

PART 5

Codes and Protocols

Members' Code of Conduct

This is the Code of Conduct for Elected and Co-opted Members of Derby City Council. It comprises the Model Code of Conduct for local authorities set out in The Local Authorities (Model Code of Conduct)(England) Order 2007. For further information on the ethical framework for local government, visit the web site of Standards for England at www.standardsforengland.gov.uk

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.
 - (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);
 - (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.

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.

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.

Officers' Code of Conduct

Employee Code of Conduct and Behaviour at Work

Introduction

- 1.1 The Code applies to all council employees except those employed under the delegated powers of Governing bodies of community and voluntary controlled schools. Governing bodies of these schools are strongly urged to adopt this Code for non-teaching employees.
- 1.2 The Council aims to be open, transparent and honest in everything it does and values its employees in delivering services. To achieve this, the Council encourages all employees to have the confidence to make suggestions and take decisions about their work.
- 1.3 For this to be effective the council needs to tell you about the standard of conduct and behaviour expected of you as a Council employee.
- 1.4 The aim of this Code is to:
 - set minimum standards of conduct
 - help maintain and improve our standards
 - protect you from any misunderstanding or criticism.
- 1.5 You may think the Code is just a set of rules. To some extent that is what the Code is and the Council has a duty to tell you about them. If you don't know what the rules are you could get yourself into difficulty, which could lead to disciplinary action or prosecution.
- 1.6 Please take the time to read this Code in the spirit it is intended. It is there to protect you just as much as the Council's interest. If you are affected by the provisions in any way, or you are unsure of what is expected of you speak to your manager, she/he will be pleased to help and advise.
- 1.7 The extent to which the Code affects you will depend on your job with the Council. Some departments, because of the nature of the work, have additional codes of conduct and procedures. Whatever your job, you must always make sure you follow all the Council's rules, agreements, policies and codes of practice.

General principles

- 2.1 The public is entitled to expect the highest standards of conduct from all employees who work in local government. The role of local government employees is to support their employing authority in implementing its policies, providing advice and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity.

- 2.2 Local government employees should deal with the public sympathetically, efficiently, promptly and without bias.
- 2.3 All members of the local community, customers and other employees have a right to be treated with fairness and equity. All local government employees must comply with policies relating to equality issues as agreed by the council in addition to the requirements of the law.
- 2.4 Nothing in this Code overrides existing statutory or common law obligations.

Standards

- 3.1 You are expected to give the highest possible standard of service to the public. Where it is part of your duties, you should provide appropriate impartial advice to other employees and to councillors. You must not undermine public confidence in the Council in any way. This means that your behaviour, both in and out of work must not jeopardise your employment or undermine the trust placed in you as a Council employee. Although your off duty hours are your personal concern, you must not allow official and private interests to conflict.
- 3.2 Appendix 2 sets out the Council's Disciplinary Rules and highlights the areas in which employees must observe the highest standards of conduct. Guidance is given on the categories of misconduct and examples of acts that we would normally treat as gross misconduct, resulting in potential dismissal.
- 3.3 Appendix 3 sets out a protocol on the consumption of alcohol and gives guidance to employees of the Council's expectations on the consumption of alcohol during the working day.
- 3.4 If you become aware of activities, which you believe are illegal, improper, unethical or otherwise inconsistent with this Code, you should ask to see a copy of the Council's Confidential Reporting Code.

Dress

- 4.1 The Council does not have a formal dress code. Employees who are required to wear a uniform or protective clothing to perform their duties will be provided with what is required.
- 4.2 Cultural dress is encouraged providing it does not become a health and safety risk.
- 4.3 You should be mindful that your appearance may reflect upon the Council's reputation. You should be dressed in a manner that is appropriate for the situation in which you are working.

- 4.4 If your duties require you to visit service users in their own homes you should be aware that certain forms of dress can be offensive to some religions and cultures. You will find guidance on this in Religious Beliefs and Cultures in Derby – A guide for all

Disclosure of information

- 5.1 Legislation requires that certain information must be available to councillors, auditors, government departments, service users and the public. The 1999 Local Government Act requires councils to publish performance results in a Local Performance Plan. The Freedom of Information Act puts obligations on the Council for further general information disclosure. There is a Freedom of Information Act Policy together with procedures and guidance. Your manager can tell you which information is openly available and which is not.
- 5.2 You must always treat personal data obtained through the performance of your duties as confidential.
- 5.3 You must only disclose personal data to other employees or councillors if the information is required on a 'need to know' basis. For example, councillors may have to show that they are sorting out a problem on behalf of a constituent or other employees may need the information to carry out their job. However, disclosure of personal data in these situations must still conform to the principles of the Data Protection Act.
- 5.4 Sometimes our notification under the Act will say that we may pass information on to other organisations. Even if it does not, you can disclose information about someone if they have either asked for or agreed to the disclosure. If you have any doubt about disclosing information, ask the Council's Data Protection Officer or your manager for advice.
- 5.5 The Council has a Data Protection Act 1998 Policy together with procedures and guidance. If your job requires you to handle personal data, you must comply with all the requirements of the Policy, procedures and guidelines. You can get a copy of the Data Protection Code and Freedom of Information Act Policy from your Departmental Personnel Officer or the Data Protection Officer.

Political Neutrality

- 6.1 As a council employee, you service the Council as a whole. You must serve all councillors not just the controlling group and make sure you respect their individual rights.
- 6.2 You will not normally be asked to advise any of the political groups represented on the Council about their or the Council's work or be required to attend political group meetings. However, in exceptional cases identified

by the Chief Executive, senior officers may be asked to attend and advise political group meetings.

6.3 You must not allow your personal or political opinions to interfere with your work.

6.4 If the duties of your post involve either:

- giving regular advice to the Council, or
- regularly speaking on behalf of the Council to journalists or broadcasters,

you will have been included in the list of Politically Sensitive Posts. The Council is required to compile this by the Local Government and Housing Act 1989. The Director of Corporate and Adult Social Services keeps the list and you will be told if your name is on it. You may appeal against the Council's decision to include your post on this list to the Independent Adjudicator. If you wish to do so, the Director of Corporate and Adult Social Services will tell you how to do this.

6.5 If you are included in the list, you are disqualified from becoming or remaining a local councillor, an MP or a Euro MP. However you could still be a town, parish or community councillor.

Relationships

Councillors

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

Employees

7.2.1 You are expected to show courtesy and respect to colleague employees and maintain a professional attitude to others in the course of the performance of your duties.

7.2.2 The Council has a statutory obligation to protect employees from harassment by fellow employees on the grounds of gender, race, disability, sexuality, religion or belief and age. You should read the policies that deal with these issues to understand what is expected from you.

Contractors

7.3.1 You must advise your manager of any relationships either business or private with external contractors or potential contractors.

- 7.3.2 You must notify the Council of any financial interest in any contract under section 117 of the Local Government Act 1972. This includes your spouse, civil partner or partner if they have a financial interest in any contract. The Director of Corporate and Adult Social Services records this information and it is available for inspection by any councillor. You should be aware that there may be a requirement for disclosure of this information resulting from a request under the Freedom of Information Act.
- 7.3.3 You must award orders and contracts on merit by fair competition against other tenders and not show special favour to businesses run by friends, partners or relatives.
- 7.3.4 If you have any official relationship with contractors and have previously had, or currently have, a private or domestic relationship with contractors, you must declare this to your manager.

Separation of roles during tendering

- 8.1 If you are involved in the tendering process and dealing with contractors, you must be clear on separating client and contractor roles. If you have both a client and contractor responsibility, you must remember the need for accountability and openness.
- 8.2 Whether you are an internal client or contractor you must be fair and impartial when dealing with all customers, suppliers, contractors or sub-contractors.
- 8.3 If your job gives you access to confidential information on tenders or costs for either internal or external contractors, you must keep it strictly confidential in the Council's interest.
- 8.4 You must not show any special favour to current or recent former employees, their partners, close relatives or anyone they associate with in awarding contracts to business run by them or employing them in a senior or managerial capacity.

Recruitment and other employment procedures

- 9.1 If you are involved in recruiting employees, you must make sure you appoint on merit only. It is illegal to offer employment to anyone based on anything other than their ability to do the work. To avoid any accusation of bias, you must not take part in recruitment when you are related to an applicant or have a close personal relationship. In these circumstances, you must tell your manager and withdraw from the recruitment process.
- 9.2 Similarly, you must not be involved in decisions about discipline, promotion or pay adjustments for any employee who is a relative, partner or close friend. If in doubt, seek advice from your manager.

Additional employment

- 10.1 The Council will not stop you carrying out additional work, employment or outside activity if it is not detrimental to the Council's business. Before doing so, you are advised to discuss the details to your Director who will decide whether or not there is likely to be a conflict of interest.
- 10.2 You must not on a private basis, prepare plans, drawings, accounts or any other document for committee approval. It is irrelevant whether the work is paid or not.
- 10.3 You must not do personal work of any sort in Council time. You are permitted reasonable use of facilities such as telephones, photocopying, and fax machines but you must pay for these at the rate set. Your department's Staffing Officer will give you the appropriate form. You are also allowed free reasonable personal use of the Council's email and Internet facility. However, this must be in your own time and not during working hours. You must follow the strict guidelines in the Email and Internet User Policy. The Council monitors telephone use and email and Internet use.
- 10.4 You may be asked to visit other organisations to give professional advice or lectures in working time. Any fees for doing this must be paid directly to the Council.

Intellectual property

- 11.1 Generally, any inventions, creative writings and drawings that you create during your employment will belong to the Council.

Invention and patents

- 11.2 Any inventions made before the 1977 Patents Act belong to the Council if they were made during your employment. However, after 1 June 1978, inventions will only belong to the Council if:
- they have been made in the course of your normal duties
 - where you would be expected to be inventive as part of your duties
 - they were made in the course of your duties when you had a special obligation to further the Council's interest.

Personal interests

- 12.1 You must declare to your manager any financial or non-financial interest you consider could conflict with the Council, for example,
- involvement with or membership of any organisation receiving grant aid from the Council
 - directorships of any outside organisations or companies.

- 12.2 You must declare to your manager membership of any organisation not open to the public, which requires allegiance and which has secrecy about rules, membership or conduct. This information will then be given to the Director of Corporate and Adult Social Services who will record it on a central register.
- 12.3 If you are in any doubt about whether or not you should declare a personal involvement in an organisation, ask the Director of Corporate and Adult Social Services.

Equality Issues

13. Everyone in the community has a right to be treated with fairness and equity. As a council employee, you have a personal responsibility to comply with the Council's policies and procedures on equality as well as any legal requirements.

Corruption

14. It is a serious criminal offence corruptly to receive or give any gift, loan, fee, reward or advantage for doing or not doing anything or showing favour or disfavour to anyone in their official capacity. If an allegation is made, you must be able to show you have not corruptly obtained or given any rewards.

Gifts and Hospitality

- 15.1 You should only accept hospitality if there is a genuine need to represent the Council. You should only accept offers to attend purely social or sporting functions where the Council should be seen to be represented. Your Director must authorise and record your attendance.
- 15.2 When you have to decline hospitality, you should do so courteously but firmly and explain the Council's procedures and standards.
- 15.3 You must not accept personal gifts from contractors and outside suppliers. The same applies to gifts from members of the public. Refuse politely and explain the rules. If refusing would cause offence, then consider only accepting small gifts such as diaries or calendars under the value of £25. Declare the gift to your Departmental Personnel Officer who will give you the correct form. You could consider donating such gifts to the Civic Services mayoral section for public charity fundraising.
- 15.4 If you do receive authorised hospitality, you should be particularly sensitive to its timing in relation to decisions which the Council may be taking which affects those providing the hospitality.
- 15.5 A copy of the Council's Protocol on Gifts and Hospitality is given in Appendix 1.

Use of financial and other resources

- 16.1 You must make sure you use any public or other funds entrusted to you in a responsible and lawful manner.
- 16.2 The Council's Standing Orders and Financial Regulations will help you in ensuring 'value for money'. If you have any concerns or need any advice, ask your manager.
- 16.3 You must not use equipment, property, vehicles or other facilities of the Council for personal use unless authorised to do so.

Sponsorship – giving and receiving

- 17.1 When an outside organisation wishes to sponsor a Council activity whether by invitation, tender, negotiation or voluntarily, the rules about accepting gifts or hospitality apply. You must take particular care when dealing with contractors or potential contractors.
- 17.2 When the Council wishes to sponsor an event or service, you must tell your manager if you, your spouse, civil partner, partner or relative might benefit in any way. Similarly, when the Council through sponsorship, grant aid, financial or other means, gives support in the community, you must make sure you give impartial advice and that there is no conflict of interest.

Review

- 18. The Council will review and update this Code when necessary in consultation with recognised trade unions.

Seek advice from the Director of Corporate and Adult Social Services if you have any doubts about this Code or your personal responsibilities.

Appendix 1**Gifts and Hospitality****A Protocol for Employees****Introduction**

- 1 This Protocol provides guidance on what is defined as a gift or hospitality; how to decide whether you can accept; how to get agreement to accept; and how to declare the gift or hospitality. The ultimate decision however, remains yours.

How to use this protocol

- 2 Section One provides guidance on defining and estimating the value of a gift or hospitality. Section Two gives you the general circumstances in which you should refuse a gift or hospitality. If any of those circumstances apply or you feel could apply, you should refuse. Section Three gives you the general circumstances in which you can accept a gift or hospitality. Section Four covers circumstances where you may be able to accept but should seek permission before doing so and / or declare the gift or hospitality.
- 3 The protocol is deliberately structured to help you, with the sections in order of priority. When considering whether you can accept a gift or hospitality always refer to Section Two first. If any of the circumstances in that section apply, you should refuse the offer. It is irrelevant whether or not the circumstances also appear in a later section. If you are entirely satisfied that none of the circumstances in Section Two apply, then move to the later sections.
- 4 If you feel that your situation is not covered by the Protocol, or you have any doubts or questions, you should consult your Director.

SECTION ONE

What is a gift or hospitality?

- 5 The Council defines a gift or hospitality as any of the following:
 - a The offer of any goods or services either free or on terms more advantageous than those available to the general public.
 - b The offer of goods or services that are not available to the general public.
 - c The offer of food, drink, accommodation, entertainment, or the opportunity to attend any event.

How do I know the value of a gift or hospitality?

- 6 There may be occasions when you need to estimate the value of a gift or hospitality, or at least to decide whether its value is above or below £25. You should use the higher of the following:
- a Your estimate of the cost to the person or organisation of providing the gift or hospitality
 - b Your estimate of the open market price that a member of the public would have to pay for the gift or hospitality if it were made available commercially. You may deduct any contribution you would be required to make towards that price.

SECTION TWO

When to refuse a gift or hospitality

- 7 You should never accept a gift or hospitality as an inducement or reward for anything you do as a Council employee.
- 8 Not only is this contrary to the Council's Code of Conduct, it is also a criminal offence. The Public Bodies (Corrupt Offences) Act 1889 makes the acceptance of any gift, loan, fee, reward or advantage whatsoever as an inducement to or reward for doing or not doing something in your official capacity punishable by a prison sentence of up to seven years.
- 9 You should never accept a gift or hospitality if acceptance might be open to misinterpretation.
- 10 The appearance of impropriety can be just as damaging to you and the Council as actual impropriety. You should therefore always consider carefully whether acceptance of a gift or hospitality could be interpreted as affecting your impartiality. If so, you should generally refuse the gift or hospitality. If you choose to accept it, you must also take whatever steps are necessary to ensure that no misunderstanding can arise.
- 11 If you are involved in a competitive procurement process, determination of a planning application, or a funding decision, you are advised to refuse all offers or gifts or hospitality by any organisation affected by your decision. These are particularly sensitive issues and refusal is the best policy, regardless of what you may consider to be exceptional circumstances.
- 12 Never accept a gift or hospitality that puts you under, or might be seen to put you under, an improper obligation.
- 13 Some commercial organisations and private individuals see the provision of gifts and hospitality as a means of buying influence. By accepting a gift or hospitality improperly you may give that organisation or person the impression that you will act in their favour, or they may seek to use your

acceptance to persuade you to. Equally, if others are aware you have accepted a gift improperly they will inevitably feel that you are not impartial. They may question the impartiality of the Council in general.

Never solicit a gift or hospitality

- 14 You should never seek or invite the offer of a gift or hospitality in connection with your position as an employee. Doing so where the acceptance of that gift or hospitality would be permitted does not breach the Council's Code of Conduct but the Council does not consider any soliciting of gifts or hospitality to be acceptable. You should also take care never to give any impression that you might be open to the improper offer or gifts or hospitality.

SECTION THREE

When you may accept a gift or hospitality without declaring it

- 15 Generally, you should only accept a gift or hospitality if there is a benefit to the Council as a whole that is equivalent to or exceeds the approximate value of the gift, and which would not have been available but for the acceptance of that hospitality or gift. This is easier to justify in the case of hospitality, for example progressing the business or advancing the interests of the Council through a working lunch or attending an event. A gift is much less likely to provide such an obvious justification.
- 16 In either case, unless the benefit to the Council is clear, acceptance can and may be interpreted as purely for your personal benefit and therefore a breach of this Protocol. A benefit to you is not a benefit to the Council as a whole.
- 17 The following are specific cases where the acceptance of a gift or hospitality is acceptable.
- a Any facilities or hospitality provided to you by the Council.
 - b Civic hospitality provided by another public authority.
 - c Modest refreshment, for example tea, coffee, soft drinks and biscuits, in connection with any meeting in the course of your work.
 - d Tickets for sporting, cultural and entertainment events sponsored by the Council.
 - e Small gifts of low intrinsic value below £25 branded with the name of the company or organisation making the gift, such as stationery. However you should take care not to display such items in any way that might be taken as an indication of favour for that company or organisation. For gifts valued over £25 see Section Four.

- f A modest alcoholic or soft drink in the case of an accidental social meeting with someone you have done business with on behalf of the council. You should however make every effort to return the offer where this is practicable.
- g A modest working lunch not exceeding £10 a head in the course of a meeting in the offices of a party with whom the Council has an existing business connection and where this is required in order to facilitate the conduct of that business.
- h Modest souvenir gifts with a value below £25 from another public authority given on the occasion of a visit by or to the authority.
- i Hospitality received in the course of an external visit or meeting, which has been authorised by the Council.
- j Any other unsolicited gift, where it is not reasonably practical to refuse/return it or seek permission for acceptance in advance. You must however, as soon as possible after receipt, notify your Director along with a written statement containing the same information required for a request for permission described at the end of Section Four below. The Director will then write to the person or organisation making the gift advising them that you have donated the gift to the Mayor's Charity Fund on whose behalf it will be raffled or otherwise disposed of in due course and the proceeds will be retained by the charity.

SECTION FOUR

When you must seek permission before accepting a gift or hospitality

- 18 If you wish to accept any gift or hospitality that is not covered by Section Three, then you are advised to obtain written permission from your Director in advance. Your written request should include the information listed at the end of this section.

Declaring a gift or hospitality

- 19 If you accept a gift or hospitality which you estimate to have a value or cost of greater than £25, whether or not you have obtained permission in advance, you must make a declaration to your Director using the Register of Hospitality/ Gifts Received. A copy of the register is attached to this protocol. Your service manager will normally keep the register.
- 20 You should also consider making a voluntary declaration of a gift or hospitality valued less than £25 if you have any concerns at all that your acceptance might be misinterpreted.

SECTION FIVE

Gifts to the authority

- 21 Occasionally you may receive an offer of a gift to the Council. This may take the form of, amongst other things, land, goods, or services, an offer to carry out works or sponsorship of a function organised or supported by the Council. You should never solicit such a gift unless the Council has formally identified an opportunity for participation by an outside body and how that participation is to be secured. Sponsorship of public events and developer's contributions under Section 106 Agreements are examples of this.
- 22 You should apply the same principles to such a gift, as you would to one offered to you personally. Most importantly, consider whether acceptance of the gift by the Council could be seen as putting it under any improper obligation. Also consider what benefit the Council would obtain from accepting the gift and whether this outweighs any disadvantages to the Council by accepting.
- 23 If you do not have delegated authority to accept the gift you should report the offer directly to the Director of Corporate and Adult Social Services, as Monitoring Officer, who has that authority, together with your recommendation. The Director of Corporate and Adult Social Services will then write back to the person or organisation making the offer either accepting or declining of the offer. If the offer is being accepted, the Director of Corporate and Adult Social Services will record the gift for audit purposes and ensure that it is properly applied for the benefit of the Council. If you are in any doubt as to what to do, consult the Director of Corporate and Adult Social Services.

Disciplinary Rules

Introduction

As a public sector employer, the Council must maintain, and is entitled to expect, the highest standards of conduct from its employees.

It is unlikely that any set of rules will cover all possible disciplinary issues, but the information in this appendix contains guidance on the categories of misconduct and examples of acts that we will normally treat as gross misconduct.

Gross misconduct is defined as conduct so serious that it justifies dismissal. This is because the significance of the act affects the contractual relationship between Derby City Council and the employee.

The categories are neither exclusive nor exhaustive, and dismissal on the grounds of gross misconduct could therefore occur for acts of a similar level of seriousness that are not referred to below, where the contractual relationship between Derby City Council and the employee has broken down.

1 Personal conduct and responsibility

All employees must carry out their duties on the basis of mutual trust, honesty and respect and show courtesy and consideration to everyone they come into contact with.

Employees who compromise this by their behaviour, and who bring the Council or themselves into disrepute, will be subject to disciplinary proceedings.

This includes complying with the reasonable and lawful instructions of managers, and repeated or serious failure to follow instruction, including insubordination.

All employees must carry out their duties and responsibilities in accordance with the following policies:

- Code of Conduct
- Equality and Diversity Policy
- Fairness at Work – Bullying, Discrimination and Harassment Policy.

The Council may treat any serious breaches of these policies as gross misconduct. This includes:

- bringing the Council into serious disrepute
- physical violence or bullying
- unlawful discrimination or harassment
- serious insubordination.

2 **Health and safety**

Employers have a duty of care to their employees and to anyone that might be affected by their activities. Employees are under a legal obligation not to endanger themselves or other people. This is particularly important in local government, which, by its nature, provides services to many people, some of whom are vulnerable.

The Council regards breaches of health and safety legislation and associated Council policies seriously and employees must be constantly aware of the need to make sure they observe safe working practices.

When the Council issues personal protective equipment, employees must wear it except when otherwise agreed by management. Refusing to wear personal protective equipment will be considered a disciplinary matter.

Breaches of the Council's Protocol on Consumption of Alcohol at Appendix 4 will be considered a disciplinary matter.

The consumption of, or being under the influence of illegal drugs or substance abuse while at work will be considered a disciplinary matter.

Any breaches of the Council's Smoking Policy will be considered a disciplinary matter.

Employees are expected to take care of the Council's property, plant and equipment. Deliberate, negligent or malicious conduct resulting in the loss, damage or misuse of property, plant or equipment will be considered a disciplinary matter.

The Council may treat serious breaches of any health and safety rules and associated policies as gross misconduct. This includes:

- deliberate acts endangering health and safety
- taking or being under the influence of alcohol or illegal drugs, or other substance abuse
- causing loss, damage or injury through serious negligence.

3 **Theft, fraud and misappropriation**

Employees are expected to act with honesty and integrity. The Council will treat any misconduct of this type seriously.

Deliberately withholding information or falsifying records or documentation will be considered a disciplinary offence. This includes time sheets, working hours records, bonus sheets, expenses claims, sickness documentation and documentation associated with job applications. This also extends to fraudulent benefit claims as referred to in section 5.

The Council may treat as gross misconduct:

- theft or misappropriation of Council or other property
- fraud
- deliberate provision of false information for personal gain.

4 Time keeping, attendance and abuse of sickness scheme

All employees must attend work regularly and punctually during their normal working hours, and accurately complete all timesheets and other records of working hours as required. Poor timekeeping and absence without permission or valid reason will be considered a disciplinary matter.

When an employee is unable to attend through illness, or for any other reason, they must report this promptly and comply with the sickness notification requirements in the Attendance Management Procedure.

The Council takes abuse of the sickness scheme seriously, and will treat it as a disciplinary matter. This includes false sickness claims, undertaking activities prejudicial to recovery and prolonging absences by failing to seek, or neglecting, medical advice.

The Council may treat as gross misconduct:

- deliberately submitting false sickness claims,
- persistent poor timekeeping or attendance.

5 Criminal offences

Any relevant criminal proceedings that impact on the employee's contract of employment will be considered a disciplinary matter. This includes deliberate fraudulent benefit claims.

Dependent upon the seriousness and circumstances of the issue, the Council may treat it as gross misconduct.

6 Use of e-mail, Internet and related technology

The Council expects employees to use e-mail, the Internet, intranet and other technology responsibly at all times. Unauthorised use or misuse of technology will be considered a disciplinary matter.

Employees must comply with standards of use required by the:

- E-mail and Internet User Policy
- Information Security Policy
- Software Licensing Policy
- Anti-Virus Policy.

The Council may treat breaches of these policies as gross misconduct. This includes:

- serious misuse of Council technology and equipment
- deliberately accessing or circulating inappropriate material.

7 Unauthorised disclosure of, or access to information, breaches of confidence and abuse of authority

Employees have a position of trust and responsibility and must not communicate work related information. All employees must comply with the requirements of data protection legislation and carry out their duties and responsibilities in accordance with the Council's Data Protection Policy and Information Security Policy.

Knowingly or recklessly accessing, disclosing or otherwise using personal or confidential information without the Council's consent will normally be treated as a disciplinary offence. Any such actions in relation to personal information may also be a criminal offence under the Data Protection Act 1998. This is subject to the provisions of the Public Interest Disclosure Act 1998.

Any communications or requests for information from the media must be referred to the Corporate Public Relations Manager. Employees communicating with the media as private individuals are responsible for making it absolutely clear that they are not speaking on behalf of the Council.

Employees must not use their official position for private advantage of themselves or someone else. This includes unauthorised use of work time for non-Council business.

Soliciting or accepting favours or financial gain are also disciplinary offences. This includes soliciting or accepting anything that affects, or could be seen to affect the integrity of employees, or may place them in a position of having a conflict of interests.

The Council may treat as gross misconduct:

- serious breaches of confidence
- unauthorised access, disclosure or other use of confidential or personal information
- significant abuses of official position.

DERBY CITY COUNCIL REGISTER OF HOSPITALITY/GIFTS RECEIVED

DEPARTMENT _____

Date Hospitality/Gifts Received	Officer Receiving Hospitality/Gifts	Division	What Hospitality Gift has been accepted and what has been done with it?	Approximate Value of Hospitality/Gift	From whom was Hospitality/Gift Accepted?	Details of Approvals Obtained	Reason for Accepting Hospitality/Gift

Appendix 3**Protocol on the Consumption of Alcohol**

Although consumption of alcohol is socially acceptable, excessive amounts are known to have an intoxicating effect, which impairs people's ability to carry out normal day-to-day activities. The effect of alcohol on individuals varies owing to factors such as body mass, if consumed on a full or empty stomach, and if an individual drinks regularly or occasionally. Therefore it is not possible to be prescriptive about how much alcohol it takes to impair a person's performance, but most adults are aware of their limits and are able to make a responsible judgement on their safe consumption level.

This protocol gives some guidance to employees on the Council's expectations on the consumption of alcohol during the working day.

1. If an employee has duties that involve any of the activities listed below, no alcohol must be consumed during the working day, including unpaid breaks.
 - Driving.
 - Working at heights.
 - Working on the public highway.
 - Use of machinery where loss of control could lead to injury to themselves, other employees or members of the public.
 - Responsible for the health and safety of others
 - Face-to-face contact with service users or representatives of organisations external to the Council, including partner agencies.

A breach of this rule will be dealt with under the disciplinary procedure as gross misconduct and could lead to dismissal.

2. For employees not in the categories listed, the consumption of alcohol during working hours, while on duty, is not permitted. Exemptions may be granted for special occasions by the relevant Chief Officer in consultation with the trade unions. A breach of this rule will be dealt with under the disciplinary procedure as gross misconduct and could lead to dismissal.
3. Employees, not in category one, are expected to take a sensible and responsible approach to the consumption of alcohol during unpaid breaks, for example at lunchtime. Employees should be mindful of the effect of their behaviour on the Council's reputation and should stay within their own limits to make sure their ability to perform their work duties is not impaired. Where there are grounds to suspect that an employee's ability is impaired by alcohol, we will treat it as gross misconduct under the disciplinary procedure, which could lead to dismissal.

Protocol on Member/Officer Relations

Principles

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

Roles of Members

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

Representational Role

5. However, all members have the important role of representing their electorates. The Government see members having a crucial role to play on consulting their communities on the development of policy, development of the Best Value Performance Plan, the community planning process and other local initiatives.

Full Council Role

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

Regulatory Role

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

Overview and Scrutiny Role

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

Executive Role

9. The members of the executive will have the following leadership roles:
- leading the community planning process and the search for best value
 - leading the preparation of the Council's policies and budget
 - taking decisions to deliver the budget and policies
 - being the partnership forming focus of the Council

Roles of Officers

10. Officers are responsible for:
- taking day-to-day managerial and operational decisions
 - advising and supporting all members in their above roles
11. Senior officers, particularly the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer, have additional roles in arbitration, to ensure that council business is conducted fairly and with propriety if needs be by negotiating with and between political groups. The three specific statutory roles are undertaken by the Chief Executive, the Director of Corporate and Adult Services and the Corporate Director - Resources respectively. Statutory responsibilities are given which underpin the fundamental principles of political neutrality and service to the whole Council.
12. Officers are employed by, and accountable to, the Council as a whole.

Expectations

13. Councillors can expect from officers:
- (a) a commitment to the authority as a whole, and not to any political group
 - (b) a working partnership
 - (c) an understanding of, and support for, respective roles, workloads and pressures
 - (d) timely responses to enquiries and complaints
 - (e) professional advice, not influenced by political views or preference, which does not compromise the political neutrality of officers
 - (f) regular, up-to-date information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions that they hold
 - (g) awareness of, and sensitivity to, the political environment

- (h) respect, dignity and courtesy
- (i) training and development in order to carry out their role effectively
- (j) integrity, mutual support and appropriate confidentiality
- (k) not to have personal issues raised with them by officers outside the agreed procedures
- (l) that employees will not use their relationship with Councillors to advance their personal interests or to influence decisions improperly
- (m) that officers will at all times comply with the relevant Code of Conduct
- (n) support for the role of Councillors as the local representatives of citizens, within any scheme of support for Councillors which may be approved by the authority.

14. Officers can expect from Councillors:

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

Relationship between Officers and the Leader/Executive Members

15. Even though officers serve the whole Council, it is inevitable that officers, and senior officers in particular, will have a closer working relationship with

members of the executive than they will with other members. Officers therefore can have a difficult job in balancing the sometimes conflicting demands of delivering professional judgement and advice; satisfying the need of the majority party; and retaining the confidence of the minority parties.

16. However, one of the aims of the executive arrangements is to ensure that decision making within a council is transparent. Executive members will be personally identified and held to account. They are therefore entitled to receive the best possible support and advice from their officers.
17. The Government recognises the potential for tension between chief officers and executive members. This can be avoided by all involved recognising the particular roles set out in parts 2 and 3 of this Protocol for both members and officers.

Overview and Scrutiny

18. Whilst the majority of officers will effectively support the executive, a relatively small number will support the Overview and Scrutiny Commissions. There is a potential for conflict here between officers. However, the Council expects that every help and facility will be extended to the Overview and Scrutiny Co-ordination Officers in undertaking their duties even when they are involved in the questioning of executive decisions based on officer advice.
19. First, second and third tier officers can be asked to appear before Overview and Scrutiny Commissions to answer questions relating to the financial, legal, professional and technical aspects of service provision.

Officers' Relationship with Political Groups

20. Officer attendance at political group meetings is likely to be the exception. However, there may be particular advantages to be gained from such attendance.
21. An opposition group may decide to establish a Shadow Cabinet made up of its Spokespeople. Where there is more than one opposition group. Only one Shadow Cabinet may be established, the membership of which may include Spokespeople from one or more groups.
22. Requests for officers' attendance at political group or Shadow Cabinet meetings should in the first instance be made to the Chief Executive. Where attendance at a full political group meeting is agreed, the Chief Executive will notify the other political groups and offer them a similar facility. Officers will not be expected to attend all Shadow Cabinet meetings but rather to attend when a particularly significant matter on the agenda of a Council Cabinet meeting is due to receive prior consideration by the Shadow Cabinet.

23. Members must not request officers to carry out work for, or on behalf of, a political party.
24. The Leader of a political group shall notify the Corporate Director – Corporate and Adult Services in writing or by email, of the names of members who are to act as Opposition Spokespeople, the Council functions to be overseen by such Spokespeople and whether they will operate through a Shadow Cabinet.
25. An Opposition Spokesperson will be entitled to be briefed by the relevant chief officer, or a nominated senior officer, on any matter within the functions overseen by the Spokesperson. Such a briefing must be limited to providing facts and professional advice. Officers must not be asked to undertake research or draw up policy options.
26. Opposition Spokespeople shall not be entitled to information or advice given to the controlling administration other than that which would be available under the Access to Information Procedure Rules.
27. Any information given to officers by Opposition Spokespeople and any advice given by officers to Opposition Spokespeople will be kept confidential.

Officers' Relationship with Ward Members

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

Access to Documents

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

Non-Council Members

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

Press Releases

35. Press releases are issued through the Communications Unit on behalf of the Council. Their comments have to comply with the provisions of Government circulars.
36. Press releases are not issued by the Council on behalf of political groups. They can however contain the comments of Executive members and Committee Chairs where they are speaking in connection with the roles given to them by Council. Officers comments can be included on professional and technical issues.
37. Copies of all press releases issued will be sent to all members of Council.

Correspondence between Members and Officers

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

Councillors and officers attending neighbourhood boards or forums as residents

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

Councillors attending neighbourhood boards or forums as residents

41. Councillors have many opportunities to raise issues and are well placed to ask questions and receive responses from other councillors and Council officers. Councillors should pursue service issues and complaints through existing service department procedures and mechanisms and not use the neighbourhood board or forums. However, councillors do have the right to be included within the democratic process and to attend a neighbourhood

board or forum meeting as a resident. When there is a need to raise an issue as a resident, a councillor should state:

- their name
- the ward they represent as a councillor
- that they wish to speak in their capacity as a local resident.

Council officers attending neighbourhood boards or forums as residents

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

- their name and job title
- that they are employed by Derby City Council
- that they do not wish to speak in their capacity as a Council officer but as a local resident.

Confidential Reporting Code

INTRODUCTION

- 1.1 The Public Interest Disclosure Act 1998 protects workers who speak out in the public interest about fraudulent, criminal or dangerous activities, wrong doings or malpractice at work.
- 1.2 Employees are often the first to realise that there may be something seriously wrong within an organisation. However, they may not express their concerns because they fear harassment or victimisation. They may also feel that speaking up would be disloyal to their colleagues or to the organisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.
- 1.3 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, we expect employees, and others that we deal with, who have serious concerns about any aspect of the Council's work to come forward and voice those concerns. It is recognised that most cases will have to proceed on a confidential basis.
- 1.4 This Code makes it clear that you can do so without fear of victimisation, subsequent discrimination or disadvantage. This Confidential Reporting Code is intended to encourage and enable employees to raise serious concerns **within** the Council rather than overlooking a problem or "blowing the whistle" outside. It is also designed to protect employees from malicious allegations.
- 1.5 The Code applies to all employees, partnering organisations and those contractors working for the Council on Council premises, for example, agency staff, builders, drivers and cleaners. It also covers suppliers and those providing services under a contract with the Council in their own premises, for example, care homes, as well as volunteer workers working within the Council.
- 1.6 This Code links with the Council's Anti Fraud and Corruption Strategy, and makes it clear that concerns can be raised without fear of reprisals.
- 1.7 These procedures are in addition to the Council's Complaints Procedures and other statutory reporting procedures applying to some departments. You are responsible for making service users aware of the existence of these procedures.

2. Aims and Scope of this Code

- 2.1 This Code aims to:
 - Encourage you to feel confident in raising serious concerns and to question and act upon concerns about practice.

- Provide an avenue for you to raise those concerns and receive feedback on any action taken.
- Make sure that you receive a response to your concerns and that you are aware of how to pursue them if you are not satisfied.
- Reassure you that you will be protected from possible reprisals or victimisation if you have a reasonable belief that you have made any disclosure in good faith.

2.2 There are existing procedures in place to enable you to lodge a grievance relating to your own employment. The Confidential Reporting Code is intended to cover major concerns that fall outside the scope of other procedures. These include:

- Conduct which is an offence or a breach of law.
- Disclosures related to miscarriages of justice.
- Health and safety risks, including risks to the public as well as other employees.
- Damage to the environment.
- The unauthorised use of public funds.
- Possible fraud and corruption.
- Sexual or physical abuse of clients.
- Other unethical conduct.

2.3 Therefore, you can report any serious concerns that you have about any aspect of service provision or the conduct of officers or members of the Council or others acting on behalf of the Council under the Confidential Reporting Code. This may be about something that:

- Makes you feel uncomfortable in terms of known standards you experience or the standards you believe the Council subscribes to.
- Is against the Council's Constitution and policies.
- Falls below established standards of practice.
- Amounts to improper conduct.

2.4 This Code does **not** replace the corporate Complaints Procedure.

3. Harassment or Victimisation

3.1 The Council is committed to good practice and high standards and wants to be supportive of employees.

3.2 The Council recognises that the decision to report a concern can be a difficult one to make. If what you are saying is true, you should have nothing to fear because you will be doing your duty to your employer and those for whom you are providing a service.

- 3.3 The Council will not tolerate any harassment or victimisation, including informal pressures, and will take appropriate action to protect you when you raise a concern in good faith.
- 3.4 Any investigation into allegations of potential malpractice will not influence or be influenced by any disciplinary or redundancy procedures that already affect you.

4. Confidentiality

- 4.1 All concerns will be treated in confidence and we will make every effort not to reveal your identity if you so wish. At the appropriate time, however, you may need to come forward as a witness.

5. Anonymous Allegations

- 5.1 This Code encourages you to put your name to your allegation whenever possible.
- 5.2 Concerns expressed anonymously are much less powerful but will be considered at the discretion of the Council.
- 5.3 In exercising this discretion, the factors to be taken into account would include the:
- Seriousness of the issues raised.
 - Credibility of the concern.
 - Likelihood of confirming the allegation from attributable sources.

6. Untrue Allegations

- 6.1 If you voice suspicion in good faith but it is not confirmed by the investigation, no action will be taken against you.
- 6.2 If the investigation concludes that you have fabricated the allegations, disciplinary action may be taken against you.

7. How to Raise a Concern

- 7.1 As a first step, you should normally raise concerns with your immediate manager, Headteacher or their superior. This depends however on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. For example, if you believe that management is involved, you should approach the Chief Executive, the Corporate Director of Corporate and Adult Services, the Corporate Director – Resources or the Head of Audit and Risk Management.

- 7.2 If you are in any doubt about how to raise a concern, you should consult your trade union who will be able to advise you how to proceed.
- 7.3 Concerns may be raised orally or in writing. If you wish to make a written report you should use the following format:
- The background and history of the concern (giving relevant dates if possible).
 - The reason why you are particularly concerned about the situation.
- 7.4 The earlier you express the concern, the easier it is to take action.
- 7.5 Although you are not expected to prove beyond doubt the truth of an allegation, you will need to demonstrate to the person contacted that there are reasonable grounds for your concern.
- 7.6 You can get advice/guidance on how to pursue matters of concern from:
- Chief Executive Tel. 255364.
 - Corporate Director of Corporate and Adult Services Tel. 255448.
 - Corporate Director – Resources Tel. 256263.
 - Head of Audit and Risk Management Tel. 255688.
- 7.7 You may wish to consider discussing your concern with a colleague first and you may find it easier to raise the matter if there are two, or more, of you who have had the same experience or concerns.
- 7.8 You may invite your trade union, professional association representative or a friend to be present during any meetings or interviews in connection with the concerns you have raised.
- 7.9 Whichever officer you decide to approach, the officer responsible for this Code is the Council's Monitoring

8. How the Council Will Respond

- 8.1 The Council will respond to your concerns. Do not forget that testing out your concerns is not the same as either accepting or rejecting them.
- 8.2 Where appropriate, the matters raised may:
- Be investigated by management, internal audit, or through the disciplinary process.
 - Be referred to the Police.
 - Be referred to the external auditor.
 - Form the subject of an independent inquiry.

- Be referred to the Standards Board if a member is the subject of the allegation.
- 8.3 In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle which the Council will have in mind is the public interest. Concerns or allegations which fall within the scope of specific procedures, such as child protection or discrimination issues, will normally be referred for consideration under those procedures.
- 8.4 Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required, this will be taken before any investigation is conducted.
- 8.5 Within ten working days of a concern being raised, the Corporate Director of Corporate and Adult Services, or one of the other officers mentioned in paragraph 7.6 where appropriate, will write to you:
- Acknowledging that the concern has been received.
 - Indicating how he proposes to deal with the matter.
 - Giving an estimate of how long it will take to provide a final response.
 - Telling you whether any initial enquiries have been made.
 - Supplying you with information on staff support mechanisms.
 - Telling you whether further investigations will take place and, if not, why not.
- 8.6 The amount of contact between the officers considering the issues and you will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the Council will seek further information from you.
- 8.7 Where any meeting is arranged, off-site if you so wish, you can be accompanied by a union, or professional association representative, or a friend.
- 8.8 The Council will take all practical steps to minimise any difficulties which you may experience either at the time, or in the future as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings, the Council will arrange for you to receive advice about the procedure and will arrange for someone to attend for support if you have not arranged your own support.
- 8.9 The Council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, we will inform you of the outcome of any investigation.

9. The Responsible Officer

- 9.1 The Corporate Director of Corporate and Adult Services, as Monitoring Officer, has overall responsibility for the maintenance and operation of this Code. He maintains a record of concerns raised and the outcomes, in a form which does not endanger your confidentiality, and will report as necessary to the Council.
- 9.2 The Monitoring Officer, the Corporate Director of Corporate and Adult Services, has a statutory duty to take action where the Council is involved in maladministration or illegality. The Chief Legal Officer is the Deputy Monitoring Officer.

10. How the Matter Can Be Taken Further

- 10.1 This policy is intended to provide you with an avenue **within** the Council to raise concerns. The Council hopes you will be satisfied with any action taken. If you are not, and if you feel it is right to take the matter outside the Council, the following are possible contact points:
- The external auditor (PricewaterhouseCoopers, tel: 01509 604 000).
 - Your trade union.
 - Your local Citizens Advice Bureau.
 - Relevant professional bodies or regulatory organisations (including the Ombudsman).
 - A relevant voluntary organisation (including the Public Concern At Work Helpline, tel: 020 7404 6609).
 - The Police.

This does not prevent you from taking your own legal advice.

- 10.2 If you do take the matter outside the Council, you should make sure that you do not disclose confidential information. Check with the contact point about that.
- 10.3 This Code will be reviewed annually by the Audit and Accounts Committee.

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

Introduction

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

Meaning of 'political purposes'

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

Use of facilities and equipment

6. The Council provides Councillors with certain facilities and equipment either in their homes or at Council offices. Details are specified in the

Members' Handbook. This section covers the use of these facilities and equipment, including stationery and consumables, other than Information Technology equipment which is covered by paragraphs 10 to 22.

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

Use of Members' Secretarial Support Services

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

Use of Information Technology (IT) facilities and equipment

11. The term "Computer" includes all ancillary furniture and equipment including monitor, printer, mouse, modem, routers and telephone line, together with the software and programs loaded on to it.

12. The Council provides IT facilities and equipment to councillors. Details are set out in the Members' Handbook.
13. Subject to paragraphs 17 and 26, councillors must use any Council IT facilities and equipment provided to them only in connection with their role as a Member and for no other purpose.
14. The Council will install the Computer at the councillor's home address ("the Property"). The Councillor must not remove the Computer from the Property at any time without the Council's written consent. This paragraph will not apply to laptop computers.
15. The Council will pay to install, service, repair and maintain the Computer and will also provide consumables, such as ink cartridges and paper.
16. The Councillor is responsible for meeting the cost of any damage to the Computer which goes beyond ordinary wear and tear, other than damage arising from theft, accidental damage, fire damage, failure of electricity supply and failure of telecommunications. The Councillor must report immediately to the Council any damage to or malfunction of the Computer.
17. Apart from reasonable incidental personal use, the Computer must only be used by the Councillor themselves and only for official Council business or activities which facilitate the carrying out of the Council's functions. Personal use is permitted provided it does not violate these Conditions and does not hamper or conflict with official business. Any private use and data held on the system is at the Councillor's discretion. The Council accepts no liability for any consequences (including financial or other loss) which may arise through reasonable incidental personal use of the Computer. The security of any personal data is the Councillor's responsibility. Any such data could be viewed by officers if stored on the computer's internal drive (hard drive) and Councillors may therefore prefer to use their own removable diskettes ('floppy disks') to store such data. Simply deleting files does not necessarily permanently remove them.
18. The Council has to comply with all UK legislation affecting IT, including the following Acts, and this also applies to a Councillor's use of the Computer. Councillors may be held personally responsible for any breach of current legislation as listed below and any future legislation that may be enacted:
 - Data Protection Act 1998
 - Copyright Design and Patents Act 1988
 - Computer Misuse Act 1990
 - Obscene Publications Act 1959
19. As well as ensuring compliance with legislation, of primary concern is to keep ongoing support costs as low as possible. To meet both these objectives Councillors should note the following:
 - a) Installation of software (including screensavers) from any source must only be carried out with prior authorisation from Information Services.

A lot of software, ranging from small 'utilities' designed to enhance performance to complete applications such as drawing packages, is readily available on magazine 'cover disks' or for download via the Internet. Some of this is 'freeware', where there is no charge for its use, whilst some is 'shareware', where the provider charges for its use. Councillors should seek the advice of Information Services before downloading or installing any such software.

- b) The copying of licensed software and data, use, or possession, of unlicensed copies or 'pirated' versions of software is illegal and, therefore, expressly prohibited.
- c) Any software or data files, including word-processed documents and spreadsheets, must be checked for viruses before being loaded onto the Councillor's equipment or transmitted to colleagues or the Council, whether by diskette or email.
- d) Anti-virus software is supplied but must be updated regularly.
- e) If a virus is detected that cannot be 'cleaned' by the supplied anti-virus software, it must be reported to Information Services so that they may deal with it.

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

- ceases to be a Councillor, or
- receives written notice from the Council to that effect.

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

21. The Computer will remain the property of the Council. It is lent to the Councillor for the duration of his/her period as an elected member of the Council. At the end of that period, the Computer must be returned to the Council in full working condition. If the Computer has been lost or damaged whilst on loan, a charge may be made for its replacement or repair.
22. The Council will provide and maintain a valid insurance policy at all times which will cover the Computer against theft, accidental damage, fire damage, failure of electricity supply and failure of telecommunications.
23. The Councillor must agree to allow the Council entry to the Property on notice to carry out the Council's duties under this Protocol and to ensure compliance by the Councillor with the terms and conditions in this Protocol.
24. The Councillor will not do, cause or permit any act or omission that could invalidate the insurance policy covering the Computer.
25. The Councillor must complete without delay all health and safety questionnaires that the Council may send to him/her and comply with all appropriate health and safety guidelines.

26. The Councillor must comply with all policies, guidelines and codes of practice issued by the Council on the use of the Computer or the network to which it is connected.

Gifts and Hospitality

A Protocol for Councillors

Introduction

1. The Council's Code of Conduct states that a member ...
 - must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage ; and
 - must, within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the authority's monitoring officer of the existence and nature of that gift or hospitality.
2. This Protocol expands on that general responsibility to provide guidance on what is defined as a gift or hospitality; how to decide whether you can accept; how to get agreement to accept; and how to declare the gift or hospitality. The ultimate decision however, remains yours.

How to use this protocol

3. Section One provides guidance on defining and estimating the value of a gift or hospitality. Section Two gives you the general circumstances in which you should refuse a gift or hospitality. If any of those circumstances apply or you feel could apply, you should refuse. Section Three gives you the general circumstances in which you can accept a gift or hospitality. Section Four covers circumstances where you may be able to accept but should seek permission before doing so and / or declare the gift or hospitality.
4. The Code is deliberately structured to help you, with the sections in order of priority. When considering whether you can accept a gift or hospitality always refer to Section Two first. If any of the circumstances in that section apply, you should refuse the offer. It is irrelevant whether or not the circumstances also appear in a later section. If you are entirely satisfied that none of the circumstances in Section Two apply, then move to the later sections.
5. If you feel that your situation is not covered by the Protocol, or you have any doubts or questions, you should consult the Director of Corporate and Adult Services as Monitoring Officer.

SECTION ONE

What is a gift or hospitality?

6. The Council defines a gift or hospitality as any of the following:

- a. The offer of any goods or services either free or on terms more advantageous than those available to the general public.
- b. The offer of goods or services that are not available to the general public.
- c. The offer of food, drink, accommodation, entertainment, or the opportunity to attend any event.

How do I know the value of a gift or hospitality?

7. There may be occasions when you need to estimate the value of a gift or hospitality, or at least to decide whether its value is above or below £25. You should use the higher of the following:
 - a. Your estimate of the cost to the person or organisation of providing the gift or hospitality
 - b. Your estimate of the open market price that a member of the public would have to pay for the gift or hospitality if it were made available commercially. You may deduct any contribution you would be required to make towards that price.

SECTION TWO

When to refuse a gift or hospitality

8. You should never accept a gift or hospitality as an inducement or reward for anything you do as a Councillor.
9. Not only is this contrary to the Council's Code of Conduct, it is also a criminal offence. The Public Bodies (Corrupt Offences) Act 1989 makes the acceptance of any gift, loan, fee, reward, or advantage whatsoever as an inducement to or reward for doing or not doing something in your official capacity punishable by a prison sentence of up to 7 years.
10. You should never accept a gift or hospitality if acceptance might be open to misinterpretation.
11. The appearance of impropriety can be just as damaging to you and the Council as actual impropriety. You should therefore always consider carefully whether acceptance of a gift or hospitality could be interpreted as affecting your impartiality. If so, you should generally refuse the gift or hospitality. If you choose to accept it, you must also take whatever steps are necessary to ensure that no misunderstanding can arise.
12. If you are involved in a competitive procurement process, determination of a planning application, or a funding decision, you are advised to refuse all offers or gifts or hospitality by any organisation affected by your decision.

These are particularly sensitive issues and refusal is the best policy, regardless of what you may consider to be exceptional circumstances.

13. Never accept a gift or hospitality that puts you under, or might be seen to put you under, an improper obligation.
14. Some commercial organisations and private individuals see the provision of gifts and hospitality as a means of buying influence. By accepting a gift or hospitality improperly you may give that organisation or person the impression that you will act in their favour, or they may seek to use your acceptance to persuade you to. Equally, if others are aware you have accepted a gift improperly they will inevitably feel that you are not impartial. They may question the impartiality of the Council in general.

Never solicit a gift or hospitality

15. You should never seek or invite the offer of a gift or hospitality in connection with your position as a Councillor. Doing so where the acceptance of that gift or hospitality would be permitted does not breach the Council's Code of Conduct but the Council does not consider any soliciting of gifts or hospitality to be acceptable. You should also take care never to give any impression that you might be open to the improper offer of gifts or hospitality.

SECTION THREE

When you may accept a gift or hospitality without declaring it

16. Generally, you should only accept a gift or hospitality if there is a benefit to the Council as a whole that is equivalent to or exceeds the approximate value of the gift, and which would not have been available but for the acceptance of that hospitality or gift. This is easier to justify in the case of hospitality, for example progressing the business or advancing the interests of the Council through a working lunch or attending an event. A gift is much less likely to provide such an obvious justification.
17. In either case, unless the benefit to the Council is clear, acceptance can and may be interpreted as purely for your personal benefit and therefore a breach of this Protocol. A benefit to you, even in your role as an individual Councillor, is not a benefit to the Council as a whole.
18. The following are specific cases where the acceptance of a gift or hospitality is acceptable.
 - a. Any facilities or hospitality provided to you by the Council
 - b. Civic hospitality provided by another public authority
 - c. Modest refreshment (eg tea, coffee, soft drinks and biscuits) in connection with any meeting in the course of your work.

- d. Tickets for sporting, cultural and entertainment events sponsored by the Council
- e. Small gifts of low intrinsic value below £25 branded with the name of the company or organisation making the gift, such as stationery. However you should take care not to display such items in any way that might be taken as an indication of favour for that company or organisation. (For gifts valued over £25 see Section Four)
- f. A modest alcoholic or soft drink in the case of an accidental social meeting with someone you have done business with on behalf of the Council. You should however make every effort to return the offer where this is practicable.
- g. A modest working lunch not exceeding £10 a head in the course of a meeting in the offices of a party with whom the Council has an existing business connection and where this is required in order to facilitate the conduct of that business. Members should however not make such arrangements themselves but request officers to settle the details. The officers should ensure that such a lunch should not exceed the stated value.
- h. Modest souvenir gifts with a value below £25 from another public authority given on the occasion of a visit by or to the authority.
- i. Hospitality received in the course of an external visit or meeting, which has been authorised by the Council. Councillors should not make these arrangements themselves but ask officers to do so, and the officers should ensure that such hospitality is no more than commensurate with the nature of the visit.
- j. Any other unsolicited gift, where it is not reasonably practical to refuse / return it or seek permission for acceptance in advance. You must however, as soon as possible after receipt, notify the Mayor along with a written statement containing the same information required for a request for permission described at the end of Section Four below. The Mayor will then write to the person or organisation making the gift advising them that you have donated the gift to the Mayor's Charity Fund on whose behalf it will be raffled or otherwise disposed of in due course and the proceeds will be retained by the charity.

SECTION FOUR

When you must seek permission before accepting a gift or hospitality

- 19. If you wish to accept any gift or hospitality that is not covered by Section Three, then you are advised to obtain written permission from the Director of Corporate and Adult Services, as Monitoring Officer in advance. Your

written request should include the information listed at the end of this section.

Declaring a gift or hospitality

20. If you accept a gift or hospitality which you estimate to have a value or cost of greater than £25, whether or not you have obtained permission in advance, you must make a declaration to the Director of Corporate and Adult Services, as Monitoring Officer containing the information listed at the end of this section. The declaration will be retained in a register open for public inspection until the approval of the Council's accounts for the year in question. You should also consider making a voluntary declaration of a gift or hospitality valued less than £25 if you have any concerns at all that your acceptance might be misinterpreted.
21. Any request for permission to accept, or declaration of having accepted a gift or hospitality should include the following information
 - a. A description of the gift or hospitality and its value
 - b. Who the gift, invitation or offer is from (or on behalf of, if this applies)
 - c. The connection you have with the person or organisation, if any
 - d. Anything (work, permission, concession, facility, or other) you believe that person or organisation has sought in the past from the Council, or may seek in the present or future
 - e. Any special circumstances you feel justify accepting the gift, hospitality, invitation or offer

SECTION FIVE

Gifts to the authority

22. Occasionally you may receive an offer of a gift to the Council. This may take the form of, amongst other things, land, goods, or services, an offer to carry out works or sponsorship of a function organised or supported by the Council. You should never solicit such a gift unless the Council has formally identified an opportunity for participation by an outside body and how that participation is to be secured. Sponsorship of public events and developer's contributions under Section 106 Agreements are examples of this.
23. You should apply the same principles to such a gift as you would to one offered to you personally. Most importantly, consider whether acceptance of the gift by the Council could be seen as putting it under any improper obligation. Also consider what benefit the Council would obtain from accepting the gift and whether this outweighs any disadvantages to the Council by accepting.
24. If you do not have delegated authority to accept the gift you should report the offer directly to the Director of Corporate and Adult Services, as

Monitoring Officer, who has that authority, together with your recommendation. The Director of Corporate and Adult Services will then write back to the person or organisation making the offer either accepting or declining of the offer. If the offer is being accepted, the Director of Corporate and Adult Services will record the gift for audit purposes and ensure that it is properly applied for the benefit of the Council. If you are in any doubt as to what to do, consult the Director of Corporate and Adult Services.

Protocol on Call-in of Executive Decisions

Introduction

1. The purposes of this protocol is to provide additional guidance on the procedures to be adopted when executive decisions of the Council Cabinet or Neighbourhood Boards and Neighbourhood Forums are called-in for scrutiny by the appropriate overview and scrutiny commission.
2. The relevant provisions of the Constitution, contained in the Overview and Scrutiny Procedure Rules, are set out below.

“Call-in

OS33 Call-in should only be used in exceptional circumstances. These are where members of the Council are of the opinion that the Council Cabinet did not take the decision in accordance with the principles set out in Article 13 (Decision Making), namely,

- a. proportionally (i.e. the action must be proportionate to the desired outcome)
- b. due consultation and the taking of professional advice from officers
- c. respect for human rights
- d. a presumption in favour of openness
- e. clarity of aims and desired outcomes
- f. a record of what options were considered and giving the reasons for the decision.

or where relevant issues do not appear to have been taken into consideration.

Procedure for Call-in

OS34 When a decision is made by the Council Cabinet or a committee of the Council Cabinet, a Council Cabinet Member or an Neighbourhood Board/Forum or under joint arrangements, the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within two working days of being made. All Members of the Council will be sent copies of the records of all such decisions within the same timescale, by the Monitoring Officer.

OS35 That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of five clear days after the publication of the decision, unless it is called in.

OS36 During that period, the Monitoring Officer shall call-in a decision for scrutiny by the appropriate commission if so requested by written notice by any three members of the Council. The written notice must specify which principle in Rule OS33 has allegedly been infringed. The Monitoring Officer must then notify the Council Cabinet of the call-in. S/he shall call a meeting of the commission on such dates as s/he may determine, where possible after consultation with the chair of the commission, and in any case within ten working days of the decision to call-in.

OS37 If, having considered the decision, the overview and scrutiny commission is still concerned about it, then it may refer it back to the Council Cabinet for reconsideration, setting out in writing the nature of its concerns. If the Commission concludes that the decision is outside the budget and policy framework it may refer the matter to full Council. If referred, to the Council Cabinet, they shall then reconsider it at their next meeting , amending the decision or not before adopting a final decision.

OS38 If following an objection to the decision, the overview and scrutiny commission does not meet in the ten day period set out above, or does meet but not refer the matter back to the Council Cabinet or to Council, the decision shall take effect on the date of the overview and scrutiny meeting, or the expiry of the ten day period, whichever is the earlier.

OS39 If the matter is referred to full Council and the Council does not object to a decision that has been made, then no further action is necessary and the decision will be effective in accordance with the provision below. However, if the Council does object and also concludes that the decision is outside the budget and policy framework, the provisions of this event in the Rules BPF 10-12.

OS40 Where a Council Cabinet decision has been taken by a Ward Committee, then the right of call-in shall extend to:

- any three elected members of another Ward Committee if they are of the opinion that the decision made but not implemented will have an adverse effect on the area to which their panel relates; and/or
- any three members of the Council if they consider that the decision is contrary to the principles of decision-making set out In these rules.

In either case, those three members may request the Monitoring Officer by written notice to call-in the decision. The written notice must specify which principle in Rule OS33 has allegedly been infringed. S/he shall call a meeting of the relevant overview and scrutiny commission on such a date as s/he may determine, where possible after consultation with the chair of the commission, and in any case within ten days of the decision to call-in.

OS41 All other provisions relating to call in shall apply as if the call in had been exercised in respect of a decision of the Council Cabinet.

Procedure to be Adopted When a Decision is Called-In

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

9. The OSCer will present any further information relevant to the call-in.
10. Any further witnesses invited by the chair / vice chair(s) to the call-in meeting will give their evidence to the Commission.
11. One nominated signatory of the first three signatories to the call-in will be allowed to make further statement to the Commission, lasting no more than five minutes, in response to submissions and questions heard previously. He / she will not be allowed to question any person.
12. The relevant Council Cabinet members will be allowed to make a closing statement to the Commission, lasting no more than five minutes, in response to submissions and questions heard previously. He / she will not be allowed to question any person.
13. The Commission will then consider the call-in and decide what action it wishes to take. The Commission may decide ...
 - a) that no principle under rule OS33 has been breached or no adverse impact under rule OS40 has been found,
 - b) that one or more principles under rule OS 33 were breached or adverse impacts under rule OS40 did occur but do not warrant reference back to the Council Cabinet or Ward Committee,
 - c) that one or more principles under rule OS33 were breached or adverse impacts under OS40 did occur and that the decision be referred back to the Council Cabinet or Ward Committee for reconsideration, or
 - d) that one or more principles under rule OS33 were breached or adverse impacts under rule OS40 did occur, that the decision was outside the budget and policy framework and that the decision be referred to full Council
14. In the case of a decision under paragraphs 15 c) or d), the Commission must agree its concerns about the decision, including which principles of decision taking it believes have been breached, and these must be set out in the minutes. The decision of the Commission will be taken in accordance with the Council Procedure Rules.
15. The COS will produce a draft minute containing the decision and concerns and circulate it to the Chair and Vice Chair for comment within one working day of the Commission meeting.
16. In the case of a decision under paragraph 15 c) or d), the COS will make sure that the resolution of the Commission is considered by the Council Cabinet, Ward Committee or full Council, as appropriate, at its next meeting.

Planning and Development Control

A Protocol for Councillors

Introduction

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

The planning system involves taking decisions about the use and development of land in the wider public interest and in doing so Members have to balance individual interests, for example those of the applicant or of a neighbour, against the broader public interest. It is the advice of the Local Government Association that, in making decisions on planning matters, Members should:
 - act fairly and openly
 - approach each application with an open mind
 - carefully weigh up all relevant issues

- determine each application on its own merits
- avoid contacts with interested parties which might be taken to indicate that they were unduly influenced by one party or another
- ensure that there are clear and substantial reasons for their decisions and that these reasons are clearly stated:

It is the Officer's role to:

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

7. **Lobbying**

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

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

- avoid as far as possible meeting an applicant or potential applicant alone
- avoid making it known in advance whether they support or oppose the proposal
- restrict their response to given procedural advice
- not pressure officers to make a particular recommendation in their report
- direct lobbyists or objectors to planning officers who will include reference to their opinions where relevant in their report
- advise the Chair of the Planning Control Committee or officers of the existence of any lobbying interests

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

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

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

8. Discussions with Potential Applicants

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

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

9. Group Pressure

Members cannot accept an instruction from anyone to determine an application in a particular manner, but must determine the issue on its merits. Accordingly while they may accord appropriate weight to the views of other Members, whether expressed in the Committee meeting or in prior discussions, they must determine the application on its merits and should not take into account any factor which they are not prepared to state in open Committee. As a result, it is inappropriate for any political group to instruct its Members to vote in a particular manner on an application or to apply, or threaten to apply, any sanction to any member who voted contrary to the Group's collective view.

10. Decisions Contrary to Officer Recommendation

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

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

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

11. Site Visits

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

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

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

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

Procedures for the conduct of site visits may be set by Members. Where such procedures exist Members must be take care to follow them.

Site visits are only likely to be necessary where:

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

the proposal is particularly contentious.

12. **Gifts and Hospitality**

Gifts and hospitality give rise to particular problems in respect of the credibility of the planning process, and acceptance of gifts or hospitality by Members or officers can be a very serious criminal offence. Members should have particular regard to the provisions of the Council's Code of Conduct and Protocol on Gifts and Hospitality. In particular, they must immediately report to the Monitoring Officer any offer of gifts or hospitality, and they should avoid any behaviour which might be taken as indicating that they are open to such offers. where Members have received or been offered hospitality by any parties involved in an application, recently or in the past and whether by the applicant, objector or supporter, they must give serious consideration to whether they should participate in making the decision. Advice should be sought from the Council's monitoring officer.

13. **Planning Applications by Members of the Council**

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

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

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

The Assistant Director – Development will ensure that all such applications are determined at the Committee meeting and not under delegated powers.

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

14. Planning Applications by the Council

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

15. Applicant and Public Representations at the Planning Control Committee

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

16. Interests

Members of the Council are prevented from speaking on applications in which they have a personal prejudicial interest, whether as applicant, supporter or objector. Guidance is available from the Monitoring Officer, the Planning Control Committee Solicitor or the Standards Board for England.

17. Complaints relating to Breaches in Probity

Procedures exist for referring complaints about alleged breaches of the Member's Code of Conduct to the Standards Board for England. For further information visit www.standardsboard.co.uk

Website facilities for Councillors Acceptable Use Policy

The Council has the power to provide services and facilities to support the role of Councillor and website facilities are being made available for that purpose. The intention is that these facilities will be used for

- giving a range of non-political information about the councillor such as contact details, ward, offices held, duties and responsibilities
- communicating in an objective or impartial manner decisions and action proposed or taken by the Council of particular relevance to councillors' wards or their areas of responsibility
- encouraging the public to make contact with a councillor so as to express views or provide information on particular topics

A Councillor is only permitted to publish information on the website in the context of their official role in respect of matters of general public interest.

There are a number of legal restrictions on the use of such websites. Some of these are specific to councils whilst others are general law. This Policy defines the purposes for which the Councillor **cannot** use their individual websites. In • the introduction of content that may result in actions for defamation or other claims for damages

- processing personal data other than for the purpose stated at the time
- the promotion of any political party or campaigning organisation
- the promotion of personal financial interests, commercial ventures or personal campaigns
- using the site in an abusive, discriminatory or hateful manner
- in a way that is prejudicial to the operation of the Council
- in a way that will bring Elected Members or the Council into disrepute

Further details are given below.

Defamation can be summarised as damage to a person's reputation or standing. If a statement is made which exposes a person to hatred, ridicule or contempt, or which causes him to be shunned or avoided, or which has a tendency to injure him in his office, trade or profession in the estimation of right-thinking members of society generally then the person can bring an action. The terms libel and slander are used to indicate whether the defamation has been made in written/permanent form or orally. Statements made on websites and in e-mails are covered by the law of defamation.

Elected Members may not use their Councillor sites to publish defamatory statements or material. Anyone who believes that a Councillor has defamed them will be able to take legal action directly against the Councillor concerned. The relevant legislation is the Defamation Act 1996 and the full text can be found at <http://www.hmsso.gov.uk/acts/acts1996/1996031.htm>.

Similar legal protection exists for the economic and financial standing of corporate bodies such as companies.

Data Protection and Confidentiality

In managing a website, Councillors may receive comments, enquiries or complaints from members of the public. Visitors to the site may register to receive occasional mailings. Councillors may refer to (or publish) material that is based upon information drawn from Derby City Council to which they have authorised access or obtained from external sources. All such personal information which can identify or be linked to individuals should be treated with care and respect and in accordance with the Data Protection Act 1998.

Anyone processing personal data must comply with the eight enforceable principles of good practice. Data must be:

- fairly and lawfully processed; - tell people why you are collecting their information
- processed for limited purposes; - only use the information collected for that purpose , it cannot be used for anything else without consent
- adequate, relevant and not excessive – don't collect information that is not needed
- accurate – check regularly for changes
- not kept longer than necessary;
- processed in accordance with the data subject's rights - remember that individuals are entitled to see everything about them
- kept secure;
- not transferred to countries without adequate protection.

Personal data covers both facts and opinions about the individual. It also includes information regarding the intentions of the data controller towards the individual. Processing means anything done to personal data including holding, reading, destroying, and copying.

You can find further advice and guidance about Data Protection in the Council's leaflet entitled 'Data Protection Act 1998' Councillors Guide. You can also contact your Information Services Officer on 01332 255590 or the Councils Data Protection Officer on 01332 256262.

You can also visit the Information Commissioners website that contains lots of information about Data Protection. www.informationcommissioner.gov.uk

The Data Protection Act applies, and the full text of the 1998 Act can be found at <http://www.legislation.hms.gov.uk/acts/acts1998/19980029.htm>

Councillors must confirm that they have read and accept the Council's own policy on Data Protection .

As well as personal information governed by the Data Protection Act, councillors may also be given information that is confidential. They must take care that they

do not breach any duty of confidentiality by disclosing the information. As with defamation, councillors can find themselves personally subject to legal proceedings for breach of confidentiality

Political Publicity

The Local Government Act 1986 (as amended) contains specific provisions dealing with local authorities' publicity. The Act's definition of "publicity", "publish" and "publication" is wide enough to include the material that appears on website facilities provided for councillors. In particular there is a prohibition on political publicity.

Because Derby City Council funds the individual websites, Members may not use their site to

- promote political campaigns and advocate political stances on issues
- promote a political party or persons identified with a political party
- promote or oppose a view on a question of political controversy, which is identifiable as the view of one political party and not of another.

Section 4 of the 1986 Local Government Act enabled the Secretary of State to issue a Code of Practice on Local Authority publicity. The original Code was amended in 2001. The Code was made more flexible in relation to publicity about individual councillors and the relevant paragraphs are:

"Publicity about individual councillors may include the contact details, the positions they hold in the Council (for example a member of the Cabinet or Chair of Overview and Scrutiny Commission) 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.

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 his/her 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".

Members may use the 'My Politics' section of their website to link to external websites of a political nature.

Publicity and Elections

The issue of local authority publicity is particularly sensitive at election times. During election times (from the 'notice of an election' to the election itself), most

parts of Councillors' websites will be suspended in order to meet legal restrictions on publicity at that time. Visitors will still, however, be able to contact them through the website.

Elected Members Code of Conduct

Derby City Council has provisions that govern the conduct of elected members. The Councillor site should be used with due regard to the Members Code of Conduct which can be found in Part 5 of the Council's Constitution at:

derby.gov.uk/Constitution

In the event of an Elected Member having a complaint about the content of the Councillor site of another Elected Member then that complaint will be referred to the Civic and Members' Services Manager who will take advice on appropriate action.

On a general level

- The site must not be used in a way that will bring Elected Members or Derby City Council into disrepute
- The site must promote equality by not discriminating unlawfully against any person, treating others with respect and not to do anything which compromises the impartiality of those who work for or on behalf of the authority.
- To treat Local Government Officer's recommendations or known views impartially
- Elected Members must not disclose information given to them in confidence or information acquired, which they believe, is of a confidential nature without the consent of a person authorised to give it.
- Elected members must not use their Councillor site to disclose information, which the council has considered in private session, or which they are on notice is confidential for any other reason.
- Elected Members must not use their Councillor site to secure personal advantage or secure use for themselves or others of the resources of the authority (for instance, by advertising a commercial service or by using the site to encourage the Local Authority to purchase a particular item or service)

Tainting of Decision Making through Biased/Closed Minds

Councillors who are involved in formal decision taking, particularly those of a quasi-judicial nature such as planning and licensing applications, or determining the outcome of consultation exercises must exercise care to keep an open mind on issues which they may be required to make decisions.

The use of individual websites to set out a clear position on a particular issue could well provide evidence of bias based on a particular personal interest or view, or a closed mind. This would demonstrate the artificiality of the Councillor then purporting to consider openly all issues in the determination of that matter.

Sound decision taking requires councillors to have regard to all relevant advice and material matters when reaching decisions and in many cases to give reasons for decisions.

Elected Members must give an accurate and even-handed account of discussions or processes that lead to decisions being taken. For example, they must not give a one-sided account of the reasons for a planning application being refused. Failure to meet these requirements or the making of ill-judged comments can lead to Council decisions being successfully challenged and overturned by the Courts.

Other Issues

As well as the specific issues described above there are other relevant Council policies and statutory provisions such as

- the particular legislative requirements relating to discrimination/incitement to racial hatred etc. (e.g. Anti-Terrorism, Crime And Security Act 2001 & Race Relations (Amendment) Act 2000)
- Publication of obscene material (e.g. Obscene Publications Act 1959, Protection of Children Act 1978, Criminal Justice Act 1988)
- The Council's policies on internet and e-mail use, Information Security and use of IT facilities
- The Freedom of Information Act policy statement Councillors must have regard to all such items in their use of the website facilities.

The text of all legislation can be found at the local reference library and Acts since 1988 can be found at <http://www.hms0.gov.uk/acts.htm/acts.htm>

Failure to comply with this policy

The Council is not responsible for approving content on individual sites, but sites will be monitored to make sure that they are being used only for appropriate purposes and in accordance with this policy.

The Council reserves the right to remove material which it feels is in breach of this Acceptable Use Policy or to withdraw the facility from a Councillor if they fail to comply with this policy

The Data Protection Act 1998

Councillor guidance for requesting access to service user personal information

As a Councillor you may have a 'need to know' information because

- you have been asked to inquire after a matter for one of your constituents
- you are a member of a committee or hold an office such as Cabinet Member and you need the information in that role.

Councillors are not entitled to information for personal, business or political purposes.

Provided you can demonstrate a 'need to know' you should be provided with the information needed subject to certain safeguards.

Firstly, we must check that the person asking for the information is who they say they are.

If you telephone a department/section to ask for access to a service user's personal information, unless they know you, they will have to make sure you are who you say you are.

The officer may well ask to call you back on your official council contact number or if you have attended in person, ask for evidence of your identity or check you against your official photograph.

Secondly, we must establish that you are entitled to receive the information.

- Is the information required by you for one of the above purposes?
- What level of detail do you need for that purpose?

To establish that you have the consent of the service user the steps we can take will vary according to the level and sensitivity of the information requested. For instance...

1. If you are asking about **progress** or an **overview** of an application, case, complaint and so on, on behalf of a service user in your ward, the assumption will be made that the service user has given you their consent to discuss the relevant information at that level. **You must be satisfied as to the identity of the person asking you to act on their behalf and that they have given you consent to receive the information.**
2. If you are asking about **details** of an application, case, complaint and so on, for example:
 - financial details
 - family circumstances
 - health issues, and so on,

we must make sure that you:

- 'need to know' such detailed information, and
- are acting on behalf of, and with the knowledge, of the person the data relates to.

The Council must then take 'due care' to check they have given consent.

This can be done in one of two ways:

- provide the officer with written consent from the service user. This could be clear from any letter they have sent you.
- provide a contact number to the officer so they can speak direct to the service user to establish consent.

Thirdly, remember that you cannot use the information for any other purpose or disclose it to another person without the data subject's consent. This is particularly important for the more detailed and sensitive information about individuals.

Further guidance can be obtained from the Council's Data Protection Officer, Alison Moss, e-mail alison.moss@derby.gov.uk or telephone 01332 256262. There is a published Data Protection Act Policy and Code of Practice in the document library on Derbynet and a Councillor's Guide to Data Protection leaflet, available from your Information Services Officer, Colin Lawrence.

The Information Commissioner has also issued guidance on data protection issues and Councillors.