

# **Hastings Borough Council Constitution of the Council**

## **Part 5**

### **Codes and Protocols**

## The Constitution, Part 5 - Codes and Protocols

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# Hastings Borough Council

## Code of Conduct for Councillors and Co-opted Members

As a Councillor or co-opted member of Hastings Borough Council I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

### The Seven Principles of Public Life

#### *Selflessness*

**1.** Councillors and co-opted members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

#### *Integrity*

**2.** Councillors and co-opted members should not place themselves in situations where integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour. Councillors and co-opted members should show integrity by consistently treating other people with respect, regardless of their race, age, religion, gender, sexual orientation, disability or position, for example as an officer or employee of the authority. Holders of public office must avoid placing themselves under any obligation to people or organisations that might try to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

#### *Objectivity*

**3.** Councillors and co-opted members should make decisions in accordance with the law and on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

#### *Accountability*

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

#### *Openness*

**5.** Councillors and co-opted members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

#### *Honesty*

**6.** Councillors and co-opted members should not place themselves in situations where their honesty may be questioned, should not behave dishonestly and should on all occasions avoid the appearance of such behaviour. Councillors and co-opted members should declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

#### *Leadership*

**7.** Councillors and co-opted members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

On their election or co-option to the Hastings Borough Council Councillors and co-opted members are required to sign an undertaking to comply with the authority's Code of Conduct.

This Code of Conduct, adopted by the authority on 21 June 2012 is set out below. It is made under Chapter 7 of the Localism Act 2011 and includes, as standing orders made under Chapter 7 of that Act and Schedule 12 of the Local Government Act 1972, provisions which require Councillors and co-opted members to leave meetings in appropriate circumstances, while matters in which they have a personal interest are being considered.

## **Part 1 – General Provisions**

### **Introduction and interpretation**

1. (1) This Code applies to you as a Councillor or co-opted member of the authority, when acting in that capacity.

(2) This Code is based upon seven principles fundamental to public service, which are set out above. You should have regard to these principles as they will help you to comply with the Code.

(3) If you need guidance on any matter under this Code you should seek it from the authority's Monitoring Officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.

(4) It is a criminal offence to fail to notify the authority's Monitoring Officer of a disclosable pecuniary interest, to take part in discussions or votes at meetings, or to take a decision where you have disclosable pecuniary interest, without reasonable excuse. It is also an offence to knowingly or recklessly to provide false or misleading information to the authority's Monitoring Officer.

(5) Any written allegation received by the authority that you have failed to comply with this Code will be dealt with by the authority under the arrangements which it has adopted for such purposes. If it is found that you have failed to comply with the Code, the authority has the right to have regard to this failure in deciding -

(a) whether to take action in relation to you and

(b) what action to take.

(6) In this Code—

“authority” means ***Hastings Borough Council***

“Code” means this Code of Conduct

“co-opted member” means a person who is not a councillor of the authority but who-

(a) is a member of any committee or sub-committee of the authority, or

(b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority,

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

"meeting" means any meeting of—

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

"register of Councillors and co-opted members' interests" means the authority's register of Councillors and co-opted members pecuniary and other interests established and maintained by the authority's Monitoring Officer under section 29 of the Localism Act 2011.

## Scope

2. —(1) Subject to sub-paragraphs (2) and (3), you must comply with this Code whenever you—

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

(b) act, claim to act or give the impression you are acting as a representative of your authority, and references to your official capacity are construed accordingly.

(2) This Code does not have effect in relation to your conduct other than where it is in your official capacity.

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

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

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

## General obligations

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

(2) You must not—

(a) do anything which may cause your authority to breach any of its the equality duties (in particular as set out in the Equality Act 2010);

(b) bully any person;

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

- (i) a complainant,
- (ii) a witness, or
- (iii) involved in the administration of any investigation or proceedings,

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

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

**4. You must not—**

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

- (i) you have the consent of a person authorised to give it;
- (ii) you are required by law to do so;
- (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
- (iv) the disclosure is—
  - (a) reasonable and in the public interest; and
  - (b) made in good faith and in compliance with the reasonable requirements of the authority;

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

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

**6. You—**

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

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

- (i) act in accordance with your authority's reasonable requirements;
- (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

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

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

- (a) your authority's Chief Finance Officer; or
- (b) your authority's Monitoring Officer,

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

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

## Part 2 – Interests

### Personal interests

8. – (1) The interests described in paragraphs 8(3) and 8(5) are your personal interests and the interests in paragraph 8(5) are your pecuniary interests which are disclosable pecuniary interests as defined by section 30 of the Localism Act 2011.

(2) If you fail to observe Parts 2 and 3 of the Code in relation to your personal interests-

(a) the authority may deal with the matter as mentioned in paragraph 1(5) and

(b) if the failure relates to a disclosable pecuniary interest, you may also become subject to criminal proceedings as mentioned in paragraph 1(4).

(3) 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—

(a) exercising functions of a public nature;

(b) directed to charitable purposes; or

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

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

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

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

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

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

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

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50

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

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

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

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(4) In sub-paragraph (3)(b), a relevant person is—

(a) a member of your family or a close associate; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

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

(d) any body of a type described in sub-paragraph (3)(a)(i) or (ii).

8(5) Subject to sub-paragraphs (6) and (7), you have a personal interest which is also a disclosable pecuniary interest in any business of your authority where (i) you or (ii) your partner have any interest of a description specified as a disclosable pecuniary interest in Regulations made by the Secretary of State pursuant to section 30 of the Localism Act 2011.

### **Employment, office, trade, profession or vacation:**

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

### **Sponsorship:**

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 a councillor or co-opted member in carrying out duties as a councillor or co-opted member, or towards the election expenses of a councillor or co-opted member.

This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(3).

### **Contracts:**

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-

(a) under which goods or services are to be provided or works are to be executed; and

(b) which has not been fully discharged.

### **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:**

Any tenancy where (to Councillor or co-opted member's knowledge)-

- (a) the landlord is the relevant authority; and
- (b) the tenant is a body in which the relevant person has a beneficial interest.

## **Securities:**

Any beneficial interest in securities of a body where-

- (a) the body (to Councillor or co-opted member's knowledge) has a place of business or land in the area of the relevant authority; and
- (b) either-

(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued shared capital of that body; or

(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.

(6) In sub-paragraph (5), your partner means—

- (a) your spouse or civil partner,
- (b) a person with whom you are living as husband and wife, or
- (c) a person with whom you are living as if you were civil partners,

(7) In sub-paragraph (5), any interest which your partner may have is only treated as your interest if you are aware that that your partner has the interest.

## **Disclosure of personal interests**

(See also Part 3)

**9.** —(1) Subject to sub-paragraphs (2) to (6), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which any matter relating to the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) If the personal interest is entered on the authority's register there is no requirement for you to disclose the interest to that meeting, but you should do so if you wish a disclosure to be recorded in the minutes of the meeting.

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

(4) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of Councillors and co-opted members interests, you must indicate to the meeting that you have a personal interest and, if also applicable, that it is a disclosable pecuniary interest, but need not disclose the sensitive information to the meeting.

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

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

### **Prejudicial interest generally**

**10.** —(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where either-

(a) the interest is a disclosable pecuniary interest as described in paragraph 8(5), or

(b) the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) For the purposes of sub-paragraph (1)(b), you do not have a prejudicial interest in any business of the authority where that business—

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

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

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

- (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to Councillors or co-opted members;
- (v) any ceremonial honour given to councillors or co-opted members ; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

## **Interests arising in relation to Overview and Scrutiny Committee**

**11.** You also have a personal interest in any business before an Overview and Scrutiny Committee of your authority (or of a sub-committee of such a committee) where—

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's Cabinet 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 Cabinet, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

## **Effect of prejudicial interests on participation**

**12.** —(1) Subject to sub-paragraph (2) and (3), where you have a prejudicial interest in any matter in relation to the business of your authority—

(a) you must not participate, or participate further, in any discussion of the matter at any meeting, or participate in any vote, or further vote, taken on the matter at the meeting and must withdraw from the room or chamber where the meeting considering the matter is being held—

- (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
- (ii) in any other case, whenever it becomes apparent that the matter is being considered at that meeting;

unless you have obtained a dispensation from your authority's Monitoring Officer or Standards Committee;

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

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

(2) Where you have a prejudicial interest in any business of your authority which is not a disclosable pecuniary interest as described in paragraph 8(5), you may attend a meeting (including a meeting of the Overview and Scrutiny Committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

(3) Where you have a prejudicial interest which is not a disclosable pecuniary interest as described in paragraph 8(5), arising solely from membership of any body described 8(3)(a)(i) or 8(3)(a)(ii)(a) then you do not have to withdraw from the room or chamber and may make representations to the committee but may not participate in the vote.

## Part 3 – Registration of Interests

### Registration of Councillors and members' interests

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

(a) this Code being adopted by the authority; or

(b) your election or appointment to office (where that is later), register in the register of Councillors and co-opted members' interests details of-

- (i) your personal interests where they fall within a category mentioned in paragraph 8(3)(a) and
- (ii) your personal interests which are also disclosable pecuniary interests where they fall within a category mentioned in paragraph 8(5)

by providing written notification to your authority's Monitoring Officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest falling within sub-paragraphs (1)(i) or (1)(ii) or any change to any personal interest registered under sub-paragraphs (1)(i) or (1)(ii), register details of that new personal interest or change by providing written notification to your authority's Monitoring Officer.

### Sensitive information

**14.** —(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's Monitoring Officer agrees, the Monitoring Officer shall not include details of the interest on any copies of the register of Councillors or co-opted members' interests which are made available for inspection or any published version of the register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.

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

(3) In this Code, "sensitive information" means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

### Dispensations

**15 - (1)** The Standards Committee, or any sub-committee of the Standards Committee, or the Monitoring Officer may, on a written request made to the Monitoring Officer of the authority by a Councillor, grant a dispensation relieving the Councillor from either or both of the restrictions in paragraph 12(1)(a) (restrictions on participating in discussions and in voting), in cases described in the dispensation.

(2) A dispensation may be granted only if, after having had regard to all relevant circumstances, the Standards Committee, its sub-committee, or the Monitoring Officer—

(a) considers that without the dispensation the number of persons prohibited by paragraph 12 from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,

(b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,

(c) considers that granting the dispensation is in the interests of persons living in the authority's area,

(d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating Cabinet arrangements, considers that without the dispensation each Councillor of the authority's Cabinet would be prohibited by paragraph 12 from participating in any particular business to be transacted by the authority's Cabinet; or

(e) considers that it is otherwise appropriate to grant a dispensation.

(2) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.

(3) Paragraph 12 does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph.

# Hastings Borough Council

## Written Undertaking

I ..... having become a Councillor/co-opted member (delete as appropriate) of Hastings Borough Council, declare that I will duly and faithfully fulfil the requirements of this role according to the best of my judgement and ability.

I undertake to observe the code as to the conduct which is expected of Councillors/co-opted members (delete as appropriate) of Hastings Borough Council.

Signed: ..... Date:.....

This undertaking was made and signed before me

Signed: ..... Date:.....

Proper Officer of the authority\*

\*Where the declaration is made before another person authorised by section 83(3) of the above Act, state instead the capacity in which that person takes the declaration.

# **Hastings Borough Council**

## **Protocol for Relationships Between Councillors and Officers**

# Hastings Borough Council Protocol for Relationships between Councillors and Co-opted Members and Officers

“Every local authority should have its own written statement or protocol governing relations between councillors and officers”. (Third report of the Committee on Standards in Public Life – the Nolan Committee)

## Introduction and Principles

- 1.1 The purpose of this Protocol is to guide Councillors and Officers in their relations with one another in such a way as to ensure the smooth running of the Council.
- 1.2 If the Protocol is followed it should ensure that Councillors receive objective and impartial advice and that Officers are protected from accusations of bias and any undue influence from Councillors.

## Definitions

1. Unless the context indicates otherwise, references to the term **Council** include the Cabinet, Overview and Scrutiny Committees, and other committees and sub-committees.
2. For the purposes of this protocol, the term **Cabinet** refers to the Leader and Cabinet.
4. **Officers and staff** means all persons employed by the Council.
5. **Senior officer** means the Managing Director, Assistant Directors and Senior Managers, except where otherwise stated.
6. **Designated Finance Officer** means the officer exercising the duties prescribed by law for the financial administration of the Council.
7. **Monitoring Officer** means as described under S5 Local Government and Housing Act 1989.

## Principles

8. Councillors and co-opted members and Officers must at all times observe the protocol.
9. The protocol seeks to maintain and enhance the integrity (real and perceived) of local government which demands the highest standards of personal conduct.
10. Councillors and co-opted members and Officers must always respect the roles and duties of each other. They must show respect in all their dealings by observing reasonable standards of courtesy, and by not seeking to take unfair advantage by virtue of their position.
11. Whilst Councillors and co-opted members and Officers are indispensable to one another, their responsibilities are distinct. Councillors and co-opted members are accountable to the electorate and serve only as long as their term of office lasts. Officers are accountable to the Council as a whole. Their job is to give advice to Councillors and co-opted members (individually and collectively) and to carry out the Council's work under the direction of the Council.
12. The Council adopted a new Code of Conduct for Councillors and co-opted members in June 2012. The Code of Conduct is based on the Nolan principles. These principles underpin this protocol. The Code of Conduct is to be found at Part 5 of the Council's Constitution with this protocol.
13. Until such time as a new national code appears, Officers are bound by the Council's own code of conduct for staff and, in some cases, by the codes of their professional



associations. The Council's Code of Conduct is available on the Intranet under Personnel, Policies and Procedures Index.

14. Breaches of this protocol by a Councillors and co-opted member may result in a complaint to the Standards Committee whether or not it appears the Councillors and co-opted members' code has also been breached. Breaches by an Officer may lead to disciplinary action.

### **The Role of Councillors and Co-opted Members**

15. Councillors and co-opted members have a number of roles and need to be alert to the potential for conflicts of interest which may arise between the roles. Where such conflicts are likely, councillors and co-opted members may wish to seek the advice of the Monitoring Officer/Chief Legal Officer.
16. Collectively, Councillors and co-opted members are the ultimate policy-makers determining the core values of the Council and approving the authority's policy framework, strategic plans and budget.
17. Councillors are elected to represent their constituents. They represent the community, act as community leaders and promote the social, economic and environmental well-being of the community often in partnership with other agencies.
18. Every elected Councillor represents the interests of, and is an advocate for, his/her ward and individual constituents. He/she represents the Council in the ward, responds to the concerns of constituents, meets with partner agencies, and often serves on local bodies.
19. Some Councillors members have roles relating to their position as members of the Cabinet, Overview and Scrutiny Committee or other committees and sub-committees of the Council.
20. Councillors serving on Overview and Scrutiny Committee monitor the effectiveness of the Council's policies and services, develop policy proposals and examine community issues. They may also monitor other public sector service provision eg local health service relevant to the borough.
21. Councillors and co-opted members who serve on other committees and sub-committees collectively have delegated responsibilities, e.g. deciding quasi-judicial matters which by law are excluded from the remit of the Cabinet.
22. Some Councillors may be appointed to represent the Council on local, regional or national bodies.
23. As politicians, Councillors may express the values and aspirations of the party groups to which they belong, recognising that in their role as Councillors they have a duty always to act in the public interest.
24. Councillors and co-opted members are not authorised to instruct Officers other than:
  - through the formal decision-making process
  - to request the provision of consumable resources provided by the Council for Councillors and co-opted members' use
  - where staff have been specifically allocated to give support to a Councillor or co-opted member or group of Councillors and co-opted members. eg the Corporate and Democratic Services Team
25. Councillors and co-opted members are not authorised to initiate or certify financial transactions, or to enter into a contract on behalf of the Council.
26. Councillors and co-opted members must avoid taking actions which are unlawful, financially improper or likely to amount to maladministration. Councillors and co-opted members have an obligation under their code of conduct to have regard, when reaching

decisions, to any advice provided by the Monitoring Officer/Chief Legal Officer or the Chief Finance Officer, or their nominees.

27. Councillors and co-opted members must respect the impartiality of Officers and do nothing to compromise it, e.g. by insisting that an officer change his/her professional advice or by seeking to involve an officer in the pursuit of a personal or political dispute with others.

### **The Role of Officers**

28. Officers are responsible for giving advice to Councillors and co-opted members to enable them to fulfil their roles. In doing so, Officers will take into account all available relevant factors.
29. Under the direction and control of the Council (including, as appropriate, the Cabinet, committees and sub-committees), Officers manage and provide the Council's services within the framework of responsibilities delegated to them. This includes the effective management of employees and operational issues.
30. Officers have a duty to implement decisions of the Council, the Cabinet, committees and sub-committees which are lawful, and which have been properly approved in accordance with the requirements of the law and the Council's constitution, and duly minuted.
31. Officers have a contractual and legal duty to be impartial. They must not allow their professional judgement and advice to be influenced by their own personal views.
32. Officers must assist and advise all parts of the Council. They must always act to the best of their abilities in the best interests of the authority as expressed in the Council's formal decisions.
33. Officers must be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for Councillors and co-opted members, the media or other sections of the public.
34. Officers have the right not to support Councillors and co-opted members in any role other than that of Councillor and co-opted member, and not to engage in actions incompatible with this protocol. In particular, there is a statutory limitation for certain Officers concerning involvement in political activities.

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

35. Officers are responsible for day-to-day managerial and operational decisions within the authority and provide support to the Leader, Cabinet, Committee Members and all Councillors and co-opted members in their respective roles.
36. Certain Statutory Officers – the Head of Paid Service, the Monitoring Officer and the Section 151 Officer (currently the Assistant Director of Financial Services and Revenues) – have specific roles. These are addressed in the Constitution. Their roles need to be understood and respected by Councillors and co-opted members.
37. Informal and collaborative two-way contact between Councillors and co-opted members and Officers is encouraged, but personal familiarity can damage the relationship, as might a family or business connection.
38. Councillors and co-opted members and officers should inform the Monitoring Officer of any relationship which might be seen as unduly influencing their work in their respective roles.
39. It is not enough to avoid actual impropriety. Councillors and co-opted members and Officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be

perceived. Specifically, a Councillor or co-opted member should not sit on a body or participate in any decision which directly affects the Officer on a personal basis.

40. Officers have a duty to implement the properly authorised decisions of the Council.
41. Officers work to the instructions of their senior officers, not individual Councillors and co-opted members. It follows that, whilst such Officers will always seek to assist a Councillor or co-opted member, they must not be asked to exceed the bounds of authority they have been given by their managers. For minor or routine matters Councillors and co-opted members should deal with the officer concerned and not automatically elevate the matter to Assistant Director or the Managing Director level. Councillors and co-opted members should use the reporting tools provided e.g. My Hastings On-line account in the first instance
42. Councillors and co-opted have been supplied with contact details of the relevant service managers to whom enquiries can be made. Councillors and co-opted members should only escalate issues to the Managing Director or Assistant Directors if an issue is no longer minor or routine or if an issue is not resolved satisfactorily at the first point of contact.
43. Councillors and co-opted members should keep correspondence and telephone conversations confined between themselves and the responsible Officer without copying it to Senior Managers and other Councillors and co-opted members. Councillors and co-opted members should also not 'copy' members of the public as this can make a proper reply difficult for Officers. Councillors and co-opted members should keep correspondence factual and not express an opinion until such time as the matter has been investigated.
44. Assistant Directors are responsible for all aspects of the budgets and work of the areas they are managing. Matters of service performance should initially always be directed to them. They have the responsibility to resolve most major issues and should know when a performance issue is sufficiently important to refer it to the Managing Director (and in some cases for discussion with political leadership).

Directors should be involved if:-

- i) There is a problem of service failure (not individual complaints)
  - ii) A problem is of a scale that presents a risk to the Council achieving its objectives, has severe reputational risk implications, public safety concerns, and/or a major impact on the budget or carries a high political significance.
  - iii) If a corporate response is required which is beyond individual middle managers to agree.
45. Councillors and co-opted members views are representative of their constituents unless there is clear evidence to the contrary. The views of Officers are based on professional judgements derived from experience and academic qualification. On occasions differences between these two approaches will arise. Where there is no lawful reason for the Councillors or co-opted members request not to be actioned, but an objection from an Officer on professional grounds there is a need to resolve these differences without a significant amount of time being taken up while achieving both analysis and consistency on one side and being responsive with community on the other.
  46. It is proposed that where a Councillor and the senior manager of a service cannot reach agreement the matter is considered by the appropriate Assistant Director and the Portfolio Holder at a regular one to one meeting or other suitable (reasonably prompt) time with the aim to resolve the issue. If Assistant Director and Portfolio Holder cannot reach agreement the matter is to be referred to the regular meeting of the Leader, Deputy Leader and the Managing Director.
  47. Officers will do their best to give timely responses to Councillors and co-opted members' enquiries and will endeavour to observe the standards stated in the Council's Contact

Charter ie 5 working days. However, Officers should not have unreasonable requests placed on them. Their work priorities are set and managed by senior managers. Overall priorities are agreed between the Leader, Portfolio Holders, and the Managing Director on the basis of policies, strategies and plans agreed by the full Council or Cabinet in accordance with the Constitution. Members should avoid disrupting Officers' work by imposing their own priorities ie 5 working days.

48. Councillors and co-opted members will endeavour to give timely responses to enquiries from Officers.
49. Councillors and co-opted members and Officers should respect each other's free (i.e. non-Council) time.

### **The Council as Employer**

50. Officers are employed by the Council as a whole.
51. Councillors' roles are limited to:
  - the appointment of the Head of Paid Service / Managing Director
  - determining human resources policies and conditions of employment, and
  - hearing and determining appeals of the Head of Paid Service / Managing Director and the disciplinary hearings of statutory Officers.
52. In light of the nature of the Councillors and co-opted members' role, an Officer should not discuss with a Councillor or co-opted member personal employment matters concerning him/herself or another individual employee. The Council has established procedures should the personal matter be in the nature of a grievance (see Grievance Policy and Procedure). This does not, of course, prevent an Officer raising on a personal basis, and in his/her own time, a matter with his/her ward member.
53. Councillors and co-opted members shall not act outside these roles.
54. If participating in the appointment of Officers, Councillors should:
  - remember that the sole criterion is merit
  - never canvass support for a particular candidate
  - not take part where one of the candidates is a close friend or relative
  - not be influenced by personal preferences, and
  - not favour a candidate by giving him/her information not available to the other candidates.
55. A Councillor should not sit on an appeal hearing if the appellant is a friend, a relative, or an Officer with whom the Councillor has had a close working relationship.

### **Mayor and Officers**

56. Officers will respect the position of Mayor and provide appropriate support.

### **Members of Cabinet and Officers**

57. Members of Cabinet will take decisions in accordance with the Constitution and will not otherwise direct staff. Senior officers will be responsible for instructing staff to implement the Cabinet's decisions.
58. Senior Officers and members of Cabinet shall agree mutually convenient methods of regular contact. The Managing Director shall meet regularly with the Leader and Deputy Leader and Shadow Leader and Deputy Shadow Leader. Before taking any formal decisions, the Cabinet will seek appropriate professional advice.

59. Performance management arrangements for the Managing Director will be exercised by the Leader and Deputy Leader.
- 60.
60. Before any formal decisions with a financial implication are taken by the Cabinet, the Finance Officer and the senior Officer(s) for the service(s) concerned must be consulted. This is to ensure that those Officers who are budget holders:
- are aware of the proposed decision
  - have the opportunity to offer advice, and
  - are subsequently able properly to authorise the financial transactions needed to implement decisions.
61. Officers taking decisions under their delegated powers must consider the advisability of informing the relevant Portfolio Holder/s of their intentions in advance when the matter to which the decision relates to is likely to be sensitive or contentious, or has wider policy implications.
62. In relation to Cabinet decision-making, at present the Council does not operate individual Cabinet member decision-making and so delegation will be to a senior Officer in consultation with the Leader or Portfolio Holder and sometimes with the leader of the opposition group or groups.

### **Overview and Scrutiny Members and Officers**

63. Members of the Overview and Scrutiny Committee, when questioning Councillors and Officers should:
- Direct their question to the merits of the decision under review
  - Ascertain the factual and other information on which the decision was based
  - Confirm the compliance of the decision making process with the Council's principles of decision making
  - Test what alternatives have been considered and the reasons for their rejection.
64. They should not:
- Question the conduct of Individual Councillors or Officers
  - Seek for Officers to disclose the contents of confidential discussions, papers or advice
  - Criticise an Officer by name
  - Seek to instigate or become in any way involved in disciplinary or grievance procedures in relation to the actions of Councillors or Officers
  - Act as a "court of appeal" against specific decisions relating to individuals or pursue complaints by individuals (Councillors, Officers or members of the Public) where other procedures exist for this.
65. It is recognised that officers required to appear before the Overview and Scrutiny Committee may often be those who have advised the Cabinet or another part of the Council on the matter under investigation. In these circumstances, an Officer may have a conflict of interest. Both Councillors and Officers need to consider the severity of the conflict. In case of such conflict, provision may be made for managing the conflict eg by means of advice from an outside source.
66. In giving evidence, Officers must not be asked to give political views.

67. In exercising the right to call-in a decision of the Cabinet, Overview and Scrutiny Committee members must seek senior Officer advice if they consider the decision is contrary to the Council's approved plans, policies or frameworks, or is unlawful.

### **Members of Other Committees or Sub-Committees and Officers**

68. The appropriate senior Officers will offer to arrange regular informal meetings with chairs, vice-chairs, and spokesperson of committees and sub-committees.
69. Senior Officers (including the Monitoring Officer and the designated Finance Officer) have the right to present reports and give advice to committees and sub-committees.
70. Members of a committee or sub-committee shall take decisions within the remit of that committee or sub-committee, and will not otherwise instruct Officers to act.
71. At some committee or sub-committee meetings, a resolution may be passed which authorises the Managing Director or their nominee to take action between meetings in consultation with the chair. In these circumstances, it is the Officer, not the Councillor, who takes the action and is responsible for it. A Councillor has no legal power to take decisions on behalf of a committee or sub-committee, neither should he/she apply inappropriate pressure on the Officer. It may be that in such circumstances it would be appropriate to take the matter back to committee for decision, though this will not always be possible due to urgency.

### **Party Groups and Officers**

72. Senior Officers may properly be asked to contribute to deliberations of matters concerning Council business by party groups.
73. Officers have the right to refuse such requests, and will normally not attend a meeting of a party group where some of those attending are not Councillors or co-opted members of the Council.
74. Officer support will not extend beyond providing factual information or professional advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business, and therefore should not be expected to be present at meetings or parts of meetings when such matters are to be discussed.
75. Party group meetings are not empowered to make decisions on behalf of the Council, and conclusions reached at such meetings do not rank as formal decisions. The presence of an Officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so.
76. Where Officers provide factual information and advice to a party group in relation to a matter of Council business, this is not a substitute for providing all the necessary information and advice when the matter in question is formally considered by the relevant part of the Council.
77. It must not be assumed that an Officer is supportive of a particular policy or view considered at a party group meeting simply because he/she has attended or provided information to the meeting.
78. Officers will respect the confidentiality of any party group discussions at which they are present and, unless requested to do so by that party group, will not relay the content of such discussions to another party group or to any other Councillor or co-opted member. This shall not prevent an Officer providing feedback to other senior Officers on a need-to-know basis.
79. In their dealings with party groups, Officers must treat each group in a fair and even-handed manner.
80. Councillors and co-opted members must not do anything which comprises or is likely to compromise Officers' impartiality.

81. The duration of an Officer's attendance at party group meetings will be at the discretion of the group, but an Officer may leave at any time if he/she feels it is no longer appropriate to be there.
82. An Officer accepting an invitation to the meeting of one party group shall not decline an invitation to advise another group about the same matter. He/she must give substantially the same advice to each.
83. An Officer should be given the opportunity of verifying comments and advice attributed to him/her in any written record of a party group meeting.
84. No Councillor or co-opted member will refer in public or at meetings of the Council to advice or information given by Officers to a party group meeting.
85. At party group meetings where some of those present are not Councillors or co-opted members of the Council, care must be taken by Councillors and Officers not to divulge confidential information relating to Council business. Persons who are not Councillors or co-opted members are not bound by the Councillors and co-opted members' Code of Conduct. They do not have the same rights to Council information as Councillors and co-opted members.
86. Any particular cases of difficulty or uncertainty in relation to this part of the protocol should be raised with the Managing Director and the relevant party group leader.

### **Local Councillors and Officers**

87. To enable them to carry out their ward role effectively, Councillors need to be fully informed about matters affecting their ward. Senior Officers must ensure that all relevant staff are aware of the requirement to keep local Councillors informed, thus allowing Councillors to contribute to the decision making process and develop their representative role.
88. This requirement is particularly important:
  - a. during the formative stages of policy development, where practicable
  - b. in relation to significant or sensitive operational matters
  - c. whenever any form of public consultation exercise is undertaken, and
  - d. during an overview and scrutiny investigation.
89. Issues may affect a single ward. Where they have a wider impact, a number of local Councillors will need to be kept informed.
90. Whenever a public meeting is organised by the Council to consider a local issue, all the Councillors representing the wards affected should be invited to attend the meeting as a matter of course.
91. If a local Councillor intends to arrange a public meeting on a matter concerning some aspect of the Council's work, he/she should inform the relevant senior Officer. Provided the meeting has not been arranged on a party political basis:
  - an Officer may attend but is not obliged to do so, and
  - the meeting may be held in Council-owned premises, subject to availability.
92. No such meetings should be arranged or held in the immediate run-up to Council elections i.e. from the time when notice of election is published.
93. Whilst support for Councillors' ward work is legitimate, an Officer should never, in his/her capacity as Officer, be invited to or to accompany a Councillor to a ward surgery or a ward or constituency political party meeting.
94. It is acknowledged that some Council staff (e.g. those providing dedicated support to Cabinet councillors) may receive and handle messages for Councillors on topics

unrelated to the Council. Whilst these will often concern diary management, care should be taken to avoid Council resources being used for private or party political purposes.

95. In seeking to deal with constituents' queries or concerns, Councillors should not seek to jump the queue, but should respect the Council's procedures. Officers have many pressures on their time. They may not be able to carry out the work required by Councillors in the requested timescale, and may need to seek instructions from their managers.

### **Councillors' and Co-opted Members Access to Documents and Information**

96. This part of the protocol should be read in conjunction with the Access to Information Rules in the Council's constitution. Councillors and co-opted members of the Council have the same rights as any other member of the public to information under the Freedom of Information Act 2000 and are subject to the same requirements and exemptions.
97. As Councillors, they may request senior Officers to provide them with such information, explanation and advice as they may reasonably need to assist them to discharge their roles as Councillors. This is generally known as the "need to know" principle. This may range from general information about some aspect of the Council's services to specific information on behalf of a constituent. It is not, however, a licence to a "roving commission to go and examine the books or documents of a corporation". Where information is requested on behalf of a third party, it will only be provided if:
- it is in the public domain, and
  - it is not barred by the Data Protection Act from being given.
98. Every member of the Cabinet, an Overview and Scrutiny Committee, and/or any other committee or sub-committee has a right to inspect documents about the business of that Overview and Scrutiny Committee, other committee or sub-committee or the Cabinet.
99. A Councillor who is not a member of the Overview and Scrutiny Committee, other committee or sub-committee, or the Cabinet may have access to any document about the business of those committees, except certain categories of exempt or Part II information.
100. Disputes as to the validity of a Councillor's request to see a document on a need to know basis will be determined by the Monitoring Officer/ Chief Legal Officer. Officers should seek his/her advice if in any doubt about the reasonableness of a Councillor's request.
101. A Councillor should obtain advice from the Monitoring Officer/Chief Legal Officer in circumstances where he/she wishes to have access to documents or information:
- where to do so is likely to be in breach of the Data Protection Act, or
  - where the subject matter is one in which he/she has a personal or prejudicial interest as defined in the Councillors and co-opted members' code of conduct.
102. Information given to a Councillor or co-opted member must only be used for the purpose for which it was requested.
103. It is an accepted convention that a member of one party group will not have a need to know and therefore a right to inspect a document which forms part of the internal workings of another party group.
104. Councillors, co-opted members and Officers must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so. This does not, however, in general prevent an Officer disclosing such information to his or her line manager.



105. When requested to do so, Officers will keep confidential from other Councillors and co-opted members, advice requested by a Councillors and co-opted member.
106. Councillors and co-opted members and Officers must not prevent another person from gaining access to information to which that person is entitled by law. **Media Relations**
107. All officer communications with the press must be made through the Communications Manager or his/her nominee.
108. Press releases or statements made by Officers must promote or give information on Council policy or services. They will be factual and consistent with Council policy. They cannot be used to promote a party group.
109. Officers will keep relevant councillors and the Communications Manager or his / her nominee informed of media interest in the Council's activities, especially regarding strategic or contentious matters.
110. If a Councillor or co-opted member is contacted by, or contacts, the media on an issue, he/she should:
  - indicate in what capacity he/she is speaking (e.g. as Ward Councillor, in a personal capacity, as an Cabinet Councillor, on behalf of the Council, or on behalf of a party group)
  - always, when he/she would like a press release to be issued, seek assistance from the Council's Marketing and Major Projects Manager or his/her nominee and/or relevant senior Officer, except in relation to a statement which is party political in nature.
  - consider the likely consequences for the Council of his/her statement (e.g. commitment to a particular course of action, image, allegations of jumping to conclusions)
  - never give a commitment in relation to matters which may be subject to claims from third parties and/or are likely to be an insurance matter
  - consider whether to consult other relevant Councillors and co-opted members.

## **Correspondence**

111. Correspondence (letters, emails etc) between an individual Councillor or co-opted member and an Officer should not be copied to another Councillor or co-opted member unless the author expressly intends and states that this is the case or consents. Where correspondence is copied, this should always be made explicit, i.e. there should be no 'blind' copies. Correspondence between an Officer and a Councillor or co-opted member should not be copied to a member of the public except with the express consent of the author or in circumstances where the author understood that it was intended to provide copies to others.
112. Official letters written on behalf of the Council should normally be in the name of the relevant Officer. It may be appropriate in some circumstances (e.g. representations to a Government Minister) for letters to appear in the name of a Cabinet councillor or the chair of a Council committee.
113. The Mayor may initiate correspondence in his/her own name.
114. Letters which create legally enforceable obligations or which give instructions on behalf of the Council should never be sent in the name of a Councillor or co-opted member.
115. When writing in an individual capacity as a Ward Councillor, a Councillor must make clear that fact.
116. Councillors and co-opted Members and Officers are asked to give due consideration to the tone of their correspondence.

## **Access to Premises**

117. Officers have the right to enter Council land and premises to carry out their work. Some Officers have the legal power to enter property in the ownership of others.
118. Councillor or co-opted members have a reasonable right of access to Council land and premises to fulfil their duties.
119. When making visits as individual Councillors and co-opted members, Councillor and co-opted members should:
  - whenever practicable, notify and make advance arrangements with the appropriate manager or Officer in charge
  - comply with health and safety, security and other workplace rules
  - not interfere with the services or activities being provided at the time of the visit.

## **Use of Council Resources**

120. The Council provides all Councillors and co-opted members with services such as printing and photocopying, and goods such as stationery and computer equipment, to assist them in discharging their roles as Councillor and co-opted members of the Council. These goods and services are paid for from the public purse. They should not be used for private purposes or in connection with party political or campaigning activities.
121. Councillor and co-opted members should ensure they understand and comply with the Council's own rules about the use of such resources, particularly:
  - where facilities are provided in Councillors and co-opted members' homes at the Council's expense
  - in relation to any locally-agreed arrangements e.g. payment for private photocopying; and
  - regarding ICT security.
122. Councillor and co-opted members should not put pressure on staff to provide resources or support which Officers are not permitted to give. Examples are:
  - business which is solely to do with a political party
  - work in connection with a ward or constituency party group meeting
  - electioneering
  - work associated with an event attended by a Councillor or co-opted member in a capacity other than as a Councillor or co-opted member of the Council
  - private personal correspondence
  - work in connection with another body or organisation where a Councillor or co-opted member's involvement is other than as a Councillor or co-opted member of the Council; and
  - support to a Councillor or co-opted member in his/her capacity as a Councillor of another local authority.

## **Interpretation, Complaints and Allegations of Breaches**

123. This part of the protocol should be read in conjunction with any "whistle-blowing" policy the Council may have.

124. Councillors or co-opted members or Officers with questions about the implementation or interpretation of any part of this protocol should seek the guidance of the Monitoring Officer.
125. A Councillor or co-opted member who is unhappy about the actions taken by, or conduct of, an officer should:
- avoid personal attacks on, or abuse of, the Officer at all times
  - ensure that any criticism is well founded and constructive
  - never make a criticism in public, and
  - take up the concern with the Officer privately.
126. It is not appropriate for a Councillor or co-opted member to continue to pursue a matter with the Officer concerned, to avoid any cause for complaint of harassment or bullying of the Officer concerned (see Council's Harassment Policy). It is inappropriate for a Councillor or co-opted member to impugn an Officer's impartiality or integrity by addressing this repeatedly to the officer concerned, without raising it with a more senior Officer.
127. If direct discussion with the Officer is inappropriate (e.g. because of the seriousness of the concern or because the officer is a junior member of staff) or fails to resolve the matter, the Councillor or co-opted member should raise the issue with the Officer's manager or the relevant senior Officer.
128. A serious breach of this protocol by an Officer may lead to an investigation under the Council's disciplinary procedure.
129. Councillors and co-opted members should consult with the relevant senior Officer or manager to seek an explanation before raising any question of failure by a particular part of the Council or group of officers in public. Officers do not have the same freedom to respond in a public meeting as Councillor or co-opted members.
130. An Officer who believes a Councillor or co-opted member may have acted other than in accordance with this protocol should raise his/her concern with the Monitoring Officer. He/she will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than informally referring the matter to the leader of the relevant party group. More serious complaints may result in reference to the Council's Standards Committee with responsibility for Councillor and co-opted member standards.
131. Whilst there are formal procedures in place for disputes between Officers and Councillor and co-opted members it is hoped that attempts would be made to resolve all disputes amicably on an informal basis.