MEMBER AND OFFICER PROTOCOL

Role and purpose

1. The purpose of this protocol is to set down principles and procedures, which have been jointly agreed by officers and members to guide their joint working in the public interest. The protocol supplements and interprets, but does not supplant:

   - statutory provisions, the code of conduct for members and other codes and guidance

   - the other provisions of the council's own adopted constitution and especially the rules of procedure

   - the disciplinary codes which regulate the conduct of officers, details of which can be found on the council's intranet at: http://thesource/SectionLandingPage.asp?id=2089.

2. It contains interpretation and guidance on some of the issues which commonly arise. It cannot cover every matter which will arise in council life but it reflects an approach and sets standards which will serve as a guide to dealing with other issues. It is intended to guide new members and officers and explain to them what they can expect of each other. It also explains what to do when things go wrong.

3. This protocol also applies to voting non-elected members of committees and also to consultants and agency staff working for the council, to whom a copy should be supplied. With regard to associates from partnership organisations, where their organisation has no code of conduct, it is expected they will abide by the principles of Southwark's code and this protocol.

4. Members appointed to outside bodies or partnership organisations as representatives of Southwark Council need to be aware that the code of conduct for members will apply to these appointments. However, members are advised to be aware that other conduct arrangements of the outside body are likely to exist. In those circumstances, members should comply with both sets of conduct arrangements, unless the code of conduct for members conflicts with the lawful obligations of the outside body. Further assistance is given in the *guidance for councillors on membership of outside bodes* issued by the monitoring officer.

Review

5. The standards committee and the monitoring officer will jointly keep the protocol under review and make recommendations for changes as appropriate. Review will take place in time for an updated version to be circulated annually after annual council with the new constitution, to all members and officers.

Definition of the role of officers and members

6. Both councillors and officers are servants of the public and they are indispensable to one another but their responsibilities are distinct.

Members

7. Councillors are responsible to the electorate and serve only so long as their term of office lasts. All councillors have responsibilities to determine the policy of the council, monitor its performance, represent the council externally and act as advocates on behalf of their constituents. Cabinet members, chair and vice-chairs of scrutiny and other committees may also have additional responsibilities. However, all councillors have the same rights and obligations in their relationship with officers and should be treated equally.

Officers

8. Officers are responsible to the council. Their job is to give full and impartial advice to councillors and the council, and to carry out the council's work under the direction and control of the council, its cabinet, committees and sub-committees. Within these guidelines all officers should endeavour to give every assistance to members carrying out their various roles. Officers have a duty to keep members of all political groups fully informed about developments of significance in relation to council activities.

Member officer relations

9. One of the key issues addressed by the member and officer protocol is the question of member officer relations. Mutual trust and respect should be the key aim of both members and officers, as it is essential for good local government.

Obtaining or granting favours

10. The member code of conduct emphasises the need for members to avoid behaviour which could be viewed as conferring an advantage or disadvantage on an officer. Members should not seek personal favours from officers. Officers should not be tempted to give favours to please a councillor. An example of favour seeking would be asking whether a councillor's parking ticket could be withdrawn or whether an application for a service could be expedited. Similarly officers should not seek to circumvent agreed staff consultative procedures by lobbying councillors on matters which directly concern them as employees.

Member involvement in officer issues

11. Issues relating to the appointment, management and dismissal of most officers are reserved by law to the chief executive and officers appointed by him/her. Member involvement in employment issues generally, including where they relate to senior officers is set out in the Local Authorities (Standing Orders) (England) Regulations 2001 and within the council's constitution.

12. Where an employee is also a constituent it may be proper for the member to make written/oral representations to the relevant chief officer, or disciplinary hearing, but the member should not take a proactive part representing or in any

other way advocating on behalf of any such employee in any disciplinary procedures brought by the council against the employee.

Personal familiarity

13. Personal familiarity between members and officers can undermine public confidence in the council. It is acknowledged that some close relationships will inevitably develop, particularly when officers and cabinet members or chairs of committees work closely together. It is important that close relationships between members and officers are openly declared and should never be allowed to become so close, or appear to be so close as to bring into question the officer's ability to deal impartially with other members and other party groups, nor to undermine public trust and confidence in the council. Where possible members and officers who have close personal relationships should try to avoid coming into contact on projects and in the day-to-day business of the council.

Courtesy

14. Members and officers should be courteous to each other at all times even if they disagree strongly with each others' views.

Bullying

15. Members and officers must not bully any person. Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person whom the member or officer has some actual or perceived influence over.

16. Bad relations between members and officers can be equally destructive to good governance. Members may from time to time become frustrated by what they regard as unacceptable or incompetent officer behaviour. It is self-evident that sometimes these feelings may be entirely justified although sometimes there may be a legitimate reason why member expectations cannot be met, e.g. because of a council policy or a legal requirement such as confidentiality.

17. However, members should take up their concerns through the procedure described in this document (paragraph 82 onward), rather than through public criticism. They should bear in mind that officers are instructed not to "answer back" in public. Attacking an officer's conduct in public can constitute bullying, as can undue pressure brought by either officers or members in private.

Lines of contact between members and officers

18. It must be remembered that officers within a department are accountable to their chief officer. Chief officers through their senior management are responsible for the allocation of work to, and the prioritising of work by, their staff.

19. Members should direct enquiries to staff through senior management, or if the matter is routine at least keep a senior manager informed by copying the manager in on correspondence or emails.

20. Officers should not leave confidential or sensitive information visible on their workstation or in other areas and should lock them away if they have to leave that area for any reason.

21. Where members and officers share an office building particular care needs to be taken to maintain appropriate lines of contact. Members and officers are reminded that within an open plan environment office certain standards are expected to be maintained. In particular meetings should not be held at workstations, members and officers should use the meeting facilities provided and sensitive or confidential issues should not be discussed in the open plan environment. Further details of the standards can be found on the intranet.

22. Officers should always seek to assist members but in so doing they must not go beyond the bounds of whatever authority they have been given by their chief officer under the scheme of management.

Registration of disclosable pecuniary interests

Notification of disclosable pecuniary interests

23. Within 28 days of becoming a member or co-opted member, the member must notify the monitoring officer of any 'disclosable pecuniary interests'.

24. What is a 'disclosable pecuniary interest' is detailed in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. The monitoring officer has provided guidance and will give advice should members require it.

25. A 'disclosable pecuniary interest' is an interest of the member or their partner (which means spouse or civil partner, a person with whom the member is living as husband or wife, or a person with whom the member is living as if they are civil partners).

Register of interests

26. Any interests notified to the monitoring officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the council's website.

Sensitive interests

27. Where the member considers that disclosure of the details of a disclosable pecuniary interest entered in the register could lead to the member, or a person connected with the member, being subject to violence or intimidation, and the monitoring officer agrees, then copies of the register that are made available for inspection and any published version of the register will not include details of the interest, but may state that the member has a disclosable pecuniary interest, the details of which are withheld under Section 32 of the Localism Act 2011.

Disclosable pecuniary interest in matters considered at meetings

28. If the member is present at a meeting of the council assembly, or any committee, sub-committee, joint committee or joint sub-committee of the council, or any meeting of the cabinet or a committee of the cabinet, and they

are aware they have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting,

- They may not participate in any discussion of the matter at the meeting
- They may not participate in any vote taken on the matter at the meeting
- If the interest is not registered, the member must disclose the interest to the meeting
- If the interest is not registered and is not the subject of a pending notification, the member must notify the monitoring officer of the interest within 28 days.

29. Members who have a disclosable pecuniary interest in any matter to be considered or being considered at any meeting or by an individual cabinet member must not seek improperly to influence a decision about that business.

30. Where a cabinet member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the cabinet member must notify the monitoring officer of the interest within 28 days and must not take any steps or further steps in the matter.

Dispensations

31. The monitoring officer may grant any member a dispensation, but only in limited circumstances, to enable the member to participate and vote on a matter in which the member has a disclosable pecuniary interest.

Gifts and hospitality

32. Members should not compromise their position by accepting any gifts or hospitality which may give the impression that they might be, or might be thought by others to have been, influenced in making an important decision as a consequence.

33. Member must register any gifts or hospitality given to them or to their partner (as defined in paragraph 25) if given to them directly worth £50 or over. A copy of the register will be available for public inspection and will be published on the council's website.

34. Members must also register what the gift is, the donor (the person, company or body) of the gift or hospitality; the date of the gift, and the value. Members only have to register gifts that are received in connection with their official duties as a member. Members do not have to register other gifts and hospitality, such as birthday gifts from family.

Visits to offices by members

35. In relation to visits to front-line services by members, members (except when accessing services as a resident of the borough) should always advise the relevant chief officers in advance of such visits. If the visit is of a statutory inspection nature other procedures apply.

36. Making an agreed time to meet with an officer is a better way of working than arriving at an officer's desk. Managers will have agreed work priorities with staff.

37. Members are advised that they carry some personal responsibilities to ensure health and safety standards are maintained at all times while on council premises and also for their private guests. Members are advised that their private guests also have personal responsibilities regarding health and safety.

Reports

38. Officers' reports should contain clear, evidence-based advice as to why a course of action is being recommended. From time to time corporate advice is given to officers on report writing and they should take care to follow it. The report should lay out all relevant factors for the decision maker, and examine all alternatives in an even handed way. Officers should take care to include even unpopular options if they feel they are relevant.

39. Members can refuse to agree recommendations and table amendments to any recommendations. The member should be clear about the reasons for making alternative recommendations, and any amendments or recommendations proposed at a meeting should have a clear and rational basis, which is accessible to the public.

40. With cabinet reports the report writer should consult with the relevant cabinet member(s). That member is able to write his or her report in addition to the report submitted by the chief officer.

41. Where there is disagreement about the right course of action, it is always best practice for this to be open with both opinions available for discussion. Sometimes, in the course of preparing reports, these disagreements can be reconciled. However, it is always poor practice to bring pressure to bear on officers unwilling to amend their professional judgement, and in some cases this could be construed as bullying.

42. In relation to action between meetings, it is important to remember that the law only allows for decisions (relating to the discharge of any of the council's functions) to be taken by the cabinet, a cabinet member, a committee, a sub-committee or an officer. It is however both legal and good practice for cabinet members individually and as a whole, and chairs of committees to be briefed by officers in advance of meetings and also to meet to plan agendas for meetings.

Officer advice to party groups

43. There is a statutory recognition for party groups and it is common for such groups to give preliminary consideration to matters of council business in advance of such matters being considered by the relevant decision making body. The opposition groups may seek support to enable them to function as an effective opposition on the bodies on which they sit.

44. Officers may properly be called upon to support and contribute to such deliberations by party groups, provided they maintain a stance which is politically impartial. Officers should be required to give information and advice to political groups on matters relating to the council's functions only and not on matters which are primarily issues of party politics or political strategy. It is

important that the political neutrality of officers is preserved. When engaging council officers at group meetings, party members should seek to avoid involving them in any political debate. With the exception of political assistants, officers should not attend, or be invited to attend, any political group meeting which includes non-council members.

45. Attendance at group meetings should normally be restricted to chief officers. If other officers are required this should be organised by the chief officer.

46. These briefings are confidential, to allow the free expression of views, and officers must be careful to maintain confidentiality. However, any written report supplied to a party political group must be accessible to members of other parties.

Support services for members

47. The role of officers is to assist members in discharging their role as members of the council for council business and in their role as advocates for local communities. Officers should not be used in connection with party political campaigning or for private purposes, and this includes the support offered by political assistants.

48. Council resources (e.g. stationery and photocopying) may only be used for council business or when they are directly required for any office to which the member has been elected or appointed by the council.

49. Support to members is a resource, which is subject to the same budget pressures as any other. Given its importance to how effective members can be, it is essential that its allocation is agreed to be fair and in proportion to the duties of all groups of members.

50. Direct support and administrative help is provided by member services. Information technology support and training responsibilities are shared between a number of sections but are co-ordinated through the member services section. From time to time training and guidelines on the proper and effective use of council supplied IT resources will be issued. Requests for further assistance or clarification should be referred in the first instance to the proper constitutional officer.

51. Use of council resources includes the use of council owned facilities. Outside of council meetings, political groups represented on the council may use meeting rooms at 160 Tooley Street for private meetings of their group which will include ordinary group meetings and training sessions under the standard room booking arrangements. The council's offices at Queens Road are also available for these purposes. Other council owned function rooms can be hired under the council's normal conditions of charging for other types of meetings.

52. During the published normal business hours, elected members may also book meeting rooms at Tooley Street and Queens Road via member services for meetings with constituents. Any meeting outside of normal hours, or that attract special facilities or security requirements, will be chargeable. Members should discuss these matters in the first instance with member services. This facility is subject to availability and the normal booking constraints of rooms, including the priority given to official council and committee meetings and does not

extend to open and public meetings as these require risk assessment and proper arrangements to be in place.

53. Where an officer is present at a meeting involving members, the officer should always lead on making the room booking arrangements.

Member development programme

54. The council runs a member development scheme which is coordinated through the organisational development team. The scheme reflects the obligation on all parts of the council to ensure that all members are able to achieve their full potential in the position to which they have been elected. When this is achieved it benefits the council as a whole and the people of the borough but it also improves the mutual understanding of members and officers.

55. Further advice on support for members can be obtained from member services.

Use of Information Technology

56. Where a member is using or accessing the council's resources, s/he must act in accordance with the council's requirements and ensure such resources are not used for any unauthorised or political purpose. This includes information technology (IT) resources; the term 'IT', means computers and any systems used to create, store, print or exchange information electronically. Similarly 'computer' means an electronic device used for storing and processing information, such as desktop and notebook computers (laptops) and hand held devices (such as ~~BlackBerrys~~mobile devices).

57. Members must not use any computer equipment and systems supplied by the council to conduct any business activity other than for their role as a councillor.

Using and caring for equipment

58. Members have a personal responsibility for any IT equipment supplied to them by the council and should take all reasonable steps to ensure that this equipment is kept safe and in good working order. Members should report any loss/theft to member services, but should note that only one issue and one upgrade will be paid for by the council in any 4-year term of office. Members should report any technical problems, lack of service etc. to the council's contractor.

59. Members are advised to consider adding council issued equipment to their home insurance arrangements. Members will be able to claim any additional related premium from the council.

60. A restricted level of personal use of the equipment is permitted provided it does not constitute misuse as detailed in the communication protocol. Members will need to:

    1. reimburse the council for any personal use of equipment that incurs a cost to the council or;
    2. confirm that all costs were associated with official council business.

    Members will also be responsible for any use of equipment, authorised by them or not (unless reported lost or stolen), and hence any associated costs.

61. Members are reminded that details of expenses paid on their behalf are published on the Southwark website.

62. IT equipment supplied to members remains the property of the council and must be returned when their period of office ends. In addition, members may be asked to return the equipment for servicing.

Political assistants

63. The Local Government and Housing Act 1989 gives councils a power to appoint political assistants to qualifying political groups. Southwark Council currently employs political assistants to the two largest groups. Political assistants are council officers who are employed to assist members of a political group, "in the discharge of any of their functions as members of a relevant authority". Unlike other officer appointments, the political affiliations and preferences of the political group for whom the assistant is hired can be taken into account in the selection process. They provide a useful means of broadening the base of advice to members.

64. The act also restricts the work that political assistants can do. A political assistant's role is to provide assistance to members in carrying out their duties as members of the authority, and not in any additional political, or other, activity. For example, political assistants are not employed to work on election campaigns. Political assistants hold politically restricted posts under the Local Government and Housing Act 1989, and therefore also face restrictions on their personal political activity.

Members' access to information and council documents and data information

65. Members often require access to information to carry out their work in decision making, scrutiny, and representing their constituents. Officers should always process such requests promptly. They are required to ensure that the information required can be released. In some cases they will need to consult their managers or third parties who may hold the information, which may cause some delay.

66. The process for obtaining information is set out in the access to information rules in the council's constitution. Advice on the legal framework can be obtained from the monitoring officer.

67. The common law right of members is based on the principle that any member has a prima facie right to inspect council documents so far as his/her access to the documents is reasonably necessary to enable the member properly to perform their duties as a member of the council. This principle is commonly referred to as the "need to know" principle and it is well established that a member has no right to "a roving commission" to go and examine documents of the council. The crucial question is the determination of the "need to know" and this question must initially be determined by the particular chief officer whose department holds the document in question (with advice from the monitoring officer).

68. In some circumstances (e.g. a cabinet or scrutiny committee/commission member wishing to inspect documents relating to the functions of their portfolio/committee/commission) a member's "need to know" will normally be

presumed, and also where the member is representing a constituent within his ward, although in these cases there may be legal reasons restricting the information that can be produced. In other circumstances (e.g. a member wishing to inspect documents which contain personal information about third parties) a member will normally be expected to justify the request in specific terms in writing.

69. Guidance on holding and processing data to comply with the Data Protection Act can be found on the Source (the council's intranet). Registration is coordinated by member services, but members should be aware that they are personally responsible under the act, and should take care to follow any guidance issued.

Confidentiality

70. Sometimes information will be supplied in confidence and paragraph 4 of the Southwark Council's code of conduct for members makes it clear that such information should not be disclosed without the consent of a person authorised to give it, or unless he or she is required by law to do so.

71. Recent case law confirms that a member may benefit from the public interest defence in some specific circumstances. However, those circumstances are rare and any member considering leaking confidential information should take legal advice immediately where their actions may impact on them as individuals.

72. Members are also reminded that there is an agreed process for applying for the release of information contained in the Freedom of Information Act 2000. Further details of this are available on the council's website

Freedom of Information Act 2000

73. Under the Freedom of Information Act (FOI), councillors like other members of the public have a general right, subject to any applicable exemption, of access to information. Requests under the Freedom of Information Act must be in writing and contain sufficient information to enable the document to be identified. There is a requirement under the act that for the information to be disclosed within 20 working days.

74. There is no requirement under the act for the member to specify whether or not the information is requested under the Freedom of Information Act. Officers should therefore in all cases ascertain from the member whether or not the information is sought under the Freedom of Information Act and if so to advise the member that the request will be dealt with within the statutory time limit of 20 working days.

75. Where the request is for access to documents that are unrelated to any council meeting or where the member requesting the information is not the ward member, officers must inform the member that the request is being treated as a freedom of information request and that a response will be provided within 20 working days.

Information held by members

76. As stated in the Communication Protocol, members should remember that their emails may be subject to disclosure if a request is made under the Freedom of Information Act 2000.

77. Councillors may have on their Southwark email account political, constituency, or trade union emails, which would not be considered 'held' for the purposes of the Freedom of Information Act 2000. Where a public authority holds or stores information solely on behalf of another person or body that material will also not be 'held' by that authority for the purposes of the Act.

78. However under the Freedom of Information Act 2000 information could be considered to be 'held' by Southwark if it is retained for the purposes of the public authority's business, for example, emails sent to a cabinet member.

79. The Information Commissioner's Office and the courts have also concluded that the private email accounts could contain information held on behalf of a public authority under section 3(2)(b) of the Freedom of Information Act 2000. This would mean they would need to be disclosed. It is likely that the same principle would apply to information held in a text message or a WhatsApp, Twitter or Facebook account. In accordance with the FOI Code of Practice, Southwark would consult third parties about information held in scope of a request in order to help in consideration as to whether information is suitable for disclosure.

Operation of the overview & scrutiny committee and its commissions

80. The overview & scrutiny committee and its commissions may require officers and members to attend and provide any information required to answer questions. It is the duty of any officer or member to attend and answer questions (other than those which he or she would be entitled to refuse to answer in a court of law) if the overview & scrutiny committee and its commissions so request. The council may consider that chief officers and other senior managers as described in the departmental schemes of management and not more junior staff are the appropriate officers to attend scrutiny meetings and answer questions.

81. Members of the overview & scrutiny committee or one of its commissions should explain the role and operation of the committee/commissions, particularly in relation to future policy development, before asking questions of witnesses. Members should adopt an inquisitorial (information seeking) approach to questioning rather than a confrontational one. They may be firm and assertive, but adopting a facilitative and exploratory way of working should generate an atmosphere in which members and officers can explore issues openly and honestly. Under no circumstance should members adopt a rude or aggressive style.

82. Officers should provide all relevant information in their possession, and they should use their best efforts to make sure that they possess all relevant information. They should never seek to conceal or 'improve' inconvenient facts, and more senior officers, or other members should never attempt to persuade them to do so.

83. Reports of scrutiny committees, while drafted by officers, are the reports of the committees themselves and there is nothing improper in members of those committees asking for draft reports to be amended.

Ceremonial events

84. Civic ceremonial events will normally be led by the Mayor or the Deputy Mayor with the leaders of all political groups and other local members informed or invited as appropriate.

When things go wrong

Procedure for officers

85. It is always preferable to resolve matters informally, through an appropriate senior manager. Officers however do have recourse to the procedure for individual employee complaints (which can be found on the council's intranet), the protections laid down in the officer employment procedure rules (contained in part 4 of the constitution) or the council's monitoring officer. In appropriate cases they may wish to utilise the council's whistleblowing procedure (again contained on the Source). In the event of a complaint being upheld, the matter will be referred to the chief executive. A local solution may be found after discussion with the leader of the council and the leader and/or whip of the group concerned. The advice of the monitoring officer should be sought.

Procedure for councillors

86. Where a councillor is dissatisfied with the conduct of an officer, and they have been unable to resolve the issue, they should refer the matter to the officer's relevant chief officer, who will nominate an appropriate manager to carry out any investigation required. The manager should then make a preliminary investigation and consider whether the council's disciplinary and capability procedure is appropriate, and then follow the appropriate procedure. The manager should then report back to the member concerned that the appropriate procedures have been followed.

87. Where the complaint relates to a chief officer or monitoring officer, the complaint may be referred to the chief executive for an informal review, conciliation and resolution where possible. If the matter is not resolved at this preliminary stage or in cases of serious complaints, the chief executive, taking appropriate advice will consider whether any formal process under the council's employment procedures and as set out in the officer employment procedure rules, as appropriate.

88. Where a complaint relates to the chief executive both the member concerned and the chief executive should consider whether a meeting may resolve the situation and whether that could be facilitated by the whip or leader of the relevant political group, if any, attending. The chief executive will provide the member with a written response to their complaint.

89. If the member remains dissatisfied with the response of the chief executive he or she will notify the monitoring officer and the head of human resources in writing and they will prepare a report for consideration by the leader of the council. The leader of the council, taking advice as appropriate, will have regard as to whether a formal process, as set out in the Local Authorities (Standing Orders)(England) 2001 is appropriate.

Standards committee

90. The function of the standards committee is set out in the council's constitution. It has a role in offering guidance on the content and working of this protocol, although it will not arbitrate, except in considering cases relating to potential breaches of the code of conduct for members.