

**Manchester City Council  
Report for Resolution**

**Report to:** Standards Committee - 11 March 2013

**Subject:** Update on Constitutional Protocols and Arrangements for Dealing with Member Complaints

**Report of:** The City Solicitor

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**Purpose of the Report:**

To advise members of the proposed revisions to: (i) the Planning Protocol for Members and Officers (Part 6, Section B of the Council Constitution); (ii) the Gifts and Hospitality Protocol for Members; and (iii) the Guidance for Local Investigation of Allegations that a Member of Manchester City Council has Failed to Comply with the Code of Conduct for Members.

**Recommendations:**

That the Standards Committee consider and comment on the:

- (i) draft revised Planning Protocol for Members and Officers (Part 6, Section B of the Council Constitution) at Appendix 1 to this report;
  - (ii) draft revised Gifts and Hospitality Protocol for Members at Appendix 2 to this report; and
  - (iii) draft Guidance for Local Investigation of Allegations that a Member of Manchester City Council has Failed to Comply with the Code of Conduct for Members at Appendix 3 to this report.
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**Wards Affected:**

All.

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**Financial Consequences for Revenue Budget:**

None.

**Financial Consequences for the Capital Budget:**

None.

**Implications for:**

Antipoverty	Equal Opportunities	Environment	Employment
No	No	No	No

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**Background Documents:**

Manchester City Council's Constitution

The Localism Act 2011

## **1. Revised Planning Protocol for Members and Officers**

- 1.1 The Planning Protocol ('the Protocol') is based on the Model Members' Planning Code of Good Practice produced by ACSeS (the Association of Council Secretaries and Solicitors). The Protocol has been updated and revised in light of changes introduced by the Localism Act 2011 ('the Act') and the revised Code of Conduct for Members adopted by the Council on 11 July 2012 ('the Code').
- 1.2 The principle revisions are briefly outlined as follows.
  - 1.2.1 The sections in the Protocol concerning the declaration of interests have been expanded to reflect the provisions in the Act concerning disclosable pecuniary interests. The Protocol also reflects the decision of Standards Committee on the 14 January 2013 that Members who have a disclosable pecuniary interest may be permitted to apply to the Monitoring Officer for a dispensation allowing them to make representations, answer questions or give evidence relating to the planning matter in which they have an interest, providing that the public are also allowed to attend the meeting for the same reason.
  - 1.2.2 The Protocol emphasises in paragraph 4 that the sections relating to the declaration of interests also apply to members who are not members of Planning Committee.
  - 1.2.3 Paragraph 4 also refers members making written representations to General Principles in the Code.
  - 1.2.4 The section entitled bias and predetermination contains advice on the application of Section 25 of the Act which applies when a Court has to consider whether a decision has been validly made as a result of an allegation of bias or predetermination and it is relevant to the issue whether the decision maker had, or appeared to have had, a closed mind when making the decision.
  - 1.2.5 The section on committee site visits has been revised.
  - 1.2.6 It is proposed that applications for development by Members or Officers which relate to the individual's residence and to which there are no objections may now be determined under delegated authority rather than being reported to Planning Committee.

## **2. Gifts and Hospitality Protocol for Members**

- 2.1 The amendments to the Gifts and Hospitality Protocol for Members at Part 6 Section D of the Constitution are as a result of the adoption on 11 July 2012 of the new Code.
- 2.2 Standards Committee are asked to consider the amendments which are shown in Appendix 2 of this report and provide any comments.

- 3. Guidance for Local Investigation of Allegations that a Member has failed to comply with the Council's Code of Conduct for Members.**
- 3.1 The Council's Procedure for Local Investigation of Allegations of Misconduct of Members has been updated following the adoption on 11 July 2012 of the new Code and new local Arrangements for dealing with Complaints that Council Members have failed to comply with the Code ("the Arrangements").
- 3.2 Paragraph 6 of the Council's Arrangements outlines the procedure that is to be followed where the Monitoring Officer, following consultation with the Council's Independent Person, determines that a complaint merits investigation. Sub-paragraph 6.1 of the Council's Arrangements provides that where a complaint merits formal investigation, the Monitoring Officer will appoint an Investigating Officer, and sub-paragraph 6.2 provides that the Investigating Officer "will follow guidance issued by the Monitoring Officer on the investigation of complaints" ("the Guidance"). The Standards Committee is asked to consider the draft Guidance which is attached at Appendix 3 of this Report.
- 3.3 The Guidance is based on the Council's previous Procedure for Local Investigation of Allegations of Misconduct of Council Members, which in turn was based on the guidance produced by Standards for England in relation to Local Investigation of Complaints. The Guidance has been drafted to take account of the new Members standards regime introduced by the Localism Act 2011, and follows the principles of proportionality and the cost effective use of Council resources in the investigation of Allegations that a Member has failed to comply with the Code.
- 3.4 The main changes that have been made in the Guidance to the Council's previous Procedure for Local Investigation of Allegations reflect the new role the "Independent Person" that the Council is required to appoint by the Localism Act. In particular, paragraph 28 of the Guidance provides that the Investigating Officer will produce a Draft Report which will be sent to the Council's Independent Person and the Monitoring Officer, asking for them to provide the Investigating Officer with their comments. This is in accordance with the requirement under section 28(7) of the Localism Act 2011 that the Council's Arrangements must include provision that the views of the Council's Independent Person "...are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate".

## **APPENDIX 1**

### **REVISED DRAFT PLANNING PROTOCOL FOR MEMBERS AND OFFICERS**

**(For inclusion at Part 6, Section B of the Council's 2013 Constitution to be adopted by Council at its Annual Meeting on 15 May 2013)**

#### **Introduction**

1. The aim of this Planning Protocol is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.
2. In this Planning Protocol wherever references are made to the Council's "Planning Committees", this includes the Planning and Highways Committee and the Wythenshawe Area Committee. No member should be appointed to the Planning Committees unless they have agreed in writing to take part in training in planning matters, including the operation of this Planning Protocol. No member appointed to a Planning Committee should participate in the business of the Planning Committee until they have attended training in planning matters.
3. In this Planning Protocol, the expression "planning matter" means any planning application, development, development proposal or plan within the City of Manchester or which materially affects the City and includes the enforcement of planning control. This Planning Protocol sets out the practices and procedures that members and officers of the Council should follow whenever they are involved in planning matters in order to comply with the Code of Conduct for Members (as adopted by the Council on 11 July 2012) ('the Code') and the Employee Code of Conduct, respectively.
4. The sections of this Planning Protocol relating to the declaration of interests also apply to members who are not members of the Planning Committee. In making written representations to Planning Committee all members must serve only the public interest and should never seek to improperly confer an advantage or disadvantage on any person.
5. Planning affects land and property interests, including the value of land and the quality of the environment. Decisions affect people's daily lives and the private interests of individuals, landowners and developers. The role of the planning system is to regulate the use and development of land in the public interest. Accordingly planning decisions must be seen to be impartial and properly justified. The planning system can only operate effectively if there is trust among the various stakeholders: the public, applicants, developers, members and officers.
6. Failure to abide by this Planning Protocol may place the Council at risk of proceedings concerning the legality or maladministration of the related decision.

## **Role and conduct of members and officers**

7. Members and officers have different but complementary roles. Both serve the public but members are accountable to the electorate and officers accountable to the Council as a whole.
8. The main duty of members is to represent their constituents as a whole, including those who did not vote for them. This is especially relevant to planning matters where often decisions are taken against the interests of individuals but for the benefit of the wider community. However, case law has established there may be occasions where the need to uphold public trust and confidence in the impartiality of planning decision making requires a restriction of members' representative capacity.
9. The role of members of the Planning Authority is to make planning decisions openly, impartially with sound judgement and for justifiable reasons.
10. Although members may take into account the views of others they should not discriminate in favour of any particular group or individual or put themselves in a position where they appear to do so.
11. Members are advised to treat with extreme caution any offer, gift, favour or hospitality that is made to a member personally. Members are referred to the Code and to the Gifts and Hospitality Guidance for Members.
12. Officers who are chartered town planners must act in accordance with the Royal Town Planning Institute's (RTPI) Code of Professional Conduct and breaches of that code may be subject to separate disciplinary action by the Institute. All officers are expected to follow the Council's own Code of Conduct for Employees, or any statutory code which may come into force or be adopted by the Council.
13. Members are free not to follow the advice of the professional officers. Professional officers may also have a change of opinion but this must be on the basis of professional judgement; they must not be allowed to be influenced by members or other officers to change an opinion where this does not genuinely represent their professional view. The Council endorse the RTPI's statement that its members "shall not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions".
14. The Council has a designated head of the planning service, who is qualified for election to membership of the RTPI and who has direct access to elected members as their professional adviser on planning matters.

## **Declaration of disclosable pecuniary interests**

15. Part 2 of the Code incorporates the provisions in the Localism Act 2011 concerning the **disclosure of pecuniary interests**.

16. A “Disclosable Pecuniary Interest” is fully defined in the Code and includes, in relation to both members and their partners:
- Employment, office trade, profession or vocation
  - Sponsorship
  - Contracts
  - Land
  - Licences
  - Corporate tenancies
  - Securities
17. It is a criminal offence, if a Member without reasonable excuse:
- a. fails to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
  - b. fails to declare a disclosable pecuniary interest at a meeting if it is not on the register
  - c. fails to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that s/he has disclosed to a meeting
  - d. participates in any discussion or vote on a matter in which s/he has a disclosable pecuniary interest
  - .e. knowingly or recklessly provides false or misleading information relating to disclosable pecuniary interests in notifying the Monitoring Officer or in disclosing such interest to a meeting.
18. Part 2 of the Code also advises members that, if they are present at a meeting and have a disclosable pecuniary interest in any matter to be considered at that meeting;
- members must disclose the interest to the meeting whether or not it is registered
  - members must not participate in any discussion of the matter or in any vote taken on the matter at the meeting and must withdraw from the room of the meeting whilst the matter is being considered.

Members with a disclosable pecuniary interest in a planning matter may apply to the Monitoring Officer for a dispensation to make representations, answer questions or give evidence relating to the relevant planning matter at a meeting, provided that the public are also allowed to attend the meeting for the same reason. Members must declare their interest at any meeting which they attend with a dispensation and must make it clear that their representations are made in a personal capacity rather than in their role as a councillor.

### **Declaration of personal interests**

19. Part 3 of the Code states that, in addition to disclosable pecuniary interests, members must also register other personal interests defined in the Code.
20. Subject to the circumstances outlined in the Code, where members have a personal interest in any business of the Council and attend meetings such as Planning Committee at which the business is considered, they must disclose the existence and nature of that interest at the meeting.

## Declaration of prejudicial interests

21. A member with a personal interest in any business of the Council also has a prejudicial interest if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice the member's judgement of the public interest. A full definition of 'prejudicial interest' appears in Part 3 of the Code.
22. A member with a prejudicial interest must disclose the interest to the meeting and must withdraw from the room where the meeting is held unless s/he is making representations, answering questions or giving evidence relating to the relevant planning matter provided that the public are also allowed to attend the meeting for the same reason. The member must leave the room immediately after making representations, answering questions or giving evidence and must not participate in any discussion of the matter at the meeting or in any vote taken on the matter at the meeting.

## Bias and predetermination

23. The law on bias and predetermination may apply at times when the member concerned does not have a disclosable pecuniary interest or a personal or prejudicial interest as defined by the Code.
24. Predetermination is a principle developed by the courts which has established that a decision taken by a public body is unlawful if the decision maker approaches the decision with a closed mind.
25. Section 25 of the Localism Act 2011 applies when a Court has to consider whether a decision has been validly made. It provides that a "decision taker" is not to be regarded as having a closed mind **just because** the decision taker had previously done anything that directly or indirectly indicated what view the decision-maker took or would or might take in relation to a matter that was relevant to the decision. The use of the qualifying words 'just because' in Section 25 indicates that some decisions will still be invalid by reason of predetermination notwithstanding the enactment of the section, because **all** the circumstances surrounding the decision have to be taken into account. Regardless of any predisposition of members to determine an application in accordance with their political views and policies, the members of Planning Committees must approach decision making with an open mind, must listen to the evidence and arguments on both sides and must make decisions with regard to material planning considerations. Members should not have, or appear to have, a closed mind on a planning application prior to its full consideration at Planning Committee.
26. Where bias or predetermination or a risk of the perception of bias or predetermination arises, a member of Planning Committee who has, or appears to have, a closed mind about a planning matter in advance of Committee should not participate in the decision making part of the meeting. Members may, in their representative capacity, address the Committee on the planning merits of the application for the same period of time as any member



of the public with a right to speak. Members should declare that they cannot participate in the decision taking as a result of having a closed mind in advance of the meeting and withdraw as soon as they have addressed the Committee.

### **Development proposed by the City Council or a Council controlled company or agency**

27. Planning legislation allows councils, and bodies controlled by them, to submit and determine development proposals which they intend to carry out themselves. These shall be considered in the same way as those put forward by private developers.
28. Decisions shall be taken strictly on planning merits and without regard to any financial gain that the Council - e.g. in its capacity as land owner - may accrue, if the development is allowed. The Council should treat such applications on an equal basis with all other applications.
29. Members of the Planning Committees who hold a position of control or management in another public authority or are appointed by the Council as its representative to another body need to consider their position where such bodies submit planning applications to the Council. In such cases the Code provides that members have a personal interest and need only disclose the nature or existence of that interest when they address the meeting on the business which relates to their public authority or other body, unless the interest is a prejudicial interest. Members should always consider whether it is appropriate to regard themselves as having no prejudicial interest in the light of the specific facts. In addition, because of the appearance of bias, a member should always consider whether it is appropriate to take part in the decision making process. For example, where the member has been or is perceived as being the chief advocate for the proposal *or* has had a significant personal involvement in preparing or promoting the proposal by which s/he may be perceived as being unable to act impartially or determine the proposal purely on its planning merits and in the public interest *or* has, or appears to have, a closed mind about the application, this would give rise to an appearance of bias. If the circumstances would give rise to potential allegations of bias, members are advised to explain their involvement and not take part in the decision (see paragraph 26 above).

### **Development proposals by individual members or officers or persons related to them**

30. Serving members or officers should never act as agents for another in pursuing a planning matter. If members or officers submit their own proposal to the Council they should take no part in the processing and determination of that proposal. The Council's Head of Planning should be informed of all such proposals as soon as they are submitted.
31. Proposals for development by members or officers shall be reported to the Planning Committees and should not be determined under delegated authority

unless they relate to the residence of a member or officer *and* there are no objections to the application.

32. Officers should not deal with development proposals and planning applications in which they have a personal interest.

### **Lobbying of and by members**

33. Lobbying is a necessary and legitimate element of the political and democratic process. Those affected by a development proposal often try to canvass support from one or more members of a planning committee. The time for individual members of the Planning Committees to make a decision on a proposal is at the committee meeting when all the relevant information is available and has been properly considered. Members should not close their minds or give the appearance of having closed their minds, particularly in relation to an external interest or lobby group, prior to the Planning Committee meeting. Members who commit themselves in advance to a fixed view as to how the proposal should be determined should withdraw from the room in which the meeting is held and not participate when the Committee is discussing or voting on the application. They may, in their representative capacity, address the Committee on the planning merits of the application (see paragraph 26 above).

(Note: Where a matter is discussed and then deferred from one meeting to another, members may continue to take part in the decision at the second meeting, even if they have expressed views at the first meeting. Members should always keep an open mind and take into account new information presented at the second meeting when they vote)

34. Members are free to listen to a point of view about a particular proposal and to provide procedural advice, (e.g. by referring the person to a particular officer). They should be careful however to reserve their own final judgement on the matter until the Planning Committee meeting.
35. Members should not circulate unofficial papers not previously considered by officers at Planning Committee meetings.
36. Members should not use mobile telephones or hand held devices during the Planning Committee meeting to discuss the progress of the application with any other person.

### **Membership of lobbying groups**

37. If a member is in a position of general control or management of an organisation that has made representations on a particular planning matter then s/he is likely to have a personal interest under the Code. Such membership may also give rise to a perception of bias or predetermination (see paragraph 26 above).

38. Whether membership constitutes a prejudicial interest will depend on the individual case. Where their lobby group has expressed a public view on a matter, members must consider whether a member of the public with knowledge of the relevant facts would reasonably regard the member's judgement of the public interest as prejudiced. In deciding whether they have a prejudicial interest, members should consider:

- the nature of the application
- the nature of their involvement with the organisation
- the publicly expressed views of the organisation
- what the member has said or done in relation to issues relevant to the application

39. A personal interest may also be prejudicial where it relates to the determining of any planning application in relation to any persons or bodies described in paragraph 12.3 in Part 3 of the Code (see paragraph 21 above)

### **Pre and post application discussions**

40. Members of Planning Committees need to uphold their position as impartial decision makers and it would not be appropriate for them to take part in pre or post application discussions with applicants, developers or groups of objectors regarding the proposed development even if they find it desirable as a ward member to attend such meetings. If it is necessary that they do so in order to fulfil some role other than ward member, this should be part of a structured arrangement agreed with a senior planning officer, who will arrange the meeting and the attendance of an officer at the meeting.

41. During any pre-application discussions or meetings with the applicant, developers or group of objectors that may take place, it shall be made clear by an officer at the outset that the Council will not - as a result of anything during the course of such communication - be bound to make a particular decision and further that any views expressed are provisional only and not those of the Council.

42. A written note shall be made of such pre-application meetings. At least two officers should be present at meetings likely to arouse controversy as to what took place.

### **Officer reports to committee**

43. Officers' reports to the Planning Committees (except to present and update a report) shall be in writing except in the most exceptional circumstances. Oral reports which are material to the Committee's decision shall be minuted.

44. Officers should seek to apply and interpret national and local planning policies in a consistent and objective manner.

45. Reports to the Planning Committees shall be accurate and provide all relevant information. They shall contain a reasoned assessment of the proposal and

justification of any recommendation. If an officer's recommendation is contrary to the Development Plan the material considerations which justify this shall be set out clearly.

### **Decisions contrary to officer recommendation**

46. Members shall take decisions on planning matters in accordance with the Development Plan (or its statutory replacement) where relevant unless material considerations indicate otherwise. The reason for a contrary decision should be clear and convincing and fully minuted.
47. In order to ensure an accurate minute of decisions contrary to officer advice, members should ordinarily make a resolution that they are minded to grant or refuse permission. When such a resolution is made, officers will report to the next committee on the proposed course of action and shall produce a written record of the proposed decision and reasons for adoption by the Committee.
48. A senior officer should be asked to explain to the Committee the implications of a contrary decision before the decision is taken.
49. If the Committee asks for additional planning conditions to be imposed or requests that amendments be made to proposed conditions, officers should prepare the draft condition. Standard conditions may be delegated to officers. Drafting of non-standard conditions which significantly depart from officers' recommendations as set out in the committee report should be delegated to officers in consultation with the Chair.

### **Committee site visits**

50. A decision to carry out a site visit may be held where a proposal is contentious or complex and the impact is difficult to visualise or assess from the plans or any supporting presentation. The visit is intended to enable members to gain knowledge of the proposal and its physical context.
51. Members, objectors and interested parties who are in regular contact with officers about specific applications will be able to obtain information about proposed site visits. Any correspondence from officers relating to a site visit shall identify clearly the purpose of the visit and its form and explain the limited extent to which members can receive representations during a site visit from the local members, applicants, objectors and interested parties. A note shall be taken by officers of any significant events occurring during the site visit.
52. While attending site visits members are free to listen to views expressed by the local members, applicants, objectors and other interested parties at the site visit but should not express an opinion on the planning application or on its merits (or otherwise) at the site visit.
53. In order to ensure transparency of public dealing by members, members shall keep together as a group and shall not engage individually in discussion with local members, applicants, objectors and other interested parties present at

the site visit. Any questions or representations by local members, applicants, objectors and other interested parties shall be made in the presence of the other parties.

### **Complaints and record keeping**

54. Any complaints made about the planning process should be recorded accurately, and would normally be dealt with in accordance with the Council's established Complaints Procedure, unless it is a complaint which is appropriate to be dealt with as a Standards or Conduct issue, in which case it should be reported to the Council's Monitoring Officer in the first instance.

### **Breach of the Members' code**

55. Breaches of the Code and/or this Planning Protocol by members should be reported to the Monitoring Officer.

## **APPENDIX 2**

### **GIFTS AND HOSPITALITY PROTOCOL FOR MEMBERS**

**(For inclusion at Part 6, Section D of the Council's 2013 Constitution to be adopted by Council at its Annual Meeting on 15 May 2013)**

#### **General Introduction**

Manchester City Council's Code of Conduct for Members (the Code) requires members to notify the Monitoring Officer in writing of a personal interest in any business of the Council where it relates to or is likely to affect the interests of any person from whom the member has received a gift or hospitality with an estimated value of at least £100 (an interest under paragraph 11.2(c) of the Code).

In addition to the obligation under paragraph 11.2(c) of the Code, the Council requires members to notify the Monitoring Officer of any gifts or hospitality accepted by either themselves or their partner by or on behalf of the elected member in connection with their appointment as an elected member or representative of the Council with an estimated value of at least £100.

.It is also a breach of the Code for a member to conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute or for a member to use or attempt to use their position as a member improperly to confer on or secure for themselves or any other person an advantage or disadvantage.

The following protocol aims to assist members in complying with these obligations and seeks to provide wider protocol so members can avoid any situation where their integrity may be brought into question as a result of gifts and hospitality.

#### **Legal position**

The Bribery Act 2010 provides that it is a criminal offence for a member to request, receive, agree to receive, promise, offer or give any gift, loan, fee, reward or advantage for doing not doing anything or showing favour or disfavour to any person in their official capacity. It is for the member to demonstrate that any such rewards have not been corruptly obtained.

#### **1. Gifts and hospitality**

Members are advised to treat with caution any offer, gift, or hospitality that is made personally to them in their capacity as an elected member/representative of the Council. The person or organisation making the offer may be doing business or seeking to do business with the Council or may be applying to the Council for some sort of decision in respect of which it is imperative that the member's independence should not be compromised e.g. planning or licensing approvals.

The requirements for notification of a personal interest under paragraph 11.2(c) of the Code and any other gifts or hospitality accepted by the member or their partner in

connection with their position as an elected member/representative of the Council with an estimated value of at least £100 are set out at 2.1 below. It is recommended that where a member refuses any gift or hospitality offered to them or to their partner in connection with their position as an elected member/representative of the Council, the member should notify the Monitoring Officer of the refusal as soon as reasonably practicable. The Monitoring Officer will maintain a register for this purpose.

Below are some examples regarding acceptance of gifts and hospitality:

### **1.1. Gifts**

Where the gift is of purely token value given to a wide range of people, e.g. pens or key ring, the member should be able to accept such a gift and as it will usually be substantially less than £100 in value there should be no need to register it.

Where the gift is of low value and refusal would cause needless offence and the giver is not currently seeking a decision or business from the Council the member should be able to accept it, and again as it will usually be substantially less than £100 in value there should be no need to register it.

Whilst it may be acceptable to accept a token or gift of low value on one occasion members should refuse repeated gifts, even if these are individually not of a significant value.

Cash or monetary gifts should always be refused without exception and the refusal notified to the Monitoring Officer.

Gifts given as prizes at exhibitions, conferences, seminars etc. as part of a free raffle or draw may be accepted but they belong to the Council and should be notified to the Monitoring Officer as soon as reasonably practicable (notwithstanding that their value may be less than £100). The Monitoring Officer in consultation with the chair of the standards Committee will determine whether it is appropriate to retain the gift in question.

### **1.2 Hospitality**

It is increasingly the case that private companies offer hospitality e.g. free drinks, tickets to shows or hotel accommodation to persons with whom they do business or with whom they hope to do business in the future. Such hospitality could convey the impression that member's judgement would be influenced. It would however be too rigid to say that no hospitality can be accepted. Members are reminded that any hospitality with an estimated value of at least £100 should be notified to the Monitoring Officer.

Examples of hospitality which may be acceptable are set out below but depend on the particular circumstances, for example who is providing the hospitality, why the member is there and the nature of the dealings between the Council, the member and the provider of the hospitality:

- A working meal provided to allow parties to discuss or to continue to discuss business.
- An invitation to attend a dinner or function of a Society, Institute or other non commercial body with whom the Council has contact.
- Invitations to attend functions where the member represents the Council (opening ceremonies, public speaking events, conferences).
- The following are examples of unacceptable hospitality:
- Holidays, including accommodation and travel arrangements
- Offers of complimentary theatre and sporting tickets for the member/family or free travel
- Paid for corporate invites for evenings out with representatives from a company or firm who have dealings with the Council or who are likely to have dealings in the future.

Members are again advised to err on the side of caution and if in any doubt as to the integrity of the offer / invite the member should consult the Monitoring Officer or refuse

## **2. Registration of a personal interest under paragraph 11.2(c) of the Code and other gifts and/or hospitality**

### **2.1 Personal and Personal and Prejudicial Interests under paragraph 11.2(c) of the Code**

A personal interest under paragraph 11.2(c) of the Code must be registered:

- Within two months of the adoption by Council of the Code (currently 11 July 2012); or
- 28 days of the members election or appointment to office

whichever is the later.

In addition the Code requires members to disclose the personal interest under paragraph 11.2(c) of the Code where a member is aware/ought reasonably to be aware of the existence of the personal interest when a member attends a meeting of the Council at which the business is considered. The member must disclose to the meeting the existence and nature of that interest at the commencement of the consideration, or when the interest becomes apparent. Where a member has a personal interest under paragraph 11.2(c) of the Code they 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.

When disclosing a personal interest under paragraph 11.2(c) of the Code members must also consider whether the personal interest is a prejudicial interest under



paragraph 13.1 of the Code. If this is the case, paragraphs 13.2 – 13.5 of the Code apply. Where the personal interest is also a prejudicial interest under paragraph 13.1 of the Code, if the personal interest is not registered and is not the subject of a pending notification, the member must notify the Monitoring Officer of the interest within 28 days of the meeting at which the interest was disclosed.

Members must notify the Monitoring Officer of any gifts or hospitality accepted by them or their partner in connection with their position as an elected member/representative of the Council with an estimated value of at least £100 within 28 days of the receipt of the gift or hospitality.

### **3. Notifications**

Notifications of gifts and hospitality should be sent to the Monitoring Officer at the following address.

Governance and Scrutiny Support Unit  
Chief Executive's Department  
Manchester City Council  
Room 403 Town Hall  
Albert Square  
Manchester M60 2LA

A form for this purpose is available from the Governance and Scrutiny Support Unit who administer the register on behalf of the Monitoring Officer.

### **4. The register of members' interests**

Notifications will be included in the register of members' interests, a copy of which is available for public inspection and is published on the Council's website (subject to the rules on sensitive information set out in paragraph 16 of the Code).

This register is subject to scrutiny by the Standards Committee and regular inspection by the Monitoring Officer, Head of Internal Audit and Risk Management and the District Auditor.

### **5. Gifts which cannot be retained**

Where the Monitoring Officer in consultation with the Chair of the Standards Committee determines that it would not be appropriate for a member to retain a gift, that gift will be returned, utilised by the Council or otherwise donated to an appropriate charitable organisation as determined appropriate by the Monitoring Officer and Chair of the Standards Committee.

### **6. Conclusion**

Members are advised to seek the advice of the Monitoring Officer in cases where their position is unclear.

Breaches of this protocol may result in a breach of the Code.

## APPENDIX 3

### GUIDANCE FOR LOCAL INVESTIGATION OF ALLEGATIONS THAT A MEMBER OF MANCHESTER CITY COUNCIL HAS FAILED TO COMPLY WITH THE CODE OF CONDUCT FOR MEMBERS

#### Introduction

1. On 11 July 2012 Manchester City Council adopted a new local Code of Conduct for Members of the Council (“the Code”) and new local Arrangements for dealing with Complaints that Council Members have failed to comply with Council’s Code of Conduct for Members (“the Arrangements”) as required by the Localism Act 2011.
2. Paragraph 6 of the Council’s Arrangements outlines the procedure that is to be followed where the Monitoring Officer, following consultation with the Council’s Independent Person, determines that a complaint merits investigation. Sub-paragraph 6.1 of the Council’s Arrangements provides that where a complaint merits formal investigation, the Monitoring Officer will appoint an Investigating Officer, and sub-paragraph 6.2 provides that the Investigating Officer “will follow guidance issued by the Monitoring Officer on the investigation of complaints.” This Guidance, which is issued by the Monitoring Officer in accordance with sub-paragraph 6.2 of the Council’s Arrangements follows the principles of proportionality and the cost effective use of Council resources and is to be interpreted in line with these principles.
3. For the purposes of this Guidance:

**Arrangements** means the local Arrangements for dealing with Complaints that Council Members have failed to comply with the Council’s Code of Conduct for Members adopted by the Council in accordance with sub-section 28(6) of the Localism Act 2011 (as amended from time to time);

**Code** means the local Code of Conduct for Members of Manchester City Council adopted by the Council in accordance with sub-section 27(2) of the Localism Act 2011 (as amended from time to time);

**Complaint** means an allegation that a Member has failed to Comply with the Council’s Code;

**Complainant** means the person making the allegation that a Member has failed to Comply with the Council’s Code;

**Hearing Panel** means a sub-committee of the Council’s Standards Committee appointed in accordance with paragraph 9 of the Arrangements;

**Independent Person** means the Independent Person(s) appointed by the Council in accordance with sub-section 28(7) of the Localism Act 2011;

**Investigating Officer** means the person appointed by the Monitoring Officer in accordance with sub-paragraph 6.1 of the Arrangements to undertake the formal investigation of a complaint;

**Member** means the person against whom the Complaint is made;

**Standards Committee** means the Council's Standards Committee ;

4. Where there may be a conflict of interest preventing the Monitoring Officer from discharging his or her functions under the Arrangements, the Deputy Monitoring Officer, another appropriate officer of the authority, an officer of another local authority, or an external Investigating Officer shall be appointed by the Monitoring Officer to discharge the functions of the Monitoring Officer.

### **Pre-Investigative Process**

#### 5. **Notification to Standards Committee**

The Monitoring Officer will notify each member of the Standards Committee by confidential memorandum that a local investigation is taking place. The memorandum will not name either the Complainant or the Member.

#### 6. **Arrangements for Investigation**

- 6.1 Following his or her appointment by the Monitoring Officer in accordance with sub-paragraph 6.1 of the Arrangements, the Investigating Officer shall conduct an investigation of the Complaint.
- 6.2 The Investigating Officer may appoint persons to assist him or her in the conduct of the investigation and may obtain such professional advice as may be necessary for the conduct of the investigation.
- 6.3 The Investigating Officer shall treat information received in relation to a Complaint as confidential until the investigation is complete.

#### 7. **Notification to the Member**

- 7.1 In accordance with sub-paragraph 2.2 of the Arrangements, a Member will normally have been informed by the Monitoring Officer of the details of a Complaint against the Member (including the identity of the Complainant) as part of the initial assessment of the Complaint, and will have been invited to make representations to the Monitoring Officer in response to the Complaint. However, in exceptional circumstances, the Monitoring Officer may determine to withhold the Complainant's identity in accordance with paragraph 5 of the Arrangements.
- 7.2 Following an initial assessment of a Complaint in accordance with paragraph 3 of the Arrangements, the Monitoring Officer will notify the Member in writing as to his or her decision as to whether the Complaint should be accepted for investigation, should be dealt with informally or should be rejected.

7.3 Where the Monitoring Officer determines that a Complaint merits investigation, the Monitoring Officer will appoint an Investigating Officer who will notify the Member in writing:

- Of the identity of the Investigating Officer;
- Confirming the identity of the Complainant (unless the Monitoring Officer has determined that the identity of the Complainant should be withheld in accordance with paragraph 5 of the Arrangements);
- Confirming the details of the allegations made by the Complainant;
- Advising as to the section(s) of the Code which appear to be relevant to the Complaint; and
- The procedure that will be followed in respect of the Complaint.

7.4 When notifying the Member, the Investigating Officer shall request the Member to respond in writing within 15 working days of notification of the following:

- Advising the Investigating Officer whether the Member admits or denies (either in whole or in part) the breach(es) of the Code which is (are) the subject of the Complaint;
- Listing any documents which the Member would wish the Investigating Officer to take into account in the investigation (and where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected);
- Providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Member would wish the Investigating Officer to interview in the course of any investigation, and providing the Investigating Officer with reasons as to why the Member believes the person or organisation should be interviewed;
- Advising the Investigating Officer:
  - ❖ Where the Member has submitted written representations to the Monitoring Officer in accordance with sub-paragraph 2.2 of the Arrangements, whether the Member wishes to make any amendments or additions to such written representations;
  - ❖ Where the Member has not submitted written representations to the Monitoring Officer in accordance with sub-paragraph 2.2 of the Arrangements, whether the Member wishes to submit any written representations to the Investigating Officer.

## 8. **Notification to the Complainant**

- 8.1 Following an initial assessment of a Complaint in accordance with paragraph 3 of the Arrangements, the Monitoring Officer will notify the Complainant in writing as to his or her decision as to whether the Complaint should be accepted for investigation, should be dealt with informally or should be rejected.
- 8.2 Where the Monitoring Officer determines that a Complaint merits investigation, the Monitoring Officer will appoint an Investigating Officer who will notify the Complainant in writing:
- Of the identity of the Investigating Officer;
  - Advising as to the section(s) of the Code which appear to be relevant to the Complaint; and
  - The procedure that will be followed in respect of the Complaint.
- 8.3 When notifying the Complainant, the Investigating Officer shall request the Complainant to respond in writing within 15 working days of notification of the following:
- Listing any documents which the Complainant would wish the Investigating Officer to take into account in the investigation (and where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected);
  - Providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Complainant would wish the Investigating Officer to interview in the course of any investigation, and providing the Investigating Officer with reasons as to why the Complainant believes the person or organisation should be interviewed;
  - Where there is ambiguity about the exact nature of the Complaint, providing clarification on any facts of the Complaint; and
  - Providing the Investigating Officer with any additional information that the Complainant considers to be of relevance to the Investigating Officer in understanding the Complaint.

9. **Notification to the Ringway Parish Council Clerk**

Where the Complaint relates to the conduct of a member of Ringway Parish Council, at the same time as notifying the Member, the Monitoring Officer and the Investigating Officer will also notify the Clerk of Ringway Parish Council of the matters set out in sub-paragraphs 7.2 and 7.3 above.

## **Conduct of Investigation**

### **10. Purpose of Investigation**

The purpose of the investigation is to enable the Investigating Officer to prepare and present to the Monitoring Officer and the Independent Person a report in relation to the allegations made by the Complainant. Where possible, the Investigating Officer should form conclusions about the evidence on the balance of probabilities.

### **11. Confidentiality**

11.1 The Investigating Officer will treat the information that he or she gathers during the investigation of a Complaint as confidential. This will help to ensure that the investigation of a Complaint is seen as fair, as maintaining confidentiality reduces the risk of evidence being viewed as biased, and preserves the integrity of the investigation.

11.2 On commencing an investigation, the Investigating Officer will identify an initial list of persons to be interviewed, organisations from whom information is to be sought and documents to be inspected as part of the investigation. (The Investigating Officer may supplement or amend this list at any stage of the investigation).

11.3 The Investigating Officer shall ask all persons who are interviewed and any other person made aware of the investigation to maintain confidentiality. Members shall be reminded of their obligations under paragraph 4(a) of the Code not to disclose information that they have received in confidence.

11.4 The Investigating Officer shall only disclose information obtained in an investigation if:

- The disclosure will assist the Monitoring Officer and/or the Independent Person to carry out his or her functions;
- He or she has the permission from the person to whom the information relates to disclose it;
- The information has already lawfully been made public;
- The disclosure is made for the purposes of criminal proceedings in the UK; or
- The disclosure is required by a court or similar body.

12. **Additional Breaches / Non Co-operation**

- 12.1 If during the course of the investigation, new breaches of the Code are alleged, the Investigating Officer should not investigate these further. The Investigating Officer should either:
- Inform the person that they obtained the information from that they cannot investigate the new allegations as part of the existing investigation and that they may wish to make a separate complaint to the Monitoring Officer; or
  - Report the new allegations to the Monitoring Officer together with any supporting information they have. The Monitoring Officer, in consultation with the Independent Person, will consider whether the new allegations should be dealt with as a separate Complaint under the Arrangements.
- 12.2 If, during the course of investigating a Complaint, information is discovered that in the Investigating Officer's opinion would mean that the allegation is either materially more serious or materially less serious than seemed apparent to the Monitoring Officer and the Independent Person originally, or if the Member has died, is seriously ill, or has resigned from the Council, the Investigating Officer must report that information to the Monitoring Officer who will then consult with the Independent Person as to what action should be taken.
- 12.3 If, during the course of investigating a Complaint, information is discovered that in the Investigating Officer's opinion suggests that the Member may have committed any of the following criminal offences under section 34 of the Localism Act 2011, the Investigating Officer must report that information to the Monitoring Officer who will then consult with the Independent Person as to what action should be taken:
- Member has failed to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election.
  - Member has failed to disclose a disclosable pecuniary interest at a meeting if it is not on the register.
  - Member has failed to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that the Member has disclosed to a meeting.
  - Member has participated in any discussion or vote on a matter in which the Member has a disclosable pecuniary interest.
  - An Executive Member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, has failed to notify the Monitoring Officer within 28 days of the interest.

- An Executive Member discharging a function acting alone, and having a disclosable pecuniary interest in a matter, has taken any steps in relation to such a matter.
- A Member has knowingly or recklessly provided information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting.

12.4 If, during the course of investigating a Complaint, a Member or a Complainant refuses to co-operate with the investigation and the Investigating Officer genuinely believes the Member or the Complainant is attempting to derail the investigation, the Investigating Officer must report that information to the Monitoring Officer who will then consult with the Independent Person as to what action should be taken.

13. **Production of documents, information and explanations**

In the course of the investigation, the Investigating Officer may make such enquiries of any person or organisation, and request any person or organisation to provide any document or information which is in his or its possession or control, or provide any explanation, as he or she thinks necessary for the purposes of carrying out the investigation, provided always that the Investigating Officer will conduct the investigation in accordance with the overriding principles of proportionality and the cost effective use of Council resources.

**Interviews**

14. **Requesting attendance**

In the course of the investigation, the Investigating Officer may request any person to attend and appear before him or her or otherwise provide any information, document or explanation for the purposes of the investigation, as he or she thinks necessary for the purposes of carrying out the investigation.

15. **Representation**

Any person who appears before the Investigating Officer may arrange to be accompanied at his or her own expense by a legal representative, colleague or friend.

16. **Conducting interviews**

Interviews may be conducted in person or over the telephone. The Investigating Officer will explain to the interviewee at the start of the interview that there may be a need for further interviews.

17. **Recording interviews**



- 17.1 Interviews will normally be recorded by the Investigating Officer. The Investigating Officer will seek the permission of the interviewee to record the interview in advance of the interview.
- 17.2 Where an interviewee is not willing to give permission for the interview to be recorded, the Investigating Officer will not proceed with the interview. The Investigating Officer will ask the interviewee if the interviewee has any reasons for refusing to give permission for the interview to be recorded that they would like to submit to the Monitoring Officer and Independent Person for consideration. Where an interviewee is not willing to give permission for the interview to be recorded, the Investigating Officer will advise the Monitoring Officer who will then consult with the Independent Person as to what action should be taken.

18. **Statements**

Following the interview the Investigating Officer shall produce a written witness statement, provide two copies of the statement to the person interviewed and ask them to return one copy signed as a correct record of the interview, with such corrections or amendments as they may feel necessary for that purpose.

**Producing Draft and Final Reports**

19. When the Investigating Officer is satisfied that he or she has sufficient information to satisfy the purpose of the investigation or has obtained as much information as is likely to be reasonably capable of being obtained, he or she shall produce a Draft Report.

**Draft Reports**

20. Pursuant to section 28(7)(a) of the Localism Act 2011, before the Council makes a decision on a Complaint that it has decided to investigate, the Council must seek and take into account the views of the Independent Person.
21. The primary purpose of a Draft Report is to allow the Investigating Officer to seek and take into account the views of the Independent Person in relation to the investigation.
22. The Draft Report also provides the Investigating Officer with an opportunity to check facts and to ensure that all aspects of the case have been explored in sufficient detail.
23. The Draft Report shall contain the following information:
- The date;
  - The legislation under which the investigation is being carried out;
  - A summary of the Complaint;