

Part 7, Section 6

Protocol and Member/Officer Relations (Current)

1. INTRODUCTION

- 1.1 The purpose of this protocol is to guide Members and Officers on their relations with one another. The document has been adopted to reflect the specific arrangements in Lancaster City Council, and is based on the Council's new Constitution and the anticipation of how these new arrangements will operate.
- 1.2 Given the variety and complexity of such relations, this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise.

2. ROLE OF MEMBERS AND OFFICERS

- 2.1 The protocol 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 of local government and they therefore demand very high standards of personal conduct.
- 2.2 Both Councillors and Officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors 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 Councillors and the Council and to carry out the Council's work under the direction and control of the Council and Cabinet, their Committees, and also Overview and Scrutiny.
- 2.3 Mutual respect between Councillors and Officers 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."
- 2.4 A relevant extract from the current Members' Code of Conduct is re-produced below:

"2 A member must –

- (a) promote equality by not discriminating unlawfully against any person;
- (b) treat others with respect; and
- (c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the Authority.

6 (1) A member must when reaching decisions –

- (a) have regard to any relevant advice provided to him/her by –
 - (i) the Authority's Chief Finance Officer acting in pursuance of his/her duties under Section 114 of the Local Government Finance Act 1988; and
 - (ii) the Authority's Monitoring Officer acting in pursuance of his/her duties under Section 5(2) of the Local Government and Housing Act 1989;"

2.5 The City Council's new Constitution sets out the clear distinction between the roles of Members and Officers:

- The Council is responsible for setting policies, service and performance targets and the Cabinet, Regulatory Committees and Overview and Scrutiny for ensuring that they are delivered. They are accountable to the electorate for the delivery of policies and services.
- Officers are accountable to the Cabinet, Overview and Scrutiny and Committees for the implementation of policies and the delivery of services. Members should not get involved in the day to day management of services. Equally, Officers should not get involved in politics.

Officers are responsible for advising Council, Cabinet, Overview and Scrutiny and Committees on policy and its implementation. They have a duty to give impartial advice to all Members and are accountable to the whole Council. Exceptions to this are set out elsewhere in this Protocol.

2.6 The guidelines set out broad boundaries between Members and Officers. There is an acceptance that Officers are responsible for the implementation of policies and delivery of services in the manner that they consider is most appropriate given their managerial and professional expertise. Members would not be expected to be involved in the detail of implementation, but can expect reports on progress, and in certain circumstances, at Overview and Scrutiny meetings, can require Chief Officers to account for their decisions.

2.7 It is appropriate, however, for Members to propose initiatives and ideas about how things can be done better. It is essential that existing ways of doing things are challenged and reviewed. This needs to be done in a professional and constructive environment. The Constitution sets out the procedures for both the Cabinet and Overview and Scrutiny to review existing policies and bring forward new policy initiatives. The procedural notes also set out the process for Officer involvement with the Cabinet, the Regulatory Committees and the Overview and Scrutiny.

3. OFFICER ADVICE TO GROUPS OF MEMBERS

3.1 It is common practice for political groups to give preliminary consideration to matters of Council business in advance of such matters being considered. As an example the Council's four-month Forward Plan will identify the Key Decisions that the Cabinet will be considering in that time. Individual Members and/or groups of Members may properly call upon Officers to support and provide factual advice to their deliberations. Briefing of political groups should only be undertaken by Chief Officers or with the approval of the Chief Officer.

3.2 Certain points must, however, be clearly understood by all those participating in this type of process, Members and Officers alike. In particular:

- (a) Officer support in these circumstances 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 a 'political' nature.
- (b) Similarly, where Officers provide information and advice to a group of Members meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to Committees the Cabinet or Overview and Scrutiny meeting when the matter in question is considered.

3.3 Officers must respect the confidentiality of any group discussions at which they are present in the sense that they should not relay the content of any such discussion to another group of Members.

3.4 Any particular cases of difficulty or uncertainty in this area of Officer advice to groups of Members should be raised with the Chief Executive or, in his absence, the Council's Monitoring Officer, who will discuss them with the relevant Group Leader(s).

4. **OFFICER/CABINET RELATIONSHIPS**

4.1 It is clearly important that there should be a close working relationship between Cabinet Members and Committees including their Chairmen and the relevant Chief Officers. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question an Officer's ability to deal impartially with other Members.

4.2 Whilst the Cabinet Leader and Committee Chairs will routinely be consulted as part of the process of drawing up agenda items for a forthcoming meeting, it must be recognised that in some situations an Officer will consider it their duty to submit a report on a particular matter. In these circumstances, an Officer will always be fully responsible for the contents of any report submitted in his/her name. Similarly, a Member will also be fully responsible for that part of any report submitted in his/her name. Any issues arising between a Member and an Officer in this area should be referred to the Chief Executive for his resolution. Where individual Members wish to place an item on a Cabinet agenda, they should notify the Chief Executive in accordance with Part 4 Section 4 of the Constitution.

4.3 In relation to action between meetings, it is important to remember that the Council's Constitution allows not only for decisions (relating to the discharge of any of the Council's functions) to be taken by the Cabinet, other Committees of Council or an Officer, but also allows for an individual Cabinet Member to take a non-key decision.

4.4 Finally, it must be remembered that Officers within a Service are accountable to their Corporate Director and/or Service Head and that whilst Officers should always seek to assist any Member, they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Corporate Director or Service Head. Officers should also refer to Part 3 (Responsibility for Functions) and Part 5, Section 2 (Officers' Code of Conduct) in the Council's new Constitution for clarification about the bounds of their responsibility.

5. **SUPPORT SERVICES TO MEMBERS AND PARTY GROUPS**

5.1 Previously, the only basis on which the Council could lawfully provide support services (e.g. stationery, typing, printing, e-mail, internet, photocopying, transport, etc.) to Members is to assist them in discharging their role as Members of the Council. However the new Code of Conduct does allow limited private use of Council resources by Members provided that when using or authorising the use by others of the resources they must -

- (i) act in accordance with the Authority's requirements; and
- (ii) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the Authority or of the office to which the Member has been elected or appointed.

Any uncertainty about compliance with these requirements should be referred to the Council's Monitoring Officer for determination.

5.2 The Members' Services Section in Democratic Services should be the first point of contact in all aspects relating to Member support.

6. MEMBERS' ACCESS TO INFORMATION AND TO COUNCIL DOCUMENTS

6.1 Members are free to approach the appropriate Service to provide them with such information, explanation and advice 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 Service's activities to a request for specific information on behalf of a constituent. Such approaches should be directed to the Service Head or nominated representative. If Members wish to visit offices, they should contact the Service Head to make arrangements whenever possible.

6.2 With respect to the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law. Guidance is also given in Part 4 Section 2 of the new Constitution.

6.3 Members have a statutory right to inspect any Council document which contains material relating to any business which is to be transacted at a Council, Cabinet, Regulatory Committee or Overview and Scrutiny meeting. This right applies irrespective of whether the Member is a Member of the Cabinet, Regulatory Committee or Overview and Scrutiny 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 or part of items which may appear on the 'exempt' agenda for meetings. The items in question are those which contain exempt information.

6.4 The common law right of Members is much broader and is based on the principle that any Member has a *prima facie* right to inspect Council documents so far as his/her access to the documents is reasonably necessary to enable the Member properly to perform his/her duties as a Member of the Council. This principle is commonly referred to as the "need to know" principle.

6.5 The exercise of this common law right depends, therefore, upon the Member's ability to demonstrate that they has 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". The particular Service Head who holds the document in question must initially determine this question. In the event of dispute, the question falls to be determined by the Council's Monitoring Officer.

6.6 In some circumstances (eg a Cabinet Member wishing to inspect documents relating to the functions of the Cabinet) a Member's "need to know" will normally be presumed. In other circumstances (eg a Member wishing to inspect documents which contain personal information about third parties) a Member will normally be expected to justify the request in specific terms.

6.7 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.

6.8 Further and more detailed advice regarding Members' rights to inspect Council documents may be obtained from the Monitoring Officer.

- 6.9 Finally, any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, ie in connection with proper performance of the Member's duties as a Member of the Council. This point is emphasised in the Members' Code of Conduct in the following terms:

"A member must not disclose information given to him/her in confidence by anyone, or information acquired which they believes is of a confidential nature, without the consent of a person authorised to give it, or unless they is required by law to do so."

7. **CORRESPONDENCE**

- 7.1 Correspondence between an individual Member and an Officer should not normally be copied (by the Officer) to any other Member. Where exceptionally it is necessary to copy the correspondence to another Member, this should be made clear to the original Member.
- 7.2 Official letters on behalf of the Council should normally be sent out over the name of the appropriate Officer, rather than over the name of a Member. It may be appropriate in certain circumstances (eg representations to a Government Minister) for a letter to appear over the name of a Member, but this should be the exception rather than the norm. Letters which, for example, create obligations or give instructions on behalf of the Council should never be sent out over the name of a Member.

8. **INVOLVEMENT OF WARD COUNCILLORS**

- 8.1 Whenever a public meeting is organised either by the Council or where the Council has been invited to attend, to consider a local issue, all the Members representing the Ward or Wards 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 Ward Members should be notified at the outset of the exercise. In addition, whenever significant Council organised events or works are taking place in a locality, all the Members representing the ward or wards should as a matter of course be notified.

9. **MEETINGS WITH THIRD PARTIES**

On occasions, Members may be approached by individuals or companies who have proposals affecting the area or functions of the Council, and which they wish to discuss with Members. Members are reminded that, as individual Members, they cannot commit the Council to any contract or other agreement or course of action. Members are advised to make this clear to any third party with which they may have contact. Should Members be asked to attend a meeting with third parties, they are recommended to arrange for the meeting to take place at Council offices and with a relevant officer present. This will enable the officer to explain to the third party the proper decision making process, and will protect Members against any subsequent claim by the third party. Normal routine activities are not intended to be subject to this recommendation.

10. **MEDIA RELATIONS**

- 10.1 The Council has agreed Press and Media Guidelines which set out the Council's procedures for dealing with the press and media. The guidelines are subject to review from time to time.

11. **ARBITRATION**

- 11.1 The Protocol is intended to act as a guide for both Members and Officers. The Corporate Director and/or Service Head should deal with difficulties that arise in the first instance with the Member(s) concerned. The Monitoring Officer and then the Chief Executive should then consider any continuing difficulties.
- 11.2 Serious difficulties or breakdowns in relations that cannot be resolved through the above route should be referred to the Standards Committee for determination in accordance with the protocol. This will be very much a last resort. Every effort should be made to resolve difficulties at any early stage.

12. **REVIEW OF PROTOCOL**

- 12.1 The protocol is intended to provide Members and Officers with guidelines to determine their roles and their relations with each other.
- 11.2 It is intended to be a “live” document and will be reviewed from time to time to reflect changing circumstances. The Standards Committee is the lead Committee.

Members or Officers with queries about the Protocol should contact the Council’s Monitoring Officer.