

## **Part 5C - Member/Officer Protocol**

### **1.0 Introduction**

- 1.1 The purpose of this Protocol is to guide Members and Officers of the Council in their relations with one another.
- 1.2 The primary responsibility for Members is to set policy as a Member of Council. Officers are responsible for implementing those policies.
- 1.3 Given the variety and complexity of such relations, the Protocol does not seek to be prescriptive and it may not cover all situations. However, it does seek to provide guidance on some of the issues that most commonly arise. The approach to these issues will serve as a guide to dealing with other issues. The protocol seeks to supplement and help to interpret but not to supplant the statutory provisions, members' Code of Conduct and other guidance, the provisions elsewhere in the Constitution, and the disciplinary code which applies to officers.
- 1.4 The Protocol also seeks to reflect the principles underlying the respective rules of conduct that apply to Members and Officers. Its purpose, therefore, is to enhance and maintain the integrity (real and perceived) of local government by seeking high standards of personal conduct.
- 1.5 Members and Officers depend on each other in carrying out the work of the Authority. Members are responsible to the electorate of East Herts and serve as long as their term of office lasts. All Members have responsibilities, as set out in the descriptions of their role; some Members have additional responsibilities, such as Chairman, Leader, Executive Members and Committee Chairman. However, all members have the same responsibilities and obligations in their relationships with officers and must be treated equally. Officers are responsible to the Council. Officers are responsible for giving full and impartial advice to the Council, as well as to individual Members, and to carry out

the Council's work under the direction and control of the Council and its various bodies.

- 1.6 Mutual respect between Members and Officers is essential to good local government. However, close personal familiarity between individual Members and Officers can damage this relationship and prove embarrassing to other Members and Officers.
- 1.7 The relationship has to function without compromising the ultimate responsibilities of Officers to the Council as a whole, and with due regard to such technical, financial, professional and legal advice that Officers can legitimately provide to Members. The Protocol seeks to set a framework that assists the working relationships between Members and Officers.

## **2.0 Roles of Members**

- 2.1 Members undertake many different roles. Broadly these are:
  - (a) Members express political values and support the policies of the party or group to which they belong (if any).
  - (b) Members represent their wards and are advocates for the constituents who live in the area.
  - (c) Members are involved in active partnerships with other organisations as community leaders.
  - (d) Members contribute to the decisions taken in full Council and in its various bodies on which they serve, as well as joint committees, outside bodies and partnership organisations.
  - (e) Members help develop and review policy and strategy.
  - (f) Members monitor and review policy implementation and service quality.

- (g) Members are involved in quasi-judicial work through their membership of regulatory committees.

### **3.0 Roles of Officers**

3.1 Briefly, Officers have the following main roles:

- (a) Managing and providing the services for which the Council has given them responsibility and being accountable for the efficiency and effectiveness of those services.
- (b) Providing advice to the Council and its various bodies and to individual Members in respect of the services provided.
- (c) Initiating policy proposals.
- (d) Implementing agreed policy.
- (e) Ensuring that the Council always acts in a lawful manner.

### **4.0 Respect and Courtesy**

4.1 For the effective conduct of Council business there must be mutual respect, trust and courtesy in all meetings and contacts, both formal and informal, between Members and Officers. This plays an important part in the Council's reputation and how it is seen in public. It is important that both Members and Officers remember their respective obligations to enhance the Council's reputation and to do what they can to avoid criticism of other Members, or other Officers, in public places.

4.2 Members should avoid making personal attacks on Officers and, in particular, avoid undermining respect for Officers in Council and Committee meetings or public forums. If a member is dissatisfied with the conduct of an officer, they should refer the matter to the relevant Head of Service who will carry out an investigation using the Council's agreed procedure. If a complaint relates to a Chief Officer or the Statutory Officers the matter should be referred to the Chief

Executive. If a complaint relates to the Chief Executive the matter should be referred to the Leader of the Council.

## **5.0 Undue Pressure**

- 5.1 It is important in any dealings between Members and Officers that neither should seek to take unfair advantage of their position.
- 5.2 In their dealings with Officers (especially junior Officers) Members need to be aware that it is easy for them to feel at a disadvantage.
- 5.3 A Member should not apply undue pressure on an Officer either to do anything that he is not empowered to do or to undertake work outside normal duties or outside normal hours. Particular care needs to be taken in connection with the use of Council property and services.
- 5.4 Similarly, an Officer must neither seek to use undue influence on an individual Member to make a decision in his/her favour, nor raise personal matters to do with their job, nor make claims or allegations about other Officers. (The Council has formal procedures for consultation, grievance and discipline, and Officers have the right to report possible wrongdoing under the Council's Whistleblowing Policy).

## **6.0 Familiarity**

- 6.1 Close personal familiarity between individual Members and Officers can damage the principle of mutual respect. It could also, intentionally or accidentally, lead to the passing of confidential information or information which should not properly be passed between them, such as personal details.
- 6.2 Such familiarity could also cause embarrassment to other Members and/or other Officers and even give rise to suspicions of favouritism.
- 6.3 Members should be aware of the need for a professional relationship with officers.

- 6.4 Any familial relations between a member and an officer must be declared to the Monitoring Officer as soon as it is known about. If the officer is about to be appointed, following a recruitment process, the Monitoring Officer must confirm in writing that the appointment is still acceptable.

## **7.0 Breach of Protocol**

- 7.1 If a Member considers that he has not been treated with proper respect or courtesy he may raise the issue with the Officer's line manager. If direct discussion with the line manager does not resolve the complaint it should be referred to the Head of Service responsible for the Officer concerned. Breach of the Protocol may give rise to disciplinary proceedings against an Officer if the circumstances warrant it.
- 7.2 If an Officer considers that a Member has contravened the protocol s/he should consult his/her line manager who will if necessary involve the Head of Service. In certain circumstances breach of the Protocol may also constitute a breach of the Members' Code of Conduct. If the breach is sufficiently serious this may warrant a formal reference to the Monitoring Officer as a complaint to be considered for potential investigation by the Standards Committee. Many complaints will be capable of informal resolution. The Monitoring Officer or the Chief Executive will assist in this process if necessary.

## **8.0 Provision of Advice and Information to Members**

- 8.1 Members are free to approach Officers of the Council to provide them with such information and advice as they may reasonably need in order to assist them in discharging their role as a Member of the Council. This can range from a request for general information about some aspect of the Council's activities to a request for specific information on behalf of a constituent.
- 8.2 Officers should always endeavour to respond to requests for information promptly and should in any event inform the Member if there is likely to be any appreciable delay in

dealing with an enquiry. As a minimum the timescale for responding to correspondence should be observed i.e. either a full response or, if this is not possible, an acknowledgement that fully explains what is happening within 5 working days of the receipt of the enquiry.

- 8.3 The legal rights of Members to inspect Council documents are covered partly by statute and partly by common law.
- 8.4 The Access to Information Procedure Rules in the Constitution explain the position with regard to access to papers relating to the business of a Council body.
- 8.5 The exercise of the common law right depends upon a Member's ability to demonstrate a "need to know". In this respect a Member has no right to "a roving commission" to examine any documents of the Council. Mere curiosity is not sufficient.
- 8.6 Members may be entitled under the Freedom of Information Act 2000 to receive information which falls outside their common law rights based on the "need to know". Officers are encouraged to supply documents to Members without the need for a formal FOI request if it is apparent from the Member's enquiry that any individual would be entitled to receive such documentation. The Council's Monitoring Officer will be able to advise on whether any request would fall within the Freedom of Information Act 2000.
- 8.7 The information sought by a Member should only be provided by the respective Service as long as it is within the limits of the Service's resources. For their part, Members should seek to act reasonably in the number and content of the requests they make.
- 8.8 It is important for Services and their staff to keep Members informed both about the major issues concerning the Council and, more specifically, about issues and events affecting the areas that they represent. Local Members should be informed about proposals that affect their wards and should also be invited to attend Council initiated events within their wards.

- 8.9 If a Member asks for specific information relating to the work of a particular Service, and it appears possible or likely that at a subsequent meeting an issue could be raised or question asked on the basis of the information provided, then the appropriate Executive Member or Committee Chairman concerned should be advised about the information provided.
- 8.10 Officers have to advise Members from time to time that a certain course of action cannot be carried out. Members sometimes assume that this is a case of Officers deliberately obstructing the wishes of politicians. Officers are employed to give unbiased professional advice even if it is not what Members want to hear. They do this as much for the protection of Members as for any other reason. However, the mark of an effective Officer is that if they do have to give negative advice, this will be accompanied by suggestions as to how Members might achieve some or all of their objectives in other ways. Such Officers are invaluable to any Council.
- 8.11 Reports
- 8.11.1 It is the responsibility of officers to ensure that their reports contain clear and evidence based advice upon the course of action which is recommended and the reasoning behind that. The report should lay out the relevant factors and examine the alternatives in an even handed way, even those options which may be unpopular.
- 8.11.2 If there are disagreements, all options should be available for discussion. Pressure should not be brought to bear upon Officers in an attempt to make them change their professional opinion.
- 8.11.3 Members can refuse officer recommendations and make their own amendments. Where an alternative is suggested the reasoning should be provided by the member with a clear and rational basis, and available to the public. For Executive reports, the Officer should always consult clearly with the Executive member in whose name the report is written.

8.11.4 In relation to action between meetings, it is important to remember that, whilst the Executive have delegated powers for executive functions, the law only allows for decisions which relate to the discharge of any of the Council's functions to be taken by a Committee, a Sub-Committee or an Officer. The law does not allow for such decisions to be taken by a Chairman or indeed by any other single Member

8.11.5 Finally, it must be remembered that Officers within a service are accountable to their Chief Officer and that whilst Officers should always seek to assist the Leader, a Portfolio Holder, Chairman (or indeed any Member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Chief Officer.

## **9.0 Operation of the Overview and Scrutiny Committee**

9.1 The Overview and Scrutiny Committee may require Officers and Members to attend and provide any information required to answer questions (other than those which he or she would be entitled to refuse to answer in a court of law). The Council may consider that this requirement should only apply to Chief Officers, Heads of Service, Service Managers and not to more junior staff (except with their agreement).

9.2 Members of the Overview and Scrutiny Committee must treat officers and independent witnesses appearing before them with respect and should explain the role and operation of the Committee, particularly in relation to future policy development, before asking questions of witnesses. Members should adopt an inquisitorial approach to questioning and may be firm and assertive, but should never be adversarial, rude or aggressive.

9.3 If officers are called to attend the O&S Committee they should provide all relevant information they possess and should never seek to withhold any matters from the O&S.

## 10.0 Confidentiality

10.1 Members should be aware of their data protection responsibility. The Council may disclose personal information to a Member which should only be used for the purposes of carrying out their duties.

10.2 Members must not disclose information given to him/her in confidence by anyone, or information acquired which he/she believes, or ought reasonably to be aware, is of a confidential nature, except where:

- he/she has the consent of a person authorised to give it;
- he/she is required by law to do so;
- the disclosure is made 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:
  - (a) reasonable and in the public interest; and
  - (b) made in good faith and in compliance with the reasonable requirements of the authority.

10.3 Confidential Committee papers (pink papers) are to be treated as confidential information unless the relevant Committee resolves not to exclude press and public. Members are reminded that the author of the report makes the initial decision as to whether or not the papers are to be treated as confidential. The decision as to whether they remain confidential is for the Committee. Other information may be confidential because to disclose it would be against the Council's or the public interest. Information may also be confidential because of the circumstances in which it was obtained.

10.4 Information and correspondence about an individual's private or business affairs will normally be confidential.

- 10.5 Officers should make it clear to Members if they are giving them confidential information. If a Member is not sure whether information is confidential, he or she should ask the relevant Officer, but treat the information as confidential in the meantime.
- 10.6 Any Council information provided to a Member must only be used by the Member in connection with the proper performance of the Member's duties as a Member of the Council.
- 10.7 If a Member receives confidential information and considers it should be disclosed to another person because it is reasonable and in the public interest to do so then he or she must first consult with the Monitoring Officer and shall not disclose the information without having regard to any advice given by that officer.

## **11.0 Safeguarding**

- 11.1 Members and officers must be cognisant of the councils safeguarding policy in their dealings with each other at all times and seek advice from the Council's Lead Safeguarding Officer.

## **12.0 Involvement of Ward Members**

- 12.1 Ward Members should be kept informed and consulted on relevant matters affecting their ward, i.e. on Planning, Licensing and other relevant matters. In the case of public meetings in a particular locality, the Ward Member will normally be invited to attend and could normally be expected to be consulted on any form or consultative exercise on local issues.
- 12.2 So far as decision making is concerned, however, Members remain accountable to the whole electorate of the District and must make a personal decision on matters which come before them, balancing the interests of the electorate as a whole, including those members of the public who did not vote for them.

### **13.0 Provision of Support Services to Members**

13.1 The only basis on which the Council can lawfully provide support services (e.g. stationery, word processing, printing, photocopying, transport, etc) to Members is to assist them in discharging their role as Members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes.

### **14.0 Correspondence**

14.1 Official letters on behalf of the Council should be sent in the name of the appropriate Officer, rather than in the name of a Member. There are circumstances where a letter sent in the name of a Member is perfectly appropriate, for example, in response to a letter of enquiry or complaint sent direct to that Member. Letters which, for example, create obligations or give instructions on behalf of the Council should never be sent out in the name of a Member.

14.2 When acting in an official capacity Members shall only use the Council email address provided for that Member when acting in an official capacity as a Member. The use of personal e-mail addresses or those of other authorities (for example town/county) is strictly prohibited as it exposes the council to significant risks under the General Data Protection Regulation (Regulation (EU) 2016/679)

### **15.0 Media**

15.1 Communication with the media can be an important part of a Member's workload. In general, Members provide comment and views while Officers provide factual information. If a Member is unsure about the circumstances of a particular issue they should contact the appropriate Head of Service concerned or ask the Communications Team to do so.

15.2 Members are reminded of the need to comply with the requirements of the Local Government Act 1986 (as amended) and the Code of Recommended Practice on

Local Authority Publicity which prohibit Councils from publishing any material which appears to be designed to affect public support for a political party. Publicity should not be used as a means to publicise individual Members, except where they are acting to represent the Council as a whole.

## **16.0 Ceremonial Events**

16.1 Ceremonial events would normally be led by the Chairman or the Vice-Chairman of the Council. Leaders of the political groups and local Members should be informed and, where possible and appropriate, invited to participate.

## **17.0 The Council's Role as Employer**

17.1 In their dealings with Officers, Members should recognise and have regard to the Council's role as employer. Members should be aware that Officers could rely on inappropriate behaviour of a Member in an employment case against the Council.

## **18.0 Political Activity**

18.1 There are a number of constraints that apply to an Officer who occupies a post that is designated as "politically restricted" under the terms of the Local Government and Housing Act 1989.

18.2 In summary, such Officers are prevented from:

- (a) being a Member of Parliament, European Parliament or local authority;
- (b) acting as an election agent or sub-agent for a candidate for election as a member of any the bodies referred to in (a);
- (c) being an officer of a political party or any branch of a political party or a member of any committee or sub-committee of such a party or branch, if his/her duties would be likely to require him/her to:

- (i) participate in the general management of the party or branch; or
  - (ii) act on behalf of the party or branch in dealings with persons other than members of the party;
- (d) canvassing on behalf of a political party or a candidate for election to any the bodies referred to in (1);
- (e) speaking to the public with the apparent intent of affecting public support for a political party; and
- (f) publishing any written or artistic work of which he is the author (or one of the authors) or acting in an editorial capacity in relation to such works, or to cause, authorise or permit any other person to publish such work or collection - if the work appears to be intended to affect public support for a political party.

18.3 It is common for party groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant decision making body. Officers may properly be called upon to support and contribute to such deliberations by party groups provided they maintain a stance which is politically impartial. Support may include a range of activities including briefings for Members relating to their roles e.g. Chairman. Officers should be required to give information and advice to political groups on Council business only and not on matters which are purely of a party political nature. Such advice should be available to all party groups and not solely to the majority group. It is important that the political neutrality of Officers is preserved and that group confidentiality is maintained by Officers.

18.4 Usually the only Officers involved in attending group meetings will be the Chief Executive, Directors and Heads of Service and they will generally leave the meeting after making their presentation and answering questions.

18.5 Officers are employed by the Council as a whole. They serve the Council and are responsible to the Chief Executive and their respective Heads of Service, and not to individual Members of the Council whatever office they might hold.

18.6 Both Members and Officers are subject to their own Codes of Conduct which can be found in the Constitution. This Protocol provides guidance on working relationships between Members and Officers. It is essential that both are familiar with the detailed obligations in their respective Codes of Conduct which will prevail in the event of any conflict between the Codes and this Protocol.

## **19.0 Sanctions**

19.1 Complaints about any breach of this Protocol by a Member may be referred to the Monitoring Officer. It should be noted that certain breaches may also amount to breaches of the Code of Conduct for Members.

19.2 Complaints about any breach of this protocol by an Officer may be referred to the Chief Executive or the relevant Head of Service.