

COUNCIL

Report title	Amendments to the Constitution	
Chief Executive or Director	James Bromiley Strategic Director for Finance Governance and Support	
Date	16 May 2018	
Purpose of the report	To consider and approve amendments to the Constitution.	
Summary of the report	The report sets out various proposed alterations to the Constitution, which have been endorsed by the Constitution and Members' Development Committee.	
If this is a key decision, which key decision test applies?*	Over the financial threshold (£150,000)	
	Amends the Council's policy framework	
	Affects two or more wards	
	Non-key	X
If this is a confidential report, which category of exemption(s) from the Schedule 12a of the Local Government Act 1972 applies?	<i>Not applicable</i>	
Decision(s) asked for	That the proposed changes to the Constitution are agreed.	
Impact of decision(s)	As set out in the attached Appendices.	

What is the purpose of this report?

1. To set out the proposed amendments to the Constitution.

Why is this report necessary?

2. At its meeting of 27 April 2018 the Constitution and Members' Development Committee considered three reports into proposed alterations to elements of the Constitution. In particular, those reports (reproduced as appendices to this report) covered:
 - a. The Councillors' Code of Conduct and associated procedure (Appendix A);

- b. The Protocol on Member/Officer Relations, also known as the Member/Officer Protocol (Appendix B); and
 - c. The Council Procedure Rules as they apply to Extraordinary Meetings of Council (Appendix C).
3. The contents of these reports, with minor changes (highlighted through 'track changes') were endorsed by the Constitution and Members' Development Committee, and are presented to Council for agreement.
 4. In addition, the Constitution and Members' Development Committee endorsed an amendment to paragraph 11.5 of the Financial Procedure Rules 2016, which would see the 'key decision' limit for Capital Schemes (currently £100,000) be brought into line with all other 'key decision' limits of £150,000.

What decision(s) are being asked for?

5. That Council approves the changes to the Constitution outlined in this report and its appendices.

Why is this being recommended?

6. The proposed changes will serve to provide additional clarity for Members in relation to: the Councillors' Code of Conduct and its procedure; the Member/Officer Protocol; the timing of Extraordinary Council meetings; and will align the Capital 'key decision' limit with that of all other 'key decisions'.

Other potential decisions and why these have not been recommended

7. The only other option available would be to do nothing. This would leave the Constitution stagnant, which would be inappropriate.

Impact(s) of recommended decision(s)

Legal

8. There are no legal implications of the proposed changes.

Financial

9. There are no financial implications arising from this report.

The Mayor's Vision for Middlesbrough

10. The statement is in line with the Mayor's vision for Middlesbrough.

Policy Framework

11. The changes to do adversely impact upon the Council's policy framework.

Wards

12. Not applicable. No wards are directly affected by this document.

Equality and Diversity

13. An Impact Assessment has not been completed, as the changes will not adversely impact on any individual group.

Risk

14. The proposed changes provide for the risk of delay to be managed in an appropriate manner.

Actions to be taken to implement the decision(s)

15. The Constitution will be amended to reflect the changes agreed and implemented by Council.

Background to Proposal

Appendices

16. Appendix A – Proposed Revised Councillors' Code of Conduct and associated procedure, and covering report;
17. Appendix B – Proposed Revised Member/Officer Protocol and covering report; and
18. Appendix C – Report proposing alterations to the Council Procedure Rules relating to Extraordinary Meetings of Council.

Background papers

19. There are no background papers to this report.

MIDDLESBROUGH COUNCIL



AGENDA ITEM 4

CONSTITUTION AND MEMBERS' DEVELOPMENT COMMITTEE

Report title	Standards Complaints - Arrangements for dealing with Members' Code of Conduct complaints and guidance on how to make a complaint.
Chief Executive or Director	Strategic Director, Finance Governance and Support
Date	27 April 2018
Purpose of the report	To seek approval of the suggested arrangements for dealing with Members' Code of Conduct complaints; the guidance on how to make a complaint, and for the arrangements to be incorporated within the Council's Constitution.
Summary of the report	<p>The report outlines the arrangements for dealing with Members' Code of Conduct complaints which sets out the process the Council has adopted for dealing with complaints that an Elected Member, Co-opted Member or Parish Councillor has failed to comply with the Member's Code of Conduct. All future complaint hearings will be dealt with by the Standards Committee.</p> <p>The report includes guidance for Members and members of the public with regard to how to complete the complaint form; examples of what will/will not be considered as a complaint, the complaint process, and possible outcomes if the complaint is upheld.</p>
Decision(s) asked for	To approve the suggested arrangements for dealing with Members' Code of Conduct complaints and guidance on how to make a complaint and that the arrangements be incorporated within the Council's Constitution.
Impact of decision(s)	The changes will provide members with greater clarity with regard to the criteria for making a Members' Code of Conduct complaint; the arrangements for dealing with Members' Code of Conduct complaints and provides guidance on how to make a complaint.

What is the purpose of this report?

1. To seek approval of the suggested arrangements for dealing with Members' Code of Conduct complaints; guidance on how to make a complaint, and for the arrangements for dealing with Members' Code of Conduct complaints to be incorporated within the Council's Constitution.

Why is this report necessary?

2. More detailed direction/clarity/guidance was needed within the Constitution with regard to the arrangements for dealing with Members' Code of Conduct complaints. There was also a lack of guidance for Members and members of the public on what happened to a complaint, once it had been submitted.

What decision(s) are being asked for?

3. The Committee are asked to approve the suggested arrangements for dealing with Members' Code of Conduct complaints and guidance on how to make a complaint and that the arrangements be incorporated within the Council's Constitution.

Why is this being recommended?

4. To clarify the arrangements for Members' Code of Conduct complaints and to provide guidance to Members and members of the public on how to complete the complaint form; examples of what will/will not be considered as a complaint, the complaint process, and possible outcomes if the complaint is upheld.

Other potential decisions and why these have not been recommended

5. No other options were considered.

Impact(s) of recommended decision(s)

Legal

6. There are no legal implications as a result of the proposed changes.

Financial

7. There are no financial implications arising from this report.

The Mayor's Vision for Middlesbrough

8. The report is in line with the Mayor's Vision for Middlesbrough.

Policy Framework

9. The changes do not adversely impact upon the Council's policy framework.

Wards

10. Not applicable. No wards are directly affected by this document.

Equality and Diversity

11. An Impact Assessment has not been completed, as the changes will not adversely impact on any individual group.

Risk

12. If the revised arrangements are not put in place, the Council will not have suitable procedures in place to deal with potential breaches of the Members' Code of Conduct.

Actions to be taken to implement the decision(s)

13. Once approved the proposed changes will be referred to Council for a decision.

Background to Proposal

Appendices

Appendix A – Arrangements for Dealing with Members' Code of Conduct Complaints
Appendix B – Guidance on how to make a complaint

Background papers

14. There are no background papers to this report.

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ARRANGEMENTS FOR DEALING WITH MEMBERS' CODE OF CONDUCT COMPLAINTS

1. CONTEXT

- 1.1 Middlesbrough Council has adopted a Code of Conduct for all Members. Each Parish Council is also required to adopt a Code of Conduct for its Members.
- 1.2 These Arrangements are made under Section 28 of the Localism Act 2011 and set out the process the Council has adopted for dealing with complaints that an Elected Member, Co-opted Member or Parish Councillor has failed to comply with the Members' Code of Conduct.
- 1.3 The Members' Code of Conduct forms part of Middlesbrough Council's Constitution (pages 133 to 139).

2. MAKING A COMPLAINT

- 2.1 Complaints alleging a breach of the Code of Conduct by a Member must be made in writing using the Members' Code of Conduct Complaint form. (Attached at Appendix 4). Assistance will be offered to Complainants who have difficulty in making their complaint in writing. (For the purpose of these arrangements, the Member who is subject to the complaint will be known as the *Subject Member*). The Members' Code of Conduct Complaint Procedure is set out at Appendix 1.
- 2.2 The Complaints Team will acknowledge receipt of a complaint in writing within 3 working days of receipt and send a copy of the complaint to the Monitoring Officer for consideration.

The Monitoring Officer, in consultation with the Independent Person, will assess the complaint as per the Complaint Process.
- 2.3 The Subject Member will usually be informed by the Monitoring Officer of the identity of the Complainant and provided with a summary of the complaint, unless the Monitoring Officer is of the opinion that it is not in the public interest to do so. This information is given in confidence and should not be divulged as this may impact on the integrity of the complaint/investigation process.
- 2.4 The Monitoring Officer may delegate his/her role to the Deputy Monitoring Officer where there is a conflict of interests or in case of absence.

3. CRIMINAL CONDUCT

- 3.1 In accordance with Section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, a Member:
 - a) Fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day the Member becomes, or is re-elected or re-appointed, a Member or Co-opted Member of the Authority.
 - b) Fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days of becoming aware of it, where a Member is acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter) and the interest is not already registered or subject to a pending notification to the Monitoring Officer.
 - c) Fails to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer.

- d) Fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day it is disclosed at a meeting, where such interest has not already been registered or notified to the Monitoring Officer.
- e) Takes part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interests, unless a dispensation has been obtained.
- f) Knowingly or recklessly provides false or misleading information in any of the above disclosures or notifications.

3.2 Where a complaint against a Member relates to conduct of a criminal nature as defined in paragraphs a) to f) above, and which is perceived to be valid, the Monitoring Officer will report the complaint to the police or other prosecuting or regulatory authority.

4. APPOINTMENT OF, AND ROLE OF THE INDEPENDENT PERSON

4.1 The Council shall appoint an Independent Person or Persons, in accordance with the requirements of Section 27 of the Localism Act 2011. Middlesbrough Council has appointed two Independent Persons.

4.2 The Independent Person must be consulted and have his or her views taken into account to assess the appropriate course of action with regard to the complaint. The Independent Person may be consulted by the Monitoring Officer at any stage of the complaints process.

5. INFORMAL RESOLUTION

5.1 The Monitoring Officer, in consultation with the Independent Person, may decide that the complaint can be resolved informally at any stage in the process prior to convening a Standards Committee hearing. (See Appendix 1).

6. INVESTIGATION

6.1 If the Monitoring Officer, in consultation with the Independent Person, decides that the complaint should be investigated, an Internal Investigating Officer will be appointed to undertake the investigation. In exceptional cases, the Monitoring Officer may decide to appoint an external Investigating Officer.

6.2 Within 10 days of appointing the Investigating Officer, the Monitoring Officer will inform the Complainant and the Subject Member of the appointment.

6.3 The complaint will be investigated by the Investigating Officer in accordance with the Investigation Procedure set out at Appendix 2.

7. STANDARDS COMMITTEE HEARING

7.1 Following the receipt of the Investigating Officer's report, if the Monitoring Officer, in consultation with the Independent Person, considers that informal resolution is not appropriate, a meeting of the Standards Committee will be convened to determine the outcome of the complaint. The procedure for the Standards Committee hearing is set out at Appendix 3.

8. WITNESSES

- 8.1 Both the Investigating Officer and the Subject Member may call upon witnesses to provide written evidence or to appear at the Standards Committee. Witnesses should be identified at the investigation stage. Although witnesses should be prepared to be questioned at the Standards Committee hearing, they should be treated with courtesy and respect (see attached guidance Appendix 5).
- 8.2 Witnesses, for either the Subject Member or the Investigating Officer, cannot be compelled to attend the Standards Committee hearing.
- 8.3 Although the Subject Member is entitled to call any witnesses he or she wants, the Chair of the Standards Committee may limit the number of witnesses if he/she believes the number called is unreasonable.

9. SANCTIONS

- 9.1 Where a Subject Member is found by the Standards Committee to have breached the Member's Code of Conduct, appropriate sanctions may be applied.

10. APPEAL

- 10.1 There is no right of appeal for either the Complainant or Subject Member against decisions of the Monitoring Officer or the Standards Committee.

APPENDIX 1

MEMBERS' CODE OF CONDUCT COMPLAINT PROCEDURE

1. PRELIMINARY TESTS

- 1.1 The complaint will be assessed by the Monitoring Officer, in consultation with the Independent Person, and the following assessment criteria applied:
- a) Did the alleged conduct occur before the adoption of the Members' Code of Conduct?
 - b) Was the person complained of a Member of the Council or Parish Council at the time of the alleged conduct?
 - c) Was the person complained of acting in an official capacity at the time of the alleged conduct?
 - d) Did the alleged conduct occur when the person complained of was acting as a Member of another authority?
 - e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?
 - f) Is the complaint about dissatisfaction with the Council's or Parish Council's decisions, policies and priorities, etc?
 - g) Is the complaint submitted in writing?
 - h) Is the Subject Member of the complaint named?
 - i) Is the complaint a 'repeat complaint', or supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant?
 - j) Is the complaint anonymous, or supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant?
 - k) Is there sufficient information/evidence to substantiate the complaint has been submitted by the Complainant?
 - l) Is the complaint malicious, trivial, politically motivated or retaliatory?
 - m) Is the Complainant unreasonably persistent, malicious and/or vexatious?
 - n) Did the alleged misconduct happen more than 6 months ago?
 - o) Is the complaint relatively minor and would dealing with the complaint have a disproportionate effect on both public money and officers' and Members' time?
 - p) Have the circumstances changed so much that there would be little benefit arising from an investigation or other action?
 - q) Has the complaint been the subject of an investigation or other action and there is nothing more to be gained by further action being taken?

- r) Is the complaint such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter?
- s) Is the complaint about a deceased person?
- t) Is the complaint about a person who is no longer a Councillor or Parish Councillor or Co-opted Member?
- u) Is the complaint about a Council employee?

1.2 The Monitoring Officer will determine whether the complaint is accepted or rejected. If the complaint is rejected, the Complainant will be notified accordingly, with reasons, normally within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

2. NOTIFICATION OF COMPLAINT TO SUBJECT MEMBER

2.1 Subject to any representations from the Complainant on confidentiality (see paragraph 5 below), the Monitoring Officer will notify the Subject Member (and, if applicable, the Parish Clerk). The Monitoring Officer may also notify the Subject Member's Group Leader, if appropriate. This information is given in confidence and the Subject Member is expected to respect that confidence.

2.2 The Monitoring Officer may invite the Subject Member (and, if applicable, the Parish Clerk) to submit initial views on the complaint, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4 below).

3. REQUEST FOR ADDITIONAL INFORMATION

3.1 The Monitoring Officer may ask the Complainant and the Subject Member (and, if applicable, the Parish Clerk) for additional information before deciding how to deal with the complaint.

4. INFORMAL RESOLUTION OR INVESTIGATION AND/OR NO ACTION

4.1 The Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation, or following an investigation, (see paragraph 6 below). Where the Subject Member or the Monitoring Officer or the Council or Parish Council make a reasonable offer of informal resolution, but the Complainant is not willing to accept this offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

4.2 The Monitoring Officer, in consultation with the Independent Person, may refer the complaint for investigation when:

- a) It is serious enough, if proven, to justify the range of sanctions available to the Standards Committee (see Appendix 3 to these Arrangements).
- b) The Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Council or Parish Council and there is no other avenue left to deal with it, short of investigation, and, in considering this, the Monitoring Officer may take into account the time that has passed since the alleged conduct occurred.

- 4.3 Where the complaint is referred for investigation, the Monitoring Officer may appoint an Investigating Officer who will conduct the investigation in accordance with the procedure at Appendix 2 to these Arrangements.
- 4.4 If the complaint identifies criminal conduct or breach of other regulations by the Subject Member or any other person, the Complainant will be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. Where a Complainant has been advised to refer a matter to the police, or the Monitoring Officer has referred the matter to the police, the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and in consultation with the Independent Person will apply the local assessment criteria test in paragraph 1.4 above.
- 4.5 The Monitoring Officer in consultation with the Independent Person, will take no action on the complaint when one or more of the following apply:
- a) On-going criminal proceedings or a police investigation into the Subject Member's conduct.
 - b) Investigation cannot proceed without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings.
 - c) The investigation might prejudice another investigation or court proceedings.
 - d) On-going investigation by another prosecuting or regulatory authority.
 - e) Genuine long-term (3 months or more) unavailability of a key party.
 - f) Serious illness of a key party.

5. CONFIDENTIALITY

- 5.1 If the Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer in consultation with the Independent Person when they initially assesses the complaint.
- 5.2 As a matter of fairness and natural justice, the Subject Member will usually be told who the Complainant is and will also receive a summary of the complaint. However, in exceptional circumstances, it may be appropriate to keep the Complainant's identity confidential or not disclose details of the complaint to the Subject Member during the early stages of an investigation. The Monitoring Officer may withhold the Complainant's identity if they are satisfied that the Complainant has reasonable grounds for believing that they or any other person (e.g. a witness):
- a) Is either vulnerable or at risk of threat, harm or reprisal.
 - b) May suffer intimidation or be victimised or harassed.
 - c) Works closely with the Subject Member and are afraid of the consequences, for example, fear of losing their job.
 - d) Suffers from a serious health condition and there are medical risks associated with their identity being disclosed (medical evidence will need to be provided to substantiate this).

- e) May receive less favourable treatment, because of the seniority of the person they are complaining about, in terms of any existing Council or Parish Council service provision or any tender/contract they may have with, or are about to submit to the Council or Parish Council.

OR where early disclosure of the complaint:

- a) May lead to evidence being compromised or destroyed; or
- b) May impede or prejudice the investigation; or
- c) Would not be in the public interest.

5.3 Relevant public interest factors favouring disclosure (not an exhaustive list) include:

- a) To facilitate transparency and ethical governance accountability: recognising that decision-making may be improved by constructive contributions from others.
- b) To raise public awareness: disclosing the complaint or part of it may inform the community about matters of general concern.
- c) Justice to an individual: the balance of the public interest may favour disclosure of the complaint to the Subject Member when it may not be in the public interest to disclose it to the world at large.
- d) Bringing out in the open serious concerns about the behaviour/conduct of an individual.

5.4 The Monitoring Officer, in consultation with the Independent Person, will balance whether the public interest in accepting the complaint outweighs the Complainant's wish to have their identity (or that of another person) withheld from the Subject Member. If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons, by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.

6. INFORMAL RESOLUTION

6.1 The Monitoring Officer will, in consultation with the Independent Person, determine whether the complaint can be resolved through informal resolution.

6.2 Informal resolution may be the simplest and most cost effective way of resolving the complaint and may be appropriate where:

- a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related Council or Parish Council procedures; or
- b) There appears to be a breakdown in the relationship between the Complainant and the Subject Member; or
- c) The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct; or
- d) The conduct complained of appears common to a number of Members of the Council or Parish Council, demonstrating a lack of awareness, experience or

recognition of the particular provisions of the Code of Conduct and/or other Council or Parish Council procedures, etc; or

- e) The conduct complained of appears to the Monitoring Officer not to require a formal censure; or
- f) The complaint appears to reveal a lack of guidance, protocols and procedures within the Council or Parish Council; or
- g) The complaint consists of allegations and retaliatory allegations between Councillors; or
- h) The complaint consists of allegations about how formal meetings are conducted; or
- i) The conduct complained of may be due to misleading, unclear or misunderstood advice from officers.

6.3 Informal resolution may consist of one or more, (but not limited to), of the following actions, which do not have to be limited to the Subject Member, but may extend to other Councillors, including the whole Council or Parish Council, where it may be useful to address systemic behaviour:

- a) Training;
- b) Conciliation/mediation;
- c) Mentoring;
- d) Apology;
- e) Implementing changes to the Council's or Parish Council's procedures.
- f) Conflict management;
- g) Development of the Council's or Parish Council's protocols;
- h) Other remedial action by the Council or Parish Council; or
- i) Other steps (other than investigation), if it appears appropriate to the Monitoring Officer in consultation with the Independent Person.

6.4 If the Subject Member complies with the informal resolution process, the Monitoring Officer will report the matter to the Standards Committee and, if applicable, the Parish Council for information, but will take no further action against the Subject Member.

6.5 Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer will report the matter to the Standards Committee.

APPENDIX 2

INVESTIGATION PROCEDURE

1. PRELIMINARIES

- 1.1 The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under the Data Protection Act 1998, Equalities Act 2010, the Human Rights Act 1998 and other relevant legislation.
- 1.2 The Investigating Officer is responsible for gathering all the facts, documents and, where applicable, for interviewing witnesses with knowledge of the facts, and they should remain objective, impartial and unbiased at all times.
- 1.3 Witnesses will be identified at the investigation stage and their evidence supported by signed and dated witness statements and/or notes of interview with the Investigating Officer. The Investigating Officer cannot compel the attendance of witnesses or their co-operation.
- 1.4 The Investigating Officer will not make recommendations on sanctions, but may be asked to suggest possible sanctions.
- 1.5 Within 10 working days of being appointed, the Investigating Officer will contact the Subject Member and the Complainant and:
 - a) Detail the procedure to be followed in respect of the investigation and the relevant timescales for responses and concluding the investigation;
 - b) Detail the sections of the Members' Code of Conduct that appear to be relevant to the complaint;
 - c) Request contact details of any potential witnesses; and
 - d) Require that confidentiality is maintained and that the complaint not be disclosed, Members or otherwise, as may be required by law or regulation – the fact that an investigation is being conducted does not need to remain confidential.
- 1.6 It is strongly recommended that the Subject Member engages in the investigation process. If the Subject Member declines to participate in the process, the investigation will proceed in their absence.
- 1.7 It may be necessary for the Investigating Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally include documents that will be relied on, or in support of, the Subject Member's case and which are relevant to the complaint.
- 1.8 The Investigating Officer may terminate their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Monitoring Officer or Standards Committee.

2. DRAFT REPORT

- 2.1 On the conclusion of their investigation and/or when the Investigating Officer is satisfied that they have sufficient information, or has obtained as much information as is likely to be reasonably capable of being obtained, the Investigating Officer will issue a draft report (clearly labelled DRAFT), to the Monitoring Officer, for review.

2.2 Following review of the draft report by the Monitoring Officer, within 5 working days of receipt, the draft report will be sent in confidence to the Subject Member and the Complainant (not witnesses) for comment. The draft report will be marked 'CONFIDENTIAL' and watermarked with the name of the addressee, and will detail:

- a) The relevant provisions of the law and the relevant paragraphs of the Code of Conduct;
- b) A summary of the complaint;
- c) The Subject Member's response to the complaint;
- d) Relevant information, explanations, etc, which the Investigating Officer has obtained in the course of the investigation;
- e) A list of any documents relevant to the matter;
- f) A list of those persons/organisations who have been interviewed;
- g) A statement of the Investigating Officer's draft findings of fact and reasons;
- h) The Investigating Officer's conclusion as to whether the Subject Member has or has not failed to comply with the Members' Code of Conduct; and
- i) That the Investigating Officer will present a final report once they have considered any comments received on the draft.

2.3 The Subject Member and Complainant will have 5 working days in which to consider the draft report and submit a response to the Investigating Officer.

2.4 Once the Investigating Officer has considered all responses received from the Subject Member and/or the Complainant, they will finalise the draft report and make their final conclusions and recommendations to the Monitoring Officer, within 5 working days. The report will be clearly labelled FINAL, marked CONFIDENTIAL, and watermarked with the name of the addressee.

3. FINAL REPORT

3.1 The Monitoring Officer will review the Investigating Officer's final report and any comments submitted by the Parties, in consultation with the Independent Person.

3.2 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is no evidence of a failure to comply with the Members' Code of Conduct, they will inform the Parties, in writing, that no further action is considered necessary. There is no right of appeal against the Monitoring Officer's decision.

3.3 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is evidence of a failure to comply with the Members' Code of Conduct, they will either take no action or seek informal resolution or refer the matter for consideration by the Standards Committee in accordance with the relevant procedure detailed in this Appendix 2.

3.4 The Monitoring Officer, in consultation with the Chair of the Standards Committee, will convene a meeting of the Standards Committee no earlier than 14 working days and no later than 28 Days after the Investigating Officer's final report has been copied to

the Complainant and Subject Member. The Investigating Officer will be invited to present their final report to the Standards Committee.

APPENDIX 3

STANDARDS COMMITTEE HEARING PROCEDURE

1. PROCEDURE RULES

- 1.1 These procedure rules shall apply to the Standards Committee when considering the Investigating Officer's report under these arrangements.
- 1.2 The Standards Committee comprises 9 Elected Members and, if required, 2 Parish Councillors.
- 1.3 The quorum for a meeting of the Standards Committee is 3.
- 1.4 The purpose of the hearing is for the Standards Committee to consider, on the evidence provided, whether the Subject Member has breached the Members' Code of Conduct. The conduct of others, for example officers, would be dealt with through another process.
- 1.5 The Independent Person will be invited to attend and participate in the Standards Committee meeting but will not have voting rights.
- 1.6 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Standards Committee. The hearing will be held in public no earlier than 14 working days and no later than 28 days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A of the Local Government Act 1972 (as amended) will be applied where it is necessary to exclude the public and press from meetings of the Standards Committee, where it is likely that confidential or exempt information will be disclosed.
- 1.7 The Monitoring Officer, in consultation with the Chair of the Standards Committee, will convene a meeting of the Standards Committee.
- 1.8 If the Subject Member is unavailable for the proposed date, the Monitoring Officer, in consultation with the Chair of the Standards Committee, will determine whether the meeting can be arranged outside of the prescribed timescale. If a meeting cannot be arranged within the prescribed timescale the Subject Member may be requested to provide a reasonable explanation to the Chair, along with any appropriate evidence of his/her unavailability.
- 1.9 All matters/issues before the Standards Committee will be decided by a simple majority of votes cast, with the Chair having a second or casting vote.
- 1.10 Where the Subject Member fails to attend the Standards Committee and where the Standards Committee is not satisfied with their explanation for their absence from the hearing, the Standards Committee may, in the first instance, have regard to any written representations submitted by the Subject Member, and/or the Investigating Officer's report and may resolve to proceed with the hearing in the Subject Member's absence and make a determination. Alternatively if the Standards Committee is satisfied with the Subject Member's reasons for not attending the hearing, it may adjourn the hearing to another date. The Standards Committee may resolve in exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously. Standards Committee hearings shall only be adjourned once, if the Subject Member fails to attend a second scheduled meeting without exceptional circumstances, the meeting shall proceed in the Subject Member's absence.

2. RIGHT TO BE ACCOMPANIED BY A REPRESENTATIVE

- 2.1 The Subject Member may choose to be accompanied and/or represented at the Standards Committee by a fellow councillor, friend or colleague. The Subject Member will not be entitled to be represented by a solicitor or other legal representative, or by any Officer of the Council.

3. THE HEARING

- 3.1 Subject to paragraph 3.2 below, the order of business will be as follows:

- a) Apologies for absence;
- b) Declarations of interests;
- c) Approval of Minutes of the previous meeting;
- d) If the Subject Member is absent, consider whether to adjourn or to proceed with the hearing (refer to paragraph 1.9 above);
- e) Introduction by the Chair, of Members of the Standards Committee, the Independent Person, Monitoring Officer, Investigating Officer, Democratic Services Officer, the Council's Legal Advisor, complainant and the Subject Member and their representative;
- f) Receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press;
- g) Determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press. When the public/press are excluded from any part of the meeting, filming, photography and/or audio recordings of the meeting will be prohibited in accordance with the provisions of the Council's Constitution (page 174).
- h) Consider the report of the Independent Person and determine the matter.

- 3.2 The Chair may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

- 3.3 The Standards Committee may adjourn the hearing at any time.

- 3.4 Witnesses:

- a) The process of the hearing is inquisitorial, and not adversarial. Witnesses should not be made to feel uncomfortable or that their integrity is being questioned. The purpose of the hearing is to establish the facts.
- b) All questions to witnesses should be made through the Chair.

- 3.5 Presentation of the complaint:

- a) The Investigating Officer presents their report including any documentary evidence or other material and calls his/her witnesses. No new points will be permitted.

- b) The Subject Member or their representative may question the Investigating Officer, and any witnesses called by the Investigating Officer.
- c) The Standards Committee may question the Investigating Officer upon the content of his/her report, the Independent Person, the Advisory Officer, and witnesses called by the Investigating Officer, upon the contents of his/her any report.

3.6 Presentation of the Subject Member's response:

- a) The Subject Member or their representative presents their response to the Investigating Officer's report, and calls their witnesses.
- b) The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member.
- c) The Standards Committee may question the Subject Member, the Independent Person, the Advisory Officer, and any witnesses called by the Subject Member.

3.7 Summing up:

- a) The Investigating Officer sums up the report.
- b) The Subject Member or their representative sums up their response to the Investigating Officer's report.

3.8 Deliberations of the Standards Committee:

- a) Having heard the representations/views of all parties, the Standards Committee will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether, on the facts found, the Subject Member has failed to comply with the Code of Conduct, and if so, what sanctions should be applied. Members'
- b) Prior to reaching a decision, the Standards Committee will consider the views expressed by the Independent Person, including any views on sanctions to be applied and/or recommendations to the Council or Parish Council or Monitoring Officer.
- c) Where the complaint has a number of aspects, the Standards Committee may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- d) The Standards Committee will make its decision on the balance of probability, based on the evidence before it during the hearing.
- e) The Standards Committee may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information, to assist the Committee, cannot be presented, then the Committee may adjourn the hearing and issue directions as to the additional evidence required and by whom.
- f) If evidence presented to the Standards Committee highlights other potential breaches of the Council's or Parish Council's Members' Code of Conduct, then the Chair will outline the Committee's concerns and recommend that the matter be referred to the Monitoring Officer as a new complaint.

- g) Having deliberated on its decision and/or recommendations and the application of any sanctions, the Standards Committee will reconvene the hearing in public and the Chair will announce:
 - i) the Standards Committee decision as to whether or not the Subject Member has failed to comply with the Members' Code of Conduct, detailing the breaches, and the principal reasons for the decision;
 - ii) the sanctions (if any) to be applied;
 - iii) the recommendations (if any) to be made to the Council or Parish Council or Monitoring Officer; and
 - iv) that there is no right of appeal against the Standards Committee decision and/or recommendations.

4. POSSIBLE SANCTIONS

4.1 Subject to paragraph 4.4 below, where the Standards Committee determines that the Subject Member has failed to comply with the Members' Code of Conduct, any one or more of the sanctions below or any further sanctions deemed appropriate by the Standards Committee may be applied/recommended:

- a) Recommend to the Council or Parish Council that the Subject Member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion;
- b) Issue an instruction that the Subject Member is removed from specified committees or sub-committees of the Council;
- c) Recommend to the Mayor that the Subject Member be removed from the Executive or removed from particular Portfolio responsibilities;
- d) Instruct the Monitoring Officer, or the Parish Council, to arrange training for the Subject Member;
- e) Recommend to the Council, or Parish Council, that the Subject Member is removed from all outside appointments to which they have been appointed or nominated by the Council, Executive or Parish Council;
- f) Instruct the Monitoring Officer, or Parish Council, to withdraw facilities provided to the Subject Member by the Council, or Parish Council, such as a computer, website and/or email and internet access;
- g) Instruct the Monitoring Officer or Parish Council, to implement a Communications Plan for the Subject Member;
- h) Instruct the Monitoring Officer, or Parish Council, to exclude the Subject Member from the Council or Parish Council's offices or other premises, with the exception of meeting rooms as necessary for Council or Parish Council committee and sub-committee meetings;
- i) Instruct the Monitoring Officer, or Parish Council, to apply the informal resolution process;
- j) Instruct the Monitoring Officer, or Parish Council, to issue a press release or other form of publicity; or

- k) Instruct the Monitoring Officer, or Parish Council, to restrict the Subject Member's access to confidential or exempt information.
- 4.2 The Standards Committee has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.
- 4.3 The Standards Committee may specify that any sanction takes effect immediately or takes effect at a later date and that the sanction be time-limited. If the sanctions are not complied with within the timescale directed by the Standards Committee, the Monitoring Officer will report the fact to the Chair of the Standards Committee, wherein further sanctions may be considered by the Standards Committee.
- 4.4 When deciding whether to apply one or more sanctions referred to in paragraph 4.1 above, the Standards Committee will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Standards Committee will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:
- a) What was the Subject Member's intention and did they know that they were failing to follow the Council's or Parish Council's Members' Code of Conduct?
 - b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
 - c) Has there been a breach of trust?
 - d) Has there been financial impropriety, for example: improper expense claims or procedural irregularities?
 - e) What was the result/impact of failing to follow the Council's or Parish Council's Members' Code of Conduct?
 - f) Was there an impact on others?
 - g) How serious was the incident?
 - h) Does the Subject Member accept that they were at fault?
 - i) Did the Subject Member apologise to the relevant persons?
 - j) Has the Subject Member previously been reprimanded or warned for similar misconduct?
 - k) Has the Subject Member previously breached the Council's or Parish Council's Members' Code of Conduct?
 - l) Is there likely to be a repetition of the incident?

5. PUBLICATION AND NOTIFICATION OF THE STANDARDS COMMITTEE DECISION AND RECOMMENDATIONS

- 5.1 Within 5 working days of the Standard Committee's announcement of its decision and recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Standards Committee's decision and recommendations, and reasons for the decision and recommendations, on the Council's website.

5.2 Within 5 working days of the announcement of the Standards Committee's decision, the Monitoring Officer will provide a full written decision and the reasons for the decision, including any recommendations, to:

- a) The Subject Member;
- b) The Complainant; and
- c) The Clerk to the Parish Council (if appropriate).

APPENDIX 4

Members' Code of Conduct - Complaint Form

Please use this form if you wish to make a complaint about the conduct of a member of Middlesbrough Council or a member of one of the parish councils in the borough.

Under the arrangements for dealing with Standards complaints the Monitoring Officer can only consider complaints if they relate to a Member's behaviour whilst they are acting, or giving the impression that they are acting, in their official capacity. Complaints which appear to be against a Member acting in their private capacity or do not fall within the Members' Code of Conduct and will be rejected.

'Member' means an elected councillor as well as an appointed or co-opted member or a Parish Councillor. The Code does not apply to Council employees.

Complaints against the Council or Council staff as a whole are outside of these procedures and should be progressed through the Councils 'Corporate Complaints' procedures.

1. YOUR DETAILS

Title		
First name		
Last Name		
Address		
Postcode		
Home or mobile telephone		
Email address		
Preferred method of contact	by post <input type="checkbox"/>	
	by email <input type="checkbox"/>	

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we may tell the following people that you have made this complaint:

- the Member(s) you are complaining about
- the Monitoring Officer of the authority
- the Parish or Town Clerk (if applicable)
- the Independent Person
- An appointed Investigating Officer

We will tell them your name and give them a summary of your complaint. If the complaint results in a hearing it is likely that your name and the content of your complaint will enter the public arena unless your complaint concerns issues of such sensitivity that this is not appropriate. If you have serious concerns about your name and details of your complaint being released, please complete section 3 of this form.

2. YOUR COMPLAINT

Who are you complaining about?

Please provide us with the name of the member(s) you believe have failed to comply with the Code of Conduct and the name of their Council or Authority.

Title	First name	Last name	Middlesbrough Council or Parish Council name

Details of your complaint

It is important that you provide all the information you wish to have taken into account by the Monitoring Officer when he/she decides whether to take any action on your complaint. For example:

- Be specific, wherever possible, about exactly what you are alleging the member said or did and explain how you think they have breached the Members' Code of Conduct.
- Provide the dates of the alleged incidents. If you cannot provide exact dates give a general timeframe.
- Please attach copies of any documents, names and details of any witnesses and any other evidence you feel is relevant to your complaint.
- Explain how you think they have breached the Members' Code of Conduct.

Please continue on a separate sheet if necessary.

Informal resolution

In the first instance the Monitoring Officer may decide that your complaint is best resolved informally.

What type of action would satisfy you? For example, an apology from the Councillor concerned.

3. CONFIDENTIALITY

Only complete this next section if you are requesting that your identity is kept confidential

In the interests of fairness and natural justice, we believe members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless you can provide a good reason why we should. For example: if there is a fear of retribution.

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Please indicate fully and giving reasons, in the space provided below, if you feel that your

identity should be kept confidential in this case.

Data Protection

The information you provide on this form will be held by Middlesbrough Council and used by us to process your complaint as above. In accordance with the Council's Record Retention Policy, the information you provide on this form will be held for a minimum of 2 years and then destroyed in a secure manner.

Should the complaint progress to an investigation full details will be shared with Investigating Officer who has been allocated to this complaint so that they may contact you directly. Details

of the complaint may also be submitted to a Standards Committee hearing to help determine whether an elected member has breached the Member's Code of Conduct.

APPENDIX 5

Witness Guidance

1. "Witness" is a general term incorporating those that may have either witnessed an event or be able to provide information/knowledge relating to an issue/subject. Witnesses may be internal to the organisation e.g. colleagues or other members of staff, or on occasion, external to the organisation e.g. complainants, or relatives or experts in a particular field related to the investigation.
2. Witnesses may be identified by the complainant, the subject member or as part of investigation process. Witnesses cannot be compelled to attend or to give a statement. Council Officers may have a duty within their Contract of Employment and any Codes of Conduct by which they are bound to support the process.
3. Witness evidence often forms part of the bundle of evidence considered at a Standards Committee hearing, and witnesses are on occasions requested to give evidence in person at a hearing.
4. The witness will be briefed as to the process/proceeding that will follow, either by a Democratic Services Officer, the Investigating Officer, or the Subject Member.
5. Witnesses play an important role in clarifying any points of fact previously raised during an investigation, and may be asked to answer questions relating to their evidence/information.
6. A witness is there as an independent party, to provide factual information. This can be provided either via an interview with an Investigating Officer, a written statement and/or by attending the formal hearing.
7. Reasonable support in relation to a disability or language skills (e.g.: where English is not the first language), will be considered if raised in advance of the meeting/hearing.
8. Following interview with the Investigating Officer, a copy of a witness's statement will be sent, confirming what they have to do next with the statement. However, if a signed copy is not returned within the date specified in the letter the original version may be included in the investigation report.
9. Witnesses are expected to treat their statement as confidential and not to discuss it with the other parties.

10. Once the investigation is complete the investigating officer submits their report to the Monitoring Officer and the Council's Independent person, who will determine whether the case should be progressed to a Standards Committee hearing.
11. Should a Standards Committee hearing be convened and witnesses required to attend, then witnesses will be informed of the time and the date of the meeting. Hearings are generally held in the public domain however the Committee will determine on the day whether the hearing should be held in private (subject to schedule 12A of the Local Government Act 1972).
12. There may be a difference between witnesses called to the hearing by the Investigating Officer/Committee and the Subject Member. The Subject Member wishing to call any witnesses should make arrangements to invite the witnesses themselves.
13. The Investigating Officer, the Committee or the Subject Member should be given a reasonable opportunity to call relevant witnesses and ask questions of witnesses to raise any points about information provided by them. Any such witnesses must be identified during the investigation process so that the investigating officer can include this in their investigation.
14. During the investigation interview and prior to disclosing a witness statement the investigator will advise the witness that it may be disclosed to the subject of the investigation e.g. if the case goes to a hearing. In exceptional circumstances e.g. where there may be fear of reprisals and the witness has requested anonymity, an assessment will be made by the investigating officer and where possible the identity of the witness will not be divulged.
15. If a situation arises where the organisation is not able to resolve the concern without revealing a witness' identity it will be discussed with them prior to any disclosure. Ultimately the Investigating Officer in conjunction with Monitoring Officer will make a reasoned decision about whether or not to disclose a witness statement or whether it can be released in an anonymised format. This will involve balancing the witness' right to privacy against the Subject Member's right to know what information is held about him or her.
16. It is usual, where there is a case to be answered, for all witness statements to be passed to the subject member so they can produce a full defence to the allegations raised against them and question the witnesses in relation to their evidence.
17. Witnesses will be offered the opportunity to read through and check their statement for accuracy once it has been typed, before signing and returning it. The statement will then be included in the report relating to the matter which will be forwarded to the Monitoring Officer to consider the next steps e.g. whether a Standards Committee hearing is to be convened.

18. If the witness wishes to add any further information they can do this through an addendum or via a further interview. Confidentiality must be maintained by the witnesses and those supporting them relating to matters discussed at interview.
19. During a formal hearing witnesses may be asked by the Committee to clarify any issues as appropriate or to answer questions from any of the parties present. The Chair of the Standards Committee may instruct that questions are posed through the Chair. All parties to the process are required to treat witnesses with courtesy and respect.
20. The Committee/Subject Member are only entitled to ask witnesses questions that are relevant to the matters in question and/or which could elicit a response which may assist the Committee in determining whether or not there has been a breach of the Code of Conduct. It will be for the Standards Committee to determine whether or not to allow the question.
21. The party calling the witness should not put leading questions to the witness unless they are introductory matters or facts that are not in dispute. The Standards Committee can choose to disregard any evidence elicited from a leading question. Leading questions are ones that prompt the answer wanted, suggest a particular answer, or contain information the person asking the question is looking to have confirmed. In general you will not be allowed to ask leading questions when asking your witnesses questions.
22. Questions should be asked in a fair manner. The Standards Committee will not permit witnesses to be harassed or badgered by either party.

Attending a Hearing

Below are some useful tips for those who are called to attend a formal hearing:

- ❖ Witnesses attending a Standards Committee hearing will be asked to wait in another room until called.
- ❖ When entering the room where the hearing is being held it can be quite intimidating to see many people in attendance. Introductions will be made and the process being followed will be confirmed to each witness when they attend.
- ❖ The room layout will be formal and some or all of the following will be present; Committee Members, the Independent Person, the Subject Member and their representative, the Investigating Officer, Democratic/Legal support staff, the press and the public.
- ❖ Witnesses who are required to attend a Standards Committee hearing will be advised of the date and venue of the hearing. The hearing may take longer than expected and witnesses may well need to wait beyond the allocated time.
- ❖ Witnesses may like to bring along notes to help them recall the events and the copy of the statement given to them which they may refer to at the hearing.

- ❖ It is important for the witness to listen carefully to the question and if it is not understood, to ask for it to be repeated or clarified.
- ❖ Witnesses should take time to consider the question, it is important not to feel rushed into answering; if unable to remember certain facts, the witness should say so.
- ❖ If additional time to think is needed the witness should say so, as this can be allowed.
- ❖ In closed sessions, principles of confidentiality apply to what is heard or observed at the hearing.
- ❖ Witnesses are advised to contact the Investigating Officer or the Democratic Services Officer if they have any queries regarding the process or their availability for the hearing.
- ❖ Whilst witnesses may wish to refuse to attend a Standards Committee hearing their statement will be used anyway. Council Officers may have a duty within their Contract of Employment and any Codes of Conduct by which they are bound to support the process.
- ❖ It is appreciated that giving evidence as a witness may not be easy. However, witness evidence is important and the Council is grateful for the assistance of witnesses and would like to thank them for their input.
- ❖ It is essential that the matter is kept confidential and not discussed with colleagues or other parties and in particular the subject of the complaint. If there are any questions or concerns, these should be raised with the Monitoring Officer.
- ❖ Once a witness has given evidence they may leave the hearing. Alternatively if the hearing is held in public witnesses may sit in the public seating area.

MIDDLESBROUGH COUNCIL



AGENDA ITEM

CONSTITUTION AND MEMBERS' DEVELOPMENT COMMITTEE

Report title	Member/Officer Protocol	
Chief Executive or Director	James Bromiley Strategic Director for Finance Governance and Support	
Date	27 April 2018	
Purpose of the report	To consider possible amendments to the Member/Officer Protocol.	
Summary of the report	The report suggests alterations to the Member/Officer Protocol, to ensure clarity in relation to breaches of that protocol, and in relation to the role and management of Political Assistants.	
If this is a key decision, which key decision test applies?*	Over the financial threshold (£150,000)	
	Amends the Council's policy framework	
	Affects two or more wards	
	Non-key	X
If this is a confidential report, which category of exemption(s) from the Schedule 12a of the Local Government Act 1972 applies?	<i>Not applicable</i>	
Decision(s) asked for	That the proposed changes to the Member/Officer Protocol are endorsed, and commended to Council for agreement.	
Impact of decision(s)	Members will have additional clarity in relation to Breaches of the Member/Officer Protocol, and the role of Political Assistants.	

What is the purpose of this report?

1. To set out the proposed changes to the Member/Officer Protocol, and to seek endorsement for the changes to proceed to Council.

Why is this report necessary?

2. As part of a standards hearing conducted in 2017 it was agreed that the issue of breaches of the Member/Officer Protocol would be referred to the Constitution and Members' Development Committee for consideration.
3. In light of this, a revised version of the Member/Officer Protocol has been prepared (and is attached at Appendix 1) which provides clarity in relation to such breaches and the consequences thereof, through the introduction of a new Section 20 to the Protocol.
4. In addition, whilst the document was under review it was considered appropriate to clarify the paragraphs of the Member/Officer Protocol which relate to Political Assistants.

What decision(s) are being asked for?

5. That the Constitution and Members' Development Committee endorses the approach set out in the report, and comments it to Council for consideration and decision.

Why is this being recommended?

6. The proposed changes will serve to provide additional clarity for Members in relation to the Member/Officer Protocol.

Other potential decisions and why these have not been recommended

7. The only other option available would be to do nothing. This would leave Members without the additional certainty which the suggested alteration would achieve.

Impact(s) of recommended decision(s)

Legal

8. There are no legal implications of the proposed changes.

Financial

9. There are no financial implications arising from this report.

The Mayor's Vision for Middlesbrough

10. The statement is line with the Mayor's vision for Middlesbrough.

Policy Framework

11. The changes to do adversely impact upon the Council's policy framework.

Wards

12. Not applicable. No wards are directly affected by this document.

Equality and Diversity

13. An Impact Assessment has not been completed, as the changes will not adversely impact on any individual group.

Risk

14. The proposed changes provide for the risk of delay to be managed in an appropriate manner.

Actions to be taken to implement the decision(s)

15. Once approved the proposed changes to the Member/Officer Protocol will be referred to Council for a decision.

Background to Proposal

Appendices

16. Appendix 1 – Proposed Revised Member/Officer Protocol.

Background papers

17. There are no background papers to this report.

MEMBER/OFFICER PROTOCOL

INTRODUCTION

The purpose of this protocol is to provide a clear and concise guide for the conduct of members and officers of the organization. It is intended to ensure that all members and officers are aware of their responsibilities and the expectations of the organization. This protocol is a living document and will be updated as needed to reflect changes in the organization's structure and goals.

The protocol is divided into several sections, each covering a different aspect of the organization's operations. These sections include: Membership, Officers, Committees, Meetings, and Communication. Each section provides detailed information on the roles and responsibilities of members and officers, as well as the procedures for conducting various activities.

It is the responsibility of all members and officers to read and understand this protocol and to adhere to its provisions. Failure to do so may result in disciplinary action. The organization reserves the right to modify this protocol at any time without notice.

This protocol is intended to be a guide and not a strict set of rules. It is designed to be flexible and adaptable to the needs of the organization. The organization's leadership will provide guidance and support to ensure that all members and officers are able to fulfill their roles and responsibilities effectively.

MEMBERSHIP

1. All members must be at least 18 years of age at the time of joining the organization. The organization reserves the right to accept members of any age at its discretion.

2. All members must be in good standing with the organization. This means that they must have paid their dues and are not in arrears.

3. All members must adhere to the organization's code of conduct and the provisions of this protocol. Failure to do so may result in the member being removed from the organization.

4. All members must be active in the organization. This means that they must attend meetings and participate in the organization's activities.

5. All members must be in good standing with the organization. This means that they must have paid their dues and are not in arrears.

OFFICERS

1. All officers must be at least 18 years of age at the time of being elected to office. The organization reserves the right to accept officers of any age at its discretion.

2. All officers must be in good standing with the organization. This means that they must have paid their dues and are not in arrears.

3. All officers must adhere to the organization's code of conduct and the provisions of this protocol. Failure to do so may result in the officer being removed from office.

MEMBER / OFFICER PROTOCOL

INTRODUCTION

Members and officers are both servants of the public, and they are indispensable to one another. But their responsibilities are distinct. Members are responsible to the electorate. Officers are responsible to the Head of Paid Service of the Council and their job is to advise members and the Council, and to carry out the work of the Council as a whole. What is expected both of members and of officers are the highest levels of respect, objectivity, impartiality and honesty in undertaking their respective roles and in dealing with each other.

This Protocol aims to give guidance in respect of the complex relationships between members and officers of the Council. Given the wide range of these relationships, this Guidance cannot be prescriptive. Rather, it seeks to give guidance and offers a framework within which both members and officers should act.

Parliament has approved ten Principles of Good Conduct in public life. Middlesbrough Council believes that these are sound values which both officers and members should adhere to in undertaking their respective roles.

This Protocol has been approved by the Council's Constitution and Members' Development Committee, and applies equally to the Elected Mayor, all members and all officers of the Council. It should be read in conjunction with all other current protocols.

PROTOCOL

1. Definitions

- 1.1. Unless the context indicates otherwise, references to the term *Council* include the Executive, Overview and Scrutiny committees, and other committees and sub-committees.
- 1.2. For the purposes of this protocol, the term *Executive* refers to the Elected Mayor and Executive.
- 1.3. Unless the context indicates otherwise, the terms *member* and *members* include non-elected (i.e. co-opted) members as well as elected councillors.
- 1.4. *Officers* and *staff* mean all persons employed by the Council.
- 1.5. *Senior officer* means members of the Leadership Management Team, .
- 1.6. *Chief Finance Officer* means the officer exercising the duties prescribed by law for the financial administration of the Council.

2. Principles

- 2.1. Members and officers must at all times observe this protocol.
- 2.2. The operation of this protocol will be monitored by the Council's Standards Committee.
- 2.3. The protocol seeks to maintain and enhance the integrity (real and perceived) of local government which demands the highest standards of personal conduct.

- 2.4. Members and officers must always respect the roles and duties of each other. They must show respect in all their dealings by observing reasonable standards of courtesy, and by not seeking to take unfair advantage by virtue of their position.
- 2.5. Whilst members and officers are indispensable to one another, their responsibilities are distinct. Members are accountable to the electorate and serve only as long as their term of office lasts. Officers are accountable to the Council as a whole. Their job is to give advice to members (individually and collectively) and to carry out the Council's work under the direction of the Council.
- 2.6. The Council has adopted codes of conduct for both members and officers. Both represent best practice. The Members' Code of Conduct follows the national code. The Code of Conduct is based on the general principles governing members' conduct which are enshrined in law. These are:
- Selflessness – serving only the public interest.
 - Honesty and integrity – not allowing these to be questioned; not behaving improperly.
 - Objectivity – taking decisions on merit.
 - Accountability – to the public; being open to scrutiny.
 - Openness – giving reasons for decisions.
 - Personal judgement – reaching one's own conclusions and acting accordingly.
 - Respect for others – promoting equality; avoiding discrimination; respecting others (member/member, as well as member/officer).
 - Duty to uphold the law – not acting unlawfully.
 - Stewardship – ensuring the prudent use of the Council's resources.
 - Leadership – acting in a way which has public confidence.
- 2.7. The above principles underpin this protocol.
- 2.8. Officers are bound by the Council's code of conduct for staff and, in some cases, by the codes of their professional associations.

3. The role of Members

- 3.1. Members have a number of roles and need to be alert to the potential for conflicts of interest which may arise between the roles. Where such conflicts are likely, members may wish to seek the advice of senior colleagues, the relevant senior officer(s), including the Monitoring Officer.
- 3.2. Collectively, members are the ultimate policy-makers determining the core values of the Council and approving the authority's policy framework, strategic plans and budget.
- 3.3. Members represent the community, act as community leaders and promote the social, economic and environmental well-being of the community often in partnership with other agencies.
- 3.4. Every elected member represents the interests of, and is an advocate for, their ward and individual constituents. Members represent the Council in their ward, respond to

the concerns of constituents, meet with partner agencies, and often serves on local bodies.

- 3.5. Some members have roles relating to their position as members of the Executive, Overview and Scrutiny committees or other committees and subcommittees of the Council.
- 3.6. Members of the Executive can have individual delegated powers. They may determine matters within their portfolios, but implementation of their decisions is the responsibility of officers.
- 3.7. Members serving on Overview and Scrutiny committees monitor the effectiveness of the Council's policies and services, develop policy proposals and examine community issues. They also monitor local health service provision.
- 3.8. Members who serve on other committees and sub-committees collectively have delegated responsibilities, e.g. deciding quasi-judicial matters which by law are excluded from the remit of the Executive.
- 3.9. Some members may be appointed to represent the Council on local, regional or national bodies.
- 3.10. As politicians, members may express the values and aspirations of the party political groups to which they belong, recognising that in their role as members they have a duty always to act in the public interest.
- 3.11. Members are not authorised to instruct officers other than:
 - through the formal decision-making process;
 - to request the provision of consumable resources provided by the Council for members' use; where staff have been specifically allocated to give support to a member or group of members; and
 - in the case of political assistants.
- 3.12. Members are not authorised to initiate or certify financial transactions, or to enter into a contract on behalf of the Council.
- 3.13. Members must avoid taking actions which are unlawful, financially improper or likely to amount to maladministration. Members have an obligation under their Code of Conduct to have regard, when reaching decisions, to any advice provided by the Monitoring Officer or the Chief Finance Officer.
- 3.14. Members must respect the impartiality of officers and do nothing to compromise it, e.g. by insisting that an officer change their professional advice.
- 3.15. Members have a duty under their code of conduct:
 - to promote equality by not discriminating unlawfully against any person; and
 - and;
 - to treat others with respect.
- 3.16. Under the code, a member must not when acting as a member or in any other capacity:
 - bring the Council or their position as a member into disrepute, or

- use their position as a member improperly to gain an advantage or disadvantage for themselves or any other person.

4. The role of officers

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

5. The relationship between members and officers: general

- 5.1. The conduct of members and officers should be such as to instil mutual confidence and trust.
- 5.2. The key elements are a 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.
- 5.3. Informal and collaborative two-way contact between members and officers is encouraged. But personal familiarity can damage the relationship, as might a family or business connection.
- 5.4. Members and officers should inform the Head of Paid Service or the Monitoring Officer of any relationship which might be seen as unduly influencing their work in their respective roles.
- 5.5. It is not enough to avoid actual impropriety. Members and officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct.

- 5.6. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be perceived. Specifically, a member should not sit on a body or participate in any decision which directly affects the officer on a personal basis.
- 5.7. Officers serve the Council as a whole. They have a duty to implement the properly authorised decisions of the Council.
- 5.8. With the exception of political assistants, officers work to the instructions of their senior officers, not individual members. It follows that, whilst such officers will always seek to assist a member, they must not be asked to exceed the bounds of authority they have been given by their managers. Except when the purpose of an enquiry is personal or confidential, members should direct their requests through the Members' One Stop service.
- 5.9. Officers will do their best to give timely responses to members' enquiries. However, officers should not have unreasonable requests placed on them. Their work priorities are set and managed by senior managers. Members must avoid disrupting officers' work by imposing their own priorities.
- 5.10. Members will endeavour to give timely responses to enquiries from officers.
- 5.11. An officer shall not discuss with a member personal matters concerning themselves or another individual employee. This does not prevent an officer raising on a personal basis, and in their own time, a matter with their ward member.
- 5.12. Members and officers should respect each other's free (i.e. non-Council) time.
- 5.13. Officers within the scope of any review must not canvass or otherwise seek the support of any Member in relation to that review, or their or their colleagues' personal circumstances. Officers canvassing Members may be subject to disciplinary proceedings under the Council's Disciplinary Policy. Members approached by officers in these circumstances should refer the approach to the Monitoring Officer.

6. The Council as employer

- 6.1. Officers are employed by the Council as a whole.
- 6.2. Members' roles are limited to:
 - the appointment of specified senior posts;
 - determining human resources policies and conditions of employment;
 - the appointment of political assistants;
 - hearing and determining appeals; and
 - disciplining statutory designated officers
- 6.3. Members shall not act outside these roles.
- 6.4. If participating in the appointment of officers, members should:
 - remember that the sole criterion is merit (other than in the case of political assistants where political consideration may apply),
 - never canvass support for a particular candidate,
 - not take part where one of the candidates is a close friend or relative,

- not be influenced by personal preferences, and not favour a candidate
 - by giving them information not available to the other candidates.
- 6.5. A member should not sit on an appeal hearing if the appellant is a friend, a relative, or an officer with whom the member has had a working relationship.

7. Elected Mayor and officers

- 7.1. Officers will respect the position of Elected Mayor and provide appropriate support.

8. Executive members and officers

- 8.1. Executive members will take decisions in accordance with the constitution and will not otherwise direct staff. Senior officers will be responsible for instructing staff to implement the Executive's decisions.

- 8.2. In addition to individual members of the Executive, senior officers (including the Monitoring Officer and the Chief Finance Officer) have the right to submit papers to the Executive as a whole or to individual Executive members for consideration.

- 8.3. Senior officers and Executive members shall agree mutually convenient methods of regular contact. Before taking any formal decisions, the Executive will seek appropriate professional advice including that of the Monitoring Officer and Chief Finance Officer, and will not direct officers in the framing of recommendations.

- 8.4. Before any formal decisions with a financial implication are taken by the Executive, the Finance Officer and the senior officer(s) for the service(s) concerned must be consulted. This is to ensure that those officers who are budget holders:

- are aware of the proposed decision,
- have the opportunity to offer advice, and
- are subsequently able properly to authorise the financial transactions needed to implement decisions.

- 8.5. An individual Executive member who is minded to write or commission a report or to make a decision about a matter within their portfolio must ensure that those other members and officers who need to know of the matter are so informed. There is a particular requirement to involve other Executive members on cross-cutting issues.

- 8.6. Executive members when making decisions (whether collectively or individually) must state the reasons for those decisions. The written record of the decisions must include the reasons.

- 8.7. Officers taking decisions under their delegated powers must consider the advisability of informing the relevant Executive member(s) of their intentions in advance when the matter to which the decisions relates is likely to be sensitive or contentious, or has wider policy implications.

9. Overview and scrutiny members and officers

- 9.1. Chairs and other leading overview and scrutiny members shall maintain regular contact with the officer(s) providing the principal support to the overview and scrutiny function. In consultation with Chairs, it shall be the responsibility of the latter to

- ensure that those who need to know of matters being considered or for possible future consideration are so informed.
- 9.2. An Overview and Scrutiny committee or its Chair acting on its behalf may require officers to attend overview and scrutiny meetings. Members should not normally expect junior officers to give evidence. All requests should be made to senior officers in the first instance.
 - 9.3. When making requests for officer attendance, Overview and Scrutiny Members shall have regard to the workload of officers.
 - 9.4. It is recognised that officers required to appear before an Overview and Scrutiny committee may often be those who have advised the Executive or another part of the Council on the matter under investigation. In these circumstances, an officer may have a conflict of interest. Both members and officers need to consider the severity of the conflict. If deemed appropriate, research and advice may be sought elsewhere – in the first instance from the Council's Scrutiny support team.
 - 9.5. Subject to 72 above, officers should be prepared to justify advice given to the Council, the Executive, or other committees and sub-committees even when the advice was not accepted.
 - 9.6. Officers must also be prepared to justify decisions they have taken under delegated powers.
 - 9.7. In giving evidence, officers must not be asked to give political views.
 - 9.8. Officers should respect members in the way they respond to members' questions.
 - 9.9. Members should not question officers in a way which could be interpreted as harassment. Neither should they ask about matters of a disciplinary nature.
 - 9.10. Overview and Scrutiny proceedings must not be used to question the capability or competence of officers. Chairs and members need to make a distinction between reviewing the policies and performance of the Council and its services, and appraising the personal performance of staff. The latter is not an Overview and Scrutiny function.
 - 9.11. In exercising the right to 'call-in' a decision of the Executive, members must seek officer advice if they consider the decision is contrary to the Council's approved plans, policies or frameworks, or is unlawful.
- 10. Members of other committees or sub-committees and officers**
- 10.1. The appropriate senior officers will offer to arrange regular informal meetings with Chairs, vice-chairs, and spokespersons of committees and subcommittees.
 - 10.2. Senior officers (including the Monitoring Officer and the Chief Finance Officer) have the right to present reports and give advice to committees and sub-committees.
 - 10.3. Members of a committee or sub-committee shall take decisions within the remit of that committee or sub-committee, and will not otherwise instruct officers to act.
 - 10.4. At some committee or sub-committee meetings, a resolution may be passed which authorises a named officer to take action between meetings in consultation with the

Chair. In these circumstances it is the officer, not the Chair, who takes the action and is responsible for it. A Chair has no legal power to take decisions on behalf of a committee or sub-committee, neither should they apply inappropriate pressure on the officer.

11. Party groups and officers (excluding political assistants)

- 11.1. Senior officers may properly be asked to contribute to deliberations of matters concerning Council business by party groups.
- 11.2. Officers have the right to refuse such requests, and will normally not attend a meeting of a party group where some of those attending are not members of the Council.
- 11.3. Officer support will not extend beyond providing factual information or professional advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business, and therefore should not be expected to be present at meetings or parts of meetings when such matters are to be discussed.
- 11.4. Party group meetings are not empowered to make decisions on behalf of the Council, and conclusions reached at such meetings do not rank as formal decisions. The presence of an officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so. Where officers provide factual information and advice to a party group in relation to a matter of Council business, this is not a substitute for providing all the necessary information and advice when the matter in question is formally considered by the relevant part of the Council.
- 11.5. It must not be assumed that an officer is supportive of a particular policy or view considered at a party group meeting simply because they have attended or provided information to the meeting.
- 11.6. Officers will respect the confidentiality of any party group discussions at which they are present and, unless requested to do so by that party group, will not relay the content of such discussions to another party group or to any other members. This shall not prevent an officer providing feedback to other senior officers on a need-to-know basis.
- 11.7. In their dealings with party groups, officers must treat each group in a fair and even-handed manner.
- 11.8. Members must not do anything which compromises or is likely to compromise officers' impartiality.
- 11.9. The duration of an officer's attendance at a party group meeting will be at the discretion of the group, but an officer may leave at any time if they feel it is no longer appropriate to be there.
- 11.10. An officer accepting an invitation to the meeting of one party group shall not decline an invitation to advise another group about the same matter. They must give substantially the same advice to each.
- 11.11. An officer who is not a senior officer shall not be invited to attend a party group meeting, but a senior officer may nominate another officer to attend on their behalf.

- 11.12. An officer should be given the opportunity of verifying comments and advice attributed to them in any written record of a party group meeting.
- 11.13. No member will refer in public or at meetings of the Council to advice or information given by officers to a party group meeting.
- 11.14. At party group meetings where some of those present are not members of the Council, care must be taken not to divulge confidential information relating to Council business. Persons who are not members are not bound by the Members' Code of Conduct. They do not have the same rights to Council information as members.
- 11.15. Any particular cases of difficulty or uncertainty in relation to this part of the protocol should be raised with the Head of Paid Service or the Monitoring Officer, and the relevant party group leader.

12. Political assistants

- 12.1. These officers have been appointed by the Council exclusively to provide support to each of the party groups. Their function is to assist the interests and work of the group to which they have been assigned. This is in contrast to all other staff whose duty is to serve the Council as a whole.
- 12.2. Political assistants will be treated in accordance with and expected to observe all codes, policies and practices relating to the Council's staff. This includes the courtesy and consideration which the Council expects its officers to show to one another.
- 12.3. Except for their immediate secretarial and clerical support, the assistants will have no line management responsibility or power of direction over other staff. Similarly, notwithstanding their role as political assistant to a party group, members will have no line management responsibility over political assistants in relation to their conditions of employment or personnel issues, but may assign day-to-day work tasks.
- 12.4. Political assistants are not authorised to comment publicly on any matter, or to commit the Council to any particular course of action, but can act as a conduit on behalf of the party group to which they have been assigned, providing that any public statement is attributed to a member of that party group.
- 12.5. The level of access to Council documents and information shall be that enjoyed by members.

13. Local members and officers

- 13.1. To enable them to carry out their ward role effectively, members need to be fully informed about matters affecting their ward. Senior officers must ensure that all relevant staff are aware of the need to keep local members informed, thus allowing members to contribute to the decision making process and develop their representative role.
- 1.2. This need is particularly important:
 - during the formative stages of policy development, where practicable,
 - in relation to significant or sensitive operational matters,
 - whenever any form of public consultation exercise is undertaken,
 - during an Overview and Scrutiny investigation.

- 13.3. Issues may affect a single ward. Where they have a wider impact, a number of local members will need to be kept informed.
- 13.4. Whenever a public meeting is organised by the Council to consider a local issue, all the members representing the wards affected should be invited to attend the meeting as a matter of course.
- 13.5. If a local member intends to arrange a public meeting on a matter concerning some aspect of the Council's work, they should inform the relevant officer. Provided the meeting has not been arranged on a party political basis:
- an officer may attend but is not obliged to do so, and
 - the meeting may be held in Council-owned premises.
- 13.6. No such meetings should be arranged or held in the immediate run-up to Council elections.
- 13.7. Whilst support for members' ward work is legitimate, care should be taken if staff are asked to accompany members to ward surgeries. In such circumstances:
- the surgeries must be open to the general public, and
 - officers should not be requested to accompany members to surgeries held in the offices or premises of political parties.
- 13.8. Officers must never be asked to attend ward or constituency political party meetings.
- 13.9. It is acknowledged that some Council staff (e.g. those providing dedicated support to members) may receive and handle messages for members on topics unrelated to the Council. Whilst these will often concern, for example, diary management, care should be taken to avoid Council resources being used for private or party political purposes.
- 13.10. In seeking to deal with constituents' queries or concerns, members should not seek to jump the queue but should respect the Council's procedures. Officers have many pressures on their time. They may not be able to carry out the work required by members in the requested timescale, and may need to seek instructions from their managers.

14. Members' access to documents and information

- 14.1. This part of the protocol should be read in conjunction with the Access to Information Rules in the Council's constitution.
- 14.2. Members may request such information, explanation and advice as they may reasonably need to assist them to discharge their roles as members. This may range from general information about some aspect of the Council's services to specific information on behalf of a constituent. Where information is requested on behalf of a third party, it will only be provided if:
- it is in the public domain, and
 - it is not barred by the Data Protection Act from being given.
- 14.3. Every member of the Executive, an Overview and Scrutiny committee, and/or any other committee or sub-committee has a right to inspect documents about the

business of that Overview and Scrutiny committee, other committee or subcommittee or the Executive.

- 14.4. A member who is not a member of a specific Overview and Scrutiny committee, other committee or sub-committee, or the Executive may have access to any document of that specific part of the Council provided:
- they can demonstrate a reasonable need to see the documents in order to carry out their role as a member (the "need to know" principle), and
 - the documents do not contain "confidential" or "exempt" information as defined by the law.
- 14.5. Disputes as to the validity of a member's request to see a document on a need to know basis will be determined by the Monitoring Officer. Officers should seek their advice if in any doubt about the reasonableness of a member's request.
- 14.6. A member should obtain advice from the Monitoring Officer in circumstances where they wish to have access to documents or information:
- where to do so is likely to be in breach of the Data Protection Act; or
 - where the subject matter is one in which they has a personal or prejudicial interest as defined in the Members' Code of Conduct.
- 14.7. Information given to a must only be used for the purpose for which it was requested.
- 14.8. It is an accepted convention that a member of one party group will not have a need to know and therefore a right to inspect a document which forms part of the internal workings of another party group.
- 14.9. Members and officers must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so.
- 14.10. When requested to do so, officers will keep confidential from other members advice requested by a member.
- 14.11. Members and officers must not prevent another person from gaining access to information to which that person is entitled by law.

15. Media relations

- 15.1. All formal relations with the media must be conducted in accordance with the Council's agreed media protocol and the law on local authority publicity.
- 15.2. Press releases or statements made by officers must promote or give information on Council policy or services. They will be factual and consistent with Council policy. They cannot be used to promote a party group.
- 15.3. Officers will keep relevant members informed of media interest in the Council's activities, especially regarding strategic or contentious matters.
- 15.4. Before responding to enquiries from the media, officers shall ensure they are authorised to do so, and follow the media protocol.

15.5. Likewise, officers will inform the Council's press office [or similar] of issues likely to be of media interest, since that unit is the media's first point of contact.

15.6. If a member is contacted by, or contacts, the media on an issue, they should:

- indicate in what capacity they are speaking (e.g. as ward member, in a personal capacity, as an Executive member, on behalf of the Council, or on behalf of a party group);
- be sure of what they want to say or not to say;
- if necessary, and always when they would like a press release to be issued, seek assistance from the Council's press office and/or relevant senior officer, except in relation to a statement which is party political in nature;
- consider the likely consequences for the Council of their statement (e.g. commitment to a particular course of action, image, allegations of jumping to conclusions);
- never give a commitment in relation to matters which may be subject to claims from third parties and/or are likely to be an insurance matter;
- consider whether to consult other relevant members; and
- take particular care in what they say in the run-up to local or national elections to avoid giving the impression of electioneering, unless they have been contacted as an election candidate or political party activist.

15.7 In respect of employee participation in radio and television programmes, the following applies:

- (a) That all invitations to participate in media programmes, which may be of a general nature, be approved by the relevant CMT member.
- (b) That all officers who may be involved in such programmes receive appropriate media training.
- (c) That if necessary, clarity be sought from the radio or television station concerned on what areas are to be covered by the programme in question.
- (d) That if in advance it is known that the programme may cover controversial issues, the attendance by the officer be re-evaluated.

16. Correspondence

16.1. Where correspondence has been marked "Private and Confidential" or "Not for Circulation" this should always be respected, and such correspondence should not be copied or forwarded to other people unless the original author consents. This applies especially to e-mails.

16.1A Where the requirements of 16.1 are knowingly disregarded, then the person failing to observe these requirements will be notified in advance that in future the 'Prevent Copy' facility will be used for e-mails that are private and confidential, or where the author does not intend them to be forwarded or otherwise circulated to other people. The 'Prevent Copy' facility should not be used as a matter of course for e-mails that are not "Private and Confidential" or "Not for Circulation".

16.2. Official letters written on behalf of the Council should normally be in the name of the relevant officer. However, the Elected Mayor and Executive members may initiate correspondence on behalf of the Council in their own names.

16.3. It may be appropriate in some circumstances (e.g. representations to a Government Minister) for letters to appear in the name of a Chair of Committee.

16.4. Letters which create legally enforceable obligations or which give instructions on behalf of the Council should never be sent in the name of a member, including the Elected Mayor.

16.5. When writing in an individual capacity as a ward member, a member must make clear that fact.

17. Access to premises

17.1. Officers have the right to enter Council land and premises to carry out their work. Some officers have the legal power to enter property in the ownership of others.

17.2. Members have a right to reasonable access to Council land and premises to enable them to fulfil their Council duties.

17.3. When making visits as individual members, members should:

- whenever practicable, notify and make advance arrangements with the appropriate manager or officer in charge;
- comply with health and safety, security and other workplace rules;
- not interfere with the services or activities being provided at the time of the visit;
- if outside their own ward, notify the ward member(s) beforehand; and
- take special care at schools and establishments serving vulnerable sections of society to avoid giving any impression of improper or inappropriate behaviour.

17.4. Members must have regard to, and act in accordance with, the Council's Protocol Relating to the Residents of Other Wards.

18. Use of Council resources

18.1. The Council provides all members with services such as typing, printing and photocopying, and goods such as stationery and computer equipment, to assist them in discharging their roles as members of the Council. These goods and services are paid for from the public purse. They should not be used for private purposes or in connection with party political or campaigning activities.

18.2. Members should ensure they understand and comply with the Council's own rules about the use of such resources, particularly:

- where facilities are provided in members' homes at the Council's expense;
- in relation to any locally-agreed arrangements e.g. payment for private photocopying; and
- regarding ICT security.

18.3. Members should not put pressure on staff to provide resources or support which officers are not permitted to give. Examples are:

- business which is solely to do with a political party;
- work in connection with a ward or constituency party political meeting;
- electioneering;
- work associated with an event attended by a member in a capacity other than as a member of the Council;
- private personal correspondence;

- work in connection with another body or organisation where a member's involvement is other than as a member of the Council; and
- support to a member in their capacity as a councillor of another local authority.

19. Interpretation, complaints and allegations of breaches

- 19.1. This part of the protocol should be read in conjunction with any "whistleblowing" policy the Council may have.
- 19.2. Members or officers with questions about the implementation or interpretation of any part of this protocol should seek the guidance of the Monitoring Officer.
- 19.3. A member who is unhappy about the actions taken by, or conduct of, an officer should:
- avoid personal attacks on, or abuse of, the officer at all times,
 - ensure that any criticism is well founded and constructive,
 - never make a criticism in public, and
 - take up the concern with the officer privately.
- 19.4. If direct discussion with the officer is inappropriate (e.g. because of the seriousness of the concern) or fails to resolve the matter, the member should raise the issue with the officer's manager, or the relevant senior officer.
- 19.5. A serious breach of this protocol by an officer may lead to an investigation under the Council's disciplinary procedure.
- 19.6. An officer who believes a member may have acted other than in accordance with this protocol should raise their concern with the Monitoring Officer. The Monitoring Officer will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than informally referring the matter to the leader of the relevant party group. More serious complaints may involve alleged breaches of the Members' Code of Conduct, and may be referred to the Standards Hearings Subcommittee.

20. Breaches of the Member/Officer Protocol

- 20.1 If, following a complaint (either in relation to the Councillors' Code of Conduct or in relation to this protocol) it appears to the Monitoring Officer that a member has breached this protocol, that breach may be investigated by the Monitoring Officer as if it were a breach of the Councillors' Code of Conduct and, if proven, will be dealt with by the Monitoring Officer in accordance with the procedure for Code of Conduct complaints.
- 20.2 If, following a complaint (either in relation to the Officers' Code of Conduct or in relation to this protocol) it appears to the Monitoring Officer that an officer has breached this protocol, the Monitoring Officer will refer details of that breach to the officer's line manager for consideration under the Council's disciplinary policies. An appeal from such a disciplinary matter will fall to the Council's Staff Appeals Committee.
- 20.3 If, following a complaint (either in relation to the Officers' Code of Conduct or in relation to this protocol) it appears to the Monitoring Officer that a Senior officer has breached this protocol, the Monitoring Officer will refer details of that breach to the

Chief Officer Appointments Committee for consideration under the Council's disciplinary policies. An appeal from such a disciplinary matter will fall to the Council's Staff Appeals Committee.

MIDDLESBROUGH COUNCIL	
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AGENDA ITEM

CONSTITUTION AND MEMBERS' DEVELOPMENT COMMITTEE

Report title	Extraordinary Council Meetings	
Chief Executive or Director	James Bromiley Strategic Director for Finance Governance and Support	
Date	27 April 2018	
Purpose of the report	To consider possible amendments to the Council Procedure Rules as they relate to Extraordinary Council Meetings	
Summary of the report	The report suggests a minor alteration to the Council Procedure Rules, to provide clarity in relation to Extraordinary Council Meetings.	
If this is a key decision, which key decision test applies?*	Over the financial threshold (£150,000)	<input type="checkbox"/>
	Amends the Council's policy framework	<input type="checkbox"/>
	Affects two or more wards	<input type="checkbox"/>
	Non-key	<input checked="" type="checkbox"/>
If this is a confidential report, which category of exemption(s) from the Schedule 12a of the Local Government Act 1972 applies?	<i>Not applicable</i>	
Decision(s) asked for	That the proposed changes to the Council Procedure Rules are endorsed, and commended to Council for agreement.	
Impact of decision(s)	Members will have additional clarity in relation to Extraordinary Council Meetings.	

What is the purpose of this report?

1. To set out the proposed changes to the Council Procedure rules, and to seek endorsement for the changes to proceed to Council.

Why is this report necessary?

2. Following a number of Extraordinary Council Meetings in 2017, it is considered expedient to revise the Council Procedure Rules to provide additional clarity for Members. As a starting point, it should be noted that the provisions of Schedule 12 of the Local Government Act 1972 do not limit the nature of topic to be considered at an Extraordinary Council meeting.
3. During the 2017/18 Municipal Year the Council has had a number of requests for Extraordinary Council meetings, in line with the provisions set out in the Local Government Act 1972. However, the timescale for hosting such Extraordinary Council meetings has never been considered; the only requirement for such meetings is that they be called (i.e. the date of the meeting is fixed, and notice of the meeting date is published) within seven days of the request.
4. Presently, Rule 7 of the Council Procedure Rules states, in relation to Extraordinary Council meetings, that such meetings "... shall be held on such date and at such time as may be determined by the Chair."
5. In order to introduce clarity for those calling the meeting, and for all members, it is proposed that the above wording should be replaced with the following: **"... shall be held in accordance with Rule 7(c) below."**
6. It is then proposed that a new paragraph (c) be introduced to Rule 7, to read as follows:

"(c) Unless it appears to the Chair, in consultation with the Monitoring Officer, that the matter to be discussed at an Extraordinary Council meeting is so time-sensitive as to require an earlier meeting, all Extraordinary Council meetings requested will be convened for the rise of the next scheduled Ordinary Council meeting."

What decision(s) are being asked for?

7. That the Constitution and Members' Development Committee endorses the approach set out in the report, and comments it to Council for consideration and decision.

Why is this being recommended?

8. The proposed changes will serve to assist Members in the future hosting of Extraordinary Council Meetings.

Other potential decisions and why these have not been recommended

9. The only other option available would be to do nothing. This would leave Members in the current 'limbo' without the additional certainty which the suggested alteration would achieve.

Impact(s) of recommended decision(s)

Legal

10. There are no legal implications of the proposed changes.

Financial

11. There are no financial implications arising from this report.

The Mayor's Vision for Middlesbrough

12. The statement is line with the Mayor's vision for Middlesbrough.

Policy Framework

13. The changes to do adversely impact upon the Council's policy framework.

Wards

14. Not applicable. No wards are directly affected by this document.

Equality and Diversity

15. An Impact Assessment has not been completed, as the changes will not adversely impact on any individual group.

Risk

16. The proposed changes provide for the risk of delay to be managed in an appropriate manner.

Actions to be taken to implement the decision(s)

17. Once approved the proposed changes to the Council Procedure Rules will be referred to Council for a decision.

Background to Proposal

Appendices

18. There are no appendices to this report.

Background papers

19. There are no background papers to this report.

