

Protocol on Member/Officer Relations

1. Introduction

- 1.1 The purpose of this protocol is to guide members and officers of the Council in their relations with one another. Given the variety and complexity of such relations, this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise. It is hoped however that the approach which it adopts to these issues will serve as a guide to dealing with other issues.
- 1.2 This protocol is to a large extent no more than a written down statement of current practice and convenience. In some respects however, it seeks to promote greater clarity and certainty. This 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 (real and perceived) of local government and they therefore demand very high standards of personal conduct.
- 1.3 Both councillors and officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give advice to councillors and the Council, and to carry out the Council's work under the Direction and control of the Council, their committees or sub-committees.
- 1.4 Mutual respect between councillors and officers is essential to good local government. Close personal familiarity between individual councillors and officers can damage this relationship and prove embarrassing to other councillors and officers. In line with the reference to "mutual respect", it is important that any dealings between members and officers should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position.
- 1.5 It is particularly important to recognise that officers giving advice to a Cabinet, a formal committee or Council meeting are constrained in their ability to respond to any behaviour amounting to a personal attack or unnecessarily persistent questioning on the part of a member. It is unacceptable for a member to pursue a course of conduct which places an officer in this position. It is important to remember that officers are under a clear duty to give appropriate advice to members, even where they suspect it might be unpalatable. Officers should not be placed in a position where they are tempted to suppress their professional advice for fear of a member's response. Accordingly, if any member is unhappy with the advice received from an officer they should not persist in raising the matter at the meeting but should register their concern and intention to raise the issue with the appropriate Corporate Director, Head of Service or the Chief Operating Officer at a later time.

- 1.6 The Chairman of the meeting should be very much aware of the need to ensure an officer is not subjected to undue criticism whilst giving advice to elected members and should intervene to prevent such a situation from continuing. If necessary, the Chairman should report the appropriate matter to the Council's Leader following the meeting, so the matter can be referred to and dealt with by the appropriate party leader. A written response should be made to the officer concerned, indicating the outcome of any referral.
- 1.7 This Protocol has no direct function in regulating comments which members may wish to make in private, including in conversation with senior and chief officers. However, members must draw the line in an appropriate place and realise that issues of a serious nature should be raised on a formal basis in the manner discussed in Paragraph 1.6 above.

2. Officer advice to party groups

- 2.1 There is statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to support and contribute to such deliberations by party groups, but will only do so with the prior agreement of the Chief Operating Officer.
- 2.2 The support provided by officers can take many forms, ranging from a briefing meeting with a single member prior to a meeting to a presentation to a full party group meeting. Whilst in practice such officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.
- 2.3 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 *party* business. The observance of this distinction will be assisted if officers are not expected to be present at meetings, or parts of meetings, when matters of party business are to be discussed;
 - (b) party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered 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 they are not interpreted or acted upon as such; and
 - (c) similarly, where officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the Council, Cabinet, relevant committee or sub-committee when the matter in question is considered.

- 2.4 It is inappropriate for officers to be involved in providing information and advice to a party group meeting which includes persons who are not members of the Council. Such persons will not be bound by the Code of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons officers are not able to provide the appropriate level of information and advice.
- 2.5 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group.
- 2.6 Any particular cases of difficulty or uncertainty in this area of officer advice to party groups should be raised with the Chief Operating Officer who will determine them after discussion with the relevant group leader(s).
- 2.7 Whether or not an employee is in a politically restricted post the need to maintain political impartiality and to serve the needs of the Council as a whole is paramount. Employees should recognise this as essential and should treat all members with appropriate regard, courtesy and respect, irrespective of the member's political affiliation. It is important that both parties recognise the fundamental need for political neutrality on the part of officers, and as result it is imperative that an officer does not find himself in a situation where he is being drawn into a political dispute between members of different political groups or within a political group.

3. Support services to members and party groups

- 3.1 The only basis on which the Council can lawfully provide support services (eg stationery, typing, 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.

4. Members' access to information and to Council documents

- 4.1 Members are free to approach the Chief Operating Officer, any Corporate Director or Head of Service to provide them with such information, explanation and advice (about a Services' functions) 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 Services' activities to a request for specific information on behalf of a constituent.
- 4.2 As regards the legal rights of members to inspect Council documents, these are covered partly by statute and partly by the common law.
- 4.3 Members have a statutory right to inspect any Council document which contains material relating to any business which is to be transacted at a Council, Cabinet, committee or sub-committee meeting. This right applies irrespective of whether the member is a member of the Cabinet, committee or sub-committee concerned and extends not only to reports which are to be submitted to the meeting, but also

to any relevant background papers. This right to inspect does not however apply to certain items which contain exempt information (pink papers) ie exempt information relating to employees, occupiers of Council property, applicants for grants and other services, contract and industrial relations negotiations, advice from Counsel and criminal investigations nor does the right apply to background documents which contain exempt information.

- 4.4 The common law right of members is much broader and is based on the principle that any member has a prima facie right to inspect Council documents so far as his/her access to the documents is reasonably necessary to enable the member properly to perform his/her duties as a member of the Council. This principle is commonly referred to as the “need to know” principle.
- 4.5 The exercise of this common law right depends therefore upon the member’s ability to demonstrate that he/she has the necessary “need to know”. In this respect a member has no right to “a roving commission” to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the “need to know”. This question must initially be determined by the Chief Operating Officer, Corporate Director or Head of Service who holds the document in question (with advice from the Legal and Democratic Services Manager). In the event of dispute, the question falls to be determined by the relevant body, i.e. the Council, Cabinet or committee in connection with whose functions the document is held.
- 4.6 In some circumstances (eg a committee member wishing to inspect documents relating to the functions of that committee) a member’s “need to know” will normally be presumed. In other circumstances (eg a member wishing to inspect documents which contain personal information about third parties) a member will normally be expected to justify the request in specific terms.
- 4.7 Whilst the term “Council document” is very broad and includes for example, any document produced with Council resources, it is accepted by convention that a member of one party group will not have a “need to know”, and therefore a right to inspect, a document which forms part of the internal workings of another party group.
- 4.8 Further and more detailed advice regarding members’ rights to inspect Council documents may be obtained from the Legal and Democratic Services Manager.
- 4.9 Finally, any Council information provided to a member must only be used by the member for the purpose for which it was provided i.e. in connection with the proper performance of the member’s duties as a member of the Council. This point is emphasised in the Code of Conduct As a councillor or a cabinet or committee or sub-committee member, you necessarily acquire much information that has not yet been made public and is still confidential. It is a betrayal of trust to breach such confidences. You should never disclose or use confidential information for the personal advantage of yourself or of anyone known to you, or to the disadvantage or the discredit of the council or anyone else.
- 4.10 The relevant Procedural Rules confer rights on members to attend meetings and sometimes to speak and vote where they are not members of the body in

question. Members should ensure from the seating arrangements that their position is clear and that they comply with any appropriate restrictions.

5. Officer/Chairman or Portfolio Holder relationships

- 5.1 It is clearly important that there should be a close working relationship between the Chairman of a committee/Portfolio Holder and the chief officer and other senior officers of any Service which reports to that committee/Portfolio Holder. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the officers' ability to deal impartially with other members and other party groups.
- 5.2 Whilst these members may be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations a Head of Service will be under a duty to submit a report on a particular matter. Similarly, Corporate Director or Head of Service will always be fully responsible for the contents of any report submitted in his/her name. Any issues arising between a Chairman/Portfolio Holder and a Corporate Director or Head of Service in this area should be referred to the Chief Operating Officer for resolution in conjunction with the Leader of the Council.
- 5.3 In relation to action between meetings, it is important to remember that the law allows for decisions (relating to the discharge of any of the Council's functions) to be taken by a committee, a sub committee or an officer. In relation to Executive functions the law does now allow for such decisions to be taken by the Leader or Portfolio Holder, in relation to other functions it does not allow decisions to be taken by a Chairman or other single member. In accordance with Constitution 4.2 "Proper Officer Provisions and Scheme of Delegation to Chief Officers etc" and 4.3 "Scheme of Delegation to Cabinet and Portfolio Holders" decisions/action can be taken between meetings.
- 5.4 Where named officers are authorised to take action in consultation with the Chairman or Portfolio Holder, it is the officer, rather than the Chairman/Portfolio Holder, who takes the action and it is the officer who is accountable for it.
- 5.5 Finally, it must be remembered that officers within a Directorate/Service are accountable to their Corporate Director/Head of Service and that whilst officers should always seek to assist a Chairman/Portfolio Holder (or indeed any member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Corporate Director/Head of Service.

6. Correspondence

- 6.1 Correspondence between an individual member and an officer may be copied (by the officer) to any other member.
- 6.2 Official letters on behalf of the Council should normally be sent out in the name of the appropriate officer, rather than in the name of a member. It may be appropriate in certain circumstances (eg representations to a Government Minister) for a letter to appear in 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 in the name of a member.

7. Involvement of ward councillors

- 7.1 Whenever a public meeting is organised by the Council, Cabinet or committee 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.
- 7.2 Officers will not be obliged to attend public meetings called by individual councillors.

8. Spouses/partners

- 8.1 Whilst paragraph 4.1 of the Officers "Code of Conduct" (Constitution 17.1) and paragraph 1.4 above, states or infers that close personal familiarity between individual councillors and officers should be avoided, this is not intended to be an absolute bar on the spouses or partners of councillors being employed by the Council. In those circumstances the Codes will be interpreted as complied with provided councillors do not have any portfolio responsibility for the area of work of the partner or spouse.

9. Arbitration

- 9.1 The Protocol is intended to act as a guide for both members and officers. Should any difficulties arise they should in the first instance be raised with the relevant Corporate Director who can then discuss the matter with the officer(s) and/or member(s) concerned. The Chief Operating Officer should then consider any continuing difficulties.

10. Contributions to Journals/Publications by Officers

- 10.1 The agreement of the Chief Operating Officer and the relevant Portfolio Holder should be sought to the submission by Officers (in their professional capacity) of Articles for Journals/Publications etc.
- 10.2 Advance notification of submission of such Articles should be given to the relevant Shadow Portfolio Holder.

10.1 Review of Protocol

- 10.1 The Protocol is intended to provide members and officers with guidelines to determine their roles and their relations with each other.
- 10.2 It is intended to be a "live" document and will be reviewed from time to time to reflect changing circumstances.

10.3 Members or officers with queries about this protocol should contact the Chief Operating Officer or Legal and Democratic Services Manager.