

THE CONSTITUTION

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CONSTITUTION - PART 5 - CODES AND PROTOCOLS

(last revised April 2017)

Protocol on Officer/Member Relationships

PART A - General Statement

1. Both Councillors and Officers of Harrogate Borough Council are servants of the public and they are indispensable to one another. The relationship between them is to be based on respect and understanding of their respective roles.
2. Councillors are responsible to the electorate, and serve only so long as their term of office lasts. Officers are responsible to the Council as a whole. Their job is to give advice to Councillors and the Council and to carry out work under the direction and control of the Council, the executive and committees and sub-committees of the Council. Control is also exercised by the overview and scrutiny committee through its ability to investigate matters, to interrogate officers and members and to comment adversely to the executive or the Council.
3. The relationship relies upon mutual respect between Councillors and Officers and is essential to good local government. Close personal familiarity between individual Councillors and Officers can damage this relationship and prove embarrassing to other Councillors and Officers and is to be avoided.
4. A Councillor must not do anything which compromises or which is likely to compromise the political impartiality of an officer of the authority. All officers, apart from political assistants, are expected to be politically neutral in their work for the Council. Officers who directly advise councillors, by law, occupy politically restricted posts and members must be sensitive to their position which is as professional advisers, not political ones. (See further the Members' Code of Conduct)

5.0 Officer Appointments

- 5.1 The law and this Constitution lay down rules for appointment, discipline and dismissal of staff and certain specific statutory protections exist in respect of the Head of Paid Service, Monitoring Officer and Chief Finance Officer which are set out in the Officer Employment Procedure Rules. All of these requirements must be observed scrupulously at all times.
- 5.2 Special provisions apply to assistants to political groups, who can be

appointed under Section 9 of the Local Government and Housing Act 1989. Currently, the Council does not appoint assistants to political groups and, therefore, these provisions do not apply.

- 5.3 Members must not, in their official capacity or otherwise, use their position improperly to confer on, or secure for, any member of staff, an advantage or disadvantage.

6.0 Chairs and Public

- 6.1 At development control committee meetings or overview and scrutiny committee, where oral contributions by members of the public are permitted, the Chairs must take a fairly robust view of questioning by Members and intervene if the questioning is too hostile or in any other way offensive. Legal officers should be quick to draw the attention of Chairs to an offensive or unfair line of questioning. If the Chair is not minded to intervene then the Legal Officer should intervene on their own account.

7.0 Cabinet Members, Chairs & Officers - Communications

- 7.1 Chief Officers must ensure that Cabinet Members and Chairs are kept informed of matters within their sphere of responsibility. Responses to Councillors on matters they have raised should be copied to the relevant Cabinet Member or Chair unless:-

- (a) the matter is a confidential one, or
- (b) it relates to casework.

In deciding what may be copied, confidentiality should be assumed where a discussion or correspondence might reveal potential tactics to a political opponent. This may occur in connection with, for example, discussions on a major issue such as the budget, where, even without any statement that the discussion is confidential, the content is clearly about political tactics. Officers are expected to keep such discussions confidential at all times. This would include discussions about notices of motion and any other potential tactical manoeuvre.

As regards casework a rule of thumb may well be helpful and it is as follows:-

When any Member raises a specific issue on behalf of a resident or a small group of residents relating to his or their individual rights then, so far as it is concerned with their individual or group rights that issue might be regarded as casework and any request for information should not be referred to the Chair or Cabinet Member until the issue is to result in a report to committee or the Cabinet Member.

Officers should use common sense in deciding whether to copy correspondence with members of the public. If in a Chief Officer's judgement

something which apparently looks routine is likely to grow into something politically contentious then (s)he will have to continue to exercise discretion over what to discuss with the Chair or Cabinet Member.

- 7.2 Where Cabinet Members are involved in negotiations or discussions with third parties the respective Chief Officers need to be advised in advance of what is happening. (See also Chief Officers' and Cabinet Members' protocol - Section B1).
- 7.3 If a Cabinet Member or Chair asks for information then Senior Officers should normally supply it unless they have doubts as to whether it should be kept confidential. This they should resolve from the advice given in 7.1 above and by discussion with Legal Services Officers.
- 7.4 If a Cabinet Member or Chair asks to be kept informed on an issue, then it would be a dereliction of duty not to do so subject to confidentiality not being in issue.
- 7.5 It is for the Chief Executive to decide whether to involve the Leader of the Council in any matter. The Chief Executive must have the opportunity to evaluate an issue before it is put to the Leader. If the issue is a corporate one, then a corporate view should be brought to bear.

It is not good corporate practice and it is unfair to professional colleagues to try to involve Cabinet Members or Committee Chairs in an issue by providing them with only some of the information they ought to have, in order to "get them on side". This practice is reprehensible and must not be pursued even in good faith.

- 7.6 Any major policy initiatives which are not plainly within the normal professional remit of Officers, should be discussed with the Chief Executive before they are discussed with any Cabinet Member or Chair. It is inappropriate for the Chief Executive to discover from a Cabinet Member or Committee Chair that there is a proposal for major development for example.
- 7.7 For the avoidance of doubt, if the Leader or any other Cabinet Member or Chair is acting as a Ward Member, information should be given as freely to them as to any other Ward Member. Moreover, if such a Member takes an interest in professional advice being given by a Chief Officer, that Chief Officer should have an open channel to explain and communicate that advice. (See Further Part B Section 6).

8.0 Contact with the Media

- 8.1 Cabinet members and, where appropriate Committee Chairs, are responsible for making all statements of a policy nature to the news media. Chief Officers are charged with making factual statements to the news media and, when necessary, explaining Council policy but may nominate or authorise other officers to deal with all or particular matters.

- 8.2 Other than in exceptional circumstances, only Cabinet Members and Chairs should respond to letters/editorials in the press on behalf of the Council. There is also a joint responsibility between Cabinet Members or Chairs and Chief Officers for considering the need for correction of material published in the press which appears to be inaccurate or misleading. (See Further Part B Section 11).

9.0 Political Groups

- 9.1 It is a long-standing Council policy that Officers do not brief Party Groups. If, on any particularly complex issues, such a request were made, then it would be acceptable for the Chief Executive or a Chief Officer, or an Executive Officer (but no others) to give such a briefing, provided the briefing were a factual presentation with a question and answer session, restricted to matters of fact and professional competence and only if the same briefing were offered to other groups. (See Further Part B Sections 5 and 5A).

10.0 Officer Disputes not to involve Cabinet Members or Chairs

- 10.1 If there is a dispute between Officers which is serious enough to warrant being resolved above Chief Officer level, then that dispute should be referred to the Chief Executive and not a Chair or Cabinet Member. It is not the function of Members to resolve disputes unless on formal appeal under the grievance procedure. Disputes are managerial issues to be addressed by professional managers. If in the end there is a policy decision which it is appropriate for Members to take then it will be proper to get the views of appropriate Cabinet Member or Chairs at that stage so the Chief Executive will ask for those views.
- 10.2 It is particularly inappropriate to place before a Cabinet Member or Chair only one side of a dispute and thus to be seen to be attempting to influence the Member before giving the normal managerial process the opportunity to resolve the issue.
- 10.3 Cabinet Members and Chairs have far too much to do to be involved in officer disputes since, once they have been given notice of a dispute which is within their province, they are almost honour-bound to pursue it even if it should not be their concern.

PART B - Specific Guidance

The following specific guidance is in the numbered sections of this part of this protocol.

- Section 1 - Protocol on negotiations or discussions with third parties.
- Section 2 - Behaviour likely to lead to a censure motion against at Cabinet Member or Chair of a Council Committee and the convention on censure motions.
- Section 3 - Behaviour likely to lead to confidence motions and the convention on motions of confidence in Chairs of Council Committees and Cabinet Members.
- Section 4 - Convention on officer relationships with political parties.
- Section 5 - Members/Group Leaders/Chief Executive Protocol at Section 5A and for Chief Officers at 5B.
- Section 6 - Protocol on ward members' rights.
- Section 7 - General guidelines on speaking in relation to planning applications.
- Section 8 - Rights of elected members to attend meetings and receive papers (co-opted members' rights are set out in the Council's Procedure Rules at Part 4 of this Constitution).
- Section 9 - Overview and Scrutiny Committees and Officers.
- Section 10 - Protocol on Foreign Travel for Members and Officers (except HIC).
- Section 11 - Media Guidelines.
- Section 12 - Guidance to Elected Members on Managing Unreasonable Complainant Behaviour

PART C - Remedies

1. In the majority of cases, any concerns or misunderstandings about a breach of this protocol may be resolved informally between the Departmental Chief Officer and the Member or Members concerned.
2. The Chief Executive is always available to resolve Member/Officer issues in preference to discussions with Chief Officers should a Member wish.
3. In the event of a serious breach of this protocol being alleged, the matter may be referred by the relevant Member or Chief Officer to the Council's Monitoring Officer for further investigation and appropriate report if necessary.

PART B

PROTOCOL FOR NEGOTIATIONS OR DISCUSSIONS WITH THIRD PARTIES

1. This protocol is to guide Chief Officers and Cabinet Members in their respective roles particularly where they involve negotiations or discussions with third parties. Insofar as it might be applicable to Chairs of Council Committees it should be read and understood to apply to them in the same way as to Cabinet Members.

The principal issues are as follows:-

- (1) the Chief Executive and the Chief Officers need to know what their relevant Cabinet Members are doing in respect of discussions with third parties, with what objective and, more importantly, when; and
 - (2) Chief Officers particularly need the opportunity for the timely exchange of information. Chief Officers need to know before the event, not afterwards, in order that they are part of the planning not merely dealing with what **has** happened.
2. The context for this protocol is that Cabinet Members are:
 - (1) very influential; and
 - (2) have individual authority in particular areas.

(Committee Chairs do not have individual authority but are influential).
3. The Chief Officers accept that Cabinet Members need to talk to third parties; they recognise that the political situation requires that Cabinet Members need to have high political profiles and, readily recognise that there are many occasions when Cabinet Members are in an advantageous position because they can discuss proposals with third parties on a basis of changing policies whereas Chief Officers, generally speaking, are professionally obliged to deal only on the basis of existing Council policy.
4. This protocol is intended to establish the basic rules of communication in order to avoid Officers being thought to contradict Cabinet Members because they are unaware of what Cabinet Members have been doing. There is a particular danger when Officers are applying existing policy but Cabinet Members are discussing potential changes in policy.
 - (a) Officers need to know enough to distinguish an "Administration" issue (where the Officer perceives that there is an agreed Council line which he or she

would have professional reasons to support) from a purely “party-political” issue where the Chief Officer must not become involved.

- (b) Chief Officers are required, and indeed wish, to remain impartial on party political issues.
- (c) Both Chief Officers and Cabinet Members need to accept that Officers are limited in giving advice to that which can be supported in their professional judgment.
- (d) Special rules apply to town and country planning. Planning policy implementation and the determination of planning applications are part of the quasi-judicial process, and require great care on the part of Cabinet Members and Officers to ensure that those with the obligation of making recommendations and decisions in the planning context are not compromised by discussions and perceived commitments of Cabinet Members.

The obligation to act in a quasi-judicial way embraces an obligation to act objectively on the basis of factual information, law and planning policy particularly that embodied in the development plan. Failure to do so can bring the local planning authority and the planning process into disrepute. Planning policies can be properly changed through the appropriate mechanisms set out in law and the Budget and Policy Framework Rules.

- 5. Cabinet Members must bear in mind that changes to Council policy are a matter for the Council as a whole and whilst Cabinet may recommend policy changes only the Council can change policy.

PART B

CENSURE MOTIONS

1. A censure motion may be moved at a Committee, or at Council.
2. Improper Behaviour

The following behaviour is likely to lead to a censure motion and should be avoided:-

- (a) Failure of a Chair to comply with the Committee's instructions either specific or implied, or not arranging for another member of the Committee to comply with those instructions, so freeing the Chair to oppose.
- (b) Refusal to hear an officer's technical report on an agenda item or refusal to take advice from an officer which may subsequently give rise to a Monitoring Officer or Chief Finance Officer's report.
- (c) Refusal to allow Ward Members to attend and speak on clear ward issues subject to the protocol on speaking at planning meetings (see Section 7).
- (d) Refusal to allow a debate on an issue.
- (e) Refusal to admit onto the agenda a genuinely urgent item of business.
- (f) Failure to disclose a clear personal or private interest under the Members' Code of Conduct. This could also lead to a complaint to the Monitoring Officer. Failure to disclose a direct or indirect pecuniary interest could lead to a criminal prosecution.
- (g) Failure of a Cabinet member to allow Councillors the proper time to discuss their notices of motion as required in the Council's Procedure Rules.

3. Conventions in connection with Censure Motions:

The general position accords with the conventions in respect of confidence motions (see Section 3 below) with the following exceptions:

- (a) a motion of censure if approved does not mean that a new Committee Chair should be appointed and, therefore, can be dealt with by the Committee under its delegated powers;
- (b) censure motions can be raised at Council by any Member under a relevant Committee minute before the Council.

Where motions of censure are moved, the rules of debate will not strictly be applied and in accordance with the rules of natural justice, the defendant (Chair or Cabinet Member) will have the right to speak last, though the mover will have the right to respond immediately before the last speaker.

PART B

CONFIDENCE MOTIONS

1. Behaviour likely to lead to motions of no confidence

- (a) Inability to Chair meetings or to act properly as Chair over a period of time.
- (b) In respect of the Mayor, a failure to carry out the duties in a manner appropriate to that office.
- (c) Persistent refusal to hear a particular Member over and above what would be expected in exercising control over the conduct of a meeting.
- (d) Persistent behaviour of the type likely to lead to censure motions.
- (e) Failure by Cabinet Members to meet Councillors in circumstances required under the Council's Procedure Rules.
- (f) Failure of a Cabinet Member to attend an Overview and Scrutiny Committee of which they have notice without adequate explanation. (This may also result in a complaint to the Monitoring Officer or other action).

2. Conventions in connection with Motions of Confidence

- (a) Confidence in the Cabinet Members or Chairs of Council Committees is a matter implicitly on Council and committee agenda and may be moved at any meeting without notice and will be treated as an urgent item of business and minuted accordingly.

(Note: under the law, only the Chairman can admit urgent items of business - failure of the Chairman to admit a confidence motion in respect of him/herself would probably lead to a Notice of Motion to Council and would itself be a matter for a censure motion).

- (b) It is the Council's policy to appoint Committee Chairs at its Annual Meeting and therefore a confidence motion relating to a Chair of Committee if approved, would go to the Council as a non-delegated item with a recommendation that a new Chair be appointed by Council.
- (c) A Committee may only consider whether it has confidence in its own Chair and not the Chair of any other Committee.
- (d) Where a Member wishes to bring a confidence motion against the Chair of a Committee of which (s)he is not a Member, it should be brought as a notice of motion to the Council under the Council's Procedure Rules.

- (e) By law the Mayor remains in office until resignation, disqualification or the appointment of a successor, so it follows the Mayor cannot be dismissed by a vote of no confidence. It may be expected that the Mayor would resign if the Council expressed a lack of confidence by approving a no confidence motion.
- (f) A confidence motion against a Cabinet Member may be brought at Council under the Council's Procedure Rules but the Cabinet Member can only be removed by the Leader. It may be expected that the Cabinet Member would resign or the Leader dismiss him/her if the Council as a whole indicated a lack of confidence.
- (g) The Leader can only be removed by a notice of motion laid in accordance with the Council's Procedure Rules and not by a vote of no confidence.

3. Procedure

Where motions of confidence are moved, the rules of debate will not strictly be applied and in accordance with the rules of natural justice, the defendant (Chair or Cabinet Member) will have the right to speak last, though the mover will have the right to respond immediately before the last speaker.

PART B

CONVENTIONS ON RELATIONSHIPS WITH POLITICAL PARTIES:

1. Officers do not answer letters from political parties on political issues (except to acknowledge and confirm what is Council policy). Sometimes it may be appropriate to refer the request to the Council itself.
2. Officers do respond where political parties put complaints on behalf of individuals.
3. Subject to 4 below, Officers do not share platforms with any political party, although, provided the issue was not a party political one, Officers will appear with members of **all** parties where the objective is to give information.
4. Officers may, however, appear with Cabinet Members and Chairs (or other members as appropriate) to deal with items of established Council Policy.
5. Officers will respond to the concerns of parish councils, which are not of a political nature, on the basis of best advice, and, dependent on the nature of that advice, on a “without prejudice basis”.

PART B

MEMBERS/GROUP LEADERS/CHIEF EXECUTIVE PROTOCOL

The following guidelines apply to the Chief Executive in particular but in appropriate circumstances may be applied to other Chief Officers:-

- (i) The Chief Executive is an officer of the Council as a whole and his/her overriding responsibility is to the Council and not to any party political group.
- (ii) The Chief Executive is expected to work closely with the political administration and give information assistance and advice. Subject to maintaining a position of political impartiality, (s)he may develop a special relationship with the administration leadership and will not, without consent, disclose information on any matter discussed with that leadership to the minority parties.
- (iii) The political impartiality of the Chief Executive should be respected by everyone.
- (iv) All Members of the Council have a right of access to the Chief Executive.
- (v) It is proper for the Chief Executive to develop a working relationship with the minority parties on the Council. The Chief Executive will not reveal to other Party Groups the content of confidential discussions with any Group unless consent has been specifically given by the Leader of the Group concerned.
- (vi) The Chief Executive will ensure that the administration's leadership is aware of the information provided by him to representatives of minority parties unless it is either of a routine or trivial nature, or would be a breach of confidence.
- (vii) When a Member requests a confidential (i.e exempt) paper and there is any doubt as to their entitlement under the Access to Information Rules at Part 3 of this Constitution the matter should be referred to the Chief Executive and/or the Head of Legal and Governance and the matter should be discussed between them if there is likely to be any element of political controversy.

Recognising that it is important for the effective conduct of Council business that the Chief Executive keeps in regular contact with all political parties to provide information, give advice and answer questions on items of corporate importance and that liaison meetings can be very valuable, offering a regular and confidential forum for dialogue so:-

- (i) The Chief Executive will have regular meetings with the Leader of the Council, the minutes of which will be confidential.

- (ii) The Chief Executive will invite each Group Leader to a liaison meeting, on a regular basis usually once per cycle. The minutes of the meetings will be confidential. The liaison meeting will cover a common set of items set by the Chief Executive, together with any additional agenda items requested by the group leader.

CHIEF OFFICERS:

- (a) In addition to the regular liaison meetings held by the Chief Executive, there will be a need for Chief Officers to liaise with Members,
 - (i) With the knowledge of the Chief Executive, Chief Officers may arrange to hold liaison meetings with Chairs and Vice-Chairs of the Committees of the Council and any or all Cabinet Members.
 - (ii) With the knowledge of the Chief Executive, Chief Officers may also hold liaison meetings with Group Leaders as necessary on similar terms to those set out above in relation to the Chief Executive liaison meetings.
- (b) The Heads of Business Units may be invited into such meetings, as required, for specific topics.
- (c) Liaison meetings, as referred to in this protocol, will take place separately from decision making meetings where items for discussion with Cabinet Members, but not for decision, are disclosed on the agenda published to all Members. The agenda for a liaison meeting will not normally be made public.

PART B

PROTOCOL: WARD MEMBERS' RIGHTS

INTRODUCTION

1. It is important that all Officers understand that, within their Wards, Local Members have enhanced rights to be kept informed. Fundamentally, **ANY** proposal in a Ward for **major** development, or for **major** change of any kind, ought to be drawn to the attention of all the Ward Councillors for that Ward. Any change which might potentially be controversial, even at a very local level (one or two streets) should also be drawn to the attention of Ward Members. However, pre-application discussions of planning applications are confidential and members will not be informed of the proposal until an application is submitted.
3. These are the basic rules and supplemented below.

THE RIGHT TO INFORMATION

4. Ward Members are entitled to know what is going on in their Wards. They are not entitled to information which is otherwise confidential **just because** the issue affects their Wards, but they do have other legal rights which are given to them by the Local Government Acts, Localism Act 2011 and Regulations which might allow them access.
5. Members always had common law rights, where they had a “need to know” which could be negated by an improper motive. They now have additional rights which are absolutely without proof of motive, to papers which are being considered by a Committee and even to some exempt information as set out in Schedule 12A to the 1972 Act (see Access to Information Procedure Rules in Part 4 of this Constitution). Generally speaking the Rules and Section 8 of Part B of the Officer and Member Protocol allow all Members access to all agenda, reports and minutes of public meetings of Cabinet, meetings of Council and its Committee and Sub-Committees, including exempt information. Access to all decisions of Cabinet Members and access to reports and decisions for all key decisions of officers as well as Cabinet and Cabinet Members is also granted. Access to files and other documents would still be on a “need to know” basis unless it is a file to which the general public are allowed access.
6. Ward Members are entitled to ask questions about Council policy, which they wish to discuss in confidence. Although if they seek written information, then any information which is recorded and transmitted to Ward Members, should also normally be copied to the relevant Chair or Cabinet Member.

JUSTIFICATION

7. Ward Members are expected by their electorate to know what is going on in their Wards. They receive a variety of telephone calls about sensitive issues and are confronted on the doorsteps when campaigning, and it is embarrassing to them (and, therefore, should be embarrassing to us) if they have to confess that they do not know about the issue.
8. The development of community engagement policies, community planning and community leadership will involve Ward Members as advocates even more than in the past and they will probably require even greater access information to enable them to carry out their roles now than hitherto.

MAKING WORK

9. Ward Members (and, indeed, any Members except Cabinet Members) are not in a position to demand that Officers carry out significant research or develop new policies merely because an individual Member wishes it. Their rights are to information currently held and reasonably accessible. Anything more than that should come through the normal process, through the Groups via a Notice of Motion, or by agreement between the Groups, or because a Senior Officer agrees there is an initiative which clearly needs to be placed before the Council.

LIMITS TO THAT RIGHT [APART FROM LEGAL RESTRICTIONS]

10. Clearly, Ward Members have different expectations which may vary considerably between urban and rural wards. Members are not, for example, entitled to be told every time someone complains that a waste collection has been missed, or either about individual complaints about other relatively minor issues, but, in the end, Officers need to exercise some judgement. If a complaint seems likely to represent the views of a number of people or seems likely to be repeated, that raises the presumption that Ward Members should be notified.
11. Officers need to ask themselves some questions about how an issue might appear to a Ward Member:
 - (i) could several electors be interested in it or worried about it;
 - (ii) could it become contentious and therefore are Ward Members likely to get telephone calls about it; and/or
 - (iii) is there any potential party political angle, which might make an otherwise innocuous issue more significant.

If the answer to any of those questions is “yes”, the Officer should contemplate raising the issue with Ward Members. If Officers have doubts, they should raise the issue with their senior manager and seek their opinion.

NOTIFYING WARD MEMBERS

12. Normally, all Ward Members should be notified and that means both in two Member Wards. That is particularly important where the Members are from different Parties. It might be sufficient to contact only one Member where they are all in the same Party, provided it is clear that that one Member has agreed to notify the other Member.

CABINET MEMBERS’ AND CHAIRS’ RIGHTS

13. If (apart from the broad rules on confidentiality) an issue seems to be becoming significant in a particular Ward, then the Cabinet Member or Chair responsible for that service ought also to be notified. To take an obvious example, if the Ward Members are concerned about a proposal to put a mobile telephone antenna in a Ward, it is highly likely that the Planning Chair is also going to be concerned about how it might be received, particularly if the Chair has to act as spokesperson for the Council under criticism from the Ward Members. If it is a serious enough issue, the Leader of the Council ought also to be notified (or the Deputy Leader in his or her absence).

NEWLY APPOINTED OR PROMOTED OFFICERS

14. Most Officers generally learn how to deal with these issues by experience. However, it is difficult for people who are appointed from outside the Council (particularly if they are from outside local government) or are promoted from relatively junior positions. Chief Officers or Business Unit Managers should make sure that those new Officers receive this part of the Protocol and are also given clear instructions on with whom to make contact when in doubt.

CONFIDENTIAL (i.e. EXEMPT) INFORMATION

15. If a Ward Member does seek information which is still confidential, then more than one situation might develop:
 - (i) The Ward Member might be entitled to that information as of right - It should be provided but the Ward Member should also be informed that the information remains confidential to the Council itself and that disclosure would be a breach of the Access to Information Rules in this Constitution and a Code of Conduct matter. Generally you should seek to avoid a situation where members are denied

information that anyone could obtain under legislation via the Freedom of Information Act.

(ii) The Ward Member might be going to receive such information as a consequence of membership of a committee - It should be supplied subject to the same warning. (Committee papers must be formally marked by law) unless it is in draft form.

(iii) The Ward Member is not entitled to receive the information at all - The request should be denied and the Ward Member advised that he or she can only seek the information by formal request to the Council which, subject to the views of the Solicitor to the Council, might need to be referred to a committee. There should be relatively little information in this category and it will usually be historic.

PART B

SPEAKING IN RELATION TO PLANNING APPLICATIONS GENERAL GUIDELINES

The Position in Respect of a Councillor who is not a Member of the Relevant Committee or the Ward Member with a right to speak under the “Opportunity to Speak Scheme.”

1.0 Introduction:

- 1.1 Under Section 8 of this part of this Protocol, a councillor is entitled to attend all meetings of Committees and Sub-Committees as an observer and remain throughout the meeting subject to compliance with the Code of Conduct. However, he or she may only speak with the permission of the Chair, sought before the meeting commences. If that permission is granted, the non-member may speak on a specified item, but may not vote.
- 1.2 This is a discretion given to the Chair and the **Chair has the right to make the final determination.**
- 1.3 In such situations, the Member must observe all the normal rules about declarations of interest in the Members’ Code of Conduct at Part 5 of this Constitution.
- 1.4 Set out below is a convention to assist the Chair of Planning Committee as to when to allow Councillors (not being the relevant Ward Member or a member of the Committee) to attend and speak, because there are perceived to be special rules governing town and country planning which require attention. This convention does not apply to other committees.
- 1.5 This is an attempt to clarify the rules. All circumstances cannot be anticipated, but most of these rules have been observed going back over a number of years and codification of this convention may be helpful, particularly to new Members.

2.0 Convention:

- 2.1 Members should remember that all Councillors are elected to serve all of the District and should therefore ask themselves whether it is necessary for them to speak, or whether it might be appropriate to brief a member of the Committee willing to explain the view that the Member was taking, making it clear that that was the view of that particular Member? Any member of the Committee willing to explain the views of a Ward Member must, of course,

make it plain that he or she is merely offering that Member's opinion, and that his or her own decision will only be made in the context of all the merits of the application, the presentations and the applicable law and policies.

- 2.2 Although Section 2.3 of this Protocol does not restrict attendance to Ward Members, yet in respect of planning issues, normally, the Chair will not allow any Councillor to speak unless he or she is either a member of the Planning Committee or a Councillor for a ward affected by the application. It is potentially maladministration for a Councillor to speak on an issue in which he or she does not have a genuine local interest, particularly if that Councillor has not been through the compulsory planning training.
- 2.3 A Councillor who is permitted to speak when not a member of the Committees or a Councillor for the Ward affected by the application is in something of a "half-way house" between other attendees and Committee members, since he or she is not restricted by the "Opportunity to Speak Scheme". However, such a Councillor ought generally not to speak for more than the 3 minutes normally allowed to Ward Members not sitting on the Committee, applicants and objectors.
- 2.4 The Member should speak to the application only.
- 2.5 The Chair would only normally expect to allow a Councillor from an adjacent ward to speak if the development is sufficiently proximate to the ward boundary to affect people living on the other side of it.
- 2.6 Where there is more than one Member for the adjoining ward, whether they are from the same political party or not, they should agree which one of them will speak on the issue. They should not all expect to speak. If there is broad agreement on the application, the consensus of the Ward Members should be referred to by whichever one is advocating that particular position.
- 2.7 Where the Chair reasonably accepts that the Members in the adjoining ward have fundamentally different positions, then the Chair might reasonably allow both points of view to be put.
- 2.8 Where an application could be seen to affect a number of wards not represented within the Committee, then the Chair will ask for one advocate of the case for and one advocate of the case against and will not allow several Councillors from several wards to speak, unless there are special circumstances which the Chair, at his or her discretion, may feel justifies additional speakers.
- 2.9 No-one may speak more than once in more than one capacity under the Planning Opportunity to Speak Scheme (for example as a Parish Council representative and then again as a Ward Member) or for more time than is permitted.

3.0 Time to Speak:

Normally, the Chair will invite the adjoining Ward Member to speak first. The reasons for this are because:

- (i) the Member has no official status at the Committee and may not have been through planning training (compulsory for those dealing with planning applications), and so should not seem to be part of the main debate; and
- (ii) the Member can give an early view of the ward perspective before the general issues are considered by the members of the Committee.

PART B

RIGHTS OF ELECTED MEMBERS IN RELATION TO MEETINGS TO WHICH THEY ARE NOT SUMMONED

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

1 Each elected Member of the Council shall be entitled, subject to the provisions of the Members' Code of Conduct at Part 5 of this Constitution and Rule 2 of the Overview and Scrutiny Committee Procedure Rules at Part 4 of this Constitution, to attend all meetings of Committees and Sub-Committees as an observer and remain throughout the meeting. Each Member shall also be entitled to receive and retain all committee papers issued for such a meeting subject to any decision taken by the meeting to require the return of all papers from all Members.

2 No Member is entitled as of right to attend any private meeting of the Cabinet; nor has any right to papers or Minutes from such a meeting. Attendance at such a meeting and access to papers and minutes are matters in the discretion of the Leader or the Cabinet Member as explained in the Access to Information and the Executive Procedure Rules at Part 4 of this Constitution.

3 No Member is entitled to attend any decision making meeting of a Cabinet Member but the agenda, reports, and minutes will be made public in accordance with the Access to Information Rules.

4 In accordance with paragraph 12(2) of the Members Code of Conduct or with the permission of the person presiding given before the meeting commences any Member may attend any meeting of a Committee or Sub-Committee of which they are not a member and speak on a specified item but may not vote. A Member who has asked for and received permission to speak on a specified item is not thereby entitled to speak on any other item of business at the meeting. Section B7 of this protocol is addressed to special rules in relation to meetings dealing with planning applications.

5 (a) If a Member receives a report for a meeting of the executive or the Council which is directed to a matter in relation to which the Member would have to declare an interest if present at a meeting considering the report, then the Member shall return the papers to the Head of Legal and Governance as soon as reasonably practicable and declare the interest as the reason for their return.

(b) Where the matter is not itself the subject of the report but only referred to in the report so that no interest would have to be declared under Members' Code of Conduct or by law then the Member shall be entitled to keep the papers.

(c) Where the matter forms a small part of a large report such that the Member would be required only to declare an interest and leave the meeting for part of the item then the Member shall be entitled to keep the papers.

6 Nothing in this section of the Protocol permits any Member to remain as an observer at a meeting if, as a member of the Committee or Sub-Committee, the Member would be obliged to leave the meeting pursuant to the Members' Code of Conduct or the Council's Procedure Rules nor does it permit the disclosure of any matter which the Committee or Sub-Committee have decided would be discussed in exempt session or which is confidential information under Section 100A of the Local Government Act 1972 as amended.

7 The entitlement conferred by this Section of the Protocol does not extend to a Member whom the Council has by resolution removed from membership of the particular Committee or Sub-Committee by reason of the conduct of that Member.

PART B

OVERVIEW AND SCRUTINY COMMITTEES AND OFFICERS

The special considerations to be taken into account by members of the Overview and Scrutiny Committee in relation to questioning officers are set out in the Overview and Scrutiny Committee Procedure Rules at Part 4 of this Constitution.

PART B

PROTOCOL FOR FOREIGN VISITS

This protocol applies to foreign travel by Members and Officers when on Council business. Foreign travel means travel outside the United Kingdom.

The general policy does not apply to officers of Harrogate International Centre whose work often requires them to travel abroad. Special rules apply to the Director and his designated staff, and these are set out in the section on the “Harrogate International Centre Management Board Rules”.

2. The Council’s Policy

- 2.1 The Council does not allow foreign travel for either Members or for Officers on Council business, unless specific authority has been granted for good reason. Authority should be obtained in writing from the Cabinet Member (Finance and Resources) or in his/her absence, the Leader. This includes travel abroad under this Council’s Town Twinning/partnership arrangements with Luchon, France and Barrie, Canada.
- 2.2 There are two exceptions to the general policy which only apply to Officers.
- a) where an Officer is part of a delegation travelling abroad and the only cost to the Council is paid leave of absence (ie the Officer concerned or another party pays for accommodation, meals and travel expenses etc). In these circumstances, the relevant Chief Officer may authorise the absence;
 - b) where an Officer is required to travel abroad as part of a course of study attendance at which has been approved by the relevant Chief Officer in order to meet a training and development need identified during the Council’s performance appraisal process.

3. Reporting and Authorisation Procedures

- 3.1 Any report to the Cabinet Member whose portfolio covers Finance and Resources proposing foreign travel must:-
- a) explain the reasons for the visit and detail each separate item of anticipated expenditure;
 - b) indicate clearly their expected costs and justify where any proposed expenditure is above what may be considered to be normal and reasonable if the officer/member were meeting the costs themselves, (eg why first class air travel is being proposed rather than club class);

- c) justify the visit in terms of anticipated benefits against costs; and
 - d) indicate clearly why particular Officers and/or Members are travelling and specifically justify the need for more than one.
- 3.2 The specific authority of the Cabinet Member is always required, even if there is an approved budget provision or where the estimated expenditure can be met from identified savings where there is no specific budget provision.
- 3.3 Members and Officers making foreign visits must also report back to the Cabinet on the outcome of the visit at the next available meeting, identifying the realised and potential benefits.

4. Gifts and Hospitality

- 4.1 Members and Officers are reminded that on their return from abroad, they must record details of any offers of gifts and hospitality in the appropriate Register.

PART B

MEDIA PROTOCOL

Introduction

The council benefits from a corporate communications and engagement team which has considerable experience in dealing with the media.

As part of being an open and responsive organisation, the council is active in engaging with its residents, businesses and customers.

We do this through a range of channels: indirectly through the media and directly using social media, our websites, and digital channels such as *Residents' News* and the business newsletter.

As a council we are specifically prevented from publishing any material that, either in whole or in part, appears to be designed to affect public support for a political party.

We follow the government's Code of Recommended Practice on Local Authority Publicity, which provides guidance on the content, style, distribution and cost of local authority publicity.

This protocol establishes the key principles and processes that will be followed when undertaking external communications.

Principles

We use communications to explain the work of the council, promote its corporate priorities and to enhance and protect its reputation. Communications is also used to inform (and engage with) residents, businesses and customers.

When a spokesperson is required for the purposes of a media interview, it will normally be the relevant cabinet member or committee chair.

Officers (normally a relevant senior manager) will act as a spokesperson only where a response is needed within a tight timescale and a relevant elected member is not available; where the issue concerns operational or procedural issues; or during periods of heightened sensitivity in the run up to an election (purdah).

The council has a well-established and well-recognised brand which means that residents, businesses and others can immediately recognise the work that the organisation undertakes.

Ensuring our brand is correctly and clearly included in materials used externally is important in maintaining the council's reputation and helping residents and businesses understand what our role is. This includes the use of logos, graphic elements, colours and language.

Process

Proactive news releases will usually only feature a quote from the relevant cabinet member but there may be occasions where committee chairs are quoted. This will be influenced by the nature of the topic and the need for a proactive communication. Proactive news releases will be shared with all members at the point they are issued to the media, or, at the time any embargo ends.

Sometimes, a news release may be issued in conjunction with a face-to-face news briefing when the subject matter is better explained in person. News conferences usually include the appropriate cabinet member and a lead officer.

The communications and engagement team also provides a reactive service to

manage incoming queries from the media. This is available during office hours. The communications team will develop a response with the most appropriate officer and share it with the relevant cabinet member before release to the requesting media organisation.

In most cases, a 'spokesperson' will be quoted when a factual response is required. Reactive responses in which a cabinet member is quoted will be cleared by the cabinet member before release. In the event the cabinet member is not available, clearance will be sought with the leader of the council.

Reactive queries which require a political response will be forwarded to the leader of the council, or relevant cabinet member.

Members are encouraged to refer any direct approach from the media to the council's communications and engagement team via news@harrogate.gov.uk.

Responses to reactive media queries may be shared with all members at the time a response is sent if the issue is significant enough, concerns the whole council, affects the council's reputation or is an emergency situation.

Media releases will be fact-checked by the most appropriate officer, but clearance will be sought from a senior officer unless a response is required urgently and a senior officer is not available.

Engaging with the media

The council does not have a dedicated press office function. However, the communications and engagement team will always use its best endeavours to respond to approaches from journalists.

At busy times, or where a media organisation is judged to be submitting a large number of queries, it may be asked to prioritise requests so they can be responded to in order of importance.

This is so a responsive service can be provided to all media outlets.

Updated December 2020

PART B

GUIDANCE TO ELECTED MEMBERS ON MANAGING UNREASONABLE COMPLAINANT BEHAVIOUR

1. INTRODUCTION:

1.1 Harrogate Borough Council through its Members and Officers is committed to dealing with all complaints thoroughly, fairly and impartially and to provide a high quality service to all those who feel it necessary to complain about some perceived error or failure to act on the part of the Authority.

1.2 This policy is designed to deal with the minority of cases where people pursue their complaints to Members in a way that is unreasonable. A similar policy exists for Officers of the Council. Complainants may behave unacceptably, or be unreasonably persistent in their contacts and submission of information. This can impede resolution of their complaint/issue and have a significant time implication for Members. These actions can occur either while their issue is being handled by Members or once the casework has been concluded.

1.3 This guidance aims to help Members develop an appropriate and proportionate approach when responding to unreasonable complainant behaviour.

2. DEFINITIONS:

2.1 This guidance covers 'unreasonable complainant behaviour', which may include one or two isolated incidents, as well as 'unreasonably persistent behaviour', which is usually a build-up of incidents or behaviour over a longer period.

2.2 Unreasonable and unreasonably persistent complaints are those complainants who, because of the nature or frequency of their contacts with a Member or group of Members, hinder their responsibilities as a councillor to their ward and the Council.

2.3 A distinction is made between 'persistent' complainants and 'unreasonably persistent' complainants. Constituents bringing complaints may be persistent if they feel that the issue has not been dealt with in line with established mechanisms and procedures and if so cannot be considered to be unreasonably persistent. Careful regard to any procedures adopted by the Council for handling the issue the subject of the complaint must be given in such circumstances.

2.4 Some complainants may have justified complaints but may pursue them in inappropriate ways. It is necessary to distinguish the complaint in such circumstances.

2.5 Others may pursue complaints which appear to have no substance or which have already been investigated and determined. Their contact with Members may still be amicable but place heavy demands on their time, or may be emotionally charged and distressing for all involved.

2.6 Situations can escalate, and sometimes complainants can become abusive, offensive, threatening or otherwise behave unacceptably. In response the Council, with the agreement of the relevant group leader may have to restrict communication with the relevant Member(s).

2.7 This guidance covers behaviour which is unreasonable, which may include one or two isolated incidents, as well as unreasonably persistent behaviour, which is usually a build-up of incidents or behaviour over a longer period.

3. EXAMPLES OF UNREASONABLE ACTIONS AND BEHAVIOURS:

3.1 The following are some of the actions and behaviours which Members may find problematic. Single incidents may be unacceptable, but more often the difficulty is caused by unreasonably persistent behaviour that is time consuming to manage and interferes with proper consideration of the issue:-

- Refusing to specify the issue/grounds of a complaint, despite offers of help.
- Refusing to accept that certain issues do not fall within the jurisdiction of the Council/Member.
- Insisting that a complaint is dealt with in a manner incompatible with established procedures or good practice.
- Making seemingly unjustified complaints about council staff and other Members.
- Consistently changing the basis of the complaint as the casework progresses.
- Denying or changing statements made at an earlier stage.
- Introducing trivial or irrelevant new information at a later stage.
- Raising many detailed but unimportant questions, and insisting that they are all answered.
- Submitting falsified documents and information.
- Adopting a 'scatter gun' approach; pursuing parallel complaints on the same issue with other Members and Council officers.
- Making excessive demands on the time and resources of Members with lengthy phone calls, emails or detailed letters every few days, and expecting immediate responses.
- Submitting repeat complaints with minor additions/variations the complainant insists make these 'new' complaints/issues.
- Refusing to accept the decision; repeatedly arguing points with no new evidence.
- A complaint seeking an unrealistic outcome.
- A person with a history of making other unreasonably persistent complaints.
- The complaint arises from an historic and irreversible decision or incident.
- The complainant behaves in an aggressive manner or is verbally abusive or threatening.

- The complainant makes and breaks contact unreasonably and with no explanation on an on-going basis.
- The complainant persistently approaches different ward Members in the hope of obtaining different responses.
- The complainant has been offered an alternative practicable recourse such as an appeal or further consultation that they continually refuse to utilise.

4. PROCEDURE:

4.1 Prior to taking any action under this policy all reasonable attempts must be made to consider all aspects of the situation to ascertain why it is developing. In particular is there anything which is unnecessarily aggravating the situation and which can be rectified? For instance,

- If the complaint is being or has been investigated properly.
- If a decision has been reached, it is the right one. Have communications with the complainant been adequate. Is the complainant now providing any significant new information that might affect the Member's view on the complaint?

4.2 When considering if the complainant is behaving unreasonably, some of the following steps may assist:-

- Offering the complainant a meeting with an officer of appropriate seniority to explore scope for a resolution of the complaint and explain why their current behaviour is seen as unreasonable.
- Sharing this policy with the complainant and warning them that restrictive actions may need to be applied if their behaviour continues.
- Setting up a strategic meeting to agree a cross-departmental approach.
- Asking a key officer to coordinate the Council's response. Helping the complainant to find a suitable independent advocate especially if the complainant has different needs.

4.3 When a complainant's behaviour is unacceptable the Member must tell him why that behaviour is unreasonable and ask him/her to change it. This may well be necessary, tactfully, but firmly during a face to face or telephone conversation or email or written communication.

5. OPTIONS FOR ACTION:

5.1 If the unacceptable behaviour continues, the Member can, as a last resort, take action to restrict the complainant's contact. The options to be considered are:-

- Placing limits on the number and duration of contacts with the member
- Offering a restricted time slot for necessary calls
- Limiting the complainant to one medium of contact (telephone, letter, email etc)
- Requiring any personal contacts to take place in the presence of a witness and in a suitable location.

- Refusing to pursue further complaints about the same matter.
- Asking the complainant to enter into an agreement about his future conduct.

5.2 Threatening, offensive or abusive behaviour, including physical assault will be viewed with particular seriousness and may call for the immediate instigation of these procedures and the requirement to disseminate information about the nature of such an incident and the complainant amongst other Members and Council officers. In such cases the incident will be reported to the Police.

6. OPERATING THE POLICY:

6.1 This should be undertaken following consultation with your political group leader and Head of Legal and Governance.

6.2 Good records of threatening, offensive or abusive behaviour should be taken and kept and reported to the Head of Legal and Governance.

6.3 The complainant should be advised as to why the decision has been taken, what it means for his/her contacts, how long any limits shall last and what the complainant can do to have the decision reviewed.

6.4 When a decision is taken not to respond to further correspondence, make sure any further letters, faxes or emails from the complainant are checked to pick up any significant new information.

6.5 When complaints are made about new issues, these should be treated on their merits. You should consider whether any restrictions previously applied are still appropriate and necessary.

7. REVIEWING DECISIONS TO RESTRICT ACCESS:

7.1 When imposing a restriction on access, you should have a specified review date. Limits should be lifted and relationships returned to normal unless there are grounds to extend them. You should consider telling the complainant of the outcome of your review. If limits are to continue, explain your reasons and state when the limits will next be reviewed.

J. Norton
Head of Legal and Governance