

Part 7, Section 6

Protocol on Member/Officer Relations (Draft)

1. INTRODUCTION

- 1.1 The purpose of this protocol is to guide Members and Officers in their relations with one another, to define their respective roles and to provide guidance for dealing with particular issues that may most commonly arise or cause concern.
- 1.2 However, given the variety and complexity of such relations, this protocol does not seek to be either prescriptive or exhaustive. It is hoped that the general approach set out in the protocol will serve as a guide in dealing with other issues that may not be specifically covered.
- 1.3 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. ROLE OF MEMBERS AND OFFICERS

- 2.1 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 as a whole, and they are accountable to the Chief Executive. 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 and Cabinet, and the various Committees.
- 2.2 The Council's Constitution sets out the clear distinction between the roles of Members and Officers. Members will perform roles on the Cabinet, and on the Regulatory and Overview and Scrutiny and other Committees, in addition to sitting as members of the full Council. They may also represent the Council on outside bodies. Officers are employed by and serve the whole Council, and are accountable to the Chief Executive. They provide support to the executive, scrutiny and regulatory functions of the Council, providing impartial advice and implementing the decisions of the Council, the Cabinet and Committees. They may also make decisions under powers delegated to them.
- 2.3 Members should not get involved in the day to day operational management of services. Equally, Officers should not get involved in politics.
- 2.4 Officers are responsible for advising on and implementing policies, and for the 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.
- 2.5 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 rules also set out the process for Officer involvement with the Cabinet, the Regulatory Committees and the Overview and Scrutiny.

2.6 Mutual respect between Members and Officers is essential to good local government. It is important in all dealings between Members and Officers that both should observe reasonable and consistent standards of courtesy and that neither party should seek to take advantage of their position. Close personal familiarity between individual Members and Officers can damage this relationship and prove embarrassing to other Members and Officers.

2.7 The general obligations in the Members' Code of Conduct include a requirement to treat others with respect, and not to do anything which compromises or is likely to compromise the impartiality of those who work for or on behalf of the authority. There is also a requirement for Members in making decisions to have regard to any advice provided by the Council's Section 151 Officer and the Monitoring Officer.

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. The support provided by Officers can take many forms, ranging from a briefing meeting prior to a committee meeting, to a presentation to a full group meeting. Briefing of political groups should only be undertaken by the Chief Executive, Corporate Directors or Service Heads, or with the approval of the Chief Executive.

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. Officers are not expected to be present at meetings, or parts of meetings, where matters of political business are to be discussed.

(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 the Cabinet, Overview and Scrutiny or other Committee 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/MEMBER RELATIONSHIPS

4.1 It is clearly important that there should be a close working relationship between Cabinet members and Committee members, 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 his/her 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 It must be remembered that Officers within a Service are accountable to their Corporate Director and/or Service Head, and ultimately to the Chief Executive, 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 7, Section 1 (Officers' Code of Conduct) in the Council's Constitution for clarification about the bounds of their responsibility.

5. **UNDUE PRESSURE**

5.1 A Member should not apply undue pressure on an Officer to do anything which he/she is not empowered to do, or which is against the Officer's professional judgement, or to undertake work outside normal duties or normal hours.

5.2 Similarly, an Officer must not seek to influence an individual Member to make a decision in his/her favour, nor raise personal matters relating to his/her job, nor make claims or allegations about other employees, except in accordance with any agreed Council procedure or in accordance with law. Members who receive any such approach from an Officer should advise the Chief Executive immediately.

6. **CRITICISM / COMPLAINTS**

6.1 It is important that there should be mutual courtesy between members and officers.

6.2 Members and officers should not criticise or undermine respect for each other at Council meetings or at any other meeting they attend in their capacity as a Member or officer, or in any other public forum.

6.3 Members should not raise matters relating to the conduct or capability of an individual officer or officers collectively at meetings or in any other public forum. Any such complaints should be made to the Chief Executive.

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

7.1 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 was to assist them in discharging their role as Members of the Council. However the current 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 reasonable requirements; and
- (ii) ensure that such resources are not used improperly for political purposes (including party political purposes)

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

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

8. MEMBERS' ACCESS TO INFORMATION AND TO COUNCIL DOCUMENTS

- 8.1 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 officers, they should contact the Service Head to make arrangements whenever possible.

- 8.2 With respect to the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law.

- 8.3 Under Section 100F of the Local Government Act 1972, any Member may inspect any document in the possession or control of the Council which contains material relating to any business to be transacted at a meeting of the Council, Cabinet, a Committee or Sub-Committee. This right applies irrespective of whether the Member is a member of the relevant committee, and extends not only to reports but also to background papers.

However, the right does not apply if a document discloses "exempt" information as defined in Schedule 12A of the Local Government Act 1972, unless the information falls within paragraph 3 (the financial and business affairs of any particular person), except to the extent that it relates to any terms proposed by or to the authority in the course of negotiations for a contract, or within paragraph 6 (that the authority proposes to give a notice or order under any enactment, by virtue of which conditions or requirements are imposed on a person). These exceptions mean that a Member's right of access to information under the Local Government Act 1972 is slightly wider than the public right under that Act.

- 8.4 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 to carry out his/her duties as a member. This is referred to as the "need to know" principle. If a Member is a member of Cabinet or a committee, then he/she has the right to inspect documents relating to the business of Cabinet or the committee. If a Member is not a member of the relevant Committee, then he/she has to demonstrate why sight of the document is necessary to enable the performance of his/her duties as a member. This could be by reference to the role as ward member. Members have no right to a "roving commission" to examine documents of the Council. Mere curiosity is not sufficient. If the Member's motive for seeing the documents is indirect, improper or ulterior, then there would be no right of access at common law.

- 8.5 A Member has the same rights of access to information under the Freedom of Information Act 2000 as any member of the public. A request must be in writing and describe specifically the information requested. The exemptions set out in the Act would be applied whoever is requesting the information. Once information has been made available in response to a Freedom of Information request, it becomes public.
- 8.6 From a procedural point of view, if a Member makes a request for information that is not routine, the request should be made to the relevant Service Head, who will consider first whether all the information would be made available as a matter of course to a member of the public making a similar request. If so, the information will be provided to the Member.
- 8.7 If the request is such that the information would not automatically be provided to a member of the public, the Service Head will consider whether the information can be provided under Section 100F of the Local Government Act 1972 or under the common law “need to know”. The Service Head should consult with the relevant Corporate Director, and should seek advice from the Monitoring Officer. The final determination as to whether there is a “need to know” will be made by the Monitoring Officer. The Overview and Scrutiny Committee may hold the Monitoring Officer to account in accordance with Rule 14 of the Overview and Scrutiny Procedure Rules.
- 8.8 If neither Section 100F nor the “need to know” are met, then the request will be dealt with as a Freedom of Information Act request, but without the need for the Member to make a specific FOI request. The FOI request will be dealt with in the normal way with advice from Legal Services. This may result in the information being provided in part, with an exemption applying to the remainder, or the request being refused in its entirety as a result of an exemption. The Member will be informed that the request has been considered under the Freedom of Information Act and that there is a right of internal review which will be carried out by the Monitoring Officer. Following such a review, the Member will be advised of the right to pursue the matter with the Information Commissioner.
- 8.9 Any information provided under the Freedom of Information Act can be made public by the Member. Information provided under the “need to know” will be provided with the caveat that it is provided to the Member in his/her capacity as member, and is only to be used for the purpose of exercising his/her functions, and should not be made public.
- 8.10 The Code of Conduct provides that a Member must not disclose information given to the Member in confidence by anyone, or information which the Member believes or ought reasonably to be aware is of a confidential nature except where
- the Member has the consent of a person authorised to give it;
 - the Member is required by law to do so;
 - the disclosure is made to a third party for the purposes 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 in the public interest and made in good faith and in compliance with the reasonable requirements of the authority. These are set out in Part 7 Section 3 of the Constitution.

9. CORRESPONDENCE

- 9.1 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.

9.2 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.

10. INVOLVEMENT OF WARD COUNCILLORS

10.1 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 or other activity are taking place in a locality, all the Members representing the ward or wards should as a matter of course be notified. Ward Members should be copied into correspondence relating to particular ward issues, save where the correspondence is confidential and/or includes personal information about a third party.

11. MEETINGS WITH THIRD PARTIES

11.1 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.

11.2 More detailed guidance about meetings relating to planning issues is set out in the Protocol on Planning in Part 7 Section 5 of the Constitution

12.. MEDIA RELATIONS

12.1 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, and can be found in Part 7 Section 7 of the Constitution.

13. ARBITRATION

13.1 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.

13.2 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.

14. **REVIEW OF PROTOCOL**

- 14.1 The protocol is intended to provide Members and Officers with guidelines to determine their roles and their relations with each other.
- 14.2 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.
- 14.3 Members or Officers with queries about the Protocol should contact the Council’s Monitoring Officer.