



Derby City Council

PART 7

Codes and Protocols

November 2015

CONTENTS

Members' Code of Conduct	Page 3
Employee Code of Conduct	Page 11
Officer / Member Protocol	Page 24
Protocol on the use of facilities, services and equipment by councillors	Page 30
Call-in procedures	Page 35
Planning and Development Control – Protocol for Councillors	Page 39
Disciplinary Procedures for the Chief Executive *	Page 49
Disciplinary Procedures for Statutory Officers other than the Chief Executive *	Page 61
Disciplinary Procedures for Chief Officers other than Statutory Officers	Page 72
Officer Employment Rules	Page 84

*These documents to be taken in consideration of procedures subsequently agreed by Council on 22 July 2015

MEMBERS' CODE OF CONDUCT

The General Principles of Public Life

You should behave in a way consistent with the following principles:

Selflessness	You should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.
Honesty and Integrity	You should not place yourself in situations where your honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.
Objectivity	You should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.
Accountability	You should be accountable to the public for your actions and the manner in which you carry out your responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to your particular office.
Openness	You should be as open as possible about your actions and those of your authority, and should be prepared to give reasons for those actions.
Leadership	You should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Part 1

General provisions

Introduction and interpretation

- 1.1 This Code applies to **you** as a member of Derby City Council.
- 1.2 You should read this Code together with the general principles at page 2 (prescribed in Section 28 of the Localism Act).
- 1.3 You must comply with the provisions of this Code.
- 1.4 In this Code:

“interest” means a pecuniary or other interest required to be notified under 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 area committees;

“member” includes a co-opted member and an appointed member;

“partner” means spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners;

“pecuniary interest” a disclosable pecuniary interest under relevant Regulations and this Code;

“Register of Interests” means the Council’s register of members’ interests maintained under section 29(1) of the Localism Act 2011; and

“Sensitive Interest” means an interest whose disclosure to the public could lead to you, or a person connected with you, being subjected to violence or intimidation.

Scope

- 2.1 Subject to sub-paragraphs 2.2-2.5, you must comply with this Code whenever you act in your official capacity as a member of your authority. That is when you:
 - (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a representative of your authority.
- 2.2 Subject to sub-paragraphs 2.3 and 2.4, this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- 2.3 In addition to having effect in relation to conduct in your official capacity, paragraphs 3.2(c), 5.1 and 6.1 also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

2.4 Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph 2.3) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

2.5 Where you act as a representative of your 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 your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3.1 You must treat others with respect.

3.2 You must not:

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

4.1 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;
 - (ii) 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; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

- 5.1 You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
- 6.1 You:
- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage, including, but not restricted to, making representations to
 - (i) officers to influence the processing of individual taxi licensing applications; or
 - (ii) sub-committees on behalf of the taxi trade or individual taxi drivers;
 - (b) must, when using or authorising the use by others of the resources of your authority—
 - (i) act in accordance with your authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) must have regard to:
 - (i) any applicable Code of Recommended Practice on Local Authority Publicity made under the Local Government Act 1986; and
 - (ii) the regulatory standards of the authority in consideration of any representations that may be made from stakeholders including, but not restricted to, the taxi trade.
- 7.1 When reaching decisions on any matter you must have regard to any relevant advice provided to you by:
- (a) your authority's chief finance officer; or
 - (b) your authority's monitoring officer,
- where that officer is acting pursuant to his or her statutory duties.
- 7.2 You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2

Pecuniary Interests

You must disclose the pecuniary interests listed below. There can be a criminal penalty if you do not.

Notification of Pecuniary Interests

8.1 A pecuniary interest is an interest of yourself or your partner within the following descriptions:

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

- (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
- (ii) if the share capital of that body is of more than one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

Non-participation where you have a pecuniary interest

- 9.1 Where you have a pecuniary interest in any business of your authority you must disclose the interest and withdraw from the room or chamber where a meeting considering the business is being held unless:
- a. you have obtained a dispensation from the authority's Monitoring Officer or Standards Committee;
 - b. It is a meeting at which the public can speak, in which case you may address the meeting but then immediately withdraw.
- 9.2 If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.
- 9.3 Where an executive member may discharge a function alone and becomes aware of a pecuniary interest in a matter being dealt with or to be dealt with by them, the executive member must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter.

Dispensations

- 10.1 The council may grant you a dispensation, but only in specified circumstances, to enable you to participate and vote on a matter in which you have a pecuniary interest.
- 10.2 Applications for dispensation must be made in writing to the Monitoring Officer before the meeting at which the matter is to be discussed.

Offences

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

- (e) As an executive member discharging a function acting alone, and having a pecuniary interest in such a matter, failing to notify the Monitoring Officer within 28 days of the interest; and
- (f) Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a pecuniary interest or in disclosing such interest to a meeting.

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

Notification of Gifts and Hospitality

- 12.1 You must, within 28 days of receipt notify the Monitoring Officer of any gifts and hospitality you have received with an estimated value of offers over £100
- 12.2 You must disclose the receipt of that gift or hospitality and its nature and extent where it is relevant to the matter under consideration unless it was registered more than 3 years before

Interests arising in relation to overview and scrutiny committees

- 13.1 In any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where:
 - (a) that business relates to a decision made (whether implemented or not) or action taken by the executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
 - (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken,

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

Part 3

Registration of Members' Interests

Registering your interests

- 14.1 You must notify the Monitoring Officer of any interest you have within 28 days of:
- (a) becoming a member;
 - (b) disclosing an interest in any matter being considered at a meeting (if that interest is not already on the Register of Interests);
 - (c) (if you are an executive member) becoming aware of an interest in any matter to be dealt with, or being dealt with.
- 14.2 Any interests notified to the Monitoring Officer will be included in the register of interests.
- 14.3 A copy of the register will be available for public inspection and will be published on the authority's website.

Sensitive interests

- 15.1 Where you consider that you have a sensitive interest, and the Monitoring Officer agrees:
- (a) if the interest is entered on the Register of Interests, any copy of the Register of Interests made available for inspection and any published version of the register will exclude details of the interest, but may state that you have an interest, the details of which are withheld
 - (b) If the interest is not entered on the Register of Interests, at any relevant meeting you must disclose the fact that you have a disclosable interest, but not the nature of the interest
- 15.2 You should, within 28 days of becoming aware of any change of circumstances which means that your interest is no longer sensitive, notify the Monitoring Officer.

EMPLOYEE CODE OF CONDUCT

1. Policy application

This policy applies to all Council employees except those employed under the delegated powers of Governing bodies of Community, Voluntary Controlled schools and Trust schools. Governing bodies of these schools are strongly urged to adopt this policy for non-teaching staff within their delegated powers.

This code should be read in conjunction with the disciplinary rules contained within the disciplinary and dismissals policy.

Any breach of this code will be regarded as misconduct, leading to disciplinary action up to and including dismissal. Nothing in this code overrides existing statutory or common law obligations.

2. Principles

2.1 General standards

The public is entitled to expect the highest standards of conduct from all employees who work in local government. The role of local government employees is to support the Council in achieving its objectives, implementing policies and delivering services to the local community.

This code describes minimum expected standards that protect the integrity of both employees and the Council; however, having a values-led approach is vital to the Council's success. This code describes minimum expected standards that protect the integrity of employees and the Council. Underpinning the code of conduct is a set of Council Values that are vital to the Council's success. The Values help us to maintain and improve how we work with each other, our partners and customers. You are expected to demonstrate behaviours that reflect these values whilst performing your duties.

The values of Derby City Council are:

Can do - Our positive attitude means that we find ways of achieving excellent outcomes for our customers, partners, stakeholders and colleagues.

Being the best – We create an environment where we constantly strive for better ways of doing things, through creativity, forward thinking and learning.

Brilliant customer experience – We put our external and internal customers at the heart of everything we do.

Honesty and respect – We will behave ethically and with transparency, embracing diversity and treating everyone fairly.

The Council also has guidance on workplace behaviours called [Derby Workstyle](#) which employees are expected to follow.

2.2 Acceptance of gifts/hospitality

The Council is committed to conducting its services fairly, honestly, openly and adhering to the [Anti-bribery Policy](#). You must not compromise your position by appearing to accept, or accepting gifts/hospitality which might be considered by others to have influenced you when making decisions on behalf of the Council.

You must secure approval from your line manager before accepting any gift or hospitality. All offers of gifts/hospitality over the value of £25 must be recorded. If you do not know the value or are unsure, record it.

In general, you are expected to refuse gifts and hospitality offered to you or members of your family by any person or body that has, or seeks to have dealings of any kind with the Council. Cash or monetary equivalents offered must always be refused, regardless of the value. There may be occasions where it could cause offence to refuse hospitality/gifts.

However, no gift/hospitality that could look as though you have been dishonest or corrupt should be accepted.

See [Acceptance of gifts, hospitality and sponsorship for information](#).

2.3 Additional employment

Employees may carry out additional work, employment or outside activity if it is not in conflict with the Council's business.

The Chief Executive and Chief Officers must seek express consent from full Council to take up additional employment in line with their terms and conditions.

You must disclose and seek approval from your line manager who will determine if there is likely to be a conflict of interest. Your manager will also assess hours worked in line with the Working Time Regulations 1998 and discuss this with you.

You must not do personal work of any sort during the hours you are carrying out your work for the Council or use the Council's facilities in connection with additional employment.

You should also read, and act upon as necessary, the framework "[Implications of the Localism Act and social enterprises](#)" if you are considering establishing a business, social enterprise or micro provider organisation.

Details of the [declaration process](#) and further guidance is available from your line manager.

2.4 Consumption of alcohol

Consumption of alcohol during working hours is not permitted.

You must not drink alcohol during the working day at all; including unpaid breaks if you are involved in the following:

- work involving a high level of health and safety risk;
- responsibility for others where there is a high level of health and safety risk;
- close contact with customers
- face to face contact with external or partner agencies where you are representing the Council.

Employees not involved in the above type of work are expected to take a sensible approach to the consumption of alcohol during unpaid breaks. You must be mindful of the effect your behaviour will have on the reputation of the Council and the impact alcohol will have on your ability to perform your duties.

Disciplinary action will be taken against you if your ability is impaired by alcohol whilst on duty. See the [disciplinary rules](#) for more information.

2.5 Illegal substances

It is a criminal offence to produce, possess or supply an illegal substance. You must not use, or be under the influence of an illegal substance during the working day at all; including unpaid breaks. Where these offences come to light disciplinary action will be taken.

You must be mindful of the effect your behaviour will have on the reputation of the Council and the impact illegal substances, or the misuse of legal drugs, will have on your ability to perform your duties. Disciplinary action will be taken against you if your ability is impaired by illegal substances or the misuse of legal drugs while on duty.

You have a duty to inform your line manager if you are taking any medication which interferes with the safe performance of your role.

2.6 Conflict/disclosure of personal interests

Employees must not allow personal interests to conflict with the Council's business. This means you must not use your Council position, facilities or equipment to benefit yourself, family, friends or a private company/interest.

You must register any interest you/your spouse/partner has which may conflict with the Council's interest. This includes any employment by, substantial shareholding in or membership of any external company or body which has, or may enter into a contractual

relationship with the Council or which is involved in campaigning or lobbying in respect of any Council activity.

The same principles apply to work carried out through partnership arrangements. So if you are involved in any type of partnership working with other agencies/companies and there appears to be a potential conflict of interest, you must also register this as described above.

Disclosure must be made as soon as it becomes evident there is or may be a conflict of interest. It may come to light in processes such as recruitment, tendering or during committee meetings. It must be declared immediately if you, a relative or friend has, or could be perceived as having, a personal interest in the process. Arrangements should be made to protect both the Council and the employee's position.

You must also declare membership of any organisation not open to the public, which requires allegiance and which has secrecy about rules, membership or conduct.

You should also read, and act upon as necessary, the framework "Implications of the Localism Act and Social Enterprises" if you are considering establishing a business, social enterprise or micro provider organisation.

Details of the [declaration process and further guidance](#) are available from your line manager

2.7 Sponsorship

When an outside organisation wishes to sponsor a Council activity or an individual employee, the rules as described in section 2.2 about accepting gifts and hospitality apply.

When the Council wishes to sponsor an event/organisation/individual, you must follow the rules for declaring a conflict of interest in section 2.5 if you may benefit, or it could be perceived you may benefit, from the arrangement.

2.8 Criminal charges

Any employee facing criminal charges must notify their line manager immediately, who will consider the impact on their contract of employment. Motoring convictions should be declared in line with the Driving at Work Policy.

2.9 Disclosure of information

Legislation requires that certain information must be available to councillors, auditors, government departments, customers and the public. The Council publishes its performance results and discloses information in line with the Freedom of Information Act.

You must always treat personal data obtained through your duties as confidential and only disclose personal data in accordance with the Data Protection Act Policy.

Further information about [data protection](#) is available from your line manager.

2.10 Dress

The Council does not have a formal dress code. Employees who are required to wear a uniform or protective clothing to perform their duties will be provided with what is required and must wear this as instructed.

Cultural dress is encouraged providing it does not become a health and safety risk within the working environment.

You should be mindful that the way you present yourself may reflect upon the Council's reputation. You must dress in a manner that is appropriate for the situation in which you are working and which does not offend colleagues, customers or service users.

2.11 Inventions, patents and copyright

Any inventions made before the Patents Act 1977 belong to the Council if they were made during the course of your employment. However, after 1 June 1978, inventions will only belong to the Council if:

- they have been made in the course of your normal duties
- you would be expected to be inventive as part of your duties
- they were made in the course of your duties and you had a special obligation to further the Council's interest.

Any material that is related to work belongs to the Council under the Copyright, Designs and Patents Act 1988. This means you cannot claim ownership of any material, written or produced by yourself or others during the course of your employment. You must not use any Council material for your own or a third party's gain.

2.12 Legacies/bequests in a will

Employees must never provide assistance to customers when drafting a will or act as a witness. Great care must be taken to ensure you are never placed in a position where it may appear that you are influencing or advising a customer about the content of their will.

Any gifts or monies left to you in a will must be declared using the acceptance of hospitality/gifts process described in section 2.2.

2.13 Off duty hours

Employees must not undermine public confidence in the Council in any way. This means your behaviour, both in and out of work, must not jeopardise your employment, undermine the trust placed in you as a Council employee or bring the Council into disrepute. Although your off duty hours are your personal concern, you must not allow official and private interests to conflict.

2.14 Personal use of Council equipment

The Council provides work equipment for employees to use to carry out their duties. If you wish to use such equipment for personal use, you must adhere to the policies that apply. For example, mobile phones, email and internet use..

2.15 Political neutrality

As a council employee, you service the Council as a whole. You must serve all councillors not just the controlling group and make sure you respect their individual rights. You must not allow your personal or political opinions to interfere with your work or your behaviour as a Council employee.

You will not normally be asked to advise any of the political groups represented on the Council about their, or the Council's work, or be required to attend political group meetings. However, in exceptional cases identified by the Chief Executive, senior officers may be asked to attend and advise political group meetings.

The Council is required by the Local Government and Housing Act 1989 to maintain a list of politically restricted posts. If you are employed in a restricted post, it prevents you from having any active political role either in or outside the workplace. It means you are disqualified from being elected or holding office as a member of this Council. You are also disqualified from standing or holding office with this Council if you hold any paid office or employment with a local or joint authority on which this Council is represented.

In practical terms, this means you cannot stand as a local councillor, an MP or a Euro MP. You are also restricted from:

- canvassing on behalf of a political party or a person who is or seeks to be a candidate.
- speaking to the public at large or publishing any written or artistic work that could give the impression that you are advocating support for a political party.

You will have been informed if your post is politically restricted and whether there is a right of appeal. Further information about [politically restricted posts](#) is available on the intranet or you can speak to your line manager.

2.16 Professional qualifications

Employees in roles that require specific professional registration to be able to practise their profession must maintain this requirement. You must also comply with the professional standards, codes of practice and any continuing professional development requirements.

2.17 Relationships at work

Councillors

Mutual respect between employees and councillors is essential. Close personal relationships between employees and individual councillors can damage this respect. Officers whose duties require them to have contact with Elected Members must familiarise themselves with and follow the Protocol on Member/Officer Relations a copy of which can be found in Part 5 of the Council's Constitution.

Employees

The Council has a statutory obligation to protect employees from harassment on the grounds of gender, race, disability, sexuality, religion or belief and age. You are expected to show courtesy and respect to fellow employees and maintain a professional attitude to others in the performance of your duties.

Customers

Employees in close contact with vulnerable customers must maintain professional relationships at all times. Appropriate boundaries should be made clear from the outset whilst being sensitive to the service user's personal history and how that might affect the relationship. Employees must not have any kind of physical or sexual relationship with customers.

Close personal relationships

During recruitment, candidates are required to declare any personal relationships they have with councillors or employees. Existing employees must not be involved in recruitment or other management processes involving a friend/relative, or someone they have a close personal relationship with. You must inform your line manager immediately if you identify an applicant that you have, or could be seen to have, a close personal relationship with.

Alternative management arrangements will be put in place, where possible, if a candidate is appointed who should be managed by, or will manage, a relative or someone with a close personal relationship.

Close relationships that develop during the course of employment between employees and or Councillors must be declared by both parties. Alternative working arrangements will be put in place to ensure compliance with this code. Further information and [how to register a relationship](#) is available on the intranet.

2.18 Social Media

There is growing popularity and use of social media websites like blogs, Facebook and Twitter. These are useful tools for communicating and engaging with the public, and are already used by some employees for this purpose. Employees must make sure that their use of, and participation in, social media websites does not bring the Council into disrepute, or breach their obligations under relevant legislation or Council policies.

You should ensure that you follow the [Social Media Marking Scheme](#) policy, which governs the use of social media websites by Council employees. You should also follow the Council's Network, Email and Internet User policy, which contains detailed provisions on the use of the Council's information systems and IT facilities for both Council related activities and personal use. These policies are intended to set the standards of behaviour expected from employees in relation to their use of social media websites.

2.19 Whistleblowing

If you become aware of activities which you believe are illegal, improper, unethical or otherwise inconsistent with this code, you can obtain a copy of the [Council's Whistleblowing Policy](#), ask your line manager or contact Human Resources.

3 Support and guidance

Further guidance, supportive information and documentation on [employee code of conduct](#) are available on the intranet or can be obtained from your manager.

4 Roles and responsibilities

The roles and responsibilities of key stakeholders are summarised in Appendix 1.

Appendix 1 – Roles and Responsibilities

Chief Executive & Chief Officers	Managers	Employees	Human Resources
Every employee must use the procedure and guidance on iDerby			
Fairness and equality			
To ensure this policy is implemented in a fair, consistent			
General operation of the scheme			
To ensure managers carry out their responsibilities.	To ensure employees carry out their responsibilities.	To adhere to the employee responsibilities.	Provide advice and guidance to managers and employees.
Acceptance of hospitality, gifts and sponsorship			
To maintain a Directorate register of gifts, hospitality and sponsorship.	To approve acceptance of appropriate gifts, hospitality and sponsorship.	To declare and record all offers of gifts, hospitality and sponsorship over £25.	Provide advice and guidance to managers and employees.
To approve acceptance of appropriate gifts, hospitality and sponsorship.	To take management action where it appears an offer of gifts/hospitality/sponsorship is disproportionate or	To seek approval to accept appropriate gifts/hospitality	
To take management action where it appears an offer of gifts/hospitality/sponsorship is disproportionate or illegitimate.			
Additional employment			
To maintain a Directorate register of additional employment.	To determine if there is a conflict of interest in additional employment.	To declare and seek approval of any additional employment.	Provide advice and guidance to managers and employees.

Chief Executive & Chief Officers	Managers	Employees	Human Resources
Seek express consent from full Council to undertake additional employment.	To take management action where additional employment represents a conflict of interest.	Sign working time regulations opt out agreement if working over 48 hours a week or reduce hours to comply.	
	To approve appropriate additional		
	To determine if an employee will be working more than a 48 hour week and take action.		
Conflict/disclosure of personal interests			
To maintain a Directorate register of conflicts/disclosures of personal interests.	To take management action where there appears to be a conflict of interest.	To make a declaration if there is or appears to be a conflict of personal interest.	Provide advice and guidance to managers and employees.
To take management action where there appears to be a conflict of interest.			
Close personal relationships			
To maintain a Directorate register of close personal relationships.	Take management action where there is a conflict of interest due to a close personal relationship.	To declare any close personal relationships that emerge at work.	Provide advice and guidance to managers and employees.
Take management action where there is a conflict of interest due to a close personal relationship.			

Chief Executive & Chief Officers	Managers	Employees	Human Resources
Seek express consent from full Council to undertake additional employment.	To take management action where additional employment represents a conflict of interest.	Sign working time regulations opt out agreement if working over 48 hours a week or reduce hours to comply.	
	To approve appropriate additional employment.		
	To determine if an employee will be working more than a 48 hour week and take action.		
Conflict/disclosure of personal interests			
To maintain a Directorate register of conflicts/disclosures of personal interests.	To take management action where there appears to be a conflict of interest.	To make a declaration if there is or appears to be a conflict of personal interest.	Provide advice and guidance to managers and employees.
To take management action where there appears to be a conflict of interest.			
Close personal relationships			
To maintain a Directorate register of close personal relationships.	Take management action where there is a conflict of interest due to a close personal relationship.	To declare any close personal relationships that emerge at work.	Provide advice and guidance to managers and employees.
Take management action where there is a conflict of interest due to a close personal relationship.			

Appendix 5

Employee Code of Conduct Policy – Table of major changes

Old Policy	Revised Policy	Reasons
Service User	Customer	Reflects corporate guidelines
No mention of Derby workstyle	Derby workstyle included at 2.1	New style buildings and ways of working have altered the dynamics within which employees work. Derby Workstyle lays out clear guidelines on the kind of behaviours that promote good relations at work
Working hours	During the hours you are carrying out your work for the Council.	The variety of working patterns in the council combined with increased business opportunities – the Localism Act and social enterprise- could lead to uncertainty about the propriety of self promotion. The change in wording seeks to make clear that whenever an employee is engaged on Council business they should not pursue their own interests. For example; An employee attending a conference or event on behalf of the Council, outside of normal working hours, should not promote their own potential business opportunities or interests.
	Implications of Localism Act and Social Enterprise	New guidance has been published for employees on the implications of the Localism Act and social enterprise. Employees need to be aware of how this may impact on them.
Small section on illegal substances	Clarity on illegal substances and drug misuse	Misuse of legal drugs was not mentioned in the previous policy. Data suggests there is increased misuse of legal drugs that could affect a person's ability to drive, operate machinery or impair their decision making. The information for illegal substances more closely matches the information on alcohol.
	Social media	Increased use of social media and the potential pitfalls inherent with this have been addressed in the Social Media Marking Policy Scheme. The code cross references employees to the Policy

Managing Individual Capability – Table of major changes

Old Policy	Revised Policy	Reasons
Managing Individual Performance (MIP) process and forms used in probation process to record targets and progress.	Removal of MIP forms from probationary process. Manager either to record in own format or suggested template.	Managers and Trade Unions have expressed concern that the MIP forms are not suitable for use in the probation process.
Probation meetings to happen on an ad hoc basis depending on employee's performance. MIP form must be used otherwise probation cannot be extended	Probation meeting must happen at 14 weeks. Other meetings to be held to discuss performance especially if the employee is underperforming. Guidance suggests 4 and 8 weeks. Meeting must be recorded on employee personal file in HRIS system.	Feedback from Trade Unions and manager.
Policy moves from capability to probation to capability.	Policy now split into two sections. Section one deals with probation and section two with capability.	Feedback suggests this makes it difficult for the policy to follow.
Factors to consider at 2.2 in current policy biased towards capability discussion rather than probation.	Training and reasonable adjustments to be implemented/discussed at probation meetings where required.	Clarifying that if employees are underperforming any necessary training or reasonable adjustment need to be put in place.
Purpose states 'managing individual capability address employees, including those on probation, where regular MIP reviews have failed, because of the employee's capability....'	Clarify that capability may include cases where there is diminished physical or mental capability. Cross reference to redeployment policy where capability is due to health reasons.	Occupational Health have identified that the capability process is not being exhausted prior to employees being sent for a referral for ill health retirement. Due to the strictness of the ill health retirement criteria employees may no longer be capable of carrying out their role but not qualify for ill health retirement.

Protocol on Member/Officer Relations

Principles

1. Under executive arrangements the roles of members and officers remain distinct. Members are not employees, are responsible to their electorate and serve only as long as their term of office lasts. Officers are employees who serve the whole Council.
2. Mutual respect between members and officers is essential for good local government. The different accountabilities between the two need to be understood and respected.
3. The council believes that out of this mutual respect a healthy atmosphere will prevail where all members feel free to question and challenge officers and where officers feel free to manage and to offer full and frank advice to members.

Roles of Members

4. Under executive arrangements, members within the executive will have different responsibilities from those outside.

Representational Role

5. However, all members have the important role of representing their electorates. The Government sees members having a crucial role to play on consulting their communities on the development of policy and council decision making.

Council Role

6. All members acting together as Council will decide the policy framework and budget.

Regulatory Role

7. Members will be appointed to the committees taking decisions on non-executive functions such as planning control and licensing.

Overview and Scrutiny Role

8. Non-executive members will carry out, through Overview and Scrutiny Boards, the roles of:
 - assisting in the development of Council policy
 - questioning and evaluating the executive

Executive Role

9. The members of the executive will have the following leadership roles:

- leading the preparation of the council's policies and budget
- taking decisions to deliver the budget and policies
- being the partnership forming focus of the council

Roles of Officers

10. Officers are responsible for:

- taking day-to-day managerial and operational decisions
- advising and supporting all members in their above roles

11. Senior officers, particularly the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer, have additional roles in arbitration, to ensure that council business is conducted fairly and with propriety if needs be by negotiating with and between political groups. The three specific statutory roles are undertaken by the Chief Executive, the Director of Governance and the Director of Finance respectively. Statutory responsibilities are given which underpin the fundamental principles of political neutrality and service to the whole council.

12. Officers are employed by, and accountable to, the council as a whole.

Expectations

13. Councillors can expect from officers:

- (a) a commitment to the authority as a whole, and not to any political group
- (b) a working partnership
- (c) an understanding of, and support for, respective roles, workloads and pressures
- (d) timely responses to enquiries and complaints
- (e) professional advice, not influenced by political views or preference, which does not compromise the political neutrality of officers
- (f) regular, up-to-date information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions that they hold
- (g) awareness of, and sensitivity to, the political environment
- (h) respect, dignity and courtesy
- (i) training and development in order to carry out their role effectively
- (j) integrity, mutual support and appropriate confidentiality
- (k) not to have personal issues raised with them by officers outside the agreed procedures
- (l) that employees will not use their relationship with councillors to advance their personal interests or to influence decisions improperly

- (m) that officers will at all times comply with the relevant Code of Conduct
- (n) support for the role of councillors as the local representatives of citizens, within any scheme of support for councillors which may be approved by the authority.

14. Officers can expect from councillors:

- (a) a working partnership
- (b) an understanding of, and support for, respective roles, workloads and pressures
- (c) political leadership and direction
- (d) respect, dignity and courtesy
- (e) integrity, mutual support and appropriate confidentiality
- (f) not to be subject to bullying or undue pressure
- (g) not to be subject to unwarranted criticism, particularly in situations where the officer cannot respond on equal terms, such as in public meetings
- (h) that councillors will not use their position or relationship with officers to advance their personal interests or those of others or to influence decisions improperly
- (i) that councillors will at all times comply with the relevant Code of Conduct.

Relationship between Officers and the Leader/Executive Members

- 15. Even though officers serve the whole council, it is inevitable that officers, and senior officers in particular, will have a closer working relationship with members of the executive than they will with other members. Officers therefore can have a difficult job in balancing the sometimes conflicting demands of delivering professional judgement and advice; satisfying the need of the majority party; and retaining the confidence of the minority parties.
- 16. However, one of the aims of the executive arrangements is to ensure that decision making within a council is transparent. Executive members will be personally identified and held to account. They are therefore entitled to receive the best possible support and advice from their officers.
- 17. The Government recognises the potential for tension between chief officers and executive members. This can be avoided by all involved recognising the particular roles set out in parts 2 and 3 of this Protocol for both members and officers.

Overview and Scrutiny

- 18. While the majority of officers will effectively support the executive, a relatively small number will support the Overview and Scrutiny Boards. There is a potential for conflict here between officers. However, the council expects that every help and facility will be extended to officers undertaking their duties even when they are involved in the questioning of executive decisions based on officer advice.

19. First, second and third tier officers can be asked to appear before Overview and Scrutiny Boards to answer questions relating to the financial, legal, professional and technical aspects of service provision.

Officers' Relationship with Political Groups

20. Officer attendance at political group meetings is likely to be the exception. However, there may be particular advantages to be gained from such attendance.
21. An opposition group may decide to establish a Shadow Cabinet made up of its Spokespeople. Where there is more than one opposition group. Only one Shadow Cabinet may be established, the membership of which may include Spokespeople from one or more groups.
22. Requests for officers' attendance at political group or Shadow Cabinet meetings should in the first instance be made to the Chief Executive. Where attendance at a full political group meeting is agreed, the Chief Executive will notify the other political groups and offer them a similar facility. Officers will not be expected to attend all Shadow Cabinet meetings but rather to attend when a particularly significant matter on the agenda of a Council Cabinet meeting is due to receive prior consideration by the Shadow Cabinet.
23. Members must not request officers to carry out work for, or on behalf of, a political party.
24. The Leader of a political group shall notify the Director of Governance in writing or by email, of the names of members who are to act as Opposition Spokespeople, the council functions to be overseen by such Spokespeople and whether they will operate through a Shadow Cabinet.
25. An Opposition Spokesperson will be entitled to be briefed by the relevant chief officer, or a nominated senior officer, on any matter within the functions overseen by the Spokesperson. Such a briefing must be limited to providing facts and professional advice. Officers must not be asked to undertake research or draw up policy options.
26. Opposition Spokespeople shall not be entitled to information or advice given to the controlling administration other than that which would be available under the Access to Information Procedure Rules.
27. Any information given to officers by Opposition Spokespeople and any advice given by officers to Opposition Spokespeople will be kept confidential.

Officers' Relationship with Ward Members

28. In their capacity as ward representatives, members will naturally be keen to bring about improvements and the resolution of problems which relate to their own areas. Officers have to do what they reasonably can to support the representative role of all members.
29. Members have to remember that officers have to look after the needs of the city as a whole, and in doing so, they have to apply the appropriate policies and procedures laid down by Council.

Access to Documents

30. In addition to the rights that everybody has under access to information provisions, members also have a right to inspect documents held within the council, where this is reasonably necessary for the performance of their duties.
31. In cases of dispute the Monitoring Officer will determine the eligibility of members to access documents.
32. Members and officers inevitably come into possession of information which has been identified, or would be identified, as exempt or confidential information for the purposes of the access to information provisions. This information should not be disclosed to the media or to the general public by members or officers.

Non-Council Members

33. Under executive arrangements the practice of co-opting non-Council members to sit on various bodies will not only continue but will increase. Co-opted members will be common features on Overview and Scrutiny Boards and on Neighbourhood Boards and Neighbourhood Forums.
34. Non-Council members co-opted onto council bodies need to be made aware of the contents of this protocol and that its principles apply to them.

Press Releases

35. Press releases are issued through the Communications team on behalf of the council. Their comments have to comply with the provisions of Government circulars.
36. Press releases are not issued by the council on behalf of political groups. They can however contain the comments of executive members and committee Chairs where they are speaking in connection with the roles given to them by Council. Officers comments can be included on professional and technical issues.

37. Copies of all press releases issued will be sent to all members of Council.

Correspondence between Members and Officers

38. Correspondence between members and officers should normally be kept on a confidential basis. This will underpin the arbitration role of officers.
39. However, if it is considered necessary by the officer, having received the advice of the Monitoring Officer, to disclose the contents of the communication to members of other political groups, then the member concerned will be informed in advance that this will happen and the reasons for doing so.

Councillors and officers attending neighbourhood boards or forums as residents

40. This section provides guidance to councillors and officers who live in Derby and wish to attend neighbourhood board or forum meetings to express their views and raise concerns as residents.

Councillors attending neighbourhood boards or forums as residents

40. Councillors have many opportunities to raise issues and are well placed to ask questions and receive responses from other councillors and council officers. Councillors should pursue service issues and complaints through existing service department procedures and mechanisms and not use the neighbourhood board or forums. However, councillors do have the right to be included within the democratic process and to attend a neighbourhood board or forum meeting as a resident. When there is a need to raise an issue as a resident, a councillor should state:
- their name
 - the ward they represent as a councillor
 - that they wish to speak in their capacity as a local resident.

Council officers attending neighbourhood boards or forums as residents

42. Council officers who live in Derby have the right to be included within the democratic process and to attend their local neighbourhood board or forum meeting as a resident. However, when a council officer has been invited to their local neighbourhood board or forum meeting in a professional capacity, they do not have the right to speak as a resident at the meeting. When raising an issue at a neighbourhood board or forum meeting as a resident, a council officer should state:
- their name and job title
 - that they are employed by Derby City Council
 - that they do not wish to speak in their capacity as a council officer but as a local resident.

PROTOCOL ON THE USE OF FACILITIES, SERVICES AND EQUIPMENT BY COUNCILLORS

Introduction

1. The council's Code of Conduct says that a member must, when using, or authorising the use by others of, the resources of the authority ...
 - a. act in accordance with the authority's requirements; and
 - b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or the office to which the Member has been elected or appointed.
2. This protocol sets out the council's requirements under the Code of Conduct and any breach of the protocol will be regarded as a breach of the Code of Conduct. The protocol covers the use of facilities, services and equipment provided to councillors.

Meaning of 'political purposes'

3. There is a distinction between 'political groups' and 'political parties'. A 'political group' is legally recognised in the Local Government and Housing Act 1989 and associated regulations. A Political Group is a collection of councillors who have declared their membership of the Group to the Council's Proper Officer. The Council has a duty to give effect to the wishes of the Groups in, for example, allocating seats on committees. A Political Group meets regularly to consider forthcoming Council business and decide the Group's position on policy matters. At least part of the work of Political Groups can therefore be regarded as facilitating, or being conducive to, the discharge of the functions of the authority.
4. Political parties are separate from, although allied to, Political Groups. Their main purpose is to campaign and fight local and national elections and their membership is much wider than local councillors. Councillors are normally members of a political party. Political parties can be organised at ward, constituency or district level. They are not directly concerned with facilitating, or being conducive to, the discharge of the functions of the authority.
5. For the purposes of the Code of Conduct, therefore, the use of the Council's resources for political purposes has to be restricted to services associated with the operation of the Council's Political Groups, not political parties. Support for Political Groups is restricted to photocopying, collating and distributing reports for, and arranging, Group meetings.

Use of facilities and equipment

6. The Council provides Councillors with certain facilities and equipment either in their homes or at Council offices. Details are specified in the Members' Handbook. This section covers the use of these facilities and equipment, including stationery and consumables, other than Information Technology equipment which is covered by paragraphs 10 to 22.
7. Equipment will remain the property of the Council. It is lent to the councillor for the duration of his/her period as an elected member of the Council. At the end of that period, the equipment must be returned to the Council in full working condition. If equipment has been lost or damaged whilst on loan, a charge may be made for its replacement or repair.
8. Councillors must use any council facilities and equipment provided to them only in connection with their role as a councillor and for no other purpose. For example, they must not use any of the council's paper, photocopiers, printers or internal or external mail facilities, for any personal or party-political purpose, or any purpose that is not related to council business. Councillors must not use rooms in council offices for any personal or party political purpose, or any purpose that is not related to council business, unless such use is in accordance with the council's practice for the use of rooms by outside organisations set out in the Members' Handbook. Use of facilities and equipment on behalf of any community or voluntary groups with which councillors may be connected is not permitted. Should the Chief Executive or Director of Resources have concern about the use of equipment, they can request the Monitoring Officer to take the matter to the Standards Committee to make the decision whether to demand the return of equipment.
9. Incidental, small-scale use of facilities and equipment outside authorised purposes, may be agreed with the Democratic Services Manager, on payment of an appropriate charge provided that this does not interfere with official council business. All uses under this paragraph shall be recorded in a register which shall be open to inspection by any member of the public.

Use of Members' Secretarial Support Services

10. The council provides secretarial support services to councillors as specified in the Members' Handbook. Secretarial support services are provided to councillors only in connection with their role as a councillor and for no other purpose. Written material will contain the council's official logo and must not contain any other logo. Councillors must not ask, or put any obligation on secretarial staff to assist with, any personal or party-political matter or any matter that is not related to council business. Use of secretarial services on behalf of community or voluntary groups with which Members may be connected is not permitted.

Use of Information Technology (IT) facilities and equipment

11. The term “Computer” includes all ancillary furniture and equipment including monitor, printer, mouse, modem, routers and telephone line, together with the software and programs loaded on to it.
12. The council provides IT facilities and equipment to councillors. Details are set out in the Members' Handbook.
13. Subject to paragraphs 17 and 26, councillors must use any council IT facilities and equipment provided to them only in connection with their role as a Member and for no other purpose.
14. The council will install the Computer at the councillor's home address (“the Property”). The councillor must not remove the Computer from the Property at any time without the council’s written consent. This paragraph will not apply to laptop computers.
15. The council will pay to install, service, repair and maintain the Computer and will also provide consumables, such as ink cartridges and paper.
16. The councillor is responsible for meeting the cost of any damage to the Computer which goes beyond ordinary wear and tear, other than damage arising from theft, accidental damage, fire damage, failure of electricity supply and failure of telecommunications. The councillor must report immediately to the council any damage to or malfunction of the Computer.
17. Apart from reasonable incidental personal use, the Computer must only be used by the councillor themselves and only for official council business or activities which facilitate the carrying out of the council’s functions. Personal use is permitted provided it does not violate these Conditions and does not hamper or conflict with official business. Any private use and data held on the system is at the councillor’s discretion. The council accepts no liability for any consequences (including financial or other loss) which may arise through reasonable incidental personal use of the Computer. The security of any personal data is the councillor’s responsibility. Any such data could be viewed by officers if stored on the computer’s internal drive (hard drive) and councillors may therefore prefer to use their own removable diskettes (‘floppy disks’) to store such data. Simply deleting files does not necessarily permanently remove them.
18. The council has to comply with all UK legislation affecting IT, including the following Acts, and this also applies to a councillor’s use of the Computer. councillors may be held personally responsible for any breach of current legislation as listed below and any future legislation that may be enacted:
 - Data Protection Act 1998
 - Copyright Design and Patents Act 1988

- Computer Misuse Act 1990
- Obscene Publications Act 1959

19. As well as ensuring compliance with legislation, of primary concern is to keep ongoing support costs as low as possible. To meet both these objectives Councillors should note the following:

- a) Installation of software (including screensavers) from any source must only be carried out with prior authorisation from Information Services. A lot of software, ranging from small 'utilities' designed to enhance performance to complete applications such as drawing packages, is readily available on magazine 'cover disks' or for download via the Internet. Some of this is 'freeware', where there is no charge for its use, whilst some is 'shareware', where the provider charges for its use. Councillors should seek the advice of Information Services before downloading or installing any such software.
- b) The copying of licensed software and data, use, or possession, of unlicensed copies or 'pirated' versions of software is illegal and, therefore, expressly prohibited.
- c) Any software or data files, including word-processed documents and spreadsheets, must be checked for viruses before being loaded onto the councillor's equipment or transmitted to colleagues or the council, whether by diskette or email.
- d) Anti-virus software is supplied but must be updated regularly.
- e) If a virus is detected that cannot be 'cleaned' by the supplied anti-virus software, it must be reported to Information Services so that they may deal with it.

20. The councillor must stop using the Computer immediately if he/she:

- ceases to be a councillor, or
- receives written notice from the council to that effect.

If the council gives the councillor notice that it requires the return of the Computer, the councillor must either return the computer within five working days or allow access to the Property for that purpose.

21. The Computer will remain the property of the council. It is lent to the councillor for the duration of his/her period as an elected member of the council. At the end of that period, the Computer must be returned to the council in full working condition. If the Computer has been lost or damaged whilst on loan, a charge may be made for its replacement or repair.

22. The council will provide and maintain a valid insurance policy at all times which will cover the Computer against theft, accidental damage, fire damage, failure of electricity supply and failure of telecommunications.

23. The councillor must agree to allow the council entry to the Property on notice to carry out the council's duties under this Protocol and to ensure compliance by the councillor with the terms and conditions in this Protocol.
24. The councillor will not do, cause or permit any act or omission that could invalidate the insurance policy covering the Computer.
25. The councillor must complete without delay all health and safety questionnaires that the council may send to him/her and comply with all appropriate health and safety guidelines.
26. The councillor must comply with all policies, guidelines and codes of practice issued by the council on the use of the Computer or the network to which it is connected.

CALL-IN PROCEDURES

Procedure to be Adopted When a Decision is Called-In

1. The Constitutional Services Officer (CSO) will check that the call-in notice is signed by at least three Members. The call-in notice must identify which principle(s) of decision making in rule OS33 have allegedly been breached or what adverse effect on a neighbouring Neighbourhood Board/Forum is alleged, and give reasons. This requirement will be checked by the Director of Governance or the Head of Democratic Services.
2. The CSO will arrange a meeting of the appropriate Board, in consultation with the Chair, within 10 working days of the call-in notice. If a scheduled meeting of the Board will be held during the 10 day period, the call-in will be considered at that meeting.
3. The CSO will acknowledge the call-in notice and notify all Council Cabinet members.
4. The CSO will invite the signatories to the call-in notice, the relevant Council Cabinet member(s) and the relevant Director to attend the call-in meeting. The call-in signatories and the relevant Council Cabinet member or a Cabinet member nominee would be expected to attend. The relevant Director may nominate a second or third tier officer to attend in his / her place. If none of the call-in signatories attend, the Board will decide whether to proceed. If the Board decides not to proceed, then the call-in will be decided on the basis that the Board does not have any concerns it wishes to refer to the Council Cabinet, and the Council Cabinet will not be required to reconsider the decision.
5. The CSO will send copies of the call-in notice, minute of Council Cabinet / Ward Committee and any associated reports to members of the Board with the agenda for the meeting, or as a late item if the agenda has already been issued.
6. The Overview and Scrutiny Co-ordination Officer (OSCer) will liaison with the Chair and Vice Chair(s) of Board over any other appropriate arrangements for the call-in, eg additional information, witnesses etc. If the Chair or Vice Chair(s) have signed the call-in notice, the OSCer will liase with another member of the Board nominated by the Chair or Vice Chairs.
7. The aim of the Board meeting when the call-in is considered should be inquisitorial not adversarial. The Meeting Procedure for a Call-in of a Council Cabinet decision will be adopted.

Meeting Procedure for a Call-in of a Council Cabinet Decision

The role of the Chair

1. This procedure shall be implemented at the meeting by the Chair and any deviation from this procedure will be at the discretion of the Chair. The Chair will advise attendees at a Call-in meeting of any reasonable intention to deviate from the procedure at the start of the meeting where possible.
2. In the absence of the Chair, the meeting will be led by the Vice-Chair. In the absence of both, the Monitoring Officer or their representative shall facilitate a vote of Members so that a Chair shall be appointed. The appointed Member will chair for the duration of the meeting or until the Chair or Vice-Chair is present.
3. Where the Chair is in attendance, the Vice-Chair shall be treated in the same way as every other Member of the Board.

Role of signatories to the Call-in notice and the Council Cabinet member

4. Signatories to the Call-in notice and the Council Cabinet Member will be invited to provide evidence to the Board, both in terms of a presentation and by answering questions put to them by the Board.
5. There is no provision for either the signatories to the Call-in or the Cabinet Member to question each other, either directly or through the Chair.

Role of officers in attendance

6. Supporting Officers will be present from Constitutional Services (providing procedural advice to the Chair and Board as required and recording decisions) and Overview and Scrutiny (advising the Chair and the board as required on relevant scrutiny of the decision under consideration). The Monitoring Officer or their representative may also be present and may undertake any of these duties in addition to providing any legal advice if required.
7. Chief Officers, Directors or Heads of Service may provide support to the Council Cabinet Member and contribute to the meeting as required by advising the Board on the strategic, technical or operational basis of decisions taken or considerations given relevant to the Call-in, or by responding to questions referred by the Council Cabinet Member to them.

Procedure at the meeting

8. The signatories to the Call-in notice will be invited to address the Board on the Call-in, and will be required to focus on justifying why they considered the council's decision-making principles to have been breached as raised in the signed Call-in Notice lodged with the Monitoring Officer. The order in which signatories are invited to speak will be at the discretion of the Chair. Signatories shall limit their contributions to the reasons for the call-in.
9. After all signatories have made their contributions, members of the Board will be invited to put questions to the signatories and receive responses to those questions.
10. The Council Cabinet Member will then be invited to address the Board on the Call-in by the Chair, and will be required to respond to the assertions relating to the council's decision-making principles as set out in the Call-in notice.
11. After the Council Cabinet Member has made their contribution, members of the Board will be invited to put questions to the Council Cabinet Member. The Council Cabinet Member shall be entitled to refer questions put to them to the Officers supporting them.
12. One nominated signatory shall be invited to make a further statement to the Board, lasting no more than five minutes, summarising the signatories' case and responding to any further points raised by the Council Cabinet Member at Points 9 and 10.
13. The Council Cabinet Member shall be invited to make a further statement to the Board, lasting no more than five minutes, responding to the Call-in Notice and any points raised by the nominated signatory at Point 11.
14. There shall be no further contributions from signatories to the Call-in notice, the Council Cabinet Member or Officers attending in support of the Council Cabinet Member.

Contributions by members of the board

15. The Chair shall invite members of the Board to make any contributions they may wish prior to the vote being taken. Each member of the Board shall be permitted to make one speech lasting no more than five minutes.

Voting on whether decision-making principles have or have not been breached

16. The Chair shall then ask each Member in turn to state whether they consider the decision-making principles identified in the Call-in Notice were, or, were not, breached giving reasons. Where a Member considers that a principle has been breached, they will be required, at this stage, to state which principles they consider to have been breached. This information shall be recorded by the Monitoring Officer or their representatives.
17. The Chair may, at their discretion, state whether they believe the decision-making principles identified in the Call-in Notice were or were not breached, giving reasons.

Finding of no breach

18. In the event that a majority of Members consider that there was not a breach, the Chair will state that the Board has resolved that the Council Cabinet decision identified in the Call-in Notice did not breach the decision-making principles and close the meeting.

Finding of a breach

19. In the event that a majority of Members consider that there was a breach in the decision making procedure, the Chair will invite the Monitoring Officer or their representative to address the Board. The Monitoring Officer or their representative will state which decision making principles were individually identified by Board members as having been breached, and which of those principles were identified by a majority of Members present as having been breached.
20. The Chair will declare the outcome of the vote and the resultant resolution and close the meeting referring the decision back to the next meeting of the Council Cabinet.

Consideration of multiple Call-in notices in relation to one decision of Council Cabinet

21. In the event that more than one Call-in notice is received in relation to a single matter, the Chair will use their discretion to vary the procedure accordingly to afford signatories to all Call-in notices equal opportunity to state their case.

Planning and Development Control Protocol for Councillors

Introduction

1. Advice to councillors and officers is provided by the Local Government Association (LGA) in their guidance document 'Probity in Planning – Update 2002'. The LGA recommends that local authorities prepare local protocols based on their guidance adapted to local circumstances. This protocol has been produced for Members in accordance with that recommendation and is based partly on the LGA guidance as well as drawing on advice from the Royal Town Planning Institute.
2. The protocol supports and supplements the guidance issued by the Local Government Association referred to in 1 above. Members should have regard to that guidance and any further guidance that may update or replace that guidance.
3. The council's Constitution includes a Model Code of Conduct, which Members must comply with.
4. Part 2 of the Model Code of Conduct gives advice on the declaration of Member Interests. This is particularly important in relation to the Planning Control Committee, where failure to declare an interest could lead to legal challenges to the Committee's decisions. The Director of Governance's representative at the Committee can give advice to individual Members where they are in any doubt. However, it remains a Member's responsibility to declare an interest and ensure it is recorded in the minutes.
5. Probity is one of the subjects, which feature in an annual Planning Control Committee Training Day. The view of the council and its Standards Committee is that attendance on that training should be accepted as compulsory for Planning Control Committee Members. Members should ensure they receive that training before participating in decisions of the Planning Control Committee.
6. **Members' and Officers' Roles**

The planning system involves taking decisions about the use and development of land in the wider public interest and in doing so Members have to balance individual interests, for example those of the applicant or of a neighbour, against the broader public interest. The credibility of the Planning Control Committee and of the individual members of the committee in their approach or perceived approach to determining applications is vital to maintaining and promoting public confidence in the planning process. It is the advice of the Local Government Association that, in making decisions on planning matters, Members should:

- act fairly and openly
- approach each application with an open mind
- carefully weigh up all relevant issues
- determine each application on its own merits
- avoid contacts with interested parties which might be taken to indicate that they were unduly influenced by one party or another
- ensure that there are clear and substantial reasons for their decisions and that these reasons are clearly stated:

It is the Officer's role to:

- provide impartial and professional advice
- make sure all the information necessary for the decision to be made is given
- set applications and enforcement issues against broader Development Plan, Local Development Framework and other material considerations
- give a clear recommendation
- give reasons for the recommendation
- implement the decisions of the Committee

7. **Lobbying**

It is quite common for applicants or other interested parties to wish to discuss a proposed development with elected Members before a planning application is determined.

This can help Members' understanding of the issues and concerns associated with an application. However, Members are under an obligation to determine matters on their merits. That means that they must not make up their minds before receiving and reading any officer's report or before hearing any debate on the matter, out of which new information may arise. It therefore follows that if a Member states his/her support for or opposition to a proposal before the matter is formally considered at the relevant meeting, it will inevitably raise questions in terms of credibility as to whether that member can approach the issue with an open mind. To avoid compromising their position before they have received all the relevant information, Members should:

- avoid as far as possible meeting an applicant or potential applicant alone
- avoid making it known in advance whether they support or oppose the proposal
- restrict their response to giving procedural advice
- not pressure officers to make a particular recommendation in their report
- direct lobbyists or objectors to planning officers, who will include

- reference to their opinions where relevant in their report
- advise the Chair of the Planning Control Committee or officers of the existence of any lobbying interests

Members must act in the public interest and not at the behest of any individual or interest. If a Member feels that he/she no longer retains an open mind on the matter, or that his/her impartiality has been compromised so that they should not take part in the debate, he/she should make a declaration to that effect, should not take part in the debate and should leave the meeting during discussion of the matter.

If a Member feels that the views of constituents should be reported to the meeting of the Committee they should refer them to another councillor who is not a Member of the Committee to make them.

Members should pass any information received relating to an application to the relevant planning officer so that it can be considered and checked and, if relevant, included in the officer's report to the Committee.

8. Discussions with Potential Applicants

Pre-application meetings with potential applicants are encouraged, to encourage beneficial development and to resolve matters, which might otherwise lead to the refusal of planning permission. But to avoid such meetings being misunderstood they will normally be at officer level and:

- where meetings are to involve elected Members they should be arranged by and attended by officers, and should include the Chair of the Planning Control Committee or his/her representative
- potentially contentious meetings should be attended by at least two officers
- a note of the discussion should be taken and placed on file and made available for public inspection at the appropriate time
- it should always be made clear at the outset of such meetings that any views expressed are personal and provisional views and no commitments can be made which would bind or otherwise compromise the Planning Control Committee or any Member of the Planning Control Committee. Any advice given should be consistent and based upon the existing Local Plan and any other material considerations.

9. Group Pressure

Members cannot accept an instruction from anyone to determine an application in a particular manner, but must determine the issue on its merits. Accordingly while they may accord appropriate weight to the views of other Members, whether expressed in the Committee meeting or in prior discussions, they must determine the application on its merits and should

not take into account any factor which they are not prepared to state in open Committee. As a result, it is inappropriate for any political group to instruct its Members to vote in a particular manner on an application or to apply, or threaten to apply, any sanction to any Member who voted contrary to the Group's collective view.

10. **Decisions Contrary to Officer Recommendation**

From time to time Members of the Planning Control Committee will disagree with the professional advice given by the officers. Development Control is not an absolute science; whilst Members should only have regard to material planning considerations, there can be genuine disagreement about the weight to attach to them and the implications of a particular proposal.

In cases where the Planning Control Committee decides to depart from the officer recommendation, the Committee must give reasons, and those reasons must be recorded in the minutes of the meeting. Officers should be given an opportunity to explain the implications of such a decision.

Failure to give reasonable, justifiable and adequate reasons may, in the case of a successful appeal, result in costs being awarded against the authority. If an appeal is made in such circumstances the Committee is expected to nominate a Member who voted to refuse the application to appear as a witness in any subsequent appeal, with the support of officers.

11. **Site Visits**

Site visits can be useful to identify features of a proposal, which may be difficult to convey in a written report, but site visits may delay the decision on an application.

In order to avoid such delays procedures are in place to identify applications where site visits may be desirable and for such to be carried out prior to applications being reported to the Planning Control Committee.

When a Member feels that a site visit will be essential, he/she can either make a request to officers in advance or in exceptional circumstances request the Planning Control Committee to defer the determination of the matter until a site visit has been held.

Where Planning Control Committee is requested to defer a determination to enable a site visit to take place sound reasons should be given for the site visit and they should be recorded in the minutes.

Procedures for the conduct of site visits may be set by Members. [See the attached appendix for the current Site Visit Protocols] Where such

procedures exist Members must take care to follow them.

Site visits are only likely to be necessary where:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers and supplied at the meeting; or
- there is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or
- the proposal is particularly contentious.

12. Gifts and Hospitality

Gifts and hospitality give rise to particular problems in respect of the credibility of the planning process. Members should have particular regard to the provisions of the council's Code of Conduct and Protocol on Gifts and Hospitality. In particular, they must within 28 days report to the Monitoring Officer any offer of gifts or hospitality of over £100 for recording in the register of gifts, and they should avoid any behaviour which might be taken as indicating that they are open to such offers. Where Members have received or been offered hospitality by any parties involved in an application, recently or in the past and whether by the applicant, objector or supporter, they must give serious consideration to whether they should participate in making the decision. Acceptance of gifts or hospitality by members or officers where linked to the improper use of their office can be a very serious criminal offence. Members should endeavour to avoid such inferences arising. Advice should be sought from the council's Monitoring Officer.

13. Planning Applications by Members of the Council

The impartiality of the planning process requires particular care when dealing with an application by anyone who might ordinarily be involved in the planning process. Accordingly, whenever any Member of the Council submits an application to the Authority for himself/herself, or on behalf of any other person, he/she must:

- inform both the Director of Planning – Property Services and the council's Monitoring Officer
- take no part in processing or determining the application
- shall not attempt to lobby any Members of the Planning Control Committee and must avoid discussing the application with such Members

This applies equally to Members objecting to an application in their personal

capacity.

The Director of Planning & Property Services will ensure that all such applications are determined at the Committee meeting and not under delegated powers.

In such cases, where Members of the Council make or are involved in applications the issue of pecuniary interests and the issue of actual or perceived bias is likely to arise for the Members of the Committee. Whilst the tests in these circumstances are no different to applications that do not involve Members, the working relationship of Members may give rise to public perceptions of impropriety. Members are advised to have particular regard to these issues before deciding whether to participate in the determination of such applications.

14. Planning Applications by the Council

The council itself requires planning permission to carry out or authorise development on land it owns. These applications should be treated in the same way as those from private applicants.

15. Applicant and Public Representations at the Planning Control Committee

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

16. Interests

Members of the Council are prevented from taking part in debating or voting on applications in which they have a pecuniary interest. They will however be allowed to address committee, but they must withdraw from the meeting before the application is debated or voted upon. Guidance is available from the Monitoring Officer, the Planning Control Committee Solicitor.

17. Complaints relating to Breaches in Probity and Protocol

Details of how to refer a complaint can be found on the council's website.

Appendix

Protocol for Planning Committee Site Visits

1.0 Background

- 1.1 This protocol is intended to guide members of the Planning Control Committee when considering planning applications in deciding on whether site visits are appropriate and the procedure for arranging and carrying out site visits.
- 1.2 It is also intended to inform other stakeholders with an interest in planning applications, e.g. applicants, objectors and agents, about the purpose and procedures at site visits.
- 1.3 Site visits by the Committee are part of the formal committee process and therefore should be dealt with in a consistent and organised manner. Administrative and procedural arrangements on site should be understood by all taking part so that the process is transparent and fair.

2.0 The Purpose of a Site Visit

- 2.1 Site visits help in enabling Members of Planning Committee to understand more fully:
 - the details of a development proposal in the context of the application site,
 - the surrounding land and buildings,
 - issues raised by interested parties.
- 2.2 Site visits can be useful to identify features of a proposal, which may be difficult to convey in a written report, however they may delay the decision on an application.
- 2.3 In order to help avoid such delays procedures are in place to identify applications where site visits may be desirable. This enables Committee to determine whether site visits are likely to be necessary and for them to be carried out prior to applications being reported to the Planning Control Committee.
- 2.4 When a member of the Committee feels that a site visit will be essential, he/she can either make a request to officers in advance or in exceptional circumstances request the Planning Control Committee to defer the determination of the matter until a site visit has been held. Planning Control Committee is at liberty to consider requests from members of the public or ward members but in doing so should follow this guidance.
- 2.5 Where Planning Control Committee is requested to defer a determination

to enable a site visit to take place sound reasons should be given for the site visit and they should be recorded in the minutes.

- 2.6 Site visits that may lead to deferral of an application should only be held where:
- the impact of the development is particularly difficult to visualise, or
 - there is good reason why the comments of the applicant or objectors cannot be adequately expressed in writing, or
 - the proposal is particularly contentious, or
 - there are other justifiable reasons for requiring one.
- 2.7 Site visits should not be undertaken to defer difficult decisions on controversial applications, or when applicants, objectors or constituents request them without good planning reasons.
- 2.8 Site visits are part of the meeting of Planning Control Committee. Councillors intending to declare a personal interest should make this known to the Chair and Planning Officer on site. If the interest is not prejudicial the councillor may attend the site visit. They should ensure that their declaration is duly recorded in the minutes of the meeting when the matter comes before committee for determination. Councillors intending to declare a prejudicial interest and withdraw from the meeting on the matter, should not attend the site visit.
- 2.9 Planning Committee members who fail to attend the site visit will need to consider whether they have sufficient knowledge of the site and the issues arising from the site visit to enable them to take part in determining the application.
- 2.10 The report to committee is published 5 clear days in advance of the Committee meeting with a view that should members of the committee wish they can undertake individual site visits to view the site from public land.

3.0 Arranging Site Visits

- 3.1 Where the Planning Control Committee considers that a site visit is necessary Constitutional Services will make the necessary arrangements.
- 3.2 The following will be invited to the site visit:
- All Members of the Planning Control Committee
 - Ward Members, however if they wish to speak this will be arranged to take place at the committee meeting.
 - If appropriate, members of the Conservation Area Advisory Committee
 - The agent (or, in the absence of an agent, the applicant) will be informed in order to secure permission to access the site and make arrangements to access the site.

- 3.2 Objectors/supporters would not normally be invited to attend a site visit. Any request for objectors/supporters to attend will be considered by and will be at the discretion of the Chair.
- 3.3 A copy of the committee report, where available, plans and where appropriate the Site Visit Protocol will be sent to all those notified of the visit.
- 3.4 While officers will attempt to arrange the visit in advance with relevant parties, there is no right to enter on private land without permission of the owner. Where appropriate officers will obtain prior permission from land owner or his agent for those invited to attend the site visit to enter the land. If permission is not given for members and officers to enter, the site will have to be viewed from the public highway/areas.

4.0 Procedure at Site Visits

- 4.1 The Chair of Planning Control Committee will oversee the conduct of site visits. They will start promptly at the time notified to members and interested persons. The Planning Officer will note the names of all members, officers and invitees present. The Planning Officer will ensure, and if possible reconfirm with the owner or his agent, that all those entering the site as part of the inspection have the owner's permission to do so.
- 4.2 Councillors should either travel to the site at the same time as, or with, the planning officer attending the visit or meet the officer on site. If present at the site before the visit begins particular care should be taken to ensure that they maintain their objectivity. Hospitality or lifts should not be accepted from an applicant or objector as this could be seen to show favour.
- 4.3 Councillors and officers, and other people attending, should ensure that mobile phones are turned off or are on silent during the site visit.
- 4.4 At the request of the Chair, the Planning Officer will describe the proposal to councillors and will display plans or drawings of the proposal. If one is available it is expected that councillors will already be familiar with the planning officer's report. The Planning Officer will indicate matters of fact in relation to the proposal and surrounding land which councillors should take account of.
- 4.5 Members of the Planning Control Committee may ask the Planning Officer for factual clarification of any planning matter relating to the proposal or surrounding land, for example, distances to adjoining or objectors' properties or the location of parking spaces. Member questions should be addressed to the planning officer through the Chair. **At no time during**

the site visit should councillors debate or comment on the planning merits or otherwise of a proposal. Councillors should not discuss the merits of the application as the proper time for this is at the subsequent committee meeting. To do so might imply that the councillor's mind is already made up. Even comments on the scenery or locality could be perceived as a comment on the appropriateness of the proposal.

- 4.6 The public right to address Planning Control Committee does not arise until the item is reached on the committee agenda. At no time during the site visit will the applicant, their agent, any objector or any other member of the public be allowed to address councillors. The site visit is not for further representations to be made, however occasionally it may be appropriate for interested parties at the site visit to be asked, through the Chair, to point out important or relevant site features however they should not be encouraged to express opinions.
- 4.7 Presentations from interested parties, on no account, should be made. If one is commenced the Chair should halt the proceedings to enable the site visit to resume unencumbered.
- 4.8 In order to assist in ensuring that councillors receive the same information, they should keep together in one group with the chair and the planning officer and not break away into small groups.
- 4.9 At the end of the site visit the councillors should leave the site promptly. If necessary they will drive or be transported to the next site visit where the same procedures as above will apply.
- 4.10 The Planning Officer's record of councillors' attendance at the site visit is given to the Constitutional Services Officer for minute purposes.
- 4.11 When the application is reported to Committee for consideration and debate the Planning Officer will briefly describe during the presentation of the item, the purpose of the site visit and the main aspects viewed.

Investigatory and Disciplinary Procedures in relation to Statutory Officers, Strategic Directors and Service Directors

DISCIPLINARY PROCEDURE FOR CHIEF EXECUTIVE

1. Scope of Procedure

- 1.1 This Procedure applies to the officer designated as the Head of the council's Paid Service (hereafter referred to as the "**Chief Executive**").
- 1.2 This Procedure has been adopted by the council for the purpose of dealing with disciplinary, capability and other substantial issues in relation to the Chief Executive of the Council. For the avoidance of doubt, this Procedure also applies to a breakdown in trust and confidence between the Chief Executive and the Authority.
- 1.3 Minor conduct issues can often be resolved informally. Formal steps will be taken under this Procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).
- 1.4 The objective of this Procedure is to:-
 - (i) encourage employees to achieve and maintain acceptable standards of behaviour;
 - (ii) provide a fair and consistent method of dealing with alleged failure to maintain acceptable standards of behaviour;
 - (iii) minimise disagreements about disciplinary matters; and
 - (iv) reduce the need for disciplinary action and dismissals.
- 1.5 Save where alternative arrangements have been agreed in advance between the Council and the Chief Executive, the steps set out in this Procedure should be followed. The parties recognise that it may be necessary to depart from the Procedure, from time to time, according to the particular circumstances of a case. In such circumstances, both parties agree to give fair consideration to reasonable proposals to modify the Procedure accordingly.
- 1.6 This Procedure does not form part of a Chief Executive's contract of employment and it may be amended at any time, subject to overall compliance with the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended).
- 1.7 Any disciplinary matters will be dealt with sensitively and with due respect for the privacy of any individuals involved. All individuals involved must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

2. Roles and Responsibilities

- 2.1 Where it appears that an issue has arisen which, if proven, could result in disciplinary action being taken against a Chief Executive, the matter will be referred to an Investigating and Disciplinary Committee ("**Investigating and Disciplinary Committee**") for consideration.
- 2.2 The Investigating and Disciplinary Committee shall be responsible for conducting the preliminary investigation which is further referred to in paragraph 5 below.
- 2.3 The Investigating and Disciplinary Committee should:-
- (i) include no fewer than five elected members;
 - (ii) should not include any member with a direct personal involvement in the complaint;
 - (iii) should be politically balanced.
 - (iv) include a member of the Cabinet.
- 2.4 The Investigating and Disciplinary Committee shall appoint a chair person to oversee the function of the Committee ("**Chair**").
- 2.5 The Investigating and Disciplinary Committee shall undertake a preliminary investigation into the allegations of conduct or capability, or other issues under investigation in order to determine whether a case to answer appears to exist which requires further consideration by a Designated Independent Person. The Investigating and Disciplinary Committee may choose to appoint a Chief Officer of the Council or an independent person to carry out the preliminary investigation on its behalf and whoever undertakes that role shall be referred to as the "**Preliminary Independent Investigator**" in this Procedure.
- 2.6 The Investigating and Disciplinary Committee shall be advised throughout by a suitable adviser who may be employed by or independent of the Council, (the "**Independent Adviser**") who shall ordinarily be accompanied by a member of the Council's HR Team, save in cases where a conflict of interest could arise, in which case the Chair shall appoint a nominee, who may be an external adviser.
- 2.7 Save where the Investigating and Disciplinary Committee is satisfied, following a preliminary investigation, that the issue requires no further action or can be resolved informally, the matter must be referred to a Designated Independent Person, who shall be responsible for determining the matter in accordance with paragraph 5 below.

3. Timescale

- 3.1 The Procedure does not generally incorporate prescriptive timescales as it is recognised that these could be impracticable to achieve in the circumstances of a

particular case. Where time limits do apply, they are included within the relevant section of this Procedure. However, it is implicit that all stages of the Procedure be operated expeditiously by all parties in order to avoid unnecessary delay and prejudice to the interests of all parties.

4. Suspension

- 4.1 Suspension is not regarded as disciplinary action under this Procedure but as a neutral act which may be implemented where it is envisaged that the Chief Executive's continuing presence at work might compromise the investigation or otherwise impair the efficient exercise of the Council's functions.
- 4.2 Suspension may also be necessary if an allegation is such that, if proven, it would amount to gross misconduct.
- 4.3 In ordinary cases, power to suspend a Chief Executive will rest with the Investigating and Disciplinary Committee. However, in cases which in the reasonable opinion of the Leader of the Council are urgent or exceptional cases, the Leader of the Council shall have power to suspend the Chief Executive. Urgent or exceptional cases will include where the continuing presence of the Chief Executive could be a serious danger to the health and safety of others, or a serious risk to the resources, information or reputation of the Council.
- 4.4 Save in urgent or exceptional cases, prior to imposing suspension in any case, the Investigating and Disciplinary Committee shall inform the Chief Executive, in writing, of the reason for the proposed suspension and the Chief Executive shall have the opportunity to make representations before a decision is taken.
- 4.5 In urgent or exceptional cases, the Chief Executive shall be informed of such reasons in writing and may make representations to the Leader.
- 4.6 The necessity for the Chief Executive to remain suspended should be reviewed at regular intervals and where possible lengthy periods of suspension should be avoided. Further, specific consideration should be given as to whether alternative working arrangements might be implemented which could avoid the need for the Chief Executive's suspension, whilst avoiding any prejudice to the investigation or to the efficient exercise of the Council's functions.
- 4.7 Absence from duty during any period of suspension shall be on full pay.
- 4.8 Any suspension must not last longer than 2 months from the day on which it takes effect unless a Designated Independent Person has used their power to direct a continuation of the suspension after the expiry of that period.

5. Preliminary Investigation

- 5.1 The Chair of the Investigating and Disciplinary Committee will be responsible for informing the Chief Executive, in writing, of the allegations or other issues under investigation.

- 5.2 The Chair of the Investigating and Disciplinary Committee shall be responsible for determining the arrangements for conducting a preliminary investigation, as set out in paragraph 2.2 above.
- 5.3 The Chair of the Investigating and Disciplinary Committee shall, where a decision has been taken to appoint another to conduct the preliminary investigation on its behalf, determine the terms of appointment of the Preliminary Independent Investigator, agree any remuneration payable to the Preliminary Independent Investigator (if appropriate), and provide facilities and all available information regarding allegations or other issues under investigation as are necessary to enable the Preliminary Independent Investigator to fulfil their role.
- 5.4 The Investigating and Disciplinary Committee or Preliminary Independent Investigator will be entitled to interview witnesses and carry out such enquiries as they deem necessary. This may include examining the Council's email, internet, and other IT systems, including the accounts of the Chief Executive. The Chief Executive shall fully cooperate with the Investigating and Disciplinary Committee or Preliminary Independent Investigator and shall make themselves available for such interviews and meetings and provide any relevant documentation or information as the Investigating and Disciplinary Committee or the Preliminary Independent Investigator deems necessary.
- 5.5 The Chief Executive shall be given reasonable facilities and access to the Council's premises and systems as well as personal files/diary, etc. to allow them to prepare their responses on such terms as may be agreed by the Investigating and Disciplinary Committee or Preliminary Independent Investigator.
- 5.6 The Investigating and Disciplinary Committee or Preliminary Independent Investigator shall prepare a short report following their investigation which shall be submitted to the Chair of the Investigating and Disciplinary Committee for their consideration ("**Preliminary Investigation Report**"). A copy of the Preliminary Investigation Report shall be provided to the Chief Executive.
- 5.7 Before determining whether the allegations or other issues under investigation warrant referral to the Designated Independent Person for further consideration, the Chair of the Investigating and Disciplinary Committee shall advise the Chief Executive, in writing, that:-
- they are required to attend a meeting with the Investigating and Disciplinary Committee;
 - they may make oral representations to the Investigating and Disciplinary Committee at that meeting; and
 - they may put forward written representations and/or evidence, including written witness evidence, which they wish the Investigating and Disciplinary Committee to consider at this stage. Any such written representations, witness statements or supporting evidence must be

submitted to the Chair of the Investigating and Disciplinary Committee at least three working days before the meeting. The Investigating and Disciplinary Committee will give careful consideration to the allegations or other issues under investigation, the Preliminary Investigator's Report, supporting evidence and any representations put forward by the Chief Executive before taking further action.

5.8 The Investigating and Disciplinary Committee shall decide whether:-

- (i) the issue requires no further formal action under this Procedure (in which case they will consider what other steps, if any, should be taken, for example a requirement for training) and would ordinarily lift any suspension immediately; or
- (ii) there is a case to answer which requires further investigation and the issue should be referred to a Designated Independent Person, in which case the following paragraphs of this Procedure shall apply.

5.9 The Investigating and Disciplinary Committee shall inform the Chief Executive of the decision, in writing, as soon as practicable.

6. The Role of the Designated Independent Person

6.1 The identity of the Designated Independent Person must be agreed between the Investigating and Disciplinary Committee and the Chief Executive. If the Chair of the Investigating and Disciplinary Committee and the Chief Executive (or their representative) are unable to agree the appointment of a suitable Designated Independent Person, the Council will ask the Secretary of State to nominate a Designated Independent Person for appointment by the Council.

6.2 The Chair of the Investigating and Disciplinary Committee shall determine the terms of appointment of the Designated Independent Person, agree the Designated Independent Person's remuneration, procure the necessary facilities, including access to sources of information and people identified as relevant to the case and provide all available information about the allegations or other issues under investigation as shall be necessary to enable them to fulfil their role.

6.3 The Designated Independent Person should operate on the basis of a combination of independent investigation using their powers to access information, and a formal hearing, at which the allegations and supporting evidence (including evidence provided by witnesses) are presented by the Council's representative, and the Chief Executive or their representative is able to present their case.

6.4 Once appointed, the Designated Independent Person will consider whether it is appropriate to terminate or continue any suspension arrangements.

6.5 The Investigating and Disciplinary Committee will, after consulting the Designated Independent Person, attempt to agree a timetable within which the Designated Independent Person is to undertake the investigation. Where there is no

agreement, the Designated Independent Person must set a timetable which they consider appropriate.

6.6 It will be the responsibility of the Designated Independent Person to carry out a further investigation into the allegations or other issues under investigation and to submit a report ("**Investigation Report**") to the Investigating and Disciplinary Committee:

- (i) stating in their opinion whether (and if so, the extent to which) the evidence they have obtained supports any allegation of misconduct, or incapability or supports a need for action under this Procedure for some other substantial reason; and
- (ii) recommending what, if any, disciplinary action or range of actions appears to be appropriate for the Council, through its Investigating and Disciplinary Committee, to take against the Chief Executive having regard to all the circumstances of the case.

7. Receipt of the Investigation Report

7.1 The Designated Independent Person must send a copy of the Investigation Report to the Chair of the Investigating and Disciplinary Committee, or his nominee, and, at the same time, shall also send a copy to the Chief Executive.

8. Pre-Disciplinary Hearing Procedure

8.1 If the Investigation Report recommends disciplinary action is taken against the Chief Executive, the Chair of the Investigating and Disciplinary Committee shall summon a meeting of the Investigating and Disciplinary Committee as a Disciplinary Hearing ("**Disciplinary Hearing**").

8.2 The Chair of the Investigating and Disciplinary Committee or their nominee shall give the Chief Executive written notice of the date of the Disciplinary Hearing. The notice shall include:-

- (i) the time and place of the Disciplinary Hearing;
- (ii) who will be in attendance at the Disciplinary Hearing including the members of the Investigating and Disciplinary Committee;
- (iii) a copy of the Investigation Report and any supporting documentation (including any witness statements where relevant) and the allegations to be considered at the Disciplinary Hearing;
- (iv) confirmation that the Disciplinary Hearing is convened under this Procedure and could result in disciplinary action;
- (v) confirmation that the Chief Executive may be accompanied at the Disciplinary Hearing by a trade union representative, an official

employed by a trade union or a fellow work colleague or some other person of their choice ("**Companion**");

- (vi) confirmation that the Chief Executive may ask any person to be present as a witness or adduce any documents or written statements in support of their response, provided full details of such witnesses and copies of any such documents or statements are provided to the Chair of the Investigating and Disciplinary Committee, or their nominee, at least five working days before the date of the Disciplinary Hearing, for distribution to all parties.

8.3 The Chief Executive and their Companion must make every effort to attend the Disciplinary Hearing. Failure to attend without good reason may be treated as misconduct in itself. If the Chief Executive fails to attend without good reason, or persistently fails to do so, the Disciplinary Hearing may proceed in their absence and a decision may be made based on the available evidence.

8.4 At least five working days before the date of the Disciplinary Hearing the Chief Executive shall give to the Chair of the Investigating and Disciplinary Committee, or their nominee:-

- (i) Full details of any witnesses they wish to call;
- (ii) Copies of any documents which they wish to refer to in support of their response;
- (iii) Any written statements or submissions which they wish to submit; and
- (iv) Details of the Companion they wish to bring to the Disciplinary Hearing.

8.5 The Chair of the Investigating and Disciplinary Committee or their nominee shall provide a copy of such documents and information to the Investigating and Disciplinary Committee as soon as reasonably practicable.

9. The Disciplinary Hearing

9.1 The procedure for the Disciplinary Hearing will be as follows:-

- (i) the Chair of the Investigating and Disciplinary Committee will explain the purpose of the Hearing and the procedure to be followed;
- (ii) the Designated Independent Person, or their nominee will present the complaint and introduce evidence in support of the complaint, including the Designated Independent Person Report, documents and witness evidence either in person or in writing as previously notified;

- (iii) the Chief Executive or their Companion, and the Investigating and Disciplinary Committee and Independent Adviser, will have the opportunity to ask questions of the Designated Independent Person and/or his nominee, including direct questions to the witnesses;
- (iv) the Chief Executive or their Companion will introduce evidence in support of their response to the allegations, including documents and witnesses as previously notified;
- (v) the Designated Independent Person, or their nominee, and the Investigating and Disciplinary Committee and the Independent Adviser will have the opportunity to ask questions of the Chief Executive and/or their Companion, including direct questions to the witnesses;
- (vi) both sides will sum-up their presentations, commencing with the Designated Independent Person or his nominee.

9.2 The Chief Executive's Companion can address the hearing, put and sum up the Chief Executive's case, make representations on behalf of the Chief Executive to any views expressed at the Disciplinary Hearing and confer with the Chief Executive during the Disciplinary Hearing. The Companion does not, however, have the right to answer questions on the Chief Executive's behalf.

9.3 The Disciplinary Hearing may be adjourned if the Investigating and Disciplinary Committee need to carry out any further investigations such as re-interviewing witnesses in the light of any new points which are raised at the Disciplinary Hearing. The Chief Executive will be given a reasonable opportunity to consider any new information obtained before the Disciplinary Hearing is reconvened.

9.4 When the Investigating and Disciplinary Committee has heard all of the evidence submitted they will adjourn to consider what, if any, action should be taken. The range of options available to them include:-

- (i) taking no further action;
- (ii) recommending informal resolution or other appropriate procedures be followed;
- (iii) referring back to the Designated Independent Person for further investigation and a further report;
- (iv) taking disciplinary action against the Chief Executive.

Action short of dismissal

9.5 In the case of disciplinary action short of dismissal, the Investigating and Disciplinary Committee may impose the necessary penalty up to the maximum

recommended by the Designated Independent Person and this can include the following:-

- (i) a recorded or oral warning;
- (ii) a written warning;
- (iii) a final written warning;
- (iv) a final written warning accompanied by:-
 - (A) suspension on half pay or no pay for a specified period; and/or
 - (B) relegation (i.e. reduction in salary) for a specified period and/or on specified terms; and/or
 - (C) demotion;
- (v) alternatively the Investigating and Disciplinary Committee may explore other alternatives such as but not limited to early retirement, secondment, or redeployment to a more junior post where there are issues relating to capability or loss of trust and confidence in the Chief Executive in their current role.

- 9.6 For the avoidance of doubt, the actions set out in paragraph 9.5 (iv) above shall only be applied in circumstances where the Investigating and Disciplinary Committee has decided that appropriate disciplinary action would include dismissal but that action short of dismissal would be more appropriate due to mitigating or other circumstances.
- 9.7 Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that period.
- 9.8 All others present at the Disciplinary Hearing (other than the Independent Adviser) will withdraw while the Investigating and Disciplinary Committee consider their decision.
- 9.9 Where practicable, the decision of the Investigating and Disciplinary Committee will be delivered orally after an adjournment. However, in order to ensure that the Investigating and Disciplinary Committee shall be afforded sufficient time to fully consider their decision, their decision may be deferred and issued to the Chief Executive in writing as soon after the Hearing as is reasonably practicable.
- 9.10 A letter will be sent out to the Chief Executive which outlines the decision and the action, if any, to be taken and will set out the rights of appeal ("**Decision Letter**").

Where the Investigating and Disciplinary Committee propose dismissal

- 9.11 Where the Investigating and Disciplinary Committee has determined that dismissal (whether summary or on notice) is the appropriate action in the circumstances, the Council must approve that dismissal before notice of dismissal is given and notice of dismissal must not be issued until an opportunity has been given to members of the executive to object to the dismissal.
- 9.12 The Investigating and Disciplinary Committee will notify the appropriate designated officer (the “**Proper Officer**”) that it is proposing to the Council that the Chief Executive be dismissed and that the executive objections procedure should commence in accordance with the Local Authorities (Standing Orders)(England) Regulations 2001.
- 9.13 The Proper Officer will notify all members of the executive of:
- (a) the fact that the Investigating and Disciplinary Committee is proposing to the Council that it dismisses the Chief Executive;
 - (b) any other particulars relevant to the dismissal;
 - (c) the period by which any objection to the dismissal is to be made by the Leader on behalf of the Executive, to the Proper Officer.
- 9.14 At the end of the period of notification, the Proper Officer will either:
- (a) inform the Investigating and Disciplinary Committee that the Leader has notified that neither they nor any member of the executive has any objection to the dismissal;
 - (b) inform the Investigating and Disciplinary Committee that no objections have been received from the Leader in the period; or
 - (c) inform the Investigating and Disciplinary Committee that an objection or objections have been received and provide details of the objections.
- 9.15 The Investigating and Disciplinary Committee will consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If they are well founded, the Investigating and Disciplinary Committee will act accordingly which may include consideration of the impact of the executive objections on the Investigation Report and relevance to the sanction or the commissioning of further investigation by the Designated Independent Person.
- 9.16 Once the Investigating and Disciplinary Committee is satisfied that there are no material and well-founded objections to the proposal to dismiss, the Investigating and Disciplinary Committee will inform the Chief Executive of the decision and put that proposal to Council along with any necessary material or documentation it considers appropriate.

10. Appeal Process

- 10.1 This procedure provides for different arrangements for appeals against dismissal and appeals against action short of dismissal.

Appeals against dismissal

- 10.2 The Local Authorities (Standing Orders) (England) Regulations 2001 require that any proposal to dismiss the Council's Chief Executive by the Investigating and Disciplinary Committee shall be subject to approval by full Council. In view of this requirement and to provide an appeals process, the meeting of full Council will also fulfil the appeal function if one is made. In these circumstances:

- (a) where an appeal is made, the appeal will be considered by full Council following the procedure set out at 10.8 to 10.16 below; and
- (b) where no appeal is made, full Council will consider the recommendation to dismiss by the Investigating and Disciplinary Committee and either approve that decision or otherwise determine an alternative disciplinary penalty.

Appeals against action short of dismissal

- 10.3 The Chief Executive shall have the right to appeal the Investigating and Disciplinary Committee's decision to the Council's Appeals Committee. The Appeals Committee will consider the report of the Designated Independent Person and any other relevant information considered by the Investigating and Disciplinary Committee.
- 10.4 The Appeals Committee should be made up of no fewer than five elected members, be politically balanced and include at least one Cabinet Member.
- 10.5 Any appeal must be made in writing to the Chair of the Appeals Committee or their nominee as set out in the Decision Letter within ten working days of the date of the Decision Letter including the grounds of appeal ("**Notice of Appeal**").
- 10.6 Within five working days thereafter the Chief Executive must inform the Chair of the Appeals Committee of the following details in relation to the Notice of Appeal and provide the following information:
- (i) whether the Chief Executive is to be accompanied at the Appeal Hearing by a Companion and if so by whom;
 - (ii) whether they wish to call witnesses and if so, their names and the nature of the evidence they will provide;
 - (iii) copies of any additional documents or information relevant to the appeal that was not provided at the Disciplinary Hearing;
- 10.7 The Appeal Hearing will normally take the form of a review of the decision taken by the Investigating and Disciplinary Committee.

- 10.8 The Appeals Committee will consider the appeal as soon as reasonably practicable after the Notice of Appeal has been received. It will invite the following persons to be present at an Appeal Hearing:
- (i) the Chief Executive, who may be accompanied by a Companion; and
 - (ii) the Chair of the Investigating and Disciplinary Committee or another member of the Committee if so nominated by the Chair, to explain the reasons for their decision and to answer any questions.
- 10.9 The Procedure for convening the Appeal Hearing will follow that set out above in relation to the Disciplinary Hearing.
- 10.10 The Appeals Committee shall be advised by an independent adviser who shall not usually be the same adviser who advised the Investigating and Disciplinary Committee.
- 10.11 The Appeals Committee may take into account any additional information which has become available in relation to the allegations or other issues under investigation following the Disciplinary Hearing.
- 10.12 The Appeals Committee may decide to uphold or dismiss the original decision or recommendation of the Investigating and Disciplinary Committee or impose a different sanction, as long as it is no higher than originally recommended by the Designated Independent Person and within the range of penalties as set out in paragraphs 9.4 and 9.5.
- 10.13 The decision reached will be final and there is no further right of appeal.
- 10.14 If it is not practicable for the Appeals Committee to provide their decision orally at the conclusion of the Appeal Hearing, it will be notified to the Chief Executive, in writing, as soon after the Appeal Hearing as is reasonably practicable.

DERBY CITY COUNCIL

DISCIPLINARY PROCEDURE FOR STATUTORY OFFICERS

OTHER THAN THE CHIEF EXECUTIVE

1. Scope of Procedure

- 1.1 This Procedure applies to all “Statutory Officers” of the Council with the exception of the officer designated as the head of the Council’s paid service (hereafter referred to as the “**Chief Executive**”). This Procedure therefore applies to the Council’s Monitoring Officer and Chief Finance Officer (Section 151 Officer) (together the “**Statutory Officers**”).
- 1.2 This Procedure has been adopted by the Council for the purpose of dealing with disciplinary, capability and other substantial issues in relation to the Statutory Officers of the Council. For the avoidance of doubt, this Procedure also applies to a breakdown in trust and confidence between the Statutory Officer and the Council.
- 1.3 Minor conduct issues can often be resolved informally. Formal steps will be taken under this Procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).
- 1.4 The objective of this Procedure is to:-
 - (i) encourage employees to achieve and maintain acceptable standards of behaviour;
 - (ii) provide a fair and consistent method of dealing with alleged failure to maintain acceptable standards of behaviour;
 - (iii) minimise disagreements about disciplinary matters; and
 - (iv) reduce the need for disciplinary action and dismissals.
- 1.5 Save where alternative arrangements have been agreed in advance between the Council and the Statutory Officer, the steps set out in this Procedure should be followed. The parties recognise that it may be necessary to depart from the Procedure, from time to time, according to the particular circumstances of a case. In such circumstances, both parties agree to give fair consideration to reasonable proposals to modify the Procedure accordingly.
- 1.6 This Procedure does not form part of a Statutory Officer’s contract of employment and it may be amended at any time, subject to overall compliance with the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended).

- 1.7 Any disciplinary matters will be dealt with sensitively and with due respect for the privacy of any individuals involved. All individuals involved must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

2. Roles and Responsibilities

- 2.1 Where it appears that an issue has arisen which, if proven, could result in disciplinary action being taken against a Statutory Officer, the matter will be referred to an Investigating and Disciplinary Committee ("**Investigating and Disciplinary Committee**") for consideration.

- 2.2 The Investigating and Disciplinary Committee shall be responsible for conducting the preliminary investigation which is further referred to in paragraph 5 below.

- 2.3 The Investigating and Disciplinary Committee should:-

- (i) include no fewer than three elected members;
- (ii) should not include any member with a direct personal involvement in the complaint;
- (iii) should be politically balanced;
- (iv) include a member of the Cabinet.

- 2.4 The Investigating and Disciplinary Committee shall appoint a chair person to oversee the function of the Committee ("**Chair**").

- 2.5 The Investigating and Disciplinary Committee shall undertake a preliminary investigation into the allegations of conduct or capability, or other issues under investigation in order to determine whether a case to answer appears to exist which requires further consideration by a Designated Independent Person. The Investigating and Disciplinary Committee may choose to appoint a Chief Officer of the Council or an independent person to carry out the preliminary investigation on its behalf and whoever undertakes that role shall be referred to as the "**Preliminary Independent Investigator**" in this Procedure.

- 2.6 The Investigating and Disciplinary Committee shall be advised throughout by a suitable adviser who may be employed by or independent of the Council, (the "**Independent Adviser**") who shall ordinarily be accompanied by a member of the Council's HR Team, save in cases where a conflict of interest could arise, in which case the Chair shall appoint a nominee, who may be an external adviser.

- 2.7 Save where the Investigating and Disciplinary Committee is satisfied, following a preliminary investigation, that the issue requires no further action or can be resolved informally, the matter must be referred to a Designated Independent Person, who shall be responsible for determining the matter in accordance with paragraph 5 below.

3. Timescale

- 3.1 The Procedure does not generally incorporate prescriptive timescales as it is recognised that these could be impracticable to achieve in the circumstances of a particular case. Where time limits do apply, they are included within the relevant section of this Procedure. However, it is implicit that all stages of the Procedure be operated expeditiously by all parties in order to avoid unnecessary delay and prejudice to the interests of all parties.

4. Suspension

- 4.1 Suspension is not regarded as disciplinary action under this Procedure but as a neutral act which may be implemented where it is envisaged that the Statutory Officer's continuing presence at work might compromise the investigation or otherwise impair the efficient exercise of the Council's functions.
- 4.2 Suspension may also be necessary if an allegation is such that, if proven, it would amount to gross misconduct.
- 4.3 In ordinary cases, power to suspend a Statutory Officer will rest with the Investigating and Disciplinary Committee. However, in cases which in the reasonable opinion of the Chief Executive are urgent or exceptional cases, the Chief Executive shall have power to suspend the Statutory Officer provided that the consent of the Leader has been obtained. Urgent or exceptional cases will include those where the continuing presence of the Statutory Officer could be a serious danger to the health and safety of others, or a serious risk to the resources, information or reputation of the Council.
- 4.4 Save in urgent or exceptional cases, prior to imposing suspension in any case, the Investigating and Disciplinary Committee shall inform the Statutory Officer, in writing, of the reason for the proposed suspension and the Statutory Officer shall have the opportunity to make representations before a decision is taken.
- 4.5 In urgent or exceptional cases, the Statutory Officer shall be informed of such reasons in writing and may make representations to the Investigating and Disciplinary Committee.
- 4.6 The necessity for the Statutory Officer to remain suspended should be reviewed at regular intervals and where possible lengthy periods of suspension should be avoided. Further, specific consideration should be given as to whether alternative working arrangements might be implemented which could avoid the need for the Statutory Officer's suspension, whilst avoiding any prejudice to the investigation or to the efficient exercise of the Council's functions.
- 4.7 Absence from duty during any period of suspension shall be on full pay.
- 4.8 Any suspension must not last longer than 2 months from the day on which it takes effect unless a Designated Independent Person has used their power to direct a continuation of the suspension after the expiry of that period.

5. Preliminary Investigation

- 5.1 The Chair of the Investigating and Disciplinary Committee will be responsible for informing the Statutory Officer, in writing, of the allegations or other issues under investigation.
- 5.2 The Chair of the Investigating and Disciplinary Committee shall be responsible for determining the arrangements for conducting a preliminary investigation, as set out in paragraph 2.2 above.
- 5.3 The Chair of the Investigating and Disciplinary Committee shall, where a decision has been taken to appoint another to conduct the preliminary investigation on its behalf, determine the terms of appointment of the Preliminary Independent Investigator, agree any remuneration payable to the Preliminary Independent Investigator (if appropriate), and provide facilities and all available information regarding allegations or other issues under investigation as are necessary to enable the Preliminary Independent Investigator to fulfil their role.
- 5.4 The Investigating and Disciplinary Committee or Preliminary Independent Investigator will be entitled to interview witnesses and carry out such enquiries as they deem necessary. This may include examining the Council's email, internet, and other IT systems, including the accounts of the Statutory Officer. The Statutory Officer shall fully cooperate with the Investigating and Disciplinary Committee or Preliminary Independent Investigator and shall make themselves available for such interviews and meetings and provide any relevant documentation or information as the Investigating and Disciplinary Committee or the Preliminary Independent Investigator deems necessary.
- 5.5 The Statutory Officer shall be given reasonable facilities and access to the Council's premises and systems as well as personal files/diary, etc. to allow them to prepare their responses on such terms as may be agreed by the Investigating and Disciplinary Committee or Preliminary Independent Investigator.
- 5.6 The Investigating and Disciplinary Committee or Preliminary Independent Investigator shall prepare a short report following their investigation which shall be submitted to the Chair of the Investigating and Disciplinary Committee for their consideration ("**Preliminary Investigation Report**"). A copy of the Preliminary Investigation Report shall be provided to the Statutory Officer.
- 5.7 Before determining whether the allegations or other issues under investigation warrant referral to the Designated Independent Person for further consideration, the Chair of the Investigating and Disciplinary Committee shall advise the Statutory Officer, in writing, that:-
 - they are required to attend a meeting with the Investigating and Disciplinary Committee;

- they may make oral representations to the Investigating and Disciplinary Committee at that meeting; and
- they may put forward written representations and/or evidence, including written witness evidence, which they wish the Investigating and Disciplinary Committee to consider at this stage. Any such written representations, witness statements or supporting evidence must be submitted to the Chair of the Investigating and Disciplinary Committee at least three working days before the meeting. The Investigating and Disciplinary Committee will give careful consideration to the allegations or other issues under investigation, the Preliminary Investigator's Report, supporting evidence and any representations put forward by the Statutory Officer before taking further action.

5.8 The Investigating and Disciplinary Committee shall decide whether:-

- (i) the issue requires no further formal action under this Procedure (in which case they will consider what other steps, if any, should be taken, for example a requirement for training) and would ordinarily lift any suspension immediately; or
- (ii) there is a case to answer which requires further investigation and the issue should be referred to a Designated Independent Person, in which case the following paragraphs of this Procedure shall apply.

5.9 The Investigating and Disciplinary Committee shall inform the Statutory Officer of the decision, in writing, as soon as practicable.

6. The Role of the Designated Independent Person

6.1 The identity of the Designated Independent Person must be agreed between the Investigating and Disciplinary Committee and the Statutory Officer. If the Chair of the Investigating and Disciplinary Committee and the Statutory Officer (or their representative) are unable to agree the appointment of a suitable Designated Independent Person, the Council will ask the Secretary of State to nominate a Designated Independent Person for appointment by the Council.

6.2 The Chair of the Investigating and Disciplinary Committee shall determine the terms of appointment of the Designated Independent Person, agree the Designated Independent Person's remuneration, procure the necessary facilities, including access to sources of information and people identified as relevant to the case and provide all available information about the allegations or other issues under investigation as shall be necessary to enable them to fulfil their role.

6.3 The Designated Independent Person should operate on the basis of a combination of independent investigation using their powers to access information, and a formal hearing, at which the allegations and supporting evidence (including evidence provided by witnesses) are presented by the Council's representative, and the Statutory Officer or their representative is able to present their case.

- 6.4 Once appointed, the Designated Independent Person will consider whether it is appropriate to terminate or continue any suspension arrangements.
- 6.5 The Investigating and Disciplinary Committee will, after consulting the Designated Independent Person, attempt to agree a timetable within which the Designated Independent Person is to undertake the investigation. Where there is no agreement, the Designated Independent Person must set a timetable which they consider appropriate.
- 6.6 It will be the responsibility of the Designated Independent Person to carry out a further investigation into the allegations or other issues under investigation and to submit a report ("**Investigation Report**") to the Investigating and Disciplinary Committee:-
- (i) stating in their opinion whether (and if so, the extent to which) the evidence they have obtained supports any allegation of misconduct, or incapability or supports a need for action under this Procedure for some other substantial reason; and
 - (ii) recommending what, if any, disciplinary action or range of actions appears to be appropriate for the Council, through its Investigating and Disciplinary Committee, to take against the Statutory Officer having regard to all the circumstances of the case.

7. Receipt of the Investigation Report

- 7.1 The Designated Independent Person must send a copy of the Investigation Report to the Chair of the Investigating and Disciplinary Committee, or his nominee, and, at the same time, shall also send a copy to the Statutory Officer.

8. Pre-Disciplinary Hearing Procedure

- 8.1 If the Investigation Report recommends disciplinary action is taken against the Statutory Officer, the Chair of the Investigating and Disciplinary Committee shall summon a meeting of the Investigating and Disciplinary Committee as a Disciplinary Hearing ("**Disciplinary Hearing**").
- 8.2 The Chair of the Investigating and Disciplinary Committee or their nominee shall give the Statutory Officer written notice of the date of the Disciplinary Hearing. The notice shall include:-
- (i) the time and place of the Disciplinary Hearing;
 - (ii) who will be in attendance at the Disciplinary Hearing including the members of the Investigating and Disciplinary Committee;
 - (iii) a copy of the Investigation Report and any supporting documentation (including any witness statements where relevant) and the allegations to be considered at the Disciplinary Hearing;

- (iv) confirmation that the Disciplinary Hearing is convened under this Procedure and could result in disciplinary action;
- (v) confirmation that the Statutory Officer may be accompanied at the Disciplinary Hearing by a trade union representative, an official employed by a trade union or a fellow work colleague ("**Companion**");
- (vi) confirmation that the Statutory Officer may ask any person to be present as a witness or adduce any documents or written statements in support of their response, provided full details of such witnesses and copies of any such documents or statements are provided to the Chair of the Investigating and Disciplinary Committee, or their nominee, at least five working days before the date of the Disciplinary Hearing, for distribution to all parties.

8.3 The Statutory Officer and their Companion must make every effort to attend the Disciplinary Hearing. Failure to attend without good reason may be treated as misconduct in itself. If the Statutory Officer fails to attend without good reason, or persistently fails to do so, the Disciplinary Hearing may proceed in their absence and a decision may be made based on the available evidence.

8.4 At least five working days before the date of the Disciplinary Hearing the Statutory Officer shall give to the Chair of the Investigating and Disciplinary Committee, or their nominee:-

- (i) Full details of any witnesses they wish to call;
- (ii) Copies of any documents which they wish to refer to in support of their response;
- (iii) Any written statements or submissions which they wish to submit; and
- (iv) Details of the Companion they wish to bring to the Disciplinary Hearing.

8.5 The Chair of the Investigating and Disciplinary Committee or their nominee shall provide a copy of such documents and information to the Investigating and Disciplinary Committee as soon as reasonably practicable.

9. The Disciplinary Hearing

9.1 The procedure for the Disciplinary Hearing will be as follows:-

- (i) the Chair of the Investigating and Disciplinary Committee will explain the purpose of the Hearing and the procedure to be followed;

- (ii) the Designated Independent Person, or their nominee will present the complaint and introduce evidence in support of the complaint, including the Investigation Report, documents and witness evidence either in person or in writing as previously notified;
- (iii) the Statutory Officer or their Companion, and the Investigating and Disciplinary Committee and Independent Adviser, will have the opportunity to ask questions of the Designated Independent Person and/or his nominee, including direct questions to the witnesses;
- (iv) the Statutory Officer or their Companion will introduce evidence in support of their response to the allegations, including documents and witnesses as previously notified;
- (v) the Designated Independent Person, or their nominee, and the Investigating and Disciplinary Committee and the Independent Adviser will have the opportunity to ask questions of the Statutory Officer and/or their Companion, including direct questions to the witnesses;
- (vi) both sides will sum-up their presentations, commencing with the Designated Independent Person or his nominee.

9.2 The Statutory Officer's Companion can address the hearing, put and sum up the Statutory Officer's case, make representations on behalf of the Statutory Officer to any views expressed at the Disciplinary Hearing and confer with the Statutory Officer during the Disciplinary Hearing. The Companion does not, however, have the right to answer questions on the Statutory Officer's behalf.

9.3 The Disciplinary Hearing may be adjourned if the Investigating and Disciplinary Committee need to carry out any further investigations such as re-interviewing witnesses in the light of any new points which are raised at the Disciplinary Hearing. The Statutory Officer will be given a reasonable opportunity to consider any new information obtained before the Disciplinary Hearing is reconvened.

9.4 When the Investigating and Disciplinary Committee has heard all of the evidence submitted they will adjourn to consider what, if any, action should be taken. The range of options available to them include:-

- (i) taking no further action;
- (ii) recommending informal resolution or other appropriate procedures be followed;
- (iii) referring back to the Designated Independent Person for further investigation and a further report;
- (iv) taking disciplinary action against the Statutory Officer.

- 9.5 In the case of disciplinary action, the Investigating and Disciplinary Committee may impose the necessary penalty up to the maximum recommended by the Designated Independent Person and this can include the following:-
- (i) a recorded or oral warning;
 - (ii) a written warning;
 - (iii) a final written warning;
 - (iv) a final written warning accompanied by:-
 - (A) suspension on half pay or no pay for a specified period; and/or
 - (B) relegation (i.e. reduction in salary) for a specified period and/or on specified terms; and/or
 - (C) demotion;
 - (v) dismissal (whether summary or on notice) (subject to completion of the notification procedure in accordance with the Local Authorities (Standing Orders)(England) Regulations 2001);
 - (vi) alternatively the Investigating and Disciplinary Committee may explore other alternatives such as but not limited to early retirement, secondment, or redeployment to a more junior post where there are issues relating to capability or loss of trust and confidence in the Statutory Officer in their current role.
- 9.6 For the avoidance of doubt, the actions set out in paragraph 9.5 (iv) above shall only be applied in circumstances where the Investigating and Disciplinary Committee has decided that appropriate disciplinary action would include dismissal but that action short of dismissal would be more appropriate due to mitigating or other circumstances.
- 9.7 Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that period.
- 9.8 All others present at the Disciplinary Hearing (other than the Independent Adviser) will withdraw while the Investigating and Disciplinary Committee consider their decision.
- 9.9 Where practicable, the decision of the Investigating and Disciplinary Committee will be delivered orally after an adjournment. However, in order to ensure that the Investigating and Disciplinary Committee shall be afforded sufficient time to fully consider their decision, their decision may be deferred and issued to the Statutory Officer in writing as soon after the Hearing as is reasonably practicable.

- 9.10 A letter will be sent out to the Statutory Officer which outlines the decision and the action, if any, to be taken and will set out the right of appeal ("**Decision Letter**").
- 9.11 Where the Investigating and Disciplinary Committee has determined that dismissal (whether summary or on notice) is the appropriate action in the circumstances, notice of dismissal must not be issued until an opportunity has been given to members of the executive to object to the dismissal.
- 9.12 The Investigating and Disciplinary Committee will notify the appropriate designated officer (the "**Proper Officer**") that it is proposing to the Council that the Statutory Officer be dismissed and that the executive objections procedure should commence in accordance with the Local Authorities (Standing Orders)(England) Regulations 2001.
- 9.13 The Proper Officer will notify all members of the executive of:
- (a) the fact that the Investigating and Disciplinary Committee has determined that the Statutory Officer be dismissed;
 - (b) any other particulars relevant to the dismissal;
 - (c) the period by which any objection to the dismissal is to be made by the Leader on behalf of the executive, to the Proper Officer.
- 9.14 At the end of the period of notification, the Proper Officer will either:
- (a) inform the Investigating and Disciplinary Committee that the Leader has notified that neither they nor any member of the executive has any objection to the dismissal;
 - (b) inform the Investigating and Disciplinary Committee that no objections have been received from the Leader in the period; or
 - (c) inform the Investigating and Disciplinary Committee that an objection or objections have been received and provide details of the objections.
- 9.15 The Investigating and Disciplinary Committee will consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If they are well founded, the Investigating and Disciplinary Committee will act accordingly which may include consideration of the impact of the executive objections on the Investigation Report and relevance to the sanction or the commissioning of further investigation by the Designated Independent Person.
- 9.16 Once the Investigating and Disciplinary Committee is satisfied that there are no material and well-founded objections to the proposal to dismiss, the Investigating and Disciplinary Committee will inform the Statutory Officer of the decision to dismiss.

10. Appeal Process

- 10.1 The Statutory Officer shall have the right to appeal the Investigating and Disciplinary Committee's decision to the Council's Appeals Committee. The Appeals Committee will consider the Investigation Report and any other relevant information considered by the Investigating and Disciplinary Committee.
- 10.2 The Appeals Committee should be made up of no fewer than three elected members and include at least one Cabinet Member.
- 10.3 Any appeal must be made in writing to the Chair of the Appeals Committee or their nominee as set out in the Decision Letter within ten working days of the date of the Decision Letter including the grounds of appeal ("**Notice of Appeal**").
- 10.4 Within five working days thereafter the Statutory Officer must inform the Chair of the Appeals Committee of the following details in relation to the Notice of Appeal and provide the following information:
 - (i) whether the Statutory Officer is to be accompanied at the Appeal Hearing by a Companion and if so by whom;
 - (ii) whether they wish to call witnesses and if so, their names and the nature of the evidence they will provide;
 - (iii) copies of any additional documents or information relevant to the appeal that was not provided at the Disciplinary Hearing;
- 10.5 The Appeal Hearing will normally take the form of a review of the decision taken by the Investigating and Disciplinary Committee.
- 10.6 The Appeals Committee will consider the appeal as soon as reasonably practicable after the Notice of Appeal has been received. It will invite the following persons to be present at an Appeal Hearing:
 - (i) the Statutory Officer, who may be accompanied by a Companion; and
 - (ii) the Chair of the Investigating and Disciplinary Committee or another member of the Committee if so nominated by the Chair, to explain the reasons for their decision and to answer any questions.
- 10.7 The Procedure for convening the Appeal Hearing will follow that set out above in relation to the Disciplinary Hearing.
- 10.8 The Appeals Committee shall be advised by an independent adviser who shall not usually be the same adviser who advised the Investigating and Disciplinary Committee.

- 10.9 The Appeals Committee may take into account any additional information which has become available in relation to the allegations or other issues under investigation following the Disciplinary Hearing.
- 10.10 The Appeals Committee may decide to uphold or dismiss the original decision or recommendation of the Investigating and Disciplinary Committee or impose a different sanction, as long as it is no higher than originally recommended by the Designated Independent Person and within the range of penalties as set out in paragraphs 9.4 and 9.5.
- 10.11 The decision reached will be final and there is no further right of appeal.
- 10.12 If it is not practicable for the Appeals Committee to provide their decision orally at the conclusion of the Appeal Hearing, it will be notified to the Statutory Officer, in writing, as soon after the Appeal Hearing as is reasonably practicable.

DERBY CITY COUNCIL

DISCIPLINARY PROCEDURE FOR CHIEF OFFICERS

1. Scope of Procedure

- 1.1 This Procedure applies to all Chief Officers (and Deputy Chief Officers) of the Council other than those designated as “**Statutory Officers**” namely the Head of Paid Service (hereafter referred to as the “**Chief Executive**”), the Monitoring Officer and Chief Finance Officer (Section 151 Officer).
- 1.2 This Procedure has been adopted by the Council for the purpose of dealing with disciplinary, capability and other substantial issues in relation to Chief Officers of the Council. For the avoidance of doubt, this Procedure also applies to a breakdown in trust and confidence between the Chief Officer and the Council.
- 1.3 Minor conduct issues can often be resolved informally. Formal steps will be taken under this Procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).
- 1.4 The objective of this Procedure is to:-
 - (i) encourage employees to achieve and maintain acceptable standards of behaviour;
 - (ii) provide a fair and consistent method of dealing with alleged failure to maintain acceptable standards of behaviour;
 - (iii) minimise disagreements about disciplinary matters; and
 - (iv) reduce the need for disciplinary action and dismissals.
- 1.5 Save where alternative arrangements have been agreed in advance between the Council and the Chief Executive or the Chief Officer, the steps set out in this Procedure should be followed. The parties recognise that it may be necessary to depart from the Procedure, from time to time, according to the particular circumstances of a case. In such circumstances, both parties agree to give fair consideration to reasonable proposals to modify the Procedure accordingly.
- 1.6 This Procedure does not form part of a Chief Officer’s contract of employment and it may be amended at any time, subject to overall compliance with the Local Authorities (Standing Orders) (England) Regulations 2001.
- 1.7 Any disciplinary matters will be dealt with sensitively and with due respect for the privacy of any individuals involved. All individuals involved must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

2. Roles and Responsibilities

- 2.1 Where it appears that an issue has arisen which, if proven, could result in disciplinary action being taken against a Chief Officer, the Chief Executive will be responsible for conducting the preliminary investigation which is further referred to in paragraph 5 below.
- 2.2 The Chief Executive shall undertake a preliminary investigation into the allegations of conduct or capability, or other issues under investigation in order to determine whether a disciplinary case to answer appears to exist which requires further consideration by an Investigating and Disciplinary committee (**"Investigating and Disciplinary Committee"**). The Chief Executive may choose to appoint another Chief Officer of the Council or an independent person to carry out the preliminary investigation on its behalf and whoever undertakes that role shall be referred to as the **"Preliminary Independent Investigator"** in this Procedure.
- 2.3 Save where the Chief Executive is satisfied, following a preliminary investigation, that the issue requires no further action or can be resolved informally, the matter must be referred to the Investigating and Disciplinary Committee, which shall be responsible for determining the matter in accordance with paragraph 5 below.

3. Timescale

- 3.1 The Procedure does not generally incorporate prescriptive timescales as it is recognised that these could be impracticable to achieve in the circumstances of a particular case. Where time limits do apply, they are included within the relevant section of this Procedure. However, it is implicit that all stages of the Procedure be operated expeditiously by all parties in order to avoid unnecessary delay and prejudice to the interests of all parties.

4. Suspension

- 4.1 Suspension is not regarded as disciplinary action under this Procedure but as a neutral act which may be implemented where, in the opinion of the Chief Executive, it is envisaged that the Chief Officer's continuing presence at work might compromise the investigation or otherwise impair the efficient exercise of the Council's functions.
- 4.2 Suspension may also be necessary if an allegation is such that, if proven, it would amount to gross misconduct.
- 4.3 Prior to imposing suspension in an ordinary case, the Chief Executive shall inform the Chief Officer, in writing, of the reason for the proposed suspension and the Chief Officer shall have the opportunity to make representations before a decision is taken. The Procedure recognises that in exceptional circumstances it may be necessary to suspend at very short notice, for example because the continuing presence of the Chief Officer could be a serious danger to the health

and safety of others, or a serious risk to the resources, information or reputation of the Council.

4.4 The necessity for the Chief Officer to remain suspended should be reviewed at regular intervals and where possible lengthy periods of suspension should be avoided. Further specific consideration should be given as to whether alternative working arrangements might be implemented which could avoid the need for the Chief Officer's suspension, whilst avoiding any prejudice to the investigation or to the efficient exercise of the Council's functions.

4.5 Absence from duty during any period of suspension shall be on full pay.

5. Preliminary Investigation

5.1 The Chief Executive will be responsible for informing the Chief Officer, in writing, of the allegations or other issues under investigation.

5.2 The Chief Executive shall be responsible for determining the arrangements for conducting a preliminary investigation, as set out in paragraph 2.2 above.

5.3 The Chief Executive shall where a decision has been taken to appoint another to conduct the preliminary investigation on its behalf, determine the terms of appointment of the Preliminary Independent Investigator, agree any remuneration payable to the Preliminary Independent Investigator (if appropriate), and provide facilities and all available information regarding the allegations or other issues under investigation as are necessary to enable the Preliminary Independent Investigator to fulfil their role.

5.4 The Chief Executive or Preliminary Independent Investigator will be entitled to interview witnesses and carry out such enquiries as they deem necessary. This may include examining the Council's email, internet, and other IT systems, including the accounts of the Chief Officer. The Chief Officer shall fully cooperate with the Chief Executive or Preliminary Independent Investigator and shall make themselves available for such interviews and meetings and provide any relevant documentation or information as the Chief Executive or Preliminary Independent Investigator deems necessary.

5.5 The Chief Officer shall be given reasonable facilities and access to the Council's premises and systems as well as personal files/diary, etc. to allow them to prepare their responses on such terms as may be agreed by the Chief Executive or Preliminary Independent Investigator.

5.6 The Chief Executive or the Preliminary Independent Investigator shall prepare a short report following their investigation which, where required, shall be submitted to the Chief Executive for their consideration ("**Preliminary Investigation Report**"). A copy of the Preliminary Investigation Report shall be provided to the Chief Officer.

5.7 Before determining whether the allegations or other issues under investigation warrant referral to the Investigation and Disciplinary Committee for further consideration, the Chief Executive shall advise the Chief Officer, in writing, that:-

- they are required to attend a meeting with the Chief Executive;
- they may make oral representations to the Chief Executive at that meeting; and
- they may put forward written representations or evidence, including written witness evidence, which they wish the Chief Executive to consider at this stage. Any such written representations, witness statements or supporting evidence must be submitted to the Chief Executive at least three working days before the meeting.

6. The Chief Executive will give careful consideration to the allegations or other issues under investigation, the Preliminary Investigator's Report, supporting evidence and any representations put forward by the Chief Officer before taking further action.

6.1 The Chief Executive shall decide whether:-

- (i) The issue requires no further formal action under this Procedure (in which case they will consider what other steps, if any, should be taken) and would ordinarily lift any suspension immediately; or
- (ii) The issue should be referred to the Investigating and Disciplinary Committee, in which case the following paragraphs shall apply.

6.2 The Chief Executive shall inform the Chief Officer of the decision, in writing, as soon as practicable.

7. The Role of the Investigating and Disciplinary Committee and appointing an Investigator

7.1 If the Chief Executive decides that the matter should be referred to the Investigating and Disciplinary Committee, it shall be its responsibility to appoint a Chief Officer of the Council, or an independent person, to carry out any further investigation required into the allegations or other issues as soon as practicable. This Investigator can be the same person who carried out the preliminary investigation.

7.2 The Investigating and Disciplinary Committee should:-

- (a) no fewer than three elected members;
- (b) should not include any member with a direct personal involvement in the complaint;
- (c) should be politically balanced; and

(d) should include a member of the Executive.

- 7.3 The Investigating and Disciplinary Committee shall appoint a chair person to oversee the function of the Committee ("**Chair**").
- 7.4 The Investigating and Disciplinary Committee shall be advised throughout by a suitable adviser who may be employed by or independent of the Council, (the "**Independent Adviser**") who shall ordinarily be accompanied by a member of the Council's HR Team, save in cases where a conflict of interest could arise, in which case the Investigating and Disciplinary Committee shall appoint a nominee.
- 7.5 The Chief Executive shall determine the terms of appointment of the Investigator, agree the Investigator's remuneration (if appropriate), procure the necessary facilities and provide all available information about the allegations or other issues under investigation as shall be necessary to enable them to fulfil their role.
- 7.6 The Chief Officer will be informed that the matter has been referred to the Investigating and Disciplinary Committee, the members of the Investigating and Disciplinary Committee and that an Investigator has been appointed who, subject to availability, may be the same person who carried out the preliminary investigation.

8. Responsibilities of the Investigator

- 8.1 It will be the responsibility of the Investigator to carry out a further investigation into the allegations or other issues under investigation and to prepare a report ("**Investigation Report**"):-
- (i) stating in their opinion whether (and if so, the extent to which) the evidence they have obtained supports any allegation of misconduct, or incapability or supports a need for action under this Procedure for some other substantial reason; and
 - (ii) recommending what, if any, disciplinary action or range of actions appears to be appropriate for the Council, through its Investigating and Disciplinary Committee, to take against the Chief Officer having regard to all the circumstances of the case.

9. Pre-Disciplinary Hearing Procedure

- 9.1 The Chief Executive, or their nominee, shall send a copy of the Investigation Report to the Chief Officer. If the Investigation Report identifies allegations of misconduct and a need for further action, the Chief Officer will be sent, in addition to the Investigation Report, written notice of the specific allegations to be considered by the Investigating and Disciplinary Committee at the Disciplinary Hearing and any supporting documentation.
- 9.2 The Chief Officer shall, if they so wish, request further information and documents relating to the allegations .

- 9.3 Any additional information and documentation requested will be provided by the Investigator, where relevant, within seven working days or such other time as appropriate in the circumstances.
- 9.4 Once a response has been provided by the Investigator further to paragraph 9.3 above (if requested), the Chief Officer shall be given not less than ten working days written notice of the date of the Disciplinary Hearing. The notice shall include:-
- (i) the time and place of the Disciplinary Hearing;
 - (ii) who will be in attendance at the Disciplinary Hearing including the members of the Investigating and Disciplinary Committee;
 - (iii) a copy of the Investigator's Report and any supporting documentation (including any witness statements where relevant) and the allegations to be considered at the Disciplinary Hearing;
 - (iv) confirmation that the Disciplinary Hearing is convened under this Procedure and could result in disciplinary action;
 - (v) confirmation that the Chief Officer may be accompanied at the Disciplinary Hearing by a trade union representative, an official employed by a trade union or a fellow work colleague ("**Companion**");
 - (vi) confirmation that the Chief Officer may ask any person to be present as a witness or adduce any documents or written statements in support of his response, provided full details of such witnesses and copies of any such documents or statements are provided to the Chief Executive, or their nominee, at least five working days before the date of the Disciplinary Hearing, for distribution to all parties.
- 9.5 The Chief Officer shall either agree the date for the Hearing or propose to the Head of HR or their nominee, a postponement for the date of the Hearing for a period not exceeding fourteen days setting out the reasons for the request. For the avoidance of doubt, the postponement includes any postponement due to the availability of the Chief Officer's Companion. If the Chief Officer requests a postponement, the Head of HR or their nominee and the Chief Officer (or his representative) shall agree the date for the Hearing. If they cannot agree the date within one working day, the Chair of the Investigating and Disciplinary Committee, having taken appropriate advice, shall determine the date of the Disciplinary Hearing.
- 9.6 The Head of HR or their nominee shall then formally give notice to the Investigating and Disciplinary Committee (and the Chief Officer if the Hearing has been postponed) of the date for the Disciplinary Hearing and shall submit a report to the Investigating and Disciplinary Committee, including the Investigation

Report, supporting evidence and any representations provided by the Chief Officer.

- 9.7 The Chief Officer and their Companion must make every effort to attend the Disciplinary Hearing (whether reconvened or otherwise). Failure to attend without good reason may be treated as misconduct in itself. If the Chief Officer fails to attend without good reason, or persistently fails to do so, the Disciplinary Hearing may proceed in their absence and a decision may be made based on the available evidence.
- 9.8 At least five working days before the date of the Disciplinary Hearing the Chief Officer shall give to the Head of HR, or their nominee:-
- (i) Full details of any witnesses they wish to call;
 - (ii) Copies of any documents which they wish to refer to in support of their response;
 - (iii) Any written statements or submissions which they wish to submit; and
 - (iv) Details of the Companion they wish to bring to the Disciplinary Hearing.
- 9.9 The Head of HR or their nominee shall provide a copy of such documents and information to the Chief Executive and the Investigating and Disciplinary Committee as soon as reasonably practicable thereafter.

10. The Disciplinary Hearing

- 10.1 The procedure for the Disciplinary Hearing will be as follows:-
- (i) the Chair of the Investigating and Disciplinary Committee will explain the purpose of the Hearing and the procedure to be followed;
 - (ii) the Chief Executive, or their nominee (who may include the Investigating Officer) will present the complaint and introduce evidence in support of the complaint, including the Investigation Report, documents and witness evidence either in person or in writing as previously notified;
 - (iii) the Chief Officer or his Companion, and the Investigating and Disciplinary Committee and Independent Adviser, will have the opportunity to ask questions of the Chief Executive and/or their nominee, including direct questions to the witnesses;
 - (iv) the Chief Officer or their Companion will introduce evidence in support of their response to the allegations, including documents and witnesses as previously notified;

- (v) the Chief Executive, or their nominee, and the Investigating and Disciplinary Committee and the Independent Adviser will have the opportunity to ask questions of the Chief Officer and/or their Companion, including direct questions to the witnesses;
 - (vi) both sides will sum-up their presentations, commencing with the Chief Executive or their nominee.
- 10.2 The Chief Officer's Companion can address the hearing, put and sum up the Chief Officer's case, make representations on behalf of the Chief Officer to any views expressed at the Disciplinary Hearing and confer with the Chief Officer during the Disciplinary Hearing. The Companion does not, however, have the right to answer questions on the Chief Officer's behalf.
- 10.3 The Disciplinary Hearing may be adjourned if the Investigating and Disciplinary Committee need to carry out any further investigations such as re-interviewing witnesses in the light of any new points which are raised at the Disciplinary Hearing. The Chief Officer will be given a reasonable opportunity to consider any new information obtained before the Disciplinary Hearing is reconvened.
- 10.4 When the Investigating and Disciplinary Committee has heard all of the evidence submitted they will adjourn to consider what, if any, action should be taken. The range of options available to them include:-
 - (i) taking no further action;
 - (ii) recommending informal resolution or other appropriate procedures be followed;
 - (iii) referring back to the Investigator for further investigation and a further report;
 - (iv) taking disciplinary action against the Chief Officer.
- 10.5 In the case of disciplinary action, this can include the following:-
 - (i) a recorded or oral warning;
 - (ii) a written warning;
 - (iii) a final written warning;
 - (iv) a final written warning accompanied by:-
 - (A) suspension on half pay or no pay for a specified period; and/or
 - (B) relegation (i.e. reduction in salary) for a specified period and/or on specified terms; and/or

(C) demotion;

- (v) dismissal (whether summary dismissal or on notice)(subject to completion of the notification procedure in accordance with the Local Authorities (Standing Orders)(England) Regulations 2001); and
- (vi) alternatively the Investigating and Disciplinary Committee may explore other alternatives such as but not limited to early retirement, secondment, or redeployment to a more junior post where there are issues relating to capability or loss of trust and confidence in the Chief Officer in their current role.

- 10.6 For the avoidance of doubt, the actions set out in paragraph 10.5 (iv) above shall only be applied in circumstances where the Investigating and Disciplinary Committee has decided that appropriate disciplinary action would include dismissal but that action short of dismissal would be more appropriate due to mitigating or other circumstances.
- 10.7 Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that period.
- 10.8 All others present at the Disciplinary Hearing (other than the Independent Adviser) will withdraw while the Investigating and Disciplinary Committee consider their decision.
- 10.9 Where practicable, the decision of the Investigating and Disciplinary Committee will be delivered orally after an adjournment. However, in order to ensure that the Investigating and Disciplinary Committee shall be afforded sufficient time to fully consider their decision, their decision may be deferred and issued to the Chief Officer in writing as soon after the hearing as is reasonably practicable.
- 10.10 The letter will outline the decision and the action, if any, to be taken and will set out the right of appeal ("**Decision Letter**").

Where the Investigating and Disciplinary Committee proposes dismissal

- 10.11 Where the Investigating and Disciplinary Committee has determined that dismissal (whether summary or on notice) is the appropriate action in the circumstances, notice of dismissal must not be issued until an opportunity has been given to members of the executive to object to the dismissal.
- 10.12 The Investigating and Disciplinary Committee will notify the appropriate designated officer (the "**Proper Officer**") that it is proposing to the Council that the Chief Officer be dismissed and that the executive objections procedure should commence in accordance with the Local Authorities (Standing Orders)(England) Regulations 2001.
- 10.13 The Proper Officer will notify all members of the executive of:

- (a) the fact that the Investigating and Disciplinary Committee has determined that the Chief Officer be dismissed;
- (b) any other particulars relevant to the dismissal;
- (c) the period by which any objection to the dismissal is to be made by the Leader on behalf of the executive, to the Proper Officer.

10.14 At the end of the period of notification, the Proper Officer will either:

- (a) inform the Investigating and Disciplinary Committee that the Leader has notified that neither they nor any member of the executive has any objection to the dismissal;
- (b) inform the Investigating and Disciplinary Committee that no objections have been received from the Leader in the period; or
- (c) inform the Investigating and Disciplinary Committee that an objection or objections have been received and provide details of the objections.

10.15 The Investigating and Disciplinary Committee will consider any objections and satisfy itself as to whether any of the objections are both material and well founded. If they are well founded, the Investigating and Disciplinary Committee will act accordingly which may include consideration of the impact of the executive objections on the Investigation Report and relevance to the sanction or the commissioning of further investigation by the Investigator.

10.16 Once the Investigating and Disciplinary Committee is satisfied that there are no material and well-founded objections to the proposal to dismiss, the Investigating and Disciplinary Committee will inform the Chief Officer of the decision to dismiss.

11. Appeal Process

11.1 The Chief Officer shall have the right to appeal the Investigating and Disciplinary Committee's decision, to the Appeals Committee. Any appeal must be made in writing to the Chair of Appeals Committee or their nominee as set out in the Decision Letter and include the grounds of appeal ("**Notice of Appeal**").

11.2 The Appeals Committee should be made up of no fewer than three elected members and include at least one Cabinet Member.

11.3 Within five working days thereafter the Chief Officer must inform the Chair of the Appeals Committee of the following details in relation to the Notice of Appeal and provide the following information:

- (i) whether the Chief Officer is to be accompanied at the Appeal Hearing by a Companion and if so by whom;

- (ii) whether they wish to call witnesses and if so, their names and the nature of the evidence they will provide;
 - (iii) copies of any additional documents or information relevant to the appeal that was not provided at the Disciplinary Hearing;
- 11.4 Having considered the Notice of Appeal, the Appeals Committee will determine whether the Appeal Hearing will take the form of a full re-hearing or a review of the decision taken by the Investigating and Disciplinary Committee.
- 11.5 The Appeals Committee will consider the appeal as soon as reasonably practicable after the Notice of Appeal has been received. It will invite the following persons to be present at an Appeal Hearing:
 - (i) the Chief Officer, who may be accompanied by a Companion; and
 - (ii) the Chair of the Investigating and Disciplinary Committee or another members of the Committee if so nominated by the Chair, to explain the reasons for their decision and to answer any questions.
- 11.6 The procedure for convening the Appeal Hearing will follow that set out above in relation to the Disciplinary Hearing.
- 11.7 The Appeals Committee shall be advised by an independent adviser who shall not usually be the same Adviser who advised the Investigating and Disciplinary Committee.
- 11.8 The Appeals Committee may take into account any additional information which has become available in relation to the allegations or other issues under investigation following the Disciplinary Hearing.
- 11.9 The Appeals Committee may decide to uphold or dismiss the original decision of the Investigating and Disciplinary Committee or impose a different sanction within the range of penalties as set out in paragraphs 10.4 and 10.5.
- 11.10 The decision reached will be final and there is no further right of appeal.
- 11.11 If it is not practicable for the Appeals Committee to provide their decision orally, at the conclusion of the Appeal Hearing it will be notified to the Chief Officer, in writing, as soon as reasonably practicable following the Appeal Hearing.

Officer Employment Procedure Rules

Appointments to the council's service

- OE1 Canvassing of members of the council directly or indirectly for any appointment under the council shall disqualify the candidate concerned for that appointment. A statement to this effect shall be included either in the advertisement inviting applications for appointment or in any form of application or particulars supplied for use by candidates.
- OE2 Any member of Council, in response to a request for an employment reference, shall be entitled to give such person a statement of his/her actual personal knowledge of the person's character and ability, but the statement shall not contain any recommendation or request for the employment of the person nor be directly addressed to any officer of the council.
- OE3 No officer of the council shall act on any recommendation received from any trade union official, unless specific application has been made previously to the trade union official in his/her official capacity in connection with a pending appointment, and there is no other channel open for the engagement of the particular employee then required.

Relatives of Members or Officers

- OE4 Candidates for any appointment under the council shall when making application disclose in writing whether to their knowledge they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor or officer of the Council; or of the partner of such persons.
- . A candidate who fails so to do shall be disqualified for such appointment and if appointed shall be liable to disciplinary action in accordance with the council's disciplinary procedures. Every member and officer of the Council shall disclose to the Director of Governance any relationship known to him/her to exist between himself/herself and a candidate for an appointment of which he/she is aware.

A statement to this effect shall be included either in the advertisement inviting applications for appointment or in any form of application or particulars supplied for use by candidates.

Recruitment of Chief Officers

- OE5 Where the council proposes to appoint a Strategic Director (including the statutory posts of head of the paid service, monitoring officer and financial officer) and it is not proposed that the appointment be made exclusively from among its existing officers, there shall be drawn up a statement specifying:

- a. the duties of the officer concerned; and
 - b. any qualifications or qualities to be sought in the person to be appointed.
- OE6 The post shall then be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it and a copy of the statement drawn up shall be sent to any person on request.
- OE7 Where a post has been advertised as provided in paragraph OE5, the council shall:
 - a. interview all qualified applicants for the posts, or
 - b. select a short list of such qualified applicants and interview those included on the shortlist
- OE8 Where no qualified person has applied, the council shall make further arrangements for advertisement in accordance with paragraph OE6.

Appointment of Head of Paid Service

- OE9 Council will approve the appointment of the head of paid service following the recommendation of such an appointment by a committee of Council. That committee must include at least one member of the Council Cabinet.
- OE10 Council may make or approve the appointment of the head of paid service only where every member of the Council Cabinet has been notified by the Director of Governance:
 - a. of the name of the person to whom the offer of employment is to be made
 - b. of any other particulars relevant to the appoint
 - c. that any objection to the offer of employment must be sent to the Director of Governance within five working daysand, in the opinion of the Director of Governance, no material or well-founded objection has been made by any member of the Council Cabinet within five working days.

Appointment of Strategic Directors and Service Directors

- OE11 A committee of Council will appoint Strategic Directors and Service Directors. That committee must include at least one member of the Council Cabinet.
- OE12 An offer of employment as a Strategic Director or Service Director shall be made only where every member of the Council Cabinet has been notified by the Director of Governance:
 - a. of the name of the person to whom the offer of employment is to be made
 - b. of any other particulars relevant to the appointment
 - c. that any objection to the offer of employment must be sent to the Director of Governance within five working days

and in the opinion of the Director of Governance, no material or well-founded objection has been made by any member of the Council Cabinet within five working days.

Appointment of Officers below Service Director

- OE13 Appointment of officers below Service Director (other than assistants to political groups) is the responsibility of the head of paid service or his/her nominee, and must not be made by councillors, though councillors may determine any appeal relating to such an appointment.

Disciplinary Action – Statutory Chief Officers

- OE14 The head of paid service, monitoring officer and Section 151 Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months.
- OE15 No other disciplinary action may be taken in respect of any of those officers except in accordance with procedures agreed by Council.
- OE16 The Council must approve the dismissal of the head of paid service.

Disciplinary Action – Non Statutory Strategic Directors and Service Directors

- OE17 A committee or sub committee of the Council will take any disciplinary action against a non statutory Strategic Director or Service Director.
- OE18 A notice of dismissal shall be issued to a non-statutory Strategic Director or Service Director only where every member of the Council Cabinet has been notified by the Director of Governance:
- a of the name of the person whom it is proposed to dismiss
 - b of any other particulars relevant to the dismissal
 - c. that any objection to the dismissal must be sent to the Director of Governance within five working days

and in the opinion of the Director of Governance, no material or well-founded objection has been made by any member of the Council Cabinet within five working days.

Disciplinary Action – Officers below Service Director

- OE19 Councillors will not be involved in disciplinary action against any officer below Service Director except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the council's disciplinary, capability and related procedures, as adopted from time to time, may allow a right of appeal to councillors in respect of dismissals or final written warnings.

Assistants to Political Groups

- OE20 Where the members of Council are divided into different political groups...
- a. no appointment to any post allocated to a political group shall be made until Council has allocated a post to each of the political groups which qualify for one
 - b. a post shall not be allocated to a political group which does not qualify for one
 - c. no more than one post shall be allocated to any one political group; and
 - d. any appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.