

Member/Officer Relations Protocol

(Including Guidance on Access to Information)

A INTRODUCTION

1. Following the adoption of the Code of Conduct for Members, the opportunity has been taken to produce the Protocol with regard to Member/Officer Relations. This protocol includes some general guidance on Access to Information.
2. Given the variety and complexity of Member and Officer relations, this Protocol does not seek to cover everything or be prescriptive in its application. General guidance is offered on some of the issues that most commonly arise or cause concern. It is hoped, therefore, that the approach which this Protocol adopts will serve as a guide to dealing with other issues that may arise from time to time.
3. This Protocol seeks to encourage best practice and to promote greater clarity and certainty between the various relationships. If Members are unsure about any matter, they should contact the Monitoring Officer for appropriate advice and assistance. If Officers are unsure about any matter, they should contact the Chief Executive the relevant Director, and/or the Monitoring Officer. If there is any disagreement in the interpretation of this Protocol, the opinion of the Monitoring Officer will prevail.
4. Where appropriate, the Monitoring Officer will also consult the Chief Finance Officer, the Head of Paid Service and the Leaders of the Political Groups on any further general guidance. In addition, there will be a specific code for planning matters and it is anticipated that a national code will be introduced for Officers. Members and Officers should, therefore, keep abreast of such issues and respect each other and not do anything to bring the Council, their offices or professions into disrepute.

B GENERAL MEMBER/OFFICER ISSUES

5.1 The opportunity is taken to reinforce the following points:

- (i) In order to ensure the business of the Council is transacted in an effective and efficient manner and with a view to ensuring that the Council is not brought into disrepute, the key guiding principle for Members and Officers has to be one of “engendering mutual trust, openness, honesty, fairness, transparency and treating everyone with respect”;
- (ii) Officers, being employees of the Council, must act in the best interests of the Council, as a whole and must not give politically partisan advice. Anyone breaching this requirement will face disciplinary action;
- (iii) Political Group meetings, whilst they perform an important part in the preliminaries to Council decision-making, are not formal decision-making bodies of the Council and, as such, are not empowered, even under the new constitutional arrangements, 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 Members and Officers understand and interpret such decisions accordingly;
- (iv) Officer support to Political Groups must not extend beyond providing information and advice in relation to Council business (not Party politics/business);
- (v) It is good practice for Party political debates and decision-making to take place in the absence of Officers, in order to avoid any suspicion of impropriety or misunderstanding;
- (vi) Officers must respect the confidentiality of any Political Group discussions; and
- (vii) any breach of this part of the Protocol by an Officer must be brought to the attention of the Head of Paid Service and/or the Monitoring Officer for consideration.

Legal and External Audit Considerations

- 5.2 Members of the Council do not, as elected Members, have any special immunity from civil or criminal wrongs that they may commit against fellow Members, Officers or members of the public. Members must abide by the Code of Conduct for Members and ensure they do not, for example, slander or libel another person. During the course of their normal duties for the Council, Members will, therefore, only have a qualified (not absolute) protection against prosecution or civil action.
- 5.3 Members must also not pressurise Officers to change their professional opinions on any Council business matter or do anything that compromises, or which is likely to compromise, the impartiality of Officers or those who work for, or on behalf of the Council. It is also imperative that Members are clear about their roles and the roles of Officers, so as to avoid getting inappropriately involved in, for example, the internal office management, discipline and/or other employment related issues, as the actions of the Member(s) may be held to be the actions of the Council, as an “employer”.

Standards

- 5.4 Any member of the public (including Members and Officers) can complain to the Council’s Standards Committee against an alleged breach of the Code of Conduct for Members and/or bring private civil litigation proceedings against an elected Member. The External Auditor can also take legal action against an elected Member and the Council, as a whole, for any breaches of law.

Public Relations Issues

- 5.5 The Council’s Communications Section are responsible for dealing with the press and other media organisations on behalf of the Council. It is important, therefore, that all official communication relating to the Council (but not party political or private matters) is dealt with by this Section, so as to ensure the proactive, effective and efficient management of the Council’s public image, relations and interface.

C SPECIFIC POINTS ON MEMBER/OFFICER RELATIONS

- 6.1 The relationship between Members and Officers generally is characterised by mutual trust, respect and courtesy. These are essential for good local government and serve to enhance local democracy.
- 6.2 Close personal familiarity between individual Members and Officers can damage professional relationships and can prove embarrassing to other Members and Officers. Situations should be avoided, therefore, that could give rise to suspicion and/or appearance of improper conduct of behaviour. This includes excessive socialising between Members and Officers.
- 6.3 Members shall use the Council email address provided for that Member when acting in an official capacity as a Member.

Employer/Employee Issues

- 6.4 Any dealing between Members and Officers should, therefore, be conducted with mutual trust, respect and courtesy, and neither party should seek to take an unfair advantage. In particular, Members should recognise and pay due regard to their role as an employer in their dealings with Officers, as Officers could use inappropriate behaviour and conduct of Members in bringing employment cases against the Council. In particular, it is quite proper for a Member to make written/oral representations about a constituent employee to the Chief Executive or the relevant Director, but the Member should avoid taking a proactive part to represent or in any other way advocate on behalf of any such employee in any disciplinary procedures brought by the Council against any such employee.
- 6.5 Members must, in particular, guard against putting inappropriate pressure on junior officers and must ensure that all communication between them (including written communication) does not bring the Council into disrepute, cause any embarrassment to them, or lead to the breakdown of mutual trust, respect and courtesy in Member/Officer relations.
- 6.6 In seeking advice and support, Members should have due regard to the seniority of the Officer with whom they are dealing and recognise that, whilst those Officers owe an overriding duty to the

Council as a whole, such duties are first expressed to their respective line managers and not to any individual Member. For this reason, Members should not give direct instructions to staff.

Equality Issues

- 6.7 The Council has statutory duties with regard to equality issues and in accordance with the Code of Conduct for Members, Members must also promote equality by not discriminating against others. Members and Officers shall not, therefore, by their behaviour or speech act discriminatorily with regard to, for example, a person's gender, race, disability, religion, ethnicity, nationality or sexual orientation. Such principles will apply to the implementation of personnel policies, recruitment and promotion as they apply to day to day dealings with fellow human beings.

Officer Conduct or Capability Issues

- 6.8 Members should not raise matters relating to the conduct or capability of an Officer (or of Officers, collectively) at meetings held in public or before the Press, as Officers have no means of responding to the same in public. If Members feels that they have not been treated with the proper mutual trust, respect or courtesy or has any concern about the conduct or capability of an Officer, they should raise the matter, in private, with the relevant Officer and, if necessary, the Chief Executive or the relevant Director. Any concerns with regard to a Director should be discussed in private with the Chief Executive.
- 6.9 Members will be in breach of the Code of Conduct for Members if they require any Officer to:
- (a) change any professional advice; or
 - (b) take any action which the Officer considers to be unlawful or illegal or which could amount to maladministration or breach any relevant Codes of Conduct (including professional codes of conduct).

Monitoring Officer/Chief Finance Officer Consultation

- 6.10 Members are required to consult with the Monitoring Officer and the Chief Finance Officer over any legality, maladministration,

financial impropriety, or probity issues or where they have any doubt as to whether particular decisions are or were likely to be contrary to the Council's policy framework, the budget or the law. Inappropriate or late consultation will not satisfy the need to consult those Officers at the relevant time.

Political Groups

- 6.11 Members of the Executive, Scrutiny and Regulatory Committees shall, at all times, respect the political impartiality of Officers and must not expect or encourage Officers to give a political view on any matter.
- 6.12 For the avoidance of doubt, it must be recognised by all that, in discharging their duties, Officers serve the Council, as a whole, and not exclusively any Political Group, combination of groups, or any individual Members.
- 6.13 Officers may properly be called upon to support and contribute to the deliberations of Political Groups but they must at all times, maintain political neutrality. This applies, in particular, to Politically Restricted Officers, who are governed by the Local Government and Housing Act 1989. All Officers must, in their dealings with Political Groups and individual Members, treat them in a fair and even handed manner.
- 6.14 Any request for advice given to a Political Group or Member will be treated with the strictest of confidence by the Officers concerned and will not be accessible to any other Political Group(s). Factual information upon which any advice is based will, if requested, be available to all Political Groups.
- 6.15 When attendance is requested for Political Group meetings:
- (a) the request to attend a Political Group meeting must be made through and approved by the Chief Executive;
 - (b) such a request can only be made in relation to Council business; and
 - (c) Officers will:
 - (i) provide relevant factual advice and assistance;

- (ii) leave during the deliberations of the Political Group on the issue;
- (iii) respect the confidentiality of any Political Group decision at which they are present; and
- (iv) not champion, defend, action or spend any resources of the Council, or be held responsible for actioning in any way whatsoever the decisions of the Political Group(s), unless and until such decisions have become the formal decisions of the Council.

D SPECIFIC POINTS ON SCRUTINY ARRANGEMENTS

7.1 The Council's Scrutiny Committees will seek the advice of:

- (a) the Monitoring Officer, where they consider there is doubt about the legality of any Executive decision(s); or
- (b) the Chief Executive or relevant Directors, where they consider a decision (or decisions) of the Executive might be contrary to the Council's policy framework.

7.2 When considering calling Officers to give evidence to any Scrutiny Committee, the Chairman of that Committee shall not, without the consent of the Chief Executive, request the attendance of a junior officer.

7.3 When asking Officers to give evidence before any Scrutiny Committee, questions should be confined, so far as is possible, to questions of fact and explanation of any professional opinion relating to policies and decisions. Officers must respond to questions from Members in an open, constructive and helpful manner. Officers must not mislead or be economical with the truth.

7.4 Where they consider it appropriate, the Chairmen of the relevant Scrutiny Committee may ask the Chief Executive and Directors to explain any advice given by them to Members of the Executive and explain any decision(s) the Chief Executive or Directors may

have taken under the Scheme of Delegations to Officers. For the avoidance of doubt, any private or confidential matter must be dealt with in a private or confidential manner.

Unacceptable or Inappropriate Behaviour

- 7.5 The Relevant Chairman of the Scrutiny Committee shall ensure that Members of the Executive and Officers are not questioned (whether through the nature, tone or language used), in such a manner as could be considered by a reasonable person to be hostile, offensive, derogatory, harassing, bullying, victimising, discriminatory or otherwise unacceptable or inappropriate behaviour by a Member. Equally, it has to be recognised that such Committees have no jurisdiction to deal with matters, which are of a disciplinary nature for the relevant Political Group (in respect of Members) or the Chief Executive (in respect of Officers).
- 7.6 Any allegation of unacceptable or inappropriate behaviour by a Member, as set out in paragraph 7.5, will be reported to the Leader of the relevant Political Group for consideration, or a complaint may be made to the Monitoring Officer if the complaint related to a breach of the Members' Code of Conduct.

E ACCESS TO INFORMATION – 'Need to know'

Statutory provisions

- 8.1 The Local Government (Access to Information) Act 1985 (which is Section 100F of the Local Government Act 1972) was introduced to give additional rights to Elected Members. The Act was at pains to stress that these rights were in addition to those at common law.
- 8.2 Section 100F makes it clear that any document which is in the possession or under the control of the Council and contains material relating to any business to be transacted at a meeting of the Council, or a committee or a sub-committee of the Council, subject to confidentiality provisions, will be open to inspection by a Member of the Council.

8.3 Section 100F does not, however, go as far as the common law, vis-à-vis, the Committee Member. For non-Committee Members, their position is enhanced by section 100F. In both cases, however, if there appears to be confidential/exempt information, by virtue of the other parts of the Act, there is still the discretion for the relevant Proper Officer to withhold the confidential/exempt information.

8.4 It is also a matter of fact as to whether or not the information is 'in the possession or under the control of the Council'. The key issue to be determined is whether or not the information belongs to the Council or another person. If it belongs to another person, Officers will only release any confidential information, after an appropriate consent to release such information has been obtained from the relevant person. Officers will not, therefore, "hand over" their files to a Member, without the Officer being clear about the reasonableness of the request and the Officer's ability to share confidential information with a Member. If Officers are unsure about a request for information, they must discuss the same with their line manager and/or the Monitoring Officer.

8.5 Under the Local Government Act 2000 Executive arrangements and subject to important exceptions (see paragraph 8.6 below), any relevant document which -

- (a) is in the possession, or under the control, of the Executive; and
- (b) contains material relating to any business to be transacted at a public meeting .

will be available for inspection by Members of the Council. If, however, the meeting is a private one (including a key decision by the Executive) any relevant document will be available for inspection after the meeting or immediately after a decision has been taken.

8.6 The exceptions, to the above general requirement of paragraph 8.5, are that -

- (a) exempt information (under paragraphs 1, 2, 4, 5 and 7 of Part 1 of Schedule 12A of the Local Government Act 1972

– see paragraph 8.9 below) would be disclosed; or

(b) the document (or part of it) would involve the disclosure of advice provided by a political adviser or assistant.

8.7 In addition to the above and subject to important exceptions (see paragraph 8.8 below), a Scrutiny Committee Member will be entitled to a copy of the relevant document which -

(a) is in the possession or under the control of the Executive, its Committee or the Portfolio Holder;

(b) contains material relating to:

(i) any business that has been transacted at a meeting of the Executive or its Committees

(ii) any decision taken by a portfolio holder.

(iii)

(iv) any decision made by an officer under the Executive arrangements

8.8 The exceptions to the above general requirements of paragraph 16 are that:

(a) such a document (or part of it) contains exempt or confidential information, unless it is relevant to any action or decision that that Member is reviewing or scrutinising or any review contained in any programme of work of such a sub committee; or

(b) the document (or part of it) would involve the disclosure of advice provided by a political adviser or assistant.

8.9 For the purposes of completeness, the Access to Information Procedure Rules (set out in Part 4 of the Constitution) provides an extract of the statutory exempt information paragraphs, which permit reports to be considered in private. As a guiding principle and in keeping with good open government, Members of the Executive, Chairmen of relevant Committees and Officers will ensure that, so far as is possible and permitted by law, reports are considered in public. If Members or Officers have any concerns over whether a private report ought to be (or should

have been) considered in public, they should raise the matter, at the earliest opportunity, with the Chief Executive, Chairman of the Committee or the Monitoring Officer for a decision.

Common law principles

- 9.1 In addition to the statutory provisions, the common law right of members to access information is based on the principle that Members have a *prima facie* right to inspect Council documents *so far as access to the documents is reasonably necessary to enable Members properly to perform their duties as Members of the Council*. This principle is commonly referred to as the “need to know” principle.
- 9.2 This principle applies equally to Leaders of the Political Groups and, under common law principles, the courts have not determined that any Leader has an ‘automatic’ right to information. Accordingly, for the purpose of legal considerations, Leaders are treated as ordinary Members, if they wish to see Council documents; although they will, in most situations, be able to readily satisfy the ‘need to know’ requirements on the submission of reasonable information or by reasonable implication to substantiate the same. Leaders of Political Groups will, therefore, still have to demonstrate that their request is a proper and reasonable one and give adequate reasons for requiring the information.
- 9.3 In addition, it should be remembered that the access to information right will vary from Member to Member, which will arise at different times and, as such, a Member’s ‘need to know’ will be considered on a case by case basis and will not last indefinitely.
- 9.4 The above statements on the common law position are subject to additional safeguards to protect Council information; namely, if the motive of a Member requesting to see documents is indirect, improper or ulterior, this may be raised by the Council as a bar to the Member’s entitlement to inspect documents that are addressed to the Council. The entitlement of a relevant Committee Member to inspect documents of the Committee is a strong one and certainly stronger than that of a non-Member of the Committee. However, as indicated earlier, the rights of the former are not absolute, as it would still be open to the

Committee/Council to raise a bar to the exercise of such a right on the grounds of the Member's motives being improper, indirect or ulterior.

- 9.5 Furthermore, the law does not entitle a Councillor to go on a "roving or a fishing expedition" or to receive every working document that Officers have access to or may have had access to in the past. Councillors will only be entitled to see those documents that are relevant background papers mentioned in any report received by the (Sub-) Committee or other reasonable requests for relevant papers in order to comply with their 'right to know'. Clearly, any confidentiality attached to the same remains and the same must be kept confidential and not released to any other person. This includes, of course, members of the press. If the breach is serious enough, the person whose confidence has been destroyed may also bring a civil action against the Member (and/or the Council) for damages.
- 9.6 A balance has, therefore, to be struck between a Member's right to know and an individual's/business/organisation's need for confidentiality, as defined in the Local Government Act 1972 S.100A; especially where the individual/business/organisation has requested confidentiality of the information provided to Council Officers. If the cost of providing the information exceeds the limit for the purposes of declining a request under the Freedom of Information Act 2000, the request will be refused.
- 9.7 If any confidential information is contained in public documents then it will, of course, lose its confidentiality. Equally, draft working documents are subject to change and it is reasonable for those documents to be withheld until the matter is formally reported to the relevant committee/decision maker.
- 9.8 The Freedom of Information Act 2000 brings additional rights, responsibilities and safeguards regarding confidential information. The Act became fully operational in January 2005. A "Publication Scheme" has been produced by the Council.

G COUNCIL PUBLICITY

10. During the election period, special rules apply with regard to local authority publicity. For ease of reference, an extract from "The

Code of Recommended Practice on Local Authority Publicity” appears at Annex A to this Protocol. Members and Officers should also refer to the Council’s Media Protocol.

H SANCTIONS FOR BREACH OF THE CODE OF CONDUCT FOR MEMBERS AND THIS GENERAL GUIDANCE

11. Complaints against any breach of the Code of Conduct for Members must be referred to the Monitoring Officer. Complaints against any breach of this Protocol by a Member may be referred to the Standards Committee. Complaints against any breach of this Protocol by an Officer may be referred to the Chief Executive, the relevant Director or the Monitoring Officer.

**Relevant extracts from the
CODE OF RECOMMENDED PRACTICE ON
LOCAL AUTHORITY PUBLICITY**

Care during period of heightened sensitivity

Local authorities should pay particular regard to legislation governing publicity during the period of heightened sensitivity before election and referendums- see paragraphs 7 and 9 of this code. It may be necessary to suspend the hosting of material produced by third parties, or to close public forums during this period to avoid breaching any legal restrictions.

During the period between the notice of an election and election itself, local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual Members or groups of Members. Publicity relating to individuals involved directly in the election should not be published by local authorities during this period unless expressly authorised or under statute. It is permissible for local authorities to publish factual information which identifies the names, wards and parties of candidates at elections.

In general, local authorities should not issue any publicity which seeks to influence voters. However this general principle is subject to any statutory provision which authorises expenditure being incurred on the publication of material designed to influence the public as to whether to support or oppose a question put as a referendum. It is acceptable to publish material relating to the subject matter of a referendum, for example to correct any factual inaccuracies which have appeared in publicity produced by third parties, so long as this is even-handed and objective and does not support or oppose any of the options which are the subject of the vote.