



STANDARDS COMMITTEE

— Agenda —

**WEDNESDAY
4 FEBRUARY 2009**

7.00 PM

COMMITTEE ROOM 4

**HAMMERSMITH
TOWN HALL
LONDON W6 9JU**

Membership

Mr. Steven Moussavi
Mr. Christopher Troke
Ms Grace Moody-Stuart
Mrs Joyce Epstein
Councillor Nicholas Botterill
Councillor Donald Johnson
Councillor Lisa Homan
Councillor Adronie Alford
Councillor Stephen Cowan

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Issue Date: 26 JANUARY 2009

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1.	MINUTES – 24 NOVEMBER 2008	1-5
	To confirm and sign the minutes of the meeting held on 24 November 2008 as an accurate record.	
2.	APOLOGIES FOR ABSENCE	
3.	DECLARATION OF INTERESTS	
	<p>If a Councillor has any prejudicial or personal interest in a particular report they should declare the existence and nature of the interest at the commencement of the consideration of that item or as soon as it becomes apparent.</p> <p>At meetings where members of the public are allowed to be in attendance and speak, any Councillor with a prejudicial interest may also make representations, give evidence or answer questions about the matter. The Councillor must then withdraw immediately from the meeting before the matter is discussed and any vote taken unless a dispensation has been obtained from the Standards Committee.</p> <p>Where members of the public are not allowed to be in attendance, then the Councillor with a prejudicial interest should withdraw from the meeting whilst the matter is under consideration unless the disability has been removed by the Standards Committee.</p>	
4	CODES AND PROTOCOLS	6-7
	To review the Statutory Codes of Conduct and LBHF Local Protocols & Guidance to Members, as set out in pages 360-413 of the Council's Constitution, and recommend any changes.	APPENDICES 8-61

5	CODE OF PRACTICE ON PUBLICITY	62-69 APPENDIX 70-103
	To note the current consultation taking place and to make any comments to be included in the Council's response.	
6	ANNUAL NORTH WEST LONDON STANDARDS SEMINAR	104-105
	To receive any feedback on this event to be held at Brent Town Hall on 27 January 2009.	
7	WORK PROGRAMME	106-107
	To note the Committee's updated work programme for 2008/2009	



STANDARDS COMMITTEE —Minutes—

1

24 NOVEMBER 2008

Members Present:

Mr. Christopher Troke (Chairman)
Mrs. Joyce Epstein
Mr. Steven Moussavi
Ms Grace Moody-Stuart
Councillor Nicholas Botterill
Councillor Stephen Cowan
Councillor Lisa Homan
Councillor Donald Johnson

Officers in attendance:

Kayode Adewumi, Head of Councillors' Services
Michael Cogher, Assistant Director (Legal & Democratic Services)
David Bays, Committee Co-ordinator

ITEM

ACTION

1

**MINUTES OF THE MEETING OF THE STANDARDS
COMMITTEE HELD ON 2 JUNE 2008**

RESOLVED - That the minutes of the meeting held on 2 June 2008 be agreed and signed as an accurate record.

KA/DB to note

2 **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillor Alford and for late arrival from Councillors Botterill and Cowan.

ACE/KA/DB to note

3 **RESIGNATION OF MEMBER**

The Committee received a report on Miss Onwere's resignation, following her appointment as a legal adviser with another authority. They also considered the implications for the Council, bearing in mind that at the time of her appointment the Council were only seeking the appointment of 1 additional Member but the Standards Committee Appointment Panel had recommended to the Council both her name and that of Mrs Joyce Epstein as new Members.

RESOLVED - That the resignation of Miss Oluchi Onwere be noted and that no further action be taken to recruit a replacement for her as an Independent Member for the time being.

4 **DECLARATIONS OF INTEREST**

There were no declarations of interest.

5 **CONSULTATION PAPER ON CODE OF CONDUCT**

MC

The Committee considered the Government's proposals for revising the Model Code of Conduct, the Relevant Authorities (General Principles) Order 2001 and the introduction of a Model Code of Conduct for Local Government Employees. A draft response was also attached to the agenda.

On the definition of "criminal offence", Members wished to see this confined to serious offences such as assault, harassment, fraud and child pornography offences; trivial offences such as police cautions would therefore be excluded. It was agreed that the definition proposed should be offences of violence, dishonesty and sexual offences.

On the time limit for Members undertaking to observe the Code, the Committee suggested this be 2 months from the date of the Members being notified rather than 2 months from the date of adoption of the Code.

On the issue raised in the paper about imposing the Code on all employees, including those subject to a separate professional code, the Committee favoured a response which would include a suggestion that other professional bodies should bring their Codes in line with those for local authorities.

On the two-tier model being proposed for selecting “qualifying employees”, the Committee favoured the “political restriction” model of the 1989 Act.

On the issue as to whether qualifying employees should publicly register their interests, the Committee agreed that they should and that those matters requiring registration on the employees’ code should be consistent with those applying to members.

With the exception of the above comments, the Committee agreed with the suggested responses set out in the report.

Resolved – That the suggested comments on the Government’s consultation as amended by the above be forwarded to the Department for Communities and Local Government as the Council’s response.

6 LOCAL ASSESSMENT OF COMPLAINTS

Resolved - That the Committee note the report on activity so far during 2008-09 on discharging the Committee’s new role in dealing with complaints against members together with recent guidance issued by the Adjudication Panel about accepting references from Standards Committees.

7 ANNUAL ASSEMBLY OF STANDARDS COMMITTEES

Mrs Joyce Epstein reported on her attendance at the Annual Assembly. She felt that most Standards Committees were trying to find a role. It seemed many were trying to broaden their remit to cover issues such as audit, monitoring ombudsman complaints, fraud, training as well as the investigation of complaints. The Committee discussed whether, in the light of experiences in other authorities, it should be more pro-active in other areas. It noted that its activities over the past 12 months had included local assessment of complaints, suggesting and initiating training, publicising the Standards Board DVD, distributing the Code Quiz to all Members, together with the publicity in the local press and on the website about the local assessment of complaints. These were sufficient for the Council’s needs at present. However, the Committee asked Mrs Epstein to circulate a note on her thoughts on the Assembly for future consideration.

Resolved - That the report be noted and Mrs Epstein be thanked for her attendance at the Assembly and circulate a note on her thoughts on conference for future consideration.

8 **ANNUAL NORTH WEST LONDON STANDARDS SEMINAR**

The Committee noted that this year's event would be held at Brent Town Hall on 27 January 2009 and would be addressed by James Goudie, QC.

Resolved - That the Chairman and appropriate officers attend the forthcoming Seminar. **KA/DB**

9 **WORK PROGRAMME.**

RESOLVED: That the Work Programme be noted and agreed. **ALL**

- Standards Committee -

Meeting began : 7:00 pm
Meeting ended : 8.40 pm

CHAIRMAN.....



STANDARDS COMMITTEE

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4 FEBRUARY 2009

CONTRIBUTORS

WARDS

ADLDS
HCS

CODES AND PROTOCOLS

Summary

This report attaches the Statutory Members and officers' Codes of Conduct adopted in 2007 together with the LBHF Local Protocols & Guidance for Members, set out in pages 360-413 of the Council's Constitution for discussion of any parts the Committee may wish to recommend changing. As there will be another meeting of the Committee on 1 April, there will be a second chance to consider these then.

RECOMMENDATION:

That comments on the attached Codes, Protocols and Guidance be made to the Council at its Annual Meeting on 27 May 2009.

1. **Background**

The current model code of conduct was adopted in May 2007 on the basis that the provisions of the code would be reviewed in the light of early experience of its practical operation. Similarly, the LBHF Local Procols & Guidance for Members were adopted at the same time and are due for review.

The Committee is due to meet again on 1 April 2009 so there will be another opportunity for review these Codes then and still be in time to make recommendations to the Council's Annual Meeting on 27 May 2009.

**LOCAL GOVERNMENT ACT 2000
BACKGROUND PAPERS**

No.	Brief Description of Background Papers	Name/Ext. of holder of file/copy	Department/Location
1.	Council's Constitution, edition 2008-9	Michael Cogher, Ext 2700	FCS, Legal Division, Room 133a HTH

STATUTORY MEMBERS' CODE OF CONDUCT

THE LOCAL AUTHORITIES (MODEL CODE OF CONDUCT) ORDER 2007

THE CODE OF CONDUCT

Part 1

General provisions

Introduction and interpretation

1. —(1) This Code applies to **you** as a member of an authority.

(2) You should read this Code together with the general principles prescribed by the Secretary of State^[13].

(3) It is your responsibility to comply with the provisions of this Code.

(4) In this Code—

"meeting" means any meeting of—

(a) the authority;

(b) the executive of the authority;

(c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

"member" includes a co-opted member and an appointed member.

(5) In relation to a parish council, references to an authority's monitoring officer and an authority's standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

2. —(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3. —(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006^[14]);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

4. You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You—

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986^[15].

7. —(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

(a) your authority's chief finance officer; or

(b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2

Interests

Personal interests

8. —(1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision;
or

(iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body 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 person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9. —(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you 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) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000^[16].

Prejudicial interest generally

10. —(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of—

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

(ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

(iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;

(iv) an allowance, payment or indemnity given to members;

(v) any ceremonial honour given to members; and

(vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

12. —(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3

Registration of Members' Interests

Registration of members' interests

13. —(1) Subject to paragraph 14, you must, within 28 days of—

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive information

14. —(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Statutory Officers' Code of Conduct

[Note: A statutory Model Code of Conduct for Local Government Employees is still awaited – the Government's draft Model Code of Conduct, on which stakeholders were last consulted in August 2004, is set out below.]

Model Code of Conduct for Local Authority Employees

THE EMPLOYEES' CODE OF CONDUCT

Honesty, Integrity, Impartiality and Objectivity

1. An employee must perform his duties with honesty, integrity, impartiality and objectivity.

Accountability

2. An employee must be accountable to the authority for his actions.

Respect for Others

3. An employee must –

- a) treat others with respect;
- b) not discriminate unlawfully against any person; and
- c) treat members and co-opted members of the authority professionally.

Stewardship

4. An employee must –

- a) use any public funds entrusted to or handled by him in a responsible and lawful manner; and
- b) not make personal use of property or facilities of the authority unless properly authorised to do so.

Personal Interests

5. An employee must not in his official or personal capacity –

- a) allow his personal interests to conflict with the authority's requirements; or
- b) use his position improperly to confer an advantage or disadvantage on any person.

Registration of Interests

6. An employee must comply with any requirements of the authority –
- a) to register or declare interests; and
 - b) to declare hospitality, benefits or gifts received as a consequence of his employment.

Reporting procedures

7. An employee must not treat another employee of the authority less favourably than other employees by reason that that other employee has done, intends to do, or is suspected of doing anything under or by reference to any procedure the authority has for reporting misconduct.

Openness

8. An employee must –
- a) not disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required by law to do so; and
 - b) not prevent another person from gaining access to information to which that person is entitled by law.

Appointment of staff

9. (1) An employee must not be involved in the appointment of any other decision relating to the discipline, promotion, pay or conditions of another employee, or prospective employee, who is a relative or friend.

(2) In this paragraph –

- a) “relative” means a spouse, partner, parent, parent-in-law, son, daughter, stepson, stepdaughter, 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 (a) above means a member of a couple who live together.

Duty of trust

10. An employee must at all times act in accordance with the trust that the public is entitled to place in him.

MEMBER / OFFICER PROTOCOL

1. INTRODUCTION

- 1.1 The traditional (and legal) position of local authority officers is that they are employees of, and serve, the whole Council. Officers support and advise the Council and constituent parts of its decision-making machinery, implement Council decisions, and may take decisions formally delegated to them through the scheme of delegation. All officers are required to be politically neutral, and for senior officers, this is enforced through the political restrictions of the Local Government and Housing Act 1989.
- 1.2 A copy of the draft Model Code of Conduct for Local Government Employees is set out elsewhere in this Constitution.
- 1.3 When the Council introduced its new political management and decision-making arrangements in 1998, it reviewed and updated its local codes and protocols to reflect the introduction of a political Executive. The changes reflected the shift towards more visible and accountable roles for elected members, and a relationship with chief officers which moved closer to the traditional civil servants relationships to Ministers.
- 1.4 For the Council's current Constitution, these principles remain largely unchanged. The role of Cabinet Members, and a set of ground rules governing working relationships between Cabinet Members and Directors/chief officers, is set out below in a formal local protocol. Further local protocols similarly set out the role of Chairmen of Scrutiny bodies and their relationship with officers, and the role of the Opposition and their relationships with officers.
- 1.5 A summary of the principles applying to chief officers are set out below:
 - a) Chief Officers are employed to serve the whole Council, and remain ultimately accountable to the whole Council. They are also expected to provide a high level of support to the Administration of the day, to give advice to Cabinet Members, and to pursue and implement all lawful policies and decisions made by the political Executive (Leader and Cabinet Members) via the Council's formal decision-making processes.
 - b) All officers are required to be politically neutral, and for senior officers this is enforced through the political restrictions of the Local Government and Housing Act 1989. All officers are required to abide by the Council's local Code of Conduct for staff.
 - c) Chief officers have individual responsibilities as defined in their job descriptions or delegated from full Council. In some cases, these will include professional or technical responsibilities of a statutory nature

(e.g. regulatory functions, proper officer functions). These functions need to be exercised without inappropriate interference, either from Councillors or from outside parties.

d) Chief officers with professional responsibilities may also have a duty to observe codes and standards set by outside professional bodies (e.g. accountancy, law, structural engineering). There may be occasions when these require to be treated as over-ruling the views of Cabinet Members or Council policy decisions (and should such circumstances arise, chief officers will need to report the position via the decision-making process).

e) The Chief Executive and chief officers have a collective responsibility to advise the Council on its priorities, allocation of resources and forward programmes.

f) Officers should conduct themselves with integrity, impartiality, and honesty. They should give honest and impartial advice to the Leader and Cabinet Members without fear or favour, and make all information relevant to a decision available to them. They should not deceive or knowingly mislead Cabinet Members, other Councillors, or the public, or withhold information that may be relevant to a decision.

g) In their dealings with backbench Councillors and Opposition Councillors, officers should give careful consideration to the stage that policy deliberations or decisions have reached. Officers owe a duty to respect the confidentiality of the policy formulation process within the Council's political Executive (Leader and Cabinet Members), and where necessary should ask backbench or Opposition Councillors to understand and respect their position in so doing.

h) These principles apply to papers generated for policy formulation purposes within the Council's political Executive (Leader and Cabinet Members) or for initial discussion at party groups. It is a long-standing convention of the Council that such papers are treated as confidential, and officers should respect this principle, subject to the statutory provisions on access to information set out in the Local Government Act 1972 (as amended), the Freedom of Information Act 2000 and the Access to Information Procedure Rules set out in the Council's Constitution.

i) Once the proposals and decisions of the Executive are published and become available for scrutiny, officers should assist in providing background information either to Councillors or the public.

j) The Council's Executive arrangements, and the access to information procedure rules as set out in the Constitution, govern the principles whereby chief and other officers may meet with members of the Executive for the purpose of briefing Councillors, singly or collectively, in accordance with the provisions of the Local Government Act 2000.

k) Chief officers (and on some occasions other officers) may be invited to attend meetings of party groups, or single party meetings of Councillors, to provide briefings or background information. On such occasions, officers should not be asked or expected to take part in party political discussion or otherwise to compromise their political neutrality.

l) Under NJC and APT&C contracts of employment, officers cannot be compelled to attend party group meetings at which there are those present who are neither Councillors nor Council employees. If attending any such meetings, officers should be particularly careful not to divulge any information confidential to the Council, and should take account of the fact that non-Councillors are not bound by the same requirements as Councillors in respect of confidentiality and declarations of interest.

m) As set out in the Code of Conduct, officers should not without authority disclose information communicated in confidence within the Council, and not in the public domain. They should not seek to frustrate or influence the policies, actions or decisions of the Council by the unauthorised, improper or premature disclosure outside the Council of any information to which they have had access as officers.

2. DELEGATION

- 2.1 Chief officers exercise functions and powers formally delegated by the Council, through the Scheme of Delegation. Where required (as in the case of any 'key decision' taken by an officer), the exercise of such delegation must be published and recorded in writing. Delegation of specific statutory and non-statutory functions from the Council to individual officers within Departments is set out within the Scheme approved by the Council on an annual basis. Where a chief officer is sub-delegating functions to named officers, this should be recorded within a written scheme held within each department.

3. WHERE THINGS GO WRONG

- 3.1 From time to time, the relationship between Councillors and officers may become strained or break down. While it is always preferable to resolve matters informally, through conciliation by an appropriate senior manager or Councillor, where matters are unresolved they should be referred initially to the Chief Executive or Monitoring Officer who will consult with appropriate Group leaders, and if necessary, the Chairman of the Standards Committee, in deciding on more formal routes for resolution.

- 3.2 In the event that a Councillor is dissatisfied with the conduct, behaviour, or performance of an officer, the matter should be raised with the appropriate Director.

4. WHISTLE-BLOWING

- 4.1 Separate local protocols at Council-wide level, and within certain individual Departments (Children's Services) govern situations in which officers may legitimately need to disclose or report information in respect of potential illegality, maladministration, fraud or corruption. Procedures for such disclosure are set out in these "whistle-blowing" procedures.

5. CORRESPONDENCE

- 5.1 It is an accepted convention at LBHF that chief officers should be able to correspond with Cabinet Members in strict confidence, and vice versa. Where Opposition Members and MP's seek information about Council services from a chief officer, it is also the convention that chief officers have a responsibility to keep Cabinet Members informed, normally by sending a copy of the response to the Cabinet Member, along with the original query.
- 5.2 Personal matters – in cases where an Opposition Member seeks information on a genuinely personal basis, then the initial letter and response should be confidential, and the appropriate Cabinet Member should not receive a copy.

LOCAL PROTOCOL FOR LEADER AND CABINET MEMBERS

1. INTRODUCTION

- 1.1 This protocol aims to ensure that the Leader and Cabinet Members, as members of the Council's political Executive, work to a set of ground-rules designed to maintain high standards of public accountability, mutual respect between Councillors and officers, and a clear understanding of the executive and scrutiny functions within the Council's decision-making structures.
- 1.2 The protocol remains broadly unchanged from that in place at LBHF since the Council introduced executive and scrutiny arrangements in June 1998.

2. GENERAL PRINCIPLES

- 2.1 Cabinet Members, along with all other Councillors, must observe the statutory Code of Conduct for Members, as adopted by the Council .(See Part 5 – Codes and Protocols - of the Council Constitution). This covers personal conduct, public duty and private interests, disclosure of interests, acceptance of gifts and hospitality, use of Council facilities, and the basic principles of relationships between Councillors, officers, and others.
- 2.2 Over and above these requirements, Cabinet Members have responsibilities as set out in their individual portfolios, for making proposals to committee, and for decisions that are neither defined as 'key decisions' nor delegated to officers, with appropriate support from officers. Cabinet Members have a responsibility to account to, and to be held to account by, the full Council and the Council's scrutiny arrangements (relevant Overview and Scrutiny Committees).
- 2.3 Cabinet Members should be as open as legally possible with scrutiny bodies and with the public. In a public forum however, information should not normally be disclosed where it has been categorised as exempt within the 7 definitions given in the Access to Information Procedure Rules set out in Part 4 of the Council Constitution (i.e. where specific grounds for confidentiality are stated), and/or the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 2.4 In developing their proposals and in making decisions, Cabinet Members should consult with their colleague Cabinet Members, with other Councillors, and with the wider public.
- 2.5 Cabinet Members should keep separate their roles as Cabinet Member and as constituency Councillor, and should seek to ensure that no conflicts of interest arise. Should any conflict arise, Cabinet Members

may wish to consider referring relevant decisions to the Cabinet, or to the Leader.

- 2.6 In accordance with the statutory Code of Conduct, Cabinet Members must not use Council resources for party political purposes. They must uphold the political impartiality of the officer body, and not ask officers to act in any way which would conflict with the Council's Staff Code of Conduct, local protocol on Member/Officer relationships, or national Conditions of Service.

3. THE ROLE OF CABINET MEMBERS

- 3.1 Cabinet Members are appointed by the full Council, with a defined portfolio of responsibilities. Cabinet Members do not have line management responsibilities for staff, and should not issue management instructions to staff.
- 3.2 The business conducted by Cabinet Members, singly and collectively consists of:
- a) matters which will ultimately be decided by the full Council, because they form part of the Council's statutory budget and policy framework;
 - b) matters which fall clearly within the remit of a single Cabinet Member, and which may be 'key decisions' published via the forward plan, or lesser matters.
 - c) matters which cross the portfolios of more than one Cabinet Member, or on which there are unresolved issues between Departments.
- 3.3 Matters wholly within the responsibility of a single Cabinet Member and which do not involve collective responsibility will normally be discussed between the Cabinet Member and the relevant Director (or Chief Executive in the case of the Leader). Cabinet Members will then make recommendations to the Cabinet on these matters, or make decisions where these are not defined as 'key decisions' under the Council's constitution.
- 3.4 At this stage, Cabinet Members will have considered a written report on the matter, prepared in accordance with the Council's report-writing guidelines. The Cabinet Member shall sign off this report prior to it entering the decision-making process, and the report will from then on provide background information on the matter in question, available to Councillors for scrutiny purposes and to the public (subject to the Access to Information Procedure Rules and other legislation).
- 3.5 Cabinet Members should respect the timetables and notice periods established via the Leader's office and Executive Support Team, so as

to allow proper collective consideration of issues in the decision-making process.

- 3.6 In undertaking the roles inherent in an executive decision-making system, Cabinet Members and chief officers should respect the following principles:
- a) As 'visible' and accountable elected representatives, with defined responsibilities, Cabinet Members need to be properly briefed on all significant aspects of the work of the one or more departments that operate within their remit. Directors should ensure a proper information flow so as to ensure that Cabinet Members can effectively undertake this part of their role.
 - b) Good communications can best be achieved through planned and programmed meetings and briefing arrangements. On the basis that Directors should be ensuring that the information needs of Cabinet Members are met, Cabinet Members should in turn seek to avoid making requests for unanticipated briefings, or detailed information gathering exercises, which can unbalance planned departmental workloads.
 - c) Cabinet Members should channel requests for information, advice, and other support via the Director, or via such arrangements as agreed and established with the Director (e.g. Director's PA, specific Departmental Management Team members on specific issues). Cabinet Members should not normally approach other departmental staff direct with requests for information (except in cases of urgency) or seek to commission work from individual staff, as this can create conflict with day-to-day line management accountabilities.
 - d) While Cabinet Members will wish to work with Directors and senior managers in the development of policies and programmes, they should recognise that there are categories of officer-level meetings, both inside and outside the Council where attendance by a Cabinet Member (or other Councillor) is inappropriate.
 - e) Cabinet Members (and other Councillors) have collective responsibility to the Council for the conduct of employment policy, and the Council acts as the employing body for all Council staff. Employment policies, having been set by the Council, are implemented via Directors. Cabinet Members should avoid becoming over-involved in issues of individual performance of officers or individual cases of grievance, disciplinary action, or harassment. Cabinet Members have the right, however, to bring to the notice of relevant Directors any instances within their area of responsibility where they have evidence that there are problems of inefficiency or ineffectiveness, and to be kept informed of what course of action is being pursued in such circumstances.

- f) Under an executive and scrutiny system, committee recommendations and 'non-key' decisions are published under the title of the relevant Cabinet Member, and Cabinet Members are expected to justify and account for their proposals to Overview and Scrutiny Committees and full Council as appropriate. In framing recommendations and making decisions, Cabinet Members are expected to take appropriate advice from relevant Directors, and Directors should ensure that full and proper professional, legal and financial advice is provided in writing, in reports to Cabinet Members.
- g) In bringing forward new policies and proposals, Cabinet Members may wish to discuss with Directors, and via Directors with senior officers preparing reports, the content of such reports and the framing of recommendations. While Cabinet Members may wish to make suggestions on content and drafting, to achieve clarity of presentation, simplify jargon, or better explain issues, they should not attempt to edit out or override any content of reports which Directors feel it important to put before the Council. This is especially relevant to matters of a professional or technical nature, and all chief officers retain an inherent right to report direct to all committees where they consider it necessary.
- h) While reports and recommendations appear under the title of the relevant Cabinet Member, relevant Directors will oversee their implementation and will therefore be assumed to accept responsibility for the professional and technical content of reports (subject to below).
- i) Where Cabinet Members wish to put forward proposals of their own (i.e. which have not been generated in discussion with a Director or via a Council department), this should be made clear in the 'contributors' section of any written report. In such instances it is the responsibility of the Cabinet Member to seek any necessary legal or financial advice for inclusion in the report. Directors may wish, and have a right, to add their comments to such reports.
- j) A number of chief officers exercise statutory functions or have individual responsibilities. Cabinet Members should not attempt to interfere with these roles. These include the functions of Chief Financial officer and Monitoring officer, details of which are set out in the Council's Constitution and local protocols.
- k) Similarly, other than in considering policy implications with the relevant Director, Cabinet Members should not become directly involved in the handling of individual cases on matters delegated to officers (e.g. planning, housing, child care, education), other than in exceptional cases, where a difference of view may need to be resolved through report to Committee.

CABINET MEMBERS AND THE SCRUTINY FUNCTION

- 3.7 Where reports are referred or called in for scrutiny by Overview and Scrutiny Committees, Cabinet Members are expected to attend to answer questions. Cabinet Members will normally be briefed and able to answer the majority of questions themselves, as well as explaining and justifying where necessary the basis of the proposal or decision. On more technical or professional issues, Cabinet Members may wish to call on Directors or specialist officers to answer questions and explain the basis for recommendations.
- 3.8 Where motions are raised at Council meetings, Cabinet Members have a right under the Council Procedure Rules to speak first in responding in debate, on matters within their portfolios.

CABINET MEMBERS AND FELLOW COUNCILLORS

- 3.9 The distinctive roles of Cabinet Members and 'non executive' or backbench Councillors are well-established at LBHF.
- 3.10 Apart from the arrangements in place to ensure that backbench Councillors are informed of proposed key decisions via the council's forward plan, Cabinet Members should ensure they consult as necessary with colleagues in the early stages of formulating proposals. Ward Councillors in particular should be consulted on issues relevant to their Ward.

CABINET MEMBERS AND OUTSIDE BODIES

- 3.11 Cabinet Members represent the Council on a range of outside bodies, partnership meetings, and inter-agency structures. As such, they act as spokespersons for the Council, but do not have authority to bind or commit the Council to any decision that requires formal committee approval (i.e. a 'key decision' or element of the Council's budget or policy framework).
- 3.12 The statutory Code of Conduct and the Council's local protocols contains detailed guidance for all Councillors, on their role on outside organisations.

CABINET MEMBERS AND THE MEDIA

- 3.13 Cabinet Members act as spokespersons for the Council, in responding to the press and media and making public statements on behalf of the Council. Cabinet Members should liaise with the Communications Team, on all forms of contact with the press and media. Annexed to this protocol is a code of practice for the issue of press releases.

ANNEX

Code of practice for the production of press releases

The guiding principles as to the issuing of press releases by local authority staff are governed by Section 2 of the Local Government Act 1986 and the Code of Recommended Practice on Local Authority Publicity (circular 20/88) which must always be taken into account in relation to all publicity issued .

The following is an extract from the Act:

"A local authority shall not publish any material which, in whole or in part, appears to be designed to effect support for a political party. In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and in particular the following matters –

(a) whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another;

(b) where material is part of a campaign the effect which the campaign appears to be designed to achieve"

The Council is not therefore permitted to fund the production of press releases which are party political. To assist in defining this the following checklist can be used:

- party political logos should not be used
- party political names should not be used except where they are essential in describing a position
- the description of the party groups should normally be **Administration** and **Opposition** (although the political party can be used, normally in brackets, in absolutely exceptional circumstances for the purposes of clarity or where there is more than one opposition group)

However each case will turn on its facts and appropriate advice should be sought.

LOCAL PROTOCOL FOR SCRUTINY CHAIRMEN

1. INTRODUCTION

- 1.1 This protocol aims to ensure that chairmen of scrutiny bodies work to a set of ground rules designed to maintain high standards of public accountability, mutual respect between Councillors and officers, and a clear understanding of the executive and scrutiny functions (Leader and Cabinet Executive model) adopted by the Council.

2. GENERAL PRINCIPLES

- 2.1 Chairmen of Scrutiny Committees, along with all other Councillors, must observe the statutory Code of Conduct as set out in Part 5 of the Constitution. This covers personal conduct, public duty and private interests, disclosure of interests, acceptance of gifts and hospitality, use of Council facilities, etc., and the basic principles of relationships between Councillors and officers.
- 2.2 Over and above these requirements, Chairmen of Scrutiny Committees have responsibility for ensuring the scrutiny process operates fairly and openly.
- 2.3 Chairmen of Scrutiny Committees should expect the Executive (Leader and Cabinet Members) to be as open as legally possible with Scrutiny Committees. In a public forum however information may not be disclosed where it has been defined as exempt under the Access to Information Procedure Rules set out in Part 4 of the Constitution. (i.e. where exempt reports are being considered, where specific grounds for confidentiality are stated). In such circumstances, Chairmen of Scrutiny Committees will still need to demonstrate a “need to know” in respect of access to information as other Councillors.
- 2.4 Chairmen of Scrutiny Committees have a right to be consulted when the Executive is taking decisions not included in the forward plan in accordance with paragraphs 15 (General Exception) and 16 (Special Urgency) of the Access to information procedure rules.
- 2.5 Chairmen of Scrutiny Committees should keep separate their roles as chairman and as a constituency Councillor, and should seek to ensure that no conflicts of interest arise. They should be mindful of the provisions of the statutory Code of Conduct and not seek to use their position to influence events unduly.
- 2.6 In accordance with the statutory Code, they must not use Council resources for party political purposes. They must uphold the political impartiality of the officer body, and not ask officers to act in any way which would conflict with the local code of conduct for Staff, or Guidance for Chief Officers, or national terms and conditions of service.

- 2.7 Officers are required to assist Scrutiny Committees in the delivery of their role. Chairmen of Scrutiny Committees, as with all Councillors undertaking scrutiny, will however have to be aware of the resource consequences of any proposals. In some instances requests for research in pursuit of scrutiny may be refused on grounds of expense or time.
- 2.8 The protocol on member/officer relations explains how chief officers must seek to serve the entire Council. This protocol should therefore be read in conjunction with that contained in part 5 of this Constitution.
- 2.9 In undertaking their role, the Chairmen of Scrutiny Committees may wish to issue press releases. The Communications Team should facilitate press releases appropriately on their behalf.

3. ROLE AND REMIT OF SCRUTINY COMMITTEES

3.1 General role

The Scrutiny Committees will be appointed in accordance with the political proportion of the Council as a whole. Within their terms of reference, these Scrutiny Committees will:

- i) review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- ii) make reports and/or recommendations to the full Council and/or the Executive in connection with the discharge of any functions;
- iii) consider any matter affecting the area or its inhabitants; and
- iv) exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the Executive.

3.2 Specific functions

- (a) Policy development and review – Scrutiny Committees may:
- i) assist the Council and the Executive in the development of its budget and policy framework by in-depth analysis of policy issues;
 - ii) conduct research, and other consultation in the analysis of policy issues and possible options;
 - iii) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;

- iv) question members of the Executive and chief officers about their views on issues and proposals affecting the area; and
 - v) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working.
- (b) Scrutiny - Scrutiny Committees may:
- i) review and scrutinise the decisions made by and performance of the Executive and Council officers both in relation to individual decisions and over time.
 - ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
 - iii) question members of the Executive and chief officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
 - iv) make recommendations to the Executive and/or the Council arising from the outcome of the scrutiny process;
 - v) review and scrutinise the performance of other public bodies in the area and invite reports from them by requesting them to address the Scrutiny Committees and local people about their activities and performance; and
 - vi) question and gather evidence from any person.
- (c) Finance - Scrutiny Committees may exercise overall responsibility for the finances made available to them to engage the services of consultants, expert witnesses, etc.
- (d) Reporting - Scrutiny Committees may report annually to full Council on their workings if appropriate.

3.3 Proceedings of Overview and Scrutiny Committees

Overview and Scrutiny Committees will conduct their proceedings in accordance with the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution.

LOCAL PROTOCOL FOR THE OPPOSITION LEADERSHIP

1. INTRODUCTION

- 1.1 The term "Opposition" is applied to the largest group of Councillors not forming part of the Administration. Where non-Administration Councillors are of more than one group, the appointed leader of the largest of those groups is known as the "Leader of the Opposition".
- 1.2 This protocol is intended to set out agreed ground rules as to the special responsibilities that rest with Councillors forming the Opposition leadership. This is defined as the Leader, Deputy Leader and Opposition Whip, together with any other Councillors allocated special responsibilities. It should be read in conjunction with the statutory Code of Conduct.

2. STAFF

- 2.1 The Opposition leadership will have allocated to it a personal assistant whose role is as set out in a job description.. They are bound by the same terms and conditions as other local authority employees in relation to party political activity. Briefly the job description contains provisions to:
- undertake research
 - provide administrative support
 - provide secretarial support

3. MEDIA RELATIONS

- 3.1 The Opposition leadership act as spokespersons for their group, in responding to the press and media and making public statements. A code of practice for the issue of press releases is annexed below.

4. OPPOSITION ACCESS TO INFORMATION

- 4.1 The Council's Constitution sets out the general legal position on Councillors' rights of access to information. Whilst the Leader of the Opposition has no specific additional legal rights of access to Council documentation, he/she is likely to seek more information by way of the position held. The various tests under the "need to" principle, as enshrined in case law, will apply.
- 4.2 The right of access to committee reports, background papers etc is governed by the Local Government Act 1972 (as amended), the Data Protection Act 1998, and the Freedom of Information Act 2000 (see Part 4 Constitution – Access to Information Procedure Rules).

4.3 It is a longstanding convention at this Authority, enshrined in the Member/Officer local protocol agreed between the political parties and adopted by the Council in 1994, that papers used in the "deliberative" stage of the political management process are treated as confidential to the Administration of the day. Under the new executive structures adopted at the Annual Council in May 2002, this principle has continued to apply to the papers of the Cabinet Briefing meetings. Agendas and papers of party groups on the Council are also treated as confidential.

5. CORRESPONDENCE

5.1 It is an accepted convention at this Authority that chief officers should be able to correspond with Cabinet Members in strict confidence and vice versa.

5.2 Where Opposition members seek information about Council services from a chief officer, it is also an accepted convention that chief officers have a responsibility to keep Cabinet Members informed through sending a copy of the response to the Cabinet Member, along with the original inquiry.

5.3 On personal matters where an Opposition member seeks information on a purely personal basis, then the initial letter and response should be confidential and the appropriate Cabinet Member should not receive a copy.

ANNEX

Code of practice for the production of press releases

The guiding principles as to the issuing of press releases by local authority staff are governed by Section 3 of the Local Government Act 1986. and the Recommended Practice on Local Authority Publicity (Circular 20/88) which must always be taken into account in relation to all publicity issued, is also highly relevant.

The following is an extract from Section 2 of the 1986 Act:

"A local authority shall not publish any material which, in whole or in part, appears to be designed to affect support for a political party. In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and in particular the following matters –

(a) whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of

political controversy which is identifiable as the view of one political party and not of another;

(b) where material is part of a campaign the effect which the campaign appears to be designed to achieve"

The Council is not therefore permitted to fund the production of press releases which are party political. To assist in defining this the following checklist can be used:

- party political logos should not be used
- party political names should not be used except where they are essential in describing a position
- the description of the party groups should normally be Administration and Opposition (although the political party can be used, normally in brackets, in absolutely exceptional circumstances for the purposes of clarity or where there is more than one opposition)

However each case will turn on its facts and appropriate advice should be sought.

LOCAL PROTOCOL FOR THE MAYOR AND THE CIVIC ROLE

1. CIVIC ARRANGEMENTS

- 1.1 Civic and ceremonial events and engagements may be undertaken by any one of the following:
- Mayor
 - Deputy Mayor
 - Leader
 - Deputy Leader
 - Cabinet Members
- 1.2 The appropriate member will be selected by the Mayor's Office in consultation with the members listed above according to the nature of the event or engagement.
- 1.3 The above members shall be entitled to wear civic insignia when undertaking engagements on behalf of the Mayor.

2. BUDGETS

2.1 The Mayoral budgets, including reception and entertainment, shall be available for Mayoral and civic events and engagements. Approval of this expenditure shall be through the Director of Finance and Corporate Services.

3. USE OF OFFICIAL CAR

- 3.1 The Council maintains an official car which shall be available to the above members when they are undertaking Mayoral or civic events and engagements.

4. STAFF

- 4.1 Staff in the Mayor's Office assist the Mayor in the full delivery of services. They are also available to assist the other members listed above when they are undertaking Mayoral or civic events or engagements.

COUNCILLORS' SUPPORT AND OTHER FACILITIES: GUIDELINES FOR USE

1. BACKGROUND

- 1.1 The Councillors' Support Service provides:
- A quality word processing service
 - Taking messages and giving advice surgeries details
 - Ordering of personalised stationery

2. QUALITY CONFIDENTIAL WORD PROCESSING SERVICE

- 2.1 The Councillors' Support Secretary will produce high quality word processing for Councillors from the freefone telephone dictation, which guarantees that work can be dealt with in the correct order, has the best recording quality and the greatest security. The freefone system is accessed by telephoning 0800 51 59 02. When Councillors hear the prompt they should enter their personal identity number (which has been issued separately) on the telephone keypad. After that Councillors will be asked to leave a message or dictate their work.
- 2.2 Generally work left with the Councillors' Support Secretary by 3pm will be completed the same day.
- 2.3 Confidentiality is important to Councillors and the strictest confidentiality in dealing with Councillors' work is undertaken. It is important therefore that Councillors do not seek to pressurise the secretary for access to other Councillors' work.

3. LIMITS

- 3.1 The Councillors' Support Secretary can be used in order to produce letters, memos or reports on any matter pertaining to the Council. But they must not be used for personal or political work. The improper use of the Councillors' Support Secretary (and for that matter any other Council facilities – headed note paper, photocopier etc) could lead to legal challenge as set in the Code of Conduct for Councillors.

4. BULK WORD PROCESSING

- 4.1 The Councillors' Standards Committee reviewed the bulk mail-out provision on 10 November 2004 and decided that, on balance, the provision should cease, with immediate effect. Councillors will, of course, be able to continue to use the Councillors' Support Secretary facilities to correspond with residents. Where a Ward Councillor needs to send a letter

to a limited number of named residents (i.e. not solicited mail), this will also be allowed.

5. ADVANCE SESSION PUBLICITY

- 5.1 The Head of Executive Services produces both the Borough wide advice session poster and also handbills/posters for individual wards. Generally the Borough wide poster will be produced twice during the term of a Council (i.e as soon as practicable after the election and then updated roughly two years later). Councillors are entitled to 5,000 leaflets per ward per year (in the case of “split” wards that is 5,000 leaflets per political party per ward).

6. MOBILE PHONES

- 6.1 Mobile telephones are provided to Councillors who demonstrate they have a special need. That would normally mean a Councillor with special responsibilities and whose movements make other forms of contact difficult or unreliable. They will only be issued where it is the clear interest of the Council.
- 6.2 The Council can only pay for outgoing calls on such mobile telephone when those are made on Council business.
- 6.3 Any personal calls made on a Council provided mobile telephone should be paid for by the Councillor. Itemised monthly bills will be circulated to Councillors to help them identify such calls. In addition to the normal reasons around probity, this is important because if personal calls are not paid for, mobile telephones become taxable benefit.
- 6.4 The mobile telephones remain the property of the Council and should be returned in the event of changes in the circumstances which warranted their original issue.

7. INTEREST FREE LOAN SCHEME

- 7.1 Interest free loans are available to enable Councillors to purchase office equipment in order to fulfil their Council duties at home. Repayments will be deducted direct from allowance payments. Office equipment includes faxes and personal computers.

For further information please contact Lyn Anthony, Head of Executive Services on 020 8753 1011.

LOCAL PROTOCOL FOR COUNCILLORS ON ACCESS TO INFORMATION / OPEN GOVERNMENT

1. THE PROCESS

1.1 All requests for documentation from Councillors should be routed through the Director, or where the Director is not available and the request is urgent, then it should be made to an Assistant or Deputy Director, or Head of Section, as appropriate. It would be for the Councillor to explain why their particular request needed an urgent response.

1.2 Councillors are requested to:

- Be as specific as possible about the documentation that they wish to see;
- Normally make the request in writing; and
- State the reason for wanting the information, and the purpose to which it will be put

[Note: The reason for asking Councillors to follow this procedure is not to be overly bureaucratic and cause delay, but to ensure that the appropriate information is supplied, and that "sensitive" information is safeguarded. This procedure is without prejudice to a Councillor's rights under the Freedom of Information Act 2000 (see below).]

1.3 If the Councillor's request is considered legitimate by the Director, then the information will be supplied as soon as possible. However, if the Director considers that to meet the request would not be justified because of the administrative cost - for example because the documentation is too bulky to be photocopied, or would require expensive and continuing computer runs - then alternative arrangements to try to meet the request will be tried.

1.4 For instance, Councillors could be invited to inspect the relevant document(s) or file(s). This should be done under the supervision of a senior officer with knowledge of the subject area, and the Councillor should mark any documents requiring photocopying. The Department may also wish to keep a record of what is copied.

1.5 If there are reasons why the Director feels that documents should not be disclosed and wishes confirmation of that view, then the matter should be referred to the Monitoring Officer or the Chief Executive. It should be noted that there are very few instances when a Councillor who satisfies the "need to know" criteria (set out in the section which deals with the legal situation below) should be denied access to the documentation. Normally, such documents will need to be defamatory or likely to lead to criminal

prosecution or contain allegations of impropriety etc before access is denied.

[Note: Officers should be aware that files and other papers can be inspected, and that all files are the property of the Council, and are not exempt from inspection rights, except in rare instances.]

2. THE LAW

- 2.1 A Councillor's right to inspect documents in the Council's possession is governed by statute, case law, the Council's Constitution and the statutory Councillor's Code of Conduct.

3. STATUTE (SECTION 100F OF THE LOCAL GOVERNMENT ACT 1972)

- 3.1 Any Councillor can inspect any document in the possession or control of the Council which contains material relating to any business to be transacted at a meeting of the Council, a Committee or Sub-Committee (i.e. a decision-making body), subject only to the exceptions listed in the paragraphs below.
- 3.2 Schedule 12A of the 1972 Act (as amended) sets out 7 categories of information normally "exempt" from public access, but nevertheless subject to a public interest disclosure test whereby the public interest in maintaining the exemption must outweigh the public interest in disclosing the information.
- 3.3 If it appears to the Council's Proper Officer that a document discloses "exempt" information, then disclosure to a Councillor is not required, unless the information falls within paragraph 3 of Schedule 12A (the financial or business affairs of any particular person (including the authority holding that information), except to the extent it relates to any terms proposed by or to the authority in the course of negotiations for a contract; or if the information falls within paragraph 6 of Schedule 12A (that the authority proposes to give a notice or order under any enactment, by virtue of which conditions or requirements are imposed on a person). However, section 100F is in addition to a Councillor's other rights, and other tests may need to be applied.

4. CASE LAW

- 4.1 A Councillor as an elected representative has a duty to be kept informed of Council business, and therefore has a *prima facie* right to inspect documents in the possession of the Council, and has a "need to know" to perform that role. The following "tests" may prove helpful in establishing whether a Councillor has a "need to know":

- If a Councillor is a member of the Committee, then s/he has the right to inspect documents relating to the business of that Committee.
- If a Councillor is not a Committee member, then s/he has to demonstrate why sight of the document(s) is necessary to enable the performance of their duties as a Councillor.
- If the Councillor's motive for seeing the documents is indirect, improper or ulterior, then the normal entitlement could be barred.
- Councillors are not allowed a "roving commission" through Council documents, but have to specify precisely the documents or information they are requesting.

5. FREEDOM OF INFORMATION Act 2000

5.1 A Councillor has some rights of access to information held by the Council under the Freedom of Information Act 2000 as a member of the public. A request under the Act must:

- Be in writing [electronic requests are acceptable]
- Provide a name and address for correspondence
- Describe specifically the information requested

Although a Councillor does not need to demonstrate a "need to know", the Act contains a number of exemptions. For example, where information is confidential, consists of personal data, or is commercially sensitive, it is likely to be exempt from disclosure.

Thus a Councillor with a common law "need to know" will generally be entitled to more extensive information than would be available to him/her under the Act.

6. COUNCIL CONSTITUTION

6.1 Under the Council's Constitution (see Council Procedure Rules 7(b) and (d), Access to Information Procedure Rules 22.3), the Chief Executive or a chief officer may refuse to provide information to a Councillor on the grounds of cost or "another good reason for non-compliance". This is subject to the Councillor's legal rights, or a relevant Committee authorising the provision of the relevant information. The bias will usually be in favour of access to information.

7. COUNCILLORS' STATUTORY CODE OF CONDUCT AND DATA PROTECTION

7.1 Councillors are bound to abide by the provisions of the statutory Code of Conduct in relation to information obtained by them. Councillors are also bound by the provisions of the Data Protection Act 1998, and should not use personal data for purposes inconsistent with the purposes for which it

was obtained, or otherwise in breach of the data protection principles. If a Councillor is in any doubt as to the uses to which information may be put, (e.g. use of names and addresses whether in hard copy or electronic form) he/she should seek advice from the Head of Legal Services. Supplementary guidance and advice is available from the Information Commissioner – www.dataprotection.gov.uk

HANDLING MEMBERS' ENQUIRIES GUIDANCE FOR MEMBERS

1. INTRODUCTION

- 1.1 Elected members have a responsibility to their constituents (at their discretion) to represent their views to the Council, and are often approached by them to advocate on their behalf. When this happens the elected member may contact the Department and ask for information about policies and individual cases. This is known as a member's enquiry. The process for handling these enquiries and ensuring members receive appropriate, sensitive, timely and complete answers to their concerns is handled by the Departmental Complaints Officer.
- 1.2 This document seeks to set out the role of elected members, to explain the relationship between elected members and officers and to outline the members' enquiry process. It should be read in conjunction with the Protocol for Councillors on Access to Information where relevant.

2. COMPLAINTS

- 2.1 Citizens have the right to complain to:
- (i) the Council itself under its complaints scheme;
 - (ii) the Ombudsman after using the Council's own complaints scheme;
 - (iii) the Standards Board for England about a breach of the Council's Code of Conduct; and
 - (iv) the Information Commissioner in relation to the Freedom of Information Act 2000 and the Data Protection Act 1998.
- 2.2 Elected members:
- (i) have rights of access to documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.
 - (ii) will not make information that is confidential or "exempt to the public" without the consent of the Council nor divulge information given in confidence to anyone other than a Councillor or officer entitled to know it.

3. MEMBERS' ENQUIRY PROCESS

- 3.1 When an elected member is contacted by a constituent about a concern they have raised, they will contact the Department (Director, Chief Executive, H&F Homes or Heads of Service) asking for an answer to that enquiry. They will usually make this request in writing.
- 3.2 *Sending to staff*

The Departmental Complaints Officer will send the enquiry, marked as urgent via email, fax or hand delivery to the relevant service manager.

3.3 *Timescales*

The Council is committed to responding to all elected members' enquiries within **eight working days** of receipt of the enquiry. The Departmental Complaints Officer will therefore ask staff to provide responses to enquiries to the team within **six working days**, allowing the team and senior managers **two further days** to draft the letter, and ask more questions if necessary. This time is also needed in order to gain senior manager approval of the letter or email before it is sent out.

Simple enquiries from Cabinet Members should be dealt with in a similar fashion but **within a three working days** deadline.

3.4 *Information requirements*

When the enquiry is sent out, the Departmental Complaints Officer will specify the information required in the response; often this will be specific answers to a series of questions. The Departmental Complaints Officers will clearly set out these questions or issues, which require comment in a covering note.

In respect of Children's/Adult Social Services matters, there is a separate statutory complaints procedure (link to statutory process).

If the enquiry concerns a housing matter, managers will generally draft a response in the Chief Executive, H&F Homes' name before providing this to the Lead Officer Housing Complaints and Enquiries.

Officers should return their response to the Departmental Complaints Officer via email. If there are any difficulties meeting the deadline for response, the Departmental Complaints Officer should be contacted as soon as possible in order to discuss sending the elected member a holding letter and to negotiate a later response date.

Officers should satisfy themselves that the elected member is lawfully entitled to any information sent to them and should obtain legal advice if required. Where information provided includes personal data officers must ensure that such data is processed in accordance with the Data Protection Act 1998.

3.5 *Follow up*

The Departmental Complaints Officers will ensure the service manager, team manager and other relevant members of staff receive a copy of the final letter which is sent to the elected member. Responses are always sent to the relevant Head of Service for information.

4. **CONFIDENTIALITY**

- 4.1 Elected members are bound by the rules of confidentiality by their Code of Conduct. This code of conduct states that members 'must not disclose information given to them in confidence by anyone, or information acquired which they believe is of a confidential nature, without the consent of a person authorised to give it, or unless required by law to do so'.

4.2 If an elected member is enquiring about a case which is particularly sensitive, officers should highlight this in their response and the Director will ensure the elected member is made aware of this.

5. THE RELATIONSHIP BETWEEN ELECTED MEMBERS AND OFFICERS

5.1 As a general rule Councillors are expected to deal only with Directors or heads of service. This is because:

- (a) chief and senior officers are in a better position to provide authoritative information or advice and to generate a swift response;
- (b) they need to be aware of any questions or complaints raised by members;
- (c) they are able to respond directly to members' requests, for example by making a judgment as to whether action could be taken under officers' delegated authority;
- (d) they are able to investigate and deal with any shortcomings there might be at the point of service delivery; and
- (e) more junior staff may be intimidated by dealing with a member enquiry, or may give incorrect information, or may take inappropriate action.

5.2 Where an elected member seeks information about a case from a member of staff below service manager level they should seek the advice of a senior manager or the Corporate Complaints Officer.

6. FURTHER INFORMATION

6.1 If you have any questions about Members' enquiries, please do not hesitate to contact the James Filus, Corporate Complaints Officer, Executive Services on 020 753 2020.

GUIDANCE FOR COUNCILLORS AND OFFICERS DEALING WITH PLANNING AND LICENSING

1. BACKGROUND

- 1.1 This guidance should be read alongside the statutory Councillors' Code of Conduct, which was issued to all Councillors on taking office and which they have given a signed undertaking to observe. The Councillors' Code of Conduct is set out elsewhere in this Constitution.
- 1.2 This guidance reflects the outcome of the work of the Nolan Committee on Conduct in Local Government, previous work by the local authority associations, and advice issued by the Audit Commission, the Standards Board for England, the Local Government Ombudsman, and the various professional bodies in the planning field. The guidance also incorporates much of the advice set out in the Local Government Association publication '*Probity in Planning*' published in November 1997. Parts of that guidance (e.g. on site visits) are not considered relevant or appropriate to the handling of planning issues within an inner London Borough, and therefore are not followed by this Council.
- 1.3 While the guidance has no statutory status, failure to observe its recommendations without good reason may be taken into account in any investigations for maladministration, or by the Council's Standards Committee when investigating allegations of breach of the Code of Conduct.

2. TRAINING OF COUNCILLORS

- 2.1 It is the Council's policy to arrange training for all Councillors serving on the Planning and Licensing Committees. Councillors must undertake this training prior to serving on these Committees.
- 2.2 In relation to licensing issues, the procedures followed by the Council's Licensing Sub-Committee are set down in detailed guidance documents issued to both the applicant and other interest parties. These will be reviewed in the light of experience of the working of the Licensing Act 2003. Further advice for Councillors and officers involved in the licensing process is set out later on in this protocol.

3. GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

- 3.1 The basis of the planning system is the consideration of private proposals against wider public interests. While Councillors on the Planning Applications Committee will need to take account of the relevant views of their constituents (which also includes those who did not vote for them), they must be careful not to favour any person,

group, company or locality, nor put themselves in a position where they appear to do so, during their involvement in the decision-making process. Nor must they give the impression that they have ‘made up their minds’ in relation to any particular matter before it is determined.

- 3.2 Councillors serving on the Licensing Sub-Committee must determine each application on the evidence presented by both the applicant and interested parties at a hearing. Councillors need to take account of relevant representations made by interested parties who may or may not be their constituents, but should not favour any person, group, company or locality, nor put themselves in a position where they appear to do so, in making the decision. Councillors are barred from sitting on any Licensing Sub-Committees determining applications which fall within their own wards only where they have a **prejudicial** interest under the Members’ Code of Conduct.
- 3.3 The advice in the Code of Conduct on dealing with gifts and hospitality can be particularly relevant when dealing with planning and licensing issues. Councillors and officers should be very circumspect in response to any offers of gifts and hospitality, should seek appropriate advice where necessary, and should record in the relevant register any gifts or hospitality they do receive. This applies particularly in circumstances where it is known that planning or licensing applications have been submitted, or are likely to be submitted, by the parties making such offers.

4. DECLARATION AND REGISTRATION OF INTERESTS

- 4.1 The requirements and guidance for registering and declaring interests are set out in the statutory Councillors’ Code of Conduct and in the officers’ Code of Conduct. The Local Government Ombudsman’s publication ‘*Guidance for Good Practice on Members’ Interests*’ also provides helpful advice.
- 4.2 All Councillors are required to register, and keep up to date, a written declaration of their interests in a Register held by the Head of Legal Services. Officers are required to register their interests on Departmental registers, held by their departmental personnel sections.
- 4.3 Detailed guidance on dealing with members’ **personal** and **prejudicial** interests can be obtained from the Head of Legal Services or the Assistant Head of Legal Services. The general tests for deciding whether a personal or prejudicial interest exists are set out in the Members’ Code of Conduct. Whilst members are encouraged to obtain guidance and advice on declaring interests from the Head of Legal Services, ultimately, the responsibility for declaring any interest lies with the individual Councillors themselves.

- 4.4 Where a Councillor has declared a **prejudicial** interest, they must not take any further part in the proceedings (i.e. not speak or vote) and should normally withdraw from the meeting unless a dispensation has been obtained beforehand from the Council's Standards Committee. This is discussed in more detail below.

5. DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS, OFFICERS AND THE COUNCIL

- 5.1 In circumstances where current or former Councillors or officers, or their close friends and relatives, are involved in submitting planning applications which would ordinarily be dealt with by officers, it is important that such applications are processed without suspicion of any impropriety. Where situations arise which could, in the opinion of the Monitoring Officer, create significant questions in the minds of the public, such applications should be referred to the Planning Applications Committee for determination.
- 5.2 Proposals for the Council's own development should be treated in the same way as those from private developers, in accordance with Circular I9/92, particularly in relation to officer advice.

6. LOBBYING OF AND BY COUNCILLORS

(NOTE: This section repeats verbatim paragraphs 7.1 - 7.9 of the LGA Guidance on Probity in Planning).

- 6.1 *It is important to recognise that lobbying is a normal and perfectly proper part of the political process: those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward member or to a member of the planning committee. As the Nolan Committee's Third Reports states. 'It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is via the local elected representatives, the Councillors themselves'. Any code of conduct which fails to take account of the realities of the political representative process will not carry credibility with experienced elected members.*
- 6.2 *However, such lobbying can, unless care and common sense are exercised by all the parties concerned, lead to the impartiality and integrity of a Councillor being called into question. When being lobbied, Councillors, and members of the planning committee in particular; should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying, that they should speak or write to the relevant officer, in order that their opinions*

can be included in the officer's report to the Committee. If they do express an opinion, they should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at Committee.

- 6.3 *It should be remembered that the reports on North Cornwall and Warwick were both greatly concerned with the issue of lobbying. In both cases, lobbying had caused considerable public mistrust of the Councils.*
- 6.4 *Councillors and members of the planning committee in particular; need to take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in a transparently open and fair manner, in which members taking the decision will take account of all the evidence presented before arriving at a decision, and that to commit themselves one way or the other before hearing all the arguments and evidence makes them vulnerable to an accusation of partiality. It is probably misleading to describe the determination of a planning application strictly as a 'quasi-judicial' process (unlike say, certain licensing functions carried out by the local authority), but it is a formal administrative process involving rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly, with the added possibility that an aggrieved party may seek Judicial Review of the way in which a decision has been arrived at, or complain to the Ombudsmen on grounds of maladministration.*
- 6.5 *In reality, of course, members will often form a judgement about an application early on in its passage through the system, whether or not they have been lobbied. The difficulty created by the nature of the planning committee's proceedings as set out in paragraph 20 above is that members of the committee (at least those who are not Councillors for the affected ward - see below) should not openly declare which way they intend to vote in advance of the planning committee meeting, and of hearing the evidence and arguments on both sides.*
- 6.6 *Political reality suggests that it is often important to distinguish between the role of the planning committee member who is, and who is not, a ward member for the area affected by a particular planning application. A planning committee member who does not represent the ward affected is in an easier position to adopt a (formally) impartial stance, however strong his or her feelings about the application may be, and to wait until the Committee meeting before declaring one way or the other.*
- 6.7 *A planning committee member who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the member responds to lobbying by deciding to go public in support of a particular outcome - or even campaigns actively for it - it will be very difficult for that member to*

argue convincingly, when the committee comes to take its decision, that he/she has carefully weighed the evidence and arguments presented -perhaps in some respect for the first time - at committee. Although not amounting to a pecuniary or non-pecuniary interest (sic) [nowadays personal or prejudicial interest] according to the National Code, the proper course of action for such a member would be to make an open declaration and not to vote. This is, however; a severe restriction on the member's wish duty even to represent the views of the electorate, and in most cases short of such high profile, active lobbying for a particular outcome, it should be possible for a member to give support to a particular body of opinion whilst waiting until the planning committee and hearing all the evidence presented before making a final decision.

6.8 *It should be evident from the previous paragraphs that it is very difficult to find a form of words which covers every nuance of these situations and which gets the balance right between the duty to be an active ward representative and what the (previous) National Code of Local Government Conduct calls the “overriding duty as a Councillor to the whole local community”.*

6.9 *It cannot be stressed too strongly that the striking of this balance is, ultimately, the responsibility of the individual member, and that in doing so, regard needs to be paid to the general rules laid down in the (previous) National Code, particularly paragraphs 4 (‘Whilst you may be strongly influenced by the views of others, and of your party in particular; it is your responsibility alone to decide what view to take on any question which Councillors have to decide’) and 6 (‘You should never do anything as a Councillor which you could not justify to the public).*

6.10 *A local code should also address the following more specific issues about lobbying:*

- *Given that the point at which a decision on a planning application is made cannot occur before the planning committee meeting, when all available information is to hand and has been duly considered, any political-group meeting prior to the committee meeting should not be used to decide how Councillors should vote. The view of the Ombudsmen is that the use of political ‘whips’ at group meetings in this way is contrary to the (previous) National Code, amounting to maladministration. (See also paragraph 4 of the National Code, reproduced above.)*
- *With the exception in some circumstances of ward Councillors, whose position has already been covered in the preceding paragraphs, Councillors should in general avoid organising support for or opposition to a planning application, and avoid lobbying other Councillors. Such actions can easily be*

misunderstood by parties to the application and by the general public.

- *Councillors should not put pressure on officers for a particular recommendation.*
- *Councillors who are unsure whether an interest should be declared should seek the advice of the council's monitoring officer; although, as indicated above, the decision rests with the Councillor.*

7. PRE-APPLICATION DISCUSSIONS (PLANNING AND LICENSING)

7.1 Discussions between a potential applicant and the Council, especially on larger and/or more complex development proposals before the submission of a planning application, can be of considerable benefit to both parties. Potential applicants may seek meetings to discuss fairly detailed proposals, or they may wish to explore basic planning requirements before committing to initial design or even before acquiring a site. In some cases, prospective site purchasers may be in competition and the advice they seek will affect their tender price. In all such cases, it is beneficial for the Council to be able to advise at an early stage on how planning policy would be applied and known local factors taken into account.

7.2 Pre-application discussions on planning matters must be handled carefully, particularly because the prospective applicant will often expect them to take place on a confidential basis for commercial reasons. It is also important to avoid any discussions becoming, or even being seen to be, part of a lobbying process that could prejudice proper consideration of a subsequent planning application and any public consultation.

7.3 To avoid problems arising, the following guidelines should be followed (and they apply equally to meetings held after an application has been made):

- It must always be made clear at the outset that the discussion will not bind the Council to making a particular decision on a planning application, and that any views expressed by officers or Councillors are personal and provisional. By the very nature of such meetings, not all relevant information will be to hand; neither will formal consultations with interested parties have taken place.
- Advice must be consistent and based on the statutory development plan and known material considerations. There should be no significant difference of interpretation of planning policies between planning officers. In addition, all officers taking

part in such discussions should make clear whether or not they are responsible for making the recommendation to Committee (or have delegated authority to determine applications).

- A written note should be made of potentially contentious meetings or telephone discussions, and a follow-up letter will normally be sent when documentary material has been left with the Council. If Councillors are present at meetings, at least one officer should also attend.
- Care must be taken to ensure that advice is impartial. In cases where there is competition between prospective purchasers or design consultants, officers will prepare a note on the application of normal planning policy and other known material considerations to the site. This will be used to ensure consistency of advice.

7.4 Any pre-application discussions on licensing matters are normally between officers and either the applicant or interested parties.

8. PREDETERMINATION

8.1 Members must not when being lobbied or involved with pre-application discussions conduct themselves in a way that suggests that they have predetermined the matter or are approaching it with a 'closed mind'. Predetermination is likely to give rise to 'apparent bias' which may result in the decision in question being quashed by the High Court on an application for Judicial Review.

9. OFFICER REPORTS TO COMMITTEES

9.1 The LGA guidance sets out five points for officers to take into account in preparing reports on planning applications. These reflect good practice, and failure to adhere to them could give rise to maladministration findings or judicial review of a decision.

- Reports should be accurate, and cover, among other things, the substance of relevant objections and the views of people who have been consulted, as recommended by the Ombudsman in their Guidance Note No 2.
- Relevant points will include a clear exposition of the development plan, site or related history, and any other material consideration.
- Reports should have a clear written recommendation of action. Oral reporting (except to update a report) should be extremely rare and carefully minuted when it does occur.

- Reports should contain a technical appraisal which clearly justifies the recommendation.
- If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify this must be clearly stated.

10. PUBLIC SPEAKING AT PLANNING APPLICATIONS COMMITTEE

- 10.1 There are no public speaking rights at Planning Applications Committee. Written petitions made on a planning application are incorporated into the officer report to Planning Applications Committee. Written petitions on traffic management issues are considered separately by the Traffic Management Advisory Panel and the relevant Cabinet Member. Petitioners, as members of the public, are welcome to attend meetings, but are not permitted to speak. They can however be represented by their Ward Councillor, who may address the Committee. Deputation requests are not accepted on applications for planning permission.

11. DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR DEVELOPMENT PLAN

- 11.1 Officers' reports on planning applications must make clear when proposals are not in accordance with the statutory development plan. All such applications are advertised in accordance with the requirements of Article 8 of the Town and Country Planning (General Development Procedure) Order 1995. Where officers' reports recommend the grant of planning permission for departure applications, the report will include a full justification for the departure, clearly identifying the circumstances which led to a recommendation to override the statutory development plan. The Committee report will be forwarded to the Secretary of State if the application is one which requires referral under the regulations.
- 11.2 If the Committee makes a planning decision contrary to the officers' recommendation (whether for approval or refusal), their reasons for doing so must be made clear and recorded in the Committee minutes. Officers will be able to assist in formulating technically correct reasons for refusal or additional planning conditions based on Members' clearly expressed wishes. If this is the case, it should either happen during the meeting, or be delegated to planning officers by the Committee. This too should be clearly recorded in the minutes.

12. SITE VISITS

- 12.1 Visits by members of the Planning Applications Committee to development sites will not normally take place. If, due to the

exceptional circumstances of a particular case, the Committee wishes to organise a site visit, this shall be by resolution of the Committee and will involve the attendance of appropriate planning officers as well. The application or enforcement case in question will then be determined either by a subsequent formal meeting of the Committee, or by officers acting under authority delegated to them by the Council, or by specific resolution of the Planning Applications Committee.

13. PARTY GROUP PRACTICES AT LBHF IN RESPECT OF PLANNING MATTERS

- 13.1 The Nolan Committee recognised that Councillors exercise, quite properly, two roles in the planning system. They determine applications, and also act as representatives of public opinion in their areas. Nolan recognised the importance of guidance to enable Councillors to achieve the 'delicate balance' in undertaking these two roles. Very prescriptive requirements on, for example, pre-application discussions, were not favoured by Nolan, as not necessarily being appropriate to all local authorities. It was felt that authorities should have some room to determine their own ground rules, within a local code.
- 13.2 In respect of 'lobbying' of and by Councillors, London Borough of Hammersmith and Fulham is content to work within the guidelines developed by the LGA. Some additional local factors in respect of party group consideration of planning issues should, however, be noted by Councillors.
- a) The political parties on the Council may develop general policies towards different types of development within the borough and discuss these within group meetings.
 - b) There will be occasions when specific development proposals or planning applications are discussed within pre-meetings, prior to formal determination at Committee. The Council does not consider such discussions to represent the 'fettering of discretion' of Councillors subsequently determining planning applications, provided individual Councillors have regard to all relevant considerations at the time of voting on an application.
 - c) The Ombudsman generally regards a planning decision based on whipping as maladministration.
 - d) It is the view of all parties on the Council that the political conventions and practices operated within the Council reflect a proper balance between the two roles Councillors are expected to undertake, as identified by the Nolan Report.

14. COUNCILLORS AND LICENSING SUB-COMMITTEE HEARINGS

- 14.1 The Council's Licensing Sub-Committee deals with all licensing applications under the Licensing Act 2003, together with some miscellaneous non-Licensing Act functions, such as street trading.
- 14.2 Where the Licensing Sub-Committee is dealing with an application under the Licensing Act 2003, the Act imposes limitations as to who may appear before the Sub-Committee and make representations to it. (NB: this does not apply to hearings concerning non-Licensing Act functions). In such cases, Councillors do not automatically have a right to attend and make representations by virtue of their office. A member may represent interested parties who have made relevant representations at their request.
- 14.3 However a member whose eligibility to speak arises because they are themselves interested party will almost certainly have a personal interest and will need to consider whether they have prejudicial interest which may prevent them from attending (see below). Members wishing to speak at Licensing Sub-Committee hearings are advised to obtain advice in advance from the Head of Legal Services or Assistant Head of Legal Services.

15. APPLICATION OF THE COUNCILLORS' CODE OF CONDUCT

- 15.1 Even if a Councillor is eligible to speak at a committee meeting, he/she may still be required to declare a personal interest and, if a prejudicial interest arises, such Councillor will be precluded from speaking at all, and may not be present when the application is considered by the Sub-Committee in any capacity. In such a case, the Councillor may still make written representations, but may not seek to improperly influence the decision.
- 15.2 It should be noted that where a Councillor has a prejudicial interest, they may not be present when it is being discussed by a formal meeting even though this might put them at a disadvantage compared to ordinary members of the public. Councillors may not "act in a personal capacity" so as to avoid the requirements of the Code of Conduct, and this has been confirmed by the Court of Appeal in the case of ***R (Richardson & Others) v North Yorkshire County Council***. Any Councillor considering speaking at a Committee in circumstances where a personal or prejudicial interest may arise is therefore advised to obtain prior advice from the Head of Legal Services or Assistant Head of Legal Services before doing so. It should be noted that whilst the Code of Conduct has been changed following ***Richardson*** to allow a member with a prejudicial interest to make representations, answer questions and give evidence before leaving the room this only applies if members of the public are also allowed to attend for the same purpose. In other words this will be of

assistance to members in Licensing matters but not planning members where the public do not have rights to address the Committee. A member may still make written representations in a private capacity, use a professional representative to act on their behalf and get another member to represent the views of their constituents.

- 15.3 The facility does exist for members to obtain dispensations from the Standards Committee where a committee may become inquorate and in other limited circumstances. Advice on this is available from the Head of Legal Services.

GUIDANCE ON GIFTS AND HOSPITALITY

1. The previous National Code of Local Government Conduct set out the position in respect of gifts and hospitality in paragraphs 27-29 as follows:

“You (Councillors) should treat with extreme caution any offer or gift, favour or hospitality that is made to you personally. The person or organisation making the offer may be doing, or seeking to do, business with the council, or may be applying to the council for planning permission or some other kind of decision.

There are no hard and fast rules about the acceptance or refusal of hospitality or tokens of goodwill. For example, working lunches may be a proper way of doing business, provided that they are approved by the local authority and that no extravagance is involved. Likewise it may be reasonable for a member to represent the council at a social function or event organised by outside persons or bodies.

You are personally responsible for all decisions connected with the acceptance or offer of gifts or hospitality and for avoiding the risk of damage to public confidence in local government. The offer or receipt of gifts or invitations should always be reported to the appropriate senior officer of the council”

2. This advice still holds true in respect of the relevant paragraph of the new statutory Code of Conduct for Councillors, to which regard must be paid. This states that Councillors 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 or nature of the gift or hospitality, which is classed as a personal interest (see paragraph 8(viii) of the Code of Conduct).
3. As with employees, Councillors should only accept offers of hospitality if there is a genuine need to impart information or represent the local authority or community. Offers to attend purely social or sporting functions should only be accepted when these are part of the life of the community or where the authority should be seen to be represented. Some Councillors represent outside or London-wide organisations (e.g. Western Riverside Waste Authority) and may be offered gifts or hospitality in that capacity. Councillors should not accept significant personal gifts from contractors or suppliers, although insignificant gifts or tokens such as pens, diaries etc up to a value of £25 are acceptable. Modest gifts over this level from constituents, which are tokens of thanks or appreciation, are acceptable so long as:
 - (a) they are unsolicited, and
 - (b) the Councillor did nothing unlawful or out of the ordinary.
4. When receiving hospitality, Councillors should be sensitive to the timing of decisions for letting of contracts or other matters (e.g. planning applications) in which the provider is involved.

5. There can be no hard and fast rules in respect of hospitality. However, given the numerous events to which Councillors may be invited, the following advice is offered, although the responsibility both for accepting and declaring hospitality remains with individual Councillors. In each of the criteria listed, it is assumed that there is a valid link with the Council and the Councillor. The following are generally considered to be acceptable, but should be registered through the declaration form:
 - sit down meals
 - any hospitality involving alcohol (even if the individual does not partake)
 - substantial buffets

Generally speaking, the following are considered to be *de minimis* and need not be registered:

- tea and biscuits
- sandwiches
- minimal buffets

Having said that Councillors are reminded of the National Code of Conduct's advice about timing. It is conceivable that even normally *de minimis* hospitality could become significant and therefore registerable if it coincided with a decision affecting the giving body.

6. Acceptance of hospitality whilst in attendance at relevant conferences is acceptable where it is clear the hospitality is corporate rather than personal.
7. There is a register of all declared gifts and hospitality. This register is in the form of a computerised database similar to the one used for the declarations of interest by Councillors at meetings, and like that system, would be on the basis of forms submitted by Councillors. Councillors are advised that any gift or hospitality should be recorded on this register. The register is kept by the Head of Legal Services but is available for inspection by any member of the public. It has been registered under the Data Protection Act. In the case of hospitality or gifts received as a representative of an outside body, Councillors should declare that gift/hospitality to both this authority and to that organisation.
8. Gifts and donations to the Mayor received in the performance of Mayoral duties, including charity fundraising, are excluded from this process as they are covered by other audit controls.

GUIDANCE FOR MEMBERS AND OFFICERS ON THE REQUIREMENT TO DECLARE RELATED PARTY TRANSACTIONS

1. INTRODUCTION

The requirement for Members and Chief Officers to declare Related Party Transactions has been considered by the Accounting Standards Board as fundamental to the presentation of the Council's published accounts. It has been introduced nationally in the belief that the truth and fairness of the accounts can only be readily understood if the reader has knowledge of the related parties to the organisation concerned.

- 1.2 In addition, organisations should be open and disclose transactions with such related parties to ensure that stakeholders are aware when related party transactions are taking place and the values of such transactions. Advice issued by the Audit Commission to external auditors requires the completion of a signed declaration on an annual basis.

2. WHAT IS A "RELATED PARTY"?

- 2.1 The principal issue in determining whether or not a related party status exists is the degree of control exerted by one party over the other. This can arise during a financial period where:
- one party has direct or indirect control of the other party;
 - one party has influence over the financial and operational policies of the other party; or
 - the parties are subject to common control or influence from the same source.
- 2.2 It should be noted that the disclosure requirement relates to transactions, not to the existence of a related party interest.
- 2.3 Put simply, the objective is to identify any transactions which may have taken place as a result of the control or influence exercised by one party over another. The concern is that such transactions may not be, or may not be perceived to be, in the best interests of the Council.

3. WHO ARE THE RELATED PARTIES OF A LOCAL AUTHORITY?

- 3.1 The Accounting Code of Practice for Local Authorities issued by the CIPEA sets out the regulations to be followed in preparing Local Authority final accounts for 1998/99. It identifies the main related parties for a local

authority. Of particular relevance to these guidance notes is the inclusion of Members and chief officers of the Council. Other related parties include:

- central government;
- local authorities and other bodies either precepting or levying demands on the council tax;
- any subsidiary and associated companies;
- any joint ventures and joint venture parties;
- the pension fund.

4. ARE FAMILY, HOUSEHOLD AND BUSINESS INTERESTS AFFECTED?

- 4.1 Yes. When considering who is a related party, regard is also taken of transactions involving members of the close family or same household of any individual listed. In addition, if any individuals are associated with partnerships, companies, trusts or any entities in which they or a member or their close family or the same household, have a major interest, transactions with that organisation should also be disclosed.

5. EXAMPLES OF QUALIFYING INTERESTS

- You own a company or have a major shareholding in a company which contracts with the Council.
- A close relative or a member of your household owns a company or has a major shareholding in a company which contracts with the Council.
- You hold a position of influence within a voluntary organisation that receives grants from or provides services to the Council.
- You (or a close relative, or a member of your household) are in receipt of income from an organisation that relies upon the Council for funding, e.g. a voluntary group.
- No specific limit has been given for what constitutes a major shareholding, but, as a broad guideline, more than 20% of the total should be taken as coming within the scope of these requirements.

6. EXAMPLES OF RELEVANT TRANSACTIONS

- Payments under contract for the purchase or sale of assets, e.g. land transactions or equipment supplied to the Council.
- Payments under contract for the supply of services to the Council, e.g. printing or building contracts or the management of Council services.
- Payments or loans to chief officers of an exceptional nature not covered by normal contracts of employment.

The requirement also extends to non-financial transactions, of which some examples are:

- The provision of a guarantee in relation to a liability or obligation of a related party, e.g. a loan guarantee to a sports club in which a member or chief officer holds a position of influence.
- The reduction or waiving of a charge for services, e.g. free use of facilities for particular individuals or groups.

7. ARE THERE ANY EXCEPTIONS?

- 7.1 Yes. Where transactions are common to all individuals, they need not be declared. For example, there is no need to declare payments of council tax, rent or housing benefit, which are transactions that would occur whether or not the individual was a related party to the authority.
- 7.2 This principle can be applied to cover any payment or benefit which arises under circumstances for which there is a statutory scheme or for which the Council has established eligibility criteria, e.g.:
- housing renovation grants;
 - mandatory or discretionary student awards;
 - planning consents;
 - provision of care services;
 - season ticket or car loans.

8. IS WHAT I DECLARE LIKELY TO BE DISCLOSED IN THE COUNCIL'S ACCOUNTS?

- 8.1 It can generally be assumed that it will. However, disclosure will not be required in the accounts when the dealings between the Council and related party are not considered to be material. The Director of Finance and Corporate Services has to assess materiality in relation to the authority, and also in relation to the related party. Consequently, a figure which may not be material to the Council's balance sheet would still be disclosed if it was material to the finances of the individual concerned. It has been suggested that transactions above £5,000 be considered material for the purposes of this disclosure.
- 8.2 If any disclosure becomes likely, a draft of the proposed disclosure note will be provided to the individual for comments prior to publication.

9. HOW DO I MAKE MY DECLARATION?

- 9.1 Each year you will be asked to sign a form of declaration. This will be kept securely and confidentially by the Director of Finance and Corporate

Services. If you have any related party transactions to disclose, the form asks for brief details of the transaction and the sums involved.

- 9.2 The form should be returned to Jane West, Director of Finance and Corporate Services, 2nd Floor, Town Hall Extension. If you have any queries please contact Jane West, Extension 1900.

STANDARDS COMMITTEE

5

4 FEBRUARY 2009

CONTRIBUTORS

ADLDS
FCS

**COMMUNITIES & LOCAL GOVERNMENT
CONSULTATION PAPER: CODE OF PRACTICE ON
LOCAL AUTHORITY PUBLICITY**

WARDS

All

Summary

This report presents the Government's consultation on proposed changes to the Code of Recommended Practice on Local Authority Publicity and sets out a proposed H&F response. The closing date for receipt of responses is 12 March 2009.

RECOMMENDATIONS:

1. That the Standards Committee considers officers' proposed responses to the consultation questions and presents its views on these to be incorporated in a draft response.
2. That the draft response be submitted to Corporate Management Team and to Cabinet Briefing for agreement before 12 March.

1. INTRODUCTION

- 1.1 As part of a series of consultations on policy commitments related to the 'Communities in Control' White Paper, the Government issued a consultation document on 17 December seeking views on the 'Code of Recommended Practice on Local Authority Publicity'. The Publicity Code has existed since 1988 and was last consulted upon in early 2007. The Code is statutory guidance, i.e. it must be taken into account but can be departed from for good and legally relevant reasons. The consultation document can be found at the following link:
<http://www.communities.gov.uk/publications/localgovernment/publicitycodeconsultation>
- 1.2 If the current consultation identifies the need for revisions to be made then a revised draft Code will be prepared for further consultation. The publication and introduction of any revised Code will be aligned with the introduction of any guidance relating to the proposed forthcoming duty on local authorities to promote democracy.
- 1.3 The consultation comes at a time when the Tax Payers Alliance has publicly criticised local authorities for levels of expenditure on publicity. The current consultation on the Publicity Code ends on 12 March.
- 1.4 The main trigger for this review of the Code is the recognition, acknowledged in the Communities in Control White Paper and previously highlighted as a finding of the DCLG appointed Councillors' Commission, that there is confusion in local government about how far councils should promote and support councillors' activities. DCLG wants the Code to be reviewed to clarify this issue.

2. CONSULTATION QUESTIONS

Q1. *Is there other guidance (additional to the Publicity Code) that councils consider creates a barrier to the provision of publicity or support, or that needs clarifying?*

- 2.1 Officers are not aware of any other guidance that is problematic in the authority's provision of publicity nor that needs clarifying in this respect.

Q2. Is there a requirement for different codes to apply to different types of authority?

- 2.2 The Publicity Code, as issued in 1988, applies to all local authorities, parish councils, joint authorities established by the Local Government Act 1985 (i.e. post GLC authorities), police authorities (including the MPA), the London Fire and Emergency Planning Authority and National Parks authorities. The Code, as amended in 2001, applies solely to primary local authorities and district councils. The 2001 amendments (revisions to paragraphs 39 and 40, regarding publicity about individual councillors, and the introduction of a new section regarding elections, referendums and petitions) were made to address changes in political structures and community consultation introduced by the Local Government Act 2000. It may be sensible to integrate the 1988 and 2001 Codes into a single document, making clear where guidance differs for primary authorities and district councils.

Q3. Should the Publicity Code specifically address the presentation of publicity on an authority's website?

- 2.3 Yes it should. The internet is different from other mediums in that it is more interactive – citizens expect to be able to contribute to discussion on local issues – particularly the more controversial ones. Publishing their views on our website is currently hampered by the publicity code – it is unclear whether we can publish views that are not ‘objective’ or which sloganise and whose views we can include, e.g. where we know a ‘member of the public’ has party connections.

Q4. Does anything need to be added to or removed from the list of matters an authority should consider in determining whether or not to issue publicity on a certain subject?

- 2.4 There are only two matters listed in the amended Code that authorities are urged to consider in determining whether or not to issue publicity on a subject:
- the publicity should be relevant to the functions of the authority, and;
 - it should not duplicate unnecessarily publicity produced by central government, another local authority or another public authority.

There is a third matter in the original Code but this was dropped in the 2001 amended Code. It does appear to be an amalgamation of the other matters.

2.5 The two matters are reasonable issues to consider but do they need to appear in guidance? Isn't it 'stating the bleedin' obvious'? These days local authorities have a very broad community leadership function and, as such, could justify (under the first matter to consider) issuing publicity on any matter that will or could have any impact on any section of the community. The second matter listed is also open to wide interpretation by the inclusion of the word 'unnecessarily'. An authority will often find it necessary to duplicate publicity for a number of reasons, e.g. its own role in an initiative has not been adequately conveyed or its own position on a matter differs from that of other bodies.

2.6 Officers do suggest that a further matter be addressed. The council sometimes finds itself in the position of issuing publicity to rebut the criticism of others only to be criticised for doing so. The guidance should include express provision to allow for such rebuttals to be made.

Q5. *Should the Publicity Code specify the different criteria local authorities should use to determine whether or not publicity can be judged to be cost effective?*

2.7 The matters to be considered according to the Code are:

- whether the publicity is statutorily required or is discretionary;
- where it is statutorily required, the purpose to be served by the publicity, and;
- whether the expenditure envisaged is in keeping with the purpose to be served by the publicity.

2.8 Officers believe this part of the guidance to be superfluous – this is already effectively governed by public scrutiny and the need to deliver value for money. Cost is much less relevant than content now with zero-cost web-based means of communicating becoming ever more prevalent. Ultimately it is for individual authorities to assess how cost effective its publicity spend will be and the decision should be left to authorities.

Q6. *Is there any aspect of the cost section that is not required or anything which should be added?*

2.9 Officers suggest that this section should either remain unchanged or be taken out of the Code altogether. Exposure to public scrutiny is a far more effective curb on publicity spending than the Publicity Code could be.

Q7. *Should the Publicity Code contain advice about ethical standards in publicity, or should this be left to local authorities to judge for themselves?*

- 2.10 Officers believe that issues surrounding ethical standards in publicity should be left to local authorities to judge themselves, with due consideration given to general laws on equality of opportunity, discrimination, defamation etc.

Q8. *Is there any aspect of the content section that is not required or anything which should be added?*

- 2.11 Officers believe that the prohibition on 'sloganising' is out-dated and unhelpful. In today's media world, the use of language has changed and effective communication relies more heavily on short, snappy phrases and campaign straplines – very difficult to distinguish these from slogans, and what's wrong with slogans as an effective means to make a point?

Q9. *Should the Publicity Code be modified to specifically address the issue of privacy and the dissemination of unsolicited material?*

- 2.12 Judgements in relation to dissemination should be left to individual authorities. The Code could deal with the matters to be weighed in the balance.

Q10. *Is there any aspect of the dissemination section that is not required or anything which should be added.*

- 2.13 Officers are of the view that this section of the guidance is unnecessary and could be removed.

Q11. *Is there any aspect of the advertising section that is not required or anything which should be added.*

- 2.14 Paragraph 33 could be clarified slightly. It is fine to prohibit, on the basis of public accountability, the purchase of advertising space for a third party where this is a disguised subsidy. However, a distinction should be made in a similar but rather different situation in which the council offers free or subsidised advertising space (on its own website or newspaper) to a third party, not-for-profit organisation, the services of which it supports as of benefit to its residents. As presently worded there might be some confusion over the Code as it relates to any such arrangement.

Q12. *Should adverts for local authority political assistants appear in political publications and websites?*

- 2.15 Political assistants are relatively new in local government – these sorts of posts have emerged over the past few years with the move from a committee system to a cabinet system. It is not an issue that is relevant to

H&F at present. The current Code is quite clear in stating that adverts for staff should not be placed in party political publications. Officers take the view that this position should be retained.

Q13. Is there any aspect of the recruitment advertising section that is not required or anything which should be added?

- 2.16 The section is concise and makes clear the need to retain the political neutrality of local government employees. Officers don't see the need for any changes.

Q14. Given the emphasis given to supporting and raising awareness of the role of the councillor in the white paper, is there any aspect of the section on councillors that is not required, or anything which should be added?.

- 2.17 Issues regarding the promotion and support of individual councillors can present a difficulty. There is no problem in promoting the role of councillors in general, as the consultation's introduction sets out, but promoting the constituency achievements of ward councillors creates considerable scope for the blurring of the political restrictions on publicity and officers would not welcome this. Including cabinet members in council publicity as spokespeople for council policy and services is easily containable. Removing the restrictions on promoting councillors as individual elected members rather than promoting the role of Leader, Cabinet Member etc, is fraught with difficulty and, could put the Publicity Code in conflict with the over-riding LG Act 1986, section 2.

- 2.18 Whilst the provisions are generally useful, specific provision should be made in relation to rebuttal of criticism (in an appropriate manner, of course) as suggested in paragraph 2.6. There could also be specific recognition that the purpose of executive arrangements is, inter alia, to ensure the public know "who to praise and who to blame" and the legitimate role of publicity in relation to this.

Q15. Is there any aspect of the timing of publicity section that is not required or anything which should be added?

- 2.19 This section covers regulations governing purdah and publicity regarding petitions and referendums. The section makes reference to existing regulations and is clear as to the political impartiality which should be observed. No further additions are necessary. The position is actually dealt with by the application of Section 2 of the 1986 Act.

Q16. Is there any aspect of the assistance to others for publicity section that is not required or anything which should be added?

2.20 This section urges the extension of the Code to other organisations supported by the authority, e.g. funded voluntary organisations. This section is logical and consistent with s.2 which also applies to assistance.

3. SUMMARY

3.1 Overall officers agree with the sentiment of the consultation that the degree of regulation provided by the current code is neither necessary (publicity regulation happens by other means); representative of modern means of communication (not using public money to promote political views is outmoded means of constraint in itself); nor conducive to public debate and the promotion of democracy ('please get involved, but not if your views don't meet our criteria!').

4. RECOMMENDATIONS

4.1 That the Standards Committee considers officers' proposed responses to the consultation questions and presents its views on these, to be incorporated in a draft response for submission to the Corporate Management Team and Cabinet Briefing.

LOCAL GOVERNMENT ACT 2000 BACKGROUND PAPERS

No.	Brief Description of Background Papers	Name/Ext. of holder of file/copy	Department/Location
1.	Communities in Control: Real People, real power Code of Practice on Publicity A Consultation	Michael Cogher, Ext 2700	FCS, Legal Division, Room 133a HTH



Communities in Control: Real people, real power
Code of recommended practice on local authority publicity
A consultation



Communities in Control: Real people, real power
Code of recommended practice on local authority publicity
A consultation

Communities and Local Government
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Bressenden Place
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Chapter 1

The consultation and how to respond

Communities in Control consultation papers

- 1.1 The white paper, *Communities in Control: Real people, real power*, is about passing power into the hands of local communities. It sets out a range of policies to achieve this, building on work still in progress from the 2006 white paper, *Strong and Prosperous Communities*.
- 1.2 This paper is the next in a series consulting on a number of policy commitments and invites comments about the future of the Code of Recommended Practice on Local Authority Publicity (the 'Publicity Code'). It invites views on the content of the Publicity Code as an instrument for protecting public money (of either national or local taxpayers) while allowing councils to issue effective publicity.

About this consultation

- 1.3 The proposals in this consultation paper relate to relevant authorities in England. Authorities in Scotland and Wales have their own versions of the Publicity Code, which are the responsibility of the relevant devolved authorities.
- 1.4 The white paper *Communities in control* committed the Government to consulting on potential changes to the Publicity Code. This document is the first part of that consultation. The last Government consultation on the Publicity Code in January 2007 revealed support for the Publicity Code as a useful source of advice for authorities on sensitive issues on the use of resources. Following that, the Councillors Commission received views that the Publicity Code may have been seen as a hindrance to councils promoting the role of the councillor. This consultation paper explains the importance of local authority publicity, seeks confirmation of the results of our earlier consultation in January 2007, seeks also to establish views of the Publicity Code across the local government sector and stakeholders and goes on to ask how a Publicity Code might function without being, or being perceived as, a disincentive to effective communication.
- 1.5 If the Government considers that revisions to the Publicity Code are required then the comments and views received in response to this consultation document will form the basis for a revised Publicity Code, the text of which we will consult on in 2009.

- 1.6 Chapter 2 of this paper explains more thoroughly the context of the consultation, with particular reference to the promotion of democracy and a positive image of the role of councillors.
- 1.7 Chapter 3 of this paper seeks views on what should constitute the Publicity Code.
- 1.8 Particular questions on which we would welcome comments are set out in each chapter and summarised in annex A. In order to aid your consideration of the possible content of a future Publicity Code, the current code is reproduced at annexes B and C.
- 1.9 We are minded, subject to responses to this consultation, to implement the measures arising from the response to this and any subsequent consultation on the Publicity Code so that they can come into effect in line with any guidance that may be issued about the currently proposed authorities' duty to promote democracy in 2009.

Who we are consulting?

- 1.10 This is a public consultation and it is open to anyone to respond to this consultation document. We would, however, particularly welcome responses from council officials and councillors. **The consultation period runs for 12 weeks to 12 March 2009.**

How to respond

- 1.11 Your response must be received by 12 March 2009 and may be sent by e-mail or post to:

Karl Holden
 Conduct and Council Constitutions Team
 Communities and Local Government
 Zone 5/B2, Eland House
 Bressenden Place
 London
 SW1E 5DU
 e-mail: publicitycode@communities.gsi.gov.uk

If you are replying by e mail please title your response 'Response to Publicity Code consultation'.

It would be helpful if you could make clear in your response whether you represent an organisation or group, and in what capacity you are responding.

What will happen to the responses?

- 1.12 The Department will take account of the responses received to this consultation before taking decisions on possible changes to the Publicity Code.
- 1.13 Within three months of the close of the consultation period we will analyse the responses to the consultation and produce a summary of them. This summary will be published on the Department's website at www.communities.gov.uk

Publication of responses – confidentiality and data protection

- 1.14 Information provided in response to this consultation, including personal information, may be published, or disclosed in accordance with the access to information regimes. (These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
- 1.15 If you want any of the information that you provide to be treated as confidential you should be aware that under the FOIA, there is a statutory Code of Practice with which public authorities must comply, and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential.
- 1.16 If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 1.17 The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The Consultation Criteria

- 1.18 The UK Government has adopted a code of practice on consultations. Please see annex D of this document for the criteria that apply under this code, and advice about who you should contact if you have any comments or complaints about the consultation process.

Additional copies

- 1.19 You may make copies of this document without seeking permission. If required, printed copies of the consultation paper can be obtained from Communities and Local Government Publications, whose contact details may be found at the front of this document. An electronic version can be found at the Consultation Section of the Department's website at: www.communities.gov.uk.

In context – previous consultations and relevant legislation

- 1.20 The consultation document *Consultation on Amendments to the Model Code of Conduct for Local Authority Members* published in January 2007 asked, among other things, if the Publicity Code served a useful purpose. The responses suggested support for the Publicity Code as a useful source of advice for authorities on sensitive issues on the use of resources for publicity.
- 1.21 The Publicity Code is issued under powers conferred on the Secretary of State under section 4(1) of the Local Government Act 1986 ("the 1986 Act"). Local authorities are required by section 4(1) of the Act as amended by section 27 of the Local Government Act 1988 to have regard to the Publicity Code in coming to any decision on publicity.
- 1.22 The Publicity Code does not, and cannot, override section 2 of the 1986 Act, which provides that a local authority shall not publish, or assist others to publish, material which in whole or in part appears designed to affect public support for a political party.
- 1.23 Section 6(4) of the 1986 Act defines publicity as 'any communication, in whatever form, addressed to the public at large or to a section of the public'. The Publicity Code will therefore be relevant across the whole range of local authority work. It covers all decisions by a local authority on publicity and most public relations activities, such as paid advertising and leaflet campaigns and local authority sponsorship of exhibitions and conferences, as well as assistance to others to issue publicity.
- 1.24 Section 6(2)(a) of the 1986 Act sets out the types of authority to which the Code can apply in England:
- a county, district or London borough council
 - the Common Council of the City of London
 - the Broads Authority
 - a police authority established under section 3 of the Police Act 1996

- the Metropolitan Police Authority
- a joint authority established by Part 4 of the Local Government Act 1985
- the London Fire and Emergency Planning Authority
- the Council of the Isles of Scilly or
- a parish council

1.25 The Publicity Code also applies to National Parks Authorities by virtue of the Environment Act 1995.

1.26 By virtue of section 6(6) of the 1986 Act, nothing in the Publicity Code is to be construed as applying to any decision by a local authority in the discharge of their duties under Part 5A of the Local Government Act 1972 (which provides for access to meetings and documents of certain authorities, committees and sub-committees).

1.27 The Publicity Code was first published on 15 August 1988 and applied to local authorities in England Scotland and Wales. That Code was amended on 2 April 2001 in England only, as regards its application to county councils, district councils and London borough councils. This consultation is concerned with the application of the Publicity Code, including the amendments made in 2001, to local authorities in England.

1.28 The Publicity Code, as published in 1988, remains applicable in Scotland; the National Assembly for Wales issued a revised Code in October 2001 which applies in Wales.

Chapter 2

Effective communication and publicity

Effective communication

- 2.1 For a community to be a healthy local democracy requires local understanding. Effective communication is key to developing that understanding. In recent years local authorities have used local publicity not only to keep their communities informed of the services that they provide, but also to encourage greater participation. Good, effective publicity, aimed at improving public awareness of councils' activities is to be welcomed and encouraged.

The Publicity Code

- 2.2 Publicity, however, can be a sensitive matter because of the impact it can have and because of the costs associated with it, which can be considerable. It is essential, therefore, to ensure that decisions about local authority publicity are properly made.
- 2.3 It was against this background that the Publicity Code was introduced in 1988. The purpose of the Publicity Code was to set out clear principles of good practice. In doing so, it reflected conventions that applied to publicity which had traditionally been applied in both central and local government.
- 2.4 The Publicity Code took account of the fact that some local authority publicity dealt with issues that are controversial because of local circumstances or because of a difference of view between political parties locally or nationally. The principles were not intended to inhibit or prohibit the publication of information on politically sensitive or controversial issues, nor to stifle public debate. Rather, it set out matters it was considered a local authority should give consideration to, to ensure public funds were not misused and to safeguard those members of the public at whom the publicity was directed. The Publicity Code was especially relevant to publicity that dealt with controversial or sensitive issues.
- 2.5 The stated underlying objective of the Publicity Code was to ensure the proper use of public funds for publicity.

- 2.6 The Publicity Code has now been in place for twenty years. While many of the values it enshrines, such as ensuring that the authority should ensure that publicity produced is a proper use of public funds, are beyond dispute, we recognise that there may be an argument that a Publicity Code is not required, or not required in its present form, to ensure that this is the case. There are other safeguards in place which contribute to ensuring the proper use of public resource in an authority, principally through the authority's auditor but in addition, more locally, councils' spending can be held to account through overview and scrutiny committees, by the Audit Commission through Comprehensive Performance Assessment, Comprehensive Area Assessment and Use of Resources assessments and the behaviour of councillors through the local authority's standards committee. Ultimately, the council is accountable to its electorate.
- 2.7 The Publicity Code is thus part of a range of legislation intended to ensure that local authority publicly funded publicity is appropriate. Moreover, the Local Government Act 1972 gives local authorities the power to arrange to publicise services offered by them or by other local authorities in their community while the Public Health (Control of Disease) Act 1984 empowers local authorities to arrange for the publication in their area of information relating to health or disease. In addition, Part 1 of the Local Government Act 2000 empowers local authorities to promote well-being in their communities.

Local authority publicity

- 2.8 Since the 2001 white paper *Quality public services* there has been a move away from central government prescription to local government having more flexibility to decide how they wish to conduct business. The white paper began the process of devolving power to local government to enable it to make its own decisions about where to direct resources. This process continued with the 2006 white paper *Strong and prosperous communities*, the Local Government and Public Involvement in Health Act 2007 and continues in the 2008 white paper *Communities in control*.
- 2.9 Part of this process involved reinvigorating and rehabilitating politics at the local level. One aspect of this is acknowledging the political nature of local government; councils are political bodies, led by democratically elected politicians making decisions about local priorities. They are not simply neutral bodies for service delivery. We consider that it is important for the health of local democracy that citizens are aware of how decisions are made at the local level, and who is making them. To aid this, we consider that councils should be able to help publicise the role of the activities of the authority and the activities of individual councillors to help promote democracy in the community.

- 2.10 We want councils to be able to play a role in helping councillors to communicate with citizens and to allow people to understand who their elected representatives are, what views they have and what they are doing on behalf of those who elected them.
- 2.11 To achieve this, the Publicity Code should not prevent councils from producing publicity that explains clearly the political control of their council, who leads the council and the political composition of the council.
- 2.12 Nor should it be seen to prevent members having, in the interests of their constituents, a public voice funded by the taxpayer to inform their community about what activities they have been undertaking in their role as councillor, in either any particular role they fulfil on the council, or as a representative of their ward.
- 2.13 The Publicity Code should not form a barrier to members using publicly funded publicity to discuss, in the interest of their constituents, matters that are of personal interest to those members, nor should it bar them from providing useful and pertinent contact details and links to other bodies. All publicity funded by a local authority, or which they assist others to publish, is subject to the statutory prohibition that it cannot appear designed to affect public support for a political party.

Promoting democracy and the role of councillors

- 2.14 In the Government's response to the Councillors Commission report, published in July 2008, the Department for Communities and Local Government acknowledged that there was confusion in local government about how far councils should promote and support councillors' activities and explained that the Department wanted to clarify this, so that any guidance or advice recognises the legitimate support that should be given to councillors. In addition the white paper *Communities in control*, also published in July, recognised that there was confusion within local government about how far local authorities should promote and support councillors' activities and, in this context, recognised the need to review the Publicity Code.
- 2.15 The Councillors Commission research also made it clear that in order to make the councillor role easier and more attractive, the level of awareness of the role needs to be raised. Council publicity can be an effective tool in demystifying the role and making currently under-represented groups, and the wider community as a whole, more aware of what is involved and what decisions councillors make on their behalf.
- 2.16 Those who work in local government should feel confident about operating in a political environment and giving elected councillors the support they require. The response to the Councillors Commission report announced the Government's intention of introducing a new duty on local authorities to support democracy and encouraged councils to take a range of actions as part of their new responsibility, including:

- **better information:** council publications and websites should provide clear information about political control, council meetings, councillors' surgeries and how to contact both councillors and local political parties
- **a two-way process:** using local radio, blogs, podcasts and interactive websites to improve dialogue between councillors and local people
- **getting people involved:** explaining to all communities how to be a councillor or take up other civic roles – including school governorships or health board membership – through websites and newsletters
- **promoting democracy:** councils could involve officials or former councillors in promoting local democracy through making positive presentations to local volunteer groups or boards about how to get involved in local governance roles and by promoting the role of the council and councillors in the community
- **targeting:** disseminating information about involvement in local democracy to groups not well represented among councillors in the area

2.17 The Government's response to the Councillors Commission report also expressed the Department's wish to see councillors encouraged to make use of more types of media, such as community radio or the internet as well as traditional methods of communication. Local authority publicity has a key role to play in delivering a positive media profile of the work of councillors. Councillors should be role models for their communities, being a role model means being visible and publicity can aid that visibility.

2.18 We want to ensure that councils, and councillors, do not consider themselves unduly restricted in the types of communication that they can engage in. To ensure that councils will not be inhibited in their new duty to promote democracy, councils will need to be prepared to publicise how to get involved in local decision making processes, will have to target publicity at groups that are under-represented in the democratic process and make the most effective use of advertising.

Other guidance for councils

2.19 We also want to establish whether there is other guidance for councils, besides the Publicity Code, which is seen to be a disincentive in terms of being able to provide citizens with the publicity that they require or councillors with the support that they require and whether this guidance need clarifying or amending?

Question 1: Is there other guidance, (additional to the Publicity Code), that councils consider creates a barrier to the provision of publicity or support, or that needs clarifying?

Chapter 3

Review of the Publicity Code

3.1 The existing Publicity Code gives recommended practice on a number of aspects of publicity ranging from subject matter to assistance to others for publicity. This chapter gives a brief explanation of the current function of each section of the Publicity Code, it is not a proposal of what might constitute a revised Code. The explanation overlooks the distinctions between the 1988 Publicity Code (which continues to apply to certain bodies) and the Publicity Code as revised (which applies to principal bodies in England). A number of open questions about what changes might be required are also asked.

Question 2: Is there a requirement for different codes to apply to different types of authority?

Question 3: Should the Publicity Code specifically address the presentation of publicity on an authority's website?

First section of the current Code: Subject matter

In summary, the current Publicity Code provides as follows: Local authorities have a variety of statutory powers which enable them to produce publicity and circulate it, or to assist others to do so. Some of those powers relate directly to the authority's functions, others give a more general discretion to publicise matters which go beyond an authority's primary responsibilities. This discretion provides an important degree of flexibility, but also heightens the need for a responsible approach to expenditure decisions. The Publicity Code lists the matters an authority should consider when determining whether to issue publicity material (see annexes B and C).

Question 4: Does anything need to be added to or removed from the list of matters an authority should consider in determining whether or not to issue publicity on a certain subject?

Second section of the current Code: Costs

In summary, the current Publicity Code provides as follows: Local authorities are accountable to the public for the efficiency and effectiveness of their expenditure and expenditure on publicity should always be cost-effective. The Publicity Code recognises that publicity can be expensive and that while in some cases publicity may justify cost by virtue of savings produced, the unquantifiable benefits of publicity are also important. The Publicity Code lists matters local authorities should consider in determining whether the costs of their publicity are justifiable.

Question 5: Should the Publicity Code specify the different criteria local authorities should use to determine whether or not publicity can be judged to be cost effective?

Question 6: Is there any aspect of the cost section that is not required or anything which should be added?

Third section of the current Code: Content

In summary, the current Publicity Code provides as follows: Local authorities produce a variety of publicity material, from factual information about services to staff recruitment advertising. Publicity will also be produced to explain or justify the council's policies either in general or on specific topics. The Publicity Code requires that publicity describing the council's policies and aims should be as objective as possible, makes provision for the production of promotional material and states that publicity should not appear to undermine generally accepted moral standards. It also makes provision for the production of publicity material to support campaigns to influence behaviour or attitudes, for instance on health matters, but prohibits publicity campaigns intended to persuade the public to hold a particular view on a question of policy.

Question 7: Should the Publicity Code contain advice about ethical standards in publicity, or should this be left to local authorities to judge for themselves?

Question 8: Is there any aspect of the content section that is not required or anything which should be added?

Fourth section of the current Code: Dissemination

In summary, the current Publicity Code provides as follows: Local authorities should ensure that information and publicity produced by the authority is available to those that want or need it. The Publicity Code makes clear that publicity material should be targeted at those who would best benefit from it and that material closely affecting vulnerable members of the community should be clear and unambiguous. It is also clear that unsolicited material is more intrusive than publicity available on application.

Question 9: Should the Publicity Code be modified to specifically address the issue of privacy and the dissemination of unsolicited material?

Question 10: Is there any aspect of the dissemination section that is not required or anything which should be added?

Fifth section of the current Code: Advertising

In summary, the current Publicity Code provides as follows: Advertising can be an expensive but effective method of getting a message across to a wide audience. While effective at conveying simple messages, advertising is inappropriate for explaining more complex policy issues and should be used appropriately. The Publicity Code prohibits the purchase of advertising space as a means of subsidising another organisation, or advertising on their behalf.

Question 11: Is there any aspect of the advertising section that is not required or anything which should be added?

Sixth section of the current Code: Recruitment advertising

In summary, the current Publicity Code provides as follows: Local authority recruitment publicity should reflect the tradition of political impartiality in the local government service and the media chosen to advertise local authority positions should reflect the objective of maintaining the politically independent status of local authority staff. The current Publicity Code restricts any council posts from being advertised in political publications.

Question 12: Should adverts for local authority political assistants appear in political publications and websites?

Question 13: Is there any aspect of the recruitment advertising section that is not required or anything which should be added?

Seventh section of the current Code: Publicity about individual members of an authority

In summary, the current Publicity Code provides as follows: A local authority discharges its functions corporately and it is inappropriate to publicise the activities of particular councillors except when councillors are representing the council as a whole. Personalisation of issues or image making should be avoided and the publicity should not be liable to misrepresentation as being party political.

Question 14: Given the emphasis given to supporting and raising awareness of the role of the councillor in the white paper, is there any aspect of the section on councillors that is not required, or anything which should be added?

Eighth section of the current Code: Timing of publicity – elections, referendums and petitions

In summary, the current Publicity Code provides as follows: While a local authority may issue publicity during the period between notice of an election and the election itself, if it is not intended to affect the public's opinion of the authority or influence public opinion, care should be taken when publicity is issued after an announcement of an election, by-election or referendum affecting the authority's area to ensure that this could not be perceived as seeking to influence public opinion or using the authority's resources to promote the public image of a particular candidate or group of candidates.

Publicity issued by an authority in the period between the calling of a referendum and the date of the referendum should not be capable of perceived as seeking public support for, or opposition to, the referendum proposals and should not associate support for, or opposition to, the proposals with any individual or group.

Authorities should not mount publicity campaigns where the primary purpose is to persuade the public to hold a particular view in relation to petitions generally or on a specific proposal.

Question 15: Is there any aspect of the timing of publicity section that is not required, or anything which should be added?

Ninth section of the current Code: Assistance to others for publicity

In summary, the current Publicity Code provides as follows: Local authorities should ensure that the principles of the Publicity Code should be taken into account by local authorities in decisions on assistance to others to issue publicity. The authority should, if incorporating principles of the Publicity Code into guidance for applicants for grants, make the observance of the principles a condition of the grant or other assistance and ensure that provision is made to monitor publicity produced to ensure that the guidance is being observed. Authorities should make fair and equal provision for the display or dissemination of publicity material produced by charities or voluntary organisations.

Question 16: Is there any aspect of the assistance to others for publicity section that is not required, or anything which should be added?

Annex A

List of consultation questions

Chapter 2: Effective communication and publicity

Question 1	Is there other guidance, (additional to the Publicity Code), that councils consider creates a barrier to the provision of publicity or support, or that needs clarifying?
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Chapter 3: The Publicity Code

Question 2	Is there a requirement for different codes to apply to different types of authority?
Question 3	Should the Publicity Code specifically address the presentation of publicity on an authority's website?
Question 4	Does anything need to be added to or removed from the list of matters an authority should consider in determining whether or not to issue publicity on a certain subject?
Question 5	Should the Publicity Code specify the different criteria local authorities should use to determine whether or not publicity can be judged to be cost effective?
Question 6	Is there any aspect of the cost section that is not required or anything which should be added?
Question 7	Should the Publicity Code contain advice about ethical standards, or should this be left to local authorities to judge for themselves?
Question 8	Is there any aspect of the content section that is not required or anything which should be added?
Question 9	Should the Publicity Code be modified to specifically address the issue of privacy and the dissemination of unsolicited material?
Question 10	Is there any aspect of the dissemination section that is not required or anything which should be added?
Question 11	Is there any aspect of the advertising section that is not required or anything which should be added?
Question 12	Should adverts for local authority political assistants appear in political publications and websites?

Question 13	Is there any aspect of the recruitment advertising section that is not required or anything which should be added?
Question 14	Given the emphasis given to supporting and raising awareness of the role of the councillor in the White Paper, is there any aspect of the section on councillors that is not required, or anything which should be added?
Question 15	Is there any aspect of the timing of publicity section that is not required, or anything which should be added?
Question 16	Is there any aspect of the assistance to others for publicity section that is not required, or anything which should be added?

Annex B

Code of Recommended Practice on Local Authority Publicity as issued in 1988

Code of Recommended Practice

Subject matter

1. Local authorities have a variety of statutory powers which enable them to produce publicity and circulate it widely, or to assist others to do so. Those commonly used include the powers in sections 111, 142, 144 and 145 of the Local Government Act 1972.
2. Some of these powers relate directly to the publishing authority's functions. Others give a more general discretion to publicise matters which go beyond an authority's primary responsibilities. For example, sections 142(1A) of the 1972 Act and 88(1) of the 1973 Act authorise local authorities to arrange for the publication within their area of information as to the services available in the area provided by them or by other local authorities; and Section 54 of the Public Health (Control of Disease) Act 1984 empowers local authorities to arrange for the publication within their area of information on questions relating to health or disease.
3. This discretion provides an important degree of flexibility, but also heightens the need for a responsible approach to expenditure decisions.
4. In considering the subject areas in which publicity is to be issued, the following matters will be important:
 - (i) the publicity should be relevant to the functions of the authority.
 - (ii) it should not duplicate unnecessarily publicity produced by central government, another local authority or another public authority.
 - (iii) in areas where central government, another tier of local government, or another public authority have the primary service or policy responsibility, local authorities should issue publicity only on matters that are directly relevant to their own functions.

Costs

5. Local authorities are accountable to the public for the efficiency and effectiveness of their expenditure, in the first instance through the audit arrangements.

6. For publicity, as for all other expenditure, the aim should therefore be to achieve the greatest possible cost-effectiveness.
7. To achieve this, there may well be cases where the benefit of higher expenditure to gain better presentation or improve other aspects of publicity will justify the extra cost.
8. Local authorities should therefore always have in mind the extent to which expert advice is needed for publicity.
9. In some cases publicity may justify its cost by virtue of savings which it achieves. More commonly it will be necessary to take a view of the importance of the unquantifiable benefits as compared with other uses to which the resources could be put.
10. In deciding whether the nature and scale of proposed publicity, and consequently its cost, are justified, the following matters will be relevant:
 - (i) whether the publicity is statutorily required or is discretionary.
 - (ii) where it is statutorily required, the purpose to be served by the publicity.
 - (iii) whether the expenditure envisaged is in keeping with the purpose and expected effect of the publicity.

Content and style

11. Local authorities produce a variety of publicity material. It ranges from factual information about the services provided by the authority, designed to inform clients or attract new ones, to material necessary to the administration of the authority, such as staff recruitment advertising. There will also be publicity to explain or justify the council's policies either in general, as in the annual report, or on specific topics, for example as background to consultation on the line chosen for a new road.
12. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on facts or explanation or both.
13. Where publicity is used to comment on, or respond to, the policies and proposals of central government, other local authorities or other public authorities, the comment or response should be objective, balanced, informative, and accurate. It should aim to set out the reasons for the council's views, and should not be a prejudiced, unreasoning or political attack on the policies or proposals in question or on those putting them forward. Slogans alone will not be an adequate means of justifying or explaining the authority's views or their policy decisions.
14. Publicity relating to the provision of a service should concentrate on providing factual information about the service.

15. In some cases promotional publicity may be appropriate – for example about the local authority's sports and leisure facilities or about tourist attractions.
16. Publicity touching on issues that are controversial, or on which there are arguments for and against the views or policies of the council, should be handled with particular care. It should not over-simplify facts, issues or arguments. Again, it is unlikely that slogans alone will achieve the necessary degree of balance, or capture the complexities of opposing political arguments.
17. Publicity should not attack, nor appear to undermine, generally accepted moral standards.
18. Publicity campaigns by local authorities are appropriate in some circumstances: for example, to promote the effective and efficient use of local services and facilities, or to attract tourists or investment. Publicity campaigns may also be an appropriate means of influencing public behaviour or attitudes on such matters as health, safety, crime prevention or race relations.
19. Legitimate concern is, however, caused by the use of public resources for some forms of campaigns which are designed to have a persuasive effect. Publicity campaigns can provide an appropriate means of ensuring that the local community is properly informed about a matter relating to a function of the local authority and about the authority's policies in relation to that function and the reasons for them. But local authorities, like other public authorities, should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy.

Dissemination

20. The main purposes of local authority publicity are to increase public awareness of the services provided by the authority and the functions it performs; to explain to electors and ratepayers the reasons for particular policies and priorities; and in general to improve local accountability.
21. Information and publicity produced by the council should be made available to all those who want or need it. Local authorities should not discriminate in favour of, or against, persons or groups in the compilation and distribution of material for reasons not connected with the efficiency and effectiveness of issuing the publicity.
22. Where material is distributed on matters closely affecting vulnerable sections of the community – for example, the elderly – particular care should be taken to ensure that it is unambiguous, readily intelligible, and unlikely to cause needless concern to those reading, seeing or listening to it.

23. Local authority newspapers, leaflets, and other publicity distributed unsolicited from house to house are inevitably more intrusive than publicity available on application to the council.
24. Publicity that reaches the public unsolicited should be targeted as far as practicable on those whose interests are clearly and directly affected by its content.
25. Material touching on politically controversial issues should be distributed unsolicited only where there is a strong case for letting a particular group of people have information of direct concern to them and no other equally efficient and effective means can be found.
26. Local authority newspapers or information bulletins are a special case. They are often a cost-effective means of disseminating information, but they may touch on controversial issues. If they do, they should treat such issues in an objective and informative way, bearing in mind the principles set out in paragraphs 11 -19 of the Code.
27. Where it is important for information to reach a particular target audience, consideration should be given to using the communications networks of other bodies, for example those of voluntary organisations.

Advertising

28. Advertising, especially on billboards or on television and radio, is a highly intrusive medium. It can also be expensive. It may however provide a cost effective, efficient means of conveying public information to the widest possible audience. Advertising on local radio networks has, for example, been used as a relatively inexpensive means of telling potential clients about local authority services. Advertising can also be the most cost-effective means of publicising a local authority's activities on tourism, and in the area of economic development generally.
29. The primary criterion for decisions on whether to use advertising should be cost-effectiveness.
30. Advertisements are not normally likely to be appropriate as a means of explaining policy or commenting on proposals, since an advertisement by its nature summarises information, compresses issues and arguments, and markets views and opinions.
31. Advertising in media which cover an area significantly wider than that of the authority is not likely to be an appropriate means of conveying information about a local authority's policies as opposed to attracting people to the authority's area or to use its facilities.

- 32. The attribution of advertising material leaflets and other forms of publicity that reach the public unsolicited should be clearly set out.
- 33. It is not acceptable, in terms of public accountability, to use the purchase of advertising space as a disguised means of subsidy to a voluntary, industrial or commercial organisation. Such support should be given openly through the normal grant arrangements. However, the conditions attached to a grant may require the provision of publicity, including publicity for the work of the authority.
- 34. Any decision to take advertising space in a publication produced by a voluntary, industrial or commercial organisation should be made only on the grounds that it provides an effective and efficient means of securing the desired publicity.
- 35. Local authorities should never use advertising as a means of giving financial support to any publication associated with a political party.

Recruitment advertising

- 36. Local authorities have respected in their staff employment policies the tradition of a politically impartial public service. Their recruitment publicity should reflect this tradition, and the fact that local authority staff are expected to serve the authority as a whole, whatever its composition from time to time.
- 37. The content of recruitment publicity and the media chosen for advertising job vacancies should be in keeping with the objective of maintaining the politically independent status of local authority staff.
- 38. Advertisements for staff should not be placed in party political publications.

Publicity about individual members of an authority

- 39. The functions of a local authority are discharged by the council corporately. It is therefore inappropriate for public resources to be used to publicise individual councillors.
- 40. In the interests of public accountability, however, it may be appropriate to give publicity to the views or activities of individual members when they are representing the council as a whole: for example, when the chairman of a council speaks or acts as the first citizen of the whole community, or when a chairman of a committee opens a new scheme or launches a policy approved by the council or by his committee on the council's behalf.

- 41.** For the same reason a local authority may justifiably in certain circumstances issue press releases reporting statements made by individual members. Examples of cases where such press releases may be appropriate are as reports of the discussion at the meetings of the council or committees, or quotations of comments made by leading members of the council in response to particular events which call for a particularly speedy reaction from the council.
- 42.** This does not prevent a member of staff of a local authority from responding to questions about individual members, since that is not publicity as defined in the 1986 Act.

Timing of publicity

- 43.** Particular care should be taken when publicity is issued immediately prior to an election or by-election affecting the authority's area to ensure that this could not be perceived as seeking to influence public opinion, or to promote the public image of a particular candidate, or group of candidates. Between the time of publication of a notice of an election and polling day, publicity should not be issued which deals with controversial issues, or which reports views or policies in a way that identifies them with individual members or groups of members.

Assistance to others for publicity

- 44.** The principles set out above apply to decisions on publicity issued by local authorities. They should also be taken into account by local authorities in decisions on assistance to others to issue publicity. In all such decisions local authorities should, to the extent appropriate:
- (a) incorporate the relevant principles of the Code in published guidance for applicants for grants;
 - (b) make the observance of that guidance a condition of the grant or other assistance;
 - (c) undertake monitoring to ensure that the guidance is observed.
- 45.** It can be appropriate for local authorities to help charities and voluntary organisations by arranging for pamphlets or other material produced and paid for by the organisation to be available for collection by the public in public libraries and other suitable locations. Such material should not offend against any legal provision, but (subject to this) any such facility should be made available on a fair and equal basis.

Annex C

Code of Recommended Practice of Local Authority Publicity as amended in 2001 and which apply only to county councils, district councils and London borough councils in England

Code of Recommended Practice

Subject matter

1. Local authorities have a variety of statutory powers which enable them to produce publicity and circulate it widely, or to assist others to do so. Those commonly used include the powers in sections 111, 142, 144 and 145 of the Local Government Act 1972.
2. Some of these powers relate directly to the publishing authority's functions. Others give a more general discretion to publicise matters which go beyond an authority's primary responsibilities. For example, section 142(1A) of the 1972 Act and 88(1) of the 1973 Act authorise local authorities to arrange for the publication within their area of information as to the services available in the area provided by them or by other local authorities; and Section 54 of the Public Health (Control of Disease) Act 1984 empowers local authorities to arrange for the publication within their area of information on questions relating to health or disease.
3. This discretion provides an important degree of flexibility, but also heightens the need for a responsible approach to expenditure decisions.
4. In considering the subject areas in which publicity is to be issued, the following matters will be important:
 - (i) the publicity should be relevant to the functions of the authority.
 - (ii) it should not duplicate unnecessarily publicity produced by central government, another local authority or another public authority.

Costs

5. Local authorities are accountable to the public for the efficiency and effectiveness of their expenditure, in the first instance through the audit arrangements.

6. For publicity, as for all other expenditure, the aim should therefore be to achieve the greatest possible cost-effectiveness.
7. To achieve this, there may well be cases where the benefit of higher expenditure to gain better presentation or improve other aspects of publicity will justify the extra cost.
8. Local authorities should therefore always have in mind the extent to which expert advice is needed for publicity.
9. In some cases publicity may justify its cost by virtue of savings which it achieves. More commonly it will be necessary to take a view of the importance of the unquantifiable benefits as compared with other uses to which the resources could be put.
10. In deciding whether the nature and scale of proposed publicity, and consequently its cost, are justified, the following matters will be relevant:
 - (i) whether the publicity is statutorily required or is discretionary.
 - (ii) where it is statutorily required, the purpose to be served by the publicity.
 - (iii) whether the expenditure envisaged is in keeping with the purpose and expected effect of the publicity.

Content and Style

11. Local authorities produce a variety of publicity material. It ranges from factual information about the services provided by the authority, designed to inform clients or attract new ones, to material necessary to the administration of the authority, such as staff recruitment advertising. There will also be publicity to explain or justify the council's policies either in general, as in the annual report, or on specific topics, for example as background to consultation on the line chosen for a new road.
12. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on facts or explanation or both.
13. Where publicity is used to comment on, or respond to, the policies and proposals of central government, other local authorities or other public authorities, the comment or response should be objective, balanced, informative, and accurate. It should aim to set out the reasons for the council's views, and should not be a prejudiced, unreasoning or political attack on the policies or proposals in question or on those putting them forward. Slogans alone will not be an adequate means of justifying or explaining the authority's views or their policy decisions.
14. Publicity relating to the provision of a service should concentrate on providing factual information about the service.

15. In some cases promotional publicity may be appropriate – for example about the local authority's sports and leisure facilities or about tourist attractions.
16. Publicity touching on issues that are controversial, or on which there are arguments for and against the views or policies of the council, is unavoidable, particularly given the importance of wide consultation whenever material issues arise. Such publicity should be handled with particular care. Issues must be presented clearly, fairly and as simply as possible, although councils should not over-simplify facts, issues or arguments. Again, it is unlikely that slogans alone will achieve the necessary degree of balance, or capture the complexities of opposing political arguments.
17. Publicity should not attack, nor appear to undermine, generally accepted moral standards.
18. Publicity campaigns by local authorities are appropriate in some circumstances: for example, as part of consultation processes where local views are being sought, or to promote the effective and efficient use of local services and facilities, or to attract tourists or investment. Publicity campaigns may also be an appropriate means of influencing public behaviour or attitudes on such matters as health, safety, crime prevention or equal opportunities.
19. Legitimate concern is, however, caused by the use of public resources for some forms of campaigns, which are designed to have a persuasive effect. Publicity campaigns can provide an appropriate means of ensuring that the local community is properly informed about a matter relating to a function of the local authority and about the authority's policies in relation to that function and the reasons for them. But local authorities, like other public authorities, should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy.

Dissemination

20. The main purposes of local authority publicity are to increase public awareness of the services provided by the authority and the functions it performs; to allow local people to have a real and informed say about issues that affect them; to explain to electors and ratepayers the reasons for particular policies and priorities; and in general to improve local accountability.
21. Information and publicity produced by the council should be made available to all those who want or need it. Local authorities should not discriminate in favour of, or against, persons or groups in the compilation and distribution of material for reasons not connected with the efficiency and effectiveness of issuing the publicity.

22. Where material is distributed on matters closely affecting vulnerable sections of the community – for example, the elderly – particular care should be taken to ensure that it is unambiguous, readily intelligible, and unlikely to cause needless concern to those reading, seeing or listening to it.
23. Local authority newspapers, leaflets, other publicity distributed unsolicited from house to house and information on websites are able to reach far wider audiences than publicity available on application to the council. Councils should give particular consideration to the use of electronic and other new media communication systems. However, councils should ensure that they do not rely solely on such mechanisms and that they do not exclude those without access or easy access to such systems.
24. Such publicity should be targeted as appropriate for its purposes, taking particular care with material touching on politically controversial issues.
25. There is no paragraph 25.
26. Local authority newspapers or information bulletins are a special case. They are often a cost-effective means of disseminating information, or facilitating consultation and can provide a means for local people to participate in debate on decisions the council is to take. The advantage of using websites and other information technology for consultations should also be considered. Inevitably such publications will touch on controversial issues and where they do they should treat such issues in an objective and informative way, bearing in mind the principles set out in paragraphs 11-19 of the Code.
27. Where it is important for information to reach a particular target audience, consideration should be given to using the communications networks of other bodies, for example those of voluntary organisations, and making use of electronic communication systems.

Advertising

28. Advertising, especially on billboards or on television and radio, is a highly intrusive medium. It can also be expensive. It may however provide a cost-effective, efficient means of conveying public information to the widest possible audience. Advertising on local radio networks has, for example, been used as a relatively inexpensive means of telling potential clients about local authority services. Advertising can also be the most cost-effective means of publicising a local authority's activities or promoting the social, economic and environmental well-being of the area.
29. The primary criterion for decisions on whether to use advertising should be cost-effectiveness.

30. Advertisements are not normally likely to be appropriate as a means of explaining policy or commenting on proposals, since an advertisement by its nature summarises information, compresses issues and arguments, and markets views and opinions.
31. Advertising in media which cover an area significantly wider than that of the authority is not likely to be an appropriate means of conveying information about a local authority's policies as opposed to attracting people to the authority's area or to use its facilities.
32. The attribution of advertising material leaflets and other forms of publicity that reach the public unsolicited should be clearly set out.
33. It is not acceptable, in terms of public accountability, to use the purchase of advertising space as a disguised means of subsidy to a voluntary, industrial or commercial organisation. Such support should be given openly through the normal grant arrangements. However, the conditions attached to a grant may require the provision of publicity, including publicity for the work of the authority.
34. Any decision to take advertising space in a publication produced by a voluntary, industrial or commercial organisation should be made only on the grounds that it provides an effective and efficient means of securing the desired publicity.
35. Local authorities should never use advertising as a means of giving financial support to any publication associated with a political party.

Recruitment Advertising

36. Local authorities have respected in their staff employment policies the tradition of a politically impartial public service. Their recruitment publicity should reflect this tradition, and the fact that local authority staff are expected to serve the authority as a whole, whatever its composition from time to time.
37. The content of recruitment publicity and the media chosen for advertising job vacancies should be in keeping with the objective of maintaining the politically independent status of local authority staff.
38. Advertisements for staff should not be placed in party political publications.

Individual Councillors

- 39.** Publicity about individual councillors may include the contact details, the positions they hold in the Council (for example, member of the Executive or Chair of Overview and Scrutiny Committee), and their responsibilities. Publicity may also include information about individual councillors' proposals, decisions and recommendations only where this is relevant to their position and responsibilities within the Council. All such publicity should be objective and explanatory, and whilst it may acknowledge the part played by individual councillors as holders of particular positions in the Council, personalisation of issues or personal image making should be avoided.
- 40.** Publicity should not be, or liable to misrepresentation as being, party political. Whilst it may be appropriate to describe policies put forward by an individual councillor which are relevant to her/his position and responsibilities within the Council, and to put forward her/his justification in defence of them, this should not be done in party political terms, using political slogans, expressly advocating policies of those of a particular political party or directly attacking policies and opinions of other parties, groups or individuals.

Elections, referendums and petitions

- 41.** The period between the notice of an election and the election itself should preclude proactive publicity in all its forms of candidates and other politicians involved directly in the election. Publicity should not deal with controversial issues or report views, proposals or recommendations in such a way that identifies them with individual members or groups of members. However, it is acceptable for the authority to respond in appropriate circumstances to events and legitimate service enquiries provided that their answers are factual and not party political. Members holding key political or civic positions should be able to comment in an emergency or where there is a genuine need for a member level response to an important event outside the authority's control. Proactive events arranged in this period should not involve members likely to be standing for election.
- 42.** The Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000 (which apply under the Local Government Act 2000 to county councils, district councils and London borough councils) prohibit an authority from incurring any expenditure to:
- publish material which appears designed to influence local people in deciding whether or not to sign a petition requesting a referendum on proposals for an elected mayor
 - assist anyone else in publishing such material or
 - influence or assist others to influence local people in deciding whether or not to sign a petition

Publicity in these circumstances should, therefore, be restricted to the publication of factual details which are presented fairly about the petition proposition and to explaining the council's existing arrangements. Local authorities should not mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view in relation to petitions generally or on a specific proposal.

- 43.** County councils, district councils and London borough councils should ensure that any publicity about a referendum under Part II of the Local Government Act 2000 (the 2000 Act) either prior to or during the referendum period is factually accurate and objective. The referendum period means the period beginning with the date on which proposals under Part II of the 2000 Act are sent to the Secretary of State and ending with the date of the referendum. The publicity should not be capable of being perceived as seeking to influence public support for, or opposition to, the referendum proposals and should not associate support for, or opposition to, the proposals with any individual or group. Local authorities must conform with any specific restrictions on publicity activities which are required by Regulations under section 45 of the 2000 Act.

Assistance to others for publicity

- 44.** The principles set out above apply to decisions on publicity issued by local authorities.

They should also be taken into account by local authorities in decisions on assistance to others to issue publicity. In all such decisions local authorities should, to the extent appropriate:

- (a) incorporate the relevant principles of the Code in published guidance for applicants for grants;
 - (b) make the observance of that guidance a condition of the grant or other assistance;
 - (c) undertake monitoring to ensure that the guidance is observed.
- 45.** It is appropriate for local authorities to help charities and voluntary organisations by arranging for pamphlets or other material produced and paid for by the organisation to be available for collection by the public in public libraries and other suitable locations. Such material should not offend against any legal provision, (authorities may be able to draw on their powers of well-being in section 2 of the Local Government Act 2000) but (subject to this) any such facility should be made available on a fair and equal basis.

Annex D

Consultation Code of Practice

- A.1 The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.
- A.2 Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (eg under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies; unless Ministers conclude that exceptional circumstances require a departure.

The Consultation Criteria

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy
 - Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
 - Ensure that your consultation is clear, concise and widely accessible.
 - Give feedback regarding the responses received and how the consultation process influenced the policy.
 - Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
 - Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
- A.3 The full consultation code of practice may be viewed at:
www.bre.berr.gov.uk/regulation/consultation/code/index.asp

A.4 Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact:

Consultation Co-ordinator
Communities and Local Government
Zone 6/H10
Eland House
Bressenden Place
London
SW1E 5DU

email: consultationcoordinator@communities.gsi.gov.uk



STANDARDS COMMITTEE

4 FEBRUARY 2009

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CONTRIBUTORS	NORTH WEST LONDON BOROUGHS SEMINAR	WARDS
	2008/2009	
ADLDS		ALL
HCS		

The Annual Standards Networking Event for North West London Boroughs was due to be held at Brent Town Hall on 27 January 2009. The keynote address was to be given by James Goudie QC.

RECOMMENDATION:

That the Committee consider any feedback from those attending



STANDARDS COMMITTEE

4 FEBRUARY 2009

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CONTRIBUTORS

STANDARDS COMMITTEE WORK PROGRAMME

WARDS

**ADLDS
HCS**

ALL

Synopsis

The attached appendix sets out the Committee's future work programme and scheduled reporting dates. Members are asked to note and update the work programme as necessary.

Because of the discussion on the Protocols and on the Publicity Code, it was felt more appropriate to review the complaints system at the next meeting on 1 April

RECOMMENDATION:

That the Standards Committee note and agree its proposed future work programme .

APPENDIX A

STANDARDS COMMITTEE PROPOSED FORWARD WORK PROGRAMME

TITLE	PROPOSED DATE
Feedback from Annual Conference & matters arising (Govt / Standards Board initiatives for the future)	24 November 2008 Committee meeting
Review & update as necessary of the way the new arrangements for assessing local complaints	7 January 2009 Committee meeting [It is suggested this be reviewed on 1 April 2009]
Consider any revisions to Committee's constitution in light of working of new system for Council Annual Meeting Consider draft Annual Report of Standards Committee	1 April 2009 Committee Meeting

**LOCAL GOVERNMENT ACT 2000
BACKGROUND PAPERS**

No.	Brief Description of Background Papers	Name/Ext. of holder of file/copy	Department/Location
1.	Council Calendar	David Bays x 2628	Room 203, Hammersmith Town Hall