

“RIGHTS AND RESPONSIBILITIES” HIGH PEAK BOROUGH COUNCIL MEMBER/OFFICER PROTOCOLS AND CONVENTIONS

INTRODUCTION

Councillors are democratically accountable and usually have political affiliations. Officers must serve the whole Council objectively. Together they must balance a complex range of obligations and competing interests. For this to be effective, Councillors and Officers must have mutual trust and respect for each other's role and duties. There must also be consistent transparency in everyday working relationships.

Ten General Principles of Conduct for Councillors and co-opted members of local authorities have been prescribed by legislation (Appendix 1). There is also a Model Code of Conduct (Appendix 2) that sets out the minimum standards councillors and co-opted members must observe. The Conventions operate within that framework and provide the Council's local ground rules.

Councillors, co-opted members and officers agree to observe the General Principles, Codes, Protocols and Conventions, and to be guided by them in the interests of fair treatment and good government.

They are the Council's way of applying the following basic principles:

- **Members have a right to information and support on a “need to know” basis.**

The “need” is so that they can perform their role as councillor. It can be limited by conflict of interest, confidentiality and practicality.

- **Officers must serve the whole Council objectively.**

They must therefore provide corporate advice at all times. This is advice which is objective, consistent and points out all relevant factors. Different points of view between officers should be resolved or presented in a balanced way that helps members to choose between them.

- **Political processes and different roles for Councillors are a legitimate part of local democracy.**

Officer advice and support can be tailored accordingly. A party group is entitled to the confidentiality of officer advice on developing policies and may decide when to publish a proposal. The overall arrangements for obtaining officer advice must be transparent.

Observance of the General Principles, the Model Code and these Conventions is essential to the maintenance of high standards of probity and integrity.

CONTENTS

- 1. OFFICER NEUTRALITY**
- 2. PROVISION OF INFORMATION TO MEMBERS**
- 3. MEMBER BRIEFINGS**
- 4. EXECUTIVE AND COMMITTEE MEETINGS**
- 5. ROLE OF THE CHAIR**
- 6. REGULATORY COMMITTEES**
- 7. WORKING GROUPS**
- 8. MEMBER INVOLVEMENT IN CASEWORK**
- 9. ACCESS TO COUNCIL PREMISES**
- 10. MEDIA RELATIONS AND PUBLISHED MATERIAL**
- 11. ELECTION PERIODS**
- 12. PARTNERSHIPS AND OUTSIDE BODIES**
- 13. RESOLVING PROBLEMS**

APPENDICES

- 1. 10 PRINCIPLES OF CONDUCT**
- 2. CODE OF CONDUCT**
- 3. BULLYING AND HARASSMENT**
- 4. PROTOCOL FOR THE USE OF ICT SERVICES AND EQUIPMENT**
- 5. DEVELOPMENT CONTROL**
- 6. PROTOCOL FOR RADIO INTERVIEWS**
- 7. PROTOCOL FOR MEMBERS ON OUTSIDE BODIES**

1. OFFICER NEUTRALITY

Convention	Members	Officers
<p>1.1 Every Officer appointment and every employment decision must, by law, be on merit alone.</p> <p>1.2 The Council has no political assistants.</p>	<p>Members appoint Service Heads and above. Party political considerations cannot be taken into account.</p>	<p>Policy support to members must conform to the “corporate advice” principle. It must be for the benefit of the Council, and not for party political purposes. Work done on behalf of members that could be open to misinterpretation must be transparent and justified, particularly at sensitive times (such as pending elections).</p>
<p>1.3 Certain posts are politically restricted, including all senior posts.</p>		<p>Politically restricted officers cannot be councillors or MPs. They cannot “speak or publish written work to the public at large or a section of the public, with the apparent intention of affecting public support for a political party”. They can speak or publish “to such an extent as is necessary for the proper performance of their duties”.</p>
<p>1.4 Officers service the whole Council and must be politically neutral at work.</p>	<p>Members should respect officers’ rights to private political opinions. These should not be used against an officer who remains neutral at work and observes the</p>	<p>The Council’s employment procedures and Codes of Conduct must be observed. Failure to do so could be a disciplinary matter.</p>

Convention	Members	Officers
	relevant codes. Any questions about neutrality should be raised with the relevant Director or Chief Executive before any public accusation. Such accusations are potentially defamatory.	
1.5 Close personal relationships between members and officers should be declared to the relevant Group Leader and Service Head and entered in the officers' register of interests and in the voluntary section of the Members' Interests Register. The test is whether a member of the public might reasonably consider the relationship likely to influence the member or officer in their respective roles.	The member concerned should judge when a personal relationship has formed or whether a family relationship or friendship might reasonably be considered as having influence. The Group Leader, where appropriate, should consider how the working relationship between the member and officer can be managed or avoided altogether to dispel perceived bias, taking advice from the Monitoring Officer or Chief Executive if necessary.	The officer concerned should judge when to make a declaration. The Service Head should consider how to avoid or manage working contact to dispel perceived bias taking advice from the Monitoring Officer or Chief Executive.
1.6 Mutual respect and due courtesy between councillors and officers is expected by the Council.	Personal remarks about or criticism of named officers or in circumstances where the identity of the officer can easily be discovered, will be a breach of this Convention. Bullying or harassment by a member could potentially expose the Council to a claim for constructive dismissal and the member to a complaint to the Standards Board for England. For a	Officers must not criticise members and should respect their rights under these Conventions. Officers should not only be neutral, they should appear neutral. Any situation that calls this into question should be raised with the relevant Director who will consider what steps are needed to provide reassurance.

Convention	Members	Officers
	<p>detailed definition of bullying and harassment see Appendix 3.</p> <p>Should members have a complaint about an officer, this must be raised face to face with the relevant Director in the first instance. If the matter is not resolved to their satisfaction, then they have the right to ask the Chief Executive to investigate. During any investigation members and officers must ensure complete confidentiality is maintained</p>	

2. PROVISION OF INFORMATION TO MEMBERS

Convention	Members	Officers
<p>2.1 Each Member has a right to the information reasonably required to perform his or her role as Councillor (the “<i>need to know</i>”). They are not entitled to information ‘out of curiosity’ or where they are on a ‘fishing expedition’.) Nor where:</p> <ul style="list-style-type: none"> • The information is primarily needed for a non-Council purpose; or • There is a conflict of interest; or • There is an over-riding right of confidentiality in respect of personal information relating to, for example, a licensing or employment matter; or • The resources needed to supply the information would be unreasonable. 	<p>Members’ requests for information should be made to the relevant manager and not to more junior members of staff.</p> <p>Any relevant interests or non-Council purpose should be declared at the time of the request.</p> <p>If dissatisfied with a refusal, the Service Head or Director should be approached. If still dissatisfied the Monitoring Officer or Chief Executive may be asked to determine entitlement.</p>	<p>Officers should assume a member has a need to know unless one of the restrictions appears to apply. The member should then be asked to justify entitlement and, in cases of doubt, the Monitoring Officer or Chief Executive should be consulted.</p> <p>An officer should seek clearance from his or her manager before embarking on a significant amount of work to provide information.</p> <p>“<i>Managed Access</i>” may be offered when information is particularly sensitive or needs interpretation. This involves inspection of the file combined with a briefing. Names and supporting evidence may need to be withheld.</p>

Convention	Members	Officers
<p>2.2 Members must respect the status of confidential Council information and must use confidential information only for the purpose it is given (for example, information supplied in confidence to an Executive Member or Select Committee Chair cannot be used to pursue a special Ward interest).</p>		<p><i>“Managed Access”</i> may be offered when information is particularly sensitive or needs interpretation. This involves inspection of the file combined with a briefing. Names and supporting evidence may need to be withheld.</p>
<p>2.3 Councillors with a particular role have a special need to know arising from that role.</p>	<p>Examples:</p> <ul style="list-style-type: none"> • Leader; • Executive Member; • Select Committee Chair and Group Leaders. • Ward Member: matters with special implications for the Ward (ie significantly more than the general implications for the Borough): • Working Group Members. 	<p><i>“Managed Access”</i> may be offered when information is particularly sensitive or needs interpretation. This involves inspection of the file combined with a briefing. Names and supporting evidence may need to be withheld.</p>

Convention	Members	Officers
<p>2.4 All members are provided with a laptop computer, printer, consumables and access to the internet, the Council's intranet, the Council's intranet and the external and internal e-mail system.</p>	<p>Members are required to sign up to the Protocol on the use of ICT services and equipment. See Appendix 4.</p> <p>Use of the laptop is confined to Council business only.</p> <p>E-mails should be framed in a business-like manner and should not be used to trade insults or criticise Council policy, members or officers.</p> <p>The attached Protocol addresses inappropriate use of e-mail. The following examples are also deemed inappropriate and therefore a breach of this Convention:-</p> <ul style="list-style-type: none"> • Any language or behaviour (including unreasonably frequent and persistent demands for information or unreasonable demands for an immediate response) that comes within the definition of bullying or harassment (see Appendix 3) 	<p>The ICT Manager and the Democratic Services Manager will ensure members receive appropriate training and support.</p> <p>Complaints about breach of this Convention or of the Protocol for the Use of Lap Tops should be made to the Monitoring Officer and relevant head of service or Director.</p> <p>The Data Protection Officer is responsible for ensuring members are registered as data users with the Information Commissioner.</p>

Convention	Members	Officers
	<ul style="list-style-type: none"> • Any language or behaviour that breaches the Council's Equalities Policy (available on the intranet) • The sending of e-mails to all staff without justification • The use of e-mail to criticise individual officers. <p>Allegations of breach should be made to the Monitoring Officer who may report it to the Standards Board for England if it is a breach of the Code of Conduct and/or the Standards Committee. If the allegation is substantiated the Committee will consider an appropriate sanction including the withdrawal of facilities and equipment for a period of time or permanently.</p>	

3. MEMBER BRIEFINGS

Convention	Members	Officers
<p>3.1 Members are entitled to be briefed in accordance with their need to know, taking account of any particular role they have. There are the same restrictions as to information (Convention 2.1). Members with a particular role e.g. portfolio holders may expect to be briefed about relevant matters without having to make a request.</p>	<p>Members should request a briefing through the Service Head or Director and they must declare any relevant interest when requesting or receiving a briefing. If dissatisfied with a refusal to brief, the Chief Executive may be asked to determine entitlement.</p>	<p>Officers should be clear about the capacity in which the member is being briefed and the implications of any interest. In cases of doubt, the Monitoring Officer or Chief Executive may be consulted. The officer should always make it clear if a briefing is not based on corporate advice, (ie is still subject to consultation with other officers). Otherwise the member is entitled to assume corporate advice is being given.</p>
<p>3.2 A Party Group (two or more individuals who have notified the Head of Legal and Democratic services of their wish to be treated as such) may be briefed.</p>	<p>Provisos:</p> <ul style="list-style-type: none"> • The Monitoring Officer knows of and approves the briefing; • All Groups are informed and offered the same briefing; • More than one officer attends with the exception of the Chief Executive; 	<p>Any officer asked to attend a group meeting/briefing must notify the Monitoring Officer in writing in advance of the meeting.</p>

Convention	Members	Officers
	<ul style="list-style-type: none"> • Officers withdraw after briefing and any questions, and before political discussion; • Officers do not write reports for Groups, leaving it for members to present draft Committee reports or briefing notes. 	
<p>3.3 The content of briefings is confidential to the members concerned. Confidentiality extends to the answers to questions asked by the members.</p>		<p>Officers attending these meetings must respect their confidentiality</p>
<p>3.4 Executive members, individually and collectively are entitled to regular confidential briefing on matters relevant to their portfolios and in support of the policies they are developing prior to them formulating formal proposals.</p>	<p>The relevant Executive member or the Executive collectively determines whether confidential briefing material may be released to others for consultation or otherwise. When the stage of formal proposals is reached, supporting officer advice becomes publishable in conjunction with the proposals.</p>	<p>A briefing to help a member respond to a formal question may be in the form of a suggested reply. It should be confined to factual and professional matters and to explanations of existing policy, leaving the member to add any political comment.</p>
<p>3.5 Committee Chairs and Group Leaders are entitled to regular and confidential briefing on matters</p>	<p>The Select Committee Chairs meet at least quarterly to co-ordinate and discuss the Committees' Work Programmes.</p>	<p>Officers will prepare agendas and reports and make information available as required. Those attending these meetings</p>

Convention	Members	Officers
relating to Council business.	The Group Leaders meet quarterly to represent their groups' interests and express their views in relation to any matter within the Council's remit.	must respect their confidentiality
3.6 Members must respect the confidentiality of information supplied in briefing	Members must use the information only for the purposes for which they would have been entitled to receive it (for example, information supplied as Executive member or Select Committee Chair may not be used to pursue a special Ward interest, if it would not have been supplied to the Ward Councillor).	

4. EXECUTIVE AND COMMITTEE MEETINGS

Convention	Members	Officers
<p>4.1 Each Executive and Committee report should be in the name of an officer who must ensure that:</p> <ul style="list-style-type: none"> • It is made clear what stage in the process has been reached and what is required from members. • There is a clear recommendation or options presented in a way which enable members to choose between them; • It is clear who is responsible for action and to what timetable (including further reports); • All relevant factors are included and the issues are presented with professional objectivity; • Associated briefings and presentations are also professionally objective. 	<p>Members may introduce reports or put forward alternative proposals provided Officer advice has been obtained before the meeting on any recommendation to be moved to ensure that operational, financial and legal factors are taken into account.</p>	<p>The principle of corporate advice requires that meaningful and timely consultation must be completed before finalising a report (particularly on financial and legal implications). All draft reports must be presented to the Weekly Business meeting prior to draft agenda stage. Except in the most exceptional cases, late reports will not be accepted.</p> <p>Officers must take account of the policies of the Council. Options and recommendations, may reflect political realities, provided all realistic options are addressed in a way that is professionally objective and sustainable. It is not always necessary to recommend the course of minimum risk, provided risks and reasons for taking them are made clear.</p> <p>Withdrawing a report is an Officer decision and responsibility, in consultation with the relevant Executive Member or Chair.</p>

Convention	Members	Officers
<p>4.2 Executive Members, individually or collectively, may determine the timetable for developing their policies, including:</p> <ul style="list-style-type: none"> • The point at which confidential ideas become formal proposals for publication; • Who to consult and to what deadline; • The timing of Executive reports. 	<p>The Executive may defer any of its decisions and amend its timetable as it sees fit.</p> <p>In response to a request from the Executive to review any matter, a Select Committee may ask for more time, information or other views before responding provided:</p> <ul style="list-style-type: none"> • The Executive portfolio holder agrees; and • The relevant Director agrees that further information can be provided at reasonable cost and use of officer time. 	<p>The relevant Directors and Service Heads must ensure that all essential decisions are requested by necessary deadlines.</p>
<p>4.3 It is for each Select Committee to determine its work programme under the overall guidance and co-ordination of the Corporate Select Committee. It is expected that reports commissioned and evidence requested will:</p> <ul style="list-style-type: none"> • Avoid duplication 	<p>Where the Executive and a Select Committee are considering the same service area, the Executive portfolio holder, Select Chair and Director should agree a joint programme of work and the order in which reports should be consulted upon and presented.</p>	<p>If any Committee insists on work or evidence that, in the opinion of the Director is outside the reasonable resources of the Council, the Chief Executive should be consulted on how to resolve the issue.</p>

Convention	Members	Officers
<ul style="list-style-type: none"> Involve reasonable cost and use of officer time. 		
<p>4.4 The Chair (or in their absence the Vice Chair) of a Select Committee may give written notice that they wish to put an item on the agenda. One quarter of the members of the appropriate Select Committee, the Standards Committee or 3 members of either (whichever is greater) may require an item to be placed on the agenda but must give 20 working days notice in writing giving details of why the Committee is being asked to consider it. This right does not apply when the matter has already been dealt with within the previous six months.</p>	<p>It is for the Select Committee to decide whether to deal with the matter:</p> <ul style="list-style-type: none"> Immediately based on any report and the arguments of the Member who raised it; or At a future meeting, requesting any appropriate report. Reject it. 	<p>The Head of Legal and Democratic Services should immediately copy the notice to the Select Committee Chair (if appropriate) the relevant Director, Service Head and Executive Members. The Service Head, in consultation with relevant members should decide what, if any, report to present in relation to the item.</p>
<p>4.5 Select Committee business shall, subject to full committee decisions, be determined by the Select Committee Chairs group including:</p> <ul style="list-style-type: none"> Agendas; 	<p>Each Select Committee Agenda shall have a standing item for Questions to the Executive. If an answer is required at the meeting, a specific request must be made to the Head of Legal and Democratic Services giving 5 working days notice.</p>	<p>Each Select Committee has a Lead Officer responsible for co-ordinating its overall programme and individual agendas in consultation with:</p> <ul style="list-style-type: none"> The Select Committee Chair

Convention	Members	Officers
<ul style="list-style-type: none"> • Dates and times of meetings; • Work Programme • Evidence to be presented at a future meeting; • Interested parties to be invited to future meetings. 	<p>There is an expectation that the relevant Executive portfolio holder will attend Select Committee meetings where necessary to explain matters on the agenda relevant to their portfolios.</p> <p>The Executive portfolio holder is also expected to attend any Select Committee that is considering any matter at the request of the Executive.</p>	<ul style="list-style-type: none"> • The Scrutiny Support Officer • The Select Committee Chairs' group • Relevant Executive Members (in relation to Executive policies in development): • Directors and Service Heads.
<p>4.6 Attendance at formal and informal meetings.</p>	<p>All members have the same rights to attend formal statutory meetings as members of the public.</p> <p>With the consent of the Chair, which can be presumed unless explicitly withheld, they may also attend those meetings when exempt items are under discussion.</p> <p>Attendance at no statutory meetings at which the public have no right of access is at the discretion of the Chair, or, in the absence of a Chair, by agreement of a majority of the attendees.</p>	

Convention	Members	Officers
4.7 Members right to speak	<p>In general, members who are not appointed to a statutory committee, nor substituting on it for another member, have no automatic right to speak. They may be allowed to speak at the Chair's discretion.</p> <p>N.B. There are special rules relating to Development Control Committee meetings (see Appendix 5), Executive meetings (see the Executive Procedure Rules in section 2 of part 4 of the Constitution) and Select Committee meetings (see the Select Committee Procedure Rules in section 3 of part 4 of the Constitution)</p>	

5. ROLE OF THE CHAIR

Convention	Members	Officers
<p>5.1 The Chair is expected to conduct meetings to ensure business is carried out effectively and expeditiously. Their decision on procedure is final.</p>	<p>The Chair must:</p> <ul style="list-style-type: none"> • Before declaring the meeting formally open ask any member present who is not formally appointed to clarify the purpose of their presence e.g as substitute, observer, to ask a question, represent the interests of their ward etc Non-members of the committee/working group may be asked by the Chair to sit apart from members to avoid confusion • Ensure any questioning of members or officers is properly structured, and conducted in a courteous, seemly and constructive manner. • Ensure Procedure Rules are observed • Ensure every member entitled to has their say 	<p>Officer advice and support will be available to all Chairs especially in relation to rules of procedure and their interpretation</p>

Convention	Members	Officers
	<ul style="list-style-type: none"> • In relation to Regulatory Committees, act in a politically neutral capacity at all times. Other Chairs must also do so unless their casting vote is necessary <p>All members must:</p> <ul style="list-style-type: none"> • Treat the Chair with respect • Address the meeting through the chair • Abide by the Chair's ruling on points of order or other matters relating to the conduct of the meeting 	

6. REGULATORY COMMITTEES

Convention	Members	Officers
<p>6.1 Development control, licensing and other quasi-judicial matters must be dealt with solely in accordance with the relevant policies and legal requirements, and in particular:</p> <ul style="list-style-type: none"> The appearance of decisions being based on party political consideration must be avoided; <p>If officer recommendations are not accepted, full reasons must be given to ensure that any departures can be justified and that they are consistent over time.</p>	<p>Particular care should be taken to declare interests in formal meetings, at site visits and in formal discussion and, if necessary avoid participation. Potential interests should be raised with officers before meetings. Any Executive member would have an interest in a planning application made by the Council.</p> <p>Members taking part in Development Control decisions must adhere to the Protocol in Appendix 5.</p>	<p>The Heads of Legal and Democratic Services and Regeneration are responsible for ensuring appropriate and timely advice is available to members prior to and during any meetings.</p>
<p>6.2 Members must have attended the whole of at least one training session appropriate to the work of that Committee each year as a minimum and will be expected to attend all</p>	<p>This requirement also applies to substitute members.</p>	<p>The Head of Legal and Democratic Services is responsible for ensuring appropriate training is arranged</p>

<p>training sessions in order to participate in regulatory decisions.</p> <p>Training provide by, for example, Derbyshire County Council or the Peak District National Park Authority may exempt a member from training provided by the Borough Council but this must be discussed with the Head of Legal and Democratic Services</p>		
<p>6.3 Reports to Regulatory meetings should comply with Convention 4.1 (corporate advice). The Chair will be briefed by officers responsible for guiding Committee business and procedure.</p>		<p>The Head of Legal and Democratic Services is responsible for ensuring that the Chair is briefed on legal and constitutional issues.</p>

7. WORKING GROUPS

Convention	Members	Officers
<p>7.1 Non-statutory Working Groups of members or members and officers may be set up by the Executive or by any Committee or Chief Officer for the purpose of:</p> <ul style="list-style-type: none"> • Providing a forum to assist in developing particular policies; • Providing a forum for consulting interested parties on particular services or issues; • Pursuing all-party consensus on an issue prior to a formal decision; • Enabling Executive and Select Committee Members to jointly review a matter. 	<p>The term “Working Group” defines the status of the body within the Council’s structures. It need not necessarily be used in the body’s title.</p> <p>The access to information rules do not apply to these meetings and attendance by non members of the group and distribution of the papers is at the discretion of the parent body or originating Chief Officer in the first instance and then the Chair.</p>	

Convention	Members	Officers
<p>7.2 A Working Group should:</p> <ul style="list-style-type: none"> • Be politically balanced where possible unless a majority of Groups agree otherwise. • Have clear terms of reference. • Be defined as a standing body or a task and finish group. 		
<p>7.3 Non members may be co-opted to the Working Group in consultation with the Head of Legal and Democratic Services</p>		

8. MEMBER INVOLVEMENT IN CASEWORK

Convention	Members	Officers
<p>8.1 Officers must implement Council policy within agreed procedures. An individual member cannot require an officer to vary this and cannot take a decision or instruct an officer to take action. The member's role in relation to casework is:</p> <ul style="list-style-type: none"> • To be briefed or consulted where there is a need to know; • To pursue the interests of individuals by seeking information, testing action taken and asking for the appropriateness of decisions to be reconsidered. <p>A Member's entitlement to be involved is based on the "need to know" and determined in accordance</p>	<p>Members should avoid becoming unduly involved in individual cases and operational detail.</p> <p>Involvement in insurance claims, disputes that may lead or already have led to legal proceedings and audit investigations carries special dangers of prejudicing the case, creating financial liabilities for the Council and of personal embarrassment.</p> <p>Members should always avoid expressing a view before they have spoken to the relevant Director and established the full facts. The District Auditor has warned of the dangers of individual members intervening in the processes of the Council without full knowledge of the facts.</p> <p>No member, apart from those on the Executive, is able to take decisions that commit the Council and should be careful</p>	<p>Officers should take the lead in pointing out where the boundaries lie in particular areas, recognising that:</p> <ul style="list-style-type: none"> • Members legitimately adopt different approaches • Members may legitimately pursue non-Ward issues (for example, an issue of Borough-wide concern) • The special local knowledge of particular members may be useful to a particular case. <p>Officers should point out to the member when a restriction on the need to know may apply, explore entitlement with the member and, in cases of doubt, consult the Head of Legal & Democratic Services.</p> <p>Directors and Service Heads should ensure that their staff know how to obtain appropriate senior management support</p>

Convention	Members	Officers
<p>with Conventions 2 and 3.</p> <p>Access to files may need to be denied or restricted if one of the circumstances in Convention 2.1 and 2.2 applies.</p>	<p>to explain this to the public.</p> <p>They should not involve themselves in any negotiations that bind the Council, especially Development Control, Licensing or contracts with the Council. That is the role of officers. Members should act as facilitators in these situations and must always refer the applicant or contractor to the relevant officer.</p> <p>A member lobbied on an issue should explain that any views expressed are personal and they cannot commit or anticipate the Council's decision.</p> <p>There are special and stricter rules for members involved in quasi-judicial decision-making and those on the Development Control Committee. These are attached at Appendix 5. Any lobbying should be declared at meetings to consider the issue.</p>	<p>appropriate senior management support when the extent of a member's involvement needs to be clarified.</p>
<p>8.2 If a member has a complaint about the standard of any service provided by the Council, it must be</p>	<p>A member should not undertake any investigation without the support and assistance of officers. It is not a member's</p>	<p>In discussion with the member, the Director will decide whether the complaint should be investigated and, if so, what</p>

Convention	Members	Officers
made to the relevant Director.	<p>role to involve themselves in operational issues.</p> <p>Members should be sensitive to the resource implications that may be required in an investigation and be aware that in order to carry out an investigation officers may be diverted from carrying out Council priorities.</p>	<p>resources can be committed to such an investigation and the timescale within which it can be carried out bearing in mind the Council's other priorities.</p> <p>Subject to the above, the Director will investigate the complaint expeditiously on the member's behalf and report back to the member on the outcome and any proposed action.</p>
8.2 A Member pursuing a Ward matter on behalf of a close family member or friend should declare the relationship and consider whether to ask another member to pursue the matter.	A close relationship should be judged as in Convention 1.5	
8.3 In relation to a staffing matter members should not act as an individual's "friend" or provide a reference. They should not be involved in staff lobbying.	<p>The only procedures for Member involvement in staffing matters are:</p> <ul style="list-style-type: none"> • Formal machinery for taking individual recruitment decisions as set out in the Constitution. • Membership of the JCC. 	

Convention	Members	Officers
8.4 Staff have the same rights as the public to raise issues with members, However, they must not lobby members on personal, employment or budgetary matters	Members should refuse to respond to inappropriate lobbying and inform the relevant Director or Service Head who should direct the staff towards the appropriate channels.	Directors and Service Heads should ensure their staff are aware of these requirements and the proper channels for their views to be put forward.

9. ACCESS TO COUNCIL PREMISES

Convention	Members	Officers
<p>9.1 A Member's right of access to Council premises and to bring in guests is based on the "need to know" (that is, to perform the Member's role). In addition to the general restrictions, it is subject to ensuring:</p> <ul style="list-style-type: none"> • Operational continuity; • Confidentiality • Compliance with Health & Safety arrangements; • Compliance with security requirements. 	<p>When visiting Council premises, a member should:</p> <ul style="list-style-type: none"> • Make prior arrangements whenever possible for visits outside normal working hours; • Check in on arrival with reception; • Observe the site manager's requirements especially in relation to health and safety. • Be prepared to identify themselves to members of staff who do not know them. 	<p>Directors should ensure that their staff are aware of these requirements</p>
<p>9.2 Councillor's guests should:</p> <ul style="list-style-type: none"> • Be properly checked in and out; • Explain the purpose of their visit, if requested; 		<p>Directors and Service Heads should ensure their staff are aware of these requirements</p>

Convention	Members	Officers
<ul style="list-style-type: none"> • Observe the site manager's requirements; <p>Not be admitted after normal business hours, except for notified evening meetings and by special arrangement for particular purposes.</p>		

10. MEDIA RELATIONS AND PUBLISHED MATERIAL

Convention	Members	Officers
<p>10.1 Statements and other material published on behalf of the Council (Including on the Council's website) must not be party political and must comply with the Statutory Code of Practice on Publicity.</p>	<p>Members are the Council's principal spokespersons on policy. As individuals, they may make party political comment, but the Council may not publish such comment.</p>	<p>Officers may publish factual, professional and technical comment. Reports, presentations and publications must be professionally objective in language, content and tone. Directors and Service Heads must ensure that officers who publish statements and material are competent for the role and understand the requirements of these Conventions.</p>
<p>10.2 News releases on behalf of the Council may only be issued through the Corporate Team. Official statements to the media should only be made after consultation with the Communications Officer.</p>	<p>The Protocol for Radio interviews at Appendix 6 must be observed together with any other guidance that may be issued on dealing with the media.</p> <p>Members must always make it clear when they are speaking as individual councillors and not on behalf of the Council.</p>	<p>The Communications Officer is responsible for promoting and protecting the Council's overall interests in relation to the media.</p> <p>Directors and Service Heads are responsible for informing relevant members when a media statement is proposed.</p> <p>The Protocol for High Peak Radio at Appendix 6 must be observed</p>

Convention	Members	Officers
<p>10.3 The Corporate Team will support and issue news releases in relation to the business of the Executive and Committees. In this it will be guided.</p> <ul style="list-style-type: none"> • By the relevant portfolio holder on Executive matters • By the Select Committee Chairs on Scrutiny matters. 	<p>News releases on behalf of a Select Committee may include:</p> <ul style="list-style-type: none"> • Their reasons for considering a matter; • Their findings and recommendations; • Majority and minority views. 	

11. ELECTION PERIODS

Convention	Members	Officers
<p>11.1 From the notice of a Parliamentary or local election until election day:</p> <ul style="list-style-type: none"> • Nothing should be published (including on the Council’s website) on a politically controversial issue, or which identifies views or policies with those of individual members or Political Groups; • In parliamentary elections, nothing should be published which mentions or includes a picture of any prospective candidate; • Any publicity should be strictly objective, concentrating on facts or explanations; <p>During local elections, no Council newspaper should be published;</p>	<p>Members and officers should take particular care to keep officers distant from party political matters.</p> <p>Members requesting information should make their “need to know” clear and the “need to know” principle should be strictly observed.</p>	<p>Subject to this Convention, publicity is permitted of a member speaking on behalf of the Council about an approved policy.</p> <p>External comments should be on strictly factual or professional matters. Care should be taken to avoid being misquoted or inadvertently associated with a particular candidate or political perspective.</p> <p>Officers should avoid even the appearance of political bias.</p>

Convention	Members	Officers
Prospective Parliamentary candidates (including current MPs) should be treated equally.		

12. PARTNERSHIPS AND OUTSIDE BODIES

Convention	Members	Officers
12.1 Any partnership in which the Council participates must be asked to adopt the General Principles of Conduct (Appendix 1) or to justify any departures.		
12.2 The partnership must be asked to observe the Council's Code of Conduct and to include an item on all agendas requesting that interests be declared.		
12.3 All partnerships should have a Constitution approved by the Council		
12.4 Members are appointed to outside bodies and partnerships annually in accordance with the Council's Constitution.	Members appointed to outside bodies should make themselves familiar with their rights, responsibilities and potential liabilities and have working knowledge of the Protocol for members on outside bodies which is attached at Appendix 7.	The Head of Legal and Democratic Services is responsible for ensuring members are properly appointed to outside bodies.

	<p>A member who has not been formally appointed by resolution is not entitled to attend any official meetings with other persons, bodies or authorities unless such meeting is open to the general public.</p> <p>A member appointed to represent the Council must speak and act in accordance with Council policy. If this is in doubt, the member must consult the relevant member of the executive or Committee Chair prior to the meeting.</p> <p>If this is not possible as an issue is raised at the meeting unexpectedly, the member must act in accordance with what they believe would have been Council policy and immediately report back to the relevant member of the Executive or Committee Chair.</p>	
--	--	--

13. RESOLVING PROBLEMS

Convention	Members	Officers
<p>13.1 Members and officers should try to interpret and apply the Conventions consistently. Those concerned should first try to resolve any problems between themselves.</p>	<p>Members should raise unresolved problems with the relevant Director or Service Head. If necessary the Chief Executive or Monitoring Officer should be consulted.</p>	<p>Officers should raise any unresolved problem with their Director or Service Head who will advise or take the matter up with the relevant members. If necessary, the Chief Executive or Monitoring Officer should be consulted.</p>

APPENDIX 1

10 PRINCIPLES OF CONDUCT

Selflessness

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

Honesty and Integrity

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

Objectivity

Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards for benefits.

Accountability

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

Openness

Members should be as open as possible about their actions and those of their Authority, and should be prepared to give reasons for those actions.

Personal Judgement

Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others

Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the

impartiality and integrity of the Authority's Statutory Officers and its other employees.

Duty to uphold the Law

Members should uphold the Law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

Members should do whatever they are able to do, to ensure that their Authority's use their resources prudently and in accordance with the Law.

Leadership

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

APPENDIX 2

CODE OF CONDUCT HIGH PEAK BOROUGH COUNCIL

Adopted 26 February 2002

PART 1

GENERAL PROVISIONS

Scope

1. – (1) A member must observe the authority's code of conduct whenever he or she -
- (a) conducts the business of the authority;
 - (b) conducts the business of the office to which he or she has been elected or appointed; or
 - (c) acts as a representative of the authority,
- and references to a member's official capacity shall be construed accordingly.
- (2) An authority's code of conduct shall not, apart from paragraphs 4 and 5 (a) below, have effect in relation to the activities of a member undertaken other than in an official capacity.
- (3) Where a member acts as a representative of the authority –
- (a) on another relevant authority, he or she must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, he or she must, when acting for that other body, comply with the authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.
- (4) In this code, "member" includes a co-opted member of an authority.

General Obligations

2. A member must –

- person;
- (a) promote equality by not discriminating unlawfully against any person;
 - (b) treat others with respect; and
 - (c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.
3. A member must not –
- (a) disclose information given to him or her in confidence by anyone, or information acquired which he or she believes is of a confidential nature, without the consent of a person authorised to give it, or unless he or she is required by law to do so; nor
 - (b) prevent another person from gaining access to information to which that person is entitled by law.
4. A member must not in his or her official capacity, or any other circumstance, conduct himself or herself in a manner which could reasonably be regarded as bringing his or her office or authority into disrepute.
5. A member –
- (a) must not in his or her official capacity, or any other circumstance, use his or her position as a member improperly to confer on or secure for himself or herself or any other person, an advantage or disadvantage; and
 - (b) must, when using or authorising the use by others of the resources of the authority –
 - (i) act in accordance with the authority's requirements; and
 - (ii) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed.
6. - (1) A member must when reaching decisions –
- (a) have regard to any relevant advice provided to him or her by –
 - (i) the authority's chief finance officer acting in pursuance of his or her duties under section 114 of the Local Government Finance Act 1988; and

- (ii) the authority's monitoring officer acting in pursuance of his or her duties under section 5(2) of the Local Government and Housing Act 1989; and
 - (b) give the reasons for those decisions in accordance with the authority's and any statutory requirements in relation to the taking of an executive decision.
 - (2) In sub-paragraph (1)(b) above and in paragraph 9(2) below, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the local Government Act 2000.
7. A member must, if he or she becomes aware of any conduct by another member which he or she reasonably believes involves a failure to comply with the authority's code of conduct, make a written allegation to that effect to the Standards Board for England as soon as it is practicable for him or her to do so.

PART 2

INTERESTS

Personal Interests

8. (1) A member must regard himself or herself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 14 and 15 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself or herself, a relative or a friend or -
- (a) any employment or business carried on by such persons;
 - (b) any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
 - (d) any body listed in sub-paragraphs (a) to (e) of paragraph 15

below in which such persons hold a position of general control or management.

- (2) In this paragraph –
 - (a) “relative” means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and
 - (b) “partner” in sub-paragraph (2)(a) above means a member of a couple who live together.

Disclosure of Personal Interest

- 9. - (1) A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Subject to paragraph 12(1)(b) below, a member with a personal interest in any matter who has made an executive decision in relation to that matter must ensure that any written statement of that decision records the existence and nature of that interest.

Prejudicial Interests

- 10. - (1) Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member’s judgement of the public interest.
- (2) A member may regard himself or herself as not having a prejudicial interest in a matter if that matter relates to –
 - (a) another relevant authority of which he or she is a member;
 - (b) another public authority in which he or she holds a position of general control or management;
 - (c) a body to which he or she has been appointed or nominated by the authority as its representative;
 - (d) the housing functions of the authority where the member holds a tenancy or lease with a relevant authority, provided that he or she does not have arrears of rent with that relevant authority of more than two months, and provided that those functions do not relate

particularly to the members' tenancy or lease;

- (e) the functions of the authority in respect of school meals, transport and travelling expenses, where the member is a guardian or parent of a child in full time education, unless it relates particularly to the school which the child attends;
- (f) the functions of the authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority; and
- (g) the functions of the authority in respect of an allowance or payment made under sections 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989.

Overview and Scrutiny Committees

- 11. (1) For the purposes of this Part, a member must if he or she is involved in the consideration of a matter at a meeting of an overview and scrutiny committee of the authority or a sub-committee of such a committee, regard himself or herself as having a personal and a prejudicial interest if that consideration relates to a decision made, or action taken, by another of the authority's –
 - (a) committees or sub-committees; or
 - (b) joint committees or joint sub-committees,

of which he or she may also be a member.

 - (2) But sub-paragraph (1) above shall not apply if that member attends that meeting for the purpose of answering questions or otherwise giving evidence relating to that decision or action.

Participation in Relation to Disclosed Interests

- 12. - (1) Subject to sub-paragraph (2) below, a member with a prejudicial interest in any matter must –
 - (a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he or she has obtained a dispensation from the authority's Standard's Committee;
 - (b) not exercise executive functions in relation to that matter; and
 - (c) not seek improperly to influence a decision about that matter.

- (2) A member with a prejudicial interest may, unless that interest is of a financial nature, and unless it is an interest of the type described in paragraph 11 above, participate in a meeting of the authority's –
- (a) overview and scrutiny committees; and
 - (b) joint or area committees,
- to the extent that such committees are not exercising functions of the authority or its executive.
13. For the purposes of this Part, “meeting” means any meeting of –
- (a) the authority;
 - (b) the executive of the authority; or
 - (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees.

PART 3

THE REGISTER OF MEMBERS' INTERESTS

Registration of Financial and Other Interests

14. Within 28 days of the provisions of an authority's code of conduct being adopted or applied to that authority or within 28 days of his or her election or appointment to office (if that is later), a member must register his or her financial interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority's monitoring officer of –
- (a) any employment or business carried on by him or her;
 - (b) the name of the person who employs or has appointed him or her, the name of any firm in which he or she is a partner, and the name of any company for which he or she is a remunerated director;
 - (c) the name of any person, other than a relevant authority, who has made a payment to him or her in respect of his or her election or any expenses incurred by him or her in carrying out his or her duties;

- (d) the name of any corporate body which has a place of business or land in the authority's area, and in which the member has a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;
 - (e) a description of any contract for goods, services or works made between the authority and himself or herself or a firm in which he or she is a partner, a company of which he or she is a remunerated director, or a body of the description specified in sub-paragraph (d) above;
 - (f) the address or other description (sufficient to identify the location) of any land in which he or she has a beneficial interest and which is in the area of the authority;
 - (g) the address or other description (sufficient to identify the location) of any land where the landlord is the authority and the tenant is a firm in which he or she is a partner, a company of which he or she is a remunerated director, or a body of the description specified in sub-paragraph (d) above; and
 - (h) the address or other description (sufficient to identify the location) of any land in the authority's area in which he or she has a licence (alone or jointly with others) to occupy for 28 days or longer.
15. Within 28 days of the provisions of the authority's code of conduct being adopted or applied to that authority or within 28 days of his or her election or appointment to office (if that is later), a member must register his or her other interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority's monitoring officer of his or her membership of or position of general control or management in any –
- (a) body to which he or she has been appointed or nominated by the authority as its representative;
 - (b) public authority or body exercising functions of a public nature;
 - (c) company, industrial and provident society, charity, or body directed to charitable purposes;
 - (d) body whose principal purposes include the influence of public opinion or policy; and
 - (e) trade union or professional association.
16. A member must within 28 days of becoming aware of any change to the interests specified under paragraphs 14 and 15 above, provide

written notification to the authority's monitoring officer of that change.

Registration of Gifts and Hospitality

17. A member must within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the authority's monitoring officer of the existence and nature of that gift or hospitality.

Monitoring Officer
High Peak Borough Council
Council Offices
Hayfield Road
Chapel-en-le-Frith
High Peak
SK23 0QJ

Tel: 01663 751751

Fax: 01663 751042

E-mail borough-council@highpeak.gov.uk

APPENDIX 3

BULLYING AND HARASSMENT

High Peak Borough Council has an Equalities Policy to which it is fully committed. It wishes to ensure that both members and officers work within a supportive, safe, hostile-free environment, where each individual is afforded dignity and respect.

Each individual is different. The Council values these differences and the contribution that they make in helping to create an organisation capable of serving the High Peak in many complex and diverse ways.

Unfortunately, differences can also provide a trigger for various forms of harassment including bullying.

Where individuals are subjected to harassment, they are often reluctant to complain. They may be too embarrassed or unsure as to how to make a complaint, or concerned that it will not be taken seriously. They may fear reprisals or victimisation. People in this situation probably want to avoid attention being focused on them; they just want the unwelcome behaviour to stop, so they suffer in silence. The consequences may be serious. For the individual concerned, harassment can lead to fear, stress and anxiety that in turn may put strains on family and personal life and result in illness.

DEFINITION

There is not, and probably cannot be, a single simple definition. This is because harassment takes many forms, occurs on a variety of grounds and may be directed at an individual or group of individuals. Harassment may be unintentional but it is not the intention of the perpetrator **but the action itself and the impact on the recipient** which are the important factors.

People can be subject to harassment on a wide variety of grounds including:

- their race, ethnic origin, nationality or skin colour;
- their sex or sexual orientation;
- their disabilities, sensory impairments, or learning difficulties;
- their willingness to challenge harassment, leading to victimisation.

This list is not exhaustive. Anyone who is perceived as different, or who is in a minority, or who lacks power within the organisation is vulnerable.

Harassment may also take many forms. It can range from extreme forms such as violence to less obvious actions like ignoring someone. Whatever the form of harassment it will be behaviour that is unwelcome and unpleasant. Forms of harassment may include:

- threats both verbal or physical;
- actual or apprehended physical contact;
- verbal and written abuse whether by e-mail or text messages, such as jokes, offensive language, sarcasm, insulting innuendo, belittling remarks, personal remarks or criticism especially in front of or copied to others;
- repeated unreasonable requests (hounding);
- visual displays eg posters, graffiti, obscene gestures;
- isolating or ignoring an individual;
- non-co-operation or exclusion;
- coercion, including pressure for sexual favours;
- intrusion by pestering, spying, following;
- any conduct that gives offence or causes embarrassment or humiliation.

BULLYING

Bullying has been defined as:

'Persistent, offensive, abusive, intimidating, malicious or insulting behaviour, abuse of power or unfair penal sanctions, which makes the recipient feel upset, threatened, humiliated or vulnerable, which undermines their self-confidence and which causes them to suffer stress.'

Wherever there is a difference in power, there is the potential for that power to be abused. Members should, therefore, be aware that their position as members may mean some, particularly more junior, officers feel overawed and at a disadvantage.

In such a situation, it is easy for an assertive member to appear to be applying undue pressure. An assertive style on its own will not constitute bullying. However, where actions taken are unreasonable in the circumstances and where it can be shown that the effect has been to undermine dignity and respect, the member may well be guilty of bullying.

Calling for the disciplining of an officer in front of their colleagues (whether verbally or by e-mail, text message or correspondence) or setting impossible deadlines may fall within the definition of bullying, more so where they form a particular behaviour pattern.

THE LAW ON HARASSMENT

Under the Protection from Harassment Act 1997, anyone found guilty of a course of conduct which amounts to harassment will be liable to imprisonment for up to six months and/or to a fine of up to £5000 (where such conduct leads to a fear of violence being used, the term of imprisonment may be for up to five years). The definition of harassment under the Act includes "alarming the

person or causing the person distress". The definition of conduct includes "speech".

DEALING WITH HARASSMENT

Informal Action

In many instances, conduct that may amount to harassment is often not intended to cause offence, but occurs because of a lack of awareness of other peoples' feelings. It is important therefore that, if at all possible, the individual who feels harassed makes their feelings known and asks the harasser to stop. Where this happens and the offensive behaviour continues, the harasser will not be able to claim that they were unaware of the effects of their behaviour.

Notes should be kept of the behaviour complained about, including dates, times, what was said, etc.

Formal Action

If informal action does not result in the harassment ceasing, or where it is considered that more serious harassment has taken place, the individual should make a complaint in writing to the Monitoring Officer. The complaint will be investigated and, depending on the outcome, may be either referred to the Standards Board for England (if a breach of the Code of Conduct has occurred) and/or to the Standards Committee.

APPENDIX 4

PROTOCOL FOR THE USE OF ICT EQUIPMENT AND SERVICES

The protocol and its procedures that follow are in force for a number of reasons, the most important of which are:

- To protect the Authority and its Members from prosecution. This can involve Data Protection, software usage, security and virus issues.
- To protect the assets owned by the Authority. These assets include not only software and hardware but also data.
- To enable you to carry out your duties safely and more effectively.

Remember this protocol is to help all users of ICT Services and is not intended to restrict you in carrying out your normal council activities.

This protocol will be updated from time to time to take into account any changes. It will be widely distributed either electronically or via hard copy.

Any breach of the protocol should be reported to the Monitoring Officer who will investigate and, depending on the outcome, may report the matter to the Standards Board for England if there has been a breach of the Code of Conduct and/or the Standards Committee. This could lead to a removal of your access rights and/or the equipment being removed from your possession.

Procedures for the use of ICT Equipment and Services by Members of the Council

INTRODUCTION

All Members of the Council should familiarise themselves with these procedures.

1. The Council's Policy Statement on Information Systems

In summary the Council's policy is:

High Peak Borough Council is committed to the Electronic Government Strategy (e-Gov) and aims to deliver all its services electronically by 2005.

The Council's Information Communication & Technology (ICT) infrastructure is an essential business asset and should not be compromised or misused by users.

The full text of the council's policy is available on the Intranet in Personnel Practice Note 47.

2. ICT EQUIPMENT AND SERVICES

2.1 Equipment Provision and its Usage

ICT equipment is provided to help you to carry out your role as a councillor.

It is permissible for equipment to be used for:

- Council business
- Communicating with staff, members and the public
- Dealing with official correspondence
- Researching relevant issues

It must **not** be used for:

- Party political purposes
- Personal use

Definition of Party Political Purposes

*There is a clear statutory ban on the use of Council property (including PC's, Laptops copiers, scanners, printers, paper and software) **for any purpose connected with party political publicity**, either at election time or at any other time. At election time there are also detailed restrictions on the use of Council property for other party political purposes as well as publicity. The safest course is to avoid the use of Council IT equipment for any purely **party political purpose at any time.***

*This does not prevent Members from using Council property for **general "political" purposes**, including for example researching an issue which concerns you as a councillor, even though that issue may be politically controversial. Also this does not prevent you from using Council property to work on matters raised by a constituent in your Ward. However, Council property should not be used for processing names and addresses of your constituents for electioneering purposes.*

2.2 Systems and Software

The laptop will be preloaded with installed software to enable you to carry out your role as a councillor or carrying out work as an officer of one of the Council's political groups.

All users are given access to the following systems:

- Microsoft Office
- Adobe (PDF reader)
- GroupWise (e-mail)
- The Council's Telephone A-Z
- Intranet
- Internet

Software and systems may change over time. These changes could include access levels, upgrades or replacements.

The ICT Service, will arrange for you to be given access to any other systems you need to carry out your role as a councillor.

3. USER ID AND PASSWORD

Access to High Peak Borough Council systems is controlled through **User Identifiers (User IDs)** and **passwords**, which will give you the correct level of access required for your role.

- The ICT Service will assign you a User Id and Password.
- Your password is personal to you, **so keep it secret**.
- It is bad practice to write your password down.
- If others learn your password they can access applications that they may not be authorised to use. **You are responsible** for actions that take place on computer systems where access has been gained using your User ID and Password.
- Passwords can be changed on request, by contacting the ICT Service.

4. DATA SECURITY

You are responsible for the computer (laptop) allocated to you and any data it holds.

Make sure that your computer is not left unattended while switched on or while connected to the network.

If you think that an unauthorised person has accessed your computer you should inform the ICT Service immediately and request a new password.

If you are dealing with confidential information, make sure that passers-by or visitors cannot see data on your screen or on printouts.

5. HOUSEKEEPING

Delete unwanted emails as you go. Do not all allow unwanted emails to build up.

Much as a house becomes untidy unless you do housekeeping, you will find your computer disk (C: drive) and the Email Server will fill up with files unless you do some regular housekeeping.

6. VIRUSES

Computer viruses represent a real threat to the continuous functionality of the Council's ICT systems. The Council employs a real time dynamically activated virus checker in order to minimise potential virus attack.

Virus checkers are installed on laptops and networked servers. Auto-update is used to maintain the latest level of virus protection.

Viruses can be extremely damaging to computer systems and can potentially disrupt the work of the Council and the services it provides.

Viruses are usually transmitted through downloading infected software from the Internet, opening infected emails, or installing infected software from removable media such as a floppy disk or CD-ROM.

Because the Council's computers are on a network, a virus can be transmitted very quickly. Therefore you must minimise the risk of infection by adopting the following procedures

- Material downloaded from the Internet should be virus checked before being used. Users should save the files to C:\Download and then use the virus checker to scan the folder.

What to do if you find a virus:

- All virus warnings must be notified to ICT services, who will determine what action needs to be taken.

7. SOFTWARE AND AUDITS

Random electronic audits of HPBC computers, including laptops, are carried on a regular basis. Any unlicensed or unauthorised software will be removed.

All software to be used by the Council will be acquired and installed by the ICT Service. Only software that has been bought by the Council, and is licensed to the Council, can be used on Council computers. Software includes games and screensavers.

It is illegal to copy or install software that has not been obtained under the terms of a software licence agreement. The Council could be liable to prosecution if unlicensed software is found on a Council computer.

8. E-MAIL

E-mail communications, either internal or external, are not guaranteed to be private, or to arrive at their destination within a particular time, if at all. There is also no guarantee that the recipients will read them.

E-mail communications, whether external or internal, are the same as any other correspondence and as such should comply with the Council's Customer Care Policy relating to Written Communications (see *Personnel Practice Note : 21*).

You should be careful what you say in your e-mail messages.

- **E-mail communications have the same legal standing as any other written communication.**
- **Carefully check your e-mail before you send it and do not write anything that you could not explain to a Court or Tribunal.**
- **E-mails that have been deleted may still be recovered for legal purposes**

You must make sure that all e-mailed letters, or memos, that contain contractual details or instructions, are backed up by a paper copy, and signed by the author.

Do not print e-mails indiscriminately. Only print those e-mails that you need to keep for file purposes.

You should not pass on material that has been e-mailed to you personally without the permission of the author.

You must not use e-mail:

- to place orders for goods or services
- to copy or transmit software, documents or other information protected by copyright law
- to abuse, threaten or harass others, send defamatory, obscene, sexist or racist messages or jokes, or use inappropriate language.
- to send an electronic chain letter or in any other way publish junk e-mails (otherwise known as Spam)
- for obtaining or sending inappropriate text and images
- for party political purposes

NB. ICT Services may need to open your mailbox for fault finding purposes, or system maintenance and may need to alter your settings if they are found to be causing problems with the mail system as a whole.

9. INTERNET

The Internet is only to be used for legitimate, council-related research, reference or educational purposes.

You must not use, or try to use, the Council's Internet facilities for :

- placing orders for goods and services
- accessing communications intended for someone else
- breaking through security controls on either internal or external computer equipment or giving someone else the information they need to do so
- accessing or transmitting computer viruses or carrying out any activities that could cause congestion or disruption of computer networks and systems
- obtaining or sending inappropriate text and images as specified in **10.4**
- infringing copyright laws
- downloading or uploading any document, information or software protected by copyright
- knowingly doing anything which is illegal or unlawful.
- to sign up to inappropriate mailing lists

10. THE LAW

10.1 Data Protection (see also separate attached note)

You are responsible for complying with the Data Protection Act 1998 that covers information held in electronic and paper-based form about individuals. It is a criminal offence to collect and process personal data

on your PC unless the use is registered with the Data Protection Registrar. Details of registration should reflect internet use. The ICT Service can provide information about the Council's Data Protection registrations and can give you advice.

The Data Protection Act 1998 considerably increases the obligation on users of personal data, such as:

- banning sending personal data to non-European Economic Area countries with inadequate protection for data subjects;
- prohibition on processing certain 'sensitive data' such as someone's marital status or ethnic origin.

The Act requires holders of data about third parties to be responsible for its security. Failure to secure sensitive information that later becomes compromised could not affect the Council's image but could lead to litigation.

10.2 Computer Misuse

The Computer Misuse Act 1990 covers unauthorised or malicious use of any computer system. It is the law used to prosecute hackers and people who write and distribute computer viruses deliberately.

It is a criminal offence to access, or attempt to access, any computer system you are not authorised to access. This law protects against employees and members of the public who deliberately cause damage to systems and data. The Act also makes it illegal for a person to deliberately delete data or sabotage systems to the detriment of the Council.

10.3 Harassment

You can commit harassment either by using e-mail or sending a harassing message to someone or by downloading and distributing material from the Internet which constitutes harassment because it creates an intimidatory working environment. Harassment and discrimination are unlawful under the Protection from Harassment Act 1997, the Sex Discrimination Act 1975, Disability Discrimination Act 1995 and the Race Relations Act 1976.

As with any form of harassment under the anti-discrimination legislation the intention of the parties is irrelevant. The problem with e-mail is that, with the lack of visual clues, offence may be caused where none was intended.

10.4 Obscene Material

Publishing obscene material is a criminal offence under the Obscene Publications Act 1959. This includes electronic storing and/or transmitting obscene materials that would tend to deprave and corrupt or paedophile material.

10.5 Defamation or false statements

The liability for defamation or false statements applies to electronic communication just as it does to more traditional forms of communication. Anyone who e-mails a libellous or false e-mail message or posts such a message on the Internet will be responsible for it and liable for any damage it causes to the reputation of the victim.

In addition to the liability of the individual who made the libellous or false statement, the Council may also be held liable. This could be either under the normal principles of:

- **Indirect** liability because the Council is considered responsible - known as 'vicarious liability'; or
- **Direct** liability as a publisher because of providing the link to the Internet and e-mail system.

An untrue statement that damages the reputation of a person or company by causing people to think worse of them will generally be defamatory. Similarly, a false statement intended to cause damage to a person or their economic interests can bring a claim for damages.

10.6 Copyright

Computer equipment must not be used to infringe copyright. Copyright laws apply to documents and information published on the web or installed on computers just as they do to magazines or books.

Although any material placed on the Internet or in public discussion areas is generally available, the originator still has moral and, possibly, legal rights over it. You should not copy it without acknowledging the original source and, where appropriate, gaining their permission. This applies even if you modify the content to some extent. Please note that any official material placed on a website is subject to copyright laws.

Copying third party documents without the owner's consent will in nearly all cases constitute copyright infringement, this includes text, graphics, audio and video clips. The most notable exception to this rule is Crown copyright that is not enforced, for example, statutes and printed advice published by the DTLR.

The Council is a signed up member of the Federation Against Software Theft (FAST). Downloading or copying information in breach of

copyright and the Council's membership of FAST will be treated as serious misconduct under the Council's disciplinary procedure.

Random checks may be carried out by ICT Services to ensure that no material in breach of copyright is held on Council computers.

10.7 Contracts

E-mail is generally regarded as an informal means of communication but it is, nevertheless, capable of creating or varying a contract in just the same way as a written letter. You should be careful not to create or vary a contract accidentally.

10.8 Disclaimer

Despite putting confidential disclaimers and, where appropriate, personal disclaimers, on external communications, there is still nevertheless a legal connection to the Council. Always remember that any statement you make may still be construed as representing the Council.

11. WORKING AT HOME

Laptops are provided to members for use at home and on Council premises. Health and Safety rules apply at home when working on Council business.

APPENDIX 5

PROTOCOL FOR LAND USE PLANNING MATTERS AND DEVELOPMENT CONTROL COMMITTEE

1. Introduction

- 1.1 All councillors agree to abide by High Peak Borough Council's Code of Local Conduct that covers the declaration of personal and prejudicial interests in issues before the Council and member behaviour.
- 1.2 This Code is published in Part 5 of the Council's Constitution. The Constitution also includes the Council's procedure rules (standing orders) and the delegation of powers to the Executive, Committees, and officers.
- 1.3 For District Councils, the planning role probably creates the most frequent opportunity for conflict, or apparent conflict, between the interests of councillors, their families, friends and colleagues and the need for decisions to be taken fairly and impartially.
- 1.4 Planning decisions by Councils can have major financial consequences for individuals and businesses or fundamentally affect the quality of life of individuals. Planning proposals are often controversial and excite much public interest and debate – to a much greater extent than other decisions of the Borough Council.
- 1.5 For these reasons, it is desirable to supplement the Code of Conduct with guidance specifically aimed at ensuring that planning matters are dealt with ethically, openly and fairly. This Protocol aims to reinforce existing arrangements and provide supplementary guidance. It has been prepared in the light of advice from the Local Government Association, recent Local Ombudsman decisions and recommendations of the Nolan Commission and the Government White Paper – 'In Touch with the People'.
- 1.6 Failure to follow this Protocol could result in any 'offender' being publicly criticised by the Local Government Ombudsman as well as placing the Council at risk of being taken to Court for a judicial review of its decisions.
- 1.7 Non-compliance with this protocol may also be a breach of the code of conduct as it is conduct which could bring the Council into disrepute. It may therefore, result in a referral to the Standards Board for England and/or to the Council's own Standards Committee.

2. DEFINITIONS

- 2.1 This Protocol applies to councillors. Officers will have regard to the provisions of the Protocol in their own dealings on planning matters.

2.2 'Planning matter' means any decision likely to affect the use or development of land, whether or not the subject of a planning application, and includes decisions on a structure or local plan, responses to consultations by other planning authorities, tree preservation orders, enforcement notices, planning obligations and footpath diversion orders, but does not include

- a) decisions on the disposal of Borough Council owned land;
- b) decisions to apply for planning permission on behalf of the Borough Council.

2.3 'Planning application' includes standard planning applications as well as applications concerning listed buildings, tree preservation orders, advertisements, certificates of lawfulness etc. and decisions on enforcement action.

2.4 'Committee' includes a sub-committee, unless the context indicates otherwise.

3. **LEGAL BACKGROUND**

3.1 Planning applications raise particular issues because they are 'quasi judicial'. This means decisions on planning applications must:

- a) take into account all the relevant facts from all sources;
- b) have regard to the context of the development plan – currently the High Peak Local Plan and the Derbyshire Structure Plan (soon to become the Local Development Framework and Regional Spatial Strategy) – and other relevant material considerations, including Government advice;
- c) take into account only relevant material planning considerations; and
- d) be seen to be fairly decided. That can be shown by adherence to this Protocol.

3.2 Whilst other planning matters do not always raise such issues, the need for openness and accountability is such that similar principles ought generally to be applied.

4. **MEMBERSHIP OF A DEVELOPMENT CONTROL COMMITTEE OR MEMBERS INVOLVED IN LOCAL PLAN POLICY**

4.1 No Councillor may serve on the Development Control Committee or on any sub-committee considering a planning application or on any committee or sub-committee involved in formulating local plan policy unless they have undertaken at least one course of training in planning

principles in the last year. Such training to be undertaken annually thereafter.

- 4.2 Only councillors who qualify under the previous paragraph may act as substitute members on those committees or sub-committees.
- 4.3 Councillors considering membership of the Development Control Committee should carefully consider the potential for conflict of interest, having regard to the Code of Conduct and to this advice. Councillors who may be, or are closely associated with, local builders, estate agents, land owners or other people likely to be interested in the use or development of land will need to consider whether they can effectively perform their role as a member of the Development Control Committee or any relevant sub-committee in the light of such interests.
- 4.4 The requirements for members of the Development Control Committee to undertake training does not extend to members of the Council where a planning application is to be determined by the Regulatory Committee for whom other training arrangements will be made.

5. **NEGOTIATIONS WITH DEVELOPERS, LAND OWNERS AND OBJECTORS**

- 5.1 The Council encourages negotiations between potential applicants and the Council prior to the submission of planning applications as well as negotiations with applicants to improve applications or on planning obligations. Negotiations are also needed with landowners, objectors and potential developers on planning matters, e.g. in the course of preparing a Local Plan. Such negotiations will be held by Officers.
- 5.2 Where it is necessary to involve councillors in negotiations, this will be through the Development Control Sub-Committee. Where, e.g. for reasons of confidentiality, this is not desirable it may be appropriate for the Committee Chair and / or Vice Chair and / or other Committee Chairs/members to be involved provided a senior Planning Officer is also present.

6. **MEETINGS WITH DEVELOPERS, LAND OWNERS AND OBJECTORS**

- 6.1 Applicants, objectors or others may wish to meet with member of the Development Control Committee to ensure that all the facts and issues are before members prior to a decision being made. This should be done through the Development Control Sub-Committee. Where such a meeting is held, other interested parties will be informed and, if appropriate, will be given an opportunity to meet the Sub-Committee or to add any further points in writing.

- 6.2 In order to preserve the integrity and objectivity of the members of the Development Control Committee members should not enter into communications nor meet third parties, applicants or agents, prior to or during the processing of an application unless an officer is present. They should not advise prospective applicants, agents or third parties about the likely acceptability or otherwise of planning proposals. Members should advise those attempting to speak to them about an application that they are unable to speak with them about the application without an officer present. They should be asked to make their representations to a planning officer or in writing to the Planning Section at Municipal Buildings, or if they have a number of representations to be made then they may request a meeting of the sub-committee. The receipt of unsolicited information will not normally require a member to declare an interest provided it is immediately referred on to a planning officer.
- 6.3 Where a planning matter is particularly important or gives rise to widespread public interest, the Chair of the Development Control Committee, in consultation with the Head of Regeneration, may agree to arrange a public meeting to inform the public of the proposals and to receive comments. The following principles will apply to public meetings:
1. their purpose will be to inform the public and obtain views, not to discuss with the Council the merits of the application;
 2. all members of the Development Control Committee and affected ward members will be invited to attend;
 3. notes will be taken of the points raised at the meeting and reported back to Development Control Committee.

7. LOBBYING, BIAS AND PREDETERMINATION

- 7.1 The 'quasi judicial' role of the Development Control Committee and the nature of the local plan making process means that each planning matter must be considered on its merits. This means members of the Development Control Committee (including any substitute members) should:
1. never **commit** the Council in advance of a Committee decision on the way in which a planning matter will be decided until all the relevant information, evidence and arguments have been put before them in a written officers' report and they have listened to the debate relating to the application at Development Control Committee;

2. avoid any indication that they have themselves **reached a conclusion** on a planning application until it comes before the Development Control Committee or a relevant sub-committee.
- 7.2 Where members of the Development Control Committee have strong concerns about a planning application, they may voice those concerns outside a meeting of the Development Control Committee provided care is taken to avoid giving any commitment as set out paragraph 7.1 above. So that a decision is not delayed, the Head of Regeneration should be informed so that the issues can be evaluated in his report to the Committee.
- 7.3 Members of the Development Control Committee or its Sub-committee must not lobby (i.e. attempt to persuade another member to vote the same way as them) other members of the Committee prior to the consideration of a planning application. Particular care must be taken by the political groups. Whilst discussion of a planning application at a political group meeting may be reasonable, a member should not lobby the group to support a particular decision. Equally, the group itself should not declare a 'party line'. It is essential that each member of the Development Control Committee considers the decision on its merits. Votes on planning applications in accordance with a 'party line' are likely to result in an adverse Ombudsman decision or judicial review challenge in the courts.
- 7.4 In any case where a member of the Development Control Committee has expressed publicly a final view on a planning application prior to the meeting when the issue is to be decided, or if a member of Development Control decides to align themselves with an applicant or objector, for example, by becoming involved in a campaign for or against a particular planning application, or by giving the impression that they have aligned themselves with any party by having private meetings with them, then they must declare an interest, leave the room during discussion of the application and not vote thereon.
- 7.5 It is inappropriate for members of Development Control Committee or their substitutes to present arguments to the Committee on behalf of applicants or objectors as it will compromise the member's impartiality or appearance of impartiality. Any person wishing to make representations to the Committee may speak in person or through any other person who is not a member of the committee, or may make representation in writing to the Council which will be brought to the attention of the Committee.
- 7.6 Councillors who are on the County Council or a Parish Council Committee meeting which is for or against a planning application must declare an interest. Subject to the comments at 7.7 below if the member has voted for or against the application at a Parish or County Council meeting they must declare a personal and prejudicial interest,

leave the room during discussion of the application and not vote thereon.

- 7.7 If prior to voting at the Parish or County Committee meeting the member makes the following declaration

'I hereby declare and would like recorded in the minutes that my vote today reflects the information which I have before me now and that I reserve the right to change my mind at the Development Control Committee meeting at which this application is later to be decided, when I have had a chance to fully consider the officers report and any other representations that may be made at that meeting.'

Then the member may declare an interest at the Development Control Committee but stay, debate and vote.

- 7.8 If the County Council, Parish Council or any body on which a Councillor sits has a financial interest in the planning matter, Borough councillors who belong to those Councils or bodies should normally declare a personal and prejudicial interest, leave the room during discussion of the application and not vote thereon.
- 7.9 In the case of an application by the Borough Council or application affecting Borough Council land (which is to be decided by the Council) the report will make clear that the Council is the applicant or the nature of the interest in the application. It will not be necessary for Borough councillors to declare an interest in that case **unless they are a member of the Executive** in which case they must declare a personal and prejudicial interest and leave the room. Because the Council is not able to appeal against the decisions of its own Development Control Committee, recommendations for refusals by the Committee of planning permission for Council development are referred to a special ad hoc panel of five members of the Regulatory Committee who are not members of the Development Control Committee.
- 7.10 In considering an application by the Borough Council or any application affecting Borough Council land, Members must not have any regard to other benefits (not being material planning considerations) that may accrue to the Council as a result of the decision.
- 7.11 **Members of the Development Control Committee or other Committee or sub-committee considering a planning matter should consider not just whether they have a declarable interest but how their actions would be SEEN by others. Councillors always need to be in a position to ensure that they can answer satisfactorily for the actions they have taken. If there is any doubt, the interest should be declared.**

8. SITE VISITS

- 8.1 Site visits will normally be held on the day of the Development Control Committee before consideration of the Head of Regeneration's report.
- 8.2 The purpose of the site visit is to obtain additional information or clarification about a proposal and to view it in context, where it is difficult to assess the impact of the application from the submitted descriptions and drawings. The reasons for the site visit will be recorded on the site visit itinerary issued to Committee members
- 8.3 Items which are to be the subject of site visits will be decided by members in conjunction with officers at the review of the applications on the draft agenda at the mid Development Control cycle briefing meeting. The Sub Committee will also consider requests from members, applicants, objectors and officers for site visits in the same way. If after receiving the committee agenda for the meeting when the provisional site visit itinerary has been drawn up any members would like the Committee to visit additional sites, they should inform the Head of Regeneration or the Development Control Manager by noon on the Thursday preceding the meeting.
- 8.4 Because of the need to determine planning applications within the statutory eight-week period, there will be a strong presumption that planning matters will not be deferred to a future meeting to enable a site visit to take place.
- 8.5 Site visits are scheduled to allow for approximately 5 - 10 minutes per site unless the issues are complex, the site is very large or a particular vantage point is required as to need more time.
- 8.6 Members of the Committee will usually travel together by minibus but may meet at the site if they wish, this also applies to local ward members who are not members of the Committee but who are invited to attend the site inspection. Officers will attend the site visit to advise members.
- 8.7 Where possible the site will be inspected from a vantage point without the need to enter private property. If it is necessary to enter private property to view the site officers will make appropriate arrangements.
- 8.8 Site visits will not be used to discuss a planning matter with developers or objectors, who will not therefore be allowed to address the members present. They will have an opportunity to do so at the Development Control Committee if they so choose.
- 8.9 The business of the visit is conducted in the following manner:
 - a) the officer will outline the application and the issues particularly those that have generated the site visit.

- b) Members are invited to ask questions about the site and request any other information.
 - c) no other persons are permitted to address the Committee, although any persons, if present, are permitted to listen.
 - d) in the event of a question of fact being asked that an officer is unable to answer, the information may be obtained from an attendee at the meeting and reported back to the Development Control Committee.
- 8.10 Any information obtained or points of note from the site visit should be reported back to the committee members who were unable to attend the site visit.

9. COMMITTEE PROCEDURES

- 9.1 All planning matters considered by the Council or one of its committees will have a full written report from officers including a reasoned assessment of the issues under consideration and a recommendation from the relevant officers.
- 9.2 Members must read all reports before the Development Control Committee meeting and any issues that are likely to delay the decision making process should be raised with officers before the meeting, e.g. requirement for a site visit, inaccurate plans or information or any legal issues, so that they can be dealt with prior to the meeting.
- 9.3 Members should respect the role of officers to make their recommendation and not put pressure on individual officers to secure a particular recommendation in any particular case.
- 9.4 If an individual member wishes their views to be considered and reported as part of the officers report, representations must be made in writing to the Head of Regeneration.
- 9.5 Any new issues arising between the date when an agenda has been circulated and the date of the meeting will be put in a written report on the day of the meeting. Exceptionally, where this is not possible, any late information will be recorded in the Minutes of the meeting.
- 9.6 Applicants and objectors may address the Development Control Committee personally or through an agent prior to consideration of the application by members. Where the County Council, as Structure Planning Authority or as Highway Authority, has raised objections on a planning matter, and has indicated that it wishes to address a Committee, its representative will be invited to the meeting and will be heard before a decision is taken.

- 9.7 Speakers other than members of the Development Control Committee will be allowed to speak for 3 minutes, objectors first, applicant second. Where there is more than one objector or applicant they will be asked to appoint a spokesperson or be restricted to 3 minutes between them. On very large/unusual applications or where there are numerous speakers arrangements will be made to ensure that objectors and applicants get equal opportunity to put their case.
- 9.8 Members of the Committee may ask questions of any speaker after they have made their representations, care should be taken to allow the speaker to answer the question but not to then continue to put his or her case.
- 9.9 Once a third party has put their case and answered any questions they may not speak again unless, at the discretion of the chair, they are asked to clarify a matter of fact.
- 9.10 All participants at the Development Control Committee; members, Officers, applicants and other third parties are entitled to be treated with respect. Planning applications are of immense importance to applicants and to those who are likely to be affected by them, feelings can often run high. Members should pay close attention to speakers at the Committee and no person should speak when another person is speaking.
- 9.11 A member who wishes to propose a decision be taken contrary to officer advice should make clear his/her planning reasons for doing so at the time of making the proposal.
- 9.12 Where a proposal has been made and seconded to take a decision contrary to officer advice the Chair will allow the Senior Planning Officer present at the meeting to respond before the vote is taken, if necessary members can debate the officer's advice further before taking the vote.
- 9.13 Except in exceptional circumstances and at the discretion of the Chair, non Development Control Committee members may not speak at the Committee on applications that are not within their ward or directly affecting their ward. Those members who do speak should confine themselves to planning matters and speak after any third parties have made their representations. They may not participate in the debate.
- 9.14 Where the Committee decide to take a decision contrary to officer advice either to refuse or grant an application, the planning reasons for the decision shall be given by the proposer and noted in the minutes of the meeting.

10. DECLARATIONS OF INTEREST

- 10.1 If there is any doubt about whether or not an interest should be declared, the Head of Legal and Democratic Services and / or the Solicitor is prepared to offer advice, but the onus lies on councillors themselves to determine whether or not they have an interest. Only councillors are aware of the full extent of any interest they may have.
- 10.2 Particular care should be taken where an applicant or objector is known to a councillor. This not only applies to relatives and friends but to people one regularly meets, e.g. at a pub or in a church, and to fellow members of clubs and other organisations including political parties.
- 10.3 If during a debate on a planning matter, it becomes apparent to any person attending the meeting that a councillor might have an interest to declare, the Chair shall be informed immediately and an opportunity given for the councillor concerned to consider their position.

11. COMPLAINTS

- 11.1 Any issue or concern arising from this Protocol should be raised with the Head of Legal and Democratic Services. Complaints will, in the first instance, be investigated by the Head of Legal and Democratic Services as monitoring officer unless they are matters which disclose a breach or potential breach of the Code of Conduct in which case they will be referred to the Standards Board for England. Complaints relating to the breach of this Protocol may also be referred to the Council's own Standards Committee if appropriate.
- 11.2 If the decision in respect of which the complaint arose has not yet been implemented, the Head of Legal and Democratic Services will consider whether or not the decision should be suspended or referred back to the Development Control Committee for further consideration.

12. PUBLICATION

- 12.1 The Protocol will be made available to all Councillors upon their election. It will also be made available to all members of the Development Control Committee at the time of their appointment to the Development Control Committee.
- 12.2 This Protocol is available on the Council's intranet and internet sites as part of the Council's Constitution.

APPENDIX 5

PROTOCOL FOR RADIO INTERVIEWS

- The Leader, Deputy Leader or the appropriate Executive Member will deal with items relating to Council policy.
- In the event of the Leader, Deputy Leader or Executive Member being unavailable, and an urgent response being required, the Chief Executive or the appropriate Strategic Director will deal with the matter.
- Opposition members may wish to be interviewed to comment on Council policy. This is seen as a welcome part of the normal democratic process.
- Select Committee Chairs may wish to promote the work being undertaken by the Committee, providing a balanced view of the Committee's discussions and decisions.
- Any member is free to appear on local radio on any issue. However, members are urged to ensure that they are aware of the line taken by the Council on the issue and the implications of their comments and do not give the impression that they are speaking on behalf of the Council unless expressly authorised to do so.
- Officers are encouraged, in consultation with the Executive Member and the Press office, to speak on the radio on matters of public information.
- Officer representation should generally be at Strategic Director, Service Head or Manager level. Other officers (e.g. those with specialist knowledge) may also be interviewed, provided they have authorisation from their Service Head or Manager.
- In some circumstances, we may need to say that no-one from the Council is available for comment. We may, for example, need more time to prepare a full response.
- Where Partnership matters are concerned (e.g. Town Regeneration Partnerships, Community Safety Partnership), we should encourage the Chair of the Partnership to be interviewed. However, where the particular issue directly affects the Borough Council it is essential that the lines are cleared beforehand. This may require the relevant Executive Member to be interviewed instead of, or as well as, the Partnership Chair.
- Partnership Officers are encouraged to appear on matters of information relating to Partnership activity.
- OFFICERS SHOULD CLEAR RADIO INTERVIEWS WITH THE PRESS OFFICE BEFOREHAND. However, it is recognised that, on occasion (e.g. at

weekends) this may not be practicable. In these circumstances, officers should advise the press office of their interview as soon as possible after the event.

APPENDIX 7

CODE FOR MEMBERS ON OUTSIDE BODIES

1. Members are appointed formally by the Council and the Executive annually to serve on a range of outside bodies, including voluntary organisations, local government associations and companies.
2. In carrying out that role, Members act both as individuals and as representatives of the Council. What does that entail?
 - a) **Positively**
 - It entails acting according to the rules, constitution and framework set by the outside body
 - It entails making independent and personal judgements in line with their duty of care to the outside body
 - It entails reporting back, at least annually, to the Council
 - It entails behaving ethically and following as far as applicable the Code of Conduct
 - It entails taking an active and informed role in the management of the outside body's affairs
 - b) **Negatively**
 - It does not entail representing the political party to which members owe their political loyalty
 - It does not entail avoiding taking part in the outside body's discussions and decisions
 - It does not entail looking at things simply from the Council's perspective
 - It does not entail being there in name only and merely turning up to meetings
3. The role of members on outside bodies may give rise to occasional uncertainty and perhaps to conflicts of interest. The attached appendix offers a simple legal guide on the responsibilities of members and officers. Members are asked to read the guide and if there are issues arising from their particular situation at any time, members should contact the Head of Legal and Democratic Services for advice.
4. Members (and officers) are under a specific obligation as a result of the 1995 Local Authorities (Companies) Order to report back to the Council on their involvement in outside companies to which they have been nominated by the Council. That obligation is best met by an annual report with an opportunity for questions. While the law now makes this a requirement for involvement in outside companies, it is self-evident that the requirement to report back should apply to involvement in all outside bodies.

5. Members will appreciate that this guide and also the Code of Conduct does not address all of the issues around the possibility of conflicts of interest. In essence, if the outside body comes into conflict with the Council and the member is a director, trustee or on the management committee of the outside body, it is likely that the member's prime duty would be to the outside body in the conduct of the outside body's affairs. The member is, however, also given discretion by the Code of Conduct to decide whether it is appropriate to participate in Council decision-making affecting the outside body to which he or she has been appointed.

6. If there is a major dispute between the Council and the outside body, then the member may be placed in an untenable situation. Before taking any action, the member is advised to seek the head of Legal and Democratic Services.

7. At the end of the day, it is possible that the member may find he/she is unable adequately to carry out their responsibilities properly, both as a member of the Council and as a member or director of the outside body. But that would be an exception, and should not deflect members generally from being prepared to participate in the management and running of outside organisations.

A GUIDE TO THE LAW FOR MEMBERS AND OFFICERS ON OUTSIDE BODIES

This advice is for members and officers who represent the Council on organisations outside the Council whether as a company director, a trustee of a charity or a representative on a management committee.

It simply sets out some of the most important responsibilities. It is not meant to be a comprehensive guide. If members or officers have queries then the Head of legal and Democratic Services will be happy to advise on any particular concern.

1.0 General

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

2.0 Companies

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

A director is an agent of the company. His/her prime duties are as follows:

- (1) A fiduciary duty to the company (not individual shareholders) to act honestly and in good faith and in the best interests of the company as a whole. Directors are therefore in the position of 'quasi trustees' who must take proper care of the assets of the company. The fiduciary duty of the director towards the company is very similar to the fiduciary duty of Councillors to the Council Tax payers of the Borough.
- (2) A general duty of care and skill to the company, but a director requires no greater skill than might reasonably be expected of someone of that individual's particular knowledge and experience. A director is not deemed to be an expert, but is expected to use due diligence and to obtain expert advice if necessary.

- (3) Like a Councillor in respect of Council decisions, the director is under a duty to exercise independent judgement though it is permissible for him/her to take account of the interests of a third party which he/she represents. In such a case the director must disclose that position and tread a fine line between the interests of the company and the party represented (in this case the Council). The director cannot vote simply in accordance with the Council mandate. To do so would be a breach of duty.
- (4) There may be actual or potential conflicts between the interests of the Council and the interests of the company. In such circumstances the only proper way for the conflict to be resolved is to resign either from the company or from the Council.
- (5) Directors are not allowed to make a private profit from their position. They must therefore disclose any interests they or their family may have in relation to the company's contracts. Whether they are then allowed to vote will depend on the Articles of Association.
- (6) Directors must ensure compliance with the Companies Acts in relation to the keeping of accounts, and that the relevant returns are made to the Register of Companies. Failure to do so incurs fines and persistent default can lead to disqualification as a director.

2.5 Directors' Liabilities

- (1) The company's identity must clearly be shown on its stationery. The company number, place of registration, registered office address and if any of the directors' names are shown then they must all appear. Non-compliance is an offence and the directors and company officers can be fined.
- (2) A company can only act within the scope set out in its Memorandum of Association (the document which sets out the objects of the company). Those directors knowingly causing the company to act beyond the activities set out in the Memorandum will be liable personally. In very limited circumstances it is possible for the actions of the directors to be ratified by the members of the company.
- (3) A director may also be liable for breach of trust, if he/she misapplies the money or property of the company. Directors may also be liable if they fail to take action to prevent the breach of a co-director of which they are aware.
- (4) In the event of failure to act in accordance with the best interests of the company, or if a director uses his/her powers improperly or makes a personal profit from his/her position as director, then the director may be personally liable for loss to the company and

may be required to give to the company the personal profit made.

- (5) If the level of skill and care shown by a director falls below that which could be reasonably expected and the company suffers loss, the director will be liable for the loss incurred. However if it believes the director acted honestly and reasonably, a Court may excuse the director the liability.
- (6) If a director knows or ought to know that there is no reasonable prospect of the company avoiding liquidation, a Court may require that director to contribute to the company's assets on liquidation if the company continues to trade. This is known as wrongful trading. No such order will be made if the Court is satisfied that the director took all reasonable steps to minimise the loss to the creditors. If a director has concerns about the company's financial position he/she could be well advised to inform the other directors and seek advice from the company auditors. He/she should try to ensure that further debts are not incurred.
- (7) A director will also be liable if, to his/her knowledge, the company carries on business with intent to defraud creditors or any other person, or for any other fraudulent purpose. Fraudulent trading can also lead to disqualification from acting as a director.
- (8) All cheques and similar documents that are purported to be signed on behalf of the company must bear the company name. Where they do not, the director signing on behalf of the company may be liable to a fine and may also be liable to the payee if the company fails to honour the cheque. It is therefore wise for directors to make sure that all documents they sign on behalf of the company state very clearly that they act as agent for the company, (eg Director, for and on behalf ...).
- (9) A third party who enters into a contract on the assumption that a director has power to bind the company, may be able to claim damages against the director if it subsequently transpires that the director had no such power. Directors would be well advised to ensure that contracts are approved by the board and that the authority to enter into any contract has been properly delegated before signing it.
- (10) Though company liability ceases on dissolution, the liability of the directors (if any) may still be enforced after dissolution.

2.6 Indemnities

- (1) Directors cannot be indemnified against liability arising out of negligence, default, or breach of duty or trust. However the

company's Articles of Association may allow for directors to be indemnified by the company in respect of the cost of defending such proceedings if the director is granted relief by the Court or acquitted. It is lawful for companies to purchase insurance to protect its directors against claims of negligence, breach of duty, trust, default. Directors would be well advised to ensure that such a policy of insurance is maintained at all times.

- (2) It is not possible for the Council to provide indemnities or insurance for Councillors acting as directors.

2.7 Local Authorities (Companies) Order 1995

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

- (2) "Regulated companies" are so defined if they are controlled or influenced by the local authority.

"Influenced companies" under the effective control of the local authority, will be subject to capital finance regime and special propriety controls. In broad terms, the test as to whether companies are local authority influenced is whether the local authority has the right to or in fact does exercise a dominant influence over the company in question.

- (3) The original concepts of controlled, influenced and minority interests in companies were introduced by the 1989 Act. "Influenced" means at least 20% local authority interest plus a business relationship with the company accounting for over 50% of the company's turnover and/or the company is located on local authority land leased or sold for less than best consideration.

"Controlled" means over 51% local authority interests, and "minority" less than 20% interest. The concept in the 1989 Act stands, but the Order introduces the term "regulated".

- (4) Councillors who are directors of outside companies to which they have been nominated by the Council are under the following obligations:

- (a) that the remuneration they receive from the company should not exceed that received from a local authority, and should be declared;

- (b) to give information to Councillors about their activities as required by the local authority (save for confidential information); and
- (c) to cease to be a director immediately upon disqualification as a Councillor.

3.0 Charities

3.1 To be a charity an organisation must operate for a charitable purpose. There are four:-

- the relief of poverty and human suffering
- the advancement of education
- the advancement of religion
- the benefit of the community

It must operate for the public benefit and have exclusively charitable purposes. An organisation which operates for political purposes will not qualify for charitable purposes.

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

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

3.4 Trustees' Duties

- (1) Trustees must take care to act in accordance with the Trust Deed and to protect the charity's assets. They are also responsible for compliance with the Charities Acts.
- (2) Trustees must not make a private profit from their position. They must also perform their duty with the standard of care which an ordinary, prudent business person would show. Higher standards are required of professionals, and in relation to investment matters.
- (3) Charitable trustees must ensure that the information relating to the trust and trustees is registered with the Charity Commissioners and that annual accounts and returns are completed and sent.

- (4) If charitable income exceeds £5,000, the letters, adverts, cheques etc., must bear a statement that the organisation is a registered charity.
- (5) Trustees are under a duty to ensure compliance with all relevant legislation (eg in relation to tax matters).

3.5 Trustees' Personal Liability

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

3.6 Indemnities

An indemnity can be given from the trust fund provided the trustee has acted properly and within his/her powers. Trustees may take out insurance to protect themselves against personal liability but not for criminal acts, fraud etc. There will be no problem if the trustee themselves pay the premiums but if they are paid out of the charitable funds the trustees will need the consent of the Charity Commissioners unless the trust deed allows it.

4.0 Committee of Management

4.1 Unincorporated Associations

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

4.2 Property will have to be held by individuals as the organisation has no existence of its own.

4.3 Duties

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

4.4 Liabilities

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

4.5 Indemnities

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