

PART 5

CODES AND GUIDANCE

Contents

	PAGE
5.1 Councillor Code of Conduct	2-11
5.2 Use of Council Resources by Members	12-13
5.3 Confidential Reporting Code	14-18
5.4 Member/Officer Relations Code	19-26
5.5 Overview and Scrutiny Committee Chairman's Guidance	27-28
5.6 Committee Chairman's Guidance	29
5.7 Code on Gifts and Hospitality	30
5.8 Councillor Call for Action	31-34
5.9 Petitions Scheme	35-40
5.10 Audit and Governance Code	41-45
5.11 Employee Code of Conduct	46-55
5.12 The Planning Code	56-67

Section 1 – The Code of Conduct for Members and Co-Opted Members of the Council

Part 1

In the event that this code is adopted by a parish or town council within the County of Herefordshire, any reference in this code to “Monitoring Officer” shall be construed as referring to the Monitoring Officer of Herefordshire Council. Reference in this code to any other officer shall be construed as relating to the officer holding equivalent responsibilities in the parish or town council.

Prepared pursuant to Chapter 7 of the Localism Act 2011

I. Purpose of the Code

1. The purpose of this Code of Conduct is to assist Members (including co-opted Members) in the discharge of their obligations to the Council (referred to as “the Authority”), their local communities and the public at large by:
 - (a) setting out the standards of conduct that are expected of Members and co-opted Members of the Authority when they are acting in that capacity, and in so doing
 - (b) providing the openness and accountability necessary to reinforce public confidence in the way in which Members perform those activities.

II. Scope of the Code

2. The Code applies to Members in all aspects of their activities as a Member, including when acting on Authority business, Ward business or when otherwise purporting to act as a Member. It does not seek to regulate what Members do in their purely private and personal lives.
3. The obligations set out in this Code are complementary to those which apply to all Members by virtue of the procedural and other rules of the Authority and the rulings of the Chairman of the Council.
4. The obligations set out in this Code are also complementary to, and include, those obligations which apply to Members falling within the scope of related Codes and Protocols of their Authority, for example:
 - (a) use of Council resources by Members;
 - (b) Member/officer relations code;
 - (c) code on gifts and; and
 - (d) the planning Code

III. Public Duties of Members

5. Members have a duty to uphold the law, including the general law against discrimination and the requirements of the Localism Act, and to act on all occasions in accordance with the public trust placed in them.

6. Members have an overriding duty to act in the interests of their Authority's area as a whole, but also have a special duty to represent the views of the residents and communities of their ward.

IV. General Principles of Conduct

7. In carrying out their duties in exercising the functions of the Authority or otherwise acting as a member or co-opted member of the Authority, members will be expected to observe the following general principles of conduct identified by the Committee on Standards in Public Life in its First Report as applying to holders of public office. These principles will be taken into consideration when any allegation is received of breaches of the provisions of the Code.

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material 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 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.

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.

V. Expectations of Conduct

8. Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

9. Members shall at all times ensure that their use of expenses, allowances, facilities and services provided from the public purse is strictly in accordance with the rules laid down on these matters, and that they observe any limits placed by the Authority on the use of such expenses, allowances, facilities and services.
10. Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Authority and never undertake any action which would bring the Authority, or its Members or officers generally, into disrepute.

VI. Rules of Conduct

11. Members shall in particular observe the following rules when acting as a Member or co-opted Member of the Authority and Members are informed that you:
- (a) **Do** treat others with respect and courtesy.
 - (b) **Do not** do anything which may cause the Authority to breach any of its equality duties (in particular as set out in the Equality Act 2010);
 - (c) **Do not** bully any person;
 - (d) **Do not** intimidate or attempt to intimidate any person who is or is likely to be:
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her Authority's code of conduct; or
 - (e) **Do not** anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Authority.
 - (f) **Do not** use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (g) **Do** be aware of the requirements of the Bribery Act 2010 and that offences under the Act include the situation where a Member requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, any function of a public nature, any activity connected with the Authority or any activity to be performed by or on behalf of the Authority or others should be performed improperly.
 - (h) **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—
 - reasonable and in the public interest; and
 - made in good faith and in compliance with the reasonable requirements of the Authority.
 - (i) **Do not** prevent another person from gaining access to information to which that person is entitled by law.
 - (j) **Do not** conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
12. Members shall observe the following rules when using the resources of the Authority, or authorising the use of those resources by others, and Members are informed that you:
- (a) **Do** act in accordance with the Authority's reasonable requirements including the requirements of the Authority's ITC policy and any other policies listed at in the Authority's Constitution, Standing Orders, Terms of Reference, Codes and Guidance, 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.
 - (d) **Do not** improperly use knowledge gained solely as a result of your role as a member for the advancement of your own interests.
13. Members shall observe the following rules when making decisions on behalf of or as part of the Authority, and Members are informed that you:
- (a) **Do** have regard to any relevant advice provided to you by the Council's chief financial officer and Monitoring Officer where such advice is offered pursuant to his or her statutory duties.
 - (b) **Do** give reasons for the decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the authority.

VII. Registration and Declaration of Interests

14. Members shall fulfil conscientiously the requirements of the Authority in respect of the registration of interests in the Register of Members' Interests and, where it is required or appropriate to do so, shall always draw attention to any relevant interest in any proceeding of the Authority or its Committees, or in any communications with the Authority, its Members or officers as required in Part 2.

VIII. Duties in respect of the Authority's Standards Panel, Audit and Governance Committee and the Monitoring Officer

15. The application and guidance on the application of this Code shall be a matter for the Authority and for the Authority's Standards Panel, Audit and Governance

Committee and, as appropriate, the Monitoring Officer, acting in accordance with their terms of reference.

16. Members shall co-operate, at all stages, with any investigation into their conduct by or under the authority of those persons and shall not seek to intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness or involved in the administration of any investigation or proceedings in relation to an allegation that a member has failed to comply with his or her authority's code of conduct.
17. No Member shall lobby a member of the Authority's Standards Panel or Audit and Governance Committee in a manner calculated or intended to influence their consideration of a complaint of a breach of this Code otherwise than in accordance with the arrangements laid down by the Authority.

Part 2

Registration, Disclosure and Duties on Interests held by Members and Co-Opted Members of the Council

I. Registration of Interests

1. **Do** fulfil the requirements of the law and the Authority in registering your interests in the Register of Members' Interests. These are explained on the following pages.
2. **Do** draw attention to any relevant interest, , where it is required or appropriate to do so, in any proceeding of the Authority or its Committees with which you are involved or in any communications with any colleague, officer or outside body in your role as a member
3. **Do** approach the Authority's Monitoring Officer if you feel that your interest should be treated as sensitive because it could lead to you, or a person connected with you, being subject to violence or intimidation

II. Disclosable Pecuniary Interests

4. The following table indicates those interests which members should declare as "disclosable Pecuniary Interests", as outlined in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (Statutory Instrument 2012 Number 1464):

Interest	Description
Employment, office, trade, profession or vocation	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 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(1).
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.

Interest	Description
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 M'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) that body (to M'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 share 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.

[For this purpose –

“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” excludes 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 a member of a relevant authority;

“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) – “A member or co-opted member of a relevant authority must, before the end of 28 days beginning with the day on which the person becomes a member or co-opted member of the authority, notify the authority’s monitoring officer of any disclosable pecuniary interests which the person has at the time when the notification is given.”;*
- *or 31(7) – “If the interest is not entered in the authority’s register and is not the subject of a pending notification, the member must notify the authority’s monitoring officer of the interest before the end of 28 days beginning with the*

date when the member becomes aware that the condition in subsection (6)(b) (which states “the member has a disclosable pecuniary interest in any matter to be dealt with, or being dealt with, by the member in the course of discharging that function”) is met in relation to the matter”,

as the case may be, of the Act;

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

- M’s spouse or civil partner,*
- a person with whom M is living as husband and wife, or*
- a person with whom M is living as if they were civil partners,*
- and M is aware that that other person has the interest;*

“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.]

5. In relation to Disclosable Pecuniary Interests, do ensure that you:

- (a) comply with the statutory requirements to register, disclose and withdraw from participating in respect of any matter in which you have a disclosable pecuniary interest.
- (b) ensure that your register of interests is kept up to date and notify the Monitoring Officer in writing within 28 days of becoming aware of any change in respect of your disclosable pecuniary interests.
- (c) make verbal declaration of the existence and nature of any disclosable pecuniary interest at any meeting at which you are present at which an item of business which affects or relates to the subject matter of that interest is under consideration, at or before the consideration of the item of business or as soon as the interest becomes apparent.
- (d) “Meeting” means any meeting organised by or on behalf of the Authority, including:
 - (i) any meeting of the Council, or a Committee or Sub-Committee of Council
 - (ii) any meeting of the Cabinet and any Committee of the Cabinet
 - (iii) in taking a decision as a Ward Councillor or as a Member of the Cabinet
 - (iv) at any briefing by Officers; and
 - (v) at any site visit to do with business of the Authority.

6. Do ensure, where you

are present at a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority; and

are or become aware that you have a disclosable pecuniary interest in any matter to

be considered, or being considered, at the meeting,

that you

- (a) **do not** participate, or participate further, in any discussion of the matter at the meeting; and
- (b) **do not** participate in any vote, or further vote, taken on the matter at the meeting

7. Do ensure, where you

are to discharge a function of the authority acting alone (this is applicable to Herefordshire Council Members only), and

are or become aware that you have a disclosable pecuniary interest in any matter to be dealt with, or being dealt with, in the course of discharging that function

that you

- (a) **do not** take any steps, or any further steps, in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by the member).

8. **Do** make a written request made to the proper officer of the authority if you consider it appropriate that the Authority grant a dispensation relieving you from either or both of the restrictions in paragraph 6.

9. **Do** be aware that, in respect of disclosable pecuniary interests, failing to act as required by the Localism Act (as outlined here) is a criminal offence.

III. Other Interests

10. In addition to the requirements set out above if you attend a meeting at which any item of business is to be considered and you are aware that you have a “non-disclosable pecuniary interest” or a “non-pecuniary interest” in that item, you must make verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent.

11. You have a “non-disclosable pecuniary interest or non-pecuniary interest” in an item of business of your Authority where:

- (a) A decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or a person with whom you have a close association to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the Ward or electoral area for which you have been elected or otherwise of the Authority’s administrative area, or
- (b) It relates to or is likely to affect any of the interests listed in this Code, but in respect of a member of your family (other than a “relevant person”) or a person with whom you have a close association and that interest is not a disclosable pecuniary interest

12. Where a matter arises at a meeting which relates to a financial interest of a friend, relative or close associate (other than an interest listed in Paragraph 4), you must disclose the nature of the interest and may not vote on the matter. You may speak on the matter only if members of the public are also allowed to speak at the meeting. If it is a “sensitive interest”, you shall declare the interest, but not the nature of the interest.

IV. Gifts and Hospitality

13. As a Member you must, within 28 days of being offered or receiving any gift or hospitality, notify the Monitoring Officer in writing.
14. The Monitoring Officer will place your notification on a public register of gifts and hospitality.
15. This duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the Authority for this purpose.

V. General

16. **Do** act in accordance with the Authority’s standing orders (Procedure Rules) where you
- (a) are present at a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority; and
 - (b) are or become aware that you have a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting,
17. **Do** base your conduct when acting as a Member on a consideration of the public interest, avoiding conflict between your personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

Section 2 - Use of Council Resources by Members

5.2.1 Introduction

- 5.2.1.1 The Herefordshire Council Councillor Code of Conduct provides that, when using Council resources, you must ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate the functions of the Council or of any office to which you have been elected or appointed.
- 5.2.1.2 A breach of this Protocol is a breach of the Code and carries penalties up to and including disqualification from office.
- 5.2.1.3 If you are in any doubt about the application of this Protocol, you should seek advice from the Monitoring Officer.

5.2.2 Council Resources

- 5.2.2.1 These include: the use of Council premises; ICT equipment such as computers and software; telephone and fax; photocopiers; stationery; postage; Council transport; secretarial and clerical support; and allowances and expenses.

5.2.3 Permitted Use

- 5.2.3.1 Except as set out in paragraph 5.2.5 of this Protocol, you may use Council resources only on Council business. If you represent the Council on outside bodies you may use Council resources to assist you in this role, and this Protocol applies to such use.
- 5.2.3.2 You may use Council resources for political purposes where that use will facilitate the functions of the Council or any office you hold at the Council. This will include e-mailing colleagues in your and other Political Groups registered with the Council, setting up Political Group meetings and conducting discussions on policy with political colleagues locally, regionally or nationally.

5.2.4 Prohibited Use

- 5.2.4.1 You may not use Council resources:
- a for the publication of material which, in whole or in part, appears designed to affect public support for a political party. This includes campaigning leaflets and correspondence.
 - b for mass mailings, even if these are related to Council business.
 - c during an election period to promote yourself or others as candidates to the electorate.

5.2.5 ICT Equipment

- 5.2.5.1 You may make modest personal use of Council-installed computers but you must not permit others (for example, family members) to do so. Personal use does not include use for any business, trade or profession in which you work.
- 5.2.5.2 The following content should not be created or accessed on Council installed

computers at any time:

- a pornography;
- b material that gratuitously displays images of violence, injury or death;
- c material that is likely to lead to the harassment of others;
- d material that promotes intolerance and discrimination on grounds of race, sex, disability, sexual orientation, religion, belief or age;
- e material relating to criminal activity, for example buying and selling illegal drugs;
- f material relating to any other unlawful activity e.g. breach of copyright;
- g material that may generate security risks and encourage computer misuse.

5.2.6 Use of the herefordshire.gov.uk address

- 5.2.6.1 The Council is statutorily prohibited from publishing material designed to affect public support for a political party. You must therefore not use your Council e-mail address (name@herefordshire.gov.uk) for this purpose nor, on a matter of controversy, to promote a point of view which is associated with a political party.
- 5.2.6.2 E-mails from your official address will be seen to be associated with the Council and may get preferential treatment, or may be thought by the public to be seeking such treatment. You should not therefore use the address for placing orders and similar activity as a private individual.
- 5.2.6.3 You will be provided with a personal e-mail address to allow modest personal use of ICT equipment as permitted in paragraph 5.2.5.

Section 3 - Confidential Reporting Code (Whistle Blowing)

5.3.1 Introduction

- 5.3.1.1 Employees are often the first to realise that there may be something seriously wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.
- 5.3.1.2 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we expect employees and others that we deal with who have serious concerns about any aspect of the Council's work to come forward and voice those concerns. It is recognised that many cases will have to proceed on a confidential basis.
- 5.3.1.3 This policy document makes it clear that staff can do so without fear of victimisation, subsequent discrimination or advantage. *This Confidential Reporting Policy is intended to encourage and enable employees to raise serious concerns within the Council rather than overlooking a problem or 'blowing the whistle' outside.*
- 5.3.1.4 The Code applies to all employees and those contractors working for the Council on Council premises, for example, agency staff, builders, and drivers. It also covers suppliers and those providing services under a contract with the Council in their own premises.
- 5.3.1.5 These procedures are in addition to the Council's complaints procedures and other statutory reporting procedures applying to some departments. Employees are responsible for making service users aware of the existence of these procedures.
- 5.3.1.6 This policy has been discussed with the relevant trade unions and professional organisations and has their support.

5.3.2 Aims and Scope of this Policy

- 5.3.2.1 This policy aims to:
- a encourage employees to feel confident in raising serious concerns and to question and act upon concerns about practice.
 - b provide avenues for employees to raise those concerns and receive feedback on any action taken.
 - c ensure that employees receive a response to their concerns and that they are aware of how to pursue them if they are not satisfied.
 - d reassure employees that they will be protected from possible reprisals or victimisation if employees have a reasonable belief that they have made any disclosure in good faith.

5.3.2.2 There are existing procedures in place to enable employees to lodge a grievance relating to their own employment. This policy is intended to cover major concerns that fall outside the scope of other procedures. These include:

- a conduct which is an offence or a breach of law
- b disclosures related to miscarriages of justice
- c health and safety risks, including risks to the public as well as other employees
- d damages to the environment
- e the unauthorised use of public funds
- f possible fraud and corruption
- g sexual or physical abuse of clients, or
- h other unethical conduct.

5.3.2.3 Any serious concerns that employees have about any aspect of service provision or the conduct of Officers or Members of the Council or others acting on behalf of the Council can be reported under this Policy.

This may be about something that:

- a makes Officers feel uncomfortable in terms of known standards, their experience or the standards they believe the Council subscribe to; or
- b is against the Council's Constitution and policies; or
- c falls below established standards of practice; or
- d amounts to improper conduct.

5.3.3 Safeguards

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

5.3.3.2 The Council will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect staff when they raise a concern in good faith. The Public Interest Disclosure Act 1998 provides additional protection for staff who use this Policy.

5.3.3.3 All concerns will be treated in confidence and every effort will be made not to reveal an employee's identity if they so wish. At the appropriate time, however, they may need to come forward as a witness.

5.3.3.4 This policy encourages employees to put their name to an allegation whenever possible but concerns expressed anonymously are much less powerful and will be considered at the discretion of the Council.

5.3.3.4 If employees make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against them. If, however, they make an

allegation maliciously or for personal gain, disciplinary action may be taken against them.

5.3.4 How to Raise a Concern

5.3.4.1 As a first step, employees should normally raise concerns with their immediate manager or that manager's manager. This depends, however, on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. For example, if they believe that your management is involved, they should approach:

- a The Chief Executive.
- b The Monitoring Officer.
- c The Director of Resources.

5.3.4.2 Concerns may be raised orally or in writing.

5.3.4.3 The earlier employees express the concern the easier it is to take action.

5.3.4.4 Although employees are not expected to prove beyond doubt the truth of an allegation, they will need to demonstrate to the person contacted that there are reasonable grounds for concern.

5.3.4.5 Advice and guidance on how matters of concern may be pursued can be obtained from the Monitoring Officer for the Council and has a legal responsibility to ensure that the Council acts properly at all times.

5.3.4.6 Employees may wish to consider discussing the concerns with a colleague first and they may find it easier to raise the matter if there are two (or more) staff who have had the same experience or concerns.

5.3.4.7 Employees may invite their trade union or a friend to be present during any meetings or interviews in connection with the concerns raised.

5.3.5 How the Council Will Respond

5.3.5.1 The Council will respond to these concerns but do not forget that testing concerns is not the same as either accepting or rejecting them.

5.3.5.2 Where appropriate, the matters raised may:

- a be investigated by management, internal audit, or through the disciplinary process;
- b be referred to the Police;
- c be referred to the external auditor;
- d form the subject of an independent inquiry.

5.3.5.3 In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle which the Council will have in mind is the public interest. Concerns or allegations which fall

within the scope of specific procedures (for example, child protection or discrimination issues) will normally be referred for consideration under those procedures.

- 5.3.5.4 Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required this will be taken before any investigation is conducted.
- 5.3.5.5 Within **ten** working days of a concern being raised, the responsible person contacted will write to the complainant:
- a acknowledging that the concern has been received,
 - b indicating how we propose to deal with the matter,
 - c giving an estimate of how long it will take to provide a final response,
 - d telling the complainant whether any initial enquiries have been made,
 - e supplying the complainant with information on staff support mechanisms, and
 - f telling the complainant whether further investigations will take place and, if not, why not.
- 5.3.5.6 The amount of contact between the officers considering the issues and the complainant will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the Council will need further information from the complainant.
- 5.3.5.7 Where any meeting is arranged off-site, if an employee so wishes, they can be accompanied by a union or professional association representative or a friend.
- 5.3.5.8 The Council will take steps to minimise any difficulties which employees may experience as a result of raising a concern. For instance, if they are required to give evidence in criminal or disciplinary proceedings the Council will arrange for them to receive advice about the procedure.
- 5.3.6 The Responsible Officer**
- 5.3.6.1 The Monitoring Officer has overall responsibility for the maintenance and operation of this policy. This officer maintains a record of concerns raised and the outcomes (but in a form which does not endanger confidentiality) and will report as necessary to the Council.
- 5.3.7 How The Matter Can Be Taken Further**
- 5.3.7.1 This policy is intended to provide employees with an avenue within the Council to raise concerns. The Council hopes employees will be satisfied with any action taken. If they are not, and if they feel it is right to take the matter outside the Council, the following are possible contact points:
- a The Ombudsman.
 - b The District Auditor.
 - c Their Trade Union.

- d Local Citizens Advice Bureau.
- e Relevant professional bodies or regulatory organisations.
- f A relevant voluntary organisation.
- g The Police.

5.3.7.2 If employees do take the matter outside the Council, they should ensure that they do not disclose confidential information. Check with the contact point above.

(Based on the LGMB Model/Procedure 1998 and the requirements of the Public Interest Disclosure Act 1998)

Section 4 - Member/Officer Relations Code

5.4.1 Introduction

- 5.4.1.1 The purpose of this protocol is to guide Members and employees of the Council in their relations with one another.
- 5.4.1.2 Given the variety and complexity of such relations this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise.
- 5.4.1.3 This protocol also seeks to reflect the principles of the codes of conduct for Members and employees. These codes aim to enhance and maintain the integrity of local government and therefore demand very high standards of personal conduct from both employees and Members.
- 5.4.1.4 The protocol reflects good practice. It aims to provide an open and honest working relationship between Members and employees which ensures the delivery of the Council's statutory and other proper functions in a transparent and accountable way.

5.4.2 Principles

- 5.4.2.1 The provisions of the Model Code of Conduct for Members apply to all Councillors. A breach of those provisions can be the basis of a complaint to the Monitoring Officer and the Standards Committee. The Employee Code of Conduct is part of the terms of conditions of their employment. Employees are accountable to their Line Manager; they will seek to assist any Member, but they must not be asked by Members to go beyond the bounds of the authority they have been given by their Line Manager.
- 5.4.2.2 Any dispute over any provision of this protocol in relation to employees should be referred in the first instance to the responsible Head of Service or the Chief Executive. If agreement cannot be reached the Chief Executive will seek to resolve the issue in conjunction with the Leader of the Council and/or the Leader of the appropriate Political Group. Issues relating to employee conduct will be dealt with under disciplinary procedures. Any unresolved dispute relating to a Member's conduct under this protocol will be determined by the Standards Committee.
- 5.4.2.3 This protocol should be read in conjunction with the the Planning Code and the Protocol on Hospitality and any other policies of the Council, for example the Whistleblowing Policy (Public Interest Disclosure) and the Harassment and Bullying Policy.

5.4.3 Councillor Code of Conduct

- 5.4.3.1 The Relevant Authorities (General Principles) Order 2001 specifies the principles governing the conduct of Members. These are set out in the schedule to this protocol. However, particular attention is drawn to principle 7 set out in the Preamble to the Councillor Code of Conduct (Part 5 section1).

5.4.3.2 The Councillor Code of Conduct at section 1 of this part specifies the obligations on Members.

5.4.4 Employee Code of Conduct

5.4.4.1 The Employee Code of Conduct is broadly in line with the Local Government Management's Board Code of Conduct for local government employees. Any variations reflect the conditions and circumstances of Herefordshire Council.

5.4.5 Standards

5.4.5.1 Employees are expected to give the highest possible standard of service to the public and where it is part of their duties to provide appropriate advice to other employees and Members with impartiality and courtesy.

5.4.6 Disclosure of Information

5.4.6.1 The law requires that certain types of information must be made available to Members, Auditors, Government Departments, service users and the public.

5.4.6.2 Under the Local Government Act 1972 the public have a right to see certain information. In most circumstances these rights are related to committee reports and background documents.

5.4.6.3 The Local Authorities Executive Arrangements (Access to Information) (England) Regulations 2000 provide additional rights of access to documents for Members of Overview and Scrutiny Committees.

5.4.7 Political Neutrality/Activities

5.4.7.1 Employees serve the Council as a whole. It follows that they must serve all Members, not just the Members of any controlling group, and must ensure that the individual rights of all Members are respected.

5.4.7.2 Some senior employees will be expected, within the terms of this Protocol, to advise political groups. These employees have a duty to advise minority groups as well as the majority group.

5.4.7.3 Some employees, normally those in more senior positions, are in politically restricted posts. They are prevented by law from taking part in certain political activities outside their work. Employees who are in this position are told of this in writing and of the rules about claiming exemption. Any employee who is in doubt about their position should contact their Head of Service.

5.4.8 Relationships

5.4.8.1 Some employees are required to give advice to Members as part of their job. Mutual respect between employees and Members is essential to good local government, but close personal familiarity between employees and individual Members can damage the relationship and prove embarrassing to other employees and should, therefore, be avoided.

5.4.9 Advice to Political Groups

- 5.4.9.1 Because Political Groups are a feature of modern local government and have a role in the successful running of the Council, officers may on occasion be asked to provide support and assistance to Political Groups.
- 5.4.9.2 This support can take many forms, ranging from a briefing meeting with a Group Leader or spokesperson, to a presentation to a full Political Group meeting. It is an important principle that such support is available to all Political Groups. Officers must not be involved in advising any Political Group of the Council or attend any meeting without the express consent of their Director or the Chief Executive.
- 5.4.9.3 Certain points must however be clearly understood by all those participating in this type of process, Members and officers alike. In particular:
- a officer support in these circumstances 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 expected to be present at meetings, or parts of meetings, when matters of party business are to be discussed;
 - b Political Group meetings form part of the preliminaries to Council decision making but 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;
 - c similarly, where officers provide information and advice to a Political 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 when the matter in question is considered; and
 - d Members often seek officers' assistance in drafting resolutions or amendments which they wish to move at a meeting. It is proper for an officer to advise on the wording of such a proposal to ensure it is accurate, practical and lawful but there can be no inference that the officer supports the substance or merits of the proposition.
- 5.4.9.4 Special care needs to be exercised whenever officers are involved in providing information and advice to a Political Group meeting which includes persons who are not members of the Council. Such persons will not be bound by the Code of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons officers may not be able to provide the same level of information and advice as they would to a members only meeting.
- 5.4.9.5 Officers must respect the confidentiality of any Political Group discussions at which they are present and should not relay the content of any such discussion to another Political Group. Although there is no reason why other such groups should not be aware that a Group has sought and received officer advice, or be inhibited from requesting officer support themselves, no political point should be made of that fact. Any difficulty or uncertainty should be raised with the Chief Executive who will discuss them with the relevant Group Leaders.
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- 5.4.10 Members' Access to Information, Council Documents and Employee Advice**
- 5.4.10.1 Members will need in the discharge of their duties to access information from employees. This will usually be most efficiently achieved through the Heads of Service or Directors who are able to provide an overview or direct the Member to the most appropriate employee. For individual cases Members may approach case officers, but junior staff are entitled to refer the Member to the responsible Service Manager or Head of Service.
- 5.4.10.2 Members who wish to obtain information from employees should request it as early as possible, recognising that employees may require reasonable time to collate or research the information. Members must state any deadline for the provision of this information. This also applies where a Member wishes to obtain information to supplement a report after the agenda for a meeting has been issued.
- 5.4.10.3 Employees will make every reasonable effort to provide Members with accurate factual information and professional advice in a timely manner, unless this would exceed the officer's authority or there are lawful reasons to prevent disclosure of the information.
- 5.4.10.4 Members have the same statutory right as any member of the public to inspect any Council document which contains material relating to any business which is to be transacted at a Council or Committee meeting or a meeting of Cabinet and any relevant background papers. This right applies irrespective of whether or not the Member is a Member of the committee concerned or acting as a substitute. This right does not, however, apply to documents relating to items containing information which is exempt from publication. Correspondence held by the Monitoring Officer in relation to his or her duties is similarly exempt unless released by him or her in the interest of furthering any enquiry.
- 5.4.10.5 The common law right of Members is much broader and based on the principle that any Member has a *prima facie* right to inspect Council documents so far as access to the documents is reasonably necessary to enable the Member properly to perform duties as a Member of the Council. This principle is commonly referred to as the 'need to know' principle and will be determined in the first instance by the particular Head of Service whose service holds the document in question. Any disputes may be referred to the Monitoring Officer whose decision shall be final. Written reasons of the Monitoring Officer's Decision will be provided on request.
- 5.4.10.6 A member who asks to inspect documents which contain personal information about third parties will normally be expected to justify that request in specific terms.
- 5.4.10.7 A Member of one Political Group will not have a 'need to know' and does not have a right to inspect any document which forms part of the internal workings of another Political Group and is in the possession of the Council or of an individual employee.
- 5.4.10.8 A member of Overview and Scrutiny Committee is entitled to a copy of any document which:
- a is in the possession or under the control of the Cabinet; and

- b contains material relating to: -
 - i any business that has been transacted at a private meeting or a public meeting of a decision making body of the Council; or
 - ii any decision that has been made by an individual Member of that Cabinet in accordance with Cabinet arrangements.

5.4.10.9 No Member of a Committee is entitled to a copy of a document or part of a document which contains exempt information or confidential information unless that information is relevant to an action or decision that he or she is reviewing or scrutinising; or which is relevant to any review contained in any programme of work of such a committee or sub-committee.

5.4.10.10 More detailed advice regarding Members' rights to inspect Council documents may be obtained from the Monitoring Officer.

5.4.10.11 Any Council information is provided to a Member on the basis that it must only be used by the Member in connection with the proper performance of the Member's duties as a Member of the Council. This forms part of the Council's Data Protection requirements. This obligation of confidentiality is part of the Councillor Code of Conduct (Part 5 section 1).

5.4.11 Relationships between Officers and Cabinet Members, Chairman of Committees, and the Leader

5.4.11.1 It is important to the efficient discharge of the Council's functions that there should be a good working relationship between Members of the Cabinet, Officers, Heads of Service and Directors and between the Chairman of a committee and officers. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the employee's ability to deal impartially with other Members and other Political Groups.

5.4.11.2 Officers and Heads of Service frequently write reports having undertaken background research and professional and technical appraisals of proposals.

5.4.11.3 These reports are then presented by the Cabinet member with Portfolio, with the assistance of officers where necessary.

5.4.11.4 Members must accept that in some situations officers will be under a duty to submit an opinion or advice in a report on a particular matter. In those situations the officer will always be fully responsible for those elements of a report submitted in the Member's name.

5.4.11.5 The principles set out in paragraph 5.10.5.6 and 5.10.5.7 apply to such elements of the report.

5.4.11.6 Where an officer wishes to consult a Cabinet Member or Chairman as part of the preparation of a report to a decision-making body under the Council's constitution, the following principles will apply. The Cabinet Member or Chairman may ask the report author:

- a to include particular options;

- b to clarify the report by expanding, simplifying or re-phrasing any part of the report or including other particular information;
- c to check or correct any error or omission of any matter or fact including statements of summaries of policy or budget;
- d to check any estimate of costs or savings.

5.4.11.7 The Cabinet Member or Chairman may not ask officers:

- a to exclude any option contained in the draft report;
- b to exclude or alter the substance of any statement in the draft report of any officers' professional opinion;
- c to alter the substance of any recommendation that compromises the officer's integrity or would result in illegality;
- d to exclude any report, comments or representations arising from consultations, publicity or supply of information to the community;
- e certain statutory functions are undertaken by the Head of Paid Service, Monitoring Officer and Chief Finance Officer. Their reports on such matters are then their own full responsibility.

5.4.12 Ward Members

5.4.12.1 Ward members will be kept fully informed about significant issues which affect their Ward or bodies on which they represent the Council. Officers will be alert to advise members at the earliest possible stage of relevant development proposals. Over and above this general responsibility the Monitoring Officer will:

- a notify a Member that a report on any such local matter is being tabled or discussed, as soon as the decision is taken to place that item on the agenda of a Committee;
- b ensure that this report is sent to the Member as soon as it is published.

5.4.12.2 The Ward Member will be invited to any public meeting organised by the Council to consider an issue affecting your ward. The Ward Member will be notified of any consultative exercise proposed for their ward, or on an issue affecting their ward, at the outset of the exercise.

5.4.12.3 The Ward Member will, wherever practicable, also be notified of any visits by the Chairman or Vice-Chairman of the Council or Committee Chairmen or Cabinet Members to Council sites or establishments in their ward, except where these are purely courtesy visits.

5.4.12.4 The Ward Member will be notified of all decisions taken by the Cabinet or by Cabinet Members affecting their ward.

5.4.13 Scrutiny Arrangements

5.4.13.1 Cabinet arrangements raise particular issues for local authority employees because: -

- a The advice which officers have given to the Cabinet, its Members or to any group may be subject to scrutiny and examined by an Overview and Scrutiny Committee.
- b Officers may have written reports for presentation by a Cabinet Member with Portfolio or provided advice to the Cabinet. Where such a decision is subject to scrutiny by an Overview and Scrutiny Committee, or when a decision is called-in, an officer may provide information or advice to an Overview and Scrutiny Committee. Members must recognise that there is an inherent tension between these two roles. As circumstances change or more information comes to light, advice may reflect the difference.
- c Overview and Scrutiny Committees and their members will need active assistance from officers if they are to perform their role of scrutinising the Cabinet effectively. These factors will require understanding by Members of the role that officers have to perform.

5.4.14 Overview and Scrutiny

- 5.4.14.1 The scrutiny role of the Council is performed by Overview and Scrutiny Committees and the Audit and Governance Committee. Employees may need to attend an Overview and Scrutiny Committee to give evidence and assist it in its scrutiny.
- 5.4.14.2 Where an employee is required to attend before an Overview and Scrutiny Committee, to report to it or provide evidence for it, it is the employee's duty to do so, or to explain why he or she is unable or unwilling to do so. If after considering that explanation the Committee insists on the information being provided the employee must do so.
- 5.4.14.3 Where an Overview and Scrutiny Committee has resolved to undertake a review it is the duty of Senior Officers to co-operate fully with the review or to arrange for the Head of Service or Director to act in their place. This duty extends beyond merely answering the Committee's questions and involves a requirement to assist the Committee in addressing the right questions and seeking the information which may be required to help them in their work.
- 5.4.14.4 Officers below Service Manager level should not present such reports or provide assistance.

5.4.15 Publicity

- 5.4.15.1 The Council abides by the provisions of the Department of the Environment, Transport and the Regions Local Authority Publicity Code (April 2001).
- 5.4.15.2 Information on Council services will be produced in collaboration with the Communications Unit and will be impartial reflecting Council approved policy.
- 5.4.15.3 All news releases will be written and issued by the Communications Unit following consultation with the Head of Service and the Cabinet Member concerned.
- 5.4.15.4 Publicity will not be party political and will report on and reflect Council policy.
- 5.4.15.5 Media requests for political comments will be referred to the political group Leaders.

5.4.15.6 The Council will make public information available on the website as resources allow.

5.4.16 The Role of the Head of Paid Service (Chief Executive)

5.4.16.1 The Chief Executive has a specific statutory function in relation to employees, appointments, discipline, terms and conditions of employment and collective bargaining. Members must recognise and respect those responsibilities and duties.

Section 5 - Overview and Scrutiny Committee Chairman's Guidance

5.5.1 Summary of Role

- 5.5.1.1 To chair the relevant Overview and Scrutiny Committee and ensure and co-ordinate the effective conduct of business;
- 5.5.1.2 To ensure he/she is sufficiently and effectively briefed.
- 5.5.1.3 To ensure and co-ordinate effective scrutiny of the Council's policies, plans and activities and to lead in the preparation of Committees' work programme;
- 5.5.1.4 To undertake, in addition, all the relevant duties specified in the Functions Scheme. (See Part 3, Section 5)

5.5.2 Key Responsibilities

- 5.5.2.1 To lead on the scrutiny of policy and strategic issues and executive recommendations.
- 5.5.2.2 To lead on the decisions, responses or recommendations, post scrutiny, to the Council, the Cabinet or relevant officers;
- 5.5.2.3 To lead on the scrutiny of budget plans, policy or strategy;
- 5.5.2.4 To lead in the provision of advice to the Cabinet on major issues or policies before final recommendations are made (by the Cabinet) and to co-ordinate and regulate reports to the Cabinet by the Overview and Scrutiny Committee;
- 5.5.2.5 To co-ordinate the exercise of the call-in powers under Sections 21 of the Local Government Act 2000 and in accordance with the Scrutiny Procedure Rules in Part 4 of this Constitution;
- 5.5.2.6 To lead on the review of policy, strategy and budget decisions and any consequent proposals for changes or amendments to policies or practices to the Council or the Cabinet, as appropriate, in pursuit of the achievement of best value;
- 5.5.2.7 To lead on the scrutiny of external reports on performance;
- 5.5.2.8 To lead on identifying cross-cutting strategy issues and ensuring a corporate approach to scrutiny in such areas;
- 5.5.2.9 To ensure the effective and orderly operation of the relevant Overview and Scrutiny Committee;
- 5.5.2.10 To lead in ensuring that appropriate information, training and guidance is available to members of the relevant Overview and Scrutiny Committee
- 5.5.2.11 To meet regularly with relevant officers to ensure the receipt of appropriate "independent" advice to inform effective scrutiny and the functioning of the committee;

- 5.5.2.12 To ensure regular contact with non-executive councillors, community representatives and local stakeholders to inform effective scrutiny of policies, strategies, budgets and performance;
- 5.5.2.13 To contribute effectively to the Council's scrutiny process by ensuring the questioning of the relevant Cabinet Members on the development of policy and strategies and performance against such strategies and policies, whether at the committee, the Council or by other means.

Section 6 - Committee Chairman's Guidance

5.6.1 Summary of Role

- 5.6.1.1 To chair one of the Committees appointed by the Council (other than an Overview and Scrutiny Committee);
- 5.6.1.2 To ensure he/she is sufficiently and effectively briefed on the issues within the Committee's terms of reference;
- 5.6.1.3 To ensure and co-ordinate effective conduct of the Committee's business;
- 5.6.1.4 To undertake, in addition, all the duties specified in the Functions Scheme.

5.6.2 Key Responsibilities

- 5.6.2.1 To ensure the Committee operates effectively and has regard to the advice of the relevant officers in respect of the Committee's powers and remit;
- 5.6.2.2 To ensure that when fulfilling any of its quasi-judicial responsibilities the Committee follows approved procedures adhering to the rules of natural justice, the provisions of the European Convention on Human Rights and all other legal requirements having regard to the advice of the relevant officers;
- 5.6.2.3 To lead on recommendations to the Council, the Cabinet or relevant officers in respect of the Committee's business and operation;
- 5.6.2.4 To lead in ensuring that appropriate information, training and guidance is available to Members in respect of the Committee's responsibilities;
- 5.6.2.5 To ensure the effective and orderly operation of the Committee;
- 5.6.2.6 To meet regularly with relevant officers to ensure the receipt of appropriate advice to inform effective functioning of the Committee;
- 5.6.2.7 To liaise with Members of the Council not on the Committee about the Committee's operation and effectively represent the work of the Committee to the community and take account of the views of community representatives and other local stakeholders with regard to the Committee's operation.

Section 7 - Code on Gifts and Hospitality

- 5.7.1 This Code covers any gift, favour or hospitality that is offered or given to you in your capacity as a Member whether you accept it or not. It is not intended to cover the ordinary social relationships which people enjoy with friends, provided that the friend is not applying to the Council for anything, seeking to do business with the Council, or involved in a business relationship with the Council.
- 5.7.2 As a Member you must declare in writing to the Monitoring Officer within 28 days of being offered or receiving any gift or hospitality. Your declaration will be recorded in a register which will set out the date of declaration, the date on which you received the hospitality, your name, the nature of the gift or hospitality, and if a gift, what was done with it. The register will be countersigned by the Monitoring Officer.
- 5.7.3 The Councillor Code of Conduct at Section 1 of this Part, (part 2 (1) (a) of that Code) relates to offers (whether accepted or declined) of gifts over £25. Where an offer is made to a group of Members which in total is the equivalent of £25 or more in respect of each Member, a representative of the Members involved will declare that to the Monitoring Officer and it will be recorded in the Hospitality Register.
- 5.7.4 Members need to be aware that the receipt of a gift or other form of hospitality might be a prejudicial interest and the rules in relation to prejudicial interests in the Code of Conduct would apply.

Section 8 -The Councillor Call For Action (CCfA) – Guidance and Procedure

5.8.1 Introduction

- 5.8.1.1 The CCfA, in brief, allows any member of the Authority to refer a “Local Government” matter to a Scrutiny Committee and require them to consider the matter.
- 5.8.1.2 The purpose of CCfA is to help councillors resolve issues of local concern on behalf of their residents.
- 5.8.1.3 The CCfA is also an opportunity to look at the range of solutions open to Members to solve problems.
- 5.8.1.4 The best practice guidance produced on behalf of the Government states that CCfA will be a means of “last resort” in a broad sense with issues being referred to a Scrutiny Committee only after other avenues have been exhausted.
- 5.8.1.5 Other avenues available to Councillors to resolve matters to be addressed first include:
- a that relevant complaints procedures have been complied with
 - b that the local service manager has been approached
 - c that the relevant Cabinet Member has been approached
 - d that any relevant partnership bodies or local groups have been approached.
- 5.8.1.6 It is also important that the Councillor considers whether any of the following approaches would be more appropriate:
- a formal letters written on behalf of constituents
 - b public meetings
 - c petitions and deputations
 - d motions on the agenda at Full Council
 - e communication with local MPs
 - f communication with councillors in other authorities
 - g web or e-mail based campaigns.

5.8.2 Issues Statutorily Excluded from CCfA

- 5.8.2.1 The following matters are specifically excluded from CCfA:
- a any matter relating to a planning decision
 - b any matter relating to a licensing decision

- c any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment
- d any matter which is vexatious, discriminatory or not reasonable to included in the agenda for or to be discussed at, a meeting of the overview and scrutiny committee.

(Except where the function in question:-

- i has not been discharged at all;
- ii. is systematically not being discharged in a way that it should be;

Irrespective of whether the function is subject to the right of review or appeal in law).

5.8.3 What the CCfA Can Provide

- 5.8.3.1
 - a Recognition that an issue is significant enough for time, attention and resources to be spent in trying to resolve it;
 - b A public forum for discussion of the issues;
 - c An opportunity to discuss the issues in a neutral environment;
 - d An opportunity to discuss a problem with the explicit and sole aim of solving it;
 - e A high-profile process owned by the ward councillor.

5.8.4 Resolution of an Issue

- 5.8.4.1 The concept of resolution is arguably at the centre of CCfA – ensuring that CCfA actually helps councillors to resolve intractable issues. The purpose of CCfA is to provide resolution where other techniques might not be able to do so.
- 5.8.4.2 To assist in establishing what would represent resolution it will be expected that:
 - a The Councillor bringing the CCfA will be clear at the outset as to what the expected outcomes are.
 - b The Committee discussion will focus on these expected outcomes.
 - c The Committee will challenge the expected outcomes at the outset if it is felt that these outcomes are unreasonable, however, where this is the case there is a clear expectation that discussion will take place with the Councillor to modify and reach an accord on expectations with the Councillor having the final say.

5.8.5 Conventions

- 5.8.5.1 It will be a convention that where a matter has previously been the subject of a call in (within the last 6 months and there have been no material changes in circumstances as is currently the case with Notices of Motion) that the person lodging the CCfA will be asked to withdraw it. If they still wish to pursue the

matter a report will be made to the next meeting of the relevant Scrutiny Committee recommending rejection of the CCfA without further action.

- 5.8.5.2 It will be a convention (that where the relevant Councillor has clearly not complied with the expectation that other means to resolve matters will be addressed first (as outlined in section [5.10.1.5 – 5.10.1.6](#)) the person lodging the CCfA will be asked to withdraw it until they have explored those other means. If they still wish to pursue the matter a report will be made to the next scheduled meeting of the relevant Scrutiny Committee recommending rejection of the CCfA without further action until those steps have been explored.
- 5.8.5.3 It will be a convention that where a CCfA is lodged as an issue and has been concluded no further CCfA will be raised on an issue on substantially the same point.

Crime and Disorder Matters

- 5.8.5.4 Under the Police and Justice Act 2006 a broadly similar CCfA procedure can be followed in relation to “crime and disorder” functions. Such matters must be considered by a committee designated by the Council as its crime and disorder committee.

Procedure

- 5.8.5.5 The guidance states that some processes and procedures are necessary to ensure that CCfA is targeted and relevant and that it occupies a central role in improving services but that these should not be too prescriptive. The procedure for dealing with CCfAs is set out below:

1	If a Councillor wishes to initiate a CCfA they must complete the form provided by Democratic Services providing full details of the issue concerned, including an explanation of what the issue is, why it is being raised as a CCfA and the steps that have been taken to resolve the issue and submit it to Democratic Services.
2	Democratic Services will acknowledge receipt of the CCfA to the Member who submitted it within one working day.
3	If necessary, the Monitoring Officer will be asked to confirm within 3 days that the CCfA does not fall within any of the statutory exempt criteria (see 5.9.2 above,) and is not vexatious, discriminatory or not reasonable to include in the agenda for, or to be discussed at, a meeting of the relevant Overview and Scrutiny Committee.
4	If the submitted CCfA falls into one of the statutory exemption criteria then it will not progress beyond this point and Democratic Services will inform the Member of this outcome. In doing so guidance will be given to the Member on whether there any other ways in which they might pursue the matter.
5	If the matter has previously been the subject of a call in or similar CCfA (see Section 5.9.5.3 above) this will be brought to the attention of the submitting Member and the convention regarding this. Only in exceptional circumstances will such a matter be revisited.
6	If the CCfA is not covered by one of the statutory exemption criteria or one of

	<p>the conventions</p> <p>(i) Democratic Services will inform the Chairman of the relevant Overview and Scrutiny Committee, relevant Cabinet Member, Monitoring Officer, Chief Executive, Deputy Chief Executive relevant Director (and Head of Service as appropriate) and any relevant Partner agencies</p> <p>(ii) All those listed above will be asked to confirm within 5 working days that they agree that the CCfA form fully reflects the position and that there are not, for example, any initiatives in hand to resolve the subject in issue and asked if they have any other observations on the CCfA (including in particular the proposed outcomes and critical deadlines)</p> <p>(iii) Inform Communications Unit.</p>
7	<p>If the relevant Councillor lodging the CCfA has clearly not complied with the expectation that other means to resolve matters will be addressed first they will be asked to withdraw it. If they still wish to pursue the matter a report will be made to the next scheduled meeting of the relevant Overview and Scrutiny Committee explaining the position and recommending rejection of the CCfA without further action until those other steps have been explored.</p>
8	<p>Once the Chairman of the relevant Overview and Scrutiny Committee, following discussion with officers, is satisfied that there are grounds for the CCfA to proceed, the Chairman of the relevant Overview and Scrutiny Committee and officers will then meet the Councillor raising the CCfA. This will be within 15 working days of the submission of the CCfA.</p> <p>If it is considered that any of the desired outcomes are considered unreasonable negotiations may take place.</p> <p>At this meeting the Chairman of the relevant Overview and Scrutiny Committee and officers will consult and negotiate with the Member who submitted the CCfA on the required information and witnesses for the relevant Overview and Scrutiny Committee meeting and agree timescales, venue and publicity requirements.</p>
9	<p>The Committee will meet to consider the CCfA either as part of a scheduled meeting or at a special meeting as agreed by the Chairman. The expectation will be that the meeting will be held in public unless there are statutory grounds in accordance with the access to information rules in Part 4 section 2.</p>
10	<p>The Committee could determine no action be taken in response to the CCfA, make recommendations; or agree that the issue is complex and requires further investigation and review.</p>
11	<p>The Councillor who raised the CCfA, relevant Cabinet Members, officers and Partner organisations will formally be notified of the outcome of the Overview and Scrutiny Committee's consideration within 5 working days of the meeting and invited to respond as appropriate.</p>
12	<p>A response to any recommendations made by the Overview and Scrutiny Committee will be reported to the next scheduled meeting or within two months whichever is the shorter.</p>

Section 9 - Petitions Scheme

5.9.1 Introduction

5.9.1.1 The Council welcomes petitions and recognises that petitions are one way in which people can let us know their concerns.

5.9.1.2 All petitions sent or presented to the Council will receive an acknowledgement from the Council within 10 working days of receipt. This acknowledgement will set out what we plan to do with the petition. Paper petitions can be sent to:

Governance Services Manager
Herefordshire Council
Brockington
35 Hafod Road
Hereford
HR1 1SH

5.9.1.3 Petitions may also be created, signed and submitted on line from the Herefordshire Council website.

5.9.1.4 Petitions can also be presented to a meeting of the Council, dates and times can be found on the Herefordshire Council website. If you would like to present your petition to the Council, or would like your Councillor or someone else to present it on your behalf, please contact Governance Services on 01432 260201 at least 10 working days before the meeting and they will explain the process.

5.9.2 What are the guidelines for submitting a petition?

5.9.2.1 We treat as a petition any communication which is signed by or sent to us on behalf of at least 15 signatories. Petitions submitted to the council must include a clear and concise statement, in under 200 words, covering the subject of the petition. It should state:

- what action the petitioners wish the council to take
- the name, identifiable address and signature of any person supporting the petition.

5.9.3.2 Petitions should be accompanied by contact details, including an address, for the petition organiser. This is the person we will contact to explain how we will respond to the petition. Whilst we like to hear from people who live, work or study in Herefordshire, this is not a requirement and we would take equally seriously a petition from, for example, 15 visitors to the area on the subject of facilities at one of our visitor attractions.

5.9.3.3 Other procedures apply if the petition:

- a relates to a planning or licensing application,
- b is a statutory petition (for example requesting a referendum on having an elected mayor),
- c relates to a matter where there is already an existing right of appeal, such as council tax banding and non-domestic rates.

- 5.9.3.4 Your ePetition may be rejected if the Governance Services Manager considers it:
- Contains intemperate, inflammatory, abusive or provocative language;
 - Is defamatory, frivolous, vexatious, discriminatory or otherwise offensive; or contains false statements.
 - Is too similar to another petition submitted within the past six months;
 - Discloses confidential or exempt information, including information protected by a court order or government department;
 - Discloses material which is otherwise commercially sensitive;
 - Names individuals, or provides information where they may be easily identified, e.g. individual officers of public bodies, or makes criminal accusations.
 - Contains advertising statements;
 - Refers to an issue which is currently the subject of a formal Council complaint, Local Ombudsman complaint or any legal proceedings;
 - Relates to the Council's Planning or Licensing functions as there are separate statutory processes in place for dealing with these matters;
 - Does not relate to an issue upon which the Council has powers or duties or on which it has shared delivery responsibilities.
- 5.9.3.5 In the period immediately before an election or referendum we may need to deal with your petition differently. If this is the case we will explain the reasons and discuss the revised timescale which will apply.
- 5.9.4 What will the Council do when it receives my petition?**
- 5.9.4.1 An acknowledgement will be sent to the petition organiser within 10 working days of receiving the petition. It will let them know what we plan to do with the petition and when they can expect to hear from us again. It will also be published on our website.
- 5.9.4.2 If we can do what your petition asks for, the acknowledgement may confirm that we have taken the action requested and the petition will be closed.
- 5.9.4.3 If the petition has enough signatures to trigger a council debate, or a senior officer giving evidence, then the acknowledgment will confirm this and tell you when and where the meeting will take place.
- 5.9.4.4 If the petition needs more investigation, we will tell you the steps we plan to take.
- 5.9.4.6 To ensure that people know what we are doing in response to the petitions we receive, the details of all the petitions submitted to us will be published on our website, except in cases where this would be inappropriate. Whenever possible we will also publish all correspondence relating to the petition (all personal details will be removed).
- 5.9.4.7 When you sign an ePetition you can elect to receive this information by email. We will not send you anything which is not relevant to the e-petition you have signed, unless you have chosen to receive other e-mails from us.
-

5.9.5 How will the Council respond to petitions?

5.9.5.1 Our response to a petition will depend on what a petition asks for and how many people have signed it. If we can do what your petition asks for, the acknowledgement may confirm that we have taken the action requested and the petition will be closed. For every petition the response will be made public and reported to a meeting of the authority. Details will also be available on our website for all to see

5.9.5.2 In responding we may include one or more of the following:

- a taking the action requested in the petition
- b considering the petition at a council meeting
- c holding an inquiry into the matter
- d undertaking research into the matter
- e holding a public meeting
- f holding a consultation
- g holding a meeting with petitioners
- h referring the petition for consideration by the Council's relevant Overview and Scrutiny Committee*
- i calling a referendum
- j writing to the petition organiser setting out our views about the request in the petition

*An Overview and Scrutiny Committee is a committee of councillors who are responsible for scrutinising the work of the council and making recommendations for improvement– in other words, the overview and scrutiny committee has the power to hold the council's decision makers to account.

5.9.5.3. In addition to these steps, the council will consider all the specific actions it can potentially take on the issues highlighted in a petition.

5.9.5.4 If your petition is about something over which the council has no direct control (for example the local railway or hospital) we will consider making representations on behalf of the community to the relevant body.

5.9.5.5 The Council works with a large number of local partners and where possible will work with these partners to respond to your petition. If we are not able to do this for any reason (for example if what the petitions calls for conflicts with council policy), they we will set out the reasons for this to you.

5.9.5.6 If your petition is about something that a different council is responsible for we will give consideration to what the best method is for responding to it. This might consist of simply forwarding the petition to the other council, but could involve other steps. In any event we will always notify you of the action we have taken.

5.9.5.7 There are two special actions that the Council will undertake if your petition has enough signatures – either triggering a council debate or a senior officer/Member giving evidence on a matter. In these circumstances the acknowledgement will confirm this and tell you when and where the meeting will take place. If the petition needs more investigation, we will tell you the steps we plan to take.

Where more than one petition is received in time for a particular meeting, each supporting the same outcome on one matter, each petition organiser will be treated as an independent petition organiser, but only the petition organiser of the first petition to be received will be invited to address the relevant meeting. A petition will not normally be considered where they are received within 6 months of another petition being considered by the authority on the same matter.

5.9.6 Debates at Meetings of Council

- 5.9.6.1 If a petition contains more than 7,000 signatures (which is approximately 5% of the electoral roll in Herefordshire) it will be debated by a Meeting of Council - unless it is a petition asking for a senior council officer to give evidence at a public meeting. This means that the issue raised in the petition will be discussed at a meeting which all councillors can attend.
- 5.9.6.2 The council will endeavour to consider the petition at its next meeting, although on some occasions this may not be possible and consideration will then take place at the following meeting. Petitions will not be considered at the Annual Meeting of Council or at Extraordinary Meetings of Council which are not convened to consider the subject matter of the petition. The petition organiser will be given three minutes to present the petition at the meeting and the petition will then be discussed by councillors. A maximum of 30 minutes will be allowed at any meeting to consider up to three petitions, however this may be extended at the discretion of the Chairman.
- 5.9.6.3 The Council will decide how to respond to the petition at this meeting. They may decide to take the action the petition requests, not to take the action requested for reasons put forward in the debate, or to commission further investigation into the matter, for example by a relevant committee.
- 5.9.6.4 Where the issue is one on which the council executive are required to make the final decision, the council will decide whether to make recommendations to inform that decision. The petition organiser will receive written confirmation of this decision. This confirmation will also be published on our website.

Officer evidence

- 5.9.6.5 Your petition may ask for a senior council officer to give evidence at a public meeting about something for which the officer is responsible as part of their job. For example, your petition may ask a senior council officer to explain progress on an issue, or to explain the advice given to elected members to enable them to make a particular decision.
- 5.9.6.6 If your petition contains at least 3,500 signatures (approximately 2.5% of the electoral roll of Herefordshire), the relevant senior officer or Cabinet Member will give evidence at a public meeting of the Council's relevant Overview and Scrutiny Committee.
- 5.10.6.7 The senior staff that can be named on a petition and called to give evidence are the Chief Executive and Directors of Herefordshire Council. You should be aware that the overview and scrutiny committee may decide that it would be more appropriate for another officer to give evidence instead of any officer named in the petition – for instance if the named officer has changed jobs.

5.9.6.8 Committee members will ask the questions at this meeting, but you will be able to suggest questions to the chair of the committee by contacting Democratic Services up to three working days before the meeting.

5.9.6.9 Upon receipt of your petition it will be passed to the Chairman of the relevant Overview and Scrutiny Committee who will arrange for it to be considered at the most appropriate Committee.

5.9.7 Petitions relating to a specified area

5.9.7.1 Over and above an ordinary petition (requiring 15 signatures) the Council provides for a petition which pertains to an area or locality to be formally recognised within the Petitions Scheme. Using the electoral roll for the area as a baseline, should such a local petition receive a number of signatories equivalent to or greater than 5%, this could trigger a debate at a relevant meeting.

5.9.8 EPetitions

5.9.8.1 From December 2010 you will also be able to use Herefordshire Council's website to design an online petition. Once this has been moderated and approved you will then be able to collect signatures via the web and submit the petition on line.

5.9.8.2 The Council welcomes e-petitions which are created and submitted through our website. EPetitions must follow the same guidelines as paper petitions.

5.9.8.3 The petition organiser will need to provide us with their name, postal address and email address. You will also need to decide how long you would like your petition to be open for signatures. Most petitions run for six months, but you can choose a shorter or longer timeframe, up to a maximum of 12 months.

5.9.8.4 When you create an ePetition, it may take 10 working days before your petition is accepted and it is published online. This is because we have to check that the content of your petition is suitable before it is made available for signature.

5.9.8.5 If we feel we cannot publish your petition for some reason, we will contact you within this time to explain. You will be able to change and resubmit your petition if you wish. If you do not do this within 10 working days of the receipt of our decision, a summary of the petition and the reason why it has not been accepted will be published under the 'rejected petitions' section of the website.

5.9.8.6 When an epetition has closed for signature, it will automatically be submitted to Governance Services. In the same way as a paper petition, you will receive an acknowledgement within 10 working days.

5.9.8.7 If you would like to present your ePetition to a meeting of the council, please contact Governance Services within 10 working days of receipt of the acknowledgement.

5.9.8.8 A petition acknowledgement and response will be emailed to everyone who has signed the ePetition and elected to receive this information. The acknowledgment and response will also be published on this website.

5.9.9 How do I 'sign' an ePetition?

- 5.9.9.1 When you sign an ePetition you will be asked to provide your name, your postcode and a valid email address. When you have submitted this information you will be sent an email to the email address you have provided. This email will include a link which you must click on in order to confirm the email address is valid. Once this step is complete your 'signature' will be added to the petition.
- 5.9.9.2 People visiting the ePetition will be able to see your name in the list of those who have signed it but your contact details will not be visible.

5.9.10 What can I do if I feel my petition has not been dealt with properly?

- 5.9.10.1 If you feel that we have not dealt with your petition properly, the petition organiser has the right to request that the council's overview and scrutiny committee review the steps that the council has taken in response to your petition. The petition organiser will be requested to give a short explanation of the reasons why the council's response is not considered to be adequate.
- 5.9.10.2 The relevant Overview and Scrutiny Committee will endeavour to consider your request at its next meeting. Should the committee determine we have not dealt with your petition adequately, it may use any of its powers to deal with the matter. These powers include instigating an investigation, making recommendations to the council executive and arranging for the matter to be considered at a Meeting of the Council.
- 5.9.10.3 Once the appeal has been considered the petition organiser will be informed of the results within five working days. The results of the review will also be published on our website.

Section 10 - Audit and Governance Code

5.10.1 Composition

- 5.10.1.1 The Committee will consist of seven non-executive councillors and may include an independent person who is not a councillor. This person, if appointed, must be appointed chairman of the Committee in accordance with Council Procedure Rule 4.1.5.2 (Part 4 section 1).

5.10.2 Purpose

- 5.10.2.1 The Council appoints the Audit and Governance Committee to ensure the effective and fully compliant governance of the Council and in particular to ensure that all aspects of the financial affairs of the Council are properly and efficiently conducted. The main purpose of this Committee is therefore to review and approve the Council's annual governance statement and annual statements of account. In so doing, the Committee shall scrutinise the effectiveness of, and management compliance with, the systems identified in the annual governance statement framework and monitor the progress made by management in implementing improvements to elements of that framework identified by external or internal audit review.

5.10.3 Key Terms

- 5.10.3.1 The **annual governance statement framework** identifies the individual systems and sources of evidence used to support the preparation of the **annual governance statement**.
- 5.10.3.2 The key systems identified in the framework include risk management, procurement, the whistle blowing policy, the control environment and associated counter fraud and corruption arrangements,' and the complaints process.
- 5.10.3.3 The key sources of evidence identified in the framework include the annual governance letter, external audit reports and the Head of Internal Audit's audit assurance reports.
- 5.10.3.4 The **annual governance statement** is prepared in advance of the annual statements of account; it provides a commentary from management on compliance with the Council's code of governance and identifies areas for further improvement.

5.10.4 Scope of the Audit & Governance Committee

- 5.10.4.1 The functions, powers and duties of the Audit and Governance Committee are set out in its Terms of Reference at 5.11.5. The Committee is able to call senior officers and appropriate members to account on issues within the Committee's remit as defined by its Terms of Reference.
- 5.10.4.2 The Committee is not responsible for reviewing specialist external inspection reports on service performance (for example, the annual OFSTED inspection) unless issues have been identified that directly relate to matters within the Committee's remit (for example, risk management of service related issues).

5.10.4.3 The Committee will not receive detailed information on investigations relating to individuals. The general governance principles and control issues may be discussed, in confidential session if applicable, at an appropriate time, to protect the identity of individuals and so as not to prejudice any potential action by the Council.

5.10.5 Terms of Reference

5.10.5.1 The Committee's terms of reference shall be maintained in line with the Chartered Institute of Public Finance & Accountancy's (CIPFA's) latest best practice guidance for Audit Committees. The key statements made by CIPFA are highlighted in bold in the Committee's Terms of Reference. [See 3.6.3]

5.10.5.2 **To consider the effectiveness of the Council's risk management arrangements, the control environment and associated counter fraud and corruption arrangements by:**

- a reviewing and approving the annual governance statement framework once a year.
- b approving the Council's counter fraud and corruption policies and reviewing them on a biennial basis.
- c reviewing and approving the Council's whistle blowing policy on a biennial basis.
- d being part of the consultation process when the Council's complaints policy is being reviewed.
- e monitoring the effective operation and development of the systems identified in the annual governance statement framework, calling for special reports where necessary and bringing to notice any inconsistency, short comings, gaps or duplications in these systems.

5.10.5.3 **Seek assurance that action is taken on risk related issues identified by auditors and inspectors by:**

- a monitoring acceptance by management of audit recommendations and progress in implementing agreed action plans.
- b reviewing audit recommendations not accepted by management and making an appropriate recommendation to Cabinet if it is considered that the course of action proposed by management presents a risk in terms of the effectiveness of or compliance with the Council's control environment.
- c monitoring progress upon the further improvements identified in the annual governance statement.
- d monitoring progress in respect of resolutions and recommendations made by the Committee

5.10.5.4 **Satisfy themselves that the Council's assurance statements, including the annual governance statement, properly reflect the risk environment and any actions required to improve it by:**

- a reviewing and approving the annual governance statement framework annually.

- b receiving and commenting upon the Head of Internal Audit's annual report on the Council's risk environment.

5.10.5.5 Approve internal audit's strategy and plan and oversee performance by:

- a reviewing and approving the internal audit strategy, internal audit charter and annual internal audit plan once a year, commenting on the adequacy of internal audit resources to ensure key systems are examined in line with the assessed level of risk. Exceptionally, the Committee may identify specific lines of enquiry for internal audit work in line with paragraph 5.11.5.12 (f).
- b reviewing performance against the internal audit plan through the interim and final audit assurance reports prepared by the Head of Internal Audit for each of the Committee's meetings.
- c noting the external auditor's opinion on the quality and effectiveness of the internal audit function.
- d commenting on the scope for further improvement in internal audit performance and / or cost effectiveness where it is appropriate to do so.

5.10.5.6 Review summary internal audit reports and the main issues arising, and seek assurance action is taken where necessary by:

- a noting the Head of Internal Audit's summary of key findings for audit reviews that have resulted in an unsound or unsatisfactory audit opinion being issued which will be included in his / her interim audit assurance reports and commenting on the management response to those issues as appropriate.
- b the Head of Internal Audit providing the Chairman of the Audit and Governance Committee with a copy of audit review reports with an unsound, unsatisfactory or marginal audit opinion.
- c the Head of Internal Audit providing the Chairman of the Audit and Governance Committee with written confirmation of audit review reports with a satisfactory or good audit opinion.

5.10.5.7 Receive the annual report of the Head of Internal Audit by:

- a reviewing the Head of Internal Audit's annual report to support the Annual Governance Statement.
- b reviewing the interim and final audit assurance reports prepared for the Committee by the Head of Internal Audit.
- c receiving assurance on the opinion given on the overall adequacy and effectiveness of the Council's control environment.

5.10.5.8 Consider the reports of external audit and inspection agencies and take appropriate action where relevant to the committee remit by:

- a reviewing and commenting on external audit and inspection reports.
- b reviewing and commenting on the management response to external audit and inspection recommendations.

- c monitoring progress in implementing the management response to external audit and inspection recommendations.

5.10.5.9 Ensure there are effective relationships between external and internal audit, inspection agencies and other relevant bodies by:

- a reviewing and agreeing the external auditor's annual audit plan, including the annual audit fee.
- b receiving regular update reports on progress from the external auditor.
- c meeting privately with the external auditor once a year, if required.
- d monitoring the effectiveness of relationships between the external and internal auditors to ensure that the combined value of the two audit processes is maximised.

5.10.5.10 Ensure the organisation actively promotes the value of the audit process by:

- a providing effective and objective scrutiny of the Council's governance arrangements, that are relevant to the committee's remit.
- b reviewing and commenting on any issue referred to it by the Chief Executive, a Director, the Section 151 Officer or Cabinet Member or by any Herefordshire Council body.
- c reviewing and making recommendations on any proposed amendments to the Council's code of corporate governance, financial procedure rules, contract and procurement procedure rules, scheme of delegation, budget policy, procedure rules or governance arrangements.

5.10.5.11 Review the financial statements, external auditor's opinion and reports to members, and oversee management action in response to the issues raised by external audit by:

- a receiving biannual forecasts of revenue and capital outturn, satisfying itself that appropriate and timely measures are in place to ensure compliance with paragraph 4.7.10 of the Council's Financial Procedure Rules (Part 4 section 7).
- b reviewing and approving the annual statement of accounts, commenting where appropriate on any issues that need to be brought to the attention of the Council.
- c Reviewing and approving the annual letter of representation.
- d Receiving the external auditor's annual governance letter and commenting on the management response to any recommendations made.

5.10.5.12 Other matters not covered by CIPFA's latest best practice guidance for audit committees:

- a the Committee's meetings shall follow the principles of scrutiny i.e. no party whip shall be applied and a constructive, evidence based approach will be used.

- b the Committee shall ensure that its members receive adequate training on the areas covered by the Terms of Reference.
- c the Committee's members will ensure that any sensitive or confidential information obtained as a result of membership of the Committee is treated as such.
- d the Committee shall receive assurance from the Head of Internal Audit that officers are complying with the Council's procurement policy and processes in all respects.
- e the Committee shall comment on the scope, depth and value for money of external audit.
- f in consultation with the Section 151 Officer, the Committee shall call for reviews/reports where the committee has identified significant gaps in the Council's internal control and governance processes, and develop the scope of these reviews with the Chief Internal Auditor.
- g the Committee shall review its effectiveness and Terms of Reference on an annual basis.
- h the Committee shall monitor progress in developing joint internal audit arrangements on matters of mutual or shared interest with NHS Herefordshire (the Primary Care Trust).
- i the Committee will contribute to the Council's programme of improvement in the standards of accuracy, clarity, comprehensiveness and conciseness in the Council's financial and associated documentation.

5.10.5.13 To decide what actions to take arising from recommendations in any report from the Standards Panel about the conduct of a Member of Herefordshire Council. The Audit and Governance Committee has a broad discretion about the action it can take but it cannot fine, suspend or disqualify a Member from membership of the Authority itself.

Note: The Council has authorised a number of additional responsibilities to the Audit and Governance Committee as set out at Part 3 Section 6

Section 11 – Employee Code of Conduct

5.11.1 POLICY

5.11.1.1 The public is entitled to expect the highest standards of conduct from every employee who works for the Council.

5.11.1.2 This Code of Conduct provides a minimum set of standards of conduct expected of employees at work and the link between that work and their private lives. The code takes into account the requirements of the law and regulations. It is produced in the light of the challenges that employees working in today's local government environment face and is intended to lay down guidelines which help maintain and improve standards of service as well as protecting employees from misunderstanding or criticism.

5.11.2 SCOPE

5.11.2.1 The Code applies to all employees of Herefordshire Council, including schools.

5.11.3 DEFINITIONS

5.11.3.1 The meaning of some key words and phrases, for the purposes of this policy, are explained below:

Manager. Either the manager, supervisor or team leader with line management responsibility for the employee, or an alternative manager where circumstances set out in the policy have been met.

5.11.4 RESPONSIBILITIES

5.11.4.1 **Managers are responsible** for ensuring that employees understand the standards of behaviour that are expected of them, maintaining those standards within their teams, and complying with the requirements of Council policies and procedures, should action need to be taken. These standards should be made clear during the induction process and as part of the ongoing communication with employees, including 1:1s, supervision meetings, the staff appraisal process and performance management meetings in schools.

5.11.4.2 **Employees are responsible** for familiarising themselves with the main standards of conduct, for asking their managers if they are unclear about what is expected of them, and for their own subsequent behaviour and actions.

5.11.5 CODE OF CONDUCT

STANDARDS

5.11.5.1 Employees are expected to give the highest possible standard of service to the public and, where it is part of their duties, to provide appropriate advice to Councillors and fellow employees with impartiality and courtesy.

5.11.5.2 Employees are expected, through Council procedures, and without fear of recrimination, to bring to the attention of their line manager any breaches of this or the Councillor Code of Conduct.

5.11.5.3 Where an employee believes that he or she has information which may suggest that some form of irregularity is taking place that information must be passed to their manager or Director. They should follow the Confidential Reporting Code (Part 5 section 4) as appropriate.

5.11.6 DISCLOSURE OF INFORMATION

5.11.6.1 The law requires that certain types of information must be available to Members, auditors, Government departments, service users and the public. Under the Local Government Act 1972 the public have a right to see certain information. In most circumstances these rights are related to Committee Reports and background documents. The Council itself may decide to be open about other types of information. Managers must make employees aware of which information the council is prepared to disclose and which is confidential.

5.11.6.2 Employees must not use any information obtained in the course of their employment for personal gain or benefit, nor may they pass it on to others who might use it in such a way. Any particular information received by employees from a councillor, which is personal to that councillor and does not belong to the council, must not be divulged by an employee or other Members without the prior approval of that councillor, except where such disclosure is required or sanctioned by law.

5.11.6.3 Only employees authorised by their Line Manager or Head of Service to do so, may talk to the Press or otherwise make public statements on behalf of their Service or Directorate. Generally, an employee contacted by the Press should refer the matter to Communications who will deal with it as appropriate.

5.11.7 POLITICAL NEUTRALITY

5.11.7.1 Local government employees serve the Council as a whole and not individual Members or groups. They must respect the rights of all and must ensure that the individual rights of all Members are respected. An employee's personal or political views must not interfere with their work.

5.11.7.2 Some senior employees will be expected, within the Council's guidelines, to advise political groups. These employees have a duty to advise minority groups as well as the majority group.

5.11.7.3 The legislation controlling the direct activities of local government employees in politics, either national or local, must be adhered to. Generally the law restricts the political activities outside their work of the Chief Executive, Directors, Heads of Service, employees above a certain salary ceiling and those in posts considered to be regularly involved in providing advice to Members. Contracts of employment for employees in posts covered by the relevant legislation contain a restriction clause.

5.11.7.4 If there is any doubt whether or not a political activity is permitted, the Monitoring Officer must be consulted by the employee or Manager concerned.

- 5.11.7.5 Every employee, whether or not politically restricted, must follow every lawful expressed policy of the council and must not allow their own personal or political opinions to interfere with their work.

5.11.8 RELATIONSHIPS

The local community and service users

- 5.11.8.1 Employees must always remember their responsibility to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the Council.

Councillors

- 5.11.8.2 Employees are responsible to the council through its senior managers. All employees are there to carry out the Council's work and the role of some employees specifically includes giving advice to Councillors and senior managers. Mutual respect between employees and individual Councillors is essential to good local government. However, close personal familiarity between employees and individual councillors can damage the relationship and should be avoided so as not to bring the authority, or the individuals concerned into disrepute

Colleagues

- 5.11.8.3 Employees should treat colleagues with courtesy and respect at all times.

Contractors

- 5.11.8.4 All relationships of a business nature with external contractors, or potential contractors, must be made known to the Director, who will record the fact in a register kept for this purpose. Orders and contracts must be awarded on merit and in accordance with the Council's Contracts and Financial Procedure Rules (Part 4 sections 6 and 7).

Close Personal Relationships

- 5.11.8.5 Particular difficulties may be encountered with any of the above groups if the relationship is of a close personal nature. In such circumstances the 'Close Personal Relationships Policy and Procedure' applies (held separately from the Constitution).

5.11.9 APPOINTMENT AND OTHER EMPLOYMENT MATTERS

- 5.11.9.1 Employees involved in appointments must ensure that these are made on the basis of merit as set out in the job description, person specification and other job literature. It would be unlawful for an employee to make an appointment, which was based on anything other than the ability of the candidate to undertake the duties of the post. To avoid any possible accusation of bias, an employee must not be involved in an appointment where they are related to an applicant, or have a close personal relationship outside work with them.

5.11.9.2 Similarly, suitable arrangements should be made when an employee may be in a position to be involved in decisions relating to discipline, promotion or pay for another employee with whom they have a close personal relationship.

5.11.9.3 More detailed information is contained in the Close Personal Relationships Policy and Procedure.

5.11.10 INFORMATION AND COMMUNICATIONS TECHNOLOGY

5.11.10.1 To ensure the security of the Council's Information and Communications Technology (ICT) protect the council's equipment from contamination and protect against claims of copyright infringement there is an absolute prohibition on the use of private software packages and "pirate" copies of software on any council computer equipment and the copying of council software by private concerns or vice versa.

5.11.10.2 Further information about this and other ICT policies can be found on the intranet.

You can obtain more advice and guidance by either contacting the information security team by email infosec@herefordshire.gov.uk or by phone 01432 260160

5.11.11 OUTSIDE COMMITMENTS AND BUSINESS INTERESTS

5.11.11.1 To avoid confusion about conflicts of interest between the council's activities and other gainful employment by employees, the following standards apply:

- a an employee must not put themselves in a position where their personal or private interests conflict with their employment by the council. The council will not prevent an employee from undertaking additional employment but it must not, in the view of the council, conflict with the council's interests or in any way weaken public confidence in the council. All employees on grade HC7 or above are required to obtain consent in writing from their Director in advance, on each occasion, if they wish to engage in any other business, or take up any other additional work. Similarly, Directors will require the prior consent of the Chief Executive should they wish to engage in such activity.
- b it is essential that there is no confusion or conflict of interest between an employee's private concerns and those of the council. The following standards aim to ensure clarity in the procurement of goods, materials or services for private use:
 - c when procuring goods, materials or services for private use, either for themselves or for anyone else, the employee must ensure that the supplier is clear that it is a personal transaction and entirely separate from any business the supplier has, or hopes to have, with the council.
 - d in no circumstances whatsoever may goods or materials for private use be delivered to council premises or sites, nor may non-work services be carried out during working hours, or on council premises or sites.
 - e all paperwork, invoices, accounts and other correspondence relating to private matters must be sent to the employee's home address. The employee must make it clear to members of the public and suppliers that sending private invoices, accounts or correspondence etc. to council

addresses etc. is expressly prohibited. This same principle applies to the private use of the council's mailing system.

- f similarly it is essential that there is no confusion or conflict of interest regarding the use of Council vehicles and equipment, including vehicles and equipment contracted to the council, so the following standards apply:
 - i Council vehicles and equipment must not be used privately and therefore when not in official use must be kept at Council depots or offices.
 - ii however, the use of vehicles or equipment by employees may be allowed where it has been decided by the appropriate Manager that the needs of a service required it.
- g to prevent any issue arising, there is a prohibition on loaning or hiring out of Council-owned equipment other than in the following circumstances:-
 - i where equipment is hired along with the use of Council accommodation (such as the Council chamber or committee rooms),
 - ii where plant is loaned to the council's sub-contractors for use on Council business,
 - iii in the case of schemes such as the salary sacrifice cycle scheme,
 - iv or exceptionally where equipment is loaned. Such a loan must be subject to prior approval from their Director and the voluntary organisation's insurance cover being deemed adequate by the Council
 - v the short term hire on terms identical to those applicable to members of the public of educational, sporting or recreational equipment through the Council's schools, libraries or leisure facilities

5.11.12 PERSONAL INTERESTS

- 5.11.12.1 Employees must declare to their Director any financial or non-financial interest that could bring them into conflict with the Council's interest. This could include involvement with an Organisation receiving Grant Aid from the Council, Membership of an NHS Trust Board, involvement with an Organisation or Pressure Group which may seek to influence their Authority's policies. Membership of a Trade Union is exempted from this requirement. A separate Code on the Disclosure of Financial Interest is attached as Annex 1.
- 5.11.12.2 An employee must declare to their Director membership of any organisation which is not open to the public without formal membership with a commitment of allegiance and with secrecy about rules or membership conduct.
- 5.11.12.3 Employees who have an interest, financial or non-financial, should not involve themselves in any decision on allocation of Council services or resources from which they, their friends or family might benefit, and should ensure that the matter is referred immediately to their Line Manager or Head of Service.

5.11.13 EQUALITY

- 5.11.13.1 Employees must ensure that they comply with the Council's equality policies and procedures in addition to the requirements of the law. All members of the local community, customers, and other employees have a right to be treated with fairness and equity.
- 5.11.13.2 If there is any doubt as to what is required the relevant Director must be consulted.

5.11.14 PROCUREMENT

- 5.11.14.1 Every employee involved in procurement and dealing with contractors must be clear on the separation of client and contractor roles within the council. Senior employees who have both a client and a contractor responsibility must be aware of the need for accountability and openness.
- 5.11.14.2 Employees in contractor or client units must demonstrate fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.
- 5.11.14.3 Employees who are privy to confidential information on tenders or costs for either internal or external contractors must not disclose that information for any unauthorised purpose.
- 5.11.14.4 Employees must ensure that no special favour is shown to current or recent former employees, or their partners, close relatives or associates in awarding contracts to businesses run by them, or employing them in a senior or managerial capacity.
- 5.11.14.5 An employee contemplating a management buy-out of an organisation in a procurement relationship with the Council must, as soon as they have formed a definite intent, inform the Monitoring Officer and withdraw from the procurement process.

5.11.15 CORRUPTION

- 5.11.15.1 It is a serious criminal offence for an employee to corruptly give or receive any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or detriment to any person in their official capacity. If such an allegation is made it is for the employee to demonstrate that any such rewards have not been corruptly obtained.

5.11.16 USE OF PUBLIC FUNDS

- 5.11.16.1 Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner. They must strive to ensure value for money to the local community and to avoid legal challenge to the council.
- 5.11.16.2 If an employee is concerned about whether particular funds are being properly applied, he or she must raise the matter with their Director in the first instance.

5.11.17 HOSPITALITY

- 5.11.17.1 Employees must treat with extreme caution any offer, gift, favour or hospitality made to them. If there is a genuine need as a legitimate part of an employee's job to accept offers of hospitality this may be allowed. The decision whether to accept is one of common sense, however, any employee who is in doubt about the legitimacy of any offer of hospitality must ask his/her Director for advice.
- 5.11.17.2 When considering whether or not to accept hospitality employees must be sensitive to the timing of decisions for letting contracts for which the provider may be bidding and must never accept hospitality from a contractor during, or just prior to, a tendering period.
- 5.11.17.3 Acceptance by employees of hospitality at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal.
- 5.11.17.4 Employees must make a declaration of a gift if they are made a beneficiary of a will as a result of their employment.
- 5.11.17.5 Any offer, gift, favour or hospitality as described in the above paragraphs should only be accepted where the employee is satisfied that any purchasing, planning or other Council decisions are not compromised. Employees should not place themselves in a position where their own integrity and the integrity of the Council may be called into question.
- 5.11.17.6 When hospitality has to be declined those making the offer should be courteously but firmly informed of the procedures and standards operating within the Council.
- 5.11.17.7 Employees must not accept significant personal gifts from contractors and outside suppliers. Insignificant tokens such as pens or diaries may be accepted.
- 5.11.17.8 When an employee accepts any gift, favour or hospitality made to them personally or on behalf of the Council they should complete the relevant form. Once signed by the Director it should be sent to the Monitoring Officer who maintains a register that is open to inspection by the Council's Internal Audit who may present such information to the appropriate Committees of the Council. If an employee believes that an improper motive exists concerning a gift or hospitality, the employee should report this immediately to the Director, who will in conjunction with the Chief Executive, decide an appropriate action e.g. withdrawal of business and/or referral to the police. The Director of Resources and Monitoring Officer must be informed.
- 5.11.17.9 An employee may only make offers of hospitality where the arrangements can be justified as being in the interests of the Council. Consideration must be given to the nature and scale of the hospitality and the circumstances in which it is being offered. All offers of hospitality must be agreed in advance by the relevant Director and recorded on the declaration of gifts and hospitality form. Any decision to offer hospitality must have regard to the council's financial position and appropriate use of public funds.

Procedure ends here

5.11.18 SPONSORSHIP

- 5.11.18.1 Where an outside organisation wishes to sponsor a council activity whether by invitation, tender, negotiation or voluntarily, the standards concerning acceptance of gifts and hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.
- 5.11.18.2 If the council wishes to sponsor an event or service neither the employee concerned, nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to the relevant Director or Chief Executive of any such interest. Similarly where the council through sponsorship, grant aid, financial or other measures gives support in the community, the employee must ensure that impartial advice is given and there is no conflict of interest.

5.11.19 TRAVEL AND SUBSISTENCE

- 5.11.19.1 Employees must put in claims for travelling and subsistence only incurred in carrying out their duties on behalf of the Council.
- 5.11.19.2 The Council will not pay any claim for alcohol on any occasion.
- 5.11.19.3 Further information is contained in the 'Travelling and Subsistence Policy and Procedure'.

5.11.20 WELLBEING AND SAFETY

- 5.11.20.1 Every employee is responsible for taking reasonable care for their own health and safety, that of their colleagues, service users and any other third parties. They must also conduct themselves in a manner which maintains public confidence in their integrity and the services provided by the council.
- 5.11.20.2 An employee must not be under the influence of alcohol at any time while at work, on-call or standby, and whilst being paid to do so. Employees are not allowed to drink alcohol during working hours, including meal breaks and whilst on standby other than at special events authorised in advance by the appropriate Director or Chief Executive. Permission must be sought from the appropriate Director by an employee who is representing the Council, while entertaining clients with social drinking, whether this is during or outside of normal working hours.

5.11.21 NOTES

- 5.11.21.1 This Code of Conduct supersedes neither the Council's disciplinary and grievance procedures, nor the provisions of the Local Government Conditions of Service, as supplemented and amended by decisions of Herefordshire Council.
- 5.11.21.2 Copies of the policies and procedures referred to in this document are available from the intranet, your manager, or the human resources (HR) team.
- 5.11.21.3 If you need further assistance with this document please refer to your manager or Human Resources Officer.

5.11.22 COMPLIANCE

- 5.11.22.1 Failure to follow this procedure may impact on good employee relations and the reputation of the council as a good employer. In addition, it may result in the council breaching employment legislation and incurring financial penalties.
- 5.11.22.2 Managers who fail to manage in accordance with this policy will be investigated and this may lead to formal action under the Managing Performance or Disciplinary Policy and Procedure.

5.11.23 IMPACT ON THE COUNCIL'S KEY PRIORITIES

- 5.11.23.1 The policy provides clear statements about manager and employee responsibilities to ensure that the conduct of all Council employees is of a high standard. This underpins service provision and enables the Council to effectively meet its key priorities.

5.11.24 TRAINING AND AWARENESS REQUIREMENTS

- 5.11.24.1 Managers and employees will be informed about this policy and procedure via communication channels such as team talk and first press.
- 5.11.24.2 HR Officers will liaise with directorate management teams to establish and agree support arrangements to assist managers to carry out their responsibilities in paragraph 5.12.4.1.

5.11.25 MONITORING

- 5.11.25.1 The Joint Management Team is responsible for ensuring the implementation and review of this policy and procedure.
- 5.11.25.2 The Head of Workforce and Organisational Development will be notified of any cases where it is concluded that the policy was breached. The notification will indicate whether there are any changes or improvements required to the policies, procedure, training, support or any other aspect of the council's approach to dignity at work matters.
- 5.11.25.3 HR will monitor the effectiveness of the policy through information received via feedback from managers and employees through, for example, management team meetings and the Employee Opinion Survey and exit interviews, as well as the numbers of employees using this procedure.

ANNEX 1 - DISCLOSURE OF FINANCIAL INTEREST

1. The Employee Code of Conduct requires employees to declare all private and business relationships with contractors to their Director as well as financial or non-financial interests that they consider could bring about conflict with the Council's interests.
2. Section 117 of the Local Government Act 1972 also requires employees to notify the Council in writing if they have a direct or indirect financial interest in any contract with the Council or under consideration by the Council. As with Councillors, the financial interests of a person with whom an employee is living will also count for these purposes.
3. This document gives additional guidance about the declaration of pecuniary interests. The interest relates to any contract that has been or is proposed to be entered into by the Council or any Committee.
4. All employees must notify their Director and the Monitoring Officer in writing that they have a pecuniary interest in such a contract, and abstain from any consideration or discussion of the contract. The Monitoring Officer is required to keep a register of these matters which is available for inspection by any member of the Council.
5. This interest can either be direct (i.e. he/she is a party to the contract) or indirect. The latter is defined as including being a partner of or employed by a person with whom the contract made or is proposed to be made or has a pecuniary interest. In the case of persons living together the interest of one shall be deemed to be also an interest of the other.
6. The failure to disclose a pecuniary interest and, where necessary, to abstain from taking part in the Council's consideration of a matter in which an employee has such an interest is likely to constitute maladministration as well as being a criminal offence.
7. An interest will not cease to be pecuniary because the Council's decision is not to the financial advantage of the employee. "Pecuniary" can mean loss as well as gain. If the Council's decision can have any financial effect at all upon the employee then the interest should be declared, unless it arises simply in the employee's capacity as a council tax payer or as a general consumer of the Council's services.

Section 12 - The Planning Code

This Code supplements the Councillor Code of Conduct. Where the provisions of this Code conflict with or are inconsistent with the Councillor Code of Conduct, the latter shall prevail. However, following this Planning Code should assist Councillors in complying with the Councillor Code of Conduct. Councillors should ensure that they are familiar with both Codes and take advice from the Monitoring Officer where necessary to ensure compliance.

The obligations and responsibilities of this Code apply to all Councillors of the Planning Committee and in similar ways to all other Councillors.

The Council's planning policies are adopted in the public interest for the benefit of the whole community rather than for any particular individual or interest group. Decisions are required to be taken in accordance with the current development plan and having regard to all material considerations. Each planning application is considered on its merits. However, planning decisions by their very nature are often contentious, with strong contrary views being expressed. Any decision can be the subject of detailed scrutiny or challenge. Failure to follow the requirements of this Code may result in sanctions under the Councillor Code of Conduct, or may be regarded by the Local Government Ombudsman as incompatible with good administration.

This code covers the conduct of both Councillors and Officers. It relates to the whole of the planning process, including policy formulation and development control, and all Councillors and Officers who come into contact with it. The code is designed to promote greater mutual support and understanding between Councillors and Officers to the benefit of all involved in the planning process. It is also designed to give the public greater confidence that Herefordshire Council discharges its planning responsibilities fairly and openly.

This code is set out in the form of a series of headings with a brief outline of the issues involved, followed by practical advice.

This code consists of 3 principal parts. The first relates to Members of the Committee. The second relates to all other Members of the Council and the third relates to Council officers

PART 1 - THE ROLE OF COUNCILLORS WHO ARE MEMBERS OF THE COMMITTEE

5.12.1.1 In making decisions on planning applications, **You will**:

- a act fairly and openly and without prejudice**
- b approach each application with an open mind**
- c carefully weigh up all the material planning considerations**
- d avoid inappropriate contact with interested parties**
- e ensure that valid reasons for decisions are clearly stated.**

5.12.1.2 **You will** be free to vote on planning applications as you consider appropriate (that is, without a Party 'whip'), deciding them in the light of all the relevant information, evidence and arguments. In accordance with the requirements of the Town and Country Planning Act, **you will** base your decisions on the provisions of the relevant Development Plan and all material planning considerations.

5.12.1.3 **You may not** give instructions to Officers nor may you place pressure on Officers in order to secure a particular recommendation on an application.

5.12.1.4 **You will not** use your position improperly to confer or secure for yourself, or for any other person, an advantage or disadvantage.

5.12.2 Discussions with Applicants

5.12.2.1 Local authorities are encouraged by the Audit Commission, the Local Government Association and the National Planning Forum to enter into pre-application discussions with potential applicants. In addition, negotiations and discussions are likely to continue after an application has been submitted. Such discussions can often be interpreted by the public, and especially by objectors, as prejudicing the planning decision-making process. To avoid this, application discussions should take place within the guidelines below.

5.12.2.1 **Pre-application meetings** with prospective applicants are encouraged, but, to avoid misunderstandings, they require a degree of formality. They **will normally only involve Officers**, except where the Assistant Director Economic, Environment and Cultural Services, in consultation with the Chairman of the Planning Committee, has agreed that a pre-application meeting shall include Members along with an appropriate senior Planning Officer.

5.12.2.3 It will be made clear at pre-application meetings that:

- a Officers' initial views and advice are given on a without prejudice basis which will be consistent with the provisions of the current Development Plan and other adopted Council policy
- b no decisions may be made or advice given which would bind or otherwise compromise the Planning Committee of the Council (or the Assistant Director Economic, Environment and Cultural Services if delegated to make the decision)

5.12.2.4 Where pre-application meetings involve a Member, a note of the discussion will be taken by the Planning Officer and will be made available for public inspection, subject to the usual rules about access to information, if and when an application is submitted. At least one appropriate Planning Officer will be present at all such meetings.

5.12.2.5 **You may, following discussion with the appropriate planning officer, take part in organised post-submission meetings with applicants or other parties.** A note of any discussions will be taken and will be made available for public inspection, subject to the usual rules about access to information. At least one Planning Officer will be present at all such meetings.

5.12.3 Lobbying

5.12.3.1 Lobbying or seeking to influence a decision is a normal and perfectly proper part of the political process. However, it can lead to impartiality being called into question and the need to declare publicly that an approach of this nature has taken place. Problems could arise if Councillors indicate or give the impression of support or opposition to a development proposal or particular planning application, or declare their voting intention to anyone, before a decision is to be

taken. To do so without all the relevant information and views would be unfair and would prejudice the impartiality of the decision making process. It may also mean that a Councillor is open to an accusation of predetermination or bias (which can give rise to a judicial review of a planning committee's decision); or it may limit the Councillor's ability to take part in further proceedings (see especially paragraphs 5.13.6.5 and 5.13.10 below).

5.12.3.2 Lobbying can take place by way of an approach to you, by telephone, or on a chance meeting, or by way of a request to see all or some of the Members of the Planning Committee. It is an essential part of the democratic process that members of the public should be able to make their views known to you. However, to avoid compromising your position before you have received all the relevant information, evidence and arguments, **you will:**

- a **avoid discussing with an applicant or any other person your thoughts about the merits of a planning application or proposed development**
- b **not make it known in advance of the consideration of the application by Committee whether you support or oppose a proposal unless you accept that this will mean that you may not take part in the decision (see paragraph 5.13.3.3)**
- c **restrict your response to giving procedural advice, and make it clear that that is all you are prepared and allowed to do**
- d **direct lobbyists or objectors to the case officer, and**
- e **advise the Head of Planning and Transportation as soon as possible of the existence of any substantial or abnormal lobbying activity.**

5.12.3.3 **If you express publicly a final view on an application** prior to the meeting of the Planning Committee, **you will show predetermination and you may also have a prejudicial interest and your further participation will be limited as set out in paragraph 5.13.6.5.** Public expression of a view would include, for example, making a statement to the press of your firm attitude to an application, or in any document to be made publicly available, at a meeting of the Council or a Town or Parish Council (or one of their Committees), or in any situation where the view expressed might reasonably be expected to gain wider circulation.

5.12.4 Site Inspections

5.12.4.1 Site Inspections by a Committee can be helpful in reaching a decision on issues where site circumstances are clearly fundamental to the decision. This is true particularly when the issues concern, for example, visual impact, the character of an historic building or the effect of development on local amenity. However, site inspections are costly, cause delay to decisions and are an unsuitable place for holding a reasoned debate.

The criteria for holding site inspections are:

- a the character or appearance of the development itself is a fundamental planning consideration;
- b a judgement is required on visual impact;

- c the setting and surroundings are fundamental to the determination or to the conditions being considered, and cannot reasonably be made without visiting the site in question.

The Chairman of the Planning Committee and the Assistant Director Environment, Planning and Waste will determine which applications will be the subject of a prior site inspection. This does not prevent any member of the Committee requesting a site inspection of a site at the Committee meeting when it has not already been visited by this procedure.

5.12.4.2 Site Inspections should not be held when inspection of the site is irrelevant to the material conditions. Any Member of the Committee may request a site inspection, but reasons based on the above criteria must be stated, and will be minuted.

5.12.4.3 **The purpose of the site visit is fact finding.** Officers will be able to point out relevant features of the site and surroundings. You will be able to see the physical features of the site and ask questions through the Chairman or the officers to seek clarification. Neither the applicant/agent or third parties will be allowed to participate in the site inspection. The input of these parties is made at the Committee meeting itself. At the discretion of the Chairman of the Planning Committee the appropriate Parish or Town Council may be invited to observe the inspection. In these circumstances the Parish or Town Council may not contribute to the opportunity to ask questions of officers on site.

5.12.4.4 **No discussion of the merits of the case must be permitted and all questions from you will be put through the Chairman.**

5.12.4.5 The visiting party will stay together as a group.

5.12.4.6 As a member of the Planning Committee when on site visits you should not make any comments that could create an impression that you had already formed a view on the merits of the application. No decision on the application should be made until the meeting of the Planning Committee at which the application is to be considered, when they will have before them all necessary information to be able to make an informed decision, including any material facts arising from the site visit which the Assistant Director Environment, Planning and Waste considers should be reported to the Committee.

5.12.4.7 Conduct of Visits

- a visits will be conducted in a formal manner.
- b the Chairman or Vice-Chairman will open the meeting, and remind members of its purpose and conduct.
- c Officers will highlight issues **relevant to site inspection**. If issues are raised which necessitate consultation with the applicant or his agent, this should be done after the close of the meeting and the outcome reported to the subsequent committee.
- d Local Ward Members will be invited to site inspections in their wards and asked to highlight local issues relevant to the site inspection.
- e the Chairman or Vice-Chairman will close the meeting.

5.12.4.8 General Matters

- a there will be **no** debate about the merits of the application and no decision will be made.
- b no formal notes will be made.
- c **no** hospitality will be accepted.

5.12.4.9 **If you find it necessary to visit a site alone (perhaps because it was not possible for you to attend a Committee visit), you should view the site only from public vantage points, seek to avoid any discussion with interested parties, and, if there is such discussion, make it clear that no decision on the application will be taken until it has been discussed at Committee.**

5.12.5 Material Submitted to Committee

5.12.5.1 If you receive material from or on behalf of an applicant or third party in connection with an application before a Committee you should establish from the Planning Officers whether the material has been received by them. If it has not, you should make it available as soon as possible to the Assistant Director Environment, Planning and Waste.

5.12.5.2 Documents in connection with an application should all be dealt with in the officer's report to Committee. Any additional information received after the preparation of that report up to noon on the day before the Committee meeting will also be brought to the attention of the Committee if it raises new and relevant material planning matters. A printed Committee update will be available for Members at the start of each Planning Committee. Papers received after that time will normally be discounted, since time will not be available to check their accuracy or to give consideration to their implications.

5.12.6 Declaration of Interests at Committee

5.12.6.1 **You should declare any interests in applications coming before the Planning Committee at the start of the meeting.** In order to be able to do that, you should seek early advice from officers, including the Monitoring Officer, if you are in any doubt whatsoever. However, if for some reason it is not possible for an interest to be declared by yourself at the outset of a meeting, or if it becomes clear at a later stage during the meeting that you have an interest in an item under discussion, then you must declare that interest at the first opportunity.

5.12.6.2 When declaring an interest, you must specify the nature of the interest, and whether it is personal or prejudicial. The minutes of the meeting must record what type of declaration was made.

- a A **personal interest** exists where a decision on the matter at hand could reasonably be regarded as affecting your well being or financial position or that of a relevant person (you, your employer, family or close friends) to a greater extent than other people in the area affected by the decision. If it does you must **say** you have a personal interest but can **stay** and take part and vote in the meeting.
- b A **prejudicial interest** exists where:-

- i. a member of the public (who has knowledge of the relevant facts) would reasonably regard your personal interest as being so significant that it is likely to prejudice your judgement of the public interest and
- ii. the decision affects your financial position or that of a relevant person, or
- iii. the decision relates to an approval, consent, licence, permission or registration in relation to you or a relevant person

5.12.6.3 **If you declare a prejudicial interest**, then under paragraph 12(2) of the Councillor Code of Conduct (Part 5 section 1), you may attend a Planning Committee meeting but only for the purposes of making representations, **provided** that the public are also allowed to attend the meeting for the same purpose. You must declare the nature of your interest at the start of the meeting. If you have such an interest you should notify the Monitoring Officer before the meeting that you wish to speak.

5.12.6.4 The procedure in Committee will be as follows. The Planning Officer will present the report. If you want to make representations, you take your place in the space allocated to public participation. You may make representations for no longer than three minutes (the time allocated to public participants at planning committee). Thereafter, you may take no further part in the debate or decision-making of the planning committee, and must immediately leave the meeting. You may not stay in the meeting or listen to any other public participation in respect of the application.

5.12.6.5 Withdrawal from the meeting involves physically leaving the meeting room. Moving to the public gallery is not sufficient. The Chairman of the Committee should suspend the proceedings of the Committee briefly while you leave the Committee room.

5.12.6.6 Where you have a dispensation granted by any appropriate person or body allowing you to speak and/or vote on a matter in respect of which a prejudicial interest has been declared, that dispensation applies also to this Code, but you still need to declare the interest.

5.12.7 **Cabinet Members**

5.12.7.1 There will be occasions when a Cabinet Member will wish to express comments on a particular application. This may include where the Council is the applicant. In those circumstances where the Cabinet Member is clearly so committed to a particular development that it would not be possible to demonstrate an ability to take account of counter-argument before a final decision is reached then **he or she may speak at the Planning Committee meeting to argue for the development but must then withdraw from the meeting while the application is discussed and determined.**

5.12.7.2 Where the Cabinet Member also has a ward representation role, he or she may also speak as local member.

5.12.8 **Planning Committee Members who serve on Parish and Town Councils**

5.12.8.1 Some Councillors will be Members of Parish or Town Councils as well as Herefordshire Councillors. This situation can present problems where the Parish

or Town Council is consulted on planning applications. The comments of the Parish Council should concentrate on local issues, but this is often the stage when Herefordshire Councillors come under pressure to indicate their support for or objection to a particular proposal. Of particular concern is the potential for a conflict of interest arising when a Member of both Councils votes on an application at a Parish or Town meeting before the Planning Committee meeting. A Councillor in this position could end up voting in the opposite way when all the relevant information is made available in the Planning Officer's report.

- 5.12.8.2 In order to avoid this potential conflict, **it is better that you do not serve on Parish or Town Council's planning committees.** If you cannot avoid that, you should not vote or say anything, which would create the impression that you have already made up your mind before the Herefordshire Council planning meeting. In this way you will avoid being part of the formal process of submitting representations on planning applications to the Council, and so demonstrate your impartiality.
- 5.12.8.3 If this is unavoidable then you should indicate to the meeting **and request the Clerk to record in the minutes** that you voted based on the limited information available to the Parish/Town Council, and that your view may change; and that if the matter comes before a planning committee of the Council you will approach it with an open mind, having regard to any Council policies, the Planning Officer's report, representations from the applicant and/or objectors and the views of other Councillors on the Committee. Those Members who have indicated a definitive view on an application or have voted without the matter being recorded as above should then proceed on the basis that they have a prejudicial interest.

5.12.9 Voting at Committee

- 5.12.9.1 **You should vote on an application before a Committee only if you have been present for the whole of the presentation of and discussion on the application.**

5.12.10 Decisions Contrary to Officer Recommendations or to Development Plan Policies

- 5.12.10.1 From time to time, there will be occasions when you or the Planning Committee disagree with the professional advice on an application given by the Assistant Director Environment, Planning and Waste.
- 5.12.10.2 The law requires that decisions should be taken in accordance with the development plans unless material considerations indicate otherwise (S38A Planning and Compensation Act 2004)
- 5.12.10.3 The Planning Committee is the only mechanism for considering non-delegated applications.
- 5.12.10.4 On this basis, and to build in the checks and balances suggested by the Audit Commission the following protocol will be followed:

In the circumstances where the Planning Committee is minded to determine an application contrary to the officer recommendation the Monitoring Officer or his/her representative should be consulted on the legal issues. The Committee will be required to defer a proposed decision contrary to the officer

recommendation where the Monitoring Officer and the Assistant Director Environment, Planning and Waste or the Development Control Manager both agree that either major policy issues are at stake or the decision will be difficult to defend if challenged and advise that a deferral should therefore be made. In the event of a deferral on these grounds a further report will be submitted to the next meeting of that Committee:-

- a updating Members on any additional information received;
- b reporting on any discussions that have taken place with the applicants/objectors since the initial meeting; and
- c setting out the legal, procedure and likely financial implications of proceeding with a resolution contrary to officer advice.
- d adding any additional Monitoring Officer advice.

5.12.10.5 If the Planning Committee makes a decision contrary to the officers' recommendation (whether for approval or refusal) a detailed minute of the Committee's reasons should be made and a copy placed on the application file. In this context Members should be prepared to explain in full their reason for not agreeing with the officers' recommendation. In so doing, Members should observe the 'Wednesbury principle' which requires all relevant information (i.e. material considerations) to be taken into account and all irrelevant information (i.e. non-material matters) to be ignored.

5.12.10.6 Planning officers should also be given an opportunity at the meeting to explain the implication of the contrary decision in order to consolidate any information already provided in the Further Information Report.

5.12.11 Applications in which a Member of the Council has an interest

5.12.11.1 All applications which are submitted by or on behalf of you as a Member of the Council in your private capacity or by a close relative or your partner (a "relevant person" as defined in paragraph 8(2) of the Councillor Code of Conduct) must be drawn to the attention of the Assistant Director Environment, Planning and Waste by yourself in writing, and if you have a material interest in the outcome of your relative's application or if the application is submitted by your partner, it will be reported to the Planning Committee for a decision, rather than being dealt with in accordance with the Scheme of Delegation to Officers.

5.12.11.2 **You must take no part in the determination of the application. You must declare a prejudicial interest however you may make representations in accordance with paragraph 5.13.6.4 before leaving the meeting and you must not seek to influence any decision made. You may also appoint an agent who can speak subject to the Planning Rules (Part 4 Section 8 paragraph 4.8.12 (Public Speaking at Planning Committees) on your behalf.**

5.12.11.3 If an application is submitted by a relative or partner (as defined in paragraph 8 of the Councillor Code of Conduct), the applicant may speak at committee meetings (subject to Planning Rules (Part 4 Section 8 paragraph 4.8.12) public speaking at planning committees or appoint an agent to speak on his or her behalf.

5.12.11.4 The Chairman of the Planning Committee which will determine the planning application in which you have an interest will appoint another Member of the

Council to provide procedural and other advice and information to the applicant, and to the Town or Parish Council concerned.

5.12.12 Hospitality

5.12.12.1 As a Member of the Council **you are discouraged from receiving hospitality from people with an interest in a planning proposal**. If receipt of hospitality is unavoidable, you will ensure that it is of the minimum level and, if it exceeds the level to which the Code of Conduct for Councillors applies (£25), you must declare its receipt as soon as possible, in the Hospitality Register kept by the Monitoring Officer.

5.12.13 Training

5.12.13.1 As a member of the Planning Committee you are required to undergo training in planning procedures. This will normally take place within three months of appointment to the Committee and at appropriate intervals thereafter. A record will be kept by the Monitoring Officer of the training you undertake. Consistent failure to undertake this training will result in disqualification from being a member of the Planning Committee.

PART 2 - THE ROLE OF COUNCILLORS WHO ARE NOT MEMBERS OF THE COMMITTEE

5.12.14.1 In general Councillors who are not members of the Committee and who are not members for wards affected by an application will be expected to abide by the same principles as those members who are members of the Planning Committee. In particular members who are not members of the Planning Committee will:

- a act fairly and openly
- b approach each application with an open mind
- c avoid inappropriate contact with interested parties
- d advise the Assistant Director Environment, Planning and Waste as soon as possible of the existence of any substantial or abnormal lobbying activity
- e take no part in the processing of applications in which they have a personal or prejudicial interest
- f not give instructions to officers nor place pressure on officers in order to secure a particular recommendation on an application

5.12.14.2 Non-committee members who are members for wards affected by an application are able to adopt a role which represents their own views on a planning application (as the ward member) to the Planning Committee or that of their constituents. In this capacity the ward members will be invited to attend any Planning Committee site inspections that take place in their ward.

5.12.14.3 Non-committee members should not lobby Planning Committee members in order to secure the outcome on a planning application that either they or their constituents seek. The ward member, the appropriate Town or Parish Council and local residents will have the opportunity to present their views to the Planning

Committee in accordance with the Council's adopted standards on Public Speaking at the Planning Committee.

5.12.14.4 All Council Members may attend meetings of the Council's Planning Committee even if they are not a member of the Committee (unless you have a prejudicial interest). **You may speak but not vote on items under the procedures laid down in the Constitution unless under paragraphs 5.13.6.3 and 5.13.6.4 above.** When you attend the Planning Committee, you should not sit in the public gallery, but in the place reserved in the Committee room for Members of the Council who are not Members of the Planning Committee. When you speak at the meeting, either the Chairman of the Committee in calling upon you to speak or you in speaking should make it clear upon what basis you are taking part in the meeting, and that you have no right to vote on the application concerned. The rules on declaring interests set out at paragraph 5.14.6 of this Code apply at all times.

PART 3 - THE ROLE OF OFFICERS

5.12.15.1 In making delegated decisions on applications, officers will:

- a act fairly and openly
- b approach each application with an open mind
- c carefully weigh up all the material planning considerations
- d avoid inappropriate contact with interested parties
- e ensure that reasons for decisions are clearly stated

5.12.15.2 In reporting to Committee officers will:

- a provide professional and impartial advice
- b make sure that all information necessary for a decision to be made is given
- c set the application in the context of the Development Plan and all other material considerations
- d include the substance of objections and the views of people who have been consulted
- e provide a clear and accurate written analysis of the issues
- f give a clear recommendation

5.12.15.3 Record keeping should be complete and accurate. Every planning application file should contain an accurate account of events throughout its life. Particular care is to be taken with delegated decisions, which should be as well documented and recorded as those taken by members. These principles apply equally to enforcement and development plan matters.

5.12.15.4 Any material planning information which is received after the written report has been prepared and before the cut-off time specified in paragraph 5.13.5.2 above will be presented orally to the Planning Committee by officers.

5.12.15.5 The Assistant Director Environment, Planning and Waste, in discussion with the Chairman of the Planning Committee, may withdraw any item from the agenda of the Planning Committee after the preparation of the report but before discussion by the Planning Committee if the circumstances of the consideration of an application change within that period.

5.12.15.6 Officers are responsible for carrying out the decisions of the Planning Committee, whether or not those decisions are in line with officer recommendations.

5.12.16 Discussions About Planning Applications

5.12.16.1 All officers taking part in pre-application or post-submission discussions with applicants, supporters or objectors should make it clear that decisions on planning applications are taken either:

- a by the elected Members in Committee, or
- b in specific circumstances by the Assistant Director Environment, Planning and Waste or by an officer to whom he or she has the power to delegate.

5.12.16.2 A written note will be made of all such meetings and may be distributed. The meeting note and any follow-up correspondence must be placed on the planning application file, in case an application is made following initial discussions.

5.12.17 Disclosures of Interest

5.12.17.1 Officers must play no part in the processing of any application in circumstances where there is, or would be perceived to be, a conflict between their personal or financial interests, those of their families or friends, and their professional duty. They must openly declare the existence of any such conflict in writing to the Assistant Director Environment, Planning and Waste. Any interest the Assistant Director Environment, Planning and Waste has in an application must be declared to the Monitoring Officer.

5.12.18 Applications Submitted by Officers

5.12.18.1 All applications submitted from officers holding politically restricted posts as defined in the Local Government and Housing Act 1989 or employed in the Planning and Transportation Service must be reported to the Planning Committee for a decision, rather than being dealt with in accordance with the Scheme of Delegation to officers. If the officer concerned is present at the meeting of the Planning Committee at which such an application is determined, he or she must leave the room during consideration of the application.

5.12.19 Hospitality

5.12.19.1 Officers are discouraged from receiving hospitality from people with an interest in a planning proposal. If receipt of hospitality is unavoidable, officers will ensure that it is of the minimum level. If it exceeds £25 they must declare it as soon as possible in the Hospitality Register which is retained by the Monitoring Officer.

5.12.20 Action on Decisions Taken Contrary to Professional Advice

5.12.20.1 In cases where an officer recommendation for approval has been overturned by Committee and an appeal is lodged:

- a officers will give full support to Members and any external witnesses in preparing evidence for any public inquiry, short of giving evidence themselves.
- b officers will give evidence themselves only in exceptional circumstances, where their Code of Professional Conduct is not breached.
- c where a hearing is to be held, with no cross-examination, officers may give evidence themselves, but this will normally be only if the officer concerned has not been involved in formulating the original recommendation.
- d officers must give full support to Member decisions which are appealed using the written representations procedures.

5.12.21 General

5.12.21.1 The operation of this Code will be monitored by the Standards Committee and revised if necessary following a change in the Council's Rules of Procedure or Constitution.

5.12.22 References

5.12.22.1 This Code of Conduct has been prepared in the wider context of national best practice on this matter. Of particular relevance are:

Local Government Association
Probity in Planning May 2009
Standards Board for England
Code of Conduct Guide for Members May 2007
Association of Council Secretaries and Solicitors
Model Members' Planning Code of Good Practice 2007