

PART 5 - CODES AND PROTOCOLS

CONDUCT OF MEMBERS

Preamble

When a person has been elected as a Councillor they are never a member of the general public in relation to any matter before the Council. Although this means they lose certain privileges available to the general public that is the consequence of holding public office. This situation continues until the Councillor ceases to be a member of Council at all times.

The General Principles of Public Life

At all times regard shall be had to the principles governing the conduct of Members and coopted Members of Council as set out under Section 28 of the Localism Act 2011, namely:-

(a) Selflessness:

By which we mean that Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person or in order to gain any personal financial or other material benefits.

(b) Integrity:

By which we mean that Members should not place themselves in situations where their integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour. Members may take into account the views of others, including their political groups, but must reach their own conclusion on the issues and act in accordance with those conclusions.

(c) Objectivity:

By which we mean that Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

(d) Accountability:

By which we mean that Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

(e) Openness:

By which we mean that Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those

actions. They should restrict information only when the wider public interest demands.

(f) Honesty:

By which we mean that Members 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.

(g) Leadership

By which we mean that Members should promote and support these principles by leadership, and by example.

1.0 Scope of Rules

- 1.1 These Rules apply to all decision making processes of the Council in which Members of Council are involved and whenever they are acting as a Councillor.
- 1.2 These Rules apply to coopted members of Committees in their position as such members and a copy of the Members' Code of Conduct including these Rules will be given to all coopted Members on cooption to a Committee or Board.
- 1.3 A record shall be kept by the Head of Legal and Governance of all declarations of interest, wherever in the decision making processes of the Council the declaration is made, together with the record of the decision in relation to which the declaration is made.
- 1.4 The Member Code of Conduct as adopted by this Council forms Appendix 1 to these Rules.
- 1.5 Where a Member has a disclosable pecuniary interest as defined in the Code in Appendix 1, in any matter which is the subject of discussion at a meeting of the political grouping of which that Member is a part then the interest shall be declared at the group meeting as if it were a formal meeting of the Council and the Member shall leave the meeting during discussion of the matter.
- 1.6 Guidance on the acceptance of gifts and/or hospitality is set out at Appendix 2 to these Rules.

2.0 Inspection of Land, Premises, Etc

- 2.1 Unless specifically authorised to do so by the Council or the Executive, a member of the Council shall not issue any order respecting any works which are being carried out by or on behalf of the Council or claim by virtue of his membership of the Council or the executive any right to inspect or to enter

upon any lands or premises which the Council or the executive have the power or duty to inspect or enter.

3.0 Special Interest Declarations by Cabinet Members

3.1 A Cabinet Member is deemed to have a prejudicial interest in relation to any matter within their portfolio where the decision of the individual Cabinet Member is required and

- i. the matter arises in their wards;
- ii. the matter arises in an adjoining ward and will significantly affect the Cabinet Member's ward whether the effect is beneficial or adverse,

and the Member shall so notify the Leader of the Council in accordance with these and the Executive Procedure Rules so that a substitute or deputy can be appointed to make or be involved in making any decision affecting the Member's Ward.

3.2 Any Cabinet Member with a disclosable pecuniary interest arising under the law these Rules or the Code at Appendix 1 must declare that interest in the normal way and ensure it is recorded in accordance with these Rules.

3.3 In relation to matters falling within Rule 3.1 the Cabinet Member shall not make nor be involved in making any decision in relation to their Ward unless the decision is being made by Cabinet, when they shall be entitled to take part in the meeting and vote.

3.4 Where a Cabinet Member is precluded from making or being involved in making a decision because of an interest arising under Rule 3.1 they shall still be entitled to exercise their rights as the Ward Member.

3.5 Any interest declared under this rule must be notified, in writing, by the Cabinet Member with that interest to the Proper Officer who shall record the interest in accordance with these Rules.

4.0 Cabinet Member Attendances at Overview and Scrutiny

4.1 The failure of a Cabinet Member, without good reason, to attend an overview and scrutiny committee after a formal request in accordance with the Overview and Scrutiny Procedure Rules, is a disciplinary matter referable to the Standards Committee at the behest of the overview and scrutiny committee.

5.0 Legal Advice on Interests Issues

- 5.1 Where a Member has sought advice from a legal officer of the Council relating to whether to declare an interest and the officer has advised that an interest does exist under these rules the Member will be expected to act on that advice.
- 5.2 If a Member fails to act on such advice then the legal officer shall inform the Monitoring Officer who shall consider whether a prima facie case exists for further investigation under the procedures set out in this part of the Constitution.
- 5.3 Where such advice is sought from the Monitoring Officer and the Member is advised that an interest exists but the Member does not follow that advice, then the Monitoring Officer shall consider whether a prima facie case exists for further investigation under the procedures set out in this part of the Constitution.
- 5.4 Where a Member does not take advice from any legal officer of the Council but seeks independent legal advice relating to whether to declare an interest, the view of the Monitoring Officer on the interpretation of the law, the Code of Conduct and these Rules shall prevail, if a complaint against the Member is made to the Monitoring Officer.

6.0 Complaints on Conduct of Members

- 6.1 Where a complaint has been made against a Member then the Member shall:-
 - a. cooperate with the Monitoring Officer in consideration of the complaint at the initial stage;
 - b. cooperate with the Monitoring Officer during preparation of the report to a Standards Panel of the General Purposes Committee;
 - c. attend the meeting of the Standards Panel of the General Purposes Committee at which the report of the Monitoring Officer is to be considered.
- 6.2 At the Committee meeting the Member, against whom a complaint has been made which is the subject of a report to the Committee will be expected to:-
 - a. answer questions put by the Panel;
 - b. generally cooperate in resolving the complaint
- 6.3 (i) Any Member who has made a complaint against another Member shall:-

- a. cooperate fully with the Monitoring Officer to bring forward the complaint expeditiously;
- b. not give or make any statement concerning the existence of the complaint, the subject matter of the complaint, or details of the complaint either to the press or other media, or to the general public or their own political group or party except as set out below.

(ii) Disclosure to a political group or party on the Council may be made confidentially if, and only if, the complaint involves a member of the same political group or party as the Member Complainant provided that that Member reasonably believes the complaint is so serious that it reflects on their political group or party on the Council and provided the provisions of Rules 6.4 and 6.5 are observed.

6.4 The political group on the Council of which a Member, against whom a complaint has been made to the Monitoring Officer, is part, may consider and take disciplinary action against that Member in advance of any decision of the Standards Panel IF:-

- a. they are instructed so to do by their party organisation nationally; or
- b. they are instructed so to do by the Ward organisation of the Member concerned or by the Ward organisation of any other Member of the same political group; or
- c. the political group on the Council consider it necessary or expedient to uphold the good name or discipline of their political group or party or the Council.

6.5 If a political group of the Council gives notice to its members that it intends to consider whether to take disciplinary action or intends to take disciplinary action against one of its members pursuant to Rule 6.3 and/or 6.4 then no Councillor who is a member of the Standards Panel shall take part in any discussion or decision of their political group on the issue and shall absent themselves from any meeting during such discussion or decision making as if they had a disclosable pecuniary interest in the matter and the political groups of the Council shall make every effort to assist their members on the Standards Panel in this.

APPENDIX 1

HARROGATE BOROUGH COUNCIL

MEMBERS' CODE OF CONDUCT

INTRODUCTION

This Code sets out the standards of behaviour required of Councillors whenever they are acting, claim or give the impression that they are acting as a Member or Co-opted Member of Harrogate Borough Council.

The Code has been adopted by the Borough Council and requires compliance with the general principles of public life set out in the preamble to this part of the Constitution.

In any case where a Borough Council Member has an interest in a matter which is not a disclosable pecuniary or registerable interest under the Localism Act 2011 or regulations but participating or voting (or further participating or voting) on the matter would conflict with the general principles of public life they must declare that interest and take no further action with regard to that matter as if it were a disclosable pecuniary interest.

PART 1

General Provisions

1. You must not treat others with disrespect.
2. You must not do anything which may cause the Borough Council to breach any equality enactment.
3. You must not bully or intimidate any person, or attempt to bully or intimidate them.
4. You must not do anything which compromises the impartiality of anyone who works for or on behalf of the Authority, or do anything that is likely to compromise their impartiality.
5. You must not disclose information which is given to you in confidence or which you believe is of a confidential nature, or ought reasonably to be aware is of a confidential nature, unless:
 - You have the permission of a person authorised to give it; or
 - You are required by law to disclose the information; or
 - You disclose it to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or
 - The disclosure is reasonable; and is in the public interest; and is made in good faith; and is only made after having complied with any reasonable requirements of the Council to delay disclosure or to maintain confidentiality.

Before disclosing any information under this paragraph, you must consult the Monitoring Officer or his deputy and/or the Chief Executive or a relevant Officer as set out under the supplementary protocol at the end of this Code.

6. You must not prevent another person gaining access to information which that person is entitled to by law.
7. You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council into disrepute, or your position as a Borough Councillor into disrepute.
8. You must not use your position as Borough Councillor improperly to obtain any advantage or disadvantage for yourself or any other person, or attempt to do so.
9. You must not take part in the scrutiny of any decision you have been involved in making – except that you may provide evidence or opinion to those undertaking any scrutiny process.

10. You must not accept any gift or hospitality which could reasonably be perceived as creating an obligation upon the Council, or upon yourself as a Councillor, if you do accept any gift or hospitality which might be attributable to your membership of the Council (other than the refreshments which might usually be expected at Council meeting or civic function) you must disclose this, or any offer of such gift or hospitality, to the Monitoring Officer.
11. You must act in accordance with the Council's guidance or requirements when using the resources of the Council (such as officer time, IT and copying equipment, or physical materials), or when authorising others to use them, and must ensure that those resources are not used improperly for political or other purposes.
12. You must have regard to relevant advice given by the Council's Chief Financial Officer or Monitoring Officer when making decisions and must give reasons for those decisions, in accordance with any requirements imposed by statute or the Council.
13. You must comply with the following section of this Code, which relates to registering interests and declaring in meetings any disclosable pecuniary interests you may have. You are also required to leave the room during any meeting at which a matter in which they have a disclosable pecuniary interest is being discussed.

PART 2

Disclosable Pecuniary Interests

14. 1. A Member or Co-opted Member 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.
2. A pecuniary interest is a disclosable pecuniary interest if it is of a description specified in regulations by the Secretary of State and it is either:
- (a) an interest of the Members; or
 - (b) It is an interest of –
 - (i) the Member's spouse or civil partner;
 - (ii) a person with whom the member is living as husband or wife; or
 - (iii) a person with whom the Member is living as if they were civil partners.
15. Disclosable Pecuniary Interests have been defined by the Secretary of State in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 1464) as follows:
- | | | |
|-----|---|--|
| (1) | Employment, office, trade, profession or vocation | Any employment, office, trade, profession or vocation carried on for profit or gain. |
| (2) | 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 the Member in carrying out duties as a Member, or towards the election expenses of the Member. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(a). |

- (3) Contracts
- Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority:
- (a) under which goods or services are to be provided or works are to be executed; and
(b) which has not been fully discharged.
- (4) Land
- Any beneficial interest in land which is within the area of the relevant authority.
- (5) Licences
- Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
- (6) Corporate tenancies
- Any tenancy where (to the Members' knowledge) –
- (a) the landlord is the relevant authority; and
(b) the tenant is a body in which the relevant person has a beneficial interest.
- (7) Securities
- Any beneficial interest in securities of a body where –
- (a) that body (to the Members' 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.

16. Effect of Interests on Participation

1. When you have a disclosable pecuniary interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that meeting or when the interest becomes apparent.
 2. Where you have a disclosable pecuniary interest and have not obtained a dispensation you must leave the room during discussion of the relevant business.
 3. Unless you have obtained a dispensation from the Monitoring Officer or the General Purposes Committee. You must not exercise executive functions in relation to any business where you have a disclosable pecuniary interest or one which conflicts with the general principles of public life set out in the preamble to this Code of Conduct.
 4. Where you have an interest where your participation or voting on a matter might be seen as conflicting with the general principles set out in the preamble to this Code of Conduct you must declare it and cease to participate or vote and leave the meeting as if it were a disclosable pecuniary interest.
 5. Where you have an 'other interest' which is registered in accordance with the Code of Conduct you need not disclose that interest at the meeting.
17. For the purposes of this Code of Conduct 'other interests' which must be included in the Members' Register of Interests include your membership of our position of general control or management in any:-
- (a) body to which you have been appointed or nominated by the authority as its representative.
 - (b) public authority or body exercising functions of a public nature;
 - (c) body directed to charitable purposes;
 - (d) body whose principal purposes include the influence of public opinion or policy; (*membership of a political party should be declared under this heading*)
 - (e) trade union or professional association.

- (f) the name and address of any person or body from whom you have received a gift or hospitality with an estimated value of at least £25 in the course of your work as a Councillor – private gifts or hospitality do not need to be recorded.
18. (1) You must also regard yourself as having an interest which must be disclosed and treated as if it were a disclosable pecuniary interest in any business before an Overview and Scrutiny Committee of your authority (or of a Sub-Committee of such a Committee) where:-
- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive; and
 - (b) at the time the decision was made or action was taken, you were a member of the executive.
- (2) Where you have an interest under paragraph (1) above you may attend a meeting of the Overview and Scrutiny Committee (or of a Sub-Committee of such a Committee) but only for the purposes of answering questions or giving evidence relating to that business. Thereafter, you should withdraw from the meeting and not seek to improperly influence any recommendations about that business.

19. Sensitive Interests

- (1) Where a Member or Co-opted Member has an interest (whether or not a disclosable pecuniary interest) and the nature of that interest is that the Member or Co-opted Member and the Monitoring Officer, consider that disclosure of the details of the interest could lead to the Member or Co-opted person or a person connected with the Member or Co-opted Member being subject to violence or intimidation any published version of the register must not include the details of the interest. The register may state that the Member or Co-opted Member has an interest but the details are withheld under Section 32 (2) of the Localism Act.
- (2) In the event that a matter relating to a sensitive interest as set out in sub-paragraph (1) above is being considered at a meeting the Member or Co-opted Member is required to disclose the fact that they have a disclosable pecuniary interest (when it is such an interest) but not the nature of it.
- (3) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

SUPPLEMENTARY PROTOCOL - DISCLOSURE OF CONFIDENTIAL INFORMATION UNDER PARAGRAPH 5 OF THE CODE

1. Councillors have access to confidential information, both from members of the public and from the Council's Officers and records. It is vital that the confidentiality of this information is respected. Disclosure of confidential information may be a breach of the Members Code, or the Data Protection Act, or a tort actionable in damages at law.
2. However a situation may arise where a Member believes that disclosure of confidential information is necessary in the public interest; for example to prevent a crime, danger to health or safety or a corrupt practice within the Council.
3. The Members Code provides an exception to the usual rule that confidential information must not be disclosed. Disclosure will not be a breach of the Code if:-
 - It is reasonable in the circumstances;
 - It is made in good faith;
 - It is in the public interest;
 - It is in compliance with the reasonable requirements of the authority.
4. It is a requirement of the authority that before disclosing confidential information, a member who wishes to make use of this exception should contact one of the following Officers and discuss the circumstances with him or her.

The Officers are:-

The Chief Executive
The Chief Financial Officer
The Monitoring Officer
The Head of Legal and Governance
The Audit Manager

5. Whether or not disclosure is a breach of the Code will depend on the circumstances and ultimately on the view taken under the procedures for the investigation of Code of Conduct complaints. But Officers will be able to give their view, and may be able to suggest ways of preventing any abuse which do not risk breaking the Code.

Disclosure of confidential information without a full prior discussion with one of these Officers will not be in accordance with the Authority's reasonable requirements as stated in paragraph 5 of this Code.

APPENDIX 2

GUIDANCE FOR MEMBERS ON THE ACCEPTANCE OF GIFTS AND/OR

HOSPITALITY

1.0 INTRODUCTION

- 1.1 The following guidelines supplement the law and the Council's Constitution in relation to the filling of any vacancies for an appointment under the Council whether an Officer or otherwise, or any contract with the Council or in any other circumstances.
- 1.2 It is essential to remember that dealings with Members of local authorities and other public bodies are subject to the provisions of special legislation with sanctions under the criminal law, designed to protect the public interest and public confidence. In consequence, any offer of hospitality or gifts to a Member even on a modest scale, needs to be approached with great caution.

The legislation is contained in:-

- the Public Bodies Corrupt Practices Act 1889;
- the Prevention of Corruption Act 1906;
- the Prevention of Corruption Act 1916.

Although these Acts are specifically addressed to corrupt practices, it is possible to commit an offence even if you innocently receive something which is given to you corruptly. In other words, you may not recognise what you are given as intended to be an inducement to do something or you may not recognise the corrupt intention of the person behind the gift. There is, of course, other legislation covering deliberate frauds of various sorts, but the ones listed above are specifically directed towards local government.

- 1.3 The legislation provides that anyone who corruptly gives, promises or offers, any gift, loan, fee, reward or advantage as an inducement to or a reward for any Member of a public body for doing or forbearing to do anything in respect of any matter or transaction, is guilty of a criminal offence. Similarly a criminal offence is committed by anyone who corruptly solicits, receives or agrees to receive for themselves or any other person such an inducement or reward. It does not matter that the corrupt intention is not achieved.

- 1.4 It is particularly to be noted that in any case where legal proceedings are brought, the giving or acceptance of any money, gift or other consideration, is deemed to have been given or received corruptly as such an inducement or reward, unless the contrary is proved. This represents a departure from the general principle that a person is innocent until proved guilty.

2.0 GIFTS

- 2.1 There can be little doubt that the acceptance of gifts by Members, from persons who have or may seek to have dealings with the Authority, would be viewed by the public with suspicion and would make the Member concerned and the Council vulnerable to criticism. Members should, therefore, tactfully refuse any personal gift offered to them or to a member of their family directly or indirectly by any person or body involved, either actually or potentially, in any way with the Authority. Members should be particularly vigilant where the person or body involved has applied for planning permission or some similar sort of decision or may be intending to do so.

- 2.2 Small gifts of token value for example a calendar or diary which may be by way of an advertisement of a business or charity may be accepted as long as there is not a series of such gifts where the total value in any 12 month period would exceed £25.00. These may be received by Members at Christmas or New Year or, for example, if there has been a need for a visit to an organisations' premises for a particular reason.

- 2.3 Any gift offered or accepted above the value of £25.00 should be notified to the Head of Finance as Proper Officer on the pro forma provided to all Members. If a Member wishes to return a gift and would prefer it dealt with formally then they should bring the gift to the office and request the assistance of the Proper Officer.

- 2.4 Members may have concerns in two other types of circumstances:-

- a. Where a gift is offered by a ward constituent in gratitude to a Member for resolving an issue which had been of concern to the constituent.

In such circumstances, the Member may choose:-

- i. to refuse the gift tactfully explaining that it would be improper to accept it but expressing gratitude for the thoughtfulness;
- ii. accept the gift but advise the constituent that it will be donated to the Mayor's charity or another charity.

In any event, if the offered gift is valued at £25.00 or more the Member must notify the Proper Officer on the pro forma provided.

- b. Gifts from personal friends

Provided the Member is able to be clear whether the gift is a personal gift, say for a birthday or Christmas present, it can be accepted without reference to the Proper Officer. If the gift relates to some actual or perceived assistance from the Member in relation to a matter connected with the Authority, the Member should deal with the gift in exactly the same way as a gift from any other ward constituent and should declare the offer on the pro forma provided.

3.0 GIVING AND RECEIVING HOSPITALITY

- 3.1 Any hospitality given by Members should be justified as in the public interest. The hospitality given should be on a scale appropriate to the occasion and parsimoniousness and extravagance alike are to be avoided.
- 3.2 Concerning offers of hospitality, there should be no cause for concern if the offer is made by another public body but, in all cases, offers of hospitality must be treated with caution.
- 3.3 Members must refuse offers of hospitality where any suggestion of improper influence is possible. Special caution is necessary where hospitality is offered by a person or body having or seeking business with or a decision from the authority, particularly where the offer is to an individual Member.
- 3.4 Hospitality should only be accepted where it is on a scale appropriate to the circumstances, reasonably incidental to the occasion and not extravagant and where it is apparent that no cause could reasonably arise for adverse criticism about the acceptance of the hospitality.
- 3.5 The following are examples of hospitality which is acceptable and that which is not:-

Acceptable

- a. An offer of a drink following a site inspection; or
- b. Invitations to attend functions where the Member represents the Council (eg dinners where they are invited to speak, opening ceremonies, trade shows, etc) or to functions which they attend by virtue of their position within the Council; or
- c. Hospitality offered by other public bodies; or
- d. A working lunch of a modest standard provided to enable the parties to continue to discuss business.

Unacceptable

- a. Night Club visits or holidays;
 - b. Personal invitations to have dinners with representatives from a company or firm which has dealings with the Council; or
 - c. Offer of hotel and tickets for theatre in London or the use of a company flat; or
 - d. Invitations to hospitality and attendance at a race meeting or other sporting event except where these are part of the life of the local community or where the authority should be seen to be represented.
- 3.6 Hospitality provided by another local authority or being paid for by Harrogate Borough Council need not be declared.

4.0 CHECKLIST AND REGISTER

- 4.1 The following checklist of questions should help Members to decide whether a gift or an offer of hospitality should be accepted or tactfully rejected:-
1. Is the donor, or event, significant in the community or in the Council's area?
 2. Are you expected to attend because of your position in the community?
 3. Will the event be attended by others of a similar standing in the community?
 4. What is the motivation behind the invitation?
 5. Would acceptance of the invitation be, in any way, inappropriate or place you under pressure in relation to any current or future issue involving the Council?
 6. Could you justify the decision to the Council, press and public?
 7. Is the extent of the hospitality or the nature of the gift reasonable and appropriate?
 8. How will you respond to the hospitality?
 9. Are you comfortable with the decision?
- 4.2 A register of hospitality offered to Members is maintained by the Director of Resources and Members should give notice on the appropriate form as soon as possible after receiving hospitality, of:-
- a. the name of the person or organisation offering hospitality;

- b. the nature of the offer of hospitality, its estimated value and location;
and
- c. the name or names of Members receiving such hospitality.

APPENDIX 3

ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS UNDER THE LOCALISM ACT

1 Introduction and Context

Harrogate Borough Council and the Parish Councils within the District have a shared legal responsibility to promote and maintain high standards of conduct by members and co-opted members of their authority.

Harrogate Borough Council's approach to investigating complaints will be proportionate to the seriousness of the complaint and Harrogate Borough Council will, in particular, seek to ensure informal resolution of such complaints wherever possible.

These “Arrangements” set out how you may make a complaint that an elected or co-opted member of this authority [or of a parish council within its area] has failed to comply with the authority’s Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the authority’s Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a member or co-opted member of the authority [or of a parish council within the authority’s area], or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member [or a member or co-opted member of a parish council] against whom an allegation has been made.

2 The Code of Conduct

The Council had adopted a Code of Conduct for members, which can be found in Part 5 of the Council’s constitution and is available for inspection on the authority’s website and on request from Reception at the Civic Offices. [Each Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct, you should inspect any website operated by the Parish Council or request the Parish Clerk to allow you to inspect the Parish Council’s Code of Conduct].

3 Making a complaint

If you wish to make a complaint, please write to:

“The Monitoring Officer
Legal & Governance
PO Box 787
Harrogate HG1 9RW

Or email: jennifer.norton@harrogate.gov.uk

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members’ interests and who is responsible for administering the system in respect of complaints of member misconduct. In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the model complaint form, which can be downloaded from the authority’s website, next to the Code of Conduct, and is available on request from Reception at the Civic Offices.

Please do provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form, in which case we will not disclose your name and address to the member against whom you make the complaint, without your prior consent. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will endeavour to acknowledge receipt of your complaint within five working days of receiving it, and will keep you informed of the progress of your complaint.

4 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and may, after consultation with the Independent Person, decide whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed. [Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of

the Parish Council before deciding whether the complaint merits formal investigation].

The Monitoring Officer may decide not to investigate your complaint if he/she decides it is inappropriate to do so; among the reasons for taking this decision are:

- (i) the potential seriousness of the alleged breach (if true)
- (ii) the likely cost of an investigation in time and other resources
- (iii) that there is insufficient evidence of a Breach of the relevant Code of Conduct
- (iv) the matters detailed in the complaint fall outside the terms of the Localism Act 2011 and/ or the relevant Code of Conduct
- (v) other actions either to remedy the complaint or prevent its re-occurrence (such as reference to the relevant Parish Clerk) or an informal resolution is seen as more appropriate
- (vi) the Member is no longer a serving member of the relevant Council (other than referring a potentially criminal matter to the Police)
- (vii) whether the complaint is anonymous - the Council will not normally investigate anonymous complaints unless there is a clear public interest in doing so
- (viii) the passage of time - if the complaint happened so long ago that there would be little benefit in taking action now
- (ix) the complaint is one that the Monitoring Officer believes has been (or largely has been) determined before
- (x) any other circumstances bearing upon the public interest including the Council's stated wish to keep the bureaucracy associated with its standards responsibilities to a minimum.

The Monitoring Officer may consult the Independent Person at this stage and in those circumstances must take their opinion into account before deciding whether or not to nominate an investigating officer.

An investigating officer will normally be a Harrogate Borough Council member of staff but in certain circumstances where the Monitoring Officer believes it expedient and appropriate to do so he may request an external investigation.

If at this stage or at any point during an investigation it appears likely to him that a criminal offence has been committed the Monitoring Officer may refer the matter to the Police or such other regulatory agencies as the Monitoring

Officer considers appropriate and, if necessary, halt the investigation pending their consideration and/or criminal proceeding.

5 How is the investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

At any time during the investigation, the Monitoring Officer may conclude that it should be discontinued for any of the reasons set out in paragraph 4 above.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

6 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned [and to the Parish Council, where your complaint relates to a Parish Councillor], notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly or feels that there

are matters requiring further clarification, he may ask the Investigating Officer to reconsider his/her report.

7 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report in the same way as in paragraph 6 above and will then either send the matter for local hearing before the Hearing Panel or, after consulting the Independent Person, seek local resolution.

7.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action the authority. If the member complies with the suggested resolution, the Monitoring Officer may report the matter to the General Purposes Committee in respect of a breach of the Borough Council Code [and the Parish Council in respect of a breach of a Parish Council Code] for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer will give further consideration to referring the matter for a local hearing and may take the Independent Person's view into account in making that decision. However, the decision as to whether the matter should proceed to a hearing is for the Monitoring Officer, who will exercise his discretion reasonably.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel which will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Council has agreed a procedure for local hearings, which is attached as Appendix 4 to these arrangements.

Essentially, the Monitoring Officer will conduct a “pre-hearing process” requiring the member to give his/her response to the Investigating Officer’s report. In order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Hearings Panel. Both the complainant and a member has a right to be accompanied and/or represented at the hearing. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

If the Hearings Panel, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Hearings Panel concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the member’s failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8 Who are the Hearings Panel?

The Hearings Panel is a panel of the Council’s General Purposes Committee. The General Purposes Committee has decided that it will comprise a maximum of three members of the Committee.

The Independent Person is invited to attend all meetings of the Hearings Panel and their views are sought and taken into consideration before the Hearings Panel takes any decision on whether the member’s conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

9 Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

A person cannot be “independent” if he/she:

- 9.1 Is, or has been within the past five years, a member, co-opted member or officer of the authority, with the exception that former Independent Members of Standards Committees can be appointed as Independent Persons;
- 9.2 (Is or has been within the past five years, a member, co-opted member or officer of a parish council within the authority's area), or
- 9.3 Is a relative, or close friend, of a person within paragraph 9.1 or 9.2 above. For this purpose, "relative" means:
 - 9.3.1 Spouse or civil partner;
 - 9.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 9.3.3 Grandparent of the other person;
 - 9.3.4 A lineal descendant of a grandparent of the other person;
 - 9.3.5 A parent, sibling or child of a person within paragraphs 9.3.1 or 9.3.2;
 - 9.3.6 A spouse or civil partner of a person within paragraphs 9.3.3, 9.3.4 or 9.3.5; or
 - 9.3.7 Living with a person within paragraphs 9.3.3, 9.3.4 or 9.3.5 as husband and wife or as if they were civil partners.

10 Contact details for Independent Person

The Council has appointed the following Independent Person until 17 July 2016:-

Alan Mitcheson: (Telephone: 0770 2 722931)

The Independent Person's role is as set out in the Localism Act and this Constitution. The Authority must consult the Independent Person in certain circumstances and may do in others and the subject of a complaint may do so. There is no statutory provision for contact between a complainant or potential complainant and the Independent Person and it is important that all concerned recognise and respect the independence of the person appointed to this role. In particular, whilst the Independent Person is a source of advice, they will not express an opinion on any particular complaint, unless and until it reaches a Hearings Panel.

11 What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to you, to the member (and to the Parish Council), make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

12 What action can the Hearings Panel take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may:-

- 12.1 Censure or reprimand the member;
- 12.2 Publish its findings in respect of the member's conduct;
- 12.3 Report its findings to Council (or to the Parish Council) for information;
- 12.4 Recommend to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 12.5 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 12.6 Recommend to Council that the member be replaced as Executive Leader;
- 12.7 Instruct the Monitoring Officer to [or recommend that the Parish Council] arrange training for the member;
- 12.8 Remove (or recommend to the Parish Council that the member be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Parish Council);
- 12.9 Withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or

12.10 Exclude (or recommend that the Parish Council exclude) the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The above list is not exhaustive, however, the Hearings Panel has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

13 Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

14 Appeals

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearings Panel.

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

APPENDIX 4

LOCALISM ACT 2011 - PROCEDURE AT PANEL HEARINGS OF THE GENERAL PURPOSES COMMITTEE

At the Hearing the Panel will consider the matter in four stages:

- The findings of fact set out in the investigating officer report focussing especially on those issues still in dispute and the responses of the member to those findings.
- Whether there has been a breach of the Code of Conduct.
- If the member has not failed to follow the Code, any recommendations it would wish to make to the Council or Parish Council arising from the hearing.
- If the member has failed to follow the Code, whether a penalty would be appropriate.

A. Preliminary Matters and Participants

1. The Chair will make introductions and explain the procedure to be followed to those present. The panel will consider whether the public should be excluded from the hearing. Any declarations of interest from members present will be taken. Any preliminary issues not resolved through the pre-hearing process will be considered.
2. The panel may take advice from its legal adviser at any time during the hearing or when they are considering the outcome. The substance of any legal advice given to the panel should be shared with the member and the investigating officer if they are present.
3. The member may attend the hearing. The panel may proceed in his or her absence. The complainant need not attend. The investigating officer may attend and answer questions of the panel.
4. So far as possible, the hearing will consider only evidence submitted in writing before the hearing together with answers to any questions asked at the hearing. Any witness evidence called at the hearing must relate to relevant facts which are in dispute. A witness other than the member may not remain in the hearing until after they have given evidence.

B. Making Findings of Facts

1. After dealing with any preliminary issues, the panel will attend to any significant disagreements about the facts contained in the investigating officer's report.
2. If there is no disagreement about the facts, the panel will move on to the next stage of the hearing.
3. If there is a disagreement, the investigating officer will be invited to make any necessary representations to support the findings of facts in the reports which are disputed. With the panel's permission, the investigating officer may call any necessary supporting witnesses to give evidence. The panel will give the member an opportunity to challenge any evidence put forward by and any witness called by the investigating officer but not to cross examine the witness.
4. The member will then have the opportunity to make representations to support his or her version of the facts and, with the panel's permission or call any necessary witnesses to give evidence.
5. At any time, the panel may question any of the people involved or any of the witnesses, and will allow the investigating officer to challenge any evidence put forward by witnesses called by the member but not to cross examine the witness.
6. If the member disagrees with most of the facts, the investigating officer may start by making presentations on all the relevant facts, instead of discussing each fact individually.
7. If the member disagrees with any relevant fact in the investigating officer report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the investigating officer is not present, the panel will consider whether it would be in the public interest to continue in his or her absence. After considering the member's explanation for not raising the issue at an earlier stage, the panel may then:-
 - (a) Continue with the hearing, relying on the information in the investigating officer's report.
 - (b) Allow the member to make representations about the issue, and invite the investigating officer to respond and call any witnesses, as necessary; or
 - (c) Postpone the hearing to arrange for appropriate witnesses to be present, or for the investigating officer to be present if he or she is not already.
8. The panel will usually consider the representations and evidence in private and will ask those present to leave the room so that they may do so.

C. Did the Member fail to follow the Code?

1. The panel will next consider whether or not, based on the fact it has found, the member has failed to follow the Code of Conduct.
2. The member will be invited to give relevant reasons why the panel should not decide that he or she has failed to follow the Code.
3. The panel will consider any verbal or written representations from the investigating officer.
4. The panel may, at any time, question anyone involved on any point they raise in their representations.
5. The member will be invited to make any final relevant points.
6. The panel will then consider the representations in private and will ask those present to leave so that they may do so.

D If the Member has not failed to follow the Code of Conduct

If the panel decides that the member has not failed to follow the Code of Conduct, the panel may move on to consider whether it should make any recommendations to the Council or Parish Council on any issue, which has arisen.

E. If the member has failed to follow the Code

1. If the panel decides that the member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigating officer and the member as to:-
 - (a) whether or not the panel should set a penalty; and
 - (b) what form any penalty should take.
2. The panel may question the investigating officer and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
3. The panel will then consider in private whether or not to impose a penalty on the member and if so, what the penalty should be.
4. Where the panel finds that the member did fail to comply and that a sanction should be imposed then the Independent Person (if present) should be consulted about the proposed action. In the event that the Independent Person is not present at the hearing, the Panel will consider what penalty it

should impose but make no announcement until the Independent Person has been consulted.

- (a) If the member no longer belongs to a relevant authority, the panel will censure the subject Member.
 - (b) If any other case, the panel, will impose one or more of the sanctions in paragraph 12 to Appendix 3 – Arrangements for Dealing with Standards Allegations under the Localism Act 2011 or other such sanction that it is legally able to impose and believes to be proportionate and appropriate.
 - (c) Censure or reprimand the member;
 - (d) Publish its findings in respect of the member's conduct;
 - (e) Reports its findings to Council [*or to the Parish Council for consideration*] for information;
5. After considering any verbal or written representations from the investigating officer the panel will consider whether or not it should make any recommendations to the relevant Council, with a view to promoting high standards of conduct amongst members.
6. The panel will announce its decision on the day unless separate consultation with the Independent Person under paragraph E(4) is required and aim to issue a full written decision within 5 working days of the hearing.
7. The Chair will ensure that the panel's decision is made public.