



Birmingham City Council Constitution

Part C – Codes and Protocols

May 2021

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C1. CORPORATE GOVERNANCE CODE AND FRAMEWORK

1.1 Introduction

- i. Corporate governance is a phrase used to describe how organisations direct and control what they do. For local authorities this also includes how a council relates to the communities that it serves.
- ii. Our [Birmingham City Council Plan](#) articulates ambitions framed around our Birmingham City Council Plan 2018 -2022 as a city of growth where every child, citizen and place matters.
- iii. The purpose of our corporate governance arrangements is to devise and deliver services to the citizens of Birmingham in a way that demonstrates accountability, transparency, effectiveness and value for money, integrity, and inclusivity and which reflects corporate values.

1.2 Corporate Governance Code

- i. Our Corporate Governance Code and Framework is based upon seven Principles.
- ii. We will:
 - a) Behave lawfully, with integrity and in the public interest and demonstrate this through our conduct and behaviour.
 - b) Be open and engage with local communities, service users and our other stakeholders.
 - c) Focus our resources on outcomes and ensure council tax payers and service users receive excellent value for money.
 - d) Ensure we have clear responsibilities and arrangements for transparent and effective accountability.
 - e) Take informed and transparent decisions.
 - f) Ensure that we have robust and effective audit, scrutiny, information governance, risk and financial management controls.
 - g) Develop our capacity and capability to be effective.
- iii. It is the role of our Audit Committee to oversee and receive assurances relating to our governance arrangements and also to provide challenge on how our arrangements can be continually improved.

1.3 Principles

We will behave lawfully, with integrity and in the public interest, and will demonstrate this through our conduct and behaviour

<i>And commit to</i>	<i>Supported and evidenced by our</i>
Embed values and codes of conduct for both employees and councillors. Ensure that those who provide services on our behalf act in accordance with these principles. Deal with breaches of legal and regulatory requirements and ensure fraud, corruption and allegations of misuse of public funds are dealt with effectively.	Values and behaviours Members' Code of Conduct Officer Code of Conduct Partnership agreements Procurement Terms and Conditions Arrangements for the registration and declaration of interests (including gifts and hospitality) Anti-Fraud and Corruption Policy Complaints and Compliments procedures

We will be open and engage with local communities, service users and our other stakeholders

<i>And commit to</i>	<i>Supported and evidenced by our</i>
Ensuring that service users, local communities and other stakeholders have access to the council and are involved and consulted about major changes that may affect them. Welcome peer challenges, reviews and inspections from regulatory bodies and implement recommendations which arise from them.	Consultation Approach to restorative practice Ward Forums Parish and Town Council arrangements Birmingham Citizens Panel (when active) Use of Overview and Scrutiny Inquiries Deputations to full Council and ward forums Consideration of and response to Petitions

We will focus our resources on outcomes and ensure council tax payers and service users receive excellent value for money

<i>And commit to</i>	<i>Supported and evidenced by our</i>
<p>Ensure that services put the needs of the public first, are non-discriminatory and are appropriate to different needs in the community.</p> <p>Make best use of resources and ensure that the People of Birmingham receive excellent value for money.</p> <p>Consider and balance the combined economic, social and environmental impact of policies and plans when taking decisions.</p>	<p>City Council Plan for Birmingham</p> <p>Equality and Diversity Policy</p> <p>Safeguarding arrangements</p> <p>Safer Birmingham Strategy</p> <p>Youth Justice Plan</p> <p>Children and Young Peoples Plan</p> <p>Annual Performance Report</p> <p>Financial Strategy and Medium Term Financial Plan</p> <p>State of the City Events</p> <p>Performance Management Framework</p> <p>Annual Internal Audit Report</p> <p>External Audit Value for Money opinion</p>

We will ensure we have clear responsibilities and arrangements for transparent and effective accountability

<i>And commit to</i>	<i>Supported and evidenced by our</i>
<p>Document who is responsible for our functions and will ensure reports on our performance, delivery of value for money and stewardship of resources are routinely reported.</p> <p>Review on a regular basis the vision for the city and its implications for the authority's governance arrangements.</p> <p>Have in place effective arrangements to identify and deal with failure in service delivery.</p> <p>Ensure that relationships and accountabilities between the authority, its partners and the public are clear.</p>	<p>Constitution</p> <p>Executive Portfolios</p> <p>Monitoring of Revenue and Capital expenditure</p> <p>Delegation and sub delegation arrangements</p> <p>Committee Terms of Reference</p> <p>Protocol for the roles of Members and officers in Decision Making</p> <p>Annual Internal Audit Report</p> <p>Customer service standards and dispute resolution arrangements</p> <p>Annual Accounts</p> <p>Access to Information Procedure Rules</p> <p>Executive and Decision Making Procedure Rules</p> <p>Annual Governance Statement</p> <p>Annual Scrutiny Report</p> <p>Annual Standards Report</p> <p>Partnership arrangements</p> <p>Information Governance arrangements</p> <p>Health Safety and Wellbeing</p> <p>Annual Pay Policy Statement</p>

We will take informed and transparent decisions

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<i>And commit to</i>	<i>Supported and evidenced by our</i>
<p>Ensure that all decisions are taken which are proportionate, respect human rights and natural justice, are open and transparent with clear aims and desired outcomes and promote equality of opportunity.</p> <p>Consider and balance the economic, social and environmental impacts of policies and plans.</p> <p>Ensure that:</p> <p>those making decisions are provided with information that is relevant, timely and gives clear explanations of technical issues and their implications;</p> <p>appropriate legal, financial and other professional advice is considered as part of the decision-making process; and</p> <p>decision-makers can be held to account for the decisions they take through effective overview and scrutiny arrangements.</p>	<p>Executive/Cabinet arrangements</p> <p>Committee Terms of Reference</p> <p>Access to Information Procedures</p> <p>Delegation and sub delegation arrangements</p> <p>Procedures for decision making</p> <p>Provision of effective, timely, responsive and highly regarded legal, financial and professional services</p> <p>Equality and Diversity Policy</p> <p>Use of data to support decision making and effectively target resources</p>

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We will ensure that we have robust and effective audit, scrutiny, information governance, risk and financial management arrangements.

<i>And commit to</i>	<i>Supported and evidenced by our</i>
<p>Embed a risk management framework to achieve our priorities and protect the Council's reputation and assets.</p> <p>Collect, use and store information and data appropriately.</p> <p>Maintain a prudential financial framework which balances our commitments with available resources, monitors income and expenditure and ensures corrective action when necessary.</p>	<p>Overview and Scrutiny Committee arrangements</p> <p>Vision for Overview and Scrutiny</p> <p>Medium Term Financial Plan</p> <p>Capital Programme and Treasury Management Strategy</p> <p>Financial Regulations and Contract Procedure Rules</p> <p>Performance and risk management arrangements</p> <p>Compliance with the Code of Practice on Data Transparency and the General Data Protection Regulation</p> <p>Business Continuity arrangements</p> <p>A 'Public Sector Internal Audit Standard' compliant Internal Audit function</p>

We will develop our capacity and capability to be effective

<i>And commit to</i>	<i>Supported and evidenced by our</i>
<p>Improving the use of our people resource by developing and maintaining an effective workforce plan.</p> <p>Continually review our performance, including how the organisation is led, how we work, and how we make the most efficient use of our resources assets (including data) to ensure our continuing effectiveness.</p> <p>Ensuring that all councillors and employees have the skills, knowledge and experience they need to perform their roles effectively.</p>	<p>Code of practice for Member-Officer relations.</p> <p>Our values and behaviours</p> <p>Appraisal arrangements</p> <p>Staff surveys</p> <p>Training and development programmes for Councillors</p> <p>Training and development programmes for staff</p> <p>Participation in peer reviews</p> <p>Recognition of colleagues through our awards for excellence</p> <p>Workforce development plan</p> <p>Graduate and apprenticeship programmes</p>

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C2. MEETINGS AND ACCESS TO INFORMATION PROCEDURE RULES

2.1 Scope

- iv. These rules apply to all meetings of the Council, its Committees and Sub-Committees (including but not limited to Overview and Scrutiny Committees, area committees (if any), regulatory committees, and meetings of the Executive (together called “meetings”).

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2.2 Principles

- i. These rules will be interpreted, where possible, in accordance with the following guiding principles / presumptions:
- Openness: the right of the public to gain access to meetings and documents;
 - Transparency: the provision of information so that the public know who is responsible for making a particular decision, when and where, and have an explanation or justification for a decision;
 - Accountability: the public can measure the actions taken against policies and plans on which those responsible were elected to office.

2.3 Notice of Meetings

- i. The Council will give at least 5 clear working days’ notice of any non-urgent meeting and for urgent meetings at least 3 clear days’ notice will be given. Details of the meeting will be posted at the Council House, Victoria Square, Birmingham B1 1BB and¹ on the Council’s website.

Commented [EW1]: Propose to retain wording

2.4 Access to Agendas, Reports and Decision Records

- i. The Council will make the Agenda and relevant Reports available to the public on its website and available for inspection at the Council House¹ at least five clear working days before the meeting or as much time as is available for an urgent item of business. Where Reports are prepared after the Agenda has been sent out, the Committee Services Officer shall make such report(s) available for inspection to the public as soon as the Report is completed and sent to the relevant Councillors.

Commented [EW2]: Propose to remove wording as the Council House will be closed for refurbishment, plus all papers are available on line.

¹ Temporary Amendments Agreed by Full Council 28 April 2020, which will expire no later than 25 May 2021

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- ii. For the avoidance of doubt, "working days" does not include weekends, statutory holidays, the day of the notice or the actual day of the meeting.
- iii. Agendas, Reports and Decision Records, save for those which contain exempt or confidential information will be found on the Council's website,²

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Background Papers

- iv. The author of a report will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:
 - a) disclose any facts or matters on which the report or an important part of the report is based; and
 - b) have been relied on to a material extent in preparing the report.
- v. This does not include those which disclose confidential or exempt information (as defined in B2.5); nor does this include the advice of a political adviser³; nor any draft report or document.

2.5 Exclusion of Access by the Public to Meetings

- i. Members of the public may attend all meetings subject only to the exceptions set out below. Attendance shall include viewing the meeting via video conferencing or live webcast as government guidance/regulation allows.

Confidential information – requirement to exclude public

- ii. The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.
- iii. Confidential information means information provided to the Council by a Government Department upon terms (however expressed) which forbid the disclosure of the information to the public or other information the disclosure of which is prohibited by any enactment or Court Order.

Exempt information – discretion to exclude public

- iv. The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.

² <https://birmingham.cmis.uk.com/birmingham/Committee.aspx>

³ "political adviser or assistant" means a person appointed pursuant to section 9 of the Local Government and Housing Act 1989(b)

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- v. Exempt information relates to the access to information requirements covered by Section 100I and Schedule 12 A of the Local Government Act 1972 (as amended) as set out in the table below, and related Regulations. Information is also exempt if it is advice of a Political Adviser or Political Assistant, as defined by the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended).

Category	Condition
1. Information relating to any individual.	This means any living individual person and relates back to data protection legislation i.e. the General Data Protection Regulation 2016/ 679 (GDPR) & the Data Protection Act 2018 (DPA).
2. Information which is likely to reveal the identity of an individual.	This again relates back to data protection legislation
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).	Includes information relating to the Authority's own financial or business affairs. It does not include information which is required to be registered under the Companies Act 1985, the Friendly Society Acts 1974 and 1992, the Industrial and Provident Societies Acts 1965-1978, the Building Societies Act 1986 or the Charities Act 1993 as such information will be in the public domain in any event. The "financial affairs or business affairs" include past, present and contemplated activities.
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office-holders, under the authority.	"Employee" means a person employed under a contract of service with the Council and would not therefore include a consultant or a temporary member of staff employed through an agency or a company. Information about such a person, however, may well be covered under the exemptions in paragraphs 1, 2 and 3 but it will depend on the individual matter. "Labour relations matter" means matters which may be the subject of a trade dispute within the meaning of Section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 or any dispute about such a trade dispute. This is therefore fairly narrow and does not appear to include normal staff negotiations which are not part of a dispute.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	
6. Information which reveals that the authority proposes –	

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Category	Condition
(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment	
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	

- vi. Information is not exempt if it relates to proposed development for which the Local Planning Authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning (General) Regulations 1992.

Public Interest Test

- vii. Paragraphs 1-7 of the exemptions above are subject to the public interest test. In determining whether this information should remain exempt, the report writer and the decision-maker will have to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. All report writers will, therefore, give consideration to this and explain why they consider the public interest test is best served by the information remaining exempt. This determination, together with reasons, will appear in the report and the agenda in relation to that item.

Cabinet: Notification of Intention to Consider Matters in Private

- viii. Where there is a proposal for a meeting of Cabinet to consider part of a report in private, Part 2 of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 requires the Council to provide notification of its intention to do so.
- ix. A notification of intention to consider matters in private will be published on the meeting page on the website 28 days ahead of that meeting.

Appeals Where Public Access is Denied to a Report

- x. If a member of the public is denied access to a report or background papers under the rules set out above, they may appeal at the relevant meeting by giving notice in writing to the Assistant Director Governance, such notice to be received not less than seven working days before the relevant meeting is due to be held. Any such appeal will be considered by the Assistant Director Governance in conjunction with the chair of that meeting.
- xi. The person making the appeal may provide written submissions to the Assistant Director Governance who will supply copies of the same to the relevant Chief Officer and each member of the meeting before the date of the meeting.

- xii. The Assistant Director Governance will collate responses to the submission and agree a response with the Chair ahead of the meeting. The decision will be announced at the start of the meeting.

2.6 Disorderly Conduct – Discretion to Exclude Public

- i. The public may also be excluded from meetings, where the meeting so resolves, in the exercise of a lawful power of exclusion in order to maintain orderly conduct or to prevent misbehaviour at a meeting.

2.7 Attendance at Private Meetings of the Executive

- i. All Members of the Executive are entitled to attend a private meeting of any committee of the Executive.
- ii. The Head of the Paid Service, the Chief Finance Officer and the Monitoring Officer, and their nominees, are entitled to attend any meeting of the Executive and its committees.
- iii. A maximum of two of the major Opposition Group Members and a maximum of one of the other Opposition Group Members – to include their Group Leader(s) – may receive notice of Cabinet meetings, the relevant papers and remain and participate during the deliberations of the private sessions of the Cabinet.
- iv. The Chairs of any of the Council's Overview & Scrutiny Committees (or their nominee from the relevant committee) shall be entitled to attend Cabinet meetings and to remain and participate during the deliberations of the Cabinet during any of its 'Private Sessions'.

2.8 Members Access – Statutory Rights

Material relating to forthcoming business

- i. All Members are entitled to inspect any document which is in the possession or under the control of the Executive or its committees and contains material relating to any business to be transacted at a public meeting unless
- It contains exempt information falling within Rules B2.5v(1), B2.5v(2), B2.5v(4), B2.5v(5), and B2.5v(7), above; or
 - It contains exempt information falling within Rule B2.5v(3), above to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract; or
 - It contains the advice of a political adviser; or
 - It is a draft report or draft background paper; or

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- e) It is not a report or a background paper.
- ii. All Members are entitled to inspect any document which is in the possession of or under the control of the Council and contains material relating to any business to be transacted at a meeting of the Council or any of its committees or sub-committees unless
 - a) It contains exempt information falling within Rules B2.5v(1), B2.5v(2), B2.5v(4), B2.5v(5), and B2.5v(7) above or
 - b) It contains exempt information falling within Rule B2.5v(3) above to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract.**
- iii. **Members of the Audit Committee shall have access to any information that is relevant to their role as an Audit Committee members, save where legal privilege applies or where sharing information will result in a breach of contract or confidentiality, or otherwise is judged by the City Solicitor to put the Council at risk.**

Scrutiny Members Access – Additional Statutory Rights

- iv. **Members of an** Overview and Scrutiny Committee will be entitled to copies / inspect documents **in respect of matters under scrutiny by those members,** which are in the possession or control of the Executive or its Committees and which contain material relating to:
 - a) Any business transacted at a public or private meeting of the Executive or its Committees; or
 - b) Any decision taken by an individual Cabinet Member.
- v. An Overview and Scrutiny Committee will **not** be entitled to:
 - a) Any document that is in draft form;
 - b) Any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise; or
 - c) The advice of a Political Adviser or Assistant (if any have been appointed).
- vi. Copies of documents requested under this section must be supplied within 10 clear days of receipt of the request. **Reasons must be given if copies of the documents are refused.**

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Members Access – Need to Know

- vii. **Meaning of the Need to Know:** Members have the right to seek information, explanation and advice which they may reasonably need in order to assist them in properly discharging their duties as a Member of the Council. This can range from a request for general information about some aspect of the Council's activities to a request for specific

information on behalf of a constituent. Such approaches should normally be made to the relevant Chief Officer.

viii. **The Nature of Requests:** Members should:

- a) Avoid over-involvement in issues raised by individual constituents;
- b) Be particularly careful when having direct contact with relatively junior officers, to avoid the appearance of abusing their position;
- c) Justify the request in specific terms, unless circumstances exist where a Member's need to know will be presumed – for example where a Member is on a committee and wants to inspect documents relating to that committee's business, or where the information requested is already in the public domain;
- d) Only use the information for the purpose for which it was provided and get the prior agreement of the relevant Chief Officer to any disclosures to the press or the public.

ix. **Limit on rights:** there are a number of factors which may limit or outweigh a Member's need to know, including:

- a) The need to know does not extend to a 'roving commission' through Council documents;
- b) The need to know would only extend to personal information in exceptional cases;
- c) Draft documents compiled in the context of emerging Council policies, and draft reports will not usually be disclosed;
- d) A Member of one party group will not have a need to know in relation to a document prepared for another party group;
- e) Documents prepared specifically for one Member will not, unless he/she agrees, normally be provided to another Member;
- f) Documents will not be disclosed where the relevant Chief Officer believes that use of those documents by a Member may prejudice the Council's or the public interest;
- g) The level of resources required to deal with locating and supplying documents.

x. **Procedure:** Whether a Member has a need to know will be determined initially by the Chief Officer who holds the document in question (with advice from the Monitoring Officer). The Chief Officer must not have regard to party political advantage, nor must the Chief Officer's determination have the effect of preventing the Member concerned from giving evidence in Court, or of penalising the Member for so doing.

xi. All internal documents and copies produced to any Member for inspection in accordance with this Rule will be produced on the basis that, in the absence of malice, officers are expressly indemnified in respect of any claim in litigation that may result from such publication.

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2.9 Public Access to Other Information – Freedom of Information

- i. Where a member of the public makes a request for information under the Freedom of Information (FOI) Act 2000, they will be informed in writing by the Council whether it holds such information, and if that is the case, they will have that information communicated to them, unless an exemption applies.
- ii. An FOI request must be in writing, state the name of the applicant and an address for correspondence, and describe the information requested. A request will be treated as made in writing where the text is transmitted by electronic means (e-mail), is received in legible form, and is capable of being used for subsequent reference.
- iii. FOI requests will be dealt with by the FOI practitioner for the relevant service area.
- iv. FOI requests must generally be dealt with promptly, and no later than 20 working days of receipt.
- v. Further details about how to make an FOI request can be found on the [website](#).⁴

⁴ https://www.birmingham.gov.uk/info/20154/foi_and_data_protection/408/make_a_freedom_of_information_request

C3. PROTOCOL REGARDING THE RECORDING OF COUNCIL MEETINGS

- i. For the purposes of this section, recording includes webcasting, filming and photography.
- ii. The Council is committed to openness and transparency in its decision making. Recording is permitted at Council meetings that are open to the public. The Council understands that some members of the public attending its meetings may not wish to be recorded and will seek to ensure that any such requests are respected.
- iii. The rules that the Council will apply are:
 - a) All recordings must be overt (clearly visible to anyone at the meeting) and must not disrupt proceedings. Where meetings are recorded by the Council, this will be stated at the start of each meeting.
 - b) The Chair of the meeting has absolute discretion to stop or suspend recording if, in their opinion, continuing to do so would prejudice proceedings at the meeting or if the person recording is in breach of these rules.
 - c) Recording must stop if the meeting goes into private session where the public is excluded for confidentiality or exempt reasons. In such a case, the person filming should leave the room ensuring all recording equipment is switched off.
 - d) Any member of the public has the right not to be recorded. Agendas for, and signage at, Council meetings should make it clear that recording can take place – anyone not wishing to be recorded must advise the Chair at the earliest opportunity.
 - e) The recording should not be edited in a way that could lead to misinterpretation or misrepresentation of the proceedings or in a way that ridicules or shows a lack of respect for those in the recording. The Council would expect any recording in breach of these rules to be removed from public view.
- iv. If someone refuses to stop recording when requested to do so by the Chair of the meeting, then the Chair will ask the person to leave the meeting. If the person refuses to leave, then the Chair may adjourn the meeting.
- v. If media outlets wish to record meetings, then it is helpful to have some advance notice to ensure space is available.
- vi. The use of social media in council meetings is permitted for members of the public and media so long as this does not cause any disruption or disturbance. The Chair's decision on this point is final. (Councillors are not permitted to use social media during the private part of any council meeting).

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C4. CODE OF CONDUCT FOR MEMBERS**4.1 Introduction**

- i. It is important that councillors can be held accountable and all adopt the behaviours and responsibilities associated with the role. Your conduct as an individual councillor affects the reputation of all councillors. The role of councillor should be one that people aspire to and individuals from a range of backgrounds and circumstances should be putting themselves forward to become councillors.
- ii. This Code has been designed to protect your democratic role, encourage good conduct and safeguard the public's trust in local government.

4.2 Definitions

- i. For the purposes of this Code of Conduct, a "councillor" means a member or co-opted member of a local authority or a directly elected mayor. A "co-opted member" is defined in the Localism Act 2011 Section 27(4) as "a person who is not a member of the authority but who
 - a) is a member of any committee or sub-committee of the authority, or;
 - b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;
 and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee".
- ii. For the purpose of this Code of Conduct, "local authority" includes district councils, parish councils and town councils.

4.3 Purpose of the Code of Conduct

- i. The purpose of the Code is to assist you, as a councillor, in modelling the behaviour that is expected of you to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, officers and the reputation of the council.
- ii. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

4.4 General principles of councillor conduct

- i. Everyone in public office at all levels, all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers, should uphold

the Seven Principles of Public Life, also known as the Nolan Principles (see section 4.6 below).

ii. Building on these principles, the following general principles have been developed specifically for the role of councillor.

iii. In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty;
- I act lawfully;
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

iv. In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community;
- I do not improperly seek to confer an advantage, or disadvantage, on any person;
- I avoid conflicts of interest;
- I exercise reasonable care and diligence;
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest;
- I affirm my commitment to and encouragement of others to promote Corporate Parenting (including their safeguarding and welfare) in respect of the City Council's children in care;
- I will take into account and abide by all other relevant council policies and procedures.

4.5 Application of the Code of Conduct

i. This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor or co-opted member.

ii. This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- you are acting in your capacity as a councillor and /or as a representative of your council;
- you are claiming to act as a councillor and/or as a representative of your council;

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- you are giving the impression, or the circumstances may give rise to the perception, that you are acting as a councillor and/or as a representative of your council;
- you refer publicly to your role as a councillor and/or as a representative of your council.

iii. This Code applies to all forms of communication and interaction, including:

- at face to face meetings;
- at online or telephone meetings;
- in written communication;
- in verbal communication;
- in non-verbal communication; and
- in electronic and social media communication, posts, statements and comments.

iv. You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

v. The Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

4.6 The Nolan Principles

Everyone in public office at all levels, all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers, should uphold the Seven Principles of Public Life, also known as the Nolan Principles. These are:

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

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Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

4.7 Standards of Conduct

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken. Guidance is included to help explain the reasons for the obligations and how they should be followed. Guidance is shown in italics.

i. Respect

As a councillor:

1.1 I treat other councillors and members of the public with respect.

1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack. As part of this you should not swear or use inappropriate language during any meetings. In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

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In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor-officer protocol.

ii. Bullying, harassment, discrimination and victimisation

As a councillor:

2.1 I do not bully any person.

2.2 I do not harass any person.

2.3 I promote equalities and not discriminate unlawfully against any person.

2.4 I do not victimise any person.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as "offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient". Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or during phone calls, in the workplace or at work-related social events. Such behaviour may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

iii. Impartiality of officers of the council

As a councillor

3.1 I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

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Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants)⁵. They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

iv. Confidentiality and access to information

As a councillor:

4.1 I do not disclose information:

- a. given to me in confidence by anyone;
- b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless:
 - i) I have received the consent of a person authorised to give it;
 - ii) I am 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:
 - 1) reasonable and in the public interest; and
 - 2) made in good faith and in compliance with the reasonable requirements of the local authority; and
 - 3) I have consulted the Monitoring Officer prior to its release.

4.2 I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.

4.3 I do not prevent anyone from getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

v. Disrepute

⁵ Officers of the Council must abide by the Employee Code of Conduct- set out in part C of the constitution

As a councillor:**5.1 I do not bring my role or local authority into disrepute.**

As a councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your or its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to challenge constructively and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

vi. Use of position**As a councillor:****6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.**

Your position as a member of the local authority provides you with certain opportunities, responsibilities and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

vii. Use of local authority resources and facilities**As a councillor:****7.1 I do not misuse council resources;****7.2 I will, when using the resources of the local authority or authorising their use by others:**

a. act in accordance with the local authority's requirements; and

b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.

Examples include:

- office support
- stationery
- equipment such as phones and computers

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- transport
- access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

viii. **Complying with the Code of Conduct**

As a councillor:

8.1 I undertake Code of Conduct training provided by the local authority;

8.2 I cooperate with any Code of Conduct investigation and/or determination;

8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings;

8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

Protecting your reputation and the reputation of the local authority

ix. **Interests**

As a councillor:

9.1 I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority.

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in Table 1, is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.

x. Gifts and hospitality

As a councillor:

10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage;

10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt;

10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

APPENDIX TO CODE

Registering interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests) which are as described in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012". You should also register details of your other personal interests which fall within the categories set out in Table 2 (Other Registerable Interests).

"Disclosable pecuniary interest" means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

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"Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A 'sensitive interest' is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
3. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

Non-participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which **directly relates** to one of your Other Registerable Interests (as set out in Table 2), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

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Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which **directly relates** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
8. Where a matter arises at a meeting which **affects** –
- a) your own financial interest or well-being;
 - b) a financial interest or well-being of a friend, relative, close associate; or
 - c) a body included in those you need to disclose under Disclosable Pecuniary Interests as set out in Table 1
- you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied
9. Where a matter **affects** your financial interest or well-being:
- d) to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision; and
 - e) a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest.
- You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.
- If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
10. Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must make sure that any written statement of that decision records the existence and nature of your interest.

Table 1: Disclosable Pecuniary Interests

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

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Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain. [Any unpaid directorship.]
Sponsorship	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her 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.
Contracts	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council — (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 and Property	Any beneficial interest in land which is within the area of the council. 'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income.
Licenses	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer.
Corporate tenancies	Any tenancy where (to the councillor's knowledge)— (a) the landlord is the council; and (b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is

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Subject	Description
	a partner of or a director* of or has a beneficial interest in the securities* of.
Securities	Any beneficial interest in securities* of a body where— (a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; 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 councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

'director' includes a member of the committee of management of an industrial and provident society.

* '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.

Table 2: Other Registerable Interests

You have a personal interest in any business of your authority where it relates to or is likely to affect:
a) any body of which you are in general control or management and to which you are nominated or appointed by your authority;
b) any body
(i) exercising functions of a public nature
(ii) directed to charitable purposes or
(iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

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C5. MEMBER / OFFICER RELATIONS PROTOCOL

5.1 Introduction

- i. The purpose of this Protocol is to guide Members and officers of the Council in their relations with one another in such a way as to ensure that the Council is not brought into disrepute, that a high standard of conduct is maintained and to ensure the business of the Council is transacted in a transparent, effective and efficient manner.
- ii. Birmingham City Council is committed to promoting a culture that demonstrates its core values and behaviours. Members and officers in conducting their working relationships with each other are expected to promote this culture and do so by acting in a respectful and professional manner. There is a high standard of conduct expected of both Members and officers at all times.
- iii. Failure to follow the expected conduct by either Members or officers is considered a serious issue by the Council and will be dealt with in accordance with the Council's policies and procedures and/or, in accordance with the Member Code of Conduct, as set out in the Constitution.
- iv. This Protocol seeks to promote greater clarity and certainty as to working relationships between Members and officers. If the Protocol is followed it should ensure that Members receive objective and impartial advice and that officers are not subject to accusations of bias, and any undue influence from Members.
- v. The Protocol is to a large extent a written statement of current practice and convention and given the variety and complexity of such relations, this Protocol does not seek to be either prescriptive or comprehensive. It offers guidance on some of the issues which most commonly arise and serves as a guide to dealing with other circumstances as they arise.
- vi. It also seeks to reflect the principles underlying the Code of Conduct for Members ("the Members' Code") and the Code of Conduct for Employees ("the Employees' Code"). The shared objective of these codes is to enhance and maintain the integrity (real and perceived) of local government and the Codes, therefore, demand very high standards of personal conduct.
- vii. Members do not have any special immunity from civil or criminal wrongs that they may commit against any fellow Members, officers or members of the public.
- viii. This Protocol should be read in conjunction with the Members' Code and the Employees' Code, the Council's Constitution and any guidance issued by the Standards Committee and/or Monitoring Officer.

5.2 Roles of Members and Officers

- i. The Elected Members are responsible for:
 - a) Initiation and direction of policy;
 - b) Democratic accountability to the electorate for policies and for service delivery;

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- c) Scrutiny of Council services;
 - d) Community leadership; and
 - e) Promotion of partnership working.
- ii. The officers are responsible for:
- a) Providing the professional advice that Members must have before them when formulating policy and when taking decisions;
 - b) Implementing Members' decisions that have followed due process;
 - c) Running the Council's services and day-to-day administration;
 - d) Taking managerial and operational decisions in accordance with the Council's schemes of delegation; and
 - e) Providing information regarding Council services and approved Council policies.

5.3 Working Relationships

- i. Both Members and officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Members are responsible to the electorate and officers are responsible to the Council as a whole. The conduct of Members and officers should be such as to instil mutual confidence and trust. The key elements are recognition of and a respect for each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately.
- ii. An informal and collaborative approach to working between Members and officers is encouraged. Members and officers should overall treat each other as they would wish to be treated.
- iii. However, both Members and officers should be guarded as personal familiarity can damage the relationship, as might a family or business connection. Inappropriate relationships can be inferred from language/behaviour. Close personal familiarity between individual Members and officers can damage the relationship of mutual respect and prove embarrassing to other Members and officers.

5.4 Constructive Criticism and Redress

- i. Challenge in a constructive and non-confrontational way is important in ensuring that policies and service performance are meeting the Council's strategic objectives. Nothing in this protocol is therefore intended to stop Members holding officers to account for decisions made under delegated powers. Officers are accountable to the Council for any decision they make and may be required to report to and answer questions from a Scrutiny Committee. Nothing herein is intended to inhibit constructive criticism delivered with courtesy and officers should not feel their employment is at risk as a result of such intervention.

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- ii. Members should guard against putting inappropriate pressure, in particular, on junior officers and need to be aware that it is easy for junior officers to feel at a disadvantage in their interactions with Members.
- iii. Members should not pressurise any Officer to change his/her professional opinion on any Council business matter or do anything that compromises the impartiality of officers.
- iv. If a Member considers that he or she has not been treated with proper respect or courtesy by an Officer, he or she may raise it with the Officer's line manager or Chief Officer or the Monitoring Officer without delay if it is not possible to resolve it through direct discussion. If the issue still remains unresolved appropriate action may be taken by the Chief Officer in accordance with the Council's normal procedures, should the allegations be proved to be true. Feedback should be given to the Member on the outcome and confidentiality, unless otherwise agreed, must be maintained by all parties.
- v. If an Officer considers that he or she has not been treated with proper respect or courtesy by a Member, and a direct discussion is impractical or fails to resolve the matter, he or she has the option of raising the matter in private with the Monitoring Officer in the knowledge that the matter will be handled with sensitivity and in confidence. In such circumstances, the Monitoring Officer will take such action as is appropriate either by approaching the Member and/or Party Group Leader and also advising the Chief Executive as Head of Paid Service. It may also be appropriate to advise the Chief Officer. Unless otherwise expressly agreed between parties, confidentiality including the identity of the Officer will be maintained at all times. This protocol does not affect the Officer's right to raise the matter via the Council's usual grievance procedures.
- vi. Members should not raise matters relating to the conduct or capabilities of an Officer at meetings held in public or before the Press as officers have no means of responding in public.
- vii. Nothing in this protocol shall prevent a Member or Officer expressing a relevant concern under the Council's Whistleblowing Policy.

5.5 Officer Reports and Advice

- i. The Chief Officer /Head of Service where they are named in a report to the Council (or any part of its formal decision-making structure) will always be fully responsible for the contents of it.
- ii. A report will only be amended where the suggested amendment also reflects the professional judgement of the author of the report. On occasions, officers will need to express a professional view on a matter which may not support the view of the Executive and/or the relevant Chief Officers of the Council. However, it remains for Members to determine the Council's policies and for officers to act on those policies.

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5.6 Officer Advice to Party Groups

- i. It must be recognised by all officers and Members that in discharging their duties and responsibilities, officers serve the Council as a whole and not any political group, combination of groups or any individual Member of the Council. The assistance provided by senior officers can take many forms ranging from a briefing meeting with an Executive Member, Lead Member, Chair or other Members prior to a meeting, to a presentation, to a full political group meeting. It is an important principle that such assistance is available to all political groups and individual Members. All officers must, in their dealings with political groups and individual Members, maintain political neutrality and treat them in a fair and even-handed manner.
- ii. Officers must respect the confidentiality of any party group discussions at which they are present. When information is disclosed to an Officer during discussions with a party group, that information should not be passed on to other groups. However, Members should be aware that this would not prevent officers from disclosing such information to other officers of the Authority in so far as that is necessary to perform their duties.
- iii. This Protocol can be revised or amended at any time in accordance with Constitutional requirements.

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C6. EMPLOYEE CODE OF CONDUCT

6.1 General Principles

- i. The public is entitled to demand a level of conduct from Council employees which is of the highest standard.
- ii. Birmingham City Council's Code of Conduct forms part of the Contract of Employment. It aims to establish the usual standard of conduct expected of all employees. The Code of Conduct's principles reflect Birmingham City Council's (BCC) values and behaviours setting down the way in which you, as an employee of the Council, are expected to conduct yourself.
- iii. As an employee, you must not put yourself in a position where duty and private interests conflict and you must not make use of your employment to further your private interests.
- iv. As employees of Birmingham City Council you are expected to carry out your duties in accordance with Birmingham City Council's policies and procedures.
- v. You are expected to uphold the following principles:
 - Selflessness: your decisions must be taken in terms of the values and mission of Birmingham City Council, and not in order to gain financial or other material benefits.
 - Integrity: you must not place yourself in a situation where your position is compromised.
 - Objectivity: all decisions must be made on merit alone.
 - Accountability: you must accept accountability for your decisions and actions.
 - Openness: you should be as open as possible about all your decisions and actions.
 - Honesty: you should declare any private interests relating to your duties and take lawful steps to resolve any conflicts to ensure that public interest is protected.
 - Leadership: you must support and promote these principles by example.
 - Conduct: you must avoid bringing Birmingham City Council into disrepute.
 - Respect: you must treat others with respect.

6.2 General Code of Conduct Application and Intent

11. You will be expected to act in accordance with the Code. The Code has been designed so that you are not left in any doubt as to what is acceptable or unacceptable behaviour.
12. The Code of Conduct places rules and regulations on certain activities. Any breach of these prohibitions may lead to disciplinary action.

Personal Interest

13. You must not in your official capacity:

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- Allow your personal interests to conflict with Birmingham City Council's requirements.
 - Use your position improperly to confer an advantage or disadvantage on any person.
14. Employees are required to complete the Potential Conflict of Interest form where they have any personal interests which may conflict with BCCs requirements and discuss with their line manager.
15. You must:
- Not disclose information given to you in confidence, or information acquired which is of a confidential nature, without the consent of a person authorised to give it.
 - Not prevent another person from gaining access to information to which that person is entitled by law.
 - Ensure that your relationships with service users are professional at all times.

Employment Matters

16. If an employee is involved in making appointments they must:
- Ensure that such appointments are made on the basis of the candidate's ability to do the job.
 - Ensure that their personal preferences do not influence judgements made.
17. Employees making appointments are required to declare their interest where they are related to an applicant or have a close personal relationship outside work with him/her by completing the Potential Conflict of Interest form and discussing it with their line manager.

Other Employment

18. In some instances, your contract of employment may:
- Prevent you from undertaking other employment without the written permission of your manager. This will be stated within your individual contract.
 - It is important that you ensure that any additional employment does not conflict with the interests of the council or affect your ability and credibility to do your job.
 - Where you have more than one job, both the City Council and your other employer(s) are responsible for ensuring that the 48 hour week is complied with. You should therefore ensure that you inform your manager about any work you undertake for other employer(s). (You may opt to work more than 48 hours per week and should you wish to do so, you will need to complete the form 'Working Time Regulations Opt Out Agreement' under Supporting Documents and submit it to HR Operations via People Solutions.
 - You must ensure that Council time and equipment are not utilised in connection with any other employment.

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- If in doubt, the best thing to do is to discuss the circumstances with your manager.

Declaration of Potential Conflict of Interest

19. Employees must not put themselves in a position where duty and private interest conflict and they must not make use of their employment to further their private interests.

What Interests Should I Declare?

20. Examples of information that should be declared include:
- Where your job could unduly influence decisions or contracts the Council either has or is proposing to enter or where you hold a financial or personal interest in any of these contracts either directly or indirectly e.g. through a partner or relative;
 - Where you hold a position with an external company or organisation whether paid or unpaid which may lead to conflict of interest e.g. Directorships, Committee membership including Charities, Voluntary Groups, Housing Associations and School Governorships;
 - If you have a close personal relationship with a person who has influence over your employment within the Council, for example, a Councillor or senior officer, or with any person who you have authority over;
 - If you have personal interests in activities within the Council e.g. you are a Landlord for the Council or involved in the fostering of children that could conflict with your job;
 - If you are dealing with applications to the Council for services, e.g. planning permission, permits, licences, grants, housing (including temporary accommodation), or applications for employment and have a relationship with any applicant.

When Should I Complete the form?

21. The examples above are not exhaustive but illustrate how the declaration is intended to apply in particular circumstances. It is your responsibility to apply the Code in the circumstances that affect you. If you are unsure about declaring a conflict of interest, please seek further advice from either your Head of Service or Human Resources Section.
22. Please note the failure to declare any potential conflict of interest during the course of your employment with Birmingham City Council may result in disciplinary action being taken.

Gifts and Responsibility

23. Birmingham City Council seeks to maintain the highest standards of conduct and probity in its business.
24. The acceptance of gifts and/or hospitality by employees must be treated with extreme caution. No offer of a gift or inducement, whether made at specific occasions (e.g. at Christmas) or casually, should be accepted when the gift is made by, or indirectly by, a person, firm or organisation which, to the knowledge of the employee, has or seeks to do business of any kind with the Council or to have an interest in its decisions.

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25. The receipt of minor articles, often by way of trade advertisements, which will be used on the Council's business (e.g. diaries, calendars, office requisites, etc., which are customarily distributed at Christmas and, occasionally, at other times) is acceptable.
26. If you are in any doubt, you should seek guidance from your line manager or the Council's Monitoring Officer, or the Head of Internal Audit before accepting any gifts or hospitality offered.

Sponsorship

27. Where the Council or parties to the Council sponsors an event or service, you, or any partner, spouse or relative must not benefit from the sponsorship.
28. You must seek guidance from your manager if you are involved with any event or service that the Council proposes to sponsor.

General Confidentiality

29. You may, in the course of your duties, obtain information which is confidential. You must not:
- Pass on any information received or obtained through your employment to anyone who is not entitled to have that information.
 - Use information for personal advantage.
30. You must:
- Work within the requirements of Data Protection Act 2018 and the Freedom of Information Act 2000.
 - Observe the Council's procedures for the release of personal information held about other employees or members of the public.
 - You must not misuse your position by seeking information which you do not need to know to carry out your duties.
31. Examples of abuse of confidence would include:
- Ill-considered gossip whether with colleagues or outsiders which may be misconstrued and re-quoted.
 - Exploitation of confidential information for personal gain.
 - Premature and/or unauthorised disclosure to other parties of policy proposals, with the object of generating adverse publicity e.g. to the press, interest groups.

Dealing with the Council's Money

32. You must:
- Ensure that public funds are used in a responsible and lawful manner.

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- Strive to ensure value for money to the local community and to avoid legal challenge to the Council.
- Ensure compliance with the Council's Standing Orders and Financial Regulations.

Criminal Charges and Convictions

33. The Council requires all applicants to disclose criminal convictions, whether committed in the UK or elsewhere unless the Rehabilitation of Offenders Act applies and the rehabilitation period has expired.
34. In some circumstances, Criminal Records Bureau checks are conducted on all successful applicants for certain positions in the Council.
35. You must:
- Notify the Council in writing if charged with any criminal offence or if convicted of any criminal offence, this includes cautions.
 - If charged with an offence, advise the Council as your employer immediately after you are charged (i.e. next working day).
36. It should be noted that the term 'conviction' includes a finding of guilt, regardless of whether or not a conviction is recorded. Failure to notify the Council in either case will constitute grounds for disciplinary action.

Intellectual Property and Copyrights

37. All intellectual property rights, (that is copyright, design rights and the right to patent inventions) relating to anything created or invented by you in the course of your duties belongs automatically to the Council, unless otherwise agreed, you cannot exploit the rights to any such thing without written permission from the Council.

Publications and Dealing with the Press

38. You must not:
- Publish any material which comments on the activities, policies etc of Birmingham City Council without the consent of your manager.
 - Make comments to the press or media unless specifically authorised to do so.
39. Where requests for comments are received they should be passed on to the appropriate officer.
40. Where you wish to publish an article unconnected with the Council then the article must not link you to the Council.

Equipment and Materials

41. You must:
- Not use the equipment and premises of Birmingham City Council for unauthorised purposes.

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- Only make personal telephone calls and emails when necessary and within reason.
- Only use the internet for personal use in your own time.
- Follow the internet usage policy.

Political Restrictions and Neutrality

42. There are a number of posts that are politically restricted. These fall into two broad categories:
- Specified posts
 - Sensitive posts
43. If you are in a politically restricted post then this will be indicated in your contract of employment and you are restricted in certain political activities.

Political Neutrality

44. The City Council will not concern itself with the political beliefs of individuals however you must not allow your own political beliefs to interfere with the work of the Council. You must serve Councillors fairly and ensure that you respect their role.
45. You may not display party political posters, including election material, in any place of work on behalf of the Council.

Equal Opportunities

46. Birmingham City Council is committed to the promotion and implementation of equal opportunities both internally and externally.
47. Birmingham City Council aims to ensure that everyone who comes into contact with it is treated equally and not in any way disadvantaged by factors which could prevent the implementation of fair policies and operations.
48. Birmingham City Council will recognise the differences which exist and will seek to understand the needs of people within the groups which are afforded protection or assistance through this policy.
49. Birmingham City Council expects all its employees to uphold its Equal Opportunity in Employment Policy and to accept the duty not to discriminate, either in employment practices or in the provision of facilities and services by reference to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Discrimination, Harassment, and Victimisation

50. You must treat all other employees and customers of Birmingham City Council with courtesy and respect, and must not make any remarks or gestures relating to the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation which may cause offence.

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51. Any complaint of discrimination, harassment, or victimisation or complaints made on the grounds of any of the protected characteristics listed above, will be taken seriously and will be the subject of a thorough investigation.

Fitness for Work

52. The City Council accepts that alcohol is legally and freely available. You must:
- Ensure that the use of alcohol out of work does not adversely affect your work performance, the health, safety or welfare of yourself or others and does not damage the City Council's image and reputation.
 - If you are a manager, consider the options available for managing employees in the above situation and refer to the alcohol policy and guidance.
 - Not consume or be under the influence of alcohol, use illicit drugs or other illegal substances while at work.
 - Ensure that the use of any of them out of work does not adversely affect the work performance and safety of yourself or others, and does not bring the Council into disrepute.
 - If taking medication, seek the advice of your doctor to ensure that such medication will not impede your ability to do the job (e.g. operate machinery).
 - Inform your line manager of any situations where a risk to yourself or others may arise because of this.
 - If you are a manager, consider the options available for assisting employees who are required to take legally prescribed drugs and whose levels of performance has been impaired. In these circumstances a risk assessment should be undertaken.

Health and Safety

53. You have a duty to take reasonable care of yourself and to cooperate with management under the Health and Safety at Work Act 1974. These responsibilities are identified in the Council's Health and Safety policy.
54. You are required to act at all times in accordance with this policy and generally to act in such a way to ensure your own safety and that of others.
55. Any action which potentially puts at risk the health and/or safety of yourself or others will be viewed seriously and may result in disciplinary action.

Attendance

56. Your contract of employment contains the main terms and conditions of your employment with Birmingham City Council.
57. It is expected that you are available for work during these hours and take an unpaid lunch break.

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58. You must record your attendance in accordance with your workplace time recording system.

Smoking

59. Birmingham City Council is a non-smoking organisation.
60. You are not permitted to smoke in any of the Council's offices, or any other building owned or occupied by the Council, at any time.
61. Smoking whilst on Council's premises may be subject to disciplinary action.

Dress Code

62. There is a general expectation that dress will be appropriate to the nature of the duties and responsibilities of the job.
63. The Council values and welcomes the ethnic diversity of its workforce and therefore dress codes will take account of ethnic and religious dress requirements with sensitivity ensuring that employees are free to observe them.
64. Where there is a clear business case or a health and safety reason then Directorates may introduce appropriate dress codes to suit the services provided and expectation of the public.

Identity Badges

65. There is a general presumption that all employees issued with identity cards/badges wear them at all times. This is particularly important if you visit the public in their homes. Where managers decide that it is not practical to wear identity badges then you should have them available for inspection at all times.

Disciplinary Rules

66. Birmingham City Council has a Disciplinary Procedure and a Capability Procedure.
67. The Disciplinary Procedure is concerned with instances of alleged misconduct, either ordinary or gross. It is anticipated that the vast majority of breaches will be of a minor nature and that they can be resolved without recourse to a formal procedure. Some breaches will be more serious or there may be circumstances where there is repetition of a minor breach. In such circumstances the matter will be progressed under the formal procedure.
68. The Capability Procedure provides a framework for managers and employees to cope with issues of poor performance. The underlying intention of the Procedure is to give the employees who are falling below the established acceptable standards the opportunity to improve.

Following instructions

69. Employees are expected to follow all reasonable and lawful instructions by a person with the authority to issue such instructions unless:
- There is a danger to a person's health and safety.

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- A conflict of interest may exist.
- It does not comply with Council policy and practice.

70. Managers must be able to justify their instructions and decisions in line with their delegations, authority, and Council policy and procedures, and be open and respond promptly to constructive questions.

Legislation

Contract of Employment

71. Your contract of employment is an agreement between Birmingham City Council and you which sets out your employment rights, responsibilities and duties and this includes the Code of Conduct.

General Data Protection Regulations (GDPR) and Data Protection Act 2018

72. The GDPR and Data Protection Act 2018 came into force in May 2018 and increase obligations on the management of personal data. GDPR is based around six principles of good information handling. These give people specific rights in relation to their personal information and place certain obligations on those organisations that are responsible for processing it.
73. For further information of how Birmingham City Council uses your personal data you should visit our privacy notice at www.birmingham.gov.uk/privacy

Freedom of Information Act 2000

74. The Freedom of Information (FOI) Act (2001) came into full force on 1st January 2005 and has created significant new rights of access to information held by all public authorities.
75. For more information, see the freedom of information guidance

Working Time Directive

76. The Working Time Regulations (the Regulations), introduced on 1 October 1998, provided new rights for workers ensuring that they do not have to work excessive hours. (The Regulations were amended, with effect from 1 August 2003, extending the extent to which they applied to workers in transport and offshore sectors. The Regulations applied to junior doctors from 1 August 2004.)
77. The aim of the regulations is to impose minimum requirements on employers, while at the same time allowing flexibility for workers and employers to make arrangements which suit them. One of the basic rights is a limit of an average of 48 hours a week which a worker can be required to work. However, there is provision for an opt out agreement to be signed where both the organisation and the worker are willing to increase or exclude the limit on working hours

C7. EMPLOYMENT PROCEDURE RULES – JNC OFFICERS

7.1 General Notes

- i. These Rules shall be regarded as Standing Orders of the Council for the purposes of The Local Authorities (Standing Orders) (England) Regulations 2001 ('the 2001 Regulations') and Local Authorities (Standing Orders) (England)(Amendment) Regulations 2015 ('the 2015 Regulations').
- ii. Full Council has delegated to the Chief Officer and Deputy Chief Officer⁶ Appointments, Dismissals and Service Conditions Sub-Committee (the 'JNC Panel') the responsibilities set out in these employment procedure rules.

7.2 Recruitment and Appointment

Declarations

- i. The Council will draw up a statement requiring any candidate for appointment as a Chief Officer or Deputy Chief Officer (Statutory or Non-Statutory) to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or officer of the Council, or of the partner of such persons. A candidate who fails to declare such relationship will be automatically disqualified from such appointment with immediate effect.
- ii. No candidate so related to a Councillor or an officer will be appointed without the authority of the Head of Paid Service or an officer nominated by him/her for that purpose.
- iii. Every Member and senior officer of the Council shall disclose to the Head of Paid Service or relevant officer any relationship known to that person to exist with a candidate for any appointment. It shall be the duty of the relevant Chief Officer or Deputy Chief Officer (Statutory and Non Statutory) to report to the Council or to the JNC Panel including any Member or officer to whom power has been delegated to make an appointment, any such disclosure made by a candidate, Member, or senior officer.
- iv. The HR Director shall record in a book to be kept for the purpose particulars of such disclosure made under this Rule.
- v. Where relationship to a Member of the Council is disclosed, that Member shall withdraw from the meeting while the appointment is under consideration.

⁶ Chief Officers are defined in Part B1.7; Deputy Chief Officers are officers Assistant Directors or equivalent

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Seeking support for appointment

- vi. Subject to paragraph ~~viii~~ below, the Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- vii. Subject to paragraph ~~viii~~ below no Councillor will seek support for any person for any appointment with the Council.
- viii. Nothing in paragraphs 7.2i and 7.2ii above will preclude a Councillor from giving a written reference for a candidate for submission with an application for appointment.

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Equal Opportunities

- ix. The Council will not unlawfully discriminate in the recruitment and appointment of officers and all appointments shall be made on merit.

7.3 Recruitment of Chief Officers and Deputy Chief Officers

- i. The Council has appointed a JNC Panel to exercise all of its powers in relation to the appointment, discipline, grievances and dismissal of Chief Officer and Deputy Chief Officer posts, where not restricted or prohibited by law. References to the Panel include a sub-committee of the Panel established by it to carry out its functions. The Panel must include at least one member of the Cabinet.
- ii. Where the Council proposes to appoint a Chief Executive (Head of Paid Service) or a Chief Officer or Deputy Chief Officer (Statutory and Non Statutory) the Council will:
 - a) Draw up a statement specifying:
 - o The duties of the officer concerned; and
 - o Any qualifications or qualities to be sought in the person to be appointed;
 - b) Make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
 - c) Make arrangements for a copy of the statement mentioned in paragraph a) to be sent to any person on request.
- iii. Where a post has been advertised as provided in rule 7.3i b) the Council shall:-
 - Interview all qualified applicants for the post, or
 - Select a shortlist of such qualified applicants and interview those included on the shortlist and
 - Give the JNC Panel the names of those candidates to be interviewed.

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- iv. Where no qualified person has applied, the Council shall make further arrangements for advertisement in accordance with Rule 7.3i.b.

7.4 Appointment of Chief Executive (Head of Paid Service)

- i. Following a recommendation of the JNC Panel that a particular candidate should be appointed to the post of Chief Executive (Head of Paid Service), the Director of HR shall notify every member of the Cabinet of the following:
- The name of the person to whom the JNC Panel recommends that the post be offered;
 - Any other particulars relevant to the appointment which the ~~JNC Panel~~ has notified to the Director of HR;
 - The period within which any objection to the making of the offer is to be notified to The Director of HR. The standard period will be three working days, but may be shortened by the Chair of the JNC Panel/Leader where necessary for the proper discharge of the Council's functions, subject to a minimum period of 24 hours.
 - The Director of HR has, within the period specified in the notice under paragraph c), notified the Leader that each member of the Cabinet has stated that they do not have any objection to the making of the offer; or
 - The Director of HR has notified the Leader that no objection was received from any member of the Cabinet within the specified period; or
 - The Leader is satisfied that any objection which has been received from any member of the Cabinet within the specified period is not material and/or is not well-founded or does not outweigh the other factors taken into consideration by the JNC Panel.
- ii. Where following the above procedure there are no objections to the proposed appointment or any objections are not upheld, the JNC Panel will recommend that person for appointment at the next meeting of the Full Council or at a specially convened meeting of the Council. If the full Council approves the recommendation, then a formal offer of appointment can be made.
- iii. Where following the interviews the JNC Panel is of the view that there is no suitable candidate, it will re-advertise the post.
- iv. Where full Council does not approve the recommendation of the JNC Panel, they shall indicate how they wish to proceed.

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7.5 Appointment of Chief Officers (Statutory and Non-Statutory) and Deputy Chief Officers

- i. The JNC Panel will appoint all Chief Officers and Deputy Chief Officers (including the Chief Finance Officer ~~(Section 151 Officer)~~ and the Monitoring Officer) in accordance with the Council's recruitment and selection process.

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- ii. Following a recommendation of the JNC Panel that a particular candidate should be appointed; the Director of HR shall notify every member of the Cabinet of the following:
 - a) The name of the person to whom the JNC Panel recommends that the post be offered;
 - b) Any other particulars relevant to the appointment which the Employment Committee has notified to the Director of HR;
 - c) The period within which any objection to the making of the offer is to be notified to The Director of HR. The standard period will be three working days but may be shortened by the Chair of the JNC Panel/Leader where necessary for the proper discharge of the Council's functions, subject to a minimum period of 24 hours.
- iii. The Director of HR has, within the period specified in the notice under paragraph 7.5ii.c, notified the Leader that each member of the Cabinet has stated that they do not have any objection to the making of the offer; or
- iv. The Director of HR has notified the Leader that no objection was received from any member of the Cabinet within the specified period; or
- v. The Leader is satisfied that any objection which has been received from any member of the Cabinet within the specified period is not material and/or is not well-founded or does not outweigh any other factors taken into consideration by the JNC Panel.
- vi. In the event that a reasoned objection is received, the Director of HR shall refer the matter to a specially convened meeting of the JNC Panel (the members of the specially convened Panel must be the same members who recommended the appointment of the Director) and the decision of this specially convened Panel will be final.

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7.6 Disciplinary Action – Chief Executive (Head of Paid Service), Monitoring Officer and Chief Finance Officer (The S151 Officer)

- i. ~~The JNC Panel has power to decide whether to investigate any allegation of misconduct by a statutory chief officer and all matters relating to the conduct of the investigation and/or any subsequent disciplinary process.~~
- ii. These rules are in accordance with the 2015 Regulations.

Suspension

- iii. The Chief Executive (Head of Paid Service), Monitoring Officer and Chief Finance Officer may be suspended ~~on full pay~~ whilst an investigation takes place into alleged misconduct. The decision to suspend the Chief Executive (Head of Paid Service), Monitoring Officer and Chief Finance Officer shall be made by the JNC Panel.
- iv. The responsibility for implementing the suspension of the Chief Executive will be the Director of HR with the Leader of the Council and the responsibility for implementing the

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suspension of the Monitoring Officer and Chief Finance Officer will be the Chief Executive and the Director of Human Resources.

Disciplinary Action and Dismissal

- v. The JNC Panel may take disciplinary action short of dismissal or recommend to full Council that the Chief Executive (Head of Paid Service) or the Chief Finance Officer (S151 Officer) or the Monitoring Officer be dismissed. Only full Council can approve the dismissal of the Chief Executive (Head of Paid Service), the Chief Finance Officer (S151 Officer) or the Monitoring Officer.
- vi. An independent panel must be appointed by the authority at least 20 days before the relevant meeting and should comprise a minimum of two independent panel members appointed under s28(7) of the Localism Act 2011.
- vii. Before taking a vote at the relevant Council meeting on whether or not to approve such a dismissal, the Council must take into account, in particular-
 - a) Any advice, views or recommendations of ~~the~~ independent panel;
 - b) The conclusions of any investigation into the proposed dismissal; and
 - c) Any representations from the officer concerned.

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7.7 Disciplinary Action – Chief Officers and Deputy Chief Officers (Statutory and Non-Statutory)

- viii. The JNC Panel has power to decide whether to investigate any allegation of misconduct by a non-statutory chief officer or deputy chief officer and all matters relating to the conduct of the investigation and/or any subsequent disciplinary process.

Suspension

- i. Chief Officers and Deputy Chief Officers may be suspended whilst an investigation takes place into alleged misconduct. The decision to suspend on full pay shall be made by the Chief Executive (Head of Paid Service) in consultation with the Leader of the Council and/ Deputy Leader and the Director of HR.
- ii. The responsibility to implement the suspension or to implement action short of dismissal shall be the responsibility of the Head of Paid Service or their designated nominee

Disciplinary Action and Dismissal

- iii. The JNC Panel may dismiss or take disciplinary action short of dismissal.
- iv. Dismissal or disciplinary action short of dismissal can only take effect where no well-founded objection has been made by any member of the Cabinet. Any objection needs to relate to the Council's disciplinary, capability and related procedures and policies.

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- v. In the event that a reasoned objection is received, the Director of HR shall refer the matter to a specially convened meeting of the JNC Panel (the members of the specially convened Panel must be the same members who recommended the dismissal/disciplinary action) and the decision of this specially convened Panel will be final.

7.8 Grievances

- i. Grievances made by all Chief Officers and Deputy Chief Officers including the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer will be dealt with in accordance with the Council's relevant procedures at the relevant time or as set out in the Chief Officer Handbook Joint Negotiation Committee in force at the relevant time.

7.9 Political Assistants

- i. Not more than one political assistant's post shall be allocated by the Council, from time to time, to each of the qualifying political groups into which the Council is divided.
- ii. No appointment to a political assistant's post shall be made until the Council has allocated such a post to each qualifying political group.
- iii. For the purpose of this Rule, a "qualifying political group" means a political group which qualifies for the allocation to it of a political assistant's post in accordance with sub-sections 6 and 7 of Section 9 of the Local Government and Housing Act

7.10 Terms and Conditions and Remuneration

- i. Terms and Conditions of employment including remuneration of all Chief Officers and Deputy Chief Officers will be approved by the JNC Panel.

7.11 Annual Pay Policy Statement

- ii. Section 38 of the Localism Act 2011 requires the Council to prepare and publish a pay policy statement for the following financial year. This annual statement will set out the Council's policies relating to the remuneration of Chief officers and its lowest paid officers and the relationship between the remuneration of its Chief Officers and that of its employees who are not Chief Officers. The annual pay policy statement will be adopted by Council before the end of March of each year. The Council has the power to amend the statement in year.

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7.12 Appointments and Dismissal – Other Officers

- i. Appointment, and Dismissal and Disciplinary action of officers below Directors who are not Chief Officers or Deputy Chief Officers (other than assistants to political groups) are the

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responsibility of the Chief Executive (Head of Paid Service) or his/her nominee and may not be made by Councillors.

- ii. Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group. Dismissal and Disciplinary action of an assistant to a political group is the responsibility of Chief Executive (Head of Paid Service) or his/her nominee, and may not be made by Councillors
- iii. Councillors will not be involved in the disciplinary process in respect of any officer below Chief Officers or Deputy Chief Officers except where such involvement is necessary for any investigation or inquiry into alleged misconduct or appeal process.

7.13 Membership of Committee and Virtual Meetings

- i. Membership of the JNC Panel shall comprise the Leaders of the three main political parties (or their nominees), and two other members subject to the proportionality rules. The Chair of the Panel will be the Leader of the Council or his/her nominated deputy.
- ii. The quorum for each meeting of the JNC Panel is five.
- iii. There may be circumstances when a decision of the JNC Panel may be agreed by all five members of that Panel in consultation with the Chief Executive and Director of Human Resources and Monitoring Officer or their nominated deputies without an actual meeting of that Panel taking place. The exercise of such decision shall be noted on the record of decision including setting out the reasons for the urgent circumstances.

7.14 Definitions

- i. In these Rules :

“the 1989 Act” means the Local Government and Housing Act 1989;

“the 2000 Act” means the Local Government Act 2000;

“the 2001 Regulations” means the Local Authorities (Standing Orders) Regulations 2001;

“Chief Finance Officer” has the same meaning as set out in Regulation 2 of the 2001 Regulations;

“disciplinary action” has the same meaning as set out in Regulation 2 of the 2001 Regulations;

“Director” means a Chief Officer, a Statutory Chief Officer, a Deputy Chief Officer or Deputy Statutory Chief Officer as set out below and includes the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer.

“Head of the Paid Service” has the same meaning as set out in Regulation 2 of the 2001 Regulations;

“member of staff” means a person appointed to or holding paid office or employment to the Council;

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“Independent Person” means a person appointed under section 28(7) of the Localism Act 2011 by the Council or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the Council considers appropriate;

“Independent Persons Panel” means a committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority in accordance with Schedule 3 to the 2001 Regulations, including or comprising at least two Independent Persons who have accepted an invitation to be considered for appointment to the Panel and who have been appointed to it in accordance with the following priority order

(a) an independent person who has been appointed by the authority and who is a local government elector in the Council’s area;

(b) any other independent person who has been appointed by the authority;

(c) an independent person who has been appointed by another authority or authorities.

“Monitoring Officer” has the same meaning as set out in Regulation 2 of the 2001 Regulations;

“Statutory Chief Officer” has the meaning as set out in section 2 (6) of the 1989 Act and for this Council will be the Director of Adult Social Care, the Director of Children’s Services, the Chief Finance Officer/section 151 Officer, the City Solicitor and Monitoring Officer, the Director of Public Health and for this Council are also known as Directors.

“Non-Statutory Chief Officer” means a person who reports to the Head of the Paid Service or who is directly accountable to the local authority or any committee or subcommittee of the authority as set out in Section 2 (7) of the 1989 Act and for this Council will be any other Director appointed by the Council who are not Statutory Chief Officers.

“Deputy Chief Officer” means a person who for most or all of his/her duties is required to report direct, or is directly accountable, to a statutory or non-statutory Chief Officer as set out in section 2 (8) of the 1989 Act.

C8. PLANNING CODE OF PRACTICE FOR MEMBERS AND OFFICERS⁷

8.1 Purpose of this Code

- i. This Planning Code of Practice ('the Planning Code') has been prepared to guide Members and officers in the discharge of the City Council's statutory planning functions. This Code will also inform potential developers and the public generally of the high standards of ethical conduct adopted by the Council in the exercise of its planning powers.
- ii. The Planning Code is in addition to Birmingham's adopted Code of Conduct for Members and Employees and subject to the responsibilities and requirements as set down by the Monitoring Officer from time to time. The responsibility for declaring an interest rests with individual Members and officers. Members should seek legal advice if they are unsure as to whether they have an interest which may prevent them from taking part in a discussion or vote on a particular planning application. Planning Committee Members must exercise an independent mind on issues before the Committee.
- iii. The provisions of this Planning Code are designed to ensure that planning decisions are taken on proper planning grounds, are applied in a consistent and open manner and that Members and officers making such decisions are held accountable for those decisions. The Planning Code is also designed to assist Members and officers in dealing with approaches from property owners.
- iv. If you have any doubts about the application of this Planning Code, you should seek early advice, preferably well before any meeting takes place, from the Director (Inclusive Growth) and/or the Assistant Director Planning/Assistant Director Development.

8.2 Roles and responsibilities

- i. Members and officers have different but complementary roles in the planning process. Members have more than one role in the process – as Ward Members and as Planning Committee Members.

Ward Members not on the Planning Committee

- ii. Ward Members who are not on the Planning Committee are in a position to represent the interests of their Ward when it comes to planning and related applications. Ward Members may:
 - Observe virtual meetings of the Planning Committee
 - Submit written representations to the Planning Committee, subject to the provisions in the public participation protocol;

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- consultations on the draft heads of terms for section 106 agreements;

Members who are on the Planning Committee

- iii. The role of Members who are involved in the planning decision making process is to exercise their judgment properly on the planning application before them – and be seen to do this. In coming to a decision on a planning application Members should make this decision based solely on material planning considerations. Officer reports to the Planning Committee will identify what is regarded as material to a decision and if Members are unclear on what matters may or may not be material to a decision they should seek advice from officers.
- iv. Whilst Members must act within the law, the exercise of planning judgment is theirs and theirs alone. The Planning Committee must take into account all relevant ministerial guidance, local plans (and related documents) and the advice of officers. The weight Members attach to the relevant considerations is a matter of their planning judgment and Members should not give weight to non-planning related matters that may be raised by members of the public.
- v. Planning Committee Members often receive correspondence from constituents, applicants and developers asking them to support or oppose a particular proposal. Members should electronically forward a copy of the correspondence to the Director (Inclusive Growth) or Assistant Director Planning/Assistant Director Development or inform them at the Planning Committee if time is short. Merely forwarding the correspondence onto the relevant officer would not prevent the Member being involved in determining the application.
- vi. Where Planning Committee Members are involved in pre-application discussions, they should be advised by the appropriate officers of the Council, which should always include a senior planning officer. The involvement of Planning Committee Members in such discussions should be recorded as a written file record of the meeting.
- vii. Planning Committee Members should not, whether orally or in writing, organise support or opposition to a proposal, lobby other Councillors, act as advocate or put pressure on officers for a particular recommendation.
- viii. Members are democratically accountable to their electors and to the wider public on whose behalf they act.

Officers

- ix.
 - vii. The Director (Inclusive Growth) or Assistant Director Planning/Assistant Director Development have a dual role in the decision making process:
 - Making decisions on the majority of planning applications under delegated powers.
 - Making recommendations on planning matters which are determined by Members at Planning Committee. When making such recommendations the function of officers is

to support and advise Members, ensure that any decision they make is lawful and identify any possible consequences of taking decisions.

8.3 Predetermination and Bias

- i. In making their decisions, Members of the Planning Committee should not be seen to side with either the applicant or the objector/s prior to the hearing of the application when all the relevant facts are known. Members are required to keep an open mind. This is a requirement of the law and a separate guidance note on predetermination and bias to assist Members in complying with this complex area of legislation and case law is set out in [Section C8.13](#) below.

8.4 Development Proposals submitted by Members and Employees

- ii. Where development proposals are submitted by Members and employees in respect of their own property or land it is particularly important that the Council ensures that such applications are handled in a way that gives no grounds for accusations of favouritism.
- iii. Serving Members of Council who submit applications or act as agents should play no part in the decision making process for that application. Further, they should not take part in the processing of the application nor should they lobby employees or officers either directly or indirectly.
- iv. Any planning officer who submits an application for their own property or on behalf of a friend or family member will inform the Director (Inclusive Growth) or Assistant Director Planning/Assistant Director Development in writing and such applications will be determined by the Planning Committee.
- v. Officers are required under the Employee Code of Conduct to make a declaration by completing the Register of Interests/Conflict of Interest Form, declaring any matters which may conflict with duties as an employee and their personal interests such as:
 - Any financial interest in any planning application;
 - Other interest where others may think that a conflict of interest may arise, such as for proposals near their residence.
- vi. In circumstances where there is a conflict of interest, the officer has no involvement in any part of the decision making process. If there is doubt about any conflict it is better to be cautious and for the officer to have no involvement.

8.5 Member contact with applicants and developers

- i. The Government encourages applicants to enter into pre-application discussions. Such discussions are a normal part of the planning process to seek further information and to seek to identify improvements to proposals at an early stage. These discussions and meetings provide an opportunity for the potential applicant to receive advice and

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information about the policy and technical requirements that must be met and advice on design, on community engagement and other issues which may improve the chances of an application being acceptable to the Local Planning Authority (LPA). However, it should be made clear that any guidance given will not bind the LPA to making a particular decision.

- ii. To minimise the prospect of challenges based on predetermination and bias, the guidelines below should be followed:
- It will always be made clear that any information or statements made cannot bind the LPA to making a particular decision.
 - Wherever possible, Members should be accompanied by an officer when meeting with applicants.
 - Members should refer applicants who approach them for advice to officers.
 - A written record of the discussion should be made by the officer.
 - Planning Committee Members are free to take part in meetings with potential applicants or their agents but extra care is needed to avoid any perception of predetermination or bias.

8.6 Planning Committee meetings

Attendance at meetings

- i. It is important to ensure that Members taking planning decisions are in possession of all the relevant facts, including matters pointed out or that come to light during a site visit by Planning Committee, matters that may have been raised during public speaking and matters that may have been discussed and considered by Planning Committee on earlier occasions. Attendance of Members on all occasions during the application phase, i.e. once the application has been submitted, will not only demonstrate that Members are fully informed but will also ensure that high quality, consistent and sound decisions are made, and that the risks of legal challenge are minimised.
- ii. A Planning Committee Member should not vote in relation to any planning application unless he or she has been present in the meeting of the Planning Committee for the whole of the deliberations on that particular application. In the case of a virtual committee meeting that means having listened to the entire presentation and debate relating to a particular application. By taking part in the vote on a particular item, members will be deemed to have made a declaration to that effect.
- iii. In cases where an application has been discussed at Planning Committee on more than one occasion, if a Member has not attended on each occasion during the application phase and wants to take part in the decision on an application, he or she should consider whether or not they are fully apprised of all the facts and relevant information necessary to properly reach a decision. If there is any doubt, legal advice should be sought by the Member concerned.

Deleted: September**Deleted:** 19**Deleted:** Amended November 2020**Conduct at meetings**

- iv. The Chair of the Planning Committee is responsible for the conduct of the meeting in accordance with the relevant Council procedure rules and for the effective delivery of business.
- v. The Planning Committee meetings are open to the public and they are often well attended particularly when there is a contentious application on the agenda. Meetings are also attended by the applicants/agents and/ or other parties supporting an application and/or objectors against an application. It is important to demonstrate that decisions have been made fairly and transparently and in the correct manner. Any debate should be confined to the planning merits of the matter.
- vi. A legal officer should always attend meetings of the Planning Committee to ensure the probity and propriety of the planning and decision-making processes.
- vii. Where there is any doubt as to the voting or of the actual counting of votes in relation to any particular application, clarification should be immediately sought by the Chair prior to dealing with the next agenda item, and if considered necessary this may include requesting from each Member as to how they have voted, noting this and the Member's name.

8.7 Decisions different to the officer recommendation

- i. Decisions on planning applications must be taken in accordance with the Development Plan unless material considerations indicate otherwise. From time to time the Committee may attach different weight to the potential planning considerations and, therefore, take a decision which differs from the officer recommendation.
- ii. Where this occurs, Members must be able to give a clear basis and reason for not taking the officer recommendation. It is important to ensure, as far as possible, that any decision made will be capable of surviving a legal challenge or appeal. So in the event that this occurs the Chair will ensure that the following principles are followed:-
 - When a planning application has been deferred following a resolution not to accept the officer recommendation, the Chair shall put to the meeting a proposed statement of why the recommendation is not considered acceptable, which, when agreed by the Committee, will be formally recorded in the minutes.
 - In these circumstances, at a subsequent meeting, the Director (Inclusive Growth) or Assistant Director Planning/Assistant Director Development will respond in a further written report the provisional reasons formulated by the Committee for granting or refusing permission. If the Planning Committee is still of the same view, then it shall again consider its reasons for the decision and a summary of those planning reasons shall be given. The reasons will then be recorded in the minutes of the meeting.
 - The officer attending the meeting should be given the opportunity to explain the implications of the decision.

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- Members should ensure they clearly identify and understand the planning reasons leading to this conclusion. These reasons must be given before the vote and be recorded.

- iii. Where an appeal to the Secretary of State is subsequently lodged against a decision which was different to the officer's recommendation, planning officers will act as a professional witness at the inquiry or hearing unless there is reason to suggest that this would prejudice the outcome. However, it should be noted that where the Planning Officer giving evidence is the officer that recommended approval, then their role is that of advocate for the Council's case.

8.8 Deferred applications

- i. In some cases, planning applications may come before the Committee on more than one occasion. This is particularly the case with larger schemes where a pre-application presentation and/ or an Issues report (a report which describes the stage a proposal has reached and the main issues involved) is presented to the Planning Committee, or when an application is deferred for a site visit or further information. Where an application is deferred then the reasons for deferral will be clearly stated and minuted.

8.9 Public speaking

- i. During the Covid 19 pandemic only virtual Planning Committee meetings are taking place and during this time all public speaking is suspended. Any ward members or members of the public wishing to make representations to the committee following the publication of an agenda can only do so by the submission of a written statement in accordance with the revised public speaking protocol.
- ii. Where Members have a disclosable pecuniary interest in the application then they must not submit representations in relation to the application, even as a member of the public, unless they have a dispensation from the Head of Paid Service.
- iii. Speakers will only be entitled to address the Committee on one occasion unless otherwise agreed by the Chair of Planning Committee on the grounds that the application has been significantly changed or amended or significant new information has been produced raising new material planning considerations. In these circumstances, speakers will only be able to speak about new matters or the amended details and not about matters which have been previously considered by the Committee.
- iv. Speakers should not raise any substantial new information (including correspondence, other documents, photographs or models) at the Planning Committee meeting, as this does not give all parties adequate time to consider and respond to the submissions, and Members of the Committee will not be able to give proper consideration to issues raised in the material.

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- v. It is important that members of the public are not permitted to communicate with or pass messages to individual Committee Members as this may give the appearance of partiality.

8.10 Site Visits

- i. During the Covid 19 pandemic only virtual Planning Committee meetings are taking place and during this time members are not able to request that a Planning Committee site visit take place.

8.11 Member training

- i. It is important that all Members involved in the planning process are aware of their role in the process and the policy and legal framework in which they operate.
- ii. Therefore, Members serving on Planning Committee must attend, as a minimum, the following compulsory training each year:
- For Members new to the Planning Committee two sessions comprising a governance and conduct session and mid-year update session;
 - For experienced Members of the Planning Committee, a single mid-year update session.
- iii. A record of attendance for the compulsory training will be maintained by Planning Officers and a list provided to Party Whips and Democratic Services for monitoring.
- iv. Other specialised training will be offered periodically throughout the year which will enhance and extend Members' knowledge of planning matters. These are not compulsory but will assist Members in carrying out their role on the Planning Committee

8.12 Reviewing and Updating this Guide

- i. The responsibility for reviewing and updating this Planning Code of Good Practice will be undertaken by the Director (Inclusive Growth) or Assistant Director Planning/Assistant Director Development in consultation with a meeting of the Planning Committee on an annual basis. Ad hoc reviews may occur if there are significant changes to be made; again these will be considered by a meeting of the Planning Committee.

8.13 Guidance Note on Bias and Predetermination in the Planning Process

What is Bias and Predetermination?

- i. The law on bias and predetermination (which is a particular form of bias) is part of the general legal obligation on public authorities to act fairly.

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- ii. Decision makers are entitled to be predisposed to particular views. However, predetermination occurs where someone closes their mind to any other possibility beyond that predisposition, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision.
- iii. The leading case on local authority bias and predetermination acknowledges the difference between judges sitting judicially and councillors making decisions in a democratic environment. Given the role of councillors, there must be 'clear pointers' before predetermination is established.

Section 25 Localism Act 2011

- iv. Section 25(2) of the Localism Act 2011 provides that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because –
 - d) the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take in relation to a matter, and
 - e) the matter was relevant to the decision.
- v. The section makes it clear that if a councillor has given a view on an issue, this, considered in isolation, does not show that the councillor has a closed mind on that issue. So, the mere fact that a councillor has campaigned on an issue or made public statements about their approach to an item of council business does not prevent that councillor from being able to participate in discussion of that issue and to vote on it.
- vi. Having said this, the use of the words 'just because' in section 25 suggest that other factors when combined with statements made etc. can still give rise to accusations of predetermination. This has also been the approach that the courts have taken to this issue. When considering whether predetermination has taken place they will consider all events leading to the decision (and also, where appropriate, those following the decision) rather than looking at individual events in isolation.
- vii. The case law has also made it clear that the words used by particular Members and the interpretation put on those words is of particular importance. So care still needs to be taken when making statements in advance of the determination of planning applications as there is a risk that they can be misinterpreted or taken out of context.

Guidance

- viii. With this in mind:-
 - It is always advisable to avoid giving the impression that you have made up your mind prior to the decision making meeting and hearing the officer's presentation and any representations made on behalf of the applicant and any objectors.
 - It is advisable not to give a view in advance of the decision. If you do comment on a development proposal in advance of the decision, consider using a form of words that

makes it clear that you have yet to make up your mind and will only do so at the appropriate time and in the light of the advice and material put before you and having regard to the discussion and debate in the Committee meeting.

- Particular care should be taken where there are chance encounters with objectors to development proposals or in the context of meetings which are not formally minuted. These are situations where the risk of what you say being misrepresented or taken out of context is particularly high.

Concluding Comments

- Councillors should avoid giving a view/ making statements in advance of determination of a planning application. If such views are given, these should be declared to the Planning Committee and legal advice should be sought if necessary as to whether that particular Member can continue to be part of the decision-making process. Any views given in advance should avoid giving the impression that you have already made up your mind and that your part in the decision is a foregone conclusion.

8.14 Protocol for public speaking at the Planning Committee meetings

Introduction

- This Protocol sets out the procedures to allow public speaking at the meetings of the Planning Committee.
- Subject to the exceptions below, public speaking does not apply where Members are considering a report for information or where Members are considering detailed reasons for refusal or conditions of approval following a decision of an earlier Committee not to accept the Director (Inclusive Growth) or Assistant Director Planning/Assistant Director Development recommendation. It also does not cover applications subject to non-determination appeals, where Members' views may be sought.

Procedures

Pre-application presentations

- Agents or prospective applicants have the opportunity to present their proposals to members of the Planning Committee at presentations organised in accordance with the **'Protocol for Pre-application Presentations to Planning Committee.'**

Matters for determination or other matters requiring a decision

- During the Covid 19 pandemic only virtual Planning Committee meetings are taking place and during this time all public speaking is suspended. Any members of the public wishing to make representations to the committee following the publication of an agenda can only do so by the submission of a written statement in accordance with the revised public speaking protocol below.

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- v. Any reference to 'speak' refers to written representations and any reference to 'speaker' refers to an individual submitting written representations.
- vi. In order for a written submission to equate to three minutes speaking time, the submission shall be no more than 1 side of A4 and be typed on 1.5 line spacing using Arial type face no smaller than 12 font. No drawings, photographs, graphs or any other visual aid will be permitted.
- vii. Applicants, supporters and objectors to an application or other form of consent before the Committee for determination or other matter requiring a decision, will normally be allowed to submit written representations to the Committee, subject to the details of the procedure set out herein and on giving notice of their wish to do so to the Director (Inclusive Growth) or Assistant Director Planning/Assistant Director Development by no later than 12 noon on the Friday immediately preceding the Committee. The written submission itself must be emailed to Committee Services by 12 noon on the Monday immediately preceding the Committee.
- viii. Applicants, supporters or objectors will have the equivalent of a maximum of three minutes to address the Committee
- ix. In the event of more than one applicant, supporter or objector wishing to submit written representations, a spokesperson should be nominated who will submit written representations on behalf of all registered speakers. If there is no spokesperson nominated, the written submission will be equally divided between the registered speakers.
- x. Where an application is recommended for approval, objectors to an application will be heard first.
- xi. Where an application is recommended for refusal, the objector will only be allowed to speak if the applicant or supporter has registered their intention to address the Committee, except in circumstances outlined in paragraph xiii.
- xii. The applicant, supporter and objectors shall take no further part in the Committee debate.
- xiii. If the applicant or supporters do not speak in relation to an application recommended for refusal the objectors will not normally be invited to speak.
- xiv. If no objector wishes to speak to an application for approval, the applicant or supporter will not normally be invited to speak.
- xv. In the circumstances where the officer's recommendation of approval is not accepted by Committee and the applicant or supporters have not been given an opportunity to speak, they shall be given the opportunity to address the Committee for up to three minutes when detailed reasons for refusal are reported.
- xvi. In the circumstances where the officer's recommendation of refusal is not accepted by Committee and the objectors have not been given the opportunity to speak they shall be

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given an opportunity to address the Committee for up to three minutes when detailed conditions for approval are reported.

- xvii. For the avoidance of doubt applicants, supporters or objectors will only be entitled to address the Committee on one occasion unless otherwise agreed by the Chair on the basis that the application has been significantly changed or amended or significant new information has been produced raising new material planning considerations. In these circumstances, speakers should only speak about new matters or the amended details, not about matters which have been previously considered by the Committee.

Passing around of information

- xviii. The circulation of materials will not ~~normally~~ be accepted during the meeting. Public speaking is an opportunity to highlight important points already made in representations, rather than to introduce new information. Members of the Committee will not be able to give proper consideration of any new issues raised in the material.

Members of Planning Committee

- xix. A Member of the Planning Committee having a disclosable pecuniary interest in an application must either declare that interest or bring it to the attention of the meeting and may not participate in the discussion or vote on the matter and must leave the room.
- xx. In line with the Birmingham Code of Conduct for Members, a Member must declare any interest in an application and complete the Register of Interest/Conflict of Interest Form.
- xxi. No Members with a disclosable pecuniary interest (whether they are a member of the Planning Committee or not) are entitled to address the Committee in accordance with the terms of this protocol for public speaking.

Review

- xxii. This Protocol may be reviewed, revised or revoked by the Director (Inclusive Growth) or Assistant Director Planning/Assistant Director Development in consultation with a meeting of the Planning Committee at any time.

Note:

- xxiii. For the purposes of this code, reference to 'attending' a meeting of the Planning Committee includes reference to attendees being in more than one place including electronic, digital or virtual locations such as internet locations, web addresses or conference call telephone numbers.

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C9. LICENSING COMMITTEE CODE OF PRACTICE FOR MEMBERS AND OFFICERS

9.1 Purpose of This Code

- i. This Licensing Code of Practice ('the Licensing Code') has been prepared to guide Members and officers in the discharge of the City Council's statutory Licensing functions. This Code will also inform potential applicants and the public generally of the high standards of ethical conduct adopted by the Council in the exercise of its Licensing powers.
- ii. The Licensing Code is in addition to Birmingham's Code of Conduct for Members, which was adopted by the City Council in June 2012. For the avoidance of doubt, when an Executive Member attends and participates in the decision-making of the Licensing Committee, s/he does so as a Member of the Committee and not as a Member of the Executive. Accordingly, s/he must, along with other Members of the Committee, exercise an independent mind on issues before the Committee.
- iii. The provisions of this Licensing Code are designed to ensure that Licensing decisions are taken on proper grounds, are applied in a consistent and open manner and that Members making such decisions are held accountable for those decisions. The Licensing Code is also designed to assist Members and officers in dealing with approaches from applicants or those who already have a relevant Licence/permit, etc.
- iv. Throughout this Code, reference is made to the Licensing Committee. This refers to the Licensing and Public Protection Committee ("LPPC"), in the context of its determination of applications for licences i.e where the Committee performs the functions of the Licensing Authority, rather than in the context of non-Licensing Authority decisions.
- v. Any reference to Licensing Committee equally refers to any Licensing Sub-Committee.

9.2 Context

- i. This Licensing Code applies to both Councillors and officers– it is not therefore restricted to Licensing Committee members. The successful operation of the Licensing system relies on mutual trust and understanding of each other's role. It also relies on both Members and officers ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.
- ii. The Human Rights Act provides additional safeguards for citizens, and encourages the application of best practice. Article 6 is concerned with guaranteeing a right to procedural fairness, transparency and accountability in the determination of civil rights and obligations.
- iii. This code must be read in conjunction with (where appropriate):
 - The LPPC Policies, Procedures and Delegations;

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- The Statement of Licensing Policy;
- Home Office Guidance (s182) – issued under S182 Licensing Act 2003;
- The Statement of Gambling Principles and relevant guidance issued by the Gambling Commission;
- The Sexual Entertainment Venue Policy;
- Code of Conduct for Members;
- Code of Conduct for officers.

9.3 General Considerations

- In relation to Hackney Carriage and Private Hire applications (generally speaking) the Licensing Authority MUST NOT issue a licence to a driver, operator or vehicle proprietor unless they are satisfied the applicant is a fit and proper person.
- In relation to Licensing Act matters, where an application has been properly made and no responsible authority or other person has made a relevant representation or where representations are made and subsequently withdrawn, the licensing authority MUST grant the application in the terms sought, subject only to conditions which are consistent with the operating schedule and relevant mandatory conditions under the 2003 Act.
- If the licensing authority decides that representations are relevant, it must hold a hearing to consider them. The need for a hearing can only be avoided with the agreement of the licensing authority, the applicant and all of the persons who made relevant representations.
- Birmingham City Council's [Code of Conduct for Members](#) (section C4) must be complied with throughout the decision making process, which includes mandatory requirements with regard to Member interests.
- The responsibility for declaring an interest rests with individual Members and officers of the Council. This Licensing Code outlines further rules applicable to the Licensing process in Birmingham.
- Councillors and officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate, whilst officers are responsible to the Council as a whole. This applies equally to traditional forms of political management based on Committees and to models based on forms of executives or elected mayors. Officers advise Councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual Councillors, and it follows that instructions may only be given to officers through a decision of the Council, the Executive or a Committee. A successful relationship between Councillors and officers can only be based upon mutual trust, respect,

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courtesy and understanding of each other's positions. This relationship, and the trust which underpins it, should never be abused or compromised.

- vii. Both Councillors and officers are guided by Codes of Conduct. Birmingham's [Code of Conduct for Members](#) (section C4) provides standards and guidance for Councillors. Employees are subject to the [Employees' Code of Conduct](#) (Section C6). In addition to these codes, a Council's standing orders set down rules which govern the conduct of Council business. There is also a Member / Officer Protocol that assists in defining the relation with both.
- viii. Birmingham's Code of Conduct for Members sets out the requirements on Councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register and declare interests, but also appropriate relationships with other Members, staff and the public, which will impact on the way in which Councillors participate in the Licensing process. Of particular relevance to Councillors serving on the Licensing Committee or Executive, or who become involved in making a Licensing decision, is the requirement that a Member must not use their position improperly for personal gain or to advantage friends or close associates.
- ix. The basis of the Licensing system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved.
- x. From time to time applicants or other parties may submit confidential information, for example a financial appraisal, or evidence from an ongoing criminal matter in relation to an application. Such information will be taken into account in relation to determination of the application, but such information may be exempt from the requirement from disclosure.

Public Speaking

- xi. During public speaking at Licensing Committee, the following should not occur:-
- Members should not cross-examine members of the public at any time;
 - Members should not ask leading questions of officers or members of the public as by way of introducing new facts to the debate;
 - Members should only ask relevant questions; and
 - Late evidence should not be introduced by speakers at Committee – unless authorised at the discretion of the Chairperson with the agreement of all parties.

Conflicts of Interest

- xii. Some Members in general are more likely than others to be uncomfortable in the role of Licensing Committee Member owing to the combined pressures of their local business interests, the Ward Member advocate role, and the constraints of the Licensing system.

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Any potential licence-related background may also give rise to a perception by the public that they are more likely to be in favour of an application, even where they are determining cases completely impartially. In order to minimise the risk for the Council and the Member concerned, the Member in question should discuss their position carefully with the Assistant Director of Regulation and Enforcement and Monitoring Officer for the Council, to see whether it would be suitable for him/her to become a Member of Licensing Committee or if already a Member take part in the determination of any applications before them.

9.4 Lobbying and Attendance at Public Meetings

General

- i. Given the requirement that Members of the Licensing Committee should exercise an independent mind to applications in accordance with the relevant considerations, Members must not favour any person, company, group or locality. Members can, of course, form and express a personal opinion on Licensing applications but they are advised to indicate that they will only form a final opinion about an application after full consideration of all the evidence, representations and submissions made. Members should be careful not to publicly commit themselves to a particular outcome on an application prior to its full consideration at Committee, as to do so could be perceived by others as the Member having closed his/her mind to hearing all the relevant considerations. If that were to happen, he/she should be asked by the Chairman of the Committee, the Assistant Director of Regulation and Enforcement and/or the Monitoring Officer (or their representatives) not to:
 - a) Take any further part in the consideration of the application; and
 - b) Vote on the application. This can only be transparently demonstrated by the relevant Member not attending the meeting or leaving the Committee Room in order to ensure the integrity of the whole decision making process. If the relevant Member wishes to speak at Committee then they should declare their pre-determined position and withdraw from the meeting. This is to ensure Members of the Licensing Committee do not, by their presence, influence or seek to influence the remainder of the decision making body. Members should always notify Committee of any approach by any group, person or company prior to the discussion of the relevant matter.
- ii. Members of the Committee who may be involved in the determination of an application are, of course, free to listen to a point of view about a proposal, give procedural advice and agree to forward any comments, but should then refer the person to officers. Members in this situation may indicate (or give the impression of) support for or opposition to a proposal, but should avoid giving the impression of a closed mind.

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- iii. Whilst Members involved in making decisions on applications may begin to form a view as more information and opinions become available, a decision can only be taken by the Committee after all available information is to hand and has been duly considered. In this regard, any political group meetings prior to the Committee meeting should not be used to determine how Councillors should vote. Decisions can only be taken after full consideration of the evidence, representations and submissions made.
- iv. The Chairman of the Committee should attend a briefing with officers prior to a Full Committee meeting, to help give an effective lead in the Committee.
- v. Councillors involved in decision making on Licence applications should not, whether orally or in writing, organise support or opposition to a proposal, lobby other Councillors, act as advocate or put pressure on officers for a particular recommendation. However, other Councillors (who are not part of the decision making process) within that Committee Member's Ward, can make written representations to the Licensing Committee.
- vi. A Member involved in determining applications may respond to lobbying by openly expressing an opinion prior to the full report of the Assistant Director of Regulation and Enforcement to a Committee meeting (and there may be particular local circumstances where this is considered appropriate) but should indicate they will not make a final decision until after full consideration of all the evidence, representations and submissions.
- vii. If a Member involved in determining applications goes so far as to make it clear beyond doubt that they have a completely closed mind which could not be shifted, this would amount to predetermination and the Member concerned should respond as in C9.4i.
- viii. Where Members involved in the determination of applications are in attendance at public meetings or Ward meetings they may listen to the debate on current applications, provide advice about procedures involved in determining an application and express a view about an application but should respond as in C9.4vi.

Members Predetermination of Applications

- ix. Section 25 of the Localism Act 2011 states that prior indications of a view of a matter do not amount to predetermination in the following situations:
 - (2) A decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because-
 - (a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter and
 - (b) the matter was relevant to the decision.
- x. The advice provided by the Monitoring Officer is that this is the present position with regard to the Legislation but, whilst Members are entitled to express a view in relation to

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an application, Members should indicate they still have an open mind in relation to an application until they have had the opportunity to consider the report of the Assistant Director of Regulation and Enforcement and that the final decision in relation to the application can only be made by Committee. This caveat is intended to safeguard so far as possible the decision made by Committee from Judicial Review until further case law and guidance has assisted with the interpretation of Section 25 of the Localism Act 2011.

Dealing with Correspondence

- xi. Members of the Committee and Executive often receive correspondence from constituents, applicants and other interested parties asking them to support or oppose a particular proposal. Members should forward a copy of the correspondence to the Director of Regulation and Enforcement or inform him/her at the Committee if time is short. Merely forwarding the correspondence onto the relevant officer would not prevent the Member being involved in determining the application.
- xii. Communication which is intended to be an objection to (or support for) a licence application MUST be properly served on the Licensing Service, not with elected members or other Council Officers. Such communication should be forwarded immediately to the Licensing Offices.

Pre-Application Discussions

- xiii. When involved in pre-application discussions, officers should always act fairly to all and completely impartially by providing accurate advice and assistance when required or requested by the general public, applicants or Members. A written record of all such discussions must be retained on the Licensing file.

Site Visits by Members with Officers (Uncommon)

- xiv. The deferral of a relevant application for a site visit should not be on the basis of exposing members of the Committee to local opinion, but should be on sound and proper Licensing reasons, which shall be recorded in the minutes of the meeting.
- xv. Under the Chairman's guidance the role of the Licensing Officer attending the site visit will be:
 - a) To brief Members on the Licensing applications(s), the subject of the visit and explain the reasons why the application was deferred for a visit;
 - b) To ensure that the views of all interested parties are heard by all Members on the site visit and accurately recorded. Officers will prepare a written report of the site visit which will be taken back to Licensing Committee to form the basis of a further discussion at a subsequent meeting.
- xvi. The Chairman (or Member chairing the visit) shall explain the purpose of the visit and how it will be conducted to all persons present at the site visit.

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- xvii. Officers shall ensure, where practical, that applicants, Members and interested parties are invited to attend the visit and that they are able to view all key parts of the site, which is the subject of the Applications.
- xviii. The purpose of a site visit conducted by Members and officers is to gain information relating to the land or buildings which are the subject of the Licensing application and which would not be apparent from the Licensing application to be considered by the Committee. A site visit may also assist Members in matters relating to the context of the application in relation to the characteristics of the surrounding area, and is an opportunity to hear the views of the members of the public, applicants and other interested parties. Discussions on site visits shall be confined to the application as currently submitted. A Member of Committee who has an interest in a Licensing application, or who has acted in a way that amounts to predetermination, cannot attend the site visit in his or her capacity as a Member of Licensing Committee. However, the Member concerned would be entitled to attend the site visit in his or her personal capacity as a member of the public.
- xix. Whilst on site visits, Members of Committee can express an opinion on the application or its merits, but should avoid making comments or acting in a way which makes it clear beyond doubt that they have a completely closed mind, as this would amount to predetermination. Whilst Members of Committee are not prevented from engaging individually in discussion with applicants or objectors, to ensure transparency of public dealing by Members and effective /orderly management of the site visit, it is recommended that any question of the applicant(s) / objector(s) by the Licensing Officer and/or Members should be made in the presence of the other parties (or their representatives if there is a large scale public interest).
- xx. Members and officers are obligated not to waste Council resources and, as such, a site visit is only likely to be necessary if:
- the impact of the proposed application is difficult to visualise from the plans and any supporting material, including photographs taken by officers (although if that is the case, additional illustrative material should have been requested in advance); or
 - there is good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or the proposal is particularly contentious.
- xxi. Where there is substantial public interest in a proposal and relevant representations have been made, the Council may invite all parties to visit the site so that they may point out all the areas of contention to Members of the Licensing Committee and give their views. A note of proceedings will be taken at these meetings and minutes kept as part of the official record.
- xxii. Results of the site visit will be reported to the next available meeting of the Committee.

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- xxiii. Once the results of a site visit have been reported back to Committee, Members of the Committee who were not present at the site visit can ask questions, offer opinions, take part in discussions and vote in relation to that Licensing application.

The Role of Ward Councillors and MPs on Site Visits

- xxiv. Where relevant representations have been made, Ward Councillors and MPs may attend and participate in site visits putting forward their point of view. However, the determination of Licensing applications rests solely with the Licensing Committee and no indication should be given by Members of the Committee of the likely decision during the course of the site visit.

9.5 Meetings of the Licensing Committee

- i. A Member shall not vote in relation to any Licensing application unless he or she has been present in the meeting of the Licensing Committee for the whole of the deliberations on that particular application.
- ii. A senior legal officer should always attend meetings of the Licensing Committee to ensure the probity and propriety of the Licensing and decision-making processes.
- iii. Where there is any doubt as to the voting or of the actual counting of votes in relation to any particular application, clarification should be immediately sought by the Chairman prior to dealing with the next agenda item, by requesting from each Member as to how they have voted, noting this and the Member's name.
- iv. Chairmanship: the chairman should ensure
 - Members' comments at Committee only relate to the relevant merits of the application before them;
 - Reference at Committee to matters which are not relevant should be disregarded;
 - The cross-questioning of speakers should only take place if there is need for clarification of what a speaker has already outlined; and done in accordance with the appropriate Procedural Rules for the Hearing in question.

9.6 Training

- i. Members dealing with Licensing issues will attend such training sessions as required each year to receive guidance in relation to Licensing matters and processes and on procedural matters such as declaration of pecuniary or non-pecuniary interests. Training will be conducted in accordance with the training for Councillors standard. Members who fail to attend such training will be excluded from meetings of Licensing Committee. This training should include a balance of the following:-
 - Short (half day) sessions on special topics of interest or where appeals have indicated problems with Licensing policy;

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- Special topic groups to consider thorny issues in depth;
- Formal training by internal and external speakers;
- Quick presentations by officers on hot topics, e.g. new legislation, white papers and their impacts, followed by a brief question and answer session.

9.7 Licence Applications Submitted by Councillors and Officers

- Serving Councillors or their relatives who act as agents for people pursuing a Licensing matter will not be permitted to play any part in the decision making process for that proposal. Similarly, should they or their relatives submit their own proposal to the Council, they will take no part in its processing, as in both cases they will have an interest in the matters.
- In cases where officers of this Department or members of their family submit a licence application, or where they have an interest in a particular application they should inform the Assistant Director of Regulation and Enforcement and Monitoring Officer accordingly (e.g. where an application is submitted by a limited company and an Officer is a director (or similar) of the company).

9.8 Registration and Declaration of Interests

- The Localism Act 2011 and the Birmingham Code of Conduct for Members place requirements on Members on the Registration and Declaration of their interests and the consequence for the Members' participation in consideration of an issue in the light of those interests. These requirements must be followed scrupulously and Members should review their situation regularly. Guidance on the registration and declaration of interests is dealt with by the Birmingham Code of Conduct for Members.

9.9 Complaints about the Determination of Licensing Applications

- Whatever procedures the City Council operates, it is likely that complaints will be made. However, the adoption of the advice in this guidance should greatly reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.
- There is a city-wide procedure for dealing with complaints, as well as customer comments and compliments. Complaints alleging a breach of the Birmingham's Code of Conduct for Members must be reported to the Monitoring Officer.
- So that complaints may be fully investigated and, in any case, as a matter of general good practice, record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. The guiding rule

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is that every application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, why and how it had been reached. Particular care needs to be taken with applications determined under the powers delegated to the Assistant Director of Regulation and Enforcement, where there is no report to a Committee. Such decisions should be well documented and form part of the case file.

- iv. It is preferable to use the complaints procedure prior to any recourse to the Local Government Ombudsman.
- v. Where any right of appeal exists against a decision of the Licensing Committee, that right is to be communicated at the time of the notification of decision.
- vi. Where the complaint relates to the decision made by the Licensing Committee, this decision cannot be overturned other than by following the statutory appeal process if one exists. No complaint procedure can overturn the decision of the Committee.

10. Concluding Remarks

- vii. Maintaining high ethical standards enhances the general reputation of the City Council, its Members and its officers. Open and transparent decision making enhances local democracy and should lead to better informed citizens. A common understanding of the various roles, responsibilities and accountabilities should also enhance citizen participation. This Licensing Code, along with Birmingham City Council's Code of Conduct for Members, therefore, serves an essential part in the local and corporate governance of Birmingham City Council.
- viii. The City Council's Head of Paid Service, the Monitoring Officer and the Section 151 Officer have been consulted over this Licensing Code.
- ix. If any person believes that a Member or Officer has breached any aspect of this Licensing Code, s/he should refer the matter to the City Council's Monitoring Officer.

C10. MEMBERS ALLOWANCE SCHEME

- i. The City Council's Members Allowances Scheme, made under Section 18 of the Local Government and Housing Act 1989 and as amended on 30th April 2001, was agreed by the City Council at the meeting on 13 April 2021.
- ii. The Scheme can be found [here](#).⁸

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C11. PROTOCOL ON SUBSTITUTE MEMBERS

11.1 Key Principles

- i. Formal substitutes are not appointed by Full Council for Birmingham City Council committees.
- ii. Formal substitutes are appointed for some joint committees:
 - West Midlands Police and Crime Panel
 - West Midlands Combined Authority Board
 - WMCA Overview and Scrutiny Committee
 - WMCA Audit, Risk & Assurance Committee
- iii. For how these committees operate substitute members, see the rules of procedure for each committee.
- iv. A committee may have substitute members if the Constitution allows it – currently Health and Wellbeing Board, Cabinet Committee Group Company Governance and Licensing Sub-Committees.
- v. Members are responsible for finding their own substitutes.
- vi. A substitute member shall be entitled to attend in place of a regular Member provided:
 - That the Chair and Committee Services has been notified of any substitution before the meeting begins.
 - That a Cabinet Member may only be substituted by another Cabinet Member.
- vii. The substitute arrangement must be announced at the beginning of the meeting and recorded in the minutes.
- viii. A substitute member will be able to vote during the meeting only when s/he is acting as a substitute for a regular Member.
- ix. If the substitution is for a committee where political proportionality rules apply, the substitute member must be a member of the Council drawn from the same political group as the ordinary member who is unable to attend the meeting and must not already be a member of the Committee concerned.
- x. With the exception of Licensing sub-Committee, a member acting as a substitute for the Chair or Vice-Chair of a committee will not, by virtue of that substitution, be entitled to act in either capacity. In the absence of both the Chair and Vice-Chair from a meeting (and the appointment of substitute members to attend in their place) the meeting shall appoint a Chair for the meeting who may be drawn from any members (including any substitute member) present and with voting rights.

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- xi. The substitute member may speak and vote in their own capacity and is not constrained by the views of the ordinary member they are replacing.
- xii. Once an agenda item has begun with a substitute member attending, the regular Member in respect of whom notification has been received, shall not be entitled to vote on the agenda item as a Member of the Committee.
- xiii. Once a meeting has started with the ordinary member in place, no substitution can then be made during the course of the meeting to replace that member.
- xiv. If the substitute member fails to attend and the ordinary member is present, then the ordinary member may take their place on the committee with full voting rights.
- xv. Where a substitute member has attended a meeting which is adjourned, the ordinary member may attend the reconvened meeting as the voting member, provided that the meeting is not part way through the consideration of an item or issue.
- xvi. Substitute members must receive copies of agendas and reports of the committees they are assigned to at the same time as ordinary members.

Licensing Sub-Committees

- xvii. In relation to each ordinary business Licensing Sub-Committee, the Licensing Committee has appointed a pool of substitute Members, comprising all other suitably trained members of the Licensing and Public Protection Committee. As the pool of members is therefore limited, whilst every effort will be made to ensure proportionality, it may not always be possible.
- xviii. A substitute Member will have all the powers and duties of any regular Member of the Licensing Sub-Committee but will not be able to exercise any special powers or duties exercisable by the person for whom s/he is substituting.
- xix. No substitute member at Licensing Sub- Committees may vote unless they have been present for the entire consideration of the item under discussion.