

# COUNCIL

Thursday, 25th April 2013  
at 6.00 pm

**PLEASE NOTE TIME**

Council Chamber - Civic Centre

## **Members of the Council**

The Mayor – Chair

The Sheriff – Vice-chair

Leader of the Council

Members of the Council (See overleaf)

## **Contacts**

Director of Corporate Services

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The agenda and papers are available via the Council's Website

<b>WARD</b>	<b>COUNCILLOR</b>	<b>WARD</b>	<b>COUNCILLOR</b>
<b>Bargate</b>	Bogle Noon Tucker	<b>Millbrook</b>	Furnell Laming Thorpe
<b>Bassett</b>	Hannides B Harris L Harris	<b>Peartree</b>	Keogh Lewzey Dr Paffey
<b>Bevois</b>	Burke Barnes-Andrews Rayment	<b>Portswood</b>	Claisse Norris Vinson
<b>Bitterne</b>	Letts Lloyd Stevens	<b>Redbridge</b>	McEwing Pope Whitbread
<b>Bitterne Park</b>	White Baillie Inglis	<b>Shirley</b>	Chaloner Kaur Mead
<b>Coxford</b>	Morrell Spicer Thomas	<b>Sholing</b>	Mrs Blatchford Jeffery Kolker
<b>Freemantle</b>	Moulton Parnell Shields	<b>Swaythling</b>	Mintoff Turner Vassiliou
<b>Harefield</b>	Daunt Fitzhenry Smith	<b>Woolston</b>	Cunio Payne Dr R Williams

# **PUBLIC INFORMATION**

## **Role of the Council**

The Council comprises all 48 Councillors. The Council normally meets six times a year including the annual meeting, at which the Mayor and the Council Leader are elected and committees and sub-committees are appointed, and the budget meeting, at which the Council Tax is set for the following year.

The Council approves the policy framework, which is a series of plans and strategies recommended by the Executive, which set out the key policies and programmes for the main services provided by the Council.

It receives a summary report of decisions made by the Executive, and reports on specific issues raised by the Overview and Scrutiny Management Committee.

The Council also considers questions and motions submitted by Council Members on matters for which the Council has a responsibility or which affect the City.

## **Public Involvement**

### **Representations**

At the discretion of the Mayor, members of the public may address the Council on any report included on the agenda in which they have a relevant interest.

### **Petitions**

At a meeting of the Council any Member or member of the public may present a petition which is submitted in accordance with the Council's scheme for handling petitions.

Petitions containing more than 1,500 signatures (qualifying) will be debated at a Council meeting. Petitions with less than 1,500 signatories (non-qualifying) shall be presented to the Council meeting and be received without discussion.

### **Deputations**

A deputation of up to three people can apply to address the Council. A deputation may include the presentation of a petition.

## **Questions**

People who live or work in the City may ask questions of the Mayor, Chairs of Committees and Members of the Executive.

## **Southampton City Council's Seven Priorities**

- More jobs for local people
- More local people who are well educated and skilled
- A better and safer place in which to live and invest
- Better protection for children and young people
- Support for the most vulnerable people and families
- Reducing health inequalities
- Reshaping the Council for the future

**Smoking policy** – The Council operates a no-smoking policy in all civic buildings.

**Mobile Telephones** – Please turn off your mobile telephone whilst in the meeting.

**Fire Procedure** – In the event of a fire or other emergency, a continuous alarm will sound and you will be advised by Council officers what action to take.

**Access** – Access is available for disabled people. Please contact the Council Administrator who will help to make any necessary arrangements.

## **Dates of Meetings(Municipal Year 2012/13)**

<b>2012</b>	<b>2013</b>
16 May	16 January
11 July	13 February (Budget)
12 September	20 March
14 November	15 May

## CONDUCT OF MEETING

### FUNCTIONS OF THE COUNCIL

The functions of the Council are set out in Article 4 of Part 2 of the Constitution

### BUSINESS TO BE DISCUSSED

Only those items listed on the attached agenda may be considered at this meeting.

### RULES OF PROCEDURE

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

### QUORUM

The minimum number of appointed Members required to be in attendance to hold the meeting is 16.

### DISCLOSURE OF INTERESTS

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "Disclosable Personal Interest" or "Other Interest" they may have in relation to matters for consideration on this Agenda.

#### DISCLOSABLE PERSONAL INTERESTS

A Member must regard himself or herself as having a Disclosable Pecuniary Interest in any matter that they or their spouse, partner, a person they are living with as husband or wife, or a person with whom they are living as if they were a civil partner in relation to:

(i) Any employment, office, trade, profession or vocation carried on for profit or gain.

(ii) Sponsorship:

Any payment or provision of any other financial benefit (other than from Southampton City Council) made or provided within the relevant period in respect of any expense incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

(iii) Any contract which is made between you / your spouse etc (or a body in which the you / your spouse etc has a beneficial interest) and Southampton City Council under which goods or services are to be provided or works are to be executed, and which has not been fully discharged.

(iv) Any beneficial interest in land which is within the area of Southampton.

(v) Any license (held alone or jointly with others) to occupy land in the area of Southampton for a month or longer.

(vi) Any tenancy where (to your knowledge) the landlord is Southampton City Council and the tenant is a body in which you / your spouse etc has a beneficial interests.

(vii) Any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of Southampton, and either:

- a) the total nominal value for the securities exceeds £25,000 or one hundredth of the total issued share capital of that body, or
- b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you / your spouse etc has a beneficial interest that exceeds one hundredth of the total issued share capital of that class.

## **Other Interests**

A Member must regard himself or herself as having a, 'Other Interest' in any membership of, or occupation of a position of general control or management in:

Any body to which they have been appointed or nominated by Southampton City Council

Any public authority or body exercising functions of a public nature

Any body directed to charitable purposes

Any body whose principal purpose includes the influence of public opinion or policy

## **Principles of Decision Making**

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

Director of Corporate Services  
M R HEATH  
Civic Centre, Southampton, SO14 7LY

Wednesday, 17 April 2013

**TO: ALL MEMBERS OF THE SOUTHAMPTON CITY COUNCIL**

You are hereby summoned to attend an EXTRAORDINARY MEETING of the COUNCIL to be held on THURSDAY, 25TH APRIL, 2013 in the COUNCIL CHAMBER - CIVIC CENTRE at 6.00 pm when the following business is proposed to be transacted:-

**1 APOLOGIES**

To receive any apologies for absence.

**2 MONITORING OFFICER REPORT: INVESTIGATION**

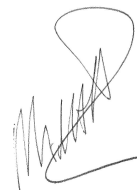
Report of the Council's Director of Corporate Services and Monitoring Officer concerning an independent investigation into allegations surrounding a press release issued by the Council in May 2012 following the resignation of Councillor Keith Morrell from the Executive together with the report of the Independent Investigator, attached.

**3 MOTION**

Motion to be moved by Councillor Smith:

"This Council believes that all Councillors should follow the Councillors' Code of Conduct and believes that Councillors should be honest and should at all times avoid the appearance of dishonesty in their activities as a Councillor. In particular senior councillors such as Cabinet Members and the Leader should take special care to ensure that they carry out their roles in a fit and proper manner.

Council agrees that should it come to light that a Cabinet Member or the Leader of the Council has been publicly dishonest they should forfeit their position to protect the reputation of public office."



M R HEATH  
Director of Corporate Services

# Agenda Item 2

<b>DECISION-MAKER:</b>	FULL COUNCIL			
<b>SUBJECT:</b>	MONITORING OFFICER REPORT: INVESTIGATION			
<b>DATE OF DECISION:</b>	25 <sup>TH</sup> APRIL 2013			
<b>REPORT OF:</b>	DIRECTOR OF CORPORATE SERVICES (MONITORING OFFICER) FOLLOWING CONSULTATION WITH THE HEAD OF FINANCE & IT (CHIEF FINANCIAL OFFICER) AND INTERIM CHIEF EXECUTIVE (HEAD OF PAID SERVICE)			
<b><u>CONTACT DETAILS</u></b>				
<b>AUTHOR:</b>	<b>Name</b>	<b>Mark Heath</b>	<b>Tel:</b>	<b>023 8083 2371</b>
	<b>E-mail</b>	<b>Mark.heath@southampton.gov.uk</b>		
<b>Director</b>	<b>Name</b>	<b>Mark Heath</b>	<b>Tel:</b>	<b>023 8083 2371</b>
	<b>E-mail</b>	<b>Mark.heath@southampton.gov.uk</b>		

## STATEMENT OF CONFIDENTIALITY

N/A

## BRIEF SUMMARY

The purpose of this report is to place before Full Council in accordance with legal requirements the outcome of an independent investigation commissioned by the Monitoring Officer in relation to allegations of impropriety involving the issue of a press release following the resignation of Councillor Keith Morrell from the Executive.

## RECOMMENDATIONS:

- (i) That the report of the Monitoring Officer be noted;
- (ii) That the report of the Monitoring Officer be referred to the Governance Committee to consider:
  - a. whether or not the current constitutional arrangements, protocols and / or guidance are robust and adequate;
  - b. making any recommendations for changes to such arrangements to Full Council as appropriate, and
  - c. whether the current training and development arrangements for officers and members should be revised.

## REASONS FOR REPORT RECOMMENDATIONS

1. Having commissioned an investigation, the Monitoring Officer determined that the matter should be reported in full to Full Council and that is the purpose of this report. This is a statutory report within the meaning of Section 5 Local Government and Housing Act 1989. The issues raised within it are sufficiently serious for Full Council to receive such a report and for the report to be considered publicly in the interests of openness, transparency and accountability.

## **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

2. None.

### **DETAIL (Including consultation carried out)**

3. On 19 October 2012, the Southern Daily Echo carried a story referring to Councillor Keith Morrell's resignation from the Executive and surrounding events. The Director of Corporate Services, in his capacity as the Council's statutory Monitoring Officer reached the view that his legal statutory duty required him to investigate whether or not there had been any breach of the law, Code or protocol.
4. The Monitoring Officer wrote to the Leader of the Council, Councillor Richard Williams, advising him of this on the day that the Echo ran the story and further wrote to all members advising them that an investigation would be carried out.
5. The law requires the Monitoring Officer to act in these circumstances, but in initiating an independent investigation, the Monitoring Officer made it clear that he was not saying that there had been a breach of any law, Code or protocol, but that the law required him to intervene and investigate.
6. The Monitoring Officer, therefore, arranged for the independent investigation to be carried out by Mr Richard Lingard, a highly experienced ex-local authority lawyer and Monitoring Officer.
7. The Monitoring Officer said that the report arising from the investigation would in due course be reported to Full Council.

### Findings of Fact

8. Mr Lingard has satisfied himself that the basic sequence of events was as follows.
  - i. Having been appointed as Cabinet Member for Efficiency and Improvement following Labour's assumption of control of Southampton City Council on 3 May 2012, Cllr Keith Morrell decided, less than two weeks later, to resign that post.
  - ii. At about 1.50 pm on Tuesday 22 May, Cllr Morrell telephoned an officer with whom he was due to have a meeting in his capacity as a newly appointed Cabinet member to tell that officer that he would not be going to the meeting at 2pm because he was resigning from his Cabinet post.
  - iii. About an hour and a half later he communicated his decision to resign in an email sent to the Leader of the Council, Councillor Richard Williams.
  - iv. That email cited political and policy differences as the reasons for his resignation.
  - v. A short time later, Cllr Jacqui Rayment, alerted to Cllr Morrell's possible resignation by a conversation she had had with a Council officer, contacted Cllr Williams to ask if he was aware that Cllr Morrell had resigned.



- vi. Cllr Williams had not at that stage seen or read the email that Cllr Morrell had sent to him but did so shortly afterwards and returned Cllr Rayment's call and in due course contacted both Cllr Don Thomas and Cllr Morrell.
- vii. Cllr Williams sought to persuade Cllr Thomas to, in turn, persuade Cllr Morrell to withdraw his resignation. Cllr Thomas declined. After a local party branch meeting that evening Councillor Williams and Councillor Rayment discussed Cllr Morrell's resignation in the car park. Councillor Rayment said during that discussion, that Cllr Morrell may have some "mental health" issues.
- viii. Cllr Williams had two telephone conversations with Cllr Morrell during the course of which he sought to persuade Cllr Morrell to withdraw his resignation. Cllr Morrell declined.
- ix. After some discussion with Cllr Williams, Cllr Morrell agreed that he should resign on the grounds of ill health.
- x. That same morning, Cllr Williams telephoned Ben White, Communications Director and instructed him to prepare a statement for release to Staff and Councillors and to the media at large explaining that Cllr Morrell had resigned on grounds of ill health.
- xi. Cllr Williams instructed Mr White to secure clearance of the statement from the Deputy Leader, Cllr Jacqui Rayment.
- xii. Mr White prepared a draft statement which he read over the telephone to Mr Heath, the Council's Monitoring Officer / Director of Corporate Services (who was by this time aware that Cllr Morrell had tendered his resignation) and then placed it before Cllr Rayment.
- xiii. Cllr Rayment read, slightly amended and approved the release.
- xiv. Mr White then arranged for the release to be distributed both internally and externally to the Council's media contacts.
- xv. Once the press and public became aware of the contents of the press release, Cllr Morrell began to receive enquiries after the state of his health. Amongst the enquirers was a reporter from the local newspaper to whom Cllr Morrell confirmed that he had not originally resigned for health reasons.
- xvi. On Sunday 10 June Cllr Williams forwarded Cllr Morrell's resignation email of 22 May to Cllr Rayment and Cllr McEwing.
- xvii. On Tuesday 12 June 2012, Cllr McEwing forwarded it to all members of the Labour Group.
- xviii. At an EGM of the Council held on 25 June, the Leader of the Opposition moved a motion of no confidence in Cllr Williams as Leader citing the circumstances of Cllr Morrell's resignation and the publicly stated reasons for it. The motion was lost. Cllr Rayment apologised at the meeting for failing to properly check the press release and Cllr Williams apologised for 'communication errors'. Cllr Morrell made no objections at the Council meeting to the version of events as described by Cllr Williams.

- xix. Prior to the EGM, the Southern Daily Echo had submitted a Freedom of Information Act request for all emails relating to Cllr Morrell's resignation.
- xx. On Friday 19 October the Echo ran a three-page story calling upon Cllr Williams to resign because he had misled the public over Cllr Morrell's reasons for resignation. (Historically there is a poor relationship between the Echo and Councillor Williams and the newspaper has made it clear to him and the Labour Group that their treatment of stories about the current administration will not be sympathetic).
- xxi. On the same date, the Monitoring Officer decided that the matter should be investigated.

### Conclusions and Recommendations from the investigation

- 9. The investigator's report contains conclusions and recommendations in relation to:
  - a. Councillor Keith Morrell;
  - b. Councillor Richard Williams;
  - c. Councillor Jacqui Rayment;
  - d. Councillor Catherine McEwing;
  - e. other members of the Labour Group; and
  - f. Ben White, Senior Communications Manager.
- 10. Full Council's attention is specifically drawn to the adverse findings in relation to Councillors Morrell, Rayment and Williams set out in paragraphs 9-11 inclusive of the investigator's report.
- 11. In respect of Councillor Keith Morrell, the investigator found that he failed to comply with The Nolan Principles of Public Life relating to Openness and Honesty.
- 12. In respect of Councillor Richard Williams, the investigator found that he failed to comply with The Nolan Principles of Public Life relating to Openness, Honesty and Leadership, and the guidance as to mutual respect and courtesy between members and Officers set out in the Council's Member / Officer Protocol.
- 13. In respect of Councillor Jacqui Rayment, the investigator found that she failed to comply with The Nolan Principles of Public Life relating to Openness and Honesty, and the guidance as to mutual respect and courtesy between members and Officers set out in the Council's Member / Officer Protocol.

### **Process**

- 14. The investigator supplied his provisional report to the Monitoring Officer on 3 March 2013.
- 15. Although this was not a Code of Conduct matter, given the content of the investigator's report and the fact that specific adverse findings were made against Councillors Morrell, Rayment and Williams, they were given an opportunity to comment on the provisional report.

16. This is because of the requirements of procedural fairness and natural justice, and the legal duty placed on public bodies such as councils to act fairly. These are the terms generally used to describe the range of procedural standards which are applied to the administrative decision-making processes. They encompass both specific statutory requirements and the requirements of natural justice derived from common law. All must be considered in light of the requirements of the Human Rights Act 1998 and in particular the provision in the Convention for the Protection of Human Rights and Fundamental Freedoms dealing with the right to a fair trial which is incorporated into English law.
17. The concept of fairness is necessarily a flexible one, and the requirements which it imposes will differ depending on the circumstances which prevail. The right to a fair hearing requires that individuals should not be penalised by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case. The mere fact that a decision affects rights or interests is sufficient to subject the decision to the procedures required by natural justice. The right to a fair hearing is guaranteed by Article 6 of the European Convention on Human Rights which complements the common law requirements of fairness and natural justice rather than replaces it.
18. The comments made by Councillors Morrell, Rayment and Williams were supplied to the investigator who then considered them, making any changes to his report that he considered were necessary, prior to finalising it on 17 April 2013. As a result any changes accepted by the investigator have been incorporated within the final version appended to this report. However, whilst he has taken full account of all comments, he has not changed his findings and conclusions.

## **RESOURCE IMPLICATIONS**

### **Capital/Revenue**

19. The cost of the investigation has been £7,000.

### **Property/Other**

20. Nil.

## **LEGAL IMPLICATIONS**

21. The Director of Corporate Services is the Council's statutory Monitoring Officer. Every local authority must have a statutory Monitoring Officer whose duty it is under the Local Government and Housing Act 1989 to prepare a report to the Authority with respect to any proposal, decision or omission of the Executive, the Authority, a committee or sub-committee, an officer, employee or a joint committee on which the Authority is represented which appears to the Monitoring Officer to have given rise to or is likely to give rise to or would give rise to a contravention of any rule of law or maladministration.
22. In preparing such a statutory report, the Monitoring Officer must consult with the Head of Paid Service and Chief Financial Officer. The Monitoring Officer has shared his report with both the Interim Chief Executive (in her capacity as Head of Paid Service) and the Head of Finance and IT (in his capacity as Chief Financial Officer).

23. In appropriate cases, the Monitoring Officer may rely upon existing processes within the authority (such as the Code of Conduct process, internal appeals procedures or insurance arrangements) to resolve any potential reportable incident, but may intervene in such processes to identify that the particular matter is a potentially reportable incident and to ensure the satisfactory resolution of the issue. In appropriate cases, and to secure the rapid resolution of a potential reportable incident or avoid a separate statutory report, the Monitoring Officer adds his written advice to the report of other officers of the authority.
24. Notwithstanding the above, the Monitoring Officer retains the right in all cases to make a statutory report where, after consultation with the Chief Executive and the Chief Finance Officer, he is of the opinion that this is necessary in order to respond properly to a reportable incident.
25. Whilst the findings of failing to comply with The Nolan Principles of Public Life and the Council's Officer / Member Protocol are serious, the investigator considers that there has been no evidence of injustice or maladministration and no contravention of any enactment or rule of law. Whilst the investigator's view, having examined the evidence in detail, clearly carries considerable weight, the ultimate decision about whether or not to issue a statutory Monitoring Officer report rests solely (and is the personal statutory responsibility of) the Monitoring Officer.
26. The Monitoring Officer agrees with the investigator's finding that there has been no contravention of any enactment or rule of law. The Monitoring Officer also agrees that there has been no conduct that amounts to the commission of a criminal offence. It should be noted the expenditure incurred on the drafting of the press release was a very modest amount. Furthermore, the amount of expenditure here is, in one sense, neutral because there would have been no more expenditure had the press release been accurate.
27. The investigator further noted that he did not see any serious potential or actual consequences for the public as a consequence of this matter.
28. The directing actions underlying the accuracy of the press release fall within the ambit of ethics, probity and member conduct. Such issues have a regime, underpinned by a Code of Conduct for Members which is policed by the Council's Governance Committee.
29. The Code of Conduct and the processes underpinning that established by the Local Government Act 2000 (as amended) were abolished by the Localism Act 2011 at the end of June 2012. As a result, this matter cannot be considered under the new Code of Conduct as that is not retrospective nor under the old Code of Conduct as that has been abolished.
30. Consequently, as a matter of law, this matter cannot be considered by the Council's Governance Committee as a Code of Conduct issue matter. If it had been capable of being so considered, the Monitoring Officer would have referred the matter to the Governance Committee in November 2012 and an appropriate Code of Conduct investigation would have been undertaken.
31. Nevertheless, the findings identified by the investigating officer and set out in his report relate to important aspects of compliance by members with The

Nolan Principles of Public Life which underpin the Council's Code of Conduct as well as the Council's Officer/Member Protocol.

32. The essential role of the monitoring officer is to uphold high standards of corporate governance in the authority and (in an appropriate manner, depending upon the circumstances) to make a formal report in what will usually be exceptional circumstances. That is the case here. The findings of the investigator should be reported to Full Council. Having the matter independently investigated and then reporting the result of that investigation to Full Council is appropriate and proportionate given the absence of a Code of Conduct route for considering the matter.
33. Further, in the light of this report, Governance Committee should consider and make recommendations for any changes to the current constitutional arrangements, protocols and guidance, as well as reviewing the existing training and development arrangements for officers and members relevant to the areas covered by this report.

**POLICY FRAMEWORK IMPLICATIONS**

34. Nil

**KEY DECISION?** No

<b>WARDS/COMMUNITIES AFFECTED:</b>	All
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**SUPPORTING DOCUMENTATION**

**Appendices**

1.	Report of Mr Richard Lingard, Solicitor
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**Documents In Members' Rooms**

1.	None
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**Equality Impact Assessment**

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	No
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**Other Background Documents**

**Equality Impact Assessment and Other Background documents available for inspection at:**

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1. None	

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Report of an Investigation into events leading to and arising from the issue of a Press Release announcing the resignation of Councillor Keith Morrell from the Cabinet of Southampton City Council.

*17 April 2013*

**Richard Lingard LLB**  
**Solicitor**

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Ref: RGL/SCC/170413

## **Richard Lingard – Curriculum Vitae**

Educated at Magdalen College School Oxford and Southampton University, I qualified as a solicitor in 1980. I trained in private practice and spent four years in the commercial sector before going into local government.

Until my retirement in September 2011, I was the Head of Legal & Democratic Services and Monitoring Officer at Guildford Borough Council for whom I worked for some 30 years.

In both professional and private capacities I have had dealings with, investigated and reported upon numerous cases involving allegations of misconduct against City, Borough, Town and Parish Councillors and Council Officers.



## EXECUTIVE SUMMARY

This is my report to the Monitoring Officer of Southampton City Council ('SCC') on my investigation of events leading to and following the issue of a press release announcing the resignation from the Cabinet of Councillor Keith Morrell in May 2012.

## SUMMARY OF FINDINGS

1. I have found no evidence of injustice or maladministration.
2. I have found no contravention of any enactment or rule of law.
3. I have found that Councillors Richard Williams, Keith Morrell and Jacqui Rayment failed, to varying degrees, to comply with:
  - The Nolan Principles of Public Life relating to Openness Honesty and Leadership and
  - The guidance as to mutual respect and courtesy between Members and Officers set out in the Council's Member / Officer Protocol.
4. I have found no contravention of the Council's Code of Conduct and Disciplinary Rules for Employees or of the Member / Officer Protocol by any of the Council staff involved.
5. I consider that it would be wise to expedite the update and review of the Media Protocol and to insert a provision that members whom it is proposed to name in a press release must be given the opportunity to comment on the draft.

## 1. BACKGROUND

- 1.1 At the local elections on 3 May 2012 sixteen (one third) of the seats on Southampton City Council were scheduled for election, whilst two additional vacancies, arising from the resignation of sitting councillors, were also filled in Bitterne Park and Peartree wards. Labour gained overall control of the council from the Conservatives and following the election, Labour held 30 seats, the Conservatives 16 and the Liberal Democrats 2. Following the subsequent resignation from the Labour Group of Cllrs Morrell and Thomas, the political composition of the Council is now as follows:

Labour:	28
Conservative:	16
Liberal Democrat:	2
Labour Against the Cuts:	2

- 1.2 One of the members of the new Labour Cabinet (led by Cllr Richard Williams) was Cllr Keith Morrell, who was appointed as Cabinet Member for Efficiency & Improvement.
- 1.3 On Wednesday 23 May, SCC's Communications Department issued a press release, instigated by Cllr Williams and signed off by Cllr Rayment, stating that Cllr Williams had announced the resignation of Cllr Morrell from the Cabinet 'due to ill health'. The local media did not report the story on that or the following day.
- 1.4 Two days later, the local newspaper, the Southern Daily Echo ('The Echo') ran a story claiming that Cllr Morrell was not ill and that he had 'quit in a policy split'.

- 1.5 At an Extraordinary Council Meeting held on Monday 25 June, Cllr Royston Smith, leader of the Conservative opposition, put and Councillor Jeremy Moulton seconded the following motion:

*“In view of the real reason for the resignation of Councillor Morrell as Cabinet Member for Efficiency and Innovation, being that he did not agree with the new Labour Administration’s proposals to deal with the Council’s budget problems and not that he was ill as publicly stated and repeated by the Leader of the Council, that the Leader has brought the Council into disrepute and accordingly the Council has no confidence in him, and resolves to remove him from the office as Leader.”* The motion was not approved.

At that meeting, Cllr Rayment apologised to the Council for her failure to pay sufficient attention to the wording of the press release and Cllr Williams subsequently apologised for ‘errors of communication’.

- 1.6 On 19 October the Echo ran a further story reporting calls for Cllr Williams to resign following its investigation into the reasons for Cllr Morrell’s resignation. It alleged that SCC’s Labour councillors all knew that Cllr Williams had misled them and the public about the real reason for Cllr Morrell’s resignation. The paper published the text of an email from Cllr Morrell to Cllr Williams in which he cited policy reasons for his resignation but made no mention of ill health.

- 1.7 On the same day, SCC’s Monitoring Officer Mark Heath wrote to Cllr Williams in the following terms:

*‘Dear Councillor,*

*In light of the publicly stated position in the Echo regarding Cllr Morrell’s resignation and surrounding events, as Monitoring Officer I have reached the view that my legal duty to investigate whether there has been any breach of the law, any Code or protocol has to be exercised.*

*There are, in my view, potentially substantive issues involved here, around standards / conduct including the Officer / Member Protocol and the Code of Recommended Practice on Local Authority Publicity.*

*To be clear – I am not saying at this stage that there has been a breach, but the position is such that in the interests of the Council and all concerned, the matter warrants proper and robust investigation.*

*I will therefore be arranging for this investigation, which will not be carried out internally, to be undertaken as soon as possible.*

*I will advise you of the details as soon as they are available. The report arising from the investigation will be considered by me and reported to full Council.*

*You should be aware – though this has not in any way coloured or driven my decision – that there is considerable interest from many, including the media in this. A statement will be made explaining that an investigation is to be carried out and the areas it will look at (Council’s Code of Conduct, Officer / Member Protocol and/or the National Code of Recommended Practice on Local Authority Publicity) but no more.’*

- 1.8 On 30 October, Mr Heath advised all SCC members by email of the contents of his message to Cllr Williams, confirmed my appointment as investigator and attached a copy of the Terms of Reference, which are reproduced as **Appendix 1** to this report.

1.9 Mr Heath added that he expected everyone to co-operate fully and to provide any information required for the investigation. He subsequently sent a similar email to senior officers.

## 2. THE FACTS IN BRIEF

2.1 Shortly after 3.30 pm on Tuesday 22 May 2012, Cllr Keith Morrell sent an email to SCC Leader Cllr Richard Williams in which he tendered his resignation from the Cabinet post which he had occupied for less than two weeks. Cllrs Williams and Rayment had been in post as Leader and Deputy respectively for just seven days at this stage. The full text of the email is as follows:

*'Dear Richard,*

*I wish to resign from the Cabinet.*

*For some considerable time now I have attempted to come to terms with the fact that the leadership of the Labour Party nationally has abandoned even the pretence that they believe in socialism as an alternative to the market economy.*

*I kept silent – against my better judgement and in what I imagined to be the best interests of the Party - while that surrender at the national level translated itself into a local agenda. I put aside my reservations and did everything I could to assist in the capture of the City Council, and was willing to help to deliver that agenda as a member of the Cabinet.*

*I fully endorse the commitments made to the Council's staff: to respect them and value them as professionals; to restore pay; to do our utmost to protect jobs; and to work with them, not against them; and will do my utmost to ensure the new Administration delivers on those promises.*

*However, the manifesto also contains a willingness to countenance what amounts to effective dismantling of local government in favour of hiving off services, starting with Adult Social Care and progressing to other key areas. My Cabinet role would obviously require me to be closely involved in delivering that agenda, and I now realise that for me that is a step too far. I was extremely uncomfortable with our visit to the LGA to meet up with the Conservative Leader of Swindon Council in order to set up a 'Capita Users' Group'.*

*Richard, I could try to bite on the bullet and stay on in the Cabinet but I fear that at some point in the not too distant future I would be unable, in such a high-profile role, to continue publicly endorsing or even defending the path the Administration will be taking, and so it is better that I stand down now, without any fuss or media attention and hopefully without causing you any embarrassment.*

*Sincerely,*

*Keith'*

2.2 Cllr Williams did not read the email immediately but was alerted to its gist if not its full contents later in the day by the Deputy Leader, Cllr Jacqui Rayment, who had heard from another source that Cllr Morrell either had resigned or was about to do so.

2.3 Cllr Williams spoke to Cllr Morrell on the telephone that same evening and again the following morning, Wednesday 23 May. Following that second conversation, Cllr

Morrell agreed that the announcement of his resignation should cite health reasons rather than those set out in his email.

- 2.4 Cllr Williams telephoned SCC's Senior Communications Manager Mr Ben White and asked him to prepare a statement in his name regarding Cllr Morrell's decision to step down from the Cabinet because of ill health. He told Mr White that as he would be unavailable all that day, he should ask the Deputy Leader, Cllr Jacqui Rayment, to approve the statement before it was released.
- 2.5 Having discussed the proposed content of the statement with Cllr Williams, Mr White composed a draft and having run through it with Mr Heath, Director of Corporate Services, took it to Cllr Rayment for approval. Cllr Rayment made a slight amendment and the statement was published, firstly internally and then, with a slightly different introduction, to the Council's media contacts.
- 2.6 The text of that statement as released to the media ran as follows:

***'Cabinet member steps down due to ill health***

*The Leader of Southampton City Council, Councillor Richard Williams, has announced the departure of Cllr Keith Morrell from the council's Cabinet due to ill health. Cllr Morrell was appointed to the Cabinet last week following the Labour group's election victory earlier in May. His Efficiency and Improvement portfolio will be shared among the remaining seven Cabinet members. No new Cabinet member will be appointed.*

*Cllr Williams said: "I am very sad that I will not have the opportunity to work with Keith in the new Cabinet and that he has had to step down so soon after my group took over the leadership of the Council. He is an excellent councillor and I am sure he would have made an excellent Cabinet member. My primary concern is that Keith has the time and space to address his health concerns and I wish him and his family all the best.*

*"I have decided not to appoint a replacement but instead to ensure that all of my Cabinet colleagues place the need for efficiency and improvement at the heart of all they do. The city and the council are facing challenging times but with the right focus on continual improvement and innovation we can work with staff and residents and move the city forward."*

- 2.7 The local media did not report the story that day but on Thursday 24 May Cllr Morrell and his wife began to receive enquiries about his health. Amongst the callers was Echo reporter Matt Smith, who appeared to know that his original resignation email had made no mention of ill health. Cllr Morrell, who had done his best to avoid answering calls he knew to be Mr. Smith told him, when he eventually got through by calling from an unknown number, that he had agreed to ill health reasons being cited, but only under pressure from Cllr Williams.
- 2.8 The Echo ran a story on Friday 25 May which began thus:

*'One of Southampton's senior Labour politicians has resigned his post over a policy split just weeks after the party seized power. Cllr Keith Morrell stepped down from his role as Labour's new efficiency tsar because he couldn't bring himself to force through the devastating cuts he believes will be needed after examining the council's finances. A council statement had claimed that Cllr Morrell had left for health reasons. But Cllr Morrell himself confirmed to the Daily Echo he was not ill and agreed to the story to avoid an embarrassing*

*public row. Cllr Morrell added that new council leader Cllr Richard Williams had told him he would be forced to resign as leader if the real reasons became known.'*

2.9 In due course, as recorded in Section 1 above, Mr Heath decided to commission an investigation.

### **3. CONDUCT OF THE INVESTIGATION**

3.1 Following receipt of Mr Heath's instruction to conduct the investigation, I made arrangements to interview Cllr Williams and Mr White, Senior Communications Manager, but it was clearly essential to secure a broad and balanced view of what had taken place and I therefore subsequently arranged to interview a number of other people, including some to whom I was specifically directed by Cllr Williams, by Cllr Rayment and by Cllr Morrell. The complete list of interviewees is as follows:

- Cllr Richard Williams, Leader of the Council (interviewed twice)
- Ben White, Senior Communications Manager
- Cllr Keith Morrell (interviewed twice)
- Cllr Catherine McEwing, Labour Party Whip
- Cllr Jacqui Rayment, Deputy Council Leader
- Cllr Don Thomas
- Cllr Stephen Barnes-Andrews
- Cllr Simon Letts
- Mr Alistair Neill, Chief Executive
- Ms Suki Sitaram, Head of Customer and Business Improvement
- Christine Watkins, Secretary, Southampton & Romsey Labour Party
- John Arnold, Chairman of Southampton & Romsey Labour Party
- Ann Wardle, Former Secretary, Southampton & Romsey Labour Party
- Eileen Wharam, Women's Officer, Southampton & Romsey Labour Party
- Brian Norgate, former Eastleigh Borough Councillor.

The interviews took place between 13 November 2012 and 14 February 2013. My first meeting with Cllr Williams took place at his home address, the second at his solicitor's office in London. The remaining interviews were conducted at Southampton Civic Centre and were in all instances followed by telephone conversations and / or exchanges of email.

3.2 At the beginning of each interview I explained the nature and purpose of my involvement to each interviewee, asked them a range of questions and made a digital recording of the interviews. I then produced edited transcriptions of the recordings and made them available to the respective interviewees who were given the opportunity to correct and clarify them as they thought necessary.

3.3 As well as considering all the correspondence and documentation with which I was initially provided and which I have gathered during the course of the investigation, I have in reaching my conclusions taken into account the contents of the notes I made at my meetings with the interviewees and the transcripts of those interviews.

3.4 I interviewed both Cllr Williams and Cllr Morrell on two occasions, for the second time at the end of the investigation because I wanted to give them the opportunity to

comment on issues raised by other interviewees following my initial meetings with them.

- 3.5 I should emphasise at this early stage that, unlike a 'conventional' Standards or Code of Conduct investigation, there is in this case no 'complainant' as such.
- 3.6 Likewise, no specific or formal allegations have been made, otherwise than in the columns of the local newspaper, nor have any formal complaints been lodged with Mr Heath in his capacity as Monitoring Officer about the behaviour of any of the people involved. The genesis of the investigation is explained in Paragraphs 1.7 and 1.8 above.
- 3.7 Having distinguished this investigation from those that I have previously conducted under the former Standards Board / Standards for England regime, I confirm that I have broadly conducted it, as far as reasonably practicable, in accordance with the general guidance issued to Investigators by SfE.

#### **4. A NOTE ON CONFIDENTIALITY AND POLITICS**

- 4.1 During the course of my investigation I was provided with a considerable amount of information that was disclosed to me on the strict understanding that it would remain confidential. Much of this information related to background and historical issues and I do not consider it necessary to cite it in other than very general terms, not least because much of the actual detail has little or no direct bearing on the fundamental questions that I have been asked to address.
- 4.2 The events that constitute the subject matter of this investigation are firmly rooted in politics but with other overtones and background issues having some relevance. In carrying out my investigation and in reaching my conclusions I have sought to avoid commenting, both during the interviews that I conducted and in this report on any specific political issues but rather looked at the standards of behaviour, both statutory and advisory, which those involved are required and expected to observe.

#### **5 CONSIDERATIONS**

- 5.1 The Terms of Reference provided by Mr Heath (**see Appendix 1**) require me to assess the events the subject of this investigation against the following:
- The Local Government Act 1986 and the Code of Recommended Practice on Local Authority issued under that Act and adopted by the Council;
  - The City Council's Officer / Member Protocol (as contained in the Council's Constitution)
  - The Code of Conduct and Disciplinary Rules for Officers and
  - The Council's Code of Conduct for Members as contained in the Council's Constitution adopted in July 2012, but please refer to Paragraph 7.7 below.
  - I have also been provided with copies of the following:
    - Protocol for the Monitoring Officer
    - Media Interview Protocol
- 5.2 My brief, as set out in the Terms of Reference is to enquire into the circumstances behind the issuing of the press release by the City Council on 23rd May 2012, establish the facts into relation to this matter insofar as they can be established and to advise the Monitoring Officer (and thereby the Council) whether there has been a breach by any member, the authority, the Executive or officer that has given rise to or

is likely to give rise to or would give rise to a contravention of any enactment or rule of law or maladministration or injustice.

- 5.3 As well as investigating the issues set out above, I was asked to consider if any remedial action should be taken and also what (if any) lessons should be learned and, hence, any recommendations I may wish to make to the Council, both specifically but also overall as to its practices and procedures.
- 5.4 As I indicated in Paragraph 3.6 there is in this case no complainant, nor (otherwise than in the columns of the local newspaper) have any specific or formal allegations been made, nor have any formal complaints been lodged with Mr Heath in his capacity as SCC's Monitoring Officer about the behaviour of any of the people involved. It would therefore be inappropriate and incorrect to name any individuals as 'the accused' or 'the defendant', not least because this is not a trial, civil or criminal.
- 5.5 Having said that, my investigation has focused, for reasons which will (or should be) apparent to readers of this report, on the main 'players' in the events of May to October 2012, namely:
- Councillor Keith Morrell
  - Councillor Richard Williams
  - Councillor Jacqui Rayment
  - Councillor Catherine McEwing
  - Mr Ben White

This list should not be taken to mean that I have excluded from consideration others who had less direct involvement in the events concerned and I deal with them separately below.

## **6. FINDINGS OF FACT**

- 6.1 A brief recapitulation of the facts as I believe them to be might be helpful at this stage.
- 6.2 On the basis of all that I have read, heard and inferred, I am satisfied that the basic sequence of events was as follows.
- (1) Having been appointed as Cabinet Member for Efficiency and Improvement following Labour's assumption of control of Southampton City Council on 3 May 2012, Cllr Keith Morrell decided, less than two weeks later, to resign that post.
  - (2) At about 1.50 pm on Tuesday 22 May, Cllr Morrell telephoned an officer with whom he was due to have a meeting in his capacity as a newly appointed Cabinet member to tell that officer that he would not be going to the meeting at 2pm because he was resigning from his Cabinet post.
  - (3) About an hour and a half later he communicated his decision to resign in an email sent to the Leader of the Council, Councillor Richard Williams.
  - (4) That email cited political and policy differences as the reasons for his resignation.

- (5) A short time later, Cllr Jacqui Rayment, alerted to Cllr Morrell's possible resignation by a conversation she had had with a Council officer, contacted Cllr Williams to ask if he was aware that Cllr Morrell had resigned.
- (6) Cllr Williams had not at that stage seen or read the email that Cllr Morrell had sent to him but did so shortly afterwards and returned Cllr Rayment's call and in due course contacted both Cllr Don Thomas and Cllr Morrell.
- (7) Cllr Williams sought to persuade Cllr Thomas to, in turn, persuade Cllr Morrell to withdraw his resignation. Cllr Thomas declined. After a local party branch meeting that evening Councillor Williams and Councillor Rayment discussed Cllr Morrell's resignation in the car park. Councillor Rayment said during that discussion, that Cllr Morrell may have some "mental health" issues
- (8) Cllr Williams had two telephone conversations with Cllr Morrell during the course of which he sought to persuade Cllr Morrell to withdraw his resignation. Cllr Morrell declined.
- (9) After some discussion with Cllr Williams, Cllr Morrell agreed that he should resign on the grounds of ill health.
- (10) That same morning, Cllr Williams telephoned Ben White, Communications Director, and instructed him to prepare a statement for release to Staff and Councillors and to the media at large explaining that Cllr Morrell had resigned on grounds of ill health.
- (11) Cllr Williams instructed Mr White to secure clearance of the statement from the Deputy Leader, Cllr Jacqui Rayment.
- (12) Mr White prepared a draft statement which he read over the telephone to Mr Heath, the Council's Monitoring Officer / Director of Corporate Services (who was by this time aware that Cllr Morrell had tendered his resignation) and then placed it before Cllr Rayment.
- (13) Cllr Rayment read, slightly amended and approved the release.
- (14) Mr White then arranged for the release to be distributed both internally and externally to the Council's media contacts.
- (15) Once the press and public became aware of the contents of the press release, Cllr Morrell began to receive enquiries after the state of his health. Amongst the enquirers was a reporter from the local newspaper to whom Cllr Morrell confirmed that he had not originally resigned for health reasons.
- (16) On Sunday 10 June Cllr Williams forwarded Cllr Morrell's resignation email of 22 May to Cllr Rayment and Cllr McEwing.
- (17) On Tuesday 12 June 2012, Cllr McEwing forwarded it to all members of the Labour Group.
- (18) At an EGM of the Council held on 25 June, the Leader of the Opposition moved a motion of no confidence in Cllr Williams as Leader citing the circumstances of Cllr Morrell's resignation and the publicly stated reasons for it. The motion was lost. Cllr Rayment apologised at the meeting for failing to properly check the press release and Cllr Williams apologised for



'communication errors'. Cllr Morrell made no objections at the Council meeting to the version of events as described by Cllr Williams.

- (19) Prior to the EGM, the Southern Daily Echo had submitted a Freedom of Information Act request for all emails relating to Cllr Morrell's resignation.
- (20) On Friday 19 October the Echo ran a three-page story calling upon Cllr Williams to resign because he had misled the public over Cllr Morrell's reasons for resignation. (Historically there is a poor relationship between the Echo and Councillor Williams and the newspaper has made it clear to him and the Labour Group that their treatment of stories about the current administration will not be sympathetic).
- (21) On the same date, Mr Heath decided that the matter should be investigated.

## **7. THE ETHICAL AND GOVERNANCE FRAMEWORK**

### **ELECTED MEMBERS**

- 7.1 Whilst the erstwhile Standards Board regime is, since 1 July 2012, a thing of the past, the Nolan Principles – the 'Seven Principles of Public Life' still hold good and reflect the fact that confidence in local democracy is a cornerstone of our way of life. It can only be achieved when councillors not only live up to, but are also seen to live up to the high standards that those members of the public who elected them (and those did not) have the right to expect of them.
- 7.2 Those principles are:
  - Selflessness
  - Integrity
  - Objectivity
  - Accountability
  - Openness
  - Honesty
  - Leadership
- 7.3 The advent of the Local Government Act 2000 saw the compulsory introduction throughout the country of Codes of Conduct for elected members. Most authorities adopted the model code as drafted, while some adapted it to their own circumstances. On taking office, all councillors sign up to and agree to abide by the code of conduct.
- 7.4 Southampton City Council's Code of Conduct, with which all current members have agreed to comply, is reproduced for the sake of completeness in its entirety at **Appendix 4** to this report. The Nolan Principles are set out in full in Appendix 1 to the Code.
- 7.5 As well as rehearsing the Nolan Principles, the Code of Conduct provides that members must comply with the 'General Obligations' set out in paragraph 2. Those General Obligations remind members that when acting in their role as members of their authority they must treat others with respect and conduct themselves in a manner that accords with the Council's duty to promote and maintain high standards of conduct.

- 7.6 Appendix 3 to the Code constitutes a comprehensive list of other codes, protocols, strategies and guidance applicable to members and / or officers of the Council. All members and officers have access to this material and are presumed to have read and understood it and to comply with it.
- 7.7 It should be noted that because of the timing of the events the subject of this investigation, they could not be formally assessed under the new code, which is not retrospective, nor, because no formal complaint was lodged, could they be assessed under the old code, which has now been abolished. Even if such a complaint had been submitted, the logistics and timing would in any event have dictated that the matter could not reasonably have been brought to a conclusion before the Standards regime was abolished at the end of June 2012. This does not however detract from the fact that the basic tenets of the 'new' code are founded on the Nolan Principles as referenced in the Introduction to the Code.

## **COUNCIL OFFICERS**

- 7.8 Just as elected members are required to comply with the Code of Conduct as explained above, so Council employees are required to abide by a Code of Conduct and Disciplinary Rules. Southampton's version is reproduced at **Appendix 6**.
- 7.9 Amongst the opening paragraphs of the Code, after a requirement to comply with the law and with the various codes and protocols listed above, the following are particularly relevant to this report:
- Employees are expected to conduct themselves at all times in a manner which will maintain public confidence in both their integrity and the services provided by the Council
  - An employee must perform his or her duties with honesty, integrity, impartiality and objectivity.
  - An employee must not [without consent] disclose information given to him or her by anyone in confidence in the course of his or her employment or disclose information acquired which he or she believes is of a confidential nature;
  - An employee must at all time act in accordance with the trust that the public is entitled to place in him or her.

## **MEMBER / OFFICER RELATIONS**

- 7.10 Southampton City Council has in place a very comprehensive Member / Officer Protocol. See **Appendix 5**. The opening paragraphs of the Protocol state its objective to be to act as a guide for Members and Officers of the Council in their relations with one another in such a way as to ensure the smooth running of the Council and to reflect the principles underlying the respective Codes of Conduct which apply to Members and Officers. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government. The Codes therefore demand very high standards of personal conduct on the part of members and officers alike.
- 7.11 The Code emphasises the importance of mutual respect. It points out that Member / Officer relationships are to be conducted in a positive and constructive way and that it is important that any dealings between Members and Officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party.

- 7.12 The Government's Code of Recommended Practice on Local Authority Publicity forms a separate Appendix to the protocol. The Code requires local authority publicity to be lawful, cost-effective, objective, even-handed and appropriate and to have regard to equality and diversity and be issued with care during periods of heightened sensitivity.
- 7.13 The Code does not contain one instance of the words 'honest' or 'honesty' and the word 'accurate' appears only in an exhortation to local authorities to ensure that any publicity that they issue relating to policies and proposals from central government is 'factually accurate'.
- 7.14 That said, it must be axiomatic that publicity of whatever nature issued by a Council should be honest, accurate and, by implication, complete and comprehensive.

## **THE MEDIA**

- 7.15 During the course of this investigation, Cllr Williams drew my attention to the fact that the current version of the Media Interview Protocol (reproduced as **Appendix 3**) was out of date as at the time when the statement concerning Cllr Morrell's resignation was issued.
- 7.16 He pointed in particular to the fact that Councillors Moulton and Hannides (and by inference although not named, Cllr Royston Smith) were named instead of himself and his corresponding Cabinet colleagues.
- 7.17 Mr Heath has confirmed to Cllr Williams' solicitor that this protocol had been created during the previous administration and that its principles are still being applied, although the names of (e.g.) the Deputy Leader have obviously changed, given the change of administration in May 2012.

## **THE MONITORING OFFICER**

- 7.18 **Appendix 2** to this report reproduces the Protocol for the Monitoring Officer, in Southampton's case, Mr Mark Heath, Director of Corporate Services. The protocol reflects his statutory obligation to ensure that the Council, its Officers, and its elected Councillors, maintain the highest standards of conduct in all they do.
- 7.19 Mr Heath's positive and proactive (rather than reactive) exercise of his function resulted in the commissioning of this investigation.

## **8. CONCLUSIONS AND RECOMMENDATIONS**

- 8.1 In an effort to set out my conclusions in as clear and concise a manner as possible, I have taken each person in turn, examined their respective roles and behaviour and formed a view as to whether they may have breached any enactment or rule of law, code of practice or of maladministration or injustice.
- 8.2 I use the word 'breach' with some reservation in this context and as convenient conversational shorthand only, given that I am neither judge nor jury and none of the people involved faces any kind of formal 'charge'. The conclusions and findings set out below represent my considered opinion as an objective investigator charged with the responsibility of coming to a clear view.
- 8.3 Taking each of the people involved in turn, I have concluded as follows.

## **9. COUNCILLOR KEITH MORRELL**

- 9.1 During the course of my investigation I was given to understand by the majority of the people (other than the Council officers) whom I interviewed (and by every one of the five people to whom Cllr Williams specifically referred me) that Cllr Morrell had a track record of erratic behaviour. They also told me, in varying levels of detail, of what they considered to be explanations for his conduct. As alluded to earlier, some of the information they proffered was of an extremely sensitive and private nature and I will not be disclosing it here.
- 9.2 Given the circumstances in which I learned this information, I did not feel it either necessary or appropriate to cross-examine Cllr Morrell on it in other than very general terms. To give him his due however he himself volunteered certain sensitive information but again I do not propose to disclose it.
- 9.3 I concluded that there was substance to the suggestions made to me as to why Cllr Morrell may from time to time have found himself in what were generally described as 'stressful situations' and that his sudden resignation could quite legitimately be regarded by Cllr Williams and others as inexplicable.
- 9.4 Councillor Morrell decided, within a very short time of being appointed to a Cabinet post that he had by his own admission coveted, to resign. In his discussions with me he made no bones about the fact that he had spent a great deal of time working with his colleagues on 'the books' before the May 2012 elections and I am satisfied that he became part of the new Administration with his eyes wide open and fully cognisant of the very serious financial situation facing the Council.
- 9.5 Cllr Williams' (and others') amazement at Cllr Morrell's apparent volte face is in the circumstances therefore entirely understandable, but this does not detract from the fact that in his resignation email of 22 May he set out quite clearly why he felt that he could no longer be part of an organisation that was proposing to solve the financial crisis in a way that he found politically unacceptable.
- 9.6 It appears that Councillor Morrell continued to work actively on developing the new administration's programme after the election, which included things which he then stated in his resignation e-mail, he had been opposed to "for some considerable time". At no stage before his appointment to the Cabinet on May 16<sup>th</sup> had Councillor Morrell conveyed any of these concerns to his Cabinet or group colleagues (apart from Councillor Thomas) nor did he withdraw his name from consideration for appointment to the Cabinet.
- 9.7 So far, so straightforward as far as Cllr Morrell is concerned, but matters became complicated when, by his own claim or admission, call it what you will, he bowed to a suggestion from Cllr Williams that he agree to resign on grounds of ill-health.
- 9.8 Cllr Williams told me that Cllr Morrell made no subsequent attempt to retract the agreement that they had reached on the telephone. As an aside, Cllr Thomas believed that Cllr Morrell had indicated to him that as soon as he had come off the phone from Cllr Williams, he immediately regretted what he had done and said that he would get back to Cllr Williams and retract his agreement.
- 9.9 Whatever the accuracy of Cllr Thomas' recollection in this regard, Cllr Morrell told me that he made no such attempt and that he had accepted that he would have to live with what he had agreed.

- 9.10 It is at this stage that I consider Cllr Morrell's conduct changed from possibly illogical to less than honest. He told me that had he been given the opportunity to read the draft press release he would not have sought to change the fundamental message – namely that he had resigned on the grounds of ill health.
- 9.11 He might, he told me, have used different phraseology such as 'stress' rather than 'health' but as it was, he took no positive steps such as contacting the Communications Office to amend or amplify the statement that had been issued. What he did do was to tell the local paper, once they had managed to catch up with him, that the ill-health reason was a 'fabrication concocted' (the paper's word, not his) with and under pressure from Cllr Williams.

### **SUMMARY CONCLUSION:**

#### **Councillor Keith Morrell failed to comply with:**

- **The Nolan Principles of Public Life relating to Openness and Honesty**

## **10. COUNCILLOR RICHARD WILLIAMS**

- 10.1 Barely two weeks after the euphoria of having led his party to a significant election victory that saw them regain control of Southampton City Council, Cllr Williams found himself in what was, on any analysis, a very tricky situation. The politics of Southampton City Council cannot be described as low-key and there is no doubt that he was quite understandably more than usually sensitive to the opportunities for making political capital that the opposition might seize.
- 10.2 Virtually every interviewee considered that such political embarrassment as may have accrued to Cllr Williams, to Cllr Morrell, to the new Cabinet, to the Council or the local or national Labour Party would have been very short lived.
- 10.3 Cllr Williams is undoubtedly more acutely aware than anyone that whatever level of embarrassment may have accrued through publication of the 'original' reason for Cllr Morrell's would pale into insignificance alongside that which has subsequently accrued.

I do not criticise Cllr Williams for approaching the difficult situation in which he found himself on the basis that he wanted to minimise reputational damage – persuasion and indeed instruction are both very much part of the role of any leader. However, when, by his own admission, the story that was published was not the whole story he strayed into the murky territory of economy with the truth, albeit possibly with the best of intentions.

- 10.4 At our second interview, Cllr Williams was adamant that he did not ask Mr White to draft a release but that Mark Heath had asked him to do so. He also said that he had not asked anyone to get Cllr Rayment to clear the release before it was issued.
- 10.5 Further, when I asked how then it was that Cllr Rayment had been asked to sign off the release, he referred me back to the media protocol.
- 10.6 Councillor Williams emphasised that at the material time, he had only been Leader for a week, had not had his "Leader induction" and was working on assumptions based on his previous knowledge of press release protocols. This knowledge was

gained through his experience in 2008, in relation to the “wind turbine” release from March 2008, which was the subject of a detailed exchange of emails over its contents, between Cllr Williams who was the cabinet member responsible at the time and the communications team. He considered it reasonable for him to expect that any quote or reference to a cabinet member required that cabinet member’s approval, before it was released.

- 10.7 Cllr Williams has however subsequently confirmed that he did ask Mr. White to draft the press release and to ‘run it past’ Cllr Rayment.
- 10.8 Cllr Rayment’s own evidence was that Cllr Williams had not just asked Mr White to ask her to clear the release, but that he had rung her directly and asked her to do so.
- 10.9 By instructing Mr White to draft a release that by his own (albeit later) admission was not the whole story, Cllr Williams failed in my view to meet the standards of openness and honesty expected of an elected member and in doing so also failed to honour the spirit of the Member / Officer Protocol.
- 10.10 During our two meetings, Cllr Williams was critical of the fact that no effort had been made to ensure that Cllr Morrell had the opportunity to vet the press release before it was issued. A number of points arise here:
  - Cllr Williams did not ask Mr White to show the draft to Cllr Morrell;
  - Cllr Rayment (whom Cllr Williams had asked to clear the release) did not ask Mr White to show the draft to Cllr Morrell;
  - Mr White said that as it was a statement directly from the Leader about his Cabinet and a particular member of it, he felt no need to run it past Cllr Morrell. In addition, he was unsure how well (or unwell) Cllr Morrell was, and he was by no means sure that in the circumstances he would want to be bothered with the matter;
  - Mr White said that Cllr Williams had made it quite clear to him that he had spoken directly to Cllr Morrell about his resignation.
- 10.11 Cllr Williams has also been critical of the fact that the Media Protocol is out of date and that this particular release was not handled in the same way as another one with which he had been involved some four years previously..
- 10.12 It is clear to me that whilst the Media Protocol may be out of date in that it still includes references to members now in Opposition, its principles can quite easily still be applied without difficulty.
- 10.13 In addition, the release relating to Cllr Morrell’s resignation complied with the Protocol’s requirements that:
  - it was attributed to the Leader;
  - it was approved by two senior officers, Mr White & Mr Heath and
  - in the absence of the Leader, it was checked by the Deputy Leader.
- 10.14 I comment further below on the matter of amending the Protocol to avoid this situation arising again.
- 10.15 There is no doubt that Mr White did move quickly thereafter, but presumably with the object of doing as the Leader of the Council had asked.

- 10.16 According to Mr. White, Cllr Williams was quite specific about what he wanted included in the press release and I do not think it fair of him to criticise either Cllr Rayment or Mr White for their respective roles in its composition or issue.

### **SUMMARY CONCLUSION:**

#### **Councillor Richard Williams failed to comply with:**

- **The Nolan Principles of Public Life relating to Openness, Honesty and Leadership and**
- **The guidance as to mutual respect and courtesy between members and Officers set out in the Council's Member / Officer Protocol**

### **11. COUNCILLOR JACQUI RAYMENT**

- 11.1 Cllr Rayment was, as far as I have been able to establish, the first elected member to learn, albeit indirectly, of Cllr Morrell's resignation. The only person to whom Cllr Morrell had mentioned his intention to resign was an officer who subsequently telephoned Cllr Rayment on Dawn Baxendale's advice and it was from there that the events described above unfolded.
- 11.2 As far as I have been able to establish, Cllr Rayment did not set eyes on Cllr Morrell's resignation email until after she had signed off the press release, but - and this is significant - she was, according to Cllr Williams, aware of its contents on the day it was sent because, he says, he gave her the gist of it and read parts of it to her over the telephone.
- 11.3 His recollection seems to tie in with what Cllr Rayment told me namely that she understood from what Cllr Williams had told her that Cllr Morrell's resignation was prompted by the budget situation and his unhappiness with the Labour Party's stance nationally and 'other stress-related factors'. Health was not mentioned.
- 11.4 She also said that when Cllr Williams rang her to tell her that he had spoken to Cllr Morrell who was definitely resigning on the grounds of ill health, he also asked her to clear the press release in his absence.
- 11.5 Although it may have been reasonable for Cllr Rayment to believe that Cllr Morrell had resigned on what were loosely referred to as 'health grounds' because Cllr Williams had told her so, there must have been doubts in her mind as to whether this was the whole story not only because according to Cllr Williams, he had read parts of the email out to her but also because he had himself mentioned political and policy issues (but not ill health) in his telephone conversation with her.
- 11.6 Since it appears that Cllr Rayment was aware of the contents of the original resignation email at the time she signed off the press release, it is at the very least unfortunate that she did not query its contents or ask Mr White (who was totally unaware of the existence of Cllr Morrell's email) to check it with Cllr Morrell.
- 11.7 Having said that, had Cllr Rayment asked Mr White to contact Cllr Morrell and he had done so, Cllr Morrell would not, by his own admission, have sought to alter the thrust but only the wording of the release. The net result of this slightly different approach would therefore probably have been much the same.
- 11.8 Cllr Rayment was expecting the draft, read it and made an amendment.

Cllr Rayment felt that Mr White and his team had a part to play in that they should have shown the draft statement to Cllr Morrell. Like Cllr Williams, Cllr Rayment considered it reasonable to expect that any quote or reference to a cabinet member required that cabinet member's approval, before it was released.

- 11.9 I find it extraordinary that at the EGM on 25 June, by which time of course she and every other member of the Labour Group had seen Cllr Morrell's resignation email, Cllr Rayment sought to distance herself from the wording used, saying that she should have paid more attention to it.
- 11.10 I do not see how she could justifiably claim to have failed to appreciate the importance of a release that dealt with the resignation of a Cabinet Member, particularly when she had received direct instructions from the Leader about it very shortly beforehand. What was Mr White to do? – ask her to read it properly, when according to him she had already done so and made an amendment?
- 11.11 Although Cllr Rayment had not actually seen Cllr Morrell's resignation email when she cleared the press release, she had, according to Cllr Williams had parts at least of it read to her over the phone and in any event there came a time when she did see it and that time was 10 June at the latest, although at her interview Cllr Rayment told me that Cllr Williams had sent her a copy of the email by Sunday 27 May, which is the date on which the Labour group held their emergency meeting.
- 11.12 I believe however that this email from Cllr Williams did not attach the 'resignation' email but was simply a message to the effect that Cllr Morrell had resigned for health reasons.
- 11.13 It therefore follows that probably within 5 days but certainly within three weeks of Cllr Morrell sending it, Cllr Rayment knew that 'health reasons' was not the whole story.
- 11.14 Whether or not it is right to attach any blame to Cllr Rayment for signing off the release, it is noteworthy that once she became aware of the full circumstances, she did nothing to correct the erroneous impression that it had conveyed.

#### **SUMMARY CONCLUSION:**

##### **Councillor Jacqui Rayment failed to comply with:**

- **The Nolan Principles of Public Life relating to Openness and Honesty and**
- **The guidance as to mutual respect and courtesy between members and Officers set out in the Council's Member / Officer Protocol**

#### **12. COUNCILLOR CATHERINE McEWING**

- 12.1 Cllr McEwing was involved (with Cllr Letts and others) in discussions at an early stage about how the 'fallout' should be handled and this is where the edges become so blurred that I found it difficult to draw any firm conclusion as to whether she has breached any code or protocol.
- 12.2 Although Cllr McEwing was clearly aware at an early stage that all was not as it seemed, and did nothing effective to correct the erroneous impression that the press release had conveyed, the same can be said of every member of the Labour Group, nine of whom were newly elected and knew nothing of the background.



- 12.3 She did disseminate the original email to the remainder of her Group but she was not party to the commissioning, drafting or clearance of the press release. She played no direct part in publishing information to the staff, press and public that was not 'the whole story' and I do not therefore believe that Cllr McEwing breached any code or protocol.

### **SUMMARY CONCLUSION:**

**Cllr Catherine McEwing has not breached any code or protocol but it should be noted that at the time of the vote opposing the Opposition's motion of no confidence, she, like the remaining members of the Labour Group, was fully aware that the resignation reasons cited in the press release were not those originally stated by Cllr Morrell.**

### **13. OTHER MEMBERS OF THE LABOUR GROUP**

- 13.1 It was not feasible, nor in my view necessary, for me to interview all thirty people who at the material time were members of the Labour Group. As mentioned earlier, I focused my attention on those whom I considered to be the 'main players'.
- 13.2 I did however consider it important to establish as accurately as possible the stage at which those involved became aware that the press release requested by Cllr Williams and cleared by Cllr Rayment was not, as Cllr Williams put it, 'the whole story'.
- 13.3 Cllrs Williams and Morrell obviously knew the true position at the outset. Cllrs Rayment and McEwing were aware of it within a matter of days and the remainder of the Labour Group all knew of the existence of the original resignation email by the time they were whipped to vote against Cllr Royston Smith's motion of no confidence in Cllr Williams at the ECM on 25 June.
- 13.4 Cllr Barnes-Andrews heard Cllr Morrell's claim about what the local paper called the 'concocted fiction' in response to his call to Cllr Morrell to find out how he was. He was therefore on notice that all was probably not as it seemed.
- 13.5 Cllr Letts told me that Cllr Williams had told him in a phone call on 23 May that Cllr Morrell had tendered his resignation 'for political reasons' and that he had subsequently discussed the matter and agreed that this reason would, if publicised, be embarrassing for RW and that they would accordingly issue a different story - the one that emerged in the press. This therefore put Cllr Letts in the position of knowing that there was more to the story than the press release conveyed.
- 13.6 Attempts were made at the meeting held at Cllr Letts' house on 27 May to resolve the conflicting stories but they came to nothing and the situation effectively rumbled on with the contents of Cllr Morrell's email of 22 May becoming more and more widely known.
- 13.7 This culminated in the ECM on 25 June at which the Labour group backed Cllr Williams in voting down Cllr Smith's motion of no confidence in him as Leader.
- 13.8 Politics is an unforgiving business and there is no doubt that the Labour group had little choice but to follow the whip at the meeting on 25 June but it is clear that a number of members were extremely uncomfortable doing so.

- 13.9 A distinction must be drawn between the political perspective and the obligation to comply with the law, the Code of Conduct and its related protocols.

#### **SUMMARY CONCLUSION:**

**The remaining members of the Labour Group did not breach any code or protocol but it should be noted that at the time they were whipped to support the Leader in opposing the Opposition's motion of no confidence, they were all aware that the resignation reasons cited in the press release were not those originally stated by Cllr Morrell.**

#### **14. BEN WHITE, SENIOR COMMUNICATIONS MANAGER**

- 14.1 A number of Members, notably Cllrs Williams and Rayment, criticised the Communications team for their failure to consult Cllr Morrell before sending out the press release announcing his resignation.
- 14.2 Hindsight is routinely cited as being a wonderful thing but it has also been defined as 'the ability to understand, after something has happened, what should have been done or what caused the event.'
- 14.3 Mr White could have checked the draft with Cllr Morrell but as Cllr Morrell himself told me, he would not have changed its substance, only its wording, so that whatever amendment he might have made to the release, it would still have not told the whole story.
- 14.4 In my view, Mr White was perfectly within his rights to accept at face value what he had been told by Cllr Williams. He did as he was asked (and checked the content of the statement with Mr Heath in terms of legal compliance) and took the draft to Cllr Rayment for approval and I don't believe he could or should have done more.
- 14.5 Whilst I make a recommendation below as to how the media protocol might be improved, I believe that criticism of Mr White and his staff for their handling of the press release is wholly unjustified.

#### **SUMMARY CONCLUSION:**

**Mr White did not contravene any provisions of the Council's Code of Conduct and Disciplinary Rules for Employees or its Member / Officer Protocol**

#### **15. RECOMMENDATIONS**

- 15.1 Although I stand by my finding that no criticism should attach to Mr White or his team for the way in which they handled this particular case, it would be wise to expedite the update and review of the Media Protocol and to insert a provision that members whom it is proposed to name in a press release be given the opportunity to comment on the draft.
- 15.2 I understand that neither Councillor Williams nor Councillor Rayment have seen a copy of the new media protocol since these events unfolded and that neither had been trained in media handling from their new perspective. This underlines the need to promote awareness of all relevant guidance amongst those expected to comply with it.

- 15.3 I also need to stress the importance of establishing and maintaining consistent, open and effective channels of communication between Members and Officers at all levels of the organisation.
- 15.4 This episode serves as a timely reminder of the need to ensure that Members fully understand that they and officers should work with each other – they need each other – they should be a team and they must be able to trust each other.
- 15.5 I would recommend that the Monitoring Officer provides some refresher training on Member / Officer relations that might well be entitled ‘Lessons Learned from 2012’

## 16. WAS A CRIMINAL OFFENCE COMMITTED?

- 16.1 Having looked in some detail at the guidance issued by the Crown Prosecution Service (CPS), I have come to the conclusion that whilst it led to breaches of the guidance, principles and codes as outlined above, the behaviour of the three councillors concerned was not so serious as to constitute the commission of a criminal offence.
- 16.2 I consider that ‘misuse of public funds’ is the only possible offence that might be argued to have been committed, by virtue of the expenditure of council resources on the issue of a press release that was not ‘the whole story’ as Cllr Williams would have it or ‘wrong’ as others would say.
- 16.3 I believe that such an offence could only fall under the heading or category of ‘misconduct in public office’, which is described in the CPS guidance as:

*‘an offence at common law triable only on indictment. It carries a maximum sentence of life imprisonment. It is an offence confined to those who are public office holders and is committed when the office holder acts (or fails to act) in a way that constitutes a breach of the duties of that office’.*

- 16.4 Local councillors have been held to be holders of a public office: R. v Speechley (2004) and the elements of the offence are as follows:

- A public officer acting as such
- wilfully neglecting to perform (his) duty or wilfully misconducting (him) self
- to such a degree as to amount to an abuse of the public’s trust in the office holder
- without reasonable excuse or justification.

- 16.5 The guidance further provides that:

- The behaviour must be serious enough to amount to an abuse of the public’s trust in the office holder and
- the element of culpability must be of such a degree that the misconduct .....is calculated to injure the public interest so as to call for condemnation and punishment.
- the conduct must ‘amount to an affront to the standing of the public office held.’ The threshold is a high one requiring conduct so far below acceptable standards (my emphasis) as to amount to an abuse of the public’s trust in the office holder’.

16.6 It also cites the following rather archaic but still relevant extract from the judgment in an early 19<sup>th</sup> century case:

*"To punish as a criminal any person who, in the gratuitous exercise of a public trust, may have fallen into error or mistake belongs only to the despotic ruler of an enslaved people, and is wholly abhorrent from the jurisprudence of this kingdom". R v Borron (1820)*

16.7 Finally, the guidance says this:

Misconduct in public office should be considered (for prosecution) only where:

- There is no suitable statutory offence for a piece of serious misconduct (such as a serious breach of or neglect of a public duty that is not in itself a criminal offence);
- There was serious misconduct or a deliberate failure to perform a duty owed to the public with serious potential or actual consequences for the public;
- The facts are so serious that the court's sentencing powers would otherwise be inadequate.

16.8 The basic principle of the proper use of public funds is clearly that public funds must be expended for an authorised public purpose – i.e. to benefit the public interest rather than individuals.

16.9 'Misuse of public funds' usually involves the more obvious misapplication of significant sums of money spent, for example, for private rather than public gain or on pointless litigation. The level of expenditure in this case is in one sense neutral because there would have been no more expenditure had the press release been 100% accurate and 100% comprehensive, but even if the whole of the expenditure incurred on the drafting and issue of the release is regarded as misuse, it would add up to a very modest amount.

16.10 I do not believe, taking into account the considerations set out above, that the behaviour of any of the councillors named in this report amounted to a criminal offence.

16.11 I also examined the question of whether the Council itself could be said to have acted illegally.

16.12 It seems to me that similar considerations apply to the Council as apply to individual members. Taken literally, driving at 31 mph in a 30mph limit is illegal, but no one regards it as such and it would hardly be in the public interest (a test that a proposed prosecution would have to pass) to institute proceedings against the 'guilty' motorist.

16.13 At the risk of overworking an analogy, I have no doubt that there will be differing views on what road speed might be represented by the events of this case, but I do not see that there were any 'serious potential or actual consequences for the public' and I am satisfied that the Council did not act illegally.

## **17. CLOSING REMARKS**

17.1 I am conscious that this report has taken some considerable time to produce but given the wide ranging Terms of Reference, it was necessary to establish as accurately as possible who said what to whom and when, and who knew what, and by when.

17.2 Whatever Cllr Williams' motives may have been and whichever account of the events of May 2012 is believed, it is quite clear that honesty and accuracy is the best policy and that neither political expediency nor altruism, however justified and however well intentioned, should be allowed to compromise the Nolan Principles of Public Life.

Richard Lingard  
17 April 2013

## INDEX TO APPENDICES

No. Title

1. Terms of Reference
2. Protocol for the Monitoring Officer
3. Media Interview Protocol
4. Code of Conduct for Members
5. Member / Officer Protocol
6. Code of Conduct & Disciplinary Rules

**TERMS OF REFERENCE**

**Background**

On 23rd May 2012, Southampton City Council's Communications Department sent out the following message to the media:

**Cabinet Member steps down due to ill health**

**Message sent on behalf of Communications**

Councillor Keith Morrell has stepped down from the council's Cabinet due to ill health. Cllr Morrell was appointed to the Cabinet last week following the Labour group's election victory earlier in May. His Efficiency and Improvement portfolio will be shared among the remaining seven Cabinet members. No new Cabinet member will be appointed.

The Leader of Southampton City Council, Councillor Richard Williams, said: "I am very sad that I will not have the opportunity to work with Keith in the new Cabinet and that he has had to step down so soon after my group took over the leadership of the council. He is an excellent councillor and I am sure he would have made an excellent Cabinet member. My primary concern is that Keith has the time and space to address his health concerns and I wish him and his family all the best.

"I have decided not to appoint a replacement but instead to ensure that all of my Cabinet colleagues place the need for efficiency and improvement at the heart of all they do. The city and the council are facing challenging times but with the right focus on continual improvement and innovation we can work with staff and residents and move the city forward."

On Friday, 19th October 2012, the local newspaper, the Southern Daily Echo, carried a piece (attached) on pages 1, 4 and 5 which included, amongst other things, an email dated 22<sup>nd</sup> May from Councillor Keith Morrell to Councillor Richard Williams.

The piece made specific reference to the press release issued by the Council.

**Investigation**

This investigation is being commissioned by the Council's Monitoring Officer.

The Monitoring Officer has a statutory duty to prepare a report to the authority if at any time it appears to him that any proposal, decision or omission by the authority, including the Executive, has given rise to or is likely to or would give rise to:

- a. a contravention of any enactment or rule of law; or
- b. maladministration or injustice.

There is a protocol for how the Monitoring Officer performs his role set out in the Council's Constitution (attached). In addition, the Council's Officer Scheme of Delegation provides that as the Monitoring Officer, the Director of Corporate Services has authority to take all any actions necessary or expedient to fulfil his or her statutory duties.

The Monitoring Officer has decided that the issues surrounding this matter warrant investigation. He has also decided that the investigation will be carried out by someone from outside the Council.

The Monitoring Officer wishes to be clear that he is not saying at this stage there has been a breach of the law, any code or protocol, but the position is such that in the interests of the Council and all concerned, the matter warrants proper and robust investigation.

The Monitoring Officer considers that the areas that in particular warrant investigation (although the investigator may choose to look at other areas, depending upon information supplied during interviews, etc) are as follows:

- a. The Local Government Act 1986 and the Code of Recommended Practice on Local Authority Publicity issued under that Act and adopted by the Council;
- b. The City Council's Officer / Member Protocol (as contained in the Council's Constitution, a copy of which is attached);
- c. The Code of Conduct and Disciplinary Rules for Officers (attached); and
- d. The Council's Code of Conduct for Members (as contained in the Council's Constitution, a copy of which is attached) adopted in July 2012.

It is a matter for the investigator to decide who to interview, but as a minimum, the Monitoring Officer recommends the following are interviewed:

- a. The Leader of the Council, Councillor Richard Williams;
- b. The Deputy Leader of the Council, Cllr Jacqui Rayment;
- c. Councillor Keith Morrell;
- d. The Senior Manager, Communications (Ben White).

The Monitoring Officer will advise members of the appointment of the investigator and also the terms of reference; other members may seek to be interviewed and the Monitoring Officer will give their details to the investigator, but make it clear that it is a matter for the investigator who s/he wishes to interview.

Terms of Reference:

To enquire into the circumstances behind the issuing of the press release by the City Council on 23rd May 2012, establish the facts into relation to this matter insofar as they can be established and to advise the Monitoring Officer (and thereby the Council) whether there has been a breach by any member, the authority, the Executive or officer that has given rise to or is likely to give rise to or would give rise to:

- a. a contravention of any enactment or rule of law; or
- b. maladministration or injustice.

For the avoidance of doubt, the Monitoring Officer would wish to make it clear that if the investigator determines that there are matters, for example disciplinary action against officers, that need to be pursued in another place under different procedures, the investigator should advise the Monitoring Officer immediately so as not to prejudice both those procedures and also the rights of those individuals.

The Monitoring Officer has written to all members and senior officers indicating his expectation



that all will co-operate fully and provide all information as required for this investigation. If the investigator does not receive the co-operation that he is entitled therefore to expect, he should advise the Monitoring Officer without delay and he will pursue the matter internally.

As well as investigating the issues set out above, the investigator should also consider if any remedial action should be taken and also what (if any) lessons should be learned and, hence, any recommendations the investigator may wish to make to the Council, both specifically but also overall as to its practices and procedures.

These terms of reference may be amended at any time by agreement between the Monitoring Officer and the investigator.

The investigator will decide the precise details of how the investigation will be conducted.

It is anticipated that the report from the investigator will be made public, and the investigator may be asked to present his/her report to councillors.

The Director of Corporate Services and Monitoring Officer is Mark Heath. His contact details are:

Email: [mark.heath@southampton.gov.uk](mailto:mark.heath@southampton.gov.uk)

Tel: 023 8083 2371

The Deputy Monitoring Officer, who will act as the key link officer, is Richard Ivory, Head of Legal, HR and Democratic Services, and his contact details are:

Email: [richard.ivory@southampton.gov.uk](mailto:richard.ivory@southampton.gov.uk)

Tel: 023 8083 2794

The lead officer, Mr Ivory, will provide such further relevant information for the investigator as he requires, and also act as prime point of contact for the investigator. In case of any difficulties or issues, the investigator should contact the Director of Corporate Services / Monitoring Officer.

The Monitoring Officer will arrange for payment of the investigator's fees, on the basis as agreed.

30th October 2012

Mark Heath  
Director of Corporate Services and Monitoring Officer  
Southampton City Council

### **PROTOCOL FOR THE MONITORING OFFICER**

#### **A General introduction to statutory responsibilities**

1. *The Monitoring Officer is a statutory appointment pursuant to section 5 of the Local Government and Housing Act 1989. This Protocol provides some general information on how those statutory requirements will be discharged in Southampton City Council.*
2. The current responsibilities of the Monitoring Officer role rest with the Director of Corporate Services, who undertakes to discharge his statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council. The deputy Monitoring Officer is the Senior Manager: Legal, HR & Democratic Services. In doing so, he will also safeguard, so far as is possible, Members and Officers, whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.
3. A summary list of the statutory responsibilities appears in the table annexed to this document. In general terms, the Monitoring Officer's ability to discharge these duties and responsibilities will depend, to a large extent, on Members and Officers:
  - a. complying with the law of the land (including any relevant Codes of Conduct);
  - b. complying with any General Guidance issued, from time to time, by the Standards and Governance Committee and the Monitoring Officer;
  - c. making lawful and proportionate decisions; and
  - d. generally, not taking action that would bring the Council, their offices or professions into disrepute.

#### **B Working Arrangements**

4. Having excellent working relations with Members and Officers will assist in the discharge of the statutory responsibilities of the Monitoring Officer and keep the Council out of trouble. Equally, a speedy flow of relevant information and access to debate (particularly at the early stages of any decision-making by the Council) will assist in fulfilling those responsibilities. Members and Officers must, therefore, work with the Monitoring Officer (and his staff) in discharging these responsibilities.
5. The Monitoring Officer issues guidance to officers to assist them in understanding the nature, breadth and requirements that the Monitoring Officer puts upon all officers. The guidance also explains how the Monitoring Officer will approach the role. The Monitoring Officer considers that the role is a positive and preventative one, related to legality, avoidance of maladministration and observance of codes of conduct / practice where there is actual / potential transgression by the Council. The Monitoring Officer gives authoritative advice and guidance on these issues which will be conducive to a culture of propriety and integrity. This will provide comfort for officers and Members alike. However, although the Monitoring Officer will seek to be positive about the role, it must be recognised that the role imposes a personal duty to make a public, statutory report where it appears to be necessary. This might ultimately force the authority to consider issues it might not wish to.

The Monitoring Officer and the authority should co-operate in everyway possible so as to reduce the chance of the need for the Monitoring Officer to issue a formal report. In support of this, the Monitoring Officer places significant reliance upon the advice and support given by colleagues in Legal, HR and Democratic Services, but particularly those in the Corporate Legal Team who will, in providing corporate legal advice do so in an enabling manner, but also identify areas of particular risk and concern, assisting officers / Members to achieve their objectives, but ultimately in a lawful and proper manner.

6. The following arrangements and understandings between the Monitoring Officer, Members and Chief Officers are designed to ensure the effective discharge of the Council's business and functions. The Monitoring Officer will:-
- a. be alerted by Members and Officers to any issue(s) that may become of concern to the Council, including, in particular issues around legal powers to do something or not, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
  - b. have advance notice (including receiving Agendas, Minutes, Reports and related papers) of all relevant meetings of the Council, including joints bodies, partnerships, etc at which a binding decision of the Council may be made (including a failure to take a decision where one should have been taken) at or before the Council, Cabinet, Cabinet Member, Committee meetings and/or Management Board of Directors (or equivalent arrangements);
  - c. have the right to attend any meeting of the Council (including the right to be heard) before any binding decision is taken by the Council (including a failure to take a decision where one should have been taken) at or before the Council, Cabinet, Cabinet Member, Committee meetings and/or Management Board of Directors (or equivalent arrangements);
  - d. be a member of Management Board of Directors, and as such has advance notice of those meetings, the agenda and reports and a right to attend and speak;
  - e. in carrying out any investigation(s) have unqualified access to any information held by the City Council and to any Officer who can assist in the discharge of his functions;
  - f. ensure the other statutory officers (Head of Paid Service and the Chief Financial Officer) are kept up-to-date with relevant information regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
  - g. meet regularly with the Head of Paid Service and the Chief Financial Officer to consider and recommend action in connection with Corporate Governance issues and other matters of concern regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
  - h. report to the Council, from time to time, on the Constitution and any necessary or desirable changes following consultation, in particular, with the Head of Paid Service and Chief Financial Officer;
  - i. as per the statutory requirements, make a report to the Council, as necessary on the staff, accommodation and resources he requires to discharge his statutory functions;
  - j. have a special relationship of respect and trust with the Mayor, Sheriff, Leader, Group Leaders and Chairs of the committees, sub-committees and panels with a view to ensuring the effective and efficient discharge of Council business;

- k. develop effective working liaison and relationship with the District Auditor and the Local Government Ombudsman (including having the authority, on behalf of the City Council, to complain to the same, refer any breaches to the same or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary) and settle any compensation payments for alleged or actual maladministration found against the Council;
- l. maintain and keep up-to-date relevant statutory registers for the declaration of members' interests, gifts and hospitality;
- m. give informal advice and undertake relevant enquiries into allegations of misconduct and, if appropriate, make a written report to the Standards and Governance Committee (unless the Chair of Standards and Governance Committee agrees a report is not necessary);
- n. in consultation, as necessary, with the Mayor, Standards and Governance Committee, defer the making of a formal report under Section 5 Local Government and Housing Act 1989 where another investigative body is involved;
- o. have sufficient resources to enable him to address any matters concerning his Monitoring Officer functions;
- p. subject to the approval of the Standards and Governance Committee, be responsible for preparing any training programme for members on ethical standards and Code of Conduct issues; and q. appoint a deputy and keep him or her briefed on any relevant issues that s/he may be required to deal with in the absence of the Monitoring Officer;
- r. have responsibility for Local Government Ombudsman and whistle-blowing functions of the authority;
- s. ensure that Members and Officers of the authority are fully aware of their obligations in relation to probity.

The Senior Manager: Legal, HR & Democratic Services will be the Proper Officer for Access to Information, decision-making, Data Protection Act 1998 and the Freedom of Information Act 2000.

- 7. To ensure the effective and efficient discharge of these arrangements, Members and Officers will report any breaches of statutory duty or Council policies or procedures and other vices or constitutional concerns to the Monitoring Officer, as soon as practicable.
- 8. The Monitoring Officer is also available for Members and Officers to consult on any issues of the Council's legal powers, possible maladministration, impropriety and probity issues, or general advice on the constitutional arrangements.
- 9. To ensure the effective and efficient discharge of this Protocol, the Chief Financial Officer will ensure adequate insurance and indemnity arrangements are in place to safeguard the interests of the City Council and the proper discharge of the Monitoring Officer role.

#### C Sanctions for breach of Southampton's Code of Conduct for Members and this Protocol

- 10. Complaints in relation to a breach of the Code of Conduct for Members must be referred to the Standards and Governance Committee, Complaints against any Member for a breach of this Protocol will be referred to the Standards and Governance Committee.

D Monitoring the Protocol

11. The Monitoring Officer will report to the Standards and Governance Committee as to whether the arrangements set out in this Protocol have been complied with and will include any proposals for amendments in the light of issues which have arisen.

E Conflicts and Interpretation

12. Where the Monitoring Officer has received a complaint or is aware of an event which may lead to him issuing a statutory report relating to a matter upon which he has previously advised the Council, he shall consult the Chief Executive who may then either refer the matter to the deputy Monitoring Officer for investigation and report to the Chief Executive, or ask a neighbouring authority to make their Monitoring Officer available to investigate the matter and report to the Chief Executive and/or the authority as appropriate.
13. Questions of interpretation of this guidance will be determined by the Monitoring Officer.

F Protocol for the Monitoring Officer

14. This Protocol was approved by Full Council for inclusion within the Council's Constitution on 16<sup>th</sup> May 2012.

## SUMMARY OF MONITORING OFFICER FUNCTIONS

	Description	Source
1	Report on contraventions or likely contraventions of any enactment or rule of law.	Local Government & Housing Act 1989 ss 5, 5A (as inserted by SI 2001/2237).
2	Report on any maladministration or injustice where Ombudsman has carried out an investigation.	Local Government & Housing Act 1989 ss 5, 5A (as inserted by SI 2001/2237).
3	Appointment of Deputy and power to delegate.	Local Government & Housing Act 1989 s 5, Local Government Act 2000 s 82A (as inserted by the Local Government Act 2003 s 113).
4	Power to delegate	Local Government Act 2000 s 82A.
5	Report on resources.	Local Government & Housing Act 1989 s5.
6	Receive copies of whistle-blowing allegations of misconduct.	Code of Members' Conduct
7	Investigate misconduct in compliance with Regulations and directions of Ethical Standards Officers.	Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, SI 2003/1483 as amended by SI 2004/2617. Directions when made in individual cases. Local Government Act 2000 s 66(1), 66(6).
8	Establish and maintain registers of Members' interests and gifts and hospitality.	Local Government Act 2000 s 81 and Code of Members' Conduct.
9	Advice to Members on interpretation of Code.	Code of Members' Conduct.
10	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee.	Statutory Guidance paragraph 8.20.
11	Compensation for maladministration.	Local Government Act 2000 s 92.
12	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all Members.	Department for Communities & Local Government, Local Government Ombudsman, Standards Board for England guidance.

**MEDIA INTERVIEW PROTOCOL**

**Southampton City Council Media Interview Protocol**

**Councillors being interviewed by the media (radio/television and print):**

- In the majority of media situations the lead Cabinet Member will be asked by the media team to speak to the media on the required subject.
- In these instances the media team will need to ensure the Cabinet Member is fully briefed.
- The media team will need to get the permission of the Leader of the Council before putting a Cabinet Member up for interview.
- In the Leader's absence permission will be sought from Cllr Moulton, and if both are absent permission will be sought from Cllr Hannides

**Council officers speaking to the media**

- Officers should not speak to the media on any policy related subjects or issues.
- Officers should only speak to the media on council "operational" issues which are focussed on the day-to-day delivery of council services.
- The Media team will also occasionally recommend officers for articles , audio and features where their expertise will generate positive media coverage for the council (a museum curator talking about the city's history for example).
- If the media team require an officer for interview, permission should be sought from the officer's level One Manager, as well as the Leader of the Council.
- In the Leader's absence permission will be sought from Cllr Moulton, and if both are absent permission will be sought from Cllr Hannides
- If Directors and Level One managers are required to speak to the media, permission should be sought from the Leader of the Council.

**Written statements for the media**

- In most situations a written statement for the media should be attributed to the lead Cabinet Member for the area.
- The media team will advise on the content of the statement and offer recommended text.
- Statements can be attributed to council officers if they are "operational" and service-related statements.
- No statement should be attributed to an officer if it is policy related.
- In rare occasions it may be necessary to attribute a statement to a council spokesperson (at the approval of the Leader of the Council).
- All statements need to be approved by senior officer and the Leader of the Council.
- In the Leader's absence permission will be sought from Cllr Moulton, and if both are absent, permission will be sought from Cllr Hannides.

### **THE CODE OF CONDUCT FOR MEMBERS**

#### **PART 1 – Introduction and Interpretation**

This Code applies to you as a member of this authority when you act in your role as a member and it is your responsibility to comply with the provisions of this Code.

As a member you are a representative of this authority and the public will view you as such, therefore, your actions impact on how the authority as a whole is viewed and your actions can have both positive and negative impacts on the authority.

This Code is based upon the “Nolan Principles – the seven principles of public life” which are set out in Appendix 1.

This Code does not cover matters in respect of which the Secretary of State under the Localism Act 2011 specifically provides that criminal sanction shall apply.

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 executives committees, sub-committees, joint committees, joint sub-committees, or area committees;

whether or not the press and public are excluded from the meeting in question by virtue of a resolution of members

“**member**” includes a co-opted member (voting and non-voting) and an appointed member.

#### **PART 2 – Scope and General Obligations**

##### **1. Scope**

- (1) This Code applies to all members of Southampton City Council, including co-opted voting members,
- (2) It is your responsibility to comply with the provisions of this Code.
- (3) You must comply with this Code whenever you –
  - a. conduct the business of your authority, or
  - b. act, claim to act or give the impression you are acting as a representative of your authority or in your official capacity as a member of the authority.
- (4) 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.

##### **2. General Obligations**



- (1) When acting in your role as a member of the authority –
  - a. **do** treat others with respect;
  - b. **do not** conduct yourself in a manner which is contrary to the Council’s duty to promote and maintain high standards of conduct of members;
  - c. **do** ensure that you are aware of and comply with the requirements which the Bribery Act 2010 places on you in your role as a Member and on the Council as a whole;
  - d. **do not** 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 legal 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; and
      - (cc) you have consulted the Monitoring Officer prior to its release.
  - e. **do not** prevent another person from gaining access to information to which that person is entitled by law;
  
- (2) When using or authorising the use by others of the resources of the authority-
  - a. **do** act in accordance with the authority’s reasonable requirements including the requirements of the authority’s ITC policy and the policies listed at Appendix 2, copies of which have been provided to you and which you are deemed to have read;
  - b. **do** make sure that such resources are not used improperly for political purposes (including party political purposes): and
  - c. **do** have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

### **PART 3 – Disclosable Pecuniary Interests (Localism Act 2011)**

#### **3. Notification of disclosable pecuniary interests**

- (1) Within 28 days of becoming a member or co-opted member, you must notify the Monitoring Officer of any ‘disclosable pecuniary interests’.
- (2) A ‘disclosable pecuniary interest’ is an interest of yourself or your partner (which means spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners) within the description at Appendix 2.

#### **4. Register of Interests**

Any interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the authority’s website.

## **5. Sensitive interests**

Where you consider that disclosure of the details of a disclosable pecuniary interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have a disclosable pecuniary interest, the details of which are withheld under Section 32(2) of the Localism Act 2011.

## **6. Non participation in case of disclosable pecuniary interest**

- (1) If you are present at a meeting of the authority, or any committee, sub-committee, joint committee or joint sub-committee of the authority, and you have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting-
  - a. you may not participate in any discussion of the matter at the meeting.
  - b. you may not participate in any vote taken on the matter at the meeting.
  - c. if the interest is not registered, you must disclose the interest to the meeting.
  - d. if the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.
- (2) In addition, Council Procedure Rules and Executive Procedure Rules require you to leave the room where the meeting is held while any discussion or voting takes place.
- (3) Where an executive member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the executive member-
  - a. must notify the Monitoring Officer of the interest; and
  - b. must not take any steps or further steps in the matter.
- (4) Where you have a disclosable pecuniary interest in any business of your authority, you may attend that meeting 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 and you leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.

## **7. Dispensations**

The authority may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.

## **8. Offences**

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

- e. As an executive member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer within 28 days of the interest;
  - f. Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting;
- (2) The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

#### **PART 4 – Other Interests (Personal and Pecuniary)**

### **9. Notification of other interests**

- (1) In addition to the disclosable pecuniary interests notifiable under the Localism Act 2011, 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),
- notify the Monitoring Officer in writing of the details of your other personal interests, where they fall within the following descriptions, for inclusion in the register of interests.
- (2) 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;
- (3) You must, within 28 days of becoming aware of any new interest or change to any interest registered under paragraph (1), or as a disclosable pecuniary interest notify the Monitoring Officer of the details of that new interest or change.

### **10. Disclosure of other interests**

- (1) Subject to sub-paragraphs (2) to (5) below, where you have a personal interest described in paragraph 9 above or in paragraph (2) below in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of the personal interest, and you attend a meeting of your authority at which the business is considered, you must-
- a. disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

- (2) (A) You have a personal interest in any business of your authority where 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 other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
- (B) In sub-paragraph (2)(A), 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 paragraph 9(2)(a)(i) or (ii).
- (3) 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 9(2)(a)(i) or 9(2)(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.
- (4) Where you have a personal interest but, by virtue of paragraph 12, 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.
- (5) 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.

## **11. Register of interests**

Any interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the authority's website.

## **12. Sensitive interests**

Where you consider that disclosure of the details an interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have an interest, the details of which are withheld.

## **13. Non participation in case of pecuniary interest**

- (1) Where you have a personal interest in any business of your authority you also have a pecuniary 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 and where that business—
- a. affects your financial position or the financial position of a person or body described in paragraph 10 ;or

- b. relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 10.
- (2) Subject to paragraph (4) and (5) below, where you have a pecuniary interest in any business of your authority—
- a. You may not participate in any discussion of the matter at the meeting.
  - b. You may not participate in any vote taken on the matter at the meeting.
  - c. If the interest is not registered, you must disclose the interest to the meeting.
  - d. If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.
- (3) In addition Council Procedure Rules and Executive Procedure Rules require you to leave the room where the meeting is held while any discussion or voting takes place.
- (4) Where you have a pecuniary interest in any business of your authority, you may attend a meeting 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 and you leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.
- (5) Subject to you disclosing the interest at the meeting, you may attend a meeting and vote on a matter where you have a pecuniary interest that relates to the functions of your authority in respect of—
- a. housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
  - b. 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;
  - c. 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;
  - d. an allowance, payment or indemnity given to members;
  - e. any ceremonial honour given to members; and
  - f. setting council tax or a precept under the Local Government Finance Act 1992.
- (6) Where, as an executive member, you may discharge a function alone, and you become aware of a pecuniary interest in a matter being dealt with, or to be dealt with by you, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter, or seek improperly to influence a decision about the matter.

#### **14. Interests arising in relation to overview and scrutiny committees**

- (1) In any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—
- a. that business relates to a decision made (whether implemented or not) or action taken by the executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

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

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

#### **15. Pre-determination or bias**

- (1) Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life you should not be prohibited from participating in a decision in your political role as member, however do not place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
- (2) When making a decision, do consider the matter with an open mind and on the facts before the meeting at which the decision is to be taken.

#### **16. Compliance with Constitution, Rules, Standards and Guidance**

Failure to comply with the requirements of the Council's Constitution or any Rule, Protocol, Corporate Standards or Guidance issued pursuant to the Constitution shall be deemed to be a breach of this Code. Rules, Protocols, Corporate Standards and Guidance shall include (but is not limited to) the documents listed in Appendix 3.

#### APPENDIX 1:

### **NOLAN PRINCIPLES - THE SEVEN PRINCIPLES OF PUBLIC LIFE**

**Selflessness** Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

**Integrity** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

**Objectivity** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**Accountability** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**Openness** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands it.

**Honesty** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**Leadership** Holders of public office should promote and support these principles by leadership and example.

## DISCLOSABLE PECUNIARY INTERESTS UNDER THE LOCALISM ACT 2011

INTEREST	DESCRIPTION
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <ol style="list-style-type: none"> <li>a. under which goods or services are to be provided or works are to be executed; and</li> <li>b. which has not been fully discharged.</li> </ol>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to M's knowledge)—</p> <ol style="list-style-type: none"> <li>a. the landlord is the relevant authority; and</li> <li>b. the tenant is a body in which the relevant person has a beneficial interest.</li> </ol>
Securities	<p>Any beneficial interest in securities of a body where—</p> <ol style="list-style-type: none"> <li>a. that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</li> <li>b. either— <ol style="list-style-type: none"> <li>i. the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</li> <li>ii. if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</li> </ol> </li> </ol>



These descriptions on interests are subject to the following definitions:

“**the Act**” means the Localism Act 2011;

“**body** in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“**director**” includes a member of the committee of management of an industrial and provident society;

“**land**” includes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“**M**” means the person M referred to in section 30 of the Act;

“**member**” includes a co-opted member;

“**relevant authority**” means the authority of which M is a member;

“**relevant period**” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) of the Act;

“**relevant person**” means M or any other person referred to in section 30(3)(b) of the Act;

“**securities**” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000() and other securities of any description, other than money deposited with a building society.

## APPENDIX 3:

### **RULES, PROTOCOLS, STANDARDS AND GUIDANCE**

- The Southampton City Council Constitution (all parts)
- Corporate Standards for:
  - Decision Making
  - Legality
  - Finance
  - HR
  - IT
  - Procurement
  - Property
- Obligations of Members on Outside Bodies
- Probity in Planning
- Licensing Handbook
- Guidance on Use of Resources
- Health & Safety Roles and Responsibilities for Elected Members
- Officer Member Protocol
- Anti Fraud and Anti Corruption Policy and Strategy

- Duty to Act Policy
- Code of Corporate Governance
- Equality Scheme
- Dignity at Work Policy
- Data Protection Policy
- Anti-Money Laundering Policy
- Partnership Code
- Guidance on the Use of Electronic Devices
- Code on Local Authority Publicity

**MEMBER / OFFICER PROTOCOL**

**(INCLUDING THE CODE OF RECOMMENDED PRACTICE ON LOCAL AUTHORITY  
PUBLICITY)**

**Protocol on Member / Officer Relations**

**Introduction and Principles**

- 1.1 The purpose of this Protocol is to guide Members and Officers of the Council in their relations with one another in such a way as to ensure the smooth running of the Council.
- 1.2 Given the variety and complexity of such relations, this Protocol does not seek to be either prescriptive or comprehensive. It simply offers guidance on some of the issues which most commonly arise. It is hoped, however, that the approach which it adopts to these issues will serve as a guide to dealing with other circumstances.
- 1.3 This Protocol is to a large extent a written statement of current practice and convention. It seeks to promote greater clarity and certainty. If the Protocol is followed it should ensure that Members receive objective and impartial advice and that Officers are protected from accusations of bias and any undue influence from Members.
- 1.4 It also seeks to reflect the principles underlying the respective Codes of Conduct which apply to Members and Officers. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government and the Codes, therefore, demand very high standards of personal conduct.
- 1.5 This Protocol is a local extension of the Members' and Employees' Codes of Conduct. Consequently, a breach of the provisions of this Protocol may also constitute a breach of those Codes.
- 1.6 This Protocol should be read in conjunction with the Members' and Employees' Codes of Local Government Conduct, the Council's Constitution and any guidance issued by the Governance Committee and/or Monitoring Officer.

**Allegations of Member or Officer Misconduct: Responses by Members or Officers as appropriate**

- 2.1 In a situation where a Member identifies that an Officer may have committed a breach of the Council's disciplinary rules and procedures, s/he shall draw the issue to the attention of the Chief Executive (Head of Paid Service) who, following consultation with the Senior Manager: Legal, HR & Democratic Services, will ensure that the appropriate action is taken.
- 2.2 In respect of an Officer who believes a Member has breached the Members' Code of Conduct, they should:
  - a. not offer any opinion or judgement upon that conduct to the Member;

- b. they must advise the Monitoring Officer immediately of the circumstances, facts, their belief and the rationale behind it, including supplying all and any documentation; and
- c. they should not comment further on the issue to any other Officer or Member without the prior consent of the Monitoring Officer.

These provisions are to protect both the Member and Officer, avoid Officers from becoming unduly involved in allegations of Member misconduct at an inappropriate level and to ensure that any investigation that may need to be carried out by the Monitoring Officer or other agency, is not in any way fettered or damaged.

### **The Relationship: General Points**

- 3.1 Both Councillors and Officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give advice to Councillors and the Council, and to carry out the Council's work under the direction and control of the Council, the Executive, their committees and subcommittees.
- 3.2 At the heart of the Code, and this Protocol, is the importance of mutual respect. Member / Officer relationships are to be conducted in a positive and constructive way. Therefore, it is important that any dealings between Members and Officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party.
- 3.3 Inappropriate relationships can be inferred from language / style. To protect both Members and Officers, Officers should address Members as "Councillor XX / Mr or Madam Mayor / Sheriff" save where circumstances clearly indicate that a level of informality is appropriate, eg a one to one between a Senior Manager and their respective Cabinet Member.
- 3.4 A Member should not raise matters relating to the conduct or capability of an Officer in a manner that is incompatible with the objectives of this Protocol. This is a long-standing tradition in public service. An Officer has no means of responding to such criticisms in public. If a Member feels s/he has not been treated with proper respect, courtesy or has any concern about the conduct or capability of an Officer, and fails to resolve it through direct discussion with the Officer, s/he should raise the matter with the respective Senior Manager of the Division. The Senior Manager will then look into the facts and report back to the Member. If the Member continues to feel concern, then s/he should report the facts to the Executive Director who heads the Directorate concerned, or if, after doing so, is still dissatisfied, should raise the issue with the Chief Executive who will look into the matter afresh. Any action taken against an Officer in respect of a complaint, will be in accordance with the provisions of the Council's Disciplinary Rules and Procedures.
- 3.5 An Officer should not raise with a Member matters relating to the conduct or capability of another Officer or to the internal management of a Section / Division / Directorate at or in a manner that is incompatible with the overall objectives of this Protocol.
- 3.6 Where an Officer feels that s/he has not been properly treated with respect and courtesy by a Member, s/he should raise the matter with his/her Senior Manager, Executive Director or the Chief Executive as appropriate, especially if they do not feel able to discuss it directly with the Member concerned. In these circumstances the

Senior Manager, Executive Director or Chief Executive will take appropriate action either by approaching the individual Member and/or group leader or by referring the matter to the Senior Manager: Legal, HR & Democratic Services in the context of the Governance Committee considering the complaint.

### **The Relationship: Officer Support to Members: General Points**

- 4.1 Officers are responsible for day-to-day managerial and operational decisions within the authority and will provide support to both the Executive and all Councillors in their several areas.
- 4.2 Certain statutory officers – the Chief Executive, the Monitoring Officer and the Chief Financial Officer – have specific roles. These are addressed in the Constitution. Their roles need to be understood and respected by all Members.
- 4.3 The following key principles reflect the way in which the officer core generally relates to Members:
  - ◆ all officers are employed by, and accountable to the authority as a whole;
  - ◆ support from officers is needed for all the authority's functions including Full Council, Overview and Scrutiny, the Executive, individual Members representing their communities, etc;
  - ◆ day-to-day managerial and operational decisions should remain the responsibility of the Chief Executive and other officers;
  - ◆ the authority will seek to avoid potential conflicts of interest for officers arising from the separation of the Executive and Overview and Scrutiny role; and
  - ◆ all officers will be provided with training and development to help them support the various Member roles effectively and to understand the new structures.
- 4.4 On occasion, a decision may be reached which authorises named Officers to take action between meetings following consultation with a Member or Members. It must be recognised that it is the Officer, rather than the Member or Members, who takes the action and it is the Officer who is accountable for it.
- 4.5 It is important that all Members, in exercising their functions as a Councillor, take appropriate legal, financial and professional officer advice, particularly about contractual matters. In order to ensure the highest standards of conduct are maintained at all times in relation to this important area of the Council's functions, additional guidance on Best Practice for Member Conduct during a Procurement Exercise is laid out in Appendix D.
- 4.6 Generally, all Members – whether Executive or otherwise – should consider, when invited to / attending a meeting, whether or not minutes should be taken and/or an officer should be present. It is a matter for Members' judgement whether this is necessary / appropriate, but factors such as whether any commitment is likely to be given on behalf of the Council and/or whether any complex financial, legal or procurement issues may be discussed will be relevant in deciding that. In such situations, Members are generally recommended to have an officer present and to ensure that contemporaneous minutes are taken and, where appropriate, shared with the other parties present to ensure that an accurate record is maintained. It will, however, be a case of judgement on each and every occasion as to how and when this principle is applied.
- 4.7 Finally, it must be remembered that Officers within a Division or Directorate are

accountable to their Senior Manager and Executive Director and that whilst Officers should always seek to assist a Member, they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Senior Manager or Executive Director.

### **The Relationship: Officer Support: Members and Party Groups**

- 5.1 It must be recognised by all Officers and Members that in discharging their duties and responsibilities, Officers serve the Council as a whole and not any political group, combination of groups or any individual Member of the Council.
- 5.2 There is now statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to support and contribute to such deliberations by party groups but must at all times maintain political neutrality. All Officers must, in their dealings with political groups and individual Members, treat them in a fair and even-handed manner.
- 5.3 The support provided by Officers can take many forms. Whilst in practice such Officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups
- 5.4 Certain points must, however, be clearly understood by all those participating in this type of process, Members and Officers alike. In particular:
  - 5.4.1 Officer support must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if Officers are not present at meetings or parts of meetings, when matters of party business are to be discussed;
  - 5.4.2 party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such; and
  - 5.4.3 similarly, where Officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant Committee or Sub-Committee when the matter in question is considered.
- 5.5 Special care needs to be exercised whenever Officers are involved in providing information and advice to a party group meeting which includes persons who are not Members of the Council. Such persons are not bound by the National Code of Local Government Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons, Officers may not attend and/or give advice to such meetings.
- 5.6 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group.
- 5.7 Whilst any Member may ask a relevant Senior Manager, , Director or the Chief Executive for written factual information about a Directorate or service, such requests

must be reasonable and not seek information relating, for instance, to case work of a similar nature, eg Social Services, employment, etc. Requests will be met subject to any overriding legal considerations (which will be determined by the Senior Manager: Legal, HR & Democratic Services), or if the recipient of any request considers the cost of providing the information requested or the nature of the request to be unreasonable. If a Member requesting such information is dissatisfied by such a response, s/he should raise the matter in the first place with the relevant Executive Director, and if still dissatisfied should raise the matter with the Chief Executive who will discuss the issue with the relevant Group Leader(s).

5.8 In relation to budget proposals:

- a. the Administration shall be entitled to confidential discussions with Officers regarding options and proposals. These will remain confidential until determined by the Administration or until published in advance of Committee / Council meetings, whichever is the earlier; and
- b. the opposition groups shall also be entitled to confidential discussions with Officers to enable them to formulate alternative budget proposals. These will remain confidential until determined by the respective opposition groups or until published in advance of Committee / Council meetings, whichever is the earlier.

5.9 As part of the Budget process, Officers may be called upon to give advice on budgetary proposals, wherever they may emanate from (once political confidentiality has been lifted). This is in addition to the "normal" rights that any member has to seek advice "in confidence" from Officers. In addition, Officers may feel it appropriate to offer advice to individuals, groups or all Members. In doing so, they should be aware of the need to remain impartial. It is appropriate and indeed, in certain circumstances, necessary that as a matter of professional judgement, if a proposed course of action is imprudent, that Officers should advise the Members of the Authority that this is so. It would, however, be for the Officer to decide how and when to do so, subject to the general rules outlined in paragraph 5.10 below. This is without prejudice to issues of legality and financial administration which are covered by specific duties placed on the Chief Financial Officer and Monitoring Officer.

5.10 In view of the need to ensure that the professional integrity of Officers is not impugned, deliberately or inadvertently, the following principles will be applied (although they may be departed from by the Chief Executive, Monitoring Officer or Chief Financial Officer as and when appropriate given their specific statutory duties):

- a. any advice provided to any Member(s) in writing will be signed and dated by the responsible Officer and shall follow the guidelines set out in Appendix B;
- b. generally, such advice will be provided to the Group Leaders, unless there are over-riding considerations associated with the statutory responsibilities of the Head of Paid Service / Chief Financial Officer / Monitoring Officer which would warrant the advice being shared with all Members;
- c. Officers will also provide, as appropriate, briefings for either Group Leaders and/or all Members as requested by the Group Leaders and/or determined by the Chief Executive, Chief Financial Officer and/or Monitoring Officer prior to the Budget on any particular issues or matters which those Officers, as a matter of professional judgement, consider should properly be drawn to Members' attention.

The over-riding obligation will be to ensure that the integrity of the administration of public affairs is maintained. The prime responsibility of Officers in the matter of any

challengeable decision arises in advising Members of the Council before decisions are reached. It is incumbent, in these circumstances, for Councillors to be fully advised on the legal and financial consequences of any proposed course of action.

- 5.11 It must not be assumed by any party group or Member that any Officer is supportive of any policy or strategy developed because of that Officer's assistance in the formulation of that policy or strategy.
- 5.12 Any particular cases of difficulty or uncertainty in this area of Officer advice to party groups should be raised with the Chief Executive who will discuss them with the relevant group leader(s).

### **The Relationship: Officer Support: The Executive**

- 6.1 It is clearly important that there should be a close working relationship between Executive Members and the Officers who support and/or interact with them. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officer's ability to deal impartially with other Members and other party groups.
- 6.2 Whilst Executive Members will routinely be consulted as part of the process of drawing up proposals for consideration or the agenda for a forthcoming meeting, it must be recognised that in some situations an Officer will be under a professional duty to submit a report. Similarly, a Senior Manager or other senior Officer will always be fully responsible for the contents of any report submitted in his/her name. This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report. This is to be distinguished from a situation where there is a value judgement to be made. Any issues arising between an Executive Member and a Senior Manager in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.
- 6.3 The Executive and its members have wide ranging leadership roles. They will:
  - ◆ lead the community planning process and the search for Best Value, with input and advice from Overview and Scrutiny Committees, area committees and any other persons as appropriate;
  - ◆ lead the preparation of the local authority's policies and budget;
  - ◆ take in-year decisions on resources and priorities, together with other stakeholders and partners in the local community, to deliver and implement the budget and policies decided by the Full Council; and
  - ◆ be the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.
- 6.4 Where functions which are the responsibility of the Executive are delegated to Officers or other structures outside the Executive, the Executive will nevertheless remain accountable to the Council, through Overview and Scrutiny Committees, for the discharge of those functions. That is to say, the Executive will be held to account for both its decision to delegate a function and the way that the function is being carried out.
- 6.5 Under Executive Arrangements, individual Members of the Executive will, for the first time, be allowed to formally take decisions. The Executive and Cabinet members must satisfy themselves that they are clear what exactly they can and cannot do.



- 6.6 The Council has put in place mechanisms / protocols which ensure that (as with the Council, its Committees and Sub-Committees, and the Executive and its Committees) an individual Executive Member seeks advice from relevant Officers before taking a decision within her or his delegated authority. This includes taking legal advice, financial advice and professional officer advice (particularly about contractual matters) as well as consulting the Monitoring Officer where there is doubt about vires.
- 6.7 As a result of the particular issues arising during contractual discussions, particular guidance has been provided for all Members at Appendix D to this Officer / Member Protocol. Whilst this guidance is predominantly aimed at Executive Members, who will largely be the Members directly involved in discussions with potential tenderers / contractors / sub-contractors during the course of a procurement exercise, it is not exclusively aimed at Executive Members – it is specifically aimed at all Members, and for that reason, all Members should be aware that their conduct during a procurement exercise should follow the guidance in Appendix D.
- 6.8 Decisions taking by individual Members of the Executive give rise to legal and financial obligations in the same way as decisions taken collectively. Therefore, Members of the Executive should always be aware of legal and financial liabilities (consulting the Monitoring Officer and Chief Financial Officer as appropriate) which will arise from their decisions. To ensure effective leadership for the local authority and the communities it serves, there are arrangements to ensure co-ordination of and haring responsibility for Executive decisions including those made by individuals.
- 6.9 Officers will continue to work for and serve the local authority as a whole. Nevertheless, as the majority of functions will be the responsibility of the Executive, it is likely that in practice many Officers will be working to the Executive for most of their time. The Executive must respect the political neutrality of the Officers. Officers must ensure that, even when they are predominantly supporting the Executive, that their political neutrality is not compromised.
- 6.10 In organising support for the Executive, there is a potential for tension between Chief Officers and Cabinet Members with portfolios. All Members and Officers need to be constantly aware of the possibility of such tensions arising and both Officers and Members need to work together to avoid such tensions and conflicts existing or being perceived.

### **The Relationship: Officer Support: Overview and Scrutiny**

- 7.1 Overview and Scrutiny is an important constituent part of effective democracy and the Council's constitutional arrangements. Officers have lead and significant role in making it effective. However, it is not Overview and Scrutiny's role to act as a disciplinary tribunal in relation to the actions of Members or Officers. Neither is it the role of Officers to become involved in what would amount to disciplinary investigations on a Panel's behalf. This is the Chief Executive's function alone in relation to staff, the Monitoring Officer's and the Governance Committee as regards the conduct of Members. This means:
- ◆ Overview and Scrutiny's questioning should not be directed to the conduct of individuals, not in the sense of establishing the facts about what occurred in the making of decisions or implementing of Council policies, but with the implication of allocating criticism or blame;
  - ◆ in these circumstances, it is for the Chief Executive to institute a formal enquiry, and Overview and Scrutiny may ask (but not require) him to do so.

- 7.2 Overview and Scrutiny should not act as a “court of appeal” against decisions or to pursue complaints by individuals (Councillors, Officers or members of the public) as other procedures exist for this. These are internal, eg the Corporate Complaints Procedure, and external / statutory, eg Local Government Ombudsman or appeal to the Courts. That said,
- ◆ Overview and Scrutiny may investigate the manner in which decisions are made but should not pass judgements on the merits of a decision in individual cases;
  - ◆ they can comment, however, on the merits of a particular policy affecting individuals.
- 7.3 It would be unfair to invite someone to appear before a Panel without telling them in general terms what they will be asked, or not giving them adequate time to prepare. Overview and Scrutiny ought to provide written questions (“Indicative Topics”) beforehand, so that the answers can form the basis of the questioning and discussion. In addition, speakers ought to be told the general line that further questioning is likely to take. Questioning should not stray outside the subject area that the Panel had previously indicated.
- 7.4 The Overview and Scrutiny Handbook contains guidelines as to the procedure at Evidence Meetings, and guidance for Members and Officers.
- 7.5 Overview and Scrutiny are, however, entitled to the following:
- a. the level and extent of questioning, and the depth to which Overview and Scrutiny Members may probe Officers is dependent upon the seniority of the Officers present – accordingly when calling Officers to give evidence, Members may wish to consider the level and nature of the Officer they wish to have before them in the light of the line of questioning they wish to follow;
  - b. Officers may be asked to give a professional opinion, and Officers may be asked to give alternative options. Officers may not confine themselves solely to justifying either the position of or the advice that they gave to the Executive, although in giving options, it is to be expected that they will explain the rationale for the advice that they gave and if the advice given to the Executive reflects, in their professional opinion, the best option, to justify that;
  - c. it is appropriate for Members of Overview and Scrutiny to ask Officers to explain and justify advice given to Members, whether on the Executive or otherwise, prior to decisions being taken, and to justify decisions Officers have taken under delegated powers;
- 7.6 Officers are expected:
- a. to maintain political impartiality at all times when commenting on the Cabinet’s / Council’s policies and actions;
  - b. to be prepared to explain and justify advice given to Members, including members of the Executive and the Council prior to decisions being taken and to justify decisions they themselves have taken under the Scheme of Delegation;
  - c. to ensure that an Officer of sufficient seniority appears before the relevant meeting in the light of the indicative topics supplied by Overview and Scrutiny in advance;
  - d. where requested to provide information to Scrutiny, eg on alternative options. to provide that information in as a comprehensive and timely fashion as if the

- request had come from the Executive.
- e. to respond to questions from Members in an open, constructive and helpful manner;
  - f. not to mislead or be economical with the truth.

### **Support services to Members and Party Groups**

- 8.1 The only basis on which the Council can lawfully provide support services (eg, stationery, typing, printing, photo-copying, transport etc) to Members is to assist them in discharging their role as Members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes.

### **Members' Access to Information and to Council Documents**

- 9.1 Members have the ability to ask for information pursuant to their legal rights to information. This right extends to such information, explanation and advice as they may reasonably need in order to assist them in discharging their role as a Member of the Council. This can range from a request for general information about some aspect of the Council's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Senior Manager or another senior Officer of the Division concerned. In cases of doubt, Members should approach the Senior Manager: Legal, HR & Democratic Services for assistance.
- 9.2 As regards the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law.
- 9.3 Members will find set out in Appendix C guidance on their rights to obtain information. The law in this area is complex, legislation including the Access to Information provisions of the Local Government Act 1972, the Data Protection Act 1998 as well as the Local Government Act 2000 have all had an impact. However, the Freedom of Information Act 2000 will have an even greater impact, and could potentially provide Members with a single route through which to obtain information in support of their work, whatever their role within the authority. The guidance note set out in Appendix C maps the hierarchy of rights of Members to information, but should be read in combination with the contents of the Constitution, most particularly the Access to Information Procedure Rules which cover the statutory obligations of the authority in terms of information and its relationship with the decision-making process.
- 9.4 In relation to business of the Executive, by virtue of Regulation 16 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012:
- i. where there is a meeting (eg Cabinet) and there is a document which is in the possession / under the control of the Executive relating to the business to be conducted at that meeting, that document shall be available for inspection at least five clear days before that meeting;
  - ii. where the decision is made at a private meeting by a Cabinet Member or is a Key Decision delegated to an Officer, the document shall be available either after the meeting closes or when the decision is made;
  - iii. there are savings for exempt and confidential material and any document that contains advice provided by a political advisor or assistant.

- 9.5 Finally, any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, ie in connection with the proper performance of the Member's duties as a Member of the Council. Therefore, for example, early drafts of Committee reports / briefing papers are not suitable for public disclosure and should not be used other than for the purpose for which they were supplied. Failure to observe this obligation or disclosure of confidential information may amount to a breach of the Code of Conduct.

### **Correspondence and Advice**

- 10.1 Members seeking advice from officers shall be entitled to assume that such advice is given under "Chatham House rules" in terms of disclosure to other Members, unless otherwise agreed with the officer(s) concerned.
- 10.2 Correspondence between an individual Member and an Officer should not normally be copied (by the Officer) to any other Member. In other words, a system of "silent copies" should not be employed.
- 10.3 Official letters on behalf of the Council should normally be sent in the name of the appropriate Officer, rather than in the name of a Member. It may be appropriate in certain limited circumstances (eg, representations to a Government Minister) for a letter to appear in the name of a Cabinet Member or the Leader or the Leaders of all political groups represented on the Council by agreement, but this should be the exception rather than the norm. Letters which, for example, create legal obligations or give instructions on behalf of the Council should never be sent out in the name of a Member, Executive or otherwise.
- 10.4 Correspondence received by Democratic Services from the public with a request that it is either copied to Members and/or forwarded to Members will, subject to any over-riding legal considerations, be forwarded / copied.
- 10.5 Officers responding to members queries should do so in a timely manner, and in accordance with the agreed standards for replying to letters and E mails from Members. Namely:
- a. Members will receive an acknowledgement within two working days of the date of the enquiry, to include the name and contact details of the officer dealing with the enquiry (subject to leave, etc);
  - b. a response will be given as soon as possible but not later than 10 working days of the date of the enquiry. If it is not possible to give a detailed response within 10 working days, the councillor should be informed within that period of the date by which they can expect to receive the information requested and be given a reason for the delay.

Members' Services, within Democratic Services, provides an alternative route whereby Members may make enquiries or request information from officers within the authority. Any Member may pass an enquiry to Democratic Services who will then refer it to the appropriate officer and follow it up as necessary. Members can expect to be updated as to progress by the officer responsible for replying to the request.

### **Publicity and Press Releases**

- 11.1 Local authorities are accountable to their electorate. Accountability requires local

understanding. This will be promoted by the Authority, explaining its objectives and policies to the electors and rate-payers. In recent years, all local authorities have increasingly used publicity to keep the public informed and to encourage public participation. Every Council needs to tell the public about the services it provides. Increasingly, local authorities see this task as an essential part of providing services. Good, effective publicity aimed to improve public awareness of a Council's activities is, in the words of the Government, to be welcomed.

- 11.2 Publicity is, however, a sensitive matter in any political environment because of the impact it can have. Expenditure on publicity can be significant. It is essential, therefore, to ensure that local authority decisions on publicity are properly made in accordance with clear principles of good practice. The Government has issued a Code of Recommended Practice on Local Authority Publicity. It is appended to this Officer / Member Protocol (Appendix A). The purpose of the Code is to set out such principles. The Code affects the conventions that should apply to all publicity at public expense and which traditionally have applied in both central and local government. The Code is issued under the provisions of the Local Government Act 1986 as amended by the Local Government Act 1988 which provides for the Secretary of State to issue Codes of Recommended Practice as regards the content, style, distribution and cost of local authority publicity, and such other matters as s/he thinks appropriate. That section requires that all local authorities shall have regard to the provisions of any such Code in coming to any decision on publicity.
- 11.3 Officers and Members of the Council will, therefore, in making decisions on publicity, take account of the provisions of this Code. If in doubt, Officers and/or Members should initially seek advice from the Senior Manager: Communications who will refer the matter to the Monitoring Officer / Senior Manager: Legal, HR & Democratic Services, if necessary / appropriate. Particular care should be paid to any publicity used by the Council around the time of an election. Particular advice will be given on this by the Monitoring Officer / Senior Manager: Legal, HR & Democratic Services as appropriate.

### **Involvement of Ward Councillors**

- 12.1 Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Ward or Wards affected should as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be notified at the outset of the exercise. More generally, Officers should consider whether other policy or briefing papers, or other topics being discussed with an Executive Member, should be discussed with relevant Ward Members. Officers should seek the views of the appropriate Executive Member(s) as to with whom and when this might be done.

### **Conclusion**

- 13.1 Mutual understanding, openness on these sorts of sensitive issues and basic respect are the greatest safeguard of the integrity of the Council, its Members and Officers.

### **Officer / Member Protocol**

- 14.1 This version was approved by the Council as part of the Constitution in May 2012.
- 14.2 Copies of the Protocol will be issued to all Members as part of the Constitution upon election.

- 14.3 Questions of interpretation of this Protocol will be determined by the Senior Manager: Legal, HR & Democratic Services.

## **Appendix A**

### **THE CODE OF RECOMMENDED PRACTICE ON LOCAL AUTHORITY PUBLICITY**

#### **Introduction**

1. This code applies to all local authorities in England specified in section 6 of the Local Government Act 1986 and to other authorities in England which have that provision applied to them by other legislation. Where the term “local authorities” is used in this code it should be taken as referring to both those categories of authority. References to “the Act” are to the Local Government Act 1986.
2. Local authorities are required by section 4(1) of the Act to have regard to the contents of this code in coming to any decision on publicity. Section 6 of the Act defines publicity as “any communication in whatever form, addressed to the public at large or a section of the public”. The code therefore applies in relation to all decisions by local authorities relating to paid advertising and leaflet campaigns, publication of free newspapers and newsheets and maintenance of websites – including the hosting of material which is created by third parties.
3. Nothing in this code overrides the prohibition by section 2 of the Act on the publication by local authorities of material which in whole or in part appears to be designed to affect public support for a political party. Paragraphs 21 to 24 offer some guidance for local authorities on the management of publicity which may contain or have links to party political material.

#### **Principles**

4. Publicity by local authorities should:-
  - be lawful
  - be cost-effective
  - be objective
  - be even-handed
  - be appropriate
  - have regard to equality and diversity
  - be issued with care during periods of heightened sensitivity

#### **Lawfulness**

5. Local authorities should ensure that publicity complies with all applicable statutory provisions. Paid-for advertising must comply with the Advertising Standards Authority’s Advertising Codes.
6. Part 3 of the Communications Act 2003 prohibits political advertising on television or radio. Local authorities must ensure that their publicity does not breach these restrictions.

7. Section 125 of the Political Parties, Elections and Referendums Act 2000 places a specific restriction on the publication by a local authority of material relating to a referendum under Part 7 of that Act, during the period of 28 days immediately before the referendum is held.
8. Regulation 5 of the Local Authorities (Conduct of Referendums) (England) Regulations 2007 (S.I. 2007/2089) prohibits local authorities from publishing material in the 28 days immediately before a referendum which expresses support for, or opposition to a particular answer to a referendum question relating to the constitutional arrangements of the authority.
9. Regulation 15 of the Local Authorities (Referendums, Petitions and Directions) (England) Regulations 2000 (S.I. 2000/2852) prohibits local authorities from incurring expenditure to publish material which appears designed to influence people in deciding whether or not to sign a petition relating to the constitutional arrangements of the authority, or to assist others to publish such material.

### **Cost-effectiveness**

10. In relation to all publicity, local authorities should be able to confirm that consideration has been given to the value for money that is being achieved, including taking into account any loss of potential revenue arising from the use of local authority-owned facilities to host authority publicity.
11. In some circumstances it will be difficult to quantify value for money, for example where the publicity promotes a local amenity which is free to use. In such a case authorities should be able to show that they have given thought to alternative means of promoting the amenity and satisfied themselves that the means of publicity chosen is the most appropriate.
12. If another public authority, such as central government, has issued publicity on a particular topic, local authorities should incur expenditure on issuing publicity on the same matter only if they consider that additional value is achieved by the duplication of that publicity. Additional value might be achieved if locally produced publicity gives a local context to national issues.
13. The purchase of advertising space should not be used as a method of subsidising voluntary, public or commercial organisations.
14. Local authorities should consider whether it is appropriate to seek advice from economic analysts, public relations experts or other sources of expert advice before embarking on a publicity campaign involving very large expenditure.

### **Objectivity**

15. Local authorities should ensure that publicity relating to policies and proposals from central government is balanced and factually accurate. Such publicity may set out the local authority's views and reasons for holding those views, but should avoid anything likely to be perceived by readers as constituting a political statement, or being a commentary on contentious areas of public policy.
16. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on the facts or explanation or both. Local authorities should not use public funds to mount publicity campaigns whose primary purpose is to

persuade the public to hold a particular view on a question of policy. It is acceptable for local authority publicity to correct erroneous material which has been published by other parties, despite the fact that the material being corrected may have been published with the intention of influencing the public's opinions about the policies of the authority. Such publicity should seek to explain the facts in an objective manner.

17. Where paid-for advertising is used by local authorities, it should be clearly identified as being advertising. Paid-for advertising, including advertisements for the recruitment of staff, should not be used in any publication owned or controlled by a political party.
18. Advertisements for the recruitment of staff should reflect the tradition of political impartiality of local authority employees and should not (except in the case of advertisements relating to the appointment of staff pursuant to section 9 of the Local Government and Housing Act 1989 (assistants for political groups)) refer to any political activities or affiliations of candidates.

### **Even-handedness**

19. Where local authority publicity addresses matters of political controversy it should seek to present the different positions in relation to the issue in question in a fair manner.
20. Other than in the circumstances described in paragraph 34 of this code, it is acceptable for local authorities to publicise the work done by individual members of the authority, and to present the views of those individuals on local issues. This might be appropriate, for example, when one councillor has been the "face" of a particular campaign. If views expressed by or attributed to individual councillors do not reflect the views of the local authority itself, such publicity should make this fact clear.
21. It is acceptable for local authorities to host publicity prepared by third parties – for example an authority may host a blog authored by members of the authority or a public forum on which members of the public may leave comments. Maintenance by a local authority of a website permitting the posting of material by third parties constitutes a continuing act of publication by that local authority which must accordingly have a system for moderating and removing any unacceptable material.
22. It is generally acceptable for local authorities to host publicity, such as a blog, which itself contains links to external sites over which the local authority has no control where the content of those sites would not itself comply with this code. This does not amount to giving assistance to any person for the publication of material which local authorities are not permitted to publish. However, particular care must be taken by local authorities during the period before elections and referendums to ensure that no breach of any legal restriction takes place. It may be necessary to suspend the hosting of material produced by third parties or public forums which contain links to impermissible material during such periods.
23. It is acceptable for publicity containing material prepared by third parties and hosted by local authorities to include logos of political parties or other organisations with which the third parties are associated.
24. It is acceptable for publicity produced or hosted by local authorities to include a logo associated with a particular member of the authority, such as a directly elected mayor, or leader of the authority. Publicity material produced by local authorities



relating to a particular member must not seek to affect public support for that individual.

25. Where local authorities provide assistance to third parties to issue publicity they should ensure that the principles in this code are adhered to by the recipients of that assistance.

### **Appropriate use of publicity**

26. Local authorities should not incur any expenditure in retaining the services of lobbyists for the purpose of the publication of any material designed to influence public officials, Members of Parliament, political parties or the Government to take a particular view on any issue.
27. Local authorities should not incur expenditure on providing stands or displays at conferences of political parties for the purpose of publicity designed to influence members of political parties to take a particular view on any issue.
28. Local authorities should not publish or incur expenditure in commissioning in hard copy or on any website, newsletters, newssheets or similar communications which seek to emulate commercial newspapers in style or content. Where local authorities do commission or publish newsletters, newssheets or similar communications, they should not issue them more frequently than quarterly, apart from parish councils which should not issue them more frequently than monthly. Such communications should not include material other than information for the public about the business, services and amenities of the council or other local service providers.
29. Publicity about local authorities and the services they provide should be freely available to anyone who wishes to receive such information in a format readily accessible and understandable by the person making the request or by any particular group for which services are provided.
30. All local authority publicity should clearly and unambiguously identify itself as a product of the local authority. Printed material, including any newsletters, newssheets or similar publications published by the local authority, should do this on the front page of the publication.

### **Equality and diversity etc**

31. Publicity by local authorities may seek to influence (in accordance with the relevant law and in a way which they consider positive) the attitudes of local people or public behaviour in relation to matters of health, safety, crime prevention, race relations, equality, diversity and community issues.
32. Local authorities should consider how any publicity they issue can contribute to the promotion of any duties applicable to them in relation to the elimination of discrimination, the advancement of equality and the fostering of good relations.

### **Care during periods of heightened sensitivity**

33. Local authorities should pay particular regard to the legislation governing publicity during the period of heightened sensitivity before elections and referendums – see paragraphs 7 to 9 of this code. It may be necessary to suspend the hosting of

material produced by third parties, or to close public forums during this period to avoid breaching any legal restrictions.

34. During the period between the notice of an election and the election itself, local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual members or groups of members. Publicity relating to individuals involved directly in the election should not be published by local authorities during this period unless expressly authorised by or under statute. It is permissible for local authorities to publish factual information which identifies the names, wards and parties of candidates at elections.
35. In general, local authorities should not issue any publicity which seeks to influence voters. However this general principle is subject to any statutory provision which authorises expenditure being incurred on the publication of material designed to influence the public as to whether to support or oppose a question put at a referendum. It is acceptable to publish material relating to the subject matter of a referendum, for example to correct any factual inaccuracies which have appeared in publicity produced by third parties, so long as this is even-handed and objective and does not support or oppose any of the options which are the subject of the vote.

## **Appendix B**

### **Guidelines for Council-wide Briefing Notes**

1. This Guidance applies to briefing notes issued on a Council-wide basis associated with / during the Budget process.
2. All Officer advice should always take account of and follow the general guidance set out in this Officer / Member Protocol and the Council's Constitution.
3. Specific advice is contained in this Officer / Member Protocol as to Council-wide briefing notes issued as part of / during the Budget process at paragraphs 5.9 and 5.10 and this should be followed.
4. The content of any briefing notes issued on a Council-wide basis associated with / during the Budget process, should follow this guidance as to its contents:
  - a. Topic;
  - b. Provenance - who requested the note be produce (advice may be reactive or pro-active – so it may be an Officer decision that this advice was needed to be placed before Members – in which case state who made that decision;
  - c. What is the current Council policy?
  - d. What is professional officer advice – including what are the ramifications of the current Council policy and any possible / proposed changes to that?
  - e. Who is the author of the briefing note?
  - f. The note should be dated.
5. Any such Council-wide briefing notes associated with the Budget process should, if not written by the relevant Directors, be cleared with them as well as the Chief Financial Officer.
6. Before being issued, any Council-wide briefing notes associated with the Budget process should be cleared with the Chief Executive.

Members should be left in no doubt as the provenance of any Council-wide briefing notes associated with / issued during the Budget process, and should be clear what is Officer professional advice regarding the ramifications of policy options / decisions.

## **Appendix C**

### **COUNCILLORS' ACCESS TO INFORMATION – A HIERARCHY OF RIGHTS**

#### **Introduction**

1. The rights of access to information by Councillors is a complex mix of legislation available to Councillors and the public alike, legislation specific to local government and “common law rights” given to Councillors by the Courts. This Guidance endeavours to provide some guidelines for Members through this “maze”. Members may also seek advice “in confidence” from the Senior Manager: Legal, HR & Democratic Services.
2. For general rights of access available to the public, please see the Access to Information Procedure Rules as set out in the Council’s Constitution.

#### **What is the Hierarchy of Rights?**

4. The law relevant to access to information by Councillors includes the following:
  - (1) **The Freedom of Information Act 2000.** This makes non-personal information freely available to all, with only limited exceptions.
  - (2) **The Data Protection Act 1998.** This relates to personal information, and generally makes this non-disclosable except in certain circumstances.
  - (3) Local Government Legislation
    - (a) **Access to Information provisions of the Local Govt Act 1972.** This gives the public access to Committee Minutes and Agenda, and to background material relevant to those documents.
    - (b)
      - (i) Other legislation (Local Government (Executive Arrangements (Meetings and Access to Information) Regulations 2012)) ensures that Members are entitled to material relevant to public / private meetings of the Leader and Cabinet (and decision making by individual portfolio holders).
      - (ii) However, these rights do not apply to draft documents, to the advice of a political advisor or to most exempt/confidential information (unless such information is needed for the work of the Scrutiny Committee).
  - (4)
    - (c) “Common Law Rights” (derived from Court judgements) give Members the right to inspect Council documents insofar as this is reasonably necessary to enable a Member to perform his/her duties as a Councillor – this is known as the “need to know” basis.
    - (d) However, Members do not have any right to “a roving commission” through Council documents – mere curiosity is not sufficient.

#### **Navigating the Hierarchy of Rights**

## Freedom of Information Act 2000

5. (1) (a) In broad terms, if the information being sought by a Member is non-personal, then the Freedom of Information Act 2000 allows access to most Council documentation.<sup>1</sup>
- (b) The first port of call for information under the Freedom of Information Act is the Council's Publication Scheme. This is located most conveniently on the Council's website <http://www.southampton.gov.uk/council-partners/accesstoinfo/foi/publicationscheme/> and sets out most of the Council's published material. This information can be accessed and used without any further reference to the Council. The remainder of this note assumes that the information being sought by a Councillor is **not** available under the Publication Scheme.
- (2) The Freedom of Information Act would allow access to information about the construction of a new leisure facility (which is likely to be non-personal information) - but note the possible "block" to obtaining this information (see paragraphs 4(3) and (4) below) but could not be used to gain access to information about a named individual's record of housing waiting list applications – this latter is covered by the Data Protection Act 1998 (see Section 6 below).
- (3) In certain circumstances, access to documentation via the Freedom of Information Act can be "blocked", although most of the "blocks" are subject to a "public interest test". So, for example:-
- (a) Releasing commercially sensitive information to a member of the public is not likely to be in the public interest.
- (b) Whereas (subject to the usual rules of confidentiality), it is likely to be in the public interest to release such information to a Councillor.
- (4) Examples of blocks ("exemptions") under the Freedom of Information Act are:
- (a) Work in progress (draft reports, for example) need not be disclosed.
- (b) Information subject to a data-sharing protocol (eg. between all member organisations of the Crime and Disorder Partnership) should not be released until all organisations have each agreed to disclosure. This is to ensure that crime & disorder and fraud investigations are not prejudiced.
- (c) Commercially sensitive information.
- (d) Where, in the opinion of a designated officer (who is to be the Monitoring Officer) disclosure of information would or would likely to inhibit the free and frank provision of advice, the free and frank

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<sup>1</sup> Strictly speaking, if there are rights of access to information under other legislation, then the Freedom of Information Act 2000 does not apply. However, for the purposes of simplicity and to develop common access to information procedures for both Councillors and the public alike, this note assumes that Freedom of Information Act-like principles apply to Councillors as well as to members of the public. In this way, we can start with wide, general powers of access only narrow down into more specific powers when strictly necessary.

exchange of views for the purposes of deliberation, or would otherwise prejudice or would be likely otherwise to prejudice the effective conduct of public affairs. This exemption is also subject to the public interest test.

- (5) If the rights outlined above are not sufficient to provide a Councillor with the information he needs, then it is necessary to navigate further down this hierarchy.

### **Data Protection Act 1998**

6. (1) If the information sought by a Councillor relates to an identified living individual, then the Data Protection Act applies.
- (2) There are 2 classes of Data Protection – “normal” personal information and “sensitive personal information”. Sensitive personal information includes:-
- (a) Racial or Ethnic Origin
  - (b) Religious beliefs
  - (c) Trade Union membership
  - (d) Physical or Mental health
  - (e) Actual or alleged criminal offences and criminal records
  - (f) Sexual life
  - (g) Political opinions.
- (3) (a) Where “normal” personal information is involved, unless additional consent has been granted by the individual concerned, information about an individual can only be used for the purposes for which that information was obtained.
- (b) Councillors have the same rights as Council employees to access personal information.<sup>2</sup>
- (c) Putting the above together, a Councillor who needs to have information about a named individual’s housing waiting list application<sup>2</sup> may do so. However (unless the individual concerned has given a specific or general consent) the same information could not be used for purposes concerned with (say) Council Tax or Housing Benefits.
- (4) (a) The Council has a duty to ensure that personal information disclosed to Members using the above procedures is used strictly for the purposes for which it is disclosed and that Members will keep the information secure and confidential (and then disposed of in a similarly careful manner).
- (b) Councillors must observe the Code of Conduct and all the provisions of the Constitution. Officers will automatically assume that Councillors will treat personal information in accordance with the previous paragraph.
- (5) (a) Where “sensitive” personal information is involved (see paragraph 5(2) above) then more rigorous procedures are necessary:-

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<sup>2</sup> and the Councillor concerned must have a “need to know”, and not just be “curious” – see paragraph 4(4) above.

- (i) Either explicit consent of the person concerned must be obtained; or
    - (ii) If this is not practicable, Members must complete a form under the Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002.
  - (b) Paragraphs 4(4), 5(3) and (4) above, of course, apply to “sensitive” personal information as they do to “normal” personal information.
- (6) If the rights outlined above are not sufficient to provide a Councillor with the information he needs, then it is necessary to navigate further down this hierarchy.

**Access to Information Provisions of the Local Government Act 1972 / Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012**

7. (1) In effect, the rights available to Councillors through the Freedom of Information Act and the Data Protection Act will begin to override both older legislation such as the Local Government Act 1972 and also older common law rights.<sup>3</sup>
- (2) (a) Where a Councillor cannot obtain the disclosure of information under the Freedom of Information Act (because, say, commercial confidentiality is too sensitive to permit it, or because of implications for fraud investigations) or the Data Protection Act (because a Councillor cannot establish a need to know the information, or because a Councillor wants to use the information in a context different to that for which the information was gathered) then the information may still become available to Members at a later date via Committee agenda, and the right to see background material associated with such an agenda.
  - (b) Once a matter has reached the stage where it is before a Committee / Cabinet, then members of that Committee / Cabinet would have a “need to know” all relevant information; and other Councillors would be able to use the usual Access to Information provisions.
- (3) (a) Councillors also have additional rights of access to material in the possession/control of the Leader and Cabinet (rather than Council officers) relating to public/private meetings of the Cabinet or to any decision taken by an individual portfolio holder.
  - (b) However, the above rights **do not apply** to draft documents, to the advice of a political advisor or to most categories exempt/confidential information (unless the Scrutiny Committee require such exempt / confidential information as part of actions / decisions it is scrutinising).

**General**

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<sup>3</sup> But see Footnote 1

8. (1) Material from Legal Services (where Legal Services is providing legal advice to one of its in-house clients at the Council) may be non-disclosable due to legal professional privilege.
- (2) Information supplied under the Data Protection Act 1998 must not be used or disclosed for political purposes.
- (3) (a) Requests for Information under the control of Officers should normally be made to the relevant Senior Manager.
- (b) Requests for information under the control of the Leader and Cabinet should normally be made to the Leader and/or the relevant Portfolio Holder.
- (4) (a) Councillors must not put undue pressure on Officers to release information to which the Councillor is not entitled to have access.
- (b) Should a Senior Manager need advice as to whether information can be released to a Councillor s/he should contact the Senior Manager: Legal, HR & Democratic Services.
- (c) The additional access to information rights given to Councillors are to allow them to do their jobs as Councillors. Confidential or exempt information should only be used in appropriate circumstances, in accordance with the proper performance of their duties as Councillors. Information should only be passed between Councillors if both Councillors can demonstrate a “need to know”.
- (5) (a) Any complaints by a Councillor about the non-disclosure of information should be made in writing to the Senior Manager: Legal, HR & Democratic Services whose decision shall be final as far as the Council is concerned.
- (b) However, if the Councillor remains dissatisfied, the Councillor may be able (under FOI) to refer the matter to the Information Commissioner.

## **Appendix D**

### **BEST PRACTICE GUIDANCE ON CONDUCT FOR MEMBERS DURING A PROCUREMENT EXERCISE**

#### **A. BACKGROUND**

1. Under the City Council’s Code of Conduct for Members, a Member must not, amongst other things, in his/her official capacity or any other circumstance, conduct him or herself in a manner which could reasonably be regarded as bringing his/her office or the authority into disrepute, nor do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the Council.
2. In the context of a procurement exercise, this would include taking any action which could, in the opinion of the Monitoring Officer or Chief Financial Officer, compromise

the objective handling of the tendering processes and lead to (or likely to expose the Council to) a successful legal challenge.

3. Tendering procedures are highly complex and there are risks involved in the failure to comply with the UK and European legislation. This guidance is intended to assist in raising awareness of the risks and to ensure that proper procedures are in place to minimise such risks.

## **B. LEGAL CONTEXT**

4. When awarding contracts, the City Council is subject to the requirements of administrative law, contractual law, EU requirements on non-discrimination and free movement of goods and services, general common law principles and the specific rules on public procurement discussed below.
5. The public procurement remedies procedures are based upon the provisions of the 'Remedies Directive' (Directive (EEC) 665/89), the provisions of which were implemented into UK law in the Works, Supplies and Services Regulations (the Regulations'). There is a general statutory obligation under the regulations for contracting authorities to comply with the public procurement rules. There are also specific provisions which establish the procedures for remedy where an aggrieved contractor, supplier or service provider suffers, or is at risk of suffering, some form of loss due to non-compliance by the contracting authority with the procurement rules.
6. Enforcement of the procurement rules operate both at the EU and at the national level. The national courts or tribunals in each member state are empowered to take measures to remedy any violation of the law and to compensate for loss. At the EU level, the Commission can commence proceedings against the national government concerned under the EC Treaty if any contracting authority breaches the rules. In the UK, the obligation to comply with the provisions of the Regulations in relation to contracts that fall within the ambit of those regulations is considered in law to be a 'duty' owed to providers.
7. Non-compliance with EU law is not a criminal offence, but it can give rise to a breach of statutory duty and will open the Council to a legal challenge by way of Judicial Review and/or claim for damages. If a Member's action(s) or inaction(s) have caused the same, the member may have acted beyond his/her powers and/or be in breach of the Code of Conduct for Members. In such event, the Monitoring Officer will refer the matter to the Governance Committee for determination by way of a written complaint against the relevant Member(s). Ultimate sanction is disqualification from office and/or civil action in damages.
8. If a corrupt practice or other criminal activity is alleged or discovered under the Prevention of Corruption Acts or Bribery Act 2010 against a Member or Officer, the Monitoring Officer will consider how the Police may be used to help safeguard and protect the interests of the Council.

## **C. BEST PRACTICE GUIDANCE**

9. In light of the inherent risks involved in a failure to comply with legal requirements affecting tendering procedures, Members / Officers should have regard to the following:
  - 9.1 Communication (including any information, instruction, or response) from and to the City Council and Tenderers (or potential Tenderers or potential sub-



contractors to Tenderers) involved in a procurement process must be clear, duly recorded, appropriate and understood by the parties;

- 9.2 Tenderers / sub-contractors are always advised not to arrange or participate in any meeting(s) or other form of communication with any Member(s) or Officer(s) of the City Council that has not been arranged under and in accordance with any specific guidance/protocol issued in relation to the procurement process in question. As a general rule, where no such specific guidance/protocol has been issued, such meetings or other form of communication should not take place without the written consent of the Monitoring Officer and the Chief Financial Officer;
- 9.3 Where an existing supplier / sub-contractor to the City Council seeks a meeting or other form of communication with a Member - ostensibly about matters related only to the existing supply - and that existing supplier / sub-contractor may potentially be or is, at that time, also a Tenderer / sub-contractor in relation to either a planned / foreseen procurement process or an ongoing procurement process of which the Member ought reasonably to be aware of, the Member should decline to meet or otherwise ensure that a sufficiently senior officer is present at such meeting to safeguard the probity and propriety of the Council's actions or inactions;
- 9.4 Any meeting between any Tenderer / sub-contractors and a Member or Officer of the City Council, should be kept to an absolute minimum, as the risk of allegation(s) of fraud and/or corrupt practices is a high possibility and one to be avoided. Any meetings that do take place with Tenderers / sub-contractors must be contemporaneously minuted / noted and, in the exceptional event that a one-to-one meeting does take place, the contemporaneous minutes / notes of the meeting must be provided to the Head of Procurement within three days of the meeting, for the file, so as to protect and safeguard the relevant Member / Officer from any unwarranted accusations; and
- 9.5 Confidential information relating to any Tenderer / sub-contractor (or prospective Tenderer or sub-contractor) must remain confidential, unless the Courts or the law orders otherwise. Where any Member or Officer is in any doubt about whether a meeting or other form of communication with a Tenderer / sub-contractor is appropriate or permitted, s/he should seek guidance from the Monitoring Officer and Chief Financial Officer.

# **CODE OF CONDUCT AND DISCIPLINARY RULES**

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## **1.0 INTRODUCTION**

This document aims to provide information on the standards of service and conduct expected of employees of Southampton City Council to maintain an efficient and effective working environment and preserve and protect the reputation of the Council.

Managers should ensure that all new employees, as part of their induction, are directed to the electronic version of the Code of Conduct and Disciplinary Rules on the Council's Intranet site or provided with access to a hard copy of the document if Intranet access is not appropriate. Employees are expected to read the document as part of their induction.

Managers should ensure that all employees understand the Code of Conduct and Disciplinary Rules and management requirements in respect of work performance and the observance of working procedures, operational regulations, safety rules and regulations, standing orders, Corporate Standards and Policies etc.

If there is anything in this document that employees do not understand they should seek the advice of their manager. This document applies to all employees of Southampton City Council (and includes employees who hold particular offices as a result of their employment such as Registrars, the Monitoring Officer, etc.).

A failure to observe the Code of Conduct or a breach of the Disciplinary Rules may initially be dealt with informally through advice and instruction. If this does not lead to an acceptable standard of conduct, or if the matter is serious, it will be dealt with in accordance with the Council's Disciplinary Procedure.

The [Code of Conduct](#) sets out the expected standards of behaviour for all employees.

The [Disciplinary Rules](#) set out examples of behaviour which are considered to be a breach of the Code of Conduct or a breach of the employee's contract of employment.

## **2.0 CODE OF CONDUCT**

### General

1. Employees are expected to conduct themselves at all times in a manner which will maintain public confidence in both their integrity and the services provided by the Council.
2. While at work employees should at all times observe:-
  - the requirements of the law;
  - the Standing Orders of the Council and Committees;
  - the Officer/ Member protocol;
  - the Council's Financial Procedure Rules and Contracting Procedures;
  - the Council's Standards, Policies and guidance on the use of ICT;
  - any nationally set codes of practice or professional standards;
  - the Corporate Standards for the Council.

### Required Standards of Employee Conduct

3. An employee must perform his or her duties with honesty, integrity, impartiality and objectivity.
4. An employee must be accountable to the Council for his or her actions.
5. An employee must:
  - treat others with respect;
  - not discriminate unlawfully against any person; and
  - treat members and co-opted members of the Council professionally.
6. An employee must:
  - use any public funds entrusted to him or her in a responsible and lawful manner; and
  - not make personal use of Council property unless properly authorised to do so.
7. An employee must not in his or her official capacity:
  - allow his or her personal interests to conflict with the Council's requirements; or

- use his or her position improperly to confer an advantage or disadvantage on any person.
8. An employee must comply with any requirements of the Council:
    - to register or declare interests; and
    - to declare hospitality, benefits or gifts received as a consequence of employment.
  9. An employee must not treat another employee of the Council less favourably than other employees by reason that the employee has done, intends to do, or is suspected of doing anything under or by reference to any procedure the Council has for reporting misconduct. (See also the Duty to Act Policy referred to in the Guidance below)
  10. An employee must not:
    - disclose information given to him or her by anyone in confidence in the course of his or her employment; or
    - disclose information acquired which he or she believes is of a confidential nature;
      - without the consent of a person authorised to give it, unless disclosure is required by law; or
      - prevent another person from gaining access to information to which that person is entitled by law.
  11. An employee must not be involved in the appointment or any other decision relating to the discipline, promotion, pay or conditions of another employee, or prospective employee, who is a relative (as defined below) or friend.
 

An employee who works with a relative (as defined below) or friend must not allow their personal relationship to affect, or be perceived by other colleagues to affect, work or working relationships.

In this paragraph:  
 “relative” means a spouse, partner, parent, parent in law, son, daughter, step son or daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and  
 “partner” means a member of a couple who live together.
  12. An employee must observe any relevant national codes of practice and standards for his or her particular profession.
  13. An employee must comply with the agreed arrangements relating to hours of work, meal breaks and requests for leave etc.
  14. An employee must observe agreed working procedures, operational regulations, safety rules, regulations and codes of practice, safe working procedures, and standing orders and must carry out reasonable and proper instructions (written or oral) given in matters relating to duties.
  15. An employee required to wear issued uniform should not do so in off-duty hours except when travelling to and from work, or when specifically authorised.
  16. An employee must at all time act in accordance with the trust that the public is entitled to place in him or her.

### **3.0 DISCIPLINARY RULES**

The Disciplinary Rules **do not constitute an exclusive or exhaustive list**. They are intended to give examples of the type of conduct that could be considered as misconduct or gross misconduct. These can arise out of either an act or an omission and can include negligence.

#### **3.1 Examples of Misconduct**

Note that in certain circumstances the examples below may be considered to constitute gross misconduct.

1. Failure to comply with the Code of Conduct and any specific professional code of conduct and/or local working arrangements.
2. Smoking in any Council workplace or immediate surroundings (see Smoking Policy).
3. Persistent poor timekeeping.
4. Unauthorised absence from work.
5. Failure to comply with a reasonable management instruction.
6. Failure to comply with sickness absence procedures.
7. Acting in an aggressive or threatening manner or using foul or abusive language towards clients, customers, colleagues or managers.
8. Misuse or unauthorised use of Council resources, vehicles, equipment, facilities etc.
9. Failure to observe Council ICT standards policies and guidance on the use of IT facilities.
10. Being unfit for duty due to the use of alcohol or other intoxicants, or consuming these while at work.
11. Knowingly being an accessory to, condoning or failing to report a serious disciplinary offence.
12. Unauthorised use or disclosure of confidential information gained through employment with the Council, or the failure to protect such information.
13. Failure to disclose an outside interest, or hospitality which could cause loss of confidence in the employee or the Council.
14. Unlawful discrimination against another employee or a member of the public in the course of duty.
15. Failure to observe Health and Safety rules by act or omission.
16. General conduct in the workplace that has a negative impact on the work of the section, on colleagues, or on service delivery.

#### **3.2 Examples of Gross Misconduct**

The following acts, and offences of a similar nature, will be regarded as gross misconduct. Gross misconduct is an act or omission that is of such a nature or so serious that, if proven,

the continued presence of the employee at work cannot be tolerated and which could lead to summary dismissal (dismissal without notice).

#### Breach of trust

1. Omission or conduct liable to lead to serious loss of confidence in the public service.
2. Criminal offences committed at work.

#### Misuse of property

3. Theft, or attempted theft, from the Council, or its employees, or from premises being visited during the course of employment.
4. Unauthorised possession and or use of the Council's property, or the property of its employees. Malicious damage to or any other unlawful act which involves the property of the Council or its employees.

#### Dishonesty and fraud

5. Failure to disclose material information (e.g. convictions) or knowingly making a false statement or omission when applying for an appointment.
6. Falsification of time sheets, flexi sheets, corporate costing sheets, bonus sheets, expense claim forms, car allowance claims, returns of ticket sales, drivers' record books, etc.
7. Deliberate disregard of the Council's Financial Procedure Rules or Contracting Procedures or general instructions concerning the collection, transfer, security and paying in of monies, the issue and receipt of tickets and the completion and submission of associated documents.
8. Undertaking other paid employment whilst receiving sick pay or other benefits from the Council during a period of sickness or unauthorised absence, without prior management agreement.

#### Health and Safety

9. Deliberate action or omission which endangers life or limb including deliberate damage to, or neglect of, or misappropriation of, safety equipment and any violations of safety rules and codes of practice which could give rise to serious consequences.

#### Unacceptable behaviour at work

10. Physical violence (e.g. fighting), whether actual or threatened.
11. Sexual misconduct.
12. Deliberate racial harassment or inciting racial hatred.
13. Deliberate harassment or bullying or intimidation.
14. Deliberate sexual harassment.

#### Alcohol and drug use

15. Consumption of alcohol or the taking of drugs (legal or illegal) in direct contravention of a specific management instruction or regulation.
16. Being under the influence of alcohol or drugs or intoxicating substances in circumstances where it could constitute a health and safety hazard or where it would be in breach of a position of responsibility and trust.

#### Confidentiality

17. Unauthorised disclosure of confidential and personal information including that which may be of use to a competitor within a tendering situation or quotation procedure.

#### Use of Information Communication Technology Systems

18. Breach of the Council's Information Systems Security Policy, Email and Internet Standards and Security Policy, or any other Standards and Policies relating to the use of information systems.

#### Improper use of office

19. The use, or attempted use, of an employee's official position for an improper purpose, for his/her own private advantage or for the advantage of a third party, including, accepting, without authorisation, any fees, gifts, hospitality, favours or other reward.

#### Conduct outside work

20. Criminal offences and other conduct outside employment which affects the employee's suitability to perform his/her work, make him/her liable to be unacceptable to other employees or management, or is liable to damage the Authority's business.

#### Failure to declare interest

21. Failure to comply with the requirements of the Local Government Act 1972, which requires an employee or office holder to declare an interest where it comes to their knowledge that a contract in which he/she has any, direct or indirect, pecuniary interest has been or is proposed to be entered into by the Council.

#### Defamation

22. Making defamatory statements in the course of employment (e.g. statements that are or could be slanderous or libelous) whether orally, written, or in electronic communication. A defamatory statement is a statement that will injure the reputation of another in the estimation of members of society generally.

### **4.0 POLICY ON MONITORING EMPLOYEE CONDUCT**

When there are suspicions or allegations of a potential disciplinary offence against employees, they will be investigated through the appropriate procedures. This may include monitoring outgoing post or telephone calls; surveillance (and this may include the use of closed circuit television) or checking on employees' use of computer systems, including email or the Internet. The Council does not undertake speculative checks of this sort.

The Council reserves the right to intercept and monitor email (both sent and received) and monitor Internet usage. The Council's policy on monitoring communications complies with the Telecommunications (Lawful Business Practice)(Interception of Communications) Regulations 2000

## **5.0 GUIDANCE FOR MANAGER AND EMPLOYEES**

The following notes are included to aid understanding. They do not form part of the Code of Conduct or Disciplinary Rules. Where appropriate, links to Council policies on the Intranet are given.

### **5.1 The City Council's Corporate Standards**

The City Council's Corporate Standards and related information can be found at the following link; [City Council's Corporate Standards](#).

### **5.2 Additional Work Outside the Council**

Whilst the City Council does not wish to unreasonably prevent its employees from taking other paid employment or pursuing personal business interests, it is important that this should not interfere with their work for the Council in any way. If an employee has paid employment or business interests, in addition to his/her City Council job, or is considering them, he/she should discuss it with his/her supervisor or manager. In some cases employees may need the specific approval of their Senior Manager or Director (which must be in writing) and, for senior employees, it may not be allowed at all.

The Council supports employees who do voluntary work but if there is a possibility of a conflict of interest, for example volunteering with an organisation which has a Council grant, the employee should discuss it with his or her manager and consider recording it.

To comply with the requirements of the Working Time Regulations, and in case of allegations of a conflict of interest, hours worked on paid or voluntary work outside Council employment should be recorded on the employee's personal file, and the employee should opt out of the maximum 48 hours a week; link to the [Working Time Policy](#).

### **5.3 Personal or Pecuniary Interest**

Employees, or their partners, who have any official relationship with a contractor(s), and/or have previously had, or currently have, a private or domestic relationship with a contractor(s), should inform their manager.

Where there is any potential conflict of interest with any part of the Council's services, an employee must tell his or her supervisor or manager and ensure that the outside interests are recorded. The Register of Employees' Interests is currently maintained by the Human Resource Management Division; link to the [Outside Interests Register](#).

Employees should inform their Supervisor if they have an interest directly or indirectly in some element of work being undertaken by the section in which they work. For example an employee working in Housing Benefits should ensure his/her supervisor is aware if they also claim benefit from the Council.

If the Authority has entered, or is proposing to enter, into a contract in which the employee has knowledge of a direct or indirect pecuniary interest, the employee must inform his/her manager.



Where the City Council sponsors or indicates an intention to sponsor any event or service no employee or his/her close associates should benefit directly without there being a full disclosure to the appropriate manager.

#### **5.4 Smoking Whilst on Duty**

The City Council introduced a new smoking policy in July 2005. Smoking by employees on any premises owned by the City Council, or at any time whilst on Council business is expressly forbidden; link to the [Smoking Policy Guidance](#).

#### **5.5 Criminal Offences Committed Outside Work**

Where an employee is charged with a criminal offence that took place during off-duty hours it should be reported to the line manager who will consider the need for disciplinary action in the light of its relevance to his/her employment. Suspension from work may be necessary pending the initial outcome of a Police investigation.

#### **5.6 Conduct during Sickness Absence**

When an employee is absent from work because of sickness he/she must report the absence in accordance with the instructions issued by the Manager. The advice and instructions of any medical adviser(s), where appropriate, shall be observed. The employee must not do anything which may retard his/her return to work. This may mean an employee who has a second job or does voluntary work should refrain from doing it if it could retard his/her return to work; link to the [Attendance at Work pages](#).

#### **5.7 Conduct Towards Others**

Whilst carrying out his/her duties or acting as a representative of the Council, employees should not act in an oppressive or abusive manner, use threatening language or take action likely to cause offence, (or incite others to do so), towards another employee or member of the public, nor by word, act, or demeanor, abuse the authority vested in him/her, or be insubordinate to his/her supervisor or any other level of management.

#### **5.8 Use or Misuse of Equipment, Tools, Material etc.**

Employees are required to take due care of all stores, materials, tools, plant, equipment and vehicles and any other property of, or under the control of, the Council. An employee must report to the Supervisor any loss, defect or damage to any such property which has been issued to or used by him/her, or where care has been entrusted.

Employees should not remove property from stores, depots or other locations without prior authorisation. This includes any items or materials collected, or deposited for disposal, by the Council. Employees should not use or allow others to use any such items without prior authorisation, or willfully cause any waste, loss or damage.

Employees should not misuse the Council's communication systems, including the use of telephones, mobile telephones, email or postal system.

Employees should not use the Council's photocopiers, fax machines, computers or other equipment and materials for private purposes, without the permission of the manager

#### **5.9 ICT Standards**

The council's IT Policies and Standards are intended to guide employees in the correct use of the IT facilities they need to do their jobs, to protect both the employee and the council's information. They are reviewed on an annual basis and can be found here:  
[http://intranet.southampton.gov.uk/corporate-services/finance/it/it\\_Pols\\_stdts/](http://intranet.southampton.gov.uk/corporate-services/finance/it/it_Pols_stdts/)

All employees using Council systems should ensure that they are familiar with the policies and standards. Breaches of the policies and standards by employees will constitute misconduct and may, in some circumstances, be regarded as gross misconduct. Actions amounting to criminal activity will be reported to the Police and will be regarded as gross misconduct.

### **5.10 Alcohol and Drugs**

Some employees are prohibited by specific management instruction or regulation from entering licensed premises whilst on duty or from consuming alcohol or taking drugs before reporting for, or during, periods of duty. Managers must ensure that such employees are aware of such specific instruction.

Employees who, due to a medical condition, are prescribed drugs which may affect their performance at work should bring this to the notice of their manager.

### **5.11 Failure to Act Impartially**

Employees must not allow their personal or political opinions to interfere with their work.

Employees should serve all Councillors, not just those of the majority group. If employees are in any doubt about the course of action they are asked to take they should seek advice from a senior manager. Attention is drawn to the Member/Officer Protocol; link to the [Protocol on Member/Officer Relations](#).

Employees should note that some employees/posts are covered by the regulations on politically restricted posts. Where this applies it will be confirmed in the Employment Contract Statement of Particulars.

### **5.12 Records and Documentation**

On any matter for which an employee is accountable, all reasonable steps should be taken to ensure that required information is complete, accurate, and available at the proper time. This requirement applies to all records and documentation.

Employees must properly to account for, or make a prompt, accurate and complete return of, any money or property which is received in the course of their duties. They must not incur cash shortages or fail to pay in cash at the correct time; or in any way fail to comply with the Council's Financial Procedure Rules; link to the [Financial Procedural Rules](#).

### **5.13 Confidentiality and Disclosure of Information**

Many City Council employees have regular access to confidential information (for example on Council tenants, clients, businesses, contractors, other employees, Council Members and members of the public). All Council information should be treated as confidential unless the employee is sure that it is for public consumption. Even confirming that someone is a tenant or employed by the Council may be a breach of confidentiality. However, there are specific notes and disclosures on information in the Freedom of Information Act (FOI). For guidance contact your line manager or link to the [handling FOI requests](#).

An employee must not use any information obtained in the course of his/her employment for personal gain or benefit, nor pass it on to others who might use it in such a way.

An employee must not use in a private capacity (for example in a public meeting) any information gained through employment with the Council that is not available to the public at large.

#### **5.14 Requests for Information from the Police**

Employees would normally be expected to fully cooperate with requests from the Police for information in connection with their enquiries. Such information may be held on Council files, or may have been obtained by individual employees in the course of their normal work activities, and may relate to employees of the Council, clients or customers, other agencies, or members of the public. If there is any doubt or concern about disclosure of information to the Police, advice should be sought immediately from the line manager. Statements, if requested, should be made in factual terms. Employees who are asked to give statements to the Police in relation to a criminal investigation will be provided with support and advice from their line manager.

#### **5.15 Whistleblowing (Duty to Act)**

If an employee has a concern about something at work which may involve unlawful conduct, illegality, financial malpractice or dangers to the public, employees or the environment, he or she should use the process set out in the Council's Whistleblowing Policy to report his or her concerns. See link to the [Duty to Act: Whistleblowing Policy](#)

#### **5.16 Anti Fraud and Anti Corruption Policy**

All employees are expected to demonstrate high standards of openness, integrity, honesty and accountability as reflected in the Council's core organizational standards.

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