

## Part 7: Member-Officer Protocol

### **A Protocol for Relationships between Members and Staff**

#### **1. Introduction**

1.1 Mutual trust and respect between members and officers is at the heart of a Council's good governance. They are essential if the partnership necessary for the effective running of a local authority is to succeed.

1.2 In order to ensure that partnership continues both members and officers may benefit from guidance and a mechanism to address concerns before they are allowed to grow. This protocol aims to:-

- promote trust, openness, fairness and honesty by establishing some ground rules;
- to define roles so as:
  - o to clarify responsibilities (i.e. who does what),
  - o to avoid conflict, and
  - o to prevent duplication or omission;
- to secure compliance with the law, codes of conduct and a council's own practices; and
- to lay down procedures for dealing with concerns by members or officers.

1.3 A protocol should be recognised both as a central element of a Council's corporate governance, and as a commitment to upholding standards of conduct in public life. It is one way of demonstrating to the public at large that local government is serious about protecting and enhancing its integrity and reputation.

#### **2. Principles**

2.1 Members and officers must at all times observe this protocol.

2.2 The protocol has been approved by the Council and the Ethics and Engagement Committee will monitor its operation.

2.3 The protocol seeks to maintain and enhance the integrity of local government which demands the highest standards of personal conduct.

2.4 Members and officers must always respect the roles and duties of each other. They must show respect in all their dealings by observing reasonable standards of courtesy, and by not seeking to take unfair advantage by virtue of their position.

- 2.5 Whilst members and officers are indispensable to one another, their responsibilities are distinct. Members are accountable to the electorate and serve only as long as their term of office lasts. Officers are accountable to the Council as a whole. Their job is to give advice to members (individually and collectively) and to carry out the Council's work under the direction of the Council.
- 2.6 The Council has adopted codes of conduct for both members and officers. Both represent best practice. The members' code follows the national code which in turn is based on the general principles governing members' conduct enshrined in law:
- Selflessness – serving only the public interest.
  - Integrity – not allowing this to be questioned.
  - Objectivity – taking decisions on merit.
  - Accountability – to the public; being open to scrutiny.
  - Openness – giving reasons for decisions.
  - Honesty - not behaving improperly.
  - Leadership – acting in a way which has public confidence.
- 2.7 These principles underpin this protocol. They are also reflected in the code of conduct for employees .
- 2.8 Some officers are also bound by the codes of their professional associations.
- 2.9 Breaches of this protocol by a member may result in a complaint to the Ethics and Engagement Committee if it appears the members' code has also been breached. Breaches of the protocol by an officer may lead to disciplinary action if it appears that there has been a breach of discipline.

### **3. The role of members**

- 3.1 Members have a number of roles and need to be alert to the potential for conflicts of interest which may arise between the roles. Where such conflicts are likely, members may wish to seek the advice of senior colleagues, the relevant senior officer(s), and/or the Monitoring Officer.
- 3.2 Collectively, members are the ultimate policymakers determining the core values of the Council and approving the authority's policy framework, strategic plans and budget.
- 3.3 Members represent the community, act as community leaders and promote the social, economic and environmental well-being of the community often in partnership with other agencies.
- 3.4 Every elected member represents the interests of, and is an advocate

for, their ward and individual constituents. They represent the Council in the ward, responds to the concerns of constituents, meets with partner agencies, and often serves on local bodies.

- 3.5 Some members have roles relating to their position as members of the Executive, scrutiny committees or other committees and sub-committees of the Council.
- 3.6 Members of the Executive can have individual delegated powers. They may determine matters within their portfolios, but implementation of their decisions is the responsibility of officers.
- 3.7 Members serving on scrutiny committees monitor the effectiveness of the Council's policies and services, develop policy proposals and examine community issues.
- 3.8 Members who serve on other committees and sub-committees collectively have delegated responsibilities, e.g. deciding quasi-judicial matters which by law are excluded from the remit of the Executive.
- 3.9 Some members may be appointed to represent the Council on local, regional or national bodies.
- 3.10 As politicians, members may express the values and aspirations of the party-political groups to which they belong, recognising that in their role as members they have a duty always to act in the public interest.
- 3.11 Members are not authorised to instruct officers other than:
  - through the formal decision-making process;
  - to request the provision of consumable resources provided by the Council for members' use;
  - where staff have been specifically allocated to give support to a member or group of members;
  - political assistants.
- 3.12 Members are not authorised to initiate or certify financial transactions, or to enter into a contract on behalf of the Council.
- 3.13 Members must not take action which is unlawful, financially improper or likely to amount to maladministration. Members have an obligation under their code of conduct to have regard, when reaching decisions, to any advice provided by the Monitoring Officer or the designated Finance Officer.
- 3.14 Members must respect the impartiality of officers and do nothing to compromise it, e.g. by insisting that an officer change their professional advice.
- 3.15 Members have a duty under their code of conduct:

- to promote equality by not discriminating unlawfully against any person, and
- to treat others with respect

3.16 Under the code, a member must not when acting as a member or in any other capacity:

- bring the Council or their position as a member into disrepute, or
- use their position as a member improperly to gain an advantage or disadvantage for themselves or any other person.

#### **4. The role of officers**

- 4.1 Officers are responsible for giving advice to members to enable them to fulfil their roles. In doing so, officers will take into account all available relevant factors.
- 4.2 Under the direction and control of the Council (including, as appropriate, the Executive, committees and sub-committees), officers manage and provide the Council's services within the framework of responsibilities delegated to them. This includes the effective management of employees and operational issues.
- 4.3 Officers have a duty to implement decisions of the Council, the Executive, committees and sub-committees which are lawful, and which have been properly approved in accordance with the requirements of the law and the Council's constitution, and duly minuted.
- 4.4 Officers have a contractual and legal duty to be impartial. They must not allow their professional judgement and advice to be influenced by their own personal views.
- 4.5 Officers must assist and advise all parts of the Council. They must always act to the best of their abilities in the best interests of the authority as expressed in the Council's formal decisions.
- 4.6 Officers must be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for members, the media or other sections of the public.
- 4.7 Officers have the right not to support members in any role other than that of member, and not to engage in actions incompatible with this protocol. In particular, there is a statutory limitation on officers' involvement in political activities.

## **5. The relationship between members and officers: general**

- 5.1 The conduct of members and officers should be such as to instil mutual confidence and trust.
- 5.2 The key elements are a recognition of and a respect for each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately.
- 5.3 Informal and collaborative two-way contact between members and officers is encouraged. But personal familiarity can damage the relationship, as might a family or business connection.
- 5.4 Members and officers should inform the Chief Executive of any relationship which might be seen as unduly influencing their work in their respective roles.
- 5.5 It is not enough to avoid actual impropriety. Members and officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be perceived. Specifically, a member should not sit on a body or participate in any decision which directly affects the officer on a personal basis.
- 5.6 Officers serve the Council as a whole. They have a duty to implement the properly authorised decisions of the Council.
- 5.7 Officers work to the instructions of their senior officers, not individual members. It follows that, whilst such officers will always seek to assist a member, they must not be asked to exceed the bounds of authority they have been given by their managers. Except when the purpose of an enquiry is purely to seek factual information, members should normally direct their requests and concerns to a senior officer, at least in the first instance.
- 5.8 Officers will do their best to give timely responses to members' enquiries. However, officers should not have unreasonable requests placed on them. Their work priorities are set and managed by senior managers. Members should avoid disrupting officers' work by imposing their own priorities.
- 5.9 Members will endeavour to give timely responses to enquiries from officers.
- 5.10 ***An officer shall not discuss with a member any personal matters relating to their employment or the employment of a colleague.***

This does not prevent an officer raising on a personal basis, and in their own time, a matter with their ward member.

- 5.11 Members and officers should respect each other's free (i.e. non-Council) time.

## **6. The Council as employer**

- 6.1 Officers are employed by the Council as a whole.
- 6.2 Members' roles are limited to:
- the appointment of specified senior posts,
  - determining human resources policies and conditions of employment,
  - the appointment of political assistants, and
  - hearing and determining appeals.
- 6.3 Members shall not act outside these roles.
- 6.4 If participating in the appointment of officers, members should:
- remember that the sole criterion is merit (other than in the case of political assistants where political consideration may apply),
  - never canvass support for a particular candidate,
  - not take part where one of the candidates is a close friend or relative,
  - not be influenced by personal preferences, and
  - not favour a candidate by giving him/her information not available to the other candidates.
- 6.5 A member should not sit on an appeal hearing if they have a declarable personal interest.

## **7. Mayor and officers**

- 7.1 Officers will respect the position of Mayor and provide appropriate support.

## **8. Executive members and officers**

- 8.1 Executive members will take decisions in accordance with the constitution and will not otherwise direct staff. Senior officers will be responsible for instructing staff to implement the Executive's decisions.
- 8.2 Senior officers (including the Monitoring Officer and the designated Finance Officer) have the right to submit papers to the Executive as a whole or to individual Executive members for consideration.
- 8.3 Senior officers and Executive members shall agree mutually convenient methods of regular contact. Before taking any formal decisions, the Executive will seek appropriate professional advice

including, without exception, the Monitoring Officer, and designated Finance Officer, and will not direct officers in the framing of recommendations.

- 8.4 Before any formal decisions with a financial implication are taken by the Executive, the Finance Officer and the senior officer(s) for the service(s) concerned must be consulted. This is to ensure that those officers who are budget holders:

- are aware of the proposed decision,
- have the opportunity to offer advice, and
- are subsequently able properly to authorise the financial transactions needed to implement decisions.

- 8.5 Executive members when making decisions (whether collectively or individually) must state the reasons for those decisions. The written record of the decisions must include the reasons. This record of decision must be published on the Council's web site.

- 8.6 Officers taking decisions under their delegated powers must consider the advisability of informing the relevant Executive member(s) of their intentions in advance when the matter to which the decisions relate is likely to be sensitive or contentious, or has wider policy implications. A written record of any delegated executive decision made by officers must be recorded with reasons for making that decision and this must be published on the web site.

## **9. Scrutiny members and officers**

- 9.1 The chair(s) and other leading scrutiny members shall maintain regular contact with the officer(s) providing the principal support to the overview and scrutiny function. In consultation with the chair(s), it shall be the responsibility of the latter to ensure that those who need to know of matters being considered or for possible future consideration are so informed.
- 9.2 A scrutiny committee or its chair acting on its behalf may require officers to attend overview and scrutiny meetings. Members should not normally expect junior officers to give evidence. All requests should be made to senior officers in the first instance.
- 9.3 When making requests for officer attendance, scrutiny members shall have regard to the workload of officers.
- 9.4 It is recognised that officers required to appear before a scrutiny committee may often be those who have advised the Executive or another part of the Council on the matter under investigation. In these circumstances, an officer may have a conflict of interest. Both members and officers need to consider the severity of the conflict. If deemed appropriate, research and advice may be sought elsewhere.

- 9.5 Subject to 9.4 above, officers should be prepared to justify advice given to the Council, the Executive, or other committees and sub-committees even when the advice was not accepted.
- 9.6 Officers must also be prepared to justify decisions they have taken under delegated powers.
- 9.7 In giving evidence, officers must not be asked to give political views.
- 9.8 Officers should respect members in the way they respond to members' questions.
- 9.9 Members should not question officers in a way which could be interpreted as harassment. Neither should they ask about matters of a disciplinary nature.
- 9.10 Scrutiny proceedings must not be used to question the capability or competence of officers. The chair and members need to make a distinction between reviewing the policies and performance of the Council and its services, and appraising the personal performance of staff. The latter is not a scrutiny function.

## **10. Members of other committees or sub-committees and officers**

- 10.1 The appropriate senior officers will offer to arrange regular informal meetings with chairs and vice-chairs of committees and sub-committees.
- 10.2 Senior officers (including the Monitoring Officer and the designated Finance Officer) have the right to present reports and give advice to committees and sub-committees.
- 10.3 Members of a committee or sub-committee shall take decisions within the remit of that committee or sub-committee, and will not otherwise instruct officers to act.
- 10.4 At some committee or sub-committee meetings, a resolution may be passed which authorises a named officer to take action between meetings in consultation with the chairman. In these circumstances it is the officer, not the chair, who takes the action and is responsible for it. A chair has no legal power to take decisions on behalf of a committee or sub-committee, neither should they apply inappropriate pressure on the officer.

## **11. Party groups and officers**

- 11.1 Senior officers may properly be asked to contribute to deliberations of matters concerning Council business by party groups, officers have the right to reasonably refuse such requests. The relevant Director



should be informed where the request is made of an Assistant Director or other members of staff.

- 11.2 Officers will normally not attend a meeting of a party group where the information to be provided to members is exempt or confidential and some of those attending are not members of the Council.
- 11.3 Officer support will not extend beyond providing factual information or professional advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business, and therefore should not be expected to be present at meetings or parts of meetings when such matters are to be discussed.
- 11.4 Party group meetings are not empowered to make decisions on behalf of the Council, and conclusions reached at such meetings do not rank as formal decisions. The presence of an officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so.
- 11.5 Where officers provide factual information and advice to a party group in relation to a matter of Council business, this is not a substitute for providing all the necessary information and advice when the matter in question is formally considered by the relevant part of the Council.
- 11.6 It must not be assumed that an officer is supportive of a particular policy or view considered at a party group meeting simply because they have attended or provided information to the meeting.
- 11.7 Officers will respect the confidentiality of any party group discussions at which they are present and, unless requested to do so by that party group, will not relay the content of such discussions to another party group or to any other members. This shall not prevent an officer providing feedback to other senior officers on a need-to-know basis.
- 11.8 In their dealings with party groups, officers must treat each group in a fair and even-handed manner.
- 11.9 Members must not do anything which compromises or is likely to compromise officers' impartiality.
- 11.10 The duration of an officer's attendance at a party group meeting will be at the discretion of the group, but an officer may leave at any time if they feel it is no longer appropriate to be there.
- 11.11 An officer accepting an invitation to the meeting of one party group shall not decline an invitation to advise another group about the same matter. They must give substantially the same advice to each.
- 11.12 An officer who is not a senior officer shall not be invited to attend a party group meeting, but a senior officer may nominate another officer

to attend on their behalf.

- 11.13 An officer should be given the opportunity of verifying comments and advice attributed to them in any written record of a party group meeting.
- 11.14 No member will refer in public or at meetings of the Council to advice or information given by officers to a party group meeting.
- 11.15 At party group meetings where some of those present are not members of the Council, care must be taken not to divulge confidential information relating to Council business. Persons who are not members are not bound by the members' code of conduct. They do not have the same rights to Council information as members.
- 11.16 Any particular cases of difficulty or uncertainty in relation to this part of the protocol should be raised with the Chief Executive and the relevant party group leader.

## **12. Local members and officers**

- 12.1 To enable them to carry out their ward role effectively, members need to be fully informed about matters affecting their ward. Senior officers must ensure that all relevant staff are aware of the requirement to keep local members informed, thus allowing members to contribute to the decision-making process and develop their representative role.
- 12.2 This requirement is particularly important:
  - during the formative stages of policy development, where practicable,
  - in relation to significant or sensitive operational matters,
  - whenever any form of public consultation exercise is undertaken, and
  - during a scrutiny investigation.
- 12.3 Issues may affect a single ward. Where they have a wider impact, a number of local members will need to be kept informed.
- 12.4 Whenever a public meeting is organised by the Council to consider a local issue, all the members representing the wards affected should be invited to attend the meeting as a matter of course.
- 12.5 If a local member intends to arrange a public meeting on a matter concerning some aspect of the Council's work, they should inform the relevant officer. Provided the meeting has not been arranged on a party-political basis:
  - an officer may attend but is not obliged to do so, and

- the meeting may be held in Council-owned premises.
- 12.6 No such meetings should be arranged or held in the immediate run-up to Council elections.
- 12.7 Whilst support for members' ward work is legitimate, care should be taken if staff are asked to accompany members to ward surgeries. In such circumstances:
  - the surgeries must be open to the general public, and
  - officers should not be requested to accompany members to surgeries held in the offices or premises of political parties.
- 12.8 Officers must never be asked to attend ward or constituency political party meetings.
- 12.9 It is acknowledged that some Council staff (e.g. those providing dedicated support to Executive members) may receive and handle messages for members on topics unrelated to the Council. Whilst these will often concern diary management, care should be taken to avoid Council resources being used for private or party-political purposes.
- 12.10 In seeking to deal with constituents' queries or concerns, members should not seek to jump the queue but should respect the Council's procedures. Officers have many pressures on their time. They may not be able to carry out the work required by members in the requested timescale, and may need to seek instructions from their managers.

### **13. Members' access to documents and information**

- 13.1 This part of the protocol should be read in conjunction with the Access to Information Rules in the Council's constitution and the data protection guidance given to members and officers.
- 13.2 Members may request senior officers to provide them with such information, explanation and advice as they may reasonably need to assist them to discharge their roles as members. This may range from general information about some aspect of the Council's services to specific information on behalf of a constituent. Where information is requested on behalf of a third party, it will only be provided if:
  - it is in the public domain, and
  - it is not barred by the Data Protection Act from being given.
- 13.3 Every member of the Executive, a scrutiny committee, and/or any other committee or sub-committee has a right to inspect documents about the business of that scrutiny committee, other committee or sub-committee or the Executive.

- 13.4 A member who is not a member of a specific scrutiny committee, other committee or sub-committee, or the Executive may have access to any document of that specific part of the Council provided:
- they can demonstrate a reasonable need to see the documents in order to carry out their role as a member (the “need to know” principle), and
  - the documents do not contain “confidential” or “exempt” information as defined by the law.
- 13.5 Disputes as to the validity of a member’s request to see a document on a need to know basis will be determined by the Monitoring Officer. Officers should seek advice if in any doubt about the reasonableness of a member’s request.
- 13.6 A member should obtain advice from the Monitoring Officer in circumstances where they wish to have access to documents or information:
- where to do so is likely to be in breach of the Data Protection Act, or
  - where the subject matter is one in which they have a disclosable pecuniary interest or personal or pecuniary interest as defined in the members’ code of conduct.
- 13.7 Information given to a member must only be used for the purpose for which it was requested.
- 13.8 It is an accepted 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.
- 13.9 Members and officers must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so or failure to disclose the information would prejudice the Council.
- 13.10 When requested to do so, officers will keep confidential from other members advice requested by a member except where to do so would prejudice the Council.
- 13.11 Members and officers must not prevent another person from gaining access to information to which that person is entitled by law.

## **14. Correspondence**

- 14.1 Correspondence between an individual member and an officer may be copied to another member unless the member specifically requests that it remain confidential (correspondence may be copied to

another member despite a request that it remain confidential where legislation requires it or if failure to disclose it would prejudice the Council). Where correspondence is copied, this should always be made explicit, i.e. there should be no “blind” copies.

- 14.2 Official letters written on behalf of the Council should normally be in the name of the relevant officer. It may be appropriate in some circumstances (e.g. representations to a Government Minister) for letters to appear in the name of an Executive member or the chair of a scrutiny committee.
- 14.3 The Mayor may initiate correspondence in their own name.
- 14.4 Letters which create legally enforceable obligations or which give instructions on behalf of the Council should never be sent in the name of a member.
- 14.5 When writing in an individual capacity as a ward member, a member must make clear that fact.

## **15. Access to premises**

- 15.1 Officers have the right to enter Council land and premises to carry out their work. Some officers have the legal power to enter property in the ownership of others.
- 15.2 Members have a right of access to Council land and premises to fulfil their duties.
- 15.3 When making visits as individual members, members should:
  - whenever practicable, notify and make advance arrangements with the appropriate manager or officer in charge;
  - comply with health and safety, security and other workplace rules;
  - not interfere with the services or activities being provided at the time of the visit; and
  - take special care at schools and establishments serving vulnerable sections of society to avoid giving any impression of improper or inappropriate behaviour.

## **16. Use of Council resources**

- 16.1 The Council provides all members with services such as typing, printing and photocopying, and goods such as stationery and computer equipment, to assist them in discharging their roles as members of the Council. These goods and services are paid for from the public purse. They should not be used for private purposes or in connection with party political or campaigning activities.

16.2 Members should ensure they understand and comply with the Council's own rules about the use of such resources, particularly:

- where facilities are provided in members' homes at the Council's expense;
- in relation to any locally-agreed arrangements e.g. payment for private photocopying; and
- regarding ICT security.

16.3 Members should not put pressure on staff to provide resources or support which officers are not permitted to give. Examples are:

- business which is solely to do with a political party;
- work in connection with a ward or constituency party political meeting;
- electioneering;
- work associated with an event attended by a member in a capacity other than as a member of the Council;
- private personal correspondence;
- work in connection with another body or organisation where a member's involvement is other than as a member of the Council; and
- support to a member in their capacity as a councillor of another local authority.

## **17. Interpretation, complaints and allegations of breaches**

17.1 This part of the protocol should be read in conjunction with any "whistle-blowing" policy the Council may have.

17.2 Members or officers with questions about the implementation or interpretation of any part of this protocol should seek the guidance of the Monitoring Officer.

17.3 A member who is unhappy about the actions taken by, or conduct of, an officer should:

- avoid personal attacks on, or abuse of, the officer at all times,
- ensure that any criticism is well founded and constructive,
- never make a criticism in public, and
- take up the concern with the officer privately in an appropriate manner taking into account the status and position of both the member and officer.

17.4 If direct discussion with the officer is inappropriate (e.g. because of the seriousness of the concern) or fails to resolve the matter, the member should raise the issue with the officer's manager or the relevant senior officer.

- 17.5 The purpose of this protocol is to give advice and guidance. Whilst a breach of this protocol alone will not give rise to disciplinary action a serious breach of this protocol by an officer may constitute a breach of discipline and lead to an investigation under the Council's disciplinary procedure.
- 17.6 An officer who believes a member may have acted other than in accordance with this protocol should raise their concern with the Monitoring Officer. The Monitoring Officer will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than informally referring the matter to the leader of the relevant party group. More serious complaints may involve alleged breaches of the members' code of conduct and may be referred to the Ethics and Engagement Committee.