

# Protocol for Member/Officer Relations

## 1. Introduction and principles

- (a) The purpose of this Protocol is to guide Members and Officers of the Council in their relations with one another in such a way as to ensure the smooth running of the Council.
- (b) Given the variety and complexity of such relations, this Protocol does not seek to be either prescriptive or comprehensive. It simply offers guidance on some of the issues which most commonly arise. It is hoped, however, that the approach which it adopts to these issues will serve as a guide to dealing with other circumstances.
- (c) This Protocol is to a large extent a written statement of current practice and convention. It seeks to promote greater clarity and certainty. If the Protocol is followed it should ensure that Members receive objective and impartial advice and that Officers are protected from accusations of bias and any undue influence from Members.
- (d) It also seeks to reflect the principles underlying the respective Codes of Conduct which apply to Members and Officers. The shared object of these Codes is to enhance and maintain the integrity (real and perceived) of local government and the Codes, therefore, demand very high standards of personal conduct.
- (e) This Protocol should be read in conjunction with the Members' and Employees' Codes of Conduct, any guidance for Members and Officers dealing with planning matters, the Planning Code of Conduct, the Council's Constitution and any guidance issued by the Standards and Governance Committee and/or Monitoring Officer.

## 2. General points

- (a) Both Members and Officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Members are responsible to the electorate and serve only so long as their term of office lasts. Officers 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, the Executive, their committees and sub-committees.
- (b) At the heart of this Protocol, is the importance of mutual respect. Member/Officer relationships should be conducted in a positive and constructive way. Therefore, it is important that any dealings between Members and Officers should always be courteous and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party.
- (c) A Member should not raise matters relating to the conduct or capability of an Officer in a manner that is incompatible with the objectives of this Protocol. This is a long-standing tradition in public service. An Officer has no means of responding to such criticisms in public. If a Member feels they have not been treated with proper respect, courtesy or has any concern about the conduct or

capability of an Officer, and fails to resolve it through direct discussion with the Officer, they should raise the matter with the respective Business Unit Head. The Business Unit Head will then look into the facts and report back to the Member. If the Member continues to feel concern, then they should report the facts to the Director/Chief Officer who heads the department concerned, or if, after doing so, the Member is still dissatisfied, they should raise the issue with the Chief Executive Officer who will look into the matter afresh. Any action taken against an Officer in respect of a complaint, will be in accordance with the provisions of the Council's Disciplinary Rules and Procedures.

- (d) An Officer should not raise with a Member matters relating to the conduct or capability of another Officer or to the internal management of a Section/Business Unit/Directorate at or in a manner that is incompatible with the overall objectives of this Protocol. This does not, however, prevent an Officer raising a concern with a Member under the Council's confidential reporting procedure ("Whistleblowing").
- (e) Where an Officer feels that they have not been properly treated with respect and courtesy by a Member, they should raise the matter with their Business Unit Head, Director/Chief Officer or the Chief Executive Officer as appropriate, especially if they do not feel able to discuss it directly with the Member concerned. In these circumstances the Business Unit Head, Director/Chief Officer or Chief Executive Officer will take appropriate action either by approaching the individual Member and/or group leader or by referring the matter to the Monitoring Officer in the context of the Standards and Governance Committee complaint handling regime.

### **3. The relationship: officer support to Members: general points**

- (a) Officers are responsible for day-to-day managerial and operational decisions within the Council and will provide support to both the Executive and all Members in their several areas.
- (b) Certain statutory officers - the Head of Paid Service, the Monitoring Officer and the Section 151 Officer - have specific roles. These are addressed in the Constitution. Their roles need to be understood and respected by all Members.
- (c) The following key principles reflect the way in which Officers generally relate to Members: all Officers are employed by, and accountable to the Council as a whole; support from Officers is needed for all the Council's functions including full Council, Overview and Scrutiny, the Executive, Strategic Planning Committee, Area Planning Committees, Statutory Licensing Committee and Sub-Committees, General Licensing and Registration Committee and Sub-Committees, Standards and Governance Committee, joint committees and individual Members representing their communities etc; day-to-day managerial and operational decisions should remain the responsibility of the Chief Executive Officer and other Officers; the Council will seek to avoid potential conflicts of interest for Officers arising from the separation of the Executive and Overview and Scrutiny role.
- (d) On occasion, a decision may be reached which authorises named Officers to take action between meetings following consultation with a Member or Members. It should be recognised that it is the Officer, rather than the

Member or Members, who takes the action and it is the Officer who is accountable for it.

- (e) Finally, it should be remembered that Officers within a Division or Department are accountable to their Business Unit Head and Director/Chief Officer and that whilst Officers should always seek to assist a Member, they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Business Unit Head or Director/Chief Officer.

#### Personal and business relationships

- (f) It is clearly important that there should be a close working relationship between Members and the Officers who support and/or interact with them, in order to effectively undertake the Council's work. This can, inevitably, lead to a degree of familiarity.
- (g) Close personal and/or business relationships between individual Members and Officer can be damaging to mutual respect and both parties should be careful to avoid:
  - (i) bringing into question the Officer's ability to deal impartially with other Members and other party groups
  - (ii) creating any general impression of unfairness or bias
  - (iii) passing confidential information to anyone who should not have access to it (see section 8 later)
  - (iv) in any other way allowing their relationship or connection to affect their actions, decisions or the performance of their duties generally.
- (h) Members and Officers should take account of any relationship or connection they have with any other Member or Officer when considering whether or not they need to register or declare an interest.
- (i) It would usually be inappropriate for a Member to have special responsibilities in an area of activity in which someone with whom they have a close personal or business relationship is a senior Officer. If this situation arises, the Member should take appropriate action to avoid a potential conflict of interest.

#### 4. **Officer support to the Executive**

- (a) The Executive and its Members have wide ranging leadership roles. They will: lead the community planning process, the preparation of the Council's policies and the search for Best Value, with input and advice from Overview and Scrutiny Committees, Area Committees and any other persons as appropriate; lead the preparation of the Council's budget; take decisions on resources and priorities, together with other stakeholders and partners in the local community, to deliver and implement the budget and policies decided by full Council; and be the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.
- (b) Officers must ensure that even if they are predominantly supporting the Executive their political neutrality is not compromised.

- (c) Whilst Executive Members will routinely be consulted as part of the process of drawing up proposals for consideration on the agenda for a forthcoming meeting, it must be recognised that in some situations an Officer will be under a professional duty to submit a report. Similarly, the Chief Executive Officer, Director/Chief Officer or other senior Officer will always be fully responsible for the contents of any report submitted in their name. This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report. Any issues arising between an Executive Member and a Director/Chief Officer in this area should be referred to the Chief Executive Officer for resolution in conjunction with the Leader of the Council.
- (d) Where functions which are the responsibility of the Executive are delegated to Officers or other structures outside the Executive, the Executive will nevertheless remain accountable to the Council, through Overview and Scrutiny Committees, for the discharge of those functions. That is to say, the Executive will be held to account for both its decision to delegate a function and the way that the function is being carried out.
- (e) Under Executive Arrangements, individual Members of the Executive are, in certain circumstances as set out in the Executive Members' Delegation Scheme, allowed to take formal decisions. The Executive, Executive Members and Officers must satisfy themselves that they are clear what exactly they can and cannot do.
- (f) The Council has put in place mechanisms/protocols which ensure that (as with the Council, its Committees and Sub-Committees, and the Executive and its Committees) an individual Executive Member seeks advice from relevant Officers before taking a decision within their delegated authority. This includes taking legal advice, financial advice and professional Officer advice (particularly about contractual matters) as well as consulting the Monitoring Officer where there is doubt about legal powers.
- (g) In organising support for the Executive, there is a potential for tension between Chief Officers and Executive Members with portfolios. All Members and Officers need to be constantly aware of the possibility of such tensions arising and both Officers and Members need to work together to avoid such tensions and conflicts existing or being perceived.

5. **Officer support: Overview and Scrutiny Committees**

- (a) Overview and Scrutiny Committees have the following roles:
  - ◆ to review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions
  - ◆ to make reports and/or recommendations to the full Council and/or the Executive and/or any Joint or Area Committee in connection with the discharge of any functions
  - ◆ to consider any matter affecting the county or its inhabitants; and

- ♦ to consider decisions which have been called in, under the Overview and Scrutiny Procedure Rules, and decide whether to refer such decisions to full Council, or refer them back to the decision maker; and
  - ♦ they may monitor the performance and effectiveness of the services they overview.
- (b) Where an Officer is aware that a political group representative is a member of the Committee that person should also be informed about matters on that issue which are communicated to the Chair and Vice-Chair. Officers must ensure that even if they are predominantly supporting the Overview and Scrutiny Committees their political neutrality is not compromised.
- (c) Overview and Scrutiny Committees and their panels will from time to time be issued with guidelines on how to gather evidence and interview witnesses.
- (d) It is not Overview and Scrutiny's role to act as a disciplinary tribunal in relation to the actions of Members or Officers. Neither is it the role of Officers to become involved in what would amount to disciplinary investigations on a panel's behalf. This is the Chief Executive Officer's function alone in relation to staff, the Monitoring Officer's and the Standards and Governance Committee as regards the conduct of Members.
- (e) Overview and Scrutiny should not act as a 'court of appeal' against decisions or to pursue complaints by individuals (Members, Officers or members of the public) which are the subject of other procedures, e.g. the Corporate Complaints Procedure, any directorate specific Complaints Procedures, the Local Government and Social Care Ombudsman, complaints under the Standards and Governance Committee complaint handling regime or appeal to the Courts.

## **6. Officer advice to party groups and individual Members**

- (a) It must be recognised by all Officers and Members that in discharging their duties and responsibilities, Officers serve the Council as a whole and not any political group, combination of groups or any individual Member of the Council.
- (b) There is statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Senior Officers may properly be called upon to assist and contribute to such deliberations by party groups or to assist individual Members but must at all times maintain political neutrality. All Officers must, in their dealings with political groups and individual Members, treat them in a fair and even-handed manner.
- (c) The assistance provided by senior Officers can take many forms ranging from a briefing meeting with an Executive Member, Chair or other Members prior to a meeting, to a presentation, to a full political group meeting. It is an important principle that such assistance is offered to all political groups and individual Members.
- (d) Certain points must, however, be clearly understood by all those participating in this type of process, Members and Officers alike. In particular:

- (i) attendance by senior Officers at meetings of political groups is voluntary and must be specifically authorised by the Chief Executive Officer
  - (ii) Officer assistance must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if Officers are not present at meetings or parts of meetings, when matters of party business are to be discussed
  - (iii) party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such; and
  - (iv) Similarly, where Officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant Council decision making body when the matter in question is considered.
- (e) Special care needs to be exercised whenever Officers are involved in providing information and advice to a party group meeting which includes persons who are not Members of the Council. Such persons are not bound by the Council's Code of Conduct for Members (in particular, the provisions concerning the declaration of interests and confidentiality). Officers would not be able to provide the same level of information and advice as they would to a Member only meeting.
- (f) Officers must respect the confidentiality of any party group discussions at which they are present. When information is disclosed to an Officer during discussions with a party group and the Officer is requested not to pass the information to other groups, then the Officer will not do so. However, Members should be aware that this would not prevent officers from disclosing such information to other Officers of the Council so far as that is necessary to performing their duties.
- (g) Any particular cases of difficulty or uncertainty in this area of Officer advice to party groups should be raised with the Chief Executive Officer who will discuss them with the relevant group leader(s).

## **7. Use of Council resources**

- (a) The Members' Code of Conduct requires that a Member must, when using or authorising the use by others of the resources of the Council, act in accordance with the Council's reasonable requirements and ensure that such resources are not used improperly for political purposes (including party political purposes). The Council provides support services such as stationery, typing, printing, photocopying to Members to assist them in discharging their role as members of the Council. Such support services must therefore only be used on Council business and should never be used in connection with party political or campaigning activity or for private purposes. As a result of

the provisions of the Members' Code of Conduct Members cannot use Council computers for political purposes other than as stated above. The general use of computers provided to Members and Officers of the Council is governed by the Email and Internet Procedures for Members and Officers

## 8. **Members' access to information and to Council documents**

- (a) Members are free to approach any Council department to obtain such information, explanation and advice (about that department's functions) as they may reasonably need in order to assist them in discharging their role as Members of the Council. This can range from a request for general information about some aspect of a department's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the appropriate Director/Chief Officer concerned. (In cases of doubt, Legal and Democratic Services' Officers will be happy to channel the request to the appropriate Officer.)
- (b) As regards the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law.
- (c) Members have a statutory right to inspect any Council document which contains material relating to any business which is to be transacted by the Council. This right applies irrespective of whether the Member is a Member of the Committee or Sub-Committee concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers. This right does not, however, apply to documents relating to certain items which may appear as a confidential (Pink) item on the agenda for a meeting. The items in question are those which contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, the care of children, contract and industrial relations negotiations, advice from Counsel and criminal investigations.
- (d) In relation to business of the Executive, by virtue of Regulation 16 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012:
  - (i) where there is a public meeting (e.g. Executive) and there is a document which is in the possession/under the control of the Executive relating to the business to be conducted at that meeting, that document shall be available for inspection by any Member
  - (ii) where the decision is made at a private meeting of the Executive or is an executive decision delegated to an Officer or individual Executive Member, the document shall be available to any Member either after the meeting closes or, for individual executive decisions, immediately after the decision has been made
  - (iii) there are exceptions for certain exempt and confidential material and any document that contains advice provided by a political advisor or assistant.
- (e) The common law rights of Members remain intact, are much broader and are based on the principle that any Member has a prima facie right to inspect Council documents so far as their access to the document 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.

- (f) The exercise of this common law right depends therefore, upon an individual Member being able to demonstrate that they have the necessary 'need to know'. In this respect a Member has no right to 'a roving commission' to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the 'need to know'. This question must initially be determined by the particular Director/Chief Officer whose department holds the document in question (with advice from the Monitoring Officer).
- (g) In some circumstances (e.g. a Committee Member wishing to inspect documents relating to the business of that Committee) a Member's 'need to know' will normally be presumed. In other circumstances (e.g., a Member wishing to inspect documents which contain personal information about third parties) the Member will normally be expected to justify the request in specific terms. In some circumstances duties of confidentiality to external bodies e.g. the Courts in child care cases or imposed by statute may override the common law right.
- (h) Whilst the term 'Council document' is very broad and includes for example, any document produced with Council resources, it is accepted by convention that a Member of one party group will not have a 'need to know' and, therefore, a right to inspect, a document which forms part of the internal workings of another party group.
- (i) Further and more detailed advice regarding Members' rights to inspect Council documents may be obtained from the Monitoring Officer.
- (j) Finally, any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, i.e. in connection with the proper performance of the Member's duties as a Member of the Council. Therefore, for example, early drafts of Committee reports/briefing papers are not suitable for public disclosure and should not be used other than for the purpose for which they were supplied. This point is emphasised in paragraphs 5 and 6 of the Members' Code of Conduct:

'5. You must not disclose information which is given to you in confidence or which you believe is of a confidential nature, or ought reasonably to be aware is of a confidential nature, unless:

- ◆ You have the permission of a person authorised to give it; or
- ◆ You are required by law to disclose the information; or
- ◆ You disclose it to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or
- ◆ The disclosure is reasonable; and is in the public interest; and is made in good faith; and is only made after having complied with any reasonable requirements of the Council to delay disclosure or to maintain confidentiality.

Before disclosing any information under this paragraph, you must consult the Monitoring Officer and/or the Chief Executive Officer.

6. You must not prevent another person gaining access to information which that person is entitled to by law.'

## 9. **Correspondence**

- (a) Correspondence between an individual Member and an Officer should not normally be copied (by the Officer) to any other Member. Where it is necessary to copy the correspondence to another Member, this should be made clear to the original Member. In other words, a system of 'silent copies' should not be employed.
- (b) Official letters on behalf of the Council should normally be sent in the name of the appropriate Officer, rather than in the name of a Member. It will, however, be appropriate in certain circumstances (e.g., representations to a Government Minister) for a letter to appear in the name of an Executive Member, the Leader or the Chair of the Council. Letters which, for example, create legal obligations or give instructions on behalf of the Council should never be sent out in the name of a Member, Executive or otherwise.

## 10. **Publicity and press releases**

- (a) Local authorities are accountable to their electorate. Accountability requires local understanding. This will be promoted by the Council, explaining its objectives and policies to the electors and Council tax-payers. In recent years, all local authorities have increasingly used publicity to keep the public informed and to encourage public participation. Every Council needs to tell the public about the services it provides. Increasingly, local authorities see this task as an essential part of providing services. Good, effective publicity aimed to improve public awareness of a Council's activities is, in the words of the Government, to be welcomed.
- (b) Publicity is, however, a sensitive matter in any political environment because of the impact it can have. Expenditure on publicity can be significant. It is essential, therefore, to ensure that local authority decisions on publicity are properly made in accordance with clear principles of good practice. The Government has issued a Code of Recommended Practice on Local Authority Publicity. The purpose of the Code is to set out such principles. The Code affects the conventions that should apply to all publicity at public expense and which traditionally have applied in both central and local government. The Code is issued under the provisions of the Local Government Act 1986 as amended by the Local Government Act 1988 which provides for the Secretary of State to issue Codes of Recommended Practice as regards the content, style, distribution and cost of local authority publicity, and such other matters as they think appropriate. That section requires that all local authorities shall have regard to the provisions of any such Code in coming to any decision on publicity. All Members are specifically bound to observe the publicity Code by the Code of Conduct.
- (c) There is a separate Protocol for Official Press Releases set out in Part 5 of the Constitution and that should be read in conjunction with this Protocol, along with any relevant internal communications guidance documents.

## 11. **Involvement of Local Councillors**

- (a) It is essential that Members should be fully informed about matters on which they may be required to make decisions or which affect their electoral divisions.
- (b) It is the duty of each Business Unit Head and Executive Member to ensure that all relevant staff are aware of the need to keep local Members informed and that the timing of such information allows Members to contribute to those decisions. Local Members shall also be kept informed about matters affecting their divisions during the formative stages of the policy development and discussion.

Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Electoral Division or Divisions affected should as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Local Council Members should be notified at the outset of the exercise. More generally, Officers should consider whether other policy or briefing papers, or other topics being discussed with an Executive Member, should be discussed with relevant Local Council Members.

- (c) Whenever the Council undertakes any form of consultative exercise in a particular locality, the local Members should be notified at the outset of the exercise.

## 12. **Redress**

- (a) If a Member considers that they have not been treated properly, and in accordance with these Protocols by an Officer they should first try to resolve the matter through direct discussion with the Officer.
- (b) The Member may raise it with the Officer's line manager or Business Unit Head if they fail to resolve the matter through such discussion. A Member may raise the issue with the Chief Executive Officer if it remains unresolved. Where appropriate, disciplinary action may be taken against an Officer.
- (c) Similarly, if an Officer feels that they have not been treated properly, and in accordance with these Protocols, by a Member and they feel unable to resolve the matter directly with the Member concerned, the Officer should raise the issue with the appropriate Business Unit Head. In such circumstances the Business Unit Head will take such action as is appropriate, if necessary, by approaching the party Group Leader or the Monitoring Officer. The Business Unit Head will inform the Chief Executive Officer if the Party Group Leader becomes involved, and in other cases, where appropriate. Where appropriate the Monitoring Officer will advise the Member concerned about the provisions of the Code of Conduct so far as they relate to this Protocol.

13. **Arbitration**

When necessary, the Monitoring Officer will arbitrate on the interpretation of this Protocol following consultation with the Chair of the Standards and Governance Committee, the Independent Person for standards and the Chief Executive Officer.