PART 9.7 CODE OF CONDUCT FOR MEMBER/OFFICER RELATIONS

1. Introduction

(a) An effective and productive working relationship between Members and officers is critical to the successful operation of the Council's business. This code deals with the Member/officer interface in general terms and then refers to the working relationship between Members and Chief Officers, senior officers and other officers who formally advise the Council. *Unless the context indicates otherwise, the terms Member and Members include co-opted Members as well as elected councillors.*

(b) Excellent working relationships between Members and officers are required both to deliver high quality services to local people and to maintain public confidence in the machinery of local government in Brighton & Hove.

2. Mutual Respect and Courtesy

(a) For the effective conduct of the Council's business there must be mutual respect and courtesy in all meetings and contacts, both formal and informal, between Members and officers. *Members and officers should be aware that contact may occur outside the traditional local government environment, as officers who undertake voluntary work within the City as part of the Employee Volunteering Scheme remain Council employees while they are volunteering.* The basic tenets of common courtesy apply in both formal and informal settings. This plays an important part in safeguarding the Council's reputation and the regard in which it is held by members of the public.

(b) It is important that both Members and officers remember their respective obligations to enhance the Council's reputation and do what they can to avoid criticism of Members or officers in public. The quality of the interface between the two is vital in ensuring that the highest ethical standards permeate the Council in both its private and public dealings.

(c) Members should be aware that officers are constrained in the response they may make to public comment from Members and should not abuse officers in public or through the press nor seek to undermine their position by abuse, rudeness or ridicule. This in no way reduces Members' proper right and duty to criticise the reports, actions and work of a department or section of the Council where they believe such criticism is merited. If Members believe they have reason to criticise the work of an individual junior officer, the proper approach should be

through the senior manager of the section or Chief Officer of the relevant department. Equally where officers feel they have good cause to criticise a Member, an approach by the relevant Chief Officer to that Member's party whip, group leader or convenor is a sensible first step.

3. Roles and Responsibilities

(a) All Members have responsibilities towards the Council, effectively as trustees. However, certain Members will exert more influence and direction than other. The Leader and Cabinet Members have special responsibilities as they have collective and individual powers to take decisions on matters that fall within the category of executive functions. They need to work closely with senior officers to ensure that they discharge their functions lawfully and in the interests of the Council and council tax payers. Committee/Sub-Committee Chairmen will also exert influence and guidance within the area covered by their Committees/Sub-Committees. The role of Committee/Sub-Committee Chairmen is recognised for procedural purposes, for example, conducting meetings or exercising a casting vote. They too need to liaise with senior officers on significant matters, even though they cannot reach individual decisions on behalf of the Council.

(b) Members are responsible to the electorate and may serve until their term of office expires or until it is ended before that, for whatsoever reason. Officers are employed by, and are responsible to, the Council. Their job is to give advice to Members and the Council and to carry out the Council's work under the direction and control of the Council, its Leader, Cabinet Members, Committees and Sub-Committees and the management of the Chief Executive and the relevant Chief Officer.

(c) Officers are employed to advise the Council and to implement its decisions. Officer advice must be full and impartial and should include all relevant options. It must not seek to second-guess the decisions of Members, for example by excluding presumed unpalatable options, and must be clear and professional at all times. Members should respect officers' political neutrality at all times. But Members are entitled to reject officer advice and to give effect to their lawful policies even if these are clearly at variance with the views of officers. It is by this means that, for example, the Leader and Cabinet Members are able to implement the policies for which they regard themselves as responsible to the electorate and the opposition groups are able to challenge them and put forward their own policies.

4. Political Activity

(a) Senior officers, except those specially exempted, cannot be local authority Members or MPs, nor can they "speak or publish written work for the public at large or to a section of the public with the apparent intention of affecting public support for a political party". Such officers are nevertheless able to engage in such activity to "such extent as is

necessary for the proper performance of their duties". (Sections 1-3 of the Local Government and Housing Act 1989 and Local Government Officers (Political Restrictions) Regulations 1990.

(b) Officers are employed by the Council not by the Leader, Cabinet Members, Committees/Sub-Committees or individual Members and are subject to the application of the Council's employment policies and procedures including the Council's Code of Conduct for Officers.

(c) National conditions of service provide that officers cannot be required to advise any political group of the Council, either as to the work of the group or as to the work of the Council, neither can they be required to attend any meetings of any political group. Nonetheless it is common practice for party groups to give preliminary consideration to matters of Council business and officers may properly be called upon to support and contribute to such deliberations.

(d) Normally, only the Chief Officer will be expected to attend meetings, write reports or carry out other work relating to Council business (including drafting Notices of Motion) for a party political group. Subject to the Chief Officer's discretion, other senior officers may be invited to attend meetings, provide information, write reports and draft Notices of Motion, or carry out other work relating to Council business for party political groups. However, neither the Chief Officer nor any other officer can be instructed to do so nor can they be instructed to carry out any party political work. This provision covers meetings of or reports to a party political group or meetings designated for one party only. It is, of course, open to the Leader, Cabinet Members, any Committee or any Sub-Committee to require reports from Chief Officers on matters within their terms of reference.

(e) Officers must respect the confidentiality of any party group discussions at which they are present and should not relay the contents of any such discussions to another party group.

(f) The principle in (d) above does not deny the necessity for regular contact on matters affecting the Council between Chief Officers, other senior officers and the leadership of political groups, and on matters affecting executive or committee functions between Chief Officers, other senior officers and the Leader, Cabinet Members, Committee/Sub-Committee Chairmen and party spokespersons.

g) *The principles outlined at c) and d) above, do not apply to political assistants appointed pursuant to section 9 of the Local Government and Housing Act 1989. Schedule 1 to the Local Government Officers (Political Restrictions) Order 1990 sets out a number of terms and conditions which are deemed to be incorporated into a political assistant's contract of employment. These include a prohibition on standing for election, acting as an election agent or being a manager or officer of a Political Party. Further, a political assistant cannot speak to the public at large or to a section of the public in circumstances which are likely to create an impression that they are speaking as an authorised representative of a political party, whether so authorised or not. Separate detailed guidance has been issued for political assistants.*

5. Contact between Members and Officers

(a) Regular contact between Members and senior officers is necessary to ensure the efficient working of the Council. In this context, it is the responsibility of Chief Officers to identify within each department the senior officers who should have regular contact with Members and this will depend upon the nature of the service they provide and the nature of the Member contact envisaged. However Members should always bring major concerns about issues affecting a department directly to the attention of the Chief Officer concerned.

(b) Serious problems can arise if Members bypass appropriate lines of communication to Chief Officers and their senior officers and, for example, deal with more junior members of staff to seek views on policy issues, non-routine business, or attempt to give instructions to staff. This has the effect of depriving Members of the formal, informed and accountable advice they have a right to expect from Chief Officers. It may also serve to undermine the formal accountability of staff to their line manager.

(c) However, there are circumstances when Members may need direct contact with relatively junior staff, for example, with junior officers in Housing District Offices when dealing with constituency casework presented by tenants. Approaches by Members to junior officers are proper when casework is detailed and ongoing or matters are routine but wherever appropriate Members should keep Chief Officers informed by copying them correspondence, e-mails etc., and routing general enquiries through them.

6. Information for Members

(a) It is important that officers keep Members informed both about the major issues concerning the Council and, more specifically, about issues and events affecting the wards which Members represent. Ward Members should be informed *in a timely manner* about *all* proposals which affect their area *including, but not limited to*, declarations of surplus property, a new traffic management scheme or a local planning application. Ward Members should also be invited to attend the opening of new Council buildings or road schemes or other similar ceremonies within their wards. *Whenever a public meeting is organised by the Council to consider a local issue, all Members representing the ward or wards affected should as a matter of course be invited to attend the meeting*. It should also be borne in mind that Members who are not Cabinet Members or Members of a particular Committee/Sub-Committee may be able to attend and speak at meetings of the Cabinet, of Cabinet Member or of Committees/Sub-Committees with the agreement of the Chairman or person presiding at the meeting.

(b) The disclosure of information by Members which they have gained as Members when the information is confidential, is restricted. It should not, therefore, be made available by the Member concerned to the press or public nor should it be passed onto another Member who cannot demonstrate a similar "need to know".

7. Access to Information

(a) Members have wide-ranging legal rights of access to documents in the possession or under the control of the Council and officers should implement requests for information from Members who need that information for the fulfilment of their duties as a Member.

(b) Normally, officers will accept that Members do not ask for information without good reason and will not question the Member's "need to know". But in the words of relevant legal arguments, a Member has no right to a "roving commission" and "mere curiosity or desire" is not sufficient. Nor can the Member exercise the right for some improper motive, e.g. to assist someone in litigation with the Council, its staff, suppliers or service users.

(c) In rare cases therefore a Chief Officer may apply the "need to know" test. The Member will need to show why the information is necessary to fulfil Council duties. Further guidance on the "need to know" issues is set out in Appendix 1 to this code. Where an officer considers that a Member has not established a "need to know" in support of a request for access to information and refuses to provide the information requested, the officer shall state reasons for doing so. Where the Member is dissatisfied with the outcome the matter shall be referred to the Monitoring Officer for a decision.

(d) A Member asking for complex or bulky information should be flexible in his or her demands if compiling and reproducing the documentation results in significant cost to a department. The Member will normally be able to view relevant material and to copy individual documents and retain them but may not make use of such information for an improper purpose or one unrelated to the Member's duties.

(e) Members are reminded of their duty not to disclose confidential information which they have gained access to as Members (see also 6(b) of this Code). To do so is not only a breach of this code but is also very likely to be a breach of the Code of Conduct for Members for which the Council's Standards Committee or *the First-Tier Tribunal* can impose penalties. If any Member believes that he or she may have justification for disclosing confidential information, he or she must first seek advice from an appropriate officer such as the Monitoring Officer, Chief Finance Officer or Chief Executive.

8. Preparation of Officer Reports for the Leader, Cabinet Members or Committees/Sub-Committees

(a) Officer reports to the Leader, Cabinet Members, Committees and Sub-Committees should be written by the Chief Officer or other officer authorised by him or her. All sensitive officer reports shall be discussed with, as appropriate, the Leader, the relevant Cabinet Member, or the relevant Committee/Sub-Committee Chairman at one of the regular meetings held with the Chief Officer.

(b) However, the draft officer report belongs to the officer concerned and even if the Leader, relevant Cabinet Member, Chairman or another Committee/Sub-Committee Member in exceptional circumstances is unhappy with its contents, it should not be amended by them save with the express approval of the Chief Officer. It is for the Chief Officer to determine when a draft officer report should be amended in the light of Members' views, taking advice from the Chief Executive, Monitoring Officer or Chief Finance Officer as appropriate.

(c) It should be noted that the guidance above relates to reports prepared by officers. In any case where the Leader or *a* Cabinet Member writes a report relating to his or her functions, the report will belong to the Member concerned and be that Member's responsibility. In such cases the Member will ensure that relevant officers, including the Chief Finance Officer and the Monitoring Officer, are consulted, to ensure that the report's content is practical, lawful, in compliance with the fiduciary duty to council tax payers and in the interests of the Council.

9. Correspondence

(a) Frequently Members and officers correspond and, where it is appropriate to regard the correspondence as non-confidential, it may be copied by either the sender or the recipient to others, subject to the provisions of paragraphs 9(b) to (d) below and to the requirement that correspondence should be courteous and wide circulation of it should not be employed as a means of administering a public rebuke to a Council officer.

(b) Officers should not copy correspondence with a Member of one party to a Member of another party without consent. This does not prevent officers or Members copying correspondence to each other about casework across ward or interest group boundaries. Nor does it preclude a Chief Officer from advising the Leader, a Cabinet Member, or a Committee/Sub-Committee Chairman in general terms of an issue raised with the Chief Officer in correspondence, or otherwise, with a Member.

(c) Members and officers must treat as confidential any personal information protected from disclosure by the Data Protection Act unless the disclosure is permitted under the Act or by other legislation.

(d) Members should bear in mind that if they disclose any information which should have been regarded as confidential, this is very likely to be a breach of the Code of Conduct for Members, as mentioned at paragraph 7(e) above. If in doubt as to the status of the correspondence, the Member should check with the officer concerned before taking any steps to distribute it more widely.

10. Undue Pressure

(a) Members need to be aware that it is easy for officers, particularly junior members of staff, to be overawed and feel at a disadvantage in their dealings with Members. Such feelings can be intensified where Members hold official and/or political office. Therefore, the usual point of contact for Members should be the relevant Chief Officer or Deputy Chief Officer.

(b) A Member should not request an officer to do anything that she or he is not empowered to do, nor to cease any action which the officer is properly taking or proposes to take, nor to undertake work outside normal duties or outside normal hours, nor to provide information to which the Member is not entitled. Advice on the appropriateness of such requests is available from either the Chief Officer or the Monitoring Officer.

(c) Similarly, an officer must neither seek to use undue influence on an individual Member to make a decision in their favour nor to raise personal matters to do with their job, nor make claims or allegations about other officers. The Council has formal procedures for consultation, grievance and discipline.

11. Familiarity

(a) Close personal familiarity between individual Members and officers can damage the principle of mutual respect. It could also, intentionally or accidentally, lead to the passing of confidential information or information which should not properly be passed between them, e.g. personal details. Such familiarity can also cause embarrassment to other Members and/or other officers and even give rise to suspicions of favouritism.

(b) For the above reasons, it is evident that close personal familiarity should be avoided, and in any event must be declared both by the Member and the officer. Such declarations should be made by the officer to the officer's Chief Officer and by Members to the Chief Executive.

12. Officers and Overview and Scrutiny

(a) Where an Overview and Scrutiny Committee exercises its powers to require officers to attend to answer questions or discuss issues it should also consider the seniority of officers it would be appropriate to require to appear before them, in order to ensure that more junior officers are not put under undue pressure. Guidelines on this matter are included in the Overview and Scrutiny Procedure Rules at Part 4 of the Constitution.

(b) Overview and Scrutiny Committees should always bear in mind that when officers appear to answer questions their evidence should, as far as possible, be confined to questions of fact and explanation relating to policies and decisions. Officers may explain what the policies are, the justification and objectives of those policies as the decision makers see them, the extent to which those objectives may have been met, and how administrative factors may have affected both the choice of policy measures and the manner of their implementation. They may be asked to explain and justify advice they have given to Members prior to decisions being taken and/or decisions they themselves have taken under delegated authority.

(c) As far as possible, officers should avoid being drawn into discussion of the merits of alternative policies where this is politically contentious. Any comment by officers on the Council's policies and decision makers' actions should always be consistent with the requirement for officers to be politically impartial.

13. Redress and Breach of this Code

(a) If a Member has a complaint about a junior or senior officer, it should be raised with the relevant Chief Officer. If the complaint concerns a Chief Officer it should be raised with the Chief Executive as Head of Paid Service. A complaint about the Chief Executive should be raised with the Leader, who will consider whether the issue can be dealt with as part of routine liaison, supervision and appraisal, or should be referred for formal action in accordance with Council procedures and the statutory provisions governing disciplinary action against Local Authority Chief Executives. This does not however preclude a Member from making public, at a Council meeting or in another appropriate way, a concern about the manner in which a Council department has acted, or dealt with a constituent, or a service has performed generally. Nor does it prevent Members at meetings of the Leader, Cabinet Member, Committees or Sub-Committees being critical of officer advice or action or of the quality of reports before them. But the manner of such criticism should have regard to the guidance in respect of mutual respect and courtesy at paragraph 2 of this Code.

(b) If a Member considers that he or she has not been treated with proper respect or courtesy by an officer or that an officer is otherwise in

breach of this Code, the Member may raise it with the officer's line manager or Chief Officer without delay if the Member fails to resolve it through direct discussions with the officer. A Member may raise the issue with the Chief Executive, after discussion with the relevant Chief Officer. If the issue still remains unresolved, appropriate disciplinary action may be taken against the officer.

(c) If an officer has similar concerns about a Member, the officer should raise the matter with his or her line manager or Chief Officer as appropriate without delay, especially if the officer does not feel able to discuss it with the Member concerned. In such circumstances the Chief Officer will take such action as is appropriate either by approaching the individual Member and/or party group leader. The Chief Officer will inform the Chief Executive and the Monitoring Officer if the party group leader or the Leader, a Cabinet Member, a Committee/Sub-committee Chairman becomes involved, or in any other case where that is appropriate. *Alternatively, any officer who feels that he or she has been bullied by a Member may invoke the Dignity & Respect at Work Policy.*

(d) If an officer is concerned that another officer is in breach of this Code, or if a Member is concerned that another Member is in breach of this Code, he or she should raise the issue directly with either their line manager or Chief Officer or with their party group leader. Similar redress may be sought as in the previous paragraph.

14. Conclusion

(a) Mutual understanding, openness and basic respect are the greatest safeguards of the integrity and reputation of the Council, its Members and officers.

(b) If Members or officers have any concerns about the content of this Code, or wish any interpretation or advice upon its contents, they should contact in the first instance the Monitoring Officer or the Chief Executive.

APPENDIX 1

ACCESS TO INFORMATION – THE "NEED TO KNOW"

1. The courts have given guidance on the circumstances in which a Member seeking information from an officer can be presumed to have a "need to know". This was formulated before the establishment of executive powers for individual Members, but the principles have been extended appropriately in the note below.

2. Members are presumed to have a good reason for access to all written material relating to a function controlled by a Committee on which they serve or an executive function for which they have responsibility either as an individual or jointly with other Cabinet Members. Also a Member of a Committee would have a good reason for access to papers relating to the business of a Sub-Committee of that Committee.

3. A Member with a legitimate concern in a matter in which she or he is representing a constituent or other person or organisation may be able to demonstrate a "need to know" in relation to papers relevant to that matter, even if the Member concerned is not on the relevant Committee/Sub-Committee or does not have any related responsibilities as a Cabinet Member.

4. However, even where a Member is

   (a) a Member of a Committee/Sub-Committee and wishes to see papers relating to the work of that Committee or a Sub-Committee of it, or

   (b) wishes to see papers relating to his or her responsibilities as a Cabinet Member,

   there will not be an automatic right of access to papers if the Member's interest springs from something other than the wish to pursue rights as a Member of that Committee/Sub-Committee or a Cabinet Member.

5. Party leaders may be able to demonstrate a "need to know" in respect of written material relating to all Committees/Sub-Committees. A Cabinet Member may be able to demonstrate a "need to know" in respect of written material relating to functions of other Cabinet Members for any matter which is to be dealt with by a committee of Cabinet Members which includes that Member.

6. Not withstanding that the information requested may come within the above categories, an officer may refuse a request to provide the information if she or he has cause to think that the information may

have been requested for an improper purpose or is otherwise unreasonable or is of a personally sensitive nature.

7. In this context, the courts have been critical of a request by a Member for details of many contracts, and have ruled that a request for details of a Chief Officer's attendance at the office amounted to harassment.

8. An officer in judging whether a Member requesting information has a right to it is entitled to know the reasons for wanting it, and in the absence of cogent reasons is entitled to refuse. Where an officer considers that a Member has not established a "need to know" in support of a request for access to information and refuses to provide the information requested, the officer shall state reasons for doing so.

9. Members are entitled to have enough information to be able to perform their functions properly and the Courts will protect this position. Members should however bear in mind that unreasonable requests or pressure for information may amount to a breach of the Code of Conduct for Members, for which the Council's Standards Committee or *the First-Tier Tribunal can* impose penalties.

10. Access to Confidential Cabinet and Cabinet Member Reports

10.1 Members' rights of access to Cabinet and Cabinet Member reports are set out in paragraph 24 of the Access to Information Procedure Rules. Without prejudice to any rights that Members may have under those rules, this guidance or the law, the following practice and procedure should apply.

(a) The Council's approach regarding access to Cabinet or Cabinet Member reports will be guided by the general principles of openness and transparency.

(b) In the practical application of the principles, the Council will have regard to any legal duty of confidentiality and the need to be able to run its business as a responsible authority.

(c) As far as possible, and to the extent that it is consistent with legal duties and good practice, the Council will endeavour to put as many of the reports as possible in the public part or, where this is not appropriate, to have an item in the open part that gives the public an indication of the nature of the issue.

(d) As general rule the Chairman of the Scrutiny Commission and all Group Leaders will be provided with copies of any part II reports to the Cabinet or Cabinet Member meetings and there will be a presumption in favour Group Leaders and relevant Scrutiny Chairmen having access to part II reports.

(e) In some cases, the matter under consideration may be such that it is necessary to limit the distribution of reports to Cabinet Members only or to restrict the copying, distribution, or retention of the reports by Members or Officers.

(f) In exceptional cases, if the Chief Executive and the Monitoring Officer are of the opinion that significant legal, financial or commercial reasons exist, then the distribution of the reports may be restricted to the person/s making the decision. In coming to such a decision, the Chief Executive and the Monitoring Officer will have regard to the following:

- Whether the distribution of confidential papers to persons outside the decision-makers would be likely to constitute a breach of any legal duty to which the Council is subject , whether such duty arises from legislation, court order, contractual duty or other express or implied legal obligation;

- Whether the disclosure of the information would be likely expose the Council to financial loss;

- whether the disclosure of the information would be likely to have a detrimental effect on any commercial negotiations;

- whether the report includes sensitive personal information the disclosure of which would expose the council to legal or reputational damage;

- whether the report contains matters relating to labour relations or negotiations with trade unions and the disclosure of such information would be likely to compromise those negotiations.

(g) steps taken to limit distribution or restrict the manner of use shall be proportionate to the perceived risk. Depending on the Chief Executive and the Monitoring Officer's assessment, any such measures may include, but are not limited to:

- Circulating the report to the decision makers only;
- Collecting the reports at the conclusion of the meeting;
- Making arrangements for relevant Members to read the report at a pre-arranged venue and not take the report away;
- Restricting any copying of the report.
- Marking reports

(h) Where a restriction or limitation on distribution is imposed under the above provisions, the Chief Executive or the Monitoring Officer shall inform the Group Leaders and the Chairman of the Scrutiny Commission.

(i) The procedure to restrict circulation of reports or the manner of use shall be applied only in exceptional circumstances and the presumption remains that Group Leaders and relevant scrutiny chairmen would be entitled see part II reports.

(j) The above procedures are without prejudice to any right that Members may have to access information and documents under the common law principle of “need to know.”