person.

(c) A Committee comprising four members of the Standards Committee be set up to short-list and interview candidates and to make a recommendation to Council for the appointment.

The Register of Members' Interests

The Committee noted the proposals for a new Register of Members Interests. However, regulations on the nature of the interests to be registered were still awaited. There would be a requirement to publish the Register on the Council's website. The Committee also noted the extension of the requirement to register to cover not just the member's own interests, but also those of the of the member's spouse or partner.

RESOLVED that:-

(a) The Monitoring Officer prepare and maintain a new register of members interests to comply with the requirements of the Act and of the Council's Code of Conduct, once adopted, and ensure that it is available for inspection as required by the Act;

(b) The Monitoring Officer ensure that all members are informed of their duty to register interests;

(c) The Monitoring Officer prepare and maintain new registers of members' interests for each Parish Council to comply with the Act and any Code of Conduct adopted by each Parish Council and ensure that it is available for inspection as required by the Act; and

(d) The Monitoring Officer arrange to inform and train Parish and Town Clerks on the

new registration arrangements.

Disclosure of Interests and Withdrawal from Meetings

The Monitoring Officer highlighted the contents of paragraph 9.2 of his report which was a significant change in practice. He advised that whilst there would be no requirement for a member to disclose an interest to a meeting if that interest had already been included on the Register of Disclosable Pecuniary Interests, it would be good practice to continue to do so. The Committee noted that there was no provision for a member with a Disclosable Pecuniary Interest to make representations on a matter, as was currently allowed for a member with a personal and prejudicial interest. The Committee considered that this was a retrograde step.

RESOLVED that:-

(a) Subject to the requirements of the relevant regulations, the Monitoring Officer be instructed to recommend to Council a Standing Order which equates to the current Code of Conduct requirement that a member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a Disclosable Pecuniary Interest, except where he is permitted to remain as a result of the grant of a dispensation.

(b) Subject to the requirements of the relevant regulations, the Monitoring Officer be instructed to recommend to Council a Standing Order which equates to the current Code of Conduct requirement that a member acting alone must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a Disclosable Pecuniary Interest, except where he is permitted to remain as a result of the grant of a dispensation.

Sensitive Interests and Dispensations

The Committee noted the provisions on dispensations were significantly changed by the Act. It noted the circumstances in which a dispensation could be granted and directed that the second sentence of paragraph of 12.3.2 be deleted

RESOLVED that the Monitoring Officer seek Council's agreement to delegate the power to grant the following dispensations:

(a) On the grounds set out in paragraphs 12.3.1 and 12.3.4 of the Monitoring Officer's report to the Monitoring Officer with an appeal to the Standards Committee, and

(b) On the grounds set out in paragraphs 12.3.2 (subject to the deletion of the second sentence), 12.3.3. and 12.3.5 of the Monitoring Officer's report to the Standards Committee, after consultation with the Independent Person.

The Committee stressed the need for Councillors to be informed of the new arrangements. The Monitoring Officer advised that there would be an all Councillor briefing once the details of the outstanding regulations were known. In terms of informing Parish Councils, it was suggested that the Monitoring Officer present

a briefing to the Colchester Association of Local Councils.

17. Standards Committee Annual Report 2011/12

The Committee considered a report from the Monitoring Officer about the draft report of the Standards Committee for 2011/12.

RESOLVED that

(i) the draft report Annual Report for the Standards Committee for 2011/12 be approved;

(iii) the Monitoring Officer be authorised in consultation with the Chairman to make any necessary changes to the Annual Report to give effect to the Committee's activities up to the end of March 2012.

18. Thanks

As this was potentially the last meeting of the Committee in its present format, the Chairman expressed his gratitude to the members of the Committee and the officers who had supported it. He considered that it had been a privilege to serve as Chairman. In return, the Committee thanked the Chairman for the chairing the Committee so effectively.



Localism Act 2011

Promoting and Maintaining High Standards of Conduct in Local Government

CODE OF CONDUCT FOR MEMBERS

Colchester Borough Council

Code of Conduct for Members

PART 1 GENERAL PROVISIONS

Introduction and interpretation

This Code of Conduct was adopted by the full council at its meeting on 2012 and is effective from 1 July 2012.

As a Member you are a representative of Colchester Borough Council (“the Authority”) and the public will view you as such. Therefore your actions impact on how the Authority as a whole is viewed and your actions can have both positive and negative impacts on the Authority.

This Code as a whole is consistent with “Nolan Principles” which are set out in Appendix 1 and the provisions of S29(1) Localism Act 2011.

In this Code-

“meeting” means any meeting of:

- (a) the Authority
- (b) the Executive of the Authority
- (c) any of the Authority's or its Executive's committees, sub-committees, joint committees, joint sub-committees or areas committees whether or not the press and public are excluded from the meeting in question by virtue of a resolution of Members
- (d) any briefings by officers and site visits organised by the Authority “relevant period” means the period of 12 months ending with the day on which you give notification to the Authority's monitoring officer of any disclosable pecuniary interests you had at the time of the notification.

“profit or gain” includes any payments or benefits in kind which are subject to Income Tax.

“beneficial interest” means having an economic benefit as a legal owner or holding it on trust for the beneficial owner, having a right to the income from the

land or securities or a share in it or the right to the proceeds of sale or share of part of the proceeds of sale.

“Member” includes a co-opted member.

1. Who does the Code apply to?

- (1) This Code applies to all Members of the Authority including co-opted members.
- (2) It is your responsibility to comply with the provisions of this Code.

2. What does the Code apply to?

- (1) You must comply with this Code whenever you -
 - (a) conduct the business of the Authority, or
 - (b) you are acting as a representative of the Authority.
- (2) This Code has effect in relation to your conduct in your official capacity.
- (3) Where you act as a representative of the Authority –
 - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with the Authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3. General obligations

- (1) You must treat others with respect.
- (2) You must uphold the law.
- (3) You must not –
 - (a) do anything which may cause the Authority to breach any of the equality enactments;
 - (b) bully any person;
 - (c) intimidate or attempt to intimidate any person who is or is likely to be –

- (i) a complainant;
 - (ii) a witness; or
 - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with the Authority's code of conduct; or
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Authority.

4. Confidential Information

You must not –

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

5. Conferring an advantage or disadvantage

You must -

- (a) not use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;
- (b) when using or authorising the use by others of the resources of the Authority -
 - (i) act in accordance with the Authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes);

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

PART 2 MEMBERS INTERESTS

6. Disclosable Pecuniary Interests¹

6.1 You have a Disclosable Pecuniary Interest in any business of the Authority if it is of a description set out in 6.2 below and is either:

- (a) An interest of yours; or
- (b) An interest (of which you are aware) of a spouse, civil partner or a person you are living with as a spouse or civil partner (“known as Relevant Persons”).

6.2 A Pecuniary Interest is an interest which relates to or is likely to affect:

- (a) Any employment, office, trade, profession or vocation carried on by you or a Relevant Person for profit or gain;
- (b) Any payment or provision of any other financial benefit (other than from the Authority) made or provided within the relevant period in respect of any expenses incurred in carrying out your duties as a Member, or towards your 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;
- (c) Any contract for goods, services or works which has not been fully discharged between you or a Relevant Person and the Authority or a body in which you or they have a beneficial interest;
- (d) A beneficial interest in any land in the Authority’s area
- (e) A licence of any land in the Authority’s area (alone or jointly with others) that you or a Relevant Person occupy for a month or longer
- (f) any tenancy where to your knowledge (i) the landlord is the Authority and (ii) the tenant is a body in which you or a Relevant Person has a beneficial interest
- (g) Any beneficial interest in securities of a body where –
 - (i) that body (to your knowledge) has a place of business or land in the area of the Authority and
 - (ii) either:

¹ The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 set out the pecuniary interests specified for the purposes of Chapter 7 of Part 1 Section 30(3) of the Localism Act 2011
June 2012

- (aa) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
- (bb) the beneficial interest exceeds one hundredth of the total issued share capital of the share capital of that body, if of more than one class, the total nominal value of the shares of any one class.

7. Other Pecuniary Interests

You have a pecuniary interest in any business of the Authority where it relates to or is likely to affect:

- (a) any person or body who employs or has appointed you;
- (b) any contract for goods, services or works made between the Authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specific in paragraph 6.2.(g) which has been fully discharged within the last 12 months;

8. Non-Pecuniary Interests

8.1 You have a non-pecuniary interest in any business of the Authority where it relates to or is likely to affect -

- (a) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Authority;
- (b) 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;
- (c) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50;
- (d) a decision in relation to that business which might reasonably be regarded as affecting your wellbeing or the wellbeing of a relevant person to a greater extent than the majority of:-
 - (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the

- electoral division or ward, as the case may be, affected by the decision; or
- (ii) (in all other cases) other council tax payers, ratepayers or inhabitants of the Authority's area.

9. Disclosure of Interests (Disclosable Pecuniary Interests, Other Pecuniary Interests and Non-Pecuniary Interests)

- 9.1 Subject to sub-paragraphs 9.2 to 9.3, where you have a Disclosable Pecuniary Interest, other Pecuniary Interest or Non-Pecuniary Interest in any business of the Authority and you are present at a meeting of the Authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest whether or not such interest is registered on your Register of Interests or for which you have made a pending notification.
- 9.2 Sub-paragraph 9.1 only applies where you are aware or ought reasonably to be aware of the existence of the Relevant Person's Interest.
- 9.3 Where you have an interest in any business of the Authority which would be disclosable by virtue of paragraph 9.1 but by virtue of paragraph 12 (Sensitive Information) details of the interest are not registered in the Authority's published Register of Members' Interests and the interest is a Disclosable Pecuniary Interest you need not disclose the nature of the interest to the meeting.
- 9.4 Where you have a Pecuniary Interest in any business of the Authority and a function of the Authority may be discharged by you acting alone in relation to that business, you must ensure you notify the Authority's monitoring officer of the existence and nature of that interest within 28 days of becoming aware that you will be dealing with the matter even if more than 28 days before you will actually deal with the business.
- 9.5 Where you have an interest in any business of the Authority which would be disclosable by virtue of paragraph 9.1 and you have made an executive decision in relation to that business you must ensure that any written statement of that decision records the existence and nature of that interest. In this paragraph "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

10. Effect of Interests on participation

10.1 Disclosable Pecuniary Interests

- (a) If you are present at a meeting of the Authority or of any committee, sub-committee, joint committee or joint sub-committee of the Authority and you have a Disclosable Pecuniary Interest in any

matter to be considered, or being considered, at the meeting and you are aware of that Interest:

- (i) You must not participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on the matter at the meeting.
 - (ii) You must withdraw from the room or chamber where the meeting considering the business is being held unless you have received a dispensation from the Authority's proper officer.
- (b) If you have a Disclosable Pecuniary Interest in any business of the Authority you must not:
- (i) exercise executive functions in relation to that business; and
 - (ii) seek improperly to influence a decision about that business
- (c) If a function of the Authority may be discharged by a Member acting alone and you have a Disclosable Pecuniary Interest in any matter to be dealt with or being dealt with in the course of discharging that function you may not take any steps or any further steps in relation to the matter (except for the purpose of enable the matter to be dealt with otherwise than by yourself).

10.2 Other Pecuniary Interests

If you have another Pecuniary Interest in any business of the Authority which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement in the public interest and you are present at a meeting of the Authority at which such business is to be considered or is being considered you must:

- (a) disclose the existence and nature of the interest in accordance with paragraph 9.1 (but subject to paragraph 9.3) and;
- (b) withdraw from the room or chamber where the meeting considering the business is being held unless you have obtained a dispensation from the Authority's proper officer.

PART 3 REGISTER OF MEMBERS INTERESTS

11. Registration of Members' Interests

Subject to paragraph 12, you must, within 28 days of –

- (a) this Code being adopted by or applied to the Authority; or
- (b) your election, re-election or appointment or re-appointment to office (where that is later), or co-opted onto the Authority

register in the Authority's Register of Members' Interests (maintained by the Monitoring Officer under Section 29(1) of the Localism Act 2011) details of:

- (i) Disclosable Pecuniary Interests as referred to in paragraph 6 that you, your spouse, civil partner or person with whom you live as if they were your spouse or civil partner in so far as you are aware of their interests at that time.
- (ii) Pecuniary Interests referred to in paragraph 7 that you have.

Subject to paragraph 12, you must within 28 days of becoming aware of any new Disclosable Pecuniary Interest as referred to in paragraph 6 that you, your spouse, civil partner or person with whom you live as if they were your spouse or civil partner or change to any Disclosable Pecuniary Interest registered under paragraphs 11.(a) (i) or (ii) above by providing written notification to your authority's Monitoring Officer.

12. Sensitive Information

- 12.1 Where you have a Disclosable Pecuniary Interest referred to in paragraph 6 or pecuniary interest referred to in paragraph 7 and the nature of the interest is such that you and the Authority's monitoring officer consider that disclosure of details of the interest could lead to you or a person connected with you being subject to violence or intimidation if the interest is entered in the Authority's Register then copies of the register available for inspection and any published version of the Register should not include details of the interest but may state that you have an interest details of which are withheld under s32(2) of the Localism Act 2011 and/or this paragraph.
- 12.2 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 12.1 is no longer sensitive information, notify the Authority's monitoring officer.
- 12.3 In this Code "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that

you or a person who lives with you may be subject to violence or intimidation.

13. Register of Gifts and Hospitality

- 13.1 You must within 28 days of receipt, notify the Authority's monitoring officer in writing of any gift, benefit or hospitality with a value in excess of £50 which you have accepted as a member from any person or body other than the Authority.
- 13.2 The Monitoring Officer will place your notification on a public register of gifts and hospitality.
- 13.3 This duty to notify the monitoring officer does not apply where the gift, benefit or hospitality comes within any description approved by the Authority for this purpose.

CODE OF CONDUCT

APPENDIX 1

THE NOLAN PRINCIPLES AND SECTION 28(1) OF THE LOCALISM ACT 2011

SELFLESSNESS

To serve only the public interest and never improperly confer an advantage or disadvantage on any person

INTEGRITY

Not to place themselves in situations where their integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour

OBJECTIVITY

Make decisions on merit, including when making appointments, awarding Contracts or recommending individuals for rewards or benefits.

ACCOUNTABILITY

To be accountable to the public for their actions and the manner in which they carry out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their Office.

OPENNESS

To be as open as possible about their actions and those of the Council and should be prepared to give reasons for those actions.

HONESTY

Not to place themselves in situations where their honesty may be questioned, should not behave improperly and should, on all occasions, avoid the appearance of such behaviour.

LEADERSHIP

Should promote and support these principles by leadership and by example and should always act in a way that secures or preserves public confidence.



Colchester Borough Council

Standards Committee

Councillor Code of Conduct

Arrangements for dealing with complaints

These arrangements came into effect on 1 July 2012

Introduction

- 1.1 These “Arrangements” set out how you may make a complaint that an elected or co-opted member of Colchester Borough Council or of a parish council, town council or community council (referred to as a parish council in this document) within the Borough of Colchester has failed to comply with the Councillors’ Code of Conduct, and sets out how the Borough Council will deal with allegations of a failure to comply with the Councillors’ Code of Conduct.
- 1.2 Under Section 28(6) and (7) of the Localism Act 2011, the Borough Council must have in place “Arrangements” under which allegations that a member or co-opted member of the Borough Council (or of a parish council within the Borough of Colchester), or of a Committee or Panel of the Borough Council, has failed to comply with Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Such arrangements must provide for the Borough Council to appoint at least 1 Independent Person, whose views must be sought by the Borough Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Borough Council at any other stage, or by a member (or a member or co-opted member of a parish council) against whom an allegation has been made. Both members and co-opted members are referred to as councillors in this document for ease of reference.

2. The Code of Conduct

- 2.1 The Borough Council has adopted a Code of Conduct for Councillors, which is available for inspection on the Borough Council’s website (www.colchester.gov.uk/standards) and on request from Reception at the Borough Council Offices.

2.2 Each Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council's Code of Conduct, you should inspect any website operated by the Parish Council or request the parish clerk to allow you to inspect the Parish Council's Code of Conduct.

3. Making a complaint

3.1 If you wish to make a complaint, please write to:

The Monitoring Officer

Colchester Borough Council

Rowan House, 33 Sheepen Road

Colchester CO3 3WG.

or by email to:

andrew.weavers@colchester.gov.uk

3.2 The Monitoring Officer is a senior officer of the Borough Council who has statutory responsibility for maintaining the register of councillors' interests and who is responsible for administering the system in respect of complaints of councillor misconduct.

3.3 In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form, which can be downloaded from the Borough Council's website, next to the Code of Conduct, and is available on request from Reception at the Borough Council Offices.

3.4 Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. The Monitoring Officer will consider your request and if granted we will not disclose your name and address to the Councillor against whom you make the complaint, without your prior consent.

3.5 The Borough Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

3.6 The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.

3.7 The Complaints Procedure Flowchart is attached at Appendix 1 for your information.

3.8 The Borough Council has agreed a Press Policy in relation to complaints made against councillors and this is attached at Appendix 2 for your information.

4. Will your complaint be investigated?

(1) The Monitoring Officer will review every complaint received and, may consult with the Independent Person before taking a decision as to whether it:

(a) merits no further investigation; or

(b) merits further investigation; or

(c) should be referred to the Standards Committee,

(2) This decision will normally be taken within 28 working days of receipt of your complaint. Your complaint will be considered in accordance with the Borough Council's Assessment Criteria contained at Appendix 3. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision. Where the Monitoring Officer requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the councillor against whom your complaint is directed.

(3) Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation.

(4) In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the councillor accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the councillor or the authority make a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.

- (5) If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police or other regulatory agencies.

5. How is the investigation conducted?

- (1) The Borough Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix 4 to these arrangements.
- (2) If the Monitoring Officer decides that a complaint merits further investigation, he/she may appoint an Investigating Officer, who may be another senior officer of the Borough Council, an officer of another authority or an external investigator. The Investigating Officer or Monitoring Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents needs to be seen, and who needs to be interviewed.
- (3) The Investigating Officer or Monitoring Officer will normally write to the councillor against whom you have complained and provide him/her with a copy of your complaint, and ask the councillor to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the councillor might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the councillor, or delay notifying the councillor until the investigation has progressed sufficiently.
- (4) At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report (“the Investigation Report”) and will send copies of that draft report, in confidence, to you and to the councillor concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.
- (5) Having received and taken account of any comments which you may make on the draft Investigation Report. Where an Investigating Officer has been appointed the Investigating Officer will send his/her final report to the Monitoring Officer.

6. What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

- (1) If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the councillor concerned and to the Parish Council, where your complaint relates to a Parish Councillor, notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigation Final Report.
- (2) If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.

7. What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

- (1) If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before the Standards Hearings Sub-Committee or in consultation with the Independent Person seek an informal resolution.

(a) Informal Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the councillor accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the councillor complies with the suggested resolution, the Monitoring Officer will report the matter to the Borough Council's Standards Committee (and the Parish Council) for information, but will take no further action.

(b) Hearing

If the Monitoring Officer considers that informal resolution is not appropriate, or the councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigation Report to the Standards Hearings Sub-Committee which will conduct a hearing before deciding whether the councillor has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the councillor.

The Borough Council has agreed a procedure for hearing complaints, which is attached as Appendix 5 to these arrangements.

At the hearing, the Investigating Officer or the Monitoring Officer will present her/his report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Sub-Committee. The councillor will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the councillor did not fail to comply with the Code of Conduct, and dismiss the complaint. If the Sub-Committee concludes that the councillor did fail to comply with the Code of Conduct, the Chair will inform the councillor of this finding and the Sub-Committee will then consider what action, if any, the Sub-Committee should take as a result of the councillor's failure to comply with the Code of Conduct. In doing this, the Sub-Committee will give the councillor an opportunity to make representations to the Sub-Committee and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8. What action can the Standards Sub-Committee take where a member has failed to comply with the Code of Conduct?

8.1 The Borough Council has delegated to the Sub-Committee such of its powers to take action in respect of individual councillors as may be necessary to promote and maintain high standards of conduct. Accordingly the Sub-Committee may:-

- (a) Report its findings to Council (or to the Parish Council) for information;
- (b) Recommend to Council (or to the Parish Council) that the councillor be issued with a formal censure or be reprimanded
- (c) Recommend to the councillor's Group Leader (or in the case of ungrouped councillors, recommend to Council or to Committees) that the councillor be removed from any or all Committees or Panels of the Council;
- (d) Recommend to the Leader of the Council that the councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- (e) Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the councillor;
- (f) Recommend to Council to remove (or recommend to the Parish Council that the councillor be removed) from all outside appointments to which he/she has been appointed or nominated by the Council (or by the Parish Council);
- (g) Recommend to Council to withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the councillor by the Council, such as a computer, website and/or email and internet access; or
- (h) Recommend to Council to exclude (or recommend that the Parish Council exclude) the councillor from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Panel meetings.

8.2 The Sub-Committee has no power to suspend or disqualify the councillor or to withdraw the councillor's basic allowance or any special responsibility allowances.

- 8.3 Any actions recommended by the Sub-Committee should be proportionate and commensurate with the circumstances of the particular case.

9 What happens at the end of the hearing?

- 9.1 At the end of the hearing, the Chair will state the decision of the Standards Hearings Sub-Committee as to whether the councillor failed to comply with the Code of Conduct and as to any actions which the Sub-Committee resolves to take.
- 9.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Sub-Committee, and send a copy to you, to the councillor (and to the Parish Council), make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

10 Who are the Standards Hearings Sub-Committee?

- 10.1 It is a Sub-Committee comprising of Councillors sitting on the Council's Standards Committee.
- 10.2 The Standards Committee has decided that it will comprise a maximum of five Councillors of the Council, including not more than one member of the Council's Cabinet and comprising councillors drawn from all political groups. Subject to those requirements, it is appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Council. If the councillor complained about is a member of a Parish Council a parish councillor who is a co-opted member of the Standards Committee will also be invited to attend the Sub-Committee.
- 10.3 The Independent Person is invited to attend all meetings of the Sub-Committee and their views are sought and taken into consideration before the Sub-Committee takes any decision on whether the councillor's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

11 Who is the Independent Person?

- 11.1 The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of the Borough Council.

11.2 A person cannot be “independent” if he/she:

- (a) is, or has been within the past 5 years, a member, co-opted member or officer of the Borough Council;
- (b) (is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the Borough of Colchester), or
- (c) is a relative or close friend, of a person within paragraph (a) or (b) above. For this purpose, a “relative” means:
 - (i) spouse or civil partner;
 - (ii) living with the other person as husband and wife or as if they were civil partners;
 - (iii) grandparent of the other person;
 - (iv) a lineal descendent of a grandparent of the other person;
 - (v) a parent, sibling or child of a person within paragraphs (a) or (b); above or
 - (vi) a spouse or civil partner of a person within paragraphs (iii), (iv) or (v) above; or
 - (vii) living with a person within paragraphs (iii), (iv) or (v) above as husband and wife or as if they were civil partners.

Transitional provisions apply until 30 June 2013.

12. Revision of these arrangements

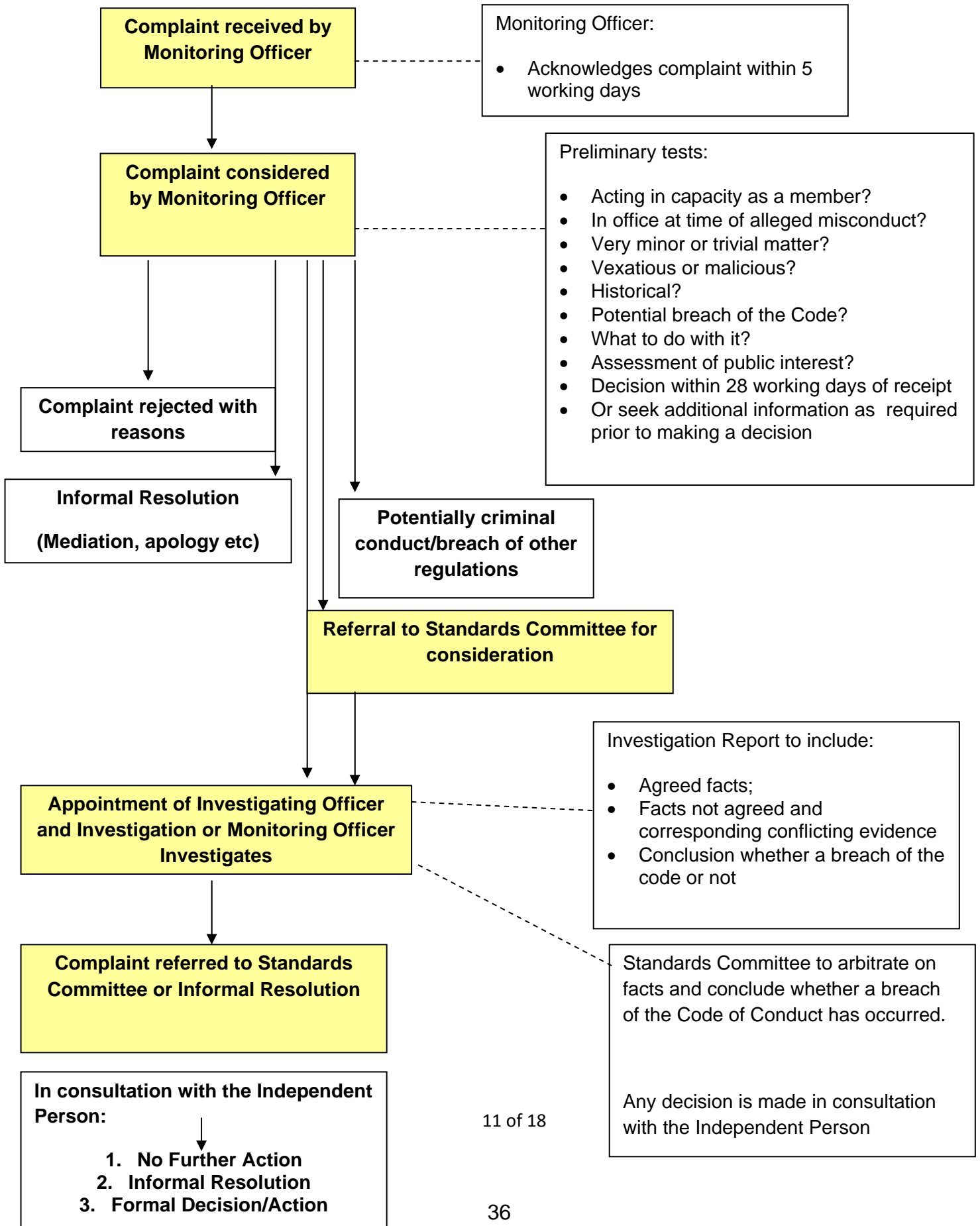
The Borough Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Sub-Committee the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13. Appeals

13.1 There is no right of appeal for you as complainant or for the councillor against a decision of the Monitoring Officer or of the Sub-Committee.

13.2 If you feel that the Borough Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Complaints Procedure Flowchart



Colchester Borough Council

Press Policy

Complaints against Members

This Policy sets out how the Borough Council will respond to press enquiries into a complaint made against councillor(s). This includes Borough Councillors and Parish and Town Councillors.

We like to be as helpful as possible to the press and we will confirm, when requested by a journalist:

- the name of a councillor(s) involved in an ongoing or past investigation
- the type of person who made the allegation – whether they are a member or Officer of the authority, or a member of the public
- part of the Code of Conduct potentially breached
- whether the case was referred for investigation and, if not, the reason it was not referred
- approximate dates of when the allegation was received and the date of when a decision was made on whether or not to investigate
- the outcome of any investigation, on issue of the final report

Please note that we will only respond to queries about specific Councillors.

We will not comment on complaints received until a decision has been made on whether a complaint will be investigated; we allow three working days from the date of that decision before confirming it to the press.

We will confirm the outcome of an investigation three working days after the final report has been issued. This policy ensures that the relevant parties involved in the complaint and investigation are notified before the press.

We will always stress that a complaint is just that: while an investigation is ongoing, no decision is made regarding a Councillor's guilt or otherwise.

Colchester Borough Council

STANDARDS COMPLAINTS ASSESSMENT CRITERIA

Complaints which would not normally be referred for investigation

1. The complaint is not considered sufficiently serious to warrant investigation; or
2. The complaint appears to be simply motivated by malice or is “tit-for-tat”; or
3. The complaint appears to be politically motivated; or
4. It appears that there can be no breach of the Code of Conduct; e.g. that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision; or
5. It is about someone who is no longer a Councillor; or
6. There is insufficient information available for a referral; or
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances e.g. allegation of bullying, harassment etc; or
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; or
9. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Standards Committee; or
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or
11. Where the councillor complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

Complaints which may be referred to the Standards Committee

1. It is serious enough, if proven, to justify the range of actions available to the Standards Committee; or
2. There are individual acts of minor misconduct which appear to be a part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or

3. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to investigate; or
4. The complaint is about a high profile Councillor such as the Leader of the Council and it would be difficult for the Monitoring Officer to investigate; or
5. Such other complaints as the Monitoring Officer considers it would not be appropriate for him to investigate.

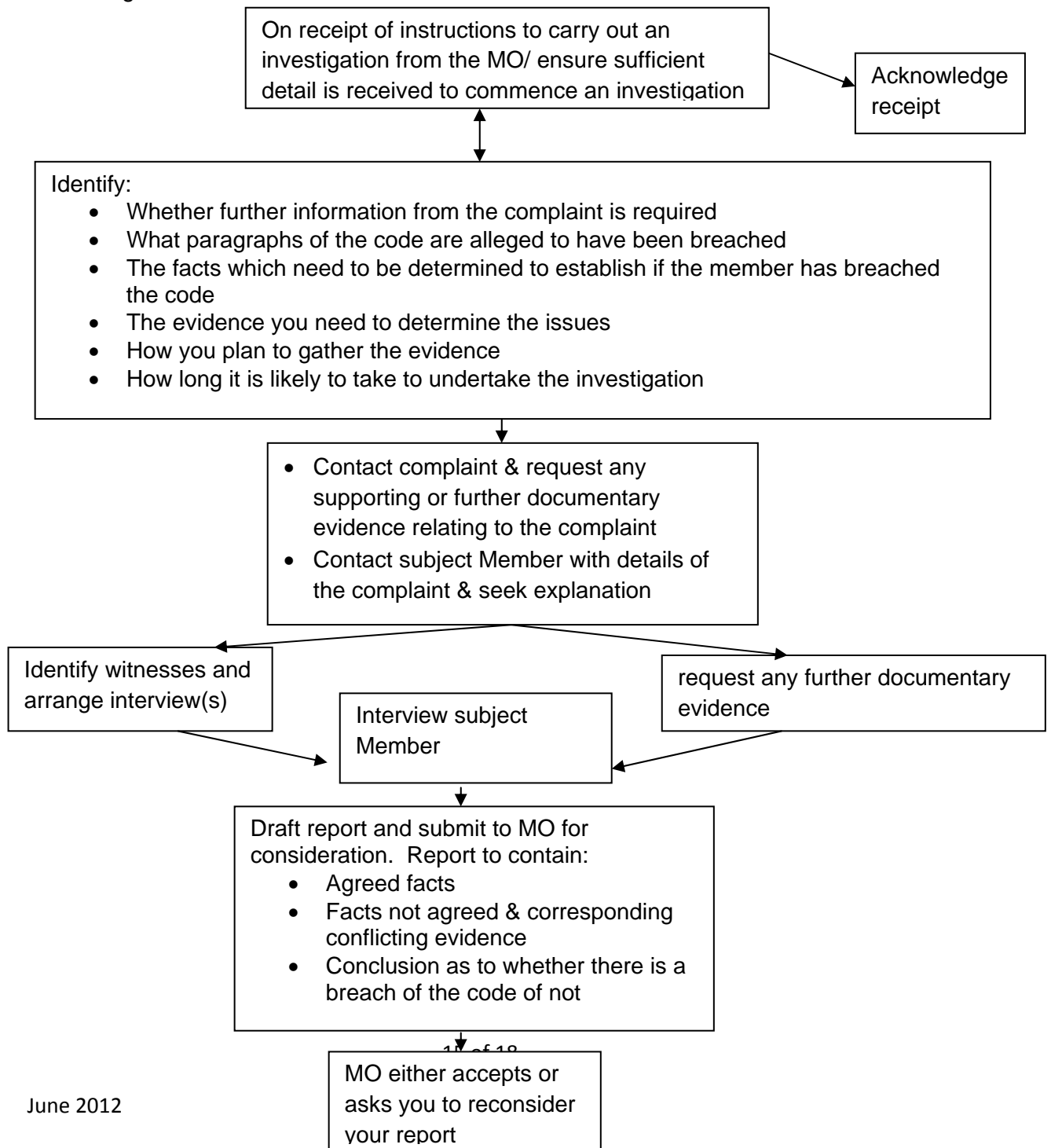
Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers' and councillors' time. This is an important consideration where the complaint is relatively minor.

STANDARDS COMPLAINTS INVESTIGATION PROCEDURE

Investigation Procedure

You should maintain a written record to demonstrate what was considered at the start of each investigation and plan how you intend to carry out the investigation, the paragraphs of the code that may have been breached, the facts you need to determine to establish, the evidence you will need, how you plan to gather the evidence and how long it will take to conclude your investigation. Remember there is no provision in the Localism Act 2011 compelling Members or witnesses to co-operate with your investigation.

A written Investigation Report will need to be prepared for consideration by the Council's Monitoring Officer.



Colchester Borough Council
STANDARDS COMMITTEE
HEARINGS SUB-COMMITTEE PROCEDURE

<u>Item No.</u>	<u>Procedure</u>
	<u>Quorum</u>
1.	<p>1.1. Three members must be present throughout the hearing to form a quorum.</p> <p>1.2. Where the complaint refers to a Parish Councillor a non voting Parish member of the Standards Committee may be present.</p> <p>1.3. The Sub-Committee shall nominate a Chairman for the meeting</p>
	<u>Opening</u>
2.	<p>2.1 The Chairman explains the procedure for the hearing and reminds all parties to turn off mobile phones etc.</p> <p>2.2 The Chairman asks all present to introduce themselves.</p> <p>2.3 The Councillor will be asked whether they wish to briefly outline their position.</p>
	<u>The Complaint</u>
3.	<p>3.1 The Investigating Officer shall be invited to present their report including any documentary evidence or other material (and to call witnesses as required by the Investigating Officer). This report and documentary evidence must be based on the complaint made to the Council – no new points will be allowed.</p> <p>3.2 The Councillor against whom the complaint has been made (or their representative) may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer. (This is the Councillor's opportunity to ask questions rising from the Investigators report and not to make a statement).</p> <p>3.3 Members of the Sub-Committee may question the Investigating Officer upon the content of their report and/or any witnesses called by the Investigating Officer</p>

<u>The Councillor's case</u>	
4.	<p>4.1 The Councillor against whom the complaint has been made (or their representative) may present their case (and call any witnesses as required by the Councillor or their representative).</p> <p>4.2 The Investigating Officer may question the Councillor and/or any witnesses.</p> <p>4.3 Members of the Sub-Committee may question the Councillor and/or any witnesses.</p>
<u>Summing Up</u>	
5.	<p>5.1 The Investigating Officer may sum up the Complaint.</p> <p>5.2 The Councillor (or their representative) may sum up their case.</p>
<u>Decision</u>	
6.	<p>6.1 Members of the Sub-Committee will deliberate in private to consider the complaint in consultation with the Independent Person prior to reaching a decision.</p> <p>6.2 Upon the Sub-Committee's return the Chairman will announce the Sub-Committee's decision in the following terms:-</p> <p>6.2.1 The Sub-Committee decides that the Councillor has failed to follow the Code of Conduct; or</p> <p>6.2.2 The Sub-Committee decides that the Councillor has not failed to follow the Code of Conduct</p> <p>6.3 The Sub-Committee will give reasons for their decision</p> <p>6.4 If the Sub-Committee decides that the Councillor has failed to follow the Code of Conduct the Sub-Committee will consider any representations from the Investigator and/or the Councillor as to:</p> <p>6.4.1 Whether any action should be taken and</p> <p>6.4.2 What form any action should take</p> <p>6.5 The Sub-Committee will then deliberate in private to consider what action if any should be taken in consultation with the Independent Person.</p> <p>6.6 On the Sub-Committee's return the Chairman will announce the Sub-Committee's decision (in relation to a Parish Councillor a recommendation to the Parish Council).</p>

6.7	The Sub-Committee will consider whether it should make any recommendations to the Borough Council (or in relation to a Parish Councillor to the Parish Council) with a view to promoting high standards of conduct among councillors.
6.8	The Chairman will confirm that a full written decision shall be issued within 7 working days following the hearing and that the Sub-Committee's findings to be published.

Colchester Borough Council
Standards Committee Terms of Reference

STANDARDS COMMITTEE	
<p>Appointed by:</p> <p>The Council, in accordance with the provisions of S101 & S102 Local Government Act 1972 and Regulations made thereunder.</p> <p>Appointment of a Standards Committee shall be by full Council</p>	<p>Number of members:</p> <p>7 Councillors appointed proportionally (of whom 1 member may be a member of the Cabinet nominated by the Leader of the Council)</p> <p>Parish Councils be invited to nominate a maximum of 3 Parish Councillors to be co-opted as non-voting members</p>
<p>Chair and Vice-Chair appointed by:</p> <ol style="list-style-type: none"> 1. The Chair will be elected by the Committee. 2. There will be one Deputy Chair, who shall be elected by the Committee 3. The Deputy-Chair shall deputise for the Chair in his or her absence. 	<p>Political Proportionality:</p> <p>Rules of political proportionality apply.</p> <p>Substitutes:</p> <p>Substitutes are permitted for the Standards Committee.</p> <p>Frequency:</p> <p>At least quarterly.</p> <p>Venue:</p> <p>As set out in the approved Calendar of Meetings.</p>
<p>Independent Person:</p> <p>Appointment approved by full Council in accordance with the provisions of Section 28(6) and (7) of the Localism Act 2011</p>	<p>The Independent Person:</p> <p>The Independent Person be invited to attend the meetings of the Standards Committee</p>
<p>Quorum:</p> <p>At least 4 voting members of the Committee</p>	

Terms of Reference

The Standards Committee will have the following roles and functions:

1. promoting and maintaining high standards of conduct by Members and Co-opted Members of the Council;
2. advising the Council on the adoption or revision of the Members' Code of Conduct;
3. advising and assisting Parish Council(s) and Councillors to maintain high standards of conduct
4. advising the Council on the adoption or revision of the Members' Code of Conduct;
5. to receive referrals from the Monitoring Officer into allegations of misconduct in accordance with the Council's assessment criteria
6. receiving reports from the Monitoring Officer and assessing the operation and effectiveness of the Members' Code of Conduct;
7. advising, training or arranging to train Members and Co-opted Members on matters relating to the Members' Code of Conduct;
8. assisting Councillors and co-opted Members to observe the Members' Code of Conduct;
9. to create a Hearings Sub-Committee to hear and determine complaints about Members and Co-opted Members referred to it by the Monitoring Officer;
10. to conduct hearings on behalf of the Parish Councils and to make recommendation to Parish Councils on improving standards or actions following a finding of a failure by a Parish Councillor to comply with the Code of Conduct;
11. informing Council and the Chief Executive of relevant issues arising from the determination of Code of Conduct complaints
12. advising the Council upon the contents of and requirements for codes/ protocols/ other procedures relating to standards of conduct throughout the Council
13. to grant dispensations after consultation with the Independent Person pursuant to Sections 33(2) (b), (c) and (e) of the Localism Act 2011
14. to hear and determine appeals against refusal to grant dispensations by the Monitoring Officer pursuant to Sections 33(2)(a) and (d) of the Localism Act 2011
15. an overview of the Council's complaint handling procedure and Local Government Ombudsman investigations
16. dealing with other matters as determined by the Council from time to time.

Colchester Borough Council

Standards Committee

Hearings Sub-Committee Terms of Reference

HEARINGS SUB-COMMITTEE	
<p>Appointed by:</p> <p>The Council, for the purposes of sections 28(6) and (7) of the Localism Act 2011</p>	<p>Number of members:</p> <p>5 Councillors appointed from members of the Standards Committee.</p>
<p>Chair and Vice-Chair appointed by:</p> <p>The Chair shall be elected by the Sub-Committee at each meeting.</p>	<p>Political Proportionality:</p> <p>Rules of political proportionality apply.</p> <p>Substitutes:</p> <p>None.</p> <p>Frequency:</p> <p>As and when required.</p> <p>Venue:</p> <p>To be determined by the Monitoring Officer.</p>
<p>Quorum:</p> <p>At least 3 voting Members</p>	<p>Parish Councillor be invited to be co-opted as non-voting members in dealing with a complaint against a Parish Councillor</p>
<p>Independent Person:</p> <p>Appointment approved by full Council in accordance with the provisions of Section 28(6) and (7) of the Localism Act 2011</p>	<p>The Independent Person:</p> <p>The Independent Person to attend the meetings of the Standards Committee dealing with hearings into allegations of misconduct</p>

Terms of Reference

The Sub- Committee will have the following roles and functions:

1. to conduct a Hearing into an allegation that a Member or Co-opted Member has breached the Authority's Code of Conduct.
2. following a Hearing, make one of the following findings:
 - (a) That the Member has not failed to comply with the Code of Conduct and no further action needs to be taken in respect of the matters considered at the Hearing.
 - (b) That the Member has failed to comply with the Code of Conduct but that no further action needs to be taken in respect of the matters considered at the Hearing.
 - (c) That the Member has failed to comply with the Code of Conduct and that a formal resolution should be made to the Authority.
3. The Sub-committee may impose any action or combination of actions available to it, or impose any informal resolution or combination of informal resolutions as are available to it by law or policy.
4. After making a finding the Sub-committee shall, as soon as reasonably practicable provide written notice of its findings and the reasons for its decision to the Member and complainant.

Colchester Borough Council

Council Procedure Rules

INTRODUCTION

The Council is required by law to have procedural rules that govern proceedings at meetings of the Council.

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Council Procedure Rules

1. Meetings of the Council

- (1) The Annual Meeting of the Council shall be held on a day in May to be determined by the Cabinet.
- (2) Other meetings of the Council shall be held at intervals of approximately eight weeks on Wednesdays commencing at 6pm or upon such other day or at such other hour as the Cabinet may determine.
- (3) The Proper Officer shall summon meetings of the Council.
- (4) The summons to an extraordinary meeting shall set out the business to be considered and no business other than that set out in the summons shall be considered at that meeting.

2. Order of Business at the Annual Meeting of the Council

The order of business at the Annual Meeting of the Council shall be:

1. To elect the Mayor;
 2. To deal with any business required by law to be done before any other business;
 3. To approve as a correct record the minutes of the last meeting of the Council;
 4. To deal with any other business expressly required by law to be done;
 5. To elect the Deputy Mayor;
 6. To give a vote of thanks to the retiring Mayor;
 7. Participation by the public (Have Your Say!) (Reconvened meeting only);
 8. To appoint the Leader of the Council (only in the year where the Leader's term of office expires)
9. To receive notification from the Leader of the Council (only in the year where the Leader's term of office expires) of:
- (a) the appointment of the Deputy Leader
 - (b) the appointments to the Cabinet and the extent of their delegated authorities
10. To appoint the Panels and Committees;
 11. To give a vote of thanks to former Councillors;

12. Other business, if any, specified in the summons;
13. Other business, if any, not specified in the summons which by reasons of special circumstances, the Mayor determines should be considered at the meeting as a matter of urgency;

unless in the exercise of absolute discretion, the Mayor shall direct otherwise.

3. The Mayor and the Deputy Mayor

The Mayor and Deputy Mayor shall be elected annually by the Council from amongst the Councillors. If the Mayor or Deputy Mayor resign they shall continue in office until their successors are elected. If the Mayor or Deputy Mayor cease to be qualified, become disqualified or are removed from office, the Council shall elect a successor to hold office until the next Annual Meeting.

4. Chairman of Meetings of the Council

The Mayor shall, if present, take the Chair at meetings of the Council. In the absence of the Mayor, the Deputy Mayor shall take the Chair. In the absence of both the Mayor and the Deputy Mayor, a Chairman for the meeting shall be elected by the Council from amongst the Councillors present. Any power or duty of the Mayor in relation to the conduct of a meeting may be exercised by the person presiding at the meeting.

5. Appointment of the Leader of the Council, Panels and Committees

- (1) The Council shall, at the appropriate Annual Meeting, elect the Leader of the Council from amongst the Councillors. If the Leader of the Council resigns he/she shall continue in office until a successor is elected by the Council. If the Leader of the Council, ceases to be qualified, becomes disqualified or is removed from office, the Council shall elect a successor.
- (2) The Council shall, at the Annual Meeting, appoint such Panels and Committees as it is required to appoint by or under any statute or otherwise as it thinks fit and may, at any time, appoint such other Panels and Committees as are necessary to carry out the work of the Council but, subject to any statutory provision in that behalf:
 1. shall not appoint any member of a Panel or a Committee so as to hold office later than the next Annual Meeting of the Council.
 2. casual vacancies which arise on any Panel or any Committee shall be filled by the Cabinet as it, in its discretion, thinks fit subject to the requirements for achieving a political balance of members on the Panels and Committees.

6. Public Participation at all Public Meetings (Have Your Say!)

- (1) Any member of the public may ask a question or address a meeting of the Council on a matter which is on the agenda for the meeting or is within the terms of reference of the Council except in cases where the

Council is acting in a quasi-judicial capacity or similar or in relation to planning applications, subject to the procedure set out below.

- (2) Subject to the absolute discretion of the Mayor to extend or limit the time available for public participation, a period of up to fifteen minutes shall be available at the start of a meeting for public participation on issues within the remit of the meeting not otherwise appearing on the agenda for the meeting.
- (3) Where public participation relates to an item on the agenda for the meeting, the Mayor shall invite the participation immediately prior to the consideration of the item by the meeting. The amount of time afforded to public participation on any single item shall be at the absolute discretion of the Mayor but should not normally exceed fifteen minutes.
- (4) At the absolute discretion of the Mayor the order of business for the meeting may be changed for the convenience of the public who wish to participate.
- (5) A member of the public may ask questions or make a statement for a period not exceeding three minutes. When a speaker has one minute of the allotted time remaining, a bell will be rung. At the end of the period of time, the bell will be rung again and the speaker will resume his/her seat whether or not the speech has been concluded.
- (6) An answer to a question posed by a member of the public may take the form of:-
 1. a direct oral answer; or
 2. where the desired information is contained in a publication of the Council, a reference to that publication; or
 3. where the reply to the question cannot conveniently be given orally, a written answer which will be reported to a future meeting.
- (7) In the exercise of absolute discretion, the Mayor may disallow or terminate any public participation which is scurrilous, vexatious, improper, irrelevant or otherwise objectionable.
- (8) At the absolute discretion of the Mayor, one question may be asked of the participant by a Councillor and the participant may give an answer or decline to do so. If an answer is given, the participant will have a period not exceeding one minute in which to give it.
- (9) Public participation at meetings must be made orally at the meeting. Written statements may not be submitted instead of personal attendance and documents including photographs may not be circulated by a member of the public participating in the meeting, except for a petition which may be presented to the Mayor.

7. Quorum for all Meetings of the Council

- (1) A quorum is one quarter of the total membership of the Council.

- (2) If during any meeting of the Council the Mayor, after counting the number of Councillors present, declares that there is not a quorum present, the meeting shall stand adjourned.
- (3) The consideration of any business not transacted shall be adjourned to a time fixed by the Mayor at the time the meeting is adjourned or if a time is not fixed by the Mayor, to the next ordinary meeting of the Council.

8. Agenda and Order of Business at Ordinary Meetings of the Council

- (1) The agenda and order of business for every ordinary meeting of the Council will be determined by the Proper Officer in consultation with the Mayor or in his absence the Deputy Mayor:
- (2) The order of business may be altered at the meeting;
- (3) Business at every ordinary meeting of the Council will consist of:
 1. The election of a Chairman for the meeting if the Mayor and Deputy Mayor are both absent;
 2. Prayers at the discretion of the Mayor;
 3. Participation by the public (Have Your Say!);
 4. To approve as a correct record, the Minutes of the last meeting of the Council;
 5. Mayor's announcements;
 6. To receive declarations of Members Personal Interests;
 7. To receive declarations of Members Prejudicial Interests;
 8. To dispose of business (if any) remaining from the last meeting;
 9. To receive matters (if any) referred under the Call-In Procedure;
 10. To receive recommendations/resolutions from the Cabinet, Panels and Committees;
 11. Debate on an issue concerning the Borough which has been previously agreed by the Group Leaders;
 12. To receive motions the subject matter of which comprise an executive function in the order in which notice has been received;
 13. To receive motions the subject matter of which comprise a non-executive function in the order in which notice has been received;
 14. Questions from Councillors to the Leader of the Council, Cabinet Members and Chairmen (or in their absence Deputy Chairman)

of Panels and Committees and replies given;

15. To note schedule of decisions taken by Portfolio Holders under delegated powers since the last meeting of the Council
16. Other business, if any, specified in the summons;
17. Other business, if any, not specified in the summons which by reason of special circumstances, the Mayor determines should be considered at the meeting as a matter of urgency;

unless in the exercise of absolute discretion, the Mayor shall direct otherwise.

9. Members' Interests

Disclosable Pecuniary Interests

- (1) A Councillor has a disclosable pecuniary interest in any business if it is of a description set out in Rule 9(2) below and is either:
 - (a) An interest of his/hers
 - (b) An interest of his/her spouse
 - (c) An interest of his/her civil partner
 - (d) An interest of a person he/she is living with as a spouse or civil partner

And in the case of Rules 9(1) (b) – 9(1) (d) (“relevant persons”) where the Councillor is aware that that relevant person has the interest.

- (2) It relates to or is likely to affect:
 - (a) any employment, office, trade, profession or vocation carried on by the Councillor or a relevant person for profit or gain;
 - (b) any payment or provision of any other financial benefit (other than from the authority) made or provided (within the period of 12 months ending with the day on which the Councillor gave notification to the monitoring officer of any disclosable pecuniary interests he/she had at the time of the notification) in respect of any expenses incurred in carrying out his/her duties as a Councillor, or towards his/her 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;
 - (c) Any contract for goods, services or works which has not been fully discharged between a Councillor or a relevant person and the authority or a body in which the Councillor or a relevant person has a beneficial interest;
 - (d) A beneficial interest in any land in the Borough of Colchester;

- (e) Any tenancy where to the Councillors knowledge (i) the landlord is the authority and (ii) the tenant is a body in which a Councillor or a relevant person has a beneficial interest;
- (f) A licence of any land in the Borough of Colchester (alone or jointly with others) that a Councillor or a relevant person occupy for a month or longer.
- (g) Any beneficial interest in securities of a body where-
 - (i) that body (to the Councillor's knowledge) has a place of business or land in the Borough of Colchester and
 - (ii) either:
 - (aa) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
 - (bb) the beneficial interest exceeds one hundredth of the total issued share capital of the share capital of that body, if of more than one class, the total nominal value of the shares of any one class.

Other Pecuniary Interests

- (3) A Councillor has a pecuniary interest in any business where either it relates to or is likely to affect:
 - (a) any person or body who employs or has appointed the Councillor;
 - (b) any contract for goods, services or works made between the authority and a Councillor or a firm in which he/she is a partner, a company of which he/she is a remunerated director, or a person or body of the description specific in paragraph 9.2.(c) which has been fully discharged within the last 12 months;

Non-Pecuniary Interests

- (4) A Councillor has a non-pecuniary interest in any business where either it relates to or is likely to affect:
 - (a) any body of which a Councillor is a member or in a position of general control or management and to which he/she are appointed or nominated by the authority;
 - (b) 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 a Councillor is a member or in a position of general control or management;

- (c) the interests of any person from whom a Councillor has received a gift or hospitality with an estimated value of at least £50;
- (d) a decision in relation to that business which might reasonably be regarded as affecting a Councillor's wellbeing or the wellbeing of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision.

Disclosure of Interests

- (5) Subject to Rules 9(6) to 9(9), where a Councillor has a disclosable pecuniary interest, other pecuniary interest or a non-pecuniary interest in any business of the authority and he/she is present at a meeting of the authority at which the business is considered, the Councillor must disclose to that meeting the existence and nature of that interest whether or not such interest is registered on his/her register of Interests or for which he/she has made a pending notification.
- (6) Rule 9(5) only applies where the Councillor is aware or ought reasonably to be aware of the existence of the pecuniary or non pecuniary interest.
- (7) Where a Councillor has an interest in any business of the authority which would be disclosable by virtue of Rule 9(5) but by virtue of paragraph 14 of the Members Code of Conduct (sensitive interests) details of the interest are not registered in the authority's published register of members' interest and that the interest is a disclosable pecuniary interest (if that is the case) but the Councillor need not disclose the nature of the interest to the meeting.
- (8) Where a Councillor has a pecuniary interest in any business of the authority and a function of the authority may be discharged by a Councillor acting alone in relation to that business, he/she must notify the monitoring officer of the existence and nature of that interest within 28 days of becoming aware that he/she will be dealing with the matter even if more than 28 days before he/she will actually deal with the business.
- (9) Where a Councillor has an interest in any business of the authority which would be disclosable by virtue of Rule 9(5) and he/she have made an executive decision in relation to that business he/she must ensure that any written statement of that decision records the existence and nature of that interest (in this Rule "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000).

Disclosure of Interests generally

- (10) Subject to Rule 9(11) where a Councillor has a pecuniary interest in any business of the authority he/she also has a disclosable pecuniary interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Councillors judgment in the public interest.
- (11) A Councillor does not have a disclosable pecuniary interest in any business of the authority where that business-
- (a) does not affect the Councillors financial position or the financial position of a person or body described in Rule 9(8) (a) and (b);
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to the Councillor or any person or body described in Rule 9(8)1 (a) and (b); or
 - (c) relates to the functions of the authority in respect of-
 - (i) housing, where the Councillor is a tenant of the authority provided that those functions do not relate particularly to his/her tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where a Councillor is a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where a Councillor is in receipt of, or is entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

Effect of Disclosable Pecuniary Interests on participation

- (12) A Councillor may not-
- (a) if present at a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority and
 - (b) he/she has a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at the meeting and
 - (c) the Councillor is aware that Rule 9(12) (b) is met:

- (i) participate, or participate further, in any discussion of the matter at the meeting, or
- (ii) participate in any vote, or further vote, taken on the matter at the meeting

and must withdraw from the room or chamber where the meeting considering the business is being held unless the Councillor has received a dispensation from the Monitoring Officer (or from an officer authorised by the Monitoring officer)

- (d) exercise executive functions in relation to that business and
- (e) seek improperly to influence a decision about that business.

(13) If a function of the authority may be discharged by a Councillor acting alone and he/she has a disclosable pecuniary interest in any matter to be dealt with or being dealt with in the course of discharging that function he/she may not take any steps or any further steps in relation to the matter (except for the purpose of enable the matter to be dealt with otherwise than by him/herself).

(14) If a Councillor has a pecuniary interest other than a disclosable pecuniary interest in any business of the authority which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice his/her judgement of the public interest and he/she is present at a meeting of the authority at which such business is to be considered or is being considered the Councillor must:-

- (a) disclose the existence and nature of the interest in accordance with Rule 9(5) (but subject to Rule 9(7))
- (b) withdraw from the room or chamber where the meeting considering the business is being held unless he/she has obtained a dispensation from the monitoring officer (or an officer authorised by the monitoring officer) in a case where Rule 9(8) applies immediately after making his/her representations or in any other case when the business is under consideration unless he/she has obtained a dispensation from the monitoring officer (or an officer authorised by the monitoring officer).

10. Questions to the Leader, Cabinet Members and Chairmen of Panels and Committees

(1) There shall be a period not exceeding 60 minutes during which Pre-notified Questions and other questions may be put by Councillors to the Leader of the Council or to Cabinet Members on any aspect of matters within a portfolio or Chairmen of Panels and Committees (or in their absence the Deputy Chairman) on any aspect of matters within the Panels or Committees remit. Pre-notified Questions will be dealt with first and any Pre-notified Questions that are not dealt with during the time allocated will receive a written reply.

(2) A Councillor may, provided two clear days' notice in writing has been given to the Proper Officer, ask up to three questions of the Leader of the Council,

Cabinet Members or Chairmen of Panels and Committees (a Pre-notified Question).

- (3) Following the conclusion of Pre-notified Questions, each Councillor may ask no more than one oral question of the Leader of the Council and of each Cabinet Member and Chairmen of Panels and Committees. In the exercise of absolute discretion, the Mayor may disallow any question which is scurrilous, vexatious, improper, irrelevant or otherwise objectionable.
- (4) At the expiration of 60 minutes, any questions which Councillors have indicated to the Mayor a desire to ask, but which have not been asked shall be deemed to have lapsed and shall not be carried forward to any future meeting.
- (5) Every question asked shall be put and answered without discussion but the person to whom a question has been put may decline to answer.
- (6) An answer may take the form of:-
 1. a direct oral answer; or
 2. where the desired information is contained in a publication of the Council, a reference to that publication; or
 3. where the reply to the question cannot conveniently be given orally, a written answer circulated to Councillors with the Minutes of the meetings at which the question has been asked.
- (7) Where either a Pre-notified Question or an oral question asked has been put and answered, the Councillor who has asked the question may ask one supplementary question of the Leader of the Council, appropriate Cabinet Member or Chairmen of Panels and Committees who has answered the question, provided the supplementary question is on a point arising from the Leader of the Council's, appropriate Cabinet Member's or Chairmen of Panels and Committees' answer. The Leader of the Council, appropriate Cabinet Member or Chairmen of Panels and Committees may decline to answer a supplementary question or may answer it in one of the forms mentioned in the previous Rule.

11. Notices of Motion

- (1) Except for a Motion that may be proposed without notice, notice of every motion shall be either given in writing, signed by the Councillor giving it, or electronically via e-mail and delivered to the Proper Officer at least five clear working days before the meeting to which it is intended to be submitted.

The Monitoring Officer in consultation with the Proper Officer shall determine whether the subject matter of the motion comprises an executive or non-executive function or an executive decision. The Proper Officer shall rule out of order:

- (a) any motion the wording of which comprises an executive decision; or
- (b) any motion that is not relevant to some matter in relation to which the Council has powers or duties or which affects the Borough.

(The Proper Officer for this purpose being the Democratic Services Manager.)

(NB: All executive decisions are required by law to be taken by the Cabinet. The Council may, however, advise the Cabinet of its view on a matter which amounts to an executive decision.)

- (2) Any motion the subject matter of which relates to an executive function shall, on being formally proposed by the councillor moving the motion set out on the Agenda in their name but without speaking upon it, stand referred without discussion to the Cabinet for consideration and determination.
- (3) Any motion the subject matter of which comprises a non-executive function shall be considered and determined by the Council.
- (4) Every motion of which notice has been given shall be relevant to some matter in relation to which the Council has powers or duties or which affects the Borough.

12. Motions and Amendments which may be proposed without Notice

- (1) The following motions and amendments may be proposed without notice:-
 1. Appointment of a Chairman of the meeting at which the motion is made.
 2. Motions relating to the accuracy of the Minutes, closure, adjournments, order of business, next business or disorderly conduct.
 3. Remission to the Cabinet, a Panel or a Committee or that the matter be considered forthwith.
 4. Appointment of, or changes to, the membership of a Panel or Committee.
 5. Adoption of reports and recommendations of the Cabinet, Panels, Committees or Officers and any consequent resolutions.
 6. That leave be given to withdraw a motion.
 7. Secondary amendments to motions.
 8. Extending the time limit for speeches.
 9. That an item of business specified in the summons has precedence.
 10. Suspending the Council Procedure Rules.
 11. Motion under Section 100 A(4) of the Local Government Act 1972 (as amended) to exclude the public (including the press) from the meeting to prevent the disclosure to them of exempt information as defined in the Act.

13. Previous Determinations by the Council

- (1) No matter on which a decision has been reached within the previous six months by the Council, shall be further considered unless the Leader of the Council or the Proper Officer is satisfied that circumstances reasonably justify the matter being re-opened.

- (2) Motions relating to business considered previously by the Council shall be subject to the following requirements:
1. No motion to rescind any resolution of the Council passed within the preceding 6 months shall be proposed unless the notice bears the names of at least 15 Councillors.
 2. No motion or amendment to the same or similar effect as any motion or amendment which has been proposed and lost at a Council meeting within the preceding 6 months shall be proposed unless the notice bears the names of at least 15 Councillors.

The above shall not apply to motions proposed in pursuance of a recommendation of the Cabinet.

14. Rules of Debate at all meetings of the Council

Speaking

- (1) A Councillor shall stand when speaking and shall address the Mayor. If two or more Councillors rise, the Mayor shall call on one to speak. The other Councillors shall remain seated unless rising to a point of order or in personal explanation.
- (2) Councillors shall, in speaking to or of each other, employ the title of "Mayor", "Deputy Mayor" or "Councillor" as the case may be.
- (3) A Councillor's speech shall be directed to the question under discussion or to a personal explanation or to a point of order. Speeches shall be addressed to the Mayor. No speech shall exceed the following time limits except by consent of the Council.
 1. Report of the Leader of the Council and of Cabinet Members – 10 minutes
 2. Proposer of a Motion – 10 minutes
 3. Proposer of a main amendment – 10 minutes
 4. Reply to discussion on a motion or main amendment – 10 minutes
 5. Reply to debate by proposer of a main amendment – 5 minutes
 6. Any other case – 5 minutes.

When a speaker has one minute of the allotted time remaining, a bell will be rung. At the end of the period of time, the bell will be rung again and the speaker will resume his/her seat whether or not he/she has concluded the speech.

- (4) Whenever the Mayor rises during a debate, a Councillor then speaking or standing shall be seated and the Council shall be silent.

Recommendations made to Council

- (5) Recommendations made to the Council by the Cabinet shall be proposed by the Leader of the Council or other appropriate Cabinet Member. Matters which are referred to the Council pursuant to the Call-In Procedure shall be the subject of a recommendation proposed by the Leader of the Council or in the absence of the Leader by an appropriate Cabinet Member.

Recommendations of the Cabinet shall be proposed collectively with the exception of:-

1. Recommendations in respect of which a main amendment has been submitted.
2. Where the Councillor who would otherwise propose the recommendations has declared a Members Interest.
3. Where a Councillor declines to propose a recommendation, it may be proposed by another Councillor who shall have the same rights to speak as the proposer of a recommendation.
4. Recommendations upon which in the opinion of the proposer there are grounds for reconsideration by the Cabinet on the basis of new information which has become available and which was not available when the Cabinet considered the matter. The proposer shall explain why the new information is sufficient for the matter to be reconsidered whereupon the recommendation shall be referred back without further discussion or vote unless it is proposed that the recommendation be considered by the Council forthwith and without further discussion the Council so resolves.

Amendments

- (6) If a proposed amendment is submitted in writing or electronically via e-mail to the Proper Officer not later than by 10am on the day before the meeting, it shall be considered to be a main amendment. All other amendments shall be considered to be secondary amendments.

[NB. a main amendment is subject to full debate by the Council. A secondary amendment may only be debated by the Council if the meeting agrees.]

- (7) No Councillor other than the proposer of the amendment or of the original motion shall be entitled to speak on a secondary amendment provided that any Councillor may request the Mayor and, if the Council agree, a secondary amendment may be treated as a main amendment.
- (8) Any Cabinet recommendation for which a main amendment has been submitted shall be proposed separately by the Leader of the Council or other appropriate Cabinet Member after the other recommendations of the Cabinet have been dealt with.
- (9) An amendment shall be relevant to the motion and shall be either:-
1. to leave out words; or
 2. to leave out words and insert or add others; or

3. to insert or add words;
4. to refer the Minute back to the Cabinet for further consideration;

but such omission, insertion or addition of words shall not have the effect of introducing a new proposal or of negating the motion before the Council.

- (10) Immediately after an amendment has been proposed, the Mayor shall ask the proposer of the original motion if the amendment is accepted and if the proposer and the Council signify acceptance, the original motion shall be deemed amended accordingly and be debated as the substantive motion.
- (11) A motion and any amendments relating thereto shall be moved individually and shall be debated (but not voted upon) together. All amendments (subject to rule 14 (10)) shall be voted upon in the order that they were received.
- (12) If the amendment is lost, other amendments not substantially to the same effect as the amendment already lost, may be proposed on the original motion. If an amendment is carried, the motion as amended shall take the place of the original motion and shall become the substantive motion upon which any further amendment may be proposed.
- (13) No Councillor shall speak more than once on the same motion or amendment.
- (14) A motion or amendment may be withdrawn by the proposer with the consent of the Council which shall be signified without discussion and, after the proposer has sought permission to withdraw the motion or amendment, no other Councillor shall speak upon it unless such permission shall have been refused.

Alterations of Motions/Amendments

- (15) The proposer of a motion may, with the consent of the Council, signified without discussion, alter that motion.

Replies to Motions/Amendments

- (16) The proposer of a motion has a right of reply at the close of the debate on the motion, immediately before it is put to the vote. If an amendment is proposed, the proposer of the original motion shall also have a right of reply at the close of the debate on the amendment and shall not otherwise speak on the amendment. The proposer of an amendment shall have a right of reply to the debate on that amendment, which shall not exceed 5 minutes and which shall be exercised immediately prior to the right of reply of the proposer of the motion.

Points of Order and Personal Explanation

- (17) A Councillor may rise on a point of order or in personal explanation and shall be entitled to be heard forthwith. A point of order shall relate only to:-
 - an alleged breach of these Rules, or
 - an alleged breach of a statutory provision

The Councillor rising on a point of order shall specify the Rule or the statutory provision and the manner in which the Councillor considers it to have been breached.

A Councillor rising in personal explanation shall be confined to some material part of a former speech by the Councillor which may appear to have been misunderstood in the present debate.

- (18) The ruling of the Mayor on a point of order or on the admissibility of a personal explanation shall be final and binding and shall not be open to discussion.

Extraordinary Meetings of the Council

- (19) Where an extraordinary meeting of the Council has been convened in accordance with Paragraph 3 of Part 1 of the 12th Schedule to the Local Government Act 1972 (meeting called by the Mayor) for the purpose of considering a motion or recommendation from individual Councillors, the rules of debate applicable to main amendments shall apply to the motion or recommendation.

15. Voting

- (1) Subject to Rule 15(2) - (4) below, every determination by the Council shall be by a show of hands.
- (2) On the request of any Councillor supported by two other Councillors, the voting on any determination by the Council shall be recorded. The record shall show how each Councillor present and voting, voted and also the names of any Councillors present but not voting. The demand for the vote to be recorded must be made before the vote is taken. A vote so recorded shall be called a "named vote".
- (3) On the request of any Councillor supported by two other Councillors, the number of votes cast for and against any determination, together with the number of Councillors present but not voting, shall be recorded. The demand for the vote to be recorded must be made before the vote is taken. A vote so recorded shall be called a "recorded vote".
- (4) Where immediately after a vote is taken and any Councillor so requires there shall be recorded in the minutes of the meeting whether that Councillor voted for or against the determination or whether that Councillor abstained from voting.
- (5) When any position or positions is/are to be filled by the Council, nominations shall be sought and if, after nominations have closed there are more nominees than positions to be filled, a vote shall be taken, each Councillor having one vote only. The nominee(s) with the greatest number of votes shall be appointed to the position(s).
- (6) At the close of any speech two Councillors may propose and second without comment, "that the vote be taken", which motion, if accepted by the Mayor, shall be voted upon immediately, without discussion. If the motion is carried, the Mayor shall put the question under consideration provided that such closure

shall not prevent a proposer of a motion having the right of reply or preventing the moving of a motion or main amendment.

16. Disorderly Conduct

(1) If at a meeting of the Council any Councillor, in the opinion of the Mayor notified to the Council, is guilty of misconduct by persistently disregarding the ruling of the Mayor or by behaving irregularly, improperly or offensively or by wilfully obstructing the business of the Council, the Mayor or any Councillor may propose:-

- that the Councillor named may not speak further on that item or for the duration of the meeting ;or
- that the Councillor named be excluded from the meeting forthwith.

The motion, if seconded, shall be put and determined without discussion.

(2) If a member of the public interrupts the proceedings at any meeting, the Mayor shall issue a warning. If the member of the public continues the interruption the Mayor shall order the removal of the member of the public from the Council Chamber. In the case of general disturbance in any part of the Chamber open to the public, the Mayor shall order that part to be cleared.

(3) In the event of general disturbance which, in the opinion of the Mayor renders the due and orderly dispatch of business impossible, the Mayor, may without question, adjourn the meeting of the Council for such period as the Mayor in the exercise of absolute discretion shall consider expedient

17. Removal from Office

The Mayor, the Deputy Mayor, the Leader of the Council, Chairmen of Panels, Committees and Sub-Committees, members of Panels, Committees and Sub-Committees and any Councillor appointed to an office or to membership of any body, may be removed from such office or membership by resolution of the Council following a vote upon which at least two thirds of the Council (ie 40 Councillors or more) have voted in favour.

18. Matters of Urgency

(1) Where the Proper Officer considers that a matter of urgency has arisen in connection with a non-executive function and requires a decision before the next regular meeting of the Council, the Proper Officer after consultation with the Chairman of the Overview and Scrutiny Committee, or in whose absence, the Deputy Chairman of the Overview and Scrutiny Committee, shall have the power to act and shall report the action to the next ordinary meeting of the Council; provided that no action shall be taken under this provision in any matter which cannot be delegated by the Council.

(2) Where in the opinion of the Chairman of the Overview and Scrutiny Committee a matter has arisen in connection with a non executive function which cannot reasonably be postponed until the next ordinary meeting of the Council, then, if the Chairman of the Overview and Scrutiny Committee and the Proper Officer following consultation with Group Leaders concur, a meeting of the council shall

be held and such a meeting shall have power to reach a decision in the matter provided it is on which the Council would, in law, have power to decide.

19. Adjournment of Discussions and Closure of Council Meetings

- (1) At the conclusion of the first speech ending after 9pm the Mayor shall adjourn the meeting for fifteen minutes unless, in the opinion of the Mayor, the meeting is likely to conclude within a short time and at the conclusion of the first speech ending after 10pm, the Mayor shall invite Councillors to consider whether the meeting is to continue or be adjourned and any motion thereon shall be voted on without formal discussion.
- (2) When any Councillor is called by the Mayor to speak that Councillor may propose, without discussion, the adjournment of the meeting and no amendment shall be proposed to it unless it relates to the time of adjournment, and it shall be voted on without discussion.

20. Conduct of Meetings

- (1) The Proper Officer or nominee may, at any time, advise the Council on a matter of procedure.
- (2) No Councillor shall leave a meeting during a sitting of the Council without notice to the Mayor.
- (3) There shall be no smoking at Council meetings.
- (4) There shall be no filming or tape recording of Council meetings without the consent of the meeting.
- (5) All mobile telephones shall be switched off for the duration of the meeting.

21. Interpretation

Following consultation with the Proper Officer, the ruling of the Mayor as to the construction or application of any of these Rules, or as to any proceedings of the Council, shall not be challenged at any meeting of the Council.

