

# Protocol on Councillor/Officer Relations

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# Protocol On Councillor/Officer Relations

## 1. Introduction

- 1.1 The relationship between Councillors and Officers is an essential ingredient that contributes to the successful working of the Council. This relationship within this Authority is characterised by mutual respect, honesty and trust. Councillors and Officers must feel free to speak to one another openly and honestly. Nothing in this Protocol is intended to change this relationship. The purpose of this Protocol is rather to help Councillors and Officers to perform effectively by giving guidance on their respective roles and expectations and on their relationship with each other. The Protocol also gives guidance on what to do on the rare occasions when things go wrong. Responsibility for the operation of this Protocol lies with the Monitoring Officer.
- 1.2 The Protocol must be read and operated in the context of any relevant legislation and national and local Codes of Conduct and any procedure for confidential reporting.

## 2. Roles Of Councillors And Officers

- 2.1 The respective roles of Councillors and Officers can be summarised as follows:

Councillors and Officers are servants of the public and are indispensable to one another. Their responsibilities however 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 to the Authority, and to carry out the Authority's work under the direction and control of the Council, the Cabinet, and relevant committees, etc.

*Mutual respect between Councillors and Officers is essential to good local governance.*

### 2.2 Councillors

Councillors have four main areas of responsibility:

- a) determining the policy of the Authority and giving it political leadership,
- b) monitoring, reviewing and scrutinising the performance of the Authority in implementing that policy and delivering services,
- c) representing the Authority externally, and
- d) acting as advocates and Community Leaders on behalf of their constituents.

Subject always to expectations contained in paragraph 3 - it is not the role of the Councillors to involve themselves in the day to day management of the Authority's services.

### 2.3 **Members of the Cabinet, Chairs and Vice Chairs**

Members of the Cabinet and Chairs and Vice Chairs of Committees, Boards, Panels etc. have additional responsibilities. Because of those responsibilities, their relationships with employees may differ from, and be more complex than those of Councillors without such responsibilities, and this is recognised in the expectations they are entitled to have. However, such Councillors must still respect the impartiality of officers. They must not ask Officers to undertake work of a party political nature, or to do anything which would put them in difficulty in the event of a change in the political composition of the authority.

### 2.4 **Opposition Councillors**

As individual Councillors, all Councillors have the same rights and obligations in their relationships with Officers and should be treated equally. This principle is particularly important in the context of overview and scrutiny. However, where a political group forms an administration, either alone or in partnership with another group or groups, it is recognised that the relationship between Officers, particularly those at a senior level in the organisation, and the administration will differ from that with opposition groups.

### 2.5 **Officers**

2.5.1 The role of Officers is to give advice and information to Councillors and to implement the policies determined by the Authority.

2.5.2 In giving advice to Councillors, and in preparing and presenting reports, it is the responsibility of the Officer to express his/her own professional views and recommendations. Whilst an Officer may report the views of individual Councillors on an issue, if the Councillor wishes to express a contrary view he/she should not seek to pressure the officer to make a recommendation contrary to the officer's professional view.

2.5.3 Certain Officers e.g. Head of Paid Service, Monitoring Officer and Chief Finance Officer (Section 151 Officer) have responsibilities in law over and above their obligations to the Authority and to individual Councillors, and Councillors must respect these obligations, must not obstruct Officers in the discharge of these responsibilities, and must not victimise Officers for discharging these responsibilities.

## 3. **Expectations**

3.1 Councillors can expect from Officers:

- a) A commitment to the Authority as a whole, and not to any political group
- b) A working partnership
- c) An understanding of and support for respective roles, workloads and pressures
- d) Timely response to enquiries and complaints
- e) Professional advice, not influenced by political views or political preference, which does not compromise the political neutrality of Officers

- f) Regular, up to date information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions that they hold
- g) Awareness of and sensitivity to the political environment
- h) Respect, dignity and courtesy
- i) Training and development in order to carry out their role effectively
- j) Integrity, mutual support and appropriate confidentiality
- k) Not to have personal issues raised with them by officers outside the agreed procedures
- l) That employees will not use their relationship with Councillors to advance their personal interests or to influence decisions improperly
- m) That Officers will at all times comply with any relevant Code of Conduct
- n) Support for the role of Councillors as the local representatives of the Authority, within any scheme of support for Councillors which may be approved by the authority.

3.2 Officers can expect from Councillors:

- a) A working partnership
- b) An understanding of and support for respective roles, workloads and pressures
- c) Political leadership and strategic direction
- d) Respect, dignity and courtesy
- e) Integrity, mutual support and appropriate confidentiality
- f) Not to be subject to bullying or to be put under undue pressure. Councillors should have regard to the seniority of Officers in determining what are reasonable requests, having regard to the power relationship between Councillors and Officers and the potential vulnerability of Officers, particularly at more junior levels
- g) That Councillors will not use their position or relationship with Officers to advance their personal interests or those of others or to influence decisions improperly
- h) That Councillors will at all times comply with the relevant Code of Conduct.

### 3.3 **Limitations upon Behaviour**

The distinct roles of Councillors and Officers necessarily impose limitations upon behaviour. By way of illustration, and not as an exclusive list:

- a) Close personal relationships between Councillors and Officers can confuse these separate roles and get in the way of the proper discharge of the Authority's functions, not least in creating the perception in others that a particular Councillor or Officer may secure advantageous treatment.
- b) The need to maintain the separate roles means that there are limits to the matters on which they may seek the advice of Officers, both in relation to personal matters and party political issues.
- c) Relationships with particular individuals or party groups should not be such as to create public suspicion that an employee favours that Councillor or group above others. The issue of Officer attendance and advice to political groups is specifically covered below.

## 4 **Information For Members**

4.1 It is important for Directors and employees to keep Councillors informed both about the major issues concerning the District Council and, more specifically, about issues and events affecting the Ward area he or she represents. Ward Councillors should be alerted to proposals, that affect their Wards uniquely from others and should also be invited to attend District Council initiated events within their Ward. Where an issue is to be discussed by the Cabinet or a Committee, Sub-Committee or Panel on which the Ward Councillor does not serve, Procedural Rules provide a right for a Ward member to attend for consideration of the item and to speak on it if he/she wishes to do so, but not to vote.

4.2 Where a Councillor requests information, the fact of that request, and the information supplied, will as appropriate be brought to the attention of the Portfolio Holder / Leader or Chairman concerned by the relevant Director or Service Head.

### **Access to Papers and other District Council Information**

4.3 The legal rights of Councillors to inspect District Council documents are covered partly by statute and partly by the common law. The Access to Information Procedure Rules contained in the Constitution explain the position in detail.

4.4 Councillors have all the rights available to members of the public and have access to individual copies of all agendas of the Cabinet and of Committees, Sub-Committees or Panels of which they are not Councillors. Additionally, Councillors' rights to information are subject to legal rules and, if a Councillor has a legitimate interest in a matter and is able to demonstrate a "need to know", in his or her role as a District Councillor, employees should provide the relevant information, including confidential information, to that member. Approaches for information on this basis should normally be directed to the relevant Director or Head of Service in the Department concerned. In the event of any doubt as to the availability of information the issue should be referred to the Corporate Director and Monitoring Officer for advice.

- 4.5 In the light of the Members Code of Conduct special care needs to be taken when a Councillor has a significant personal or business relationship with a constituent about whom he or she is seeking information. An appropriate option may be that another Councillor could act for the constituent.

#### **Common Law**

- 4.6 The common law right of a Councillor to inspect documents is based on the principle that any Councillor has a prima facie right to inspect District Council documents so far as his/her access to the documents is reasonably necessary to enable him/her properly to perform his/her duties as a member of the District Council. This principle is commonly referred to as the “need to know” principle.
- 4.7 The exercise of this common law right depends therefore upon the Councillor’s ability to demonstrate that he/she has the necessary “need to know”. In this respect a Councillor has no right to “a roving commission” to go and examine documents of the District 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 particular Director whose Department holds the document in question (with advice from the Corporate Director and Monitoring Officer). In the event of dispute, the question would fall to be determined by the Cabinet.
- 4.8 In some circumstances (e.g. 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 (e.g. 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.
- 4.9 Whilst the term “District Council document” is very broad and includes for example, any document produced with District Council resources, it is accepted by convention that a member of one party group will not have the right to inspect, a document which forms part of the internal workings of another party group.

#### **Statutory Rights**

- 4.10 Statutory rights under the Local Government Acts 1972 and 2000 are additional to the common law rights to inspect information. Elected members have a statutory right to inspect any District Council document which contains material relating to any business which is to be transacted at a Council or Cabinet or Committee, Sub-Committee or Panel meeting. This right applies irrespective of whether the member is a member of the Cabinet or the Committee concerned and extends not only to reports that are to be submitted to the meeting, but also to any relevant background papers.
- 4.11 Further and more detailed advice regarding members’ rights to inspect District Council documents may be obtained from the Corporate Director and Monitoring Officer.

#### **Redress**

- 4.12 If a Councillor is not receiving, or is having difficulty in obtaining, information that is needed, or to which he/she considers he/she is entitled in order to carry out duties as a District Councillor, that Councillor may contact the Corporate Director and Monitoring Officer for advice, just as employees will seek guidance from him.

#### **How can the Information be used?**

- 4.13 Finally, any District Council information provided to a Councillor must only be used by the Councillor for the purpose for which it was provided i.e. in connection with the proper performance of the Councillor's duties as a District Councillor. This point is emphasised in the Code of Conduct for Members included in the Constitution.
- 4.14 Confidential information must not be made available by any Councillor to the public. Councillors are reminded that any breach of this requirement is a breach of the Members Code of Conduct which may be referred to the Standards Board for England for action.

#### **Inspection of Premises**

- 4.15 Unless authorised to do so under any Procedure Rule of the Constitution, Councillors are not entitled to inspect land or premises which the Council have the right or duty to inspect. Nor may they enter, or issue orders relating to, works being carried out by or on behalf of the Council; this includes for example, building sites. An example where visits have been authorised, of course, is the system of site visits for members of the Planning Applications Committee.

### **5 Political Activity**

- 5.1 Senior employees, except those politically exempted, cannot be Local Authority Councillors or MPs, nor can they "speak or publish written work for the public at large or to a section of the public with the apparent intention of affecting public support for a political party".
- 5.2 Employees are employed by the District Council as a whole. They serve the Council and are responsible to the Head of Paid Service and their respective Directors, and not to individual members of the Council whatever office they might hold.
- 5.3 It is obviously important, though, for there to be regular contact between the Chief Executive, Directors, Heads of Service and the leaders of political groups on matters affecting the District Council: and between Directors, Heads of Service and the Leader of the Council, Portfolio Holders and Committee Chairmen on matters affecting their respective responsibilities.
- 5.4 District Council decisions can only be made in accordance with the Constitution. Decisions by party political groups do not constitute Council decisions and it is essential that they are not interpreted or acted upon as such. Where employees provide information and advice to a Councillor or group of Councillors in relation to a matter of District Council business, this does not obviate the requirement to provide all necessary information and advice to the relevant decision making body when the matter in question is considered. It is essential therefore that representations to the District Council, at any stage in the formal decision-making process with regard to any matter, should be made to the Cabinet or the relevant Committee, Sub-Committee or Panel and not to a political group.

### **6 Political Groups**

- 6.1 The operation of political groups is now an integral feature of Local Government, and such political groups have an important part to play in the development of policy and the political management of the Authority. It is in the interests of the Authority to support the effective operation of political groups, but their operation can pose particular dangers in terms of the impartiality of Officers.

## 6.2 Briefings

- a) Political groups may request the Chief Executive or a Director to brief them on matters relating to the Authority.
- b) Any Officer reports to political groups will be limited to a statement of material facts and identification of options and the merits and demerits of such options for the Authority. Reports will not deal with any political implications of the matter or any option, and Officers will not make any recommendation to a political group.
- c) Where a report is prepared for a political group, the Chief Executive will advise all other groups that the report has been prepared and will provide a copy of that report to any group upon request.

## 6.3 Officer Attendance

- a) Any political group may request the Chief Executive or a Director to attend a meeting of the group to advise on any particular matter relating to the Authority.
- b) The Chief Executive or Director may arrange for the attendance of a representative in his/her stead, or may decline to attend or to provide a representative where he/she is of the opinion that the particular issue is of such a political nature that it would be inappropriate to attend.
- c) Officers' advice to political groups will be limited to a statement of material facts and identification of options and the merits and demerits of such options for the Authority. Advice will not deal with any political implications of the matter or any option, and Officers will not make any recommendation to a political group.
- d) Where an Officer attends a political group, the Chief Executive will advise all other groups that the Officer has attended and the subject upon which he/she has advised.
- e) Officers will respect the confidentiality of any matter which they hear in the course of attending a political group meeting.

## 6.4 Support to Councillors and Party Groups

The only basis on which the District Council can lawfully provide support services (e.g. 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 District Council business. They should never be used in connection with party political or campaigning activity or for private purposes.

## 7 Overview And Scrutiny

7.1 The Council's Overview and Scrutiny Panels 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 Monitoring Officer and other 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 Overview and Scrutiny Panel, the Chairman of that Panel shall not, without the consent of the relevant Director, request the attendance of a junior Officer.
- 7.3 When asking Officers to give evidence before any Overview and Scrutiny Panel, 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 Chairman of the relevant Overview and Scrutiny Panel may ask Directors or Heads of Service to explain any advice given by them to Members of the Cabinet and explain any decision(s) the Director or Heads of Service 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 Overview and Scrutiny Panel shall ensure that Members of the Cabinet and Officers are not questioned (whether through the nature and frequency of the questions, or through the tone or language used), in such a manner as could be considered by a reasonable person to be hostile, offensive, derogatory, harassment, bullying, victimisation, discriminatory or otherwise unacceptable or inappropriate. Equally, it has to be recognised that such Panels have no jurisdiction to deal with matters, which are of a disciplinary nature for a Political Group or the relevant Director / Chief Executive.
- 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 and/or the Standards Board for England, if there has been a breach of the Code of Conduct for Members. The relevant Leader may also refer the matter to the Standards Committee for consideration, guidance or sanction, if the matter is not a breach of the Code of Conduct for Members but another Council code or protocol.

**8 When Things Go Wrong**

**8.1 Procedure for Officers:**

From time to time the relationship between Councillors and Officers may break down or become strained. Whilst it will always be preferable to resolve matters informally, through conciliation by an appropriate senior Manager or Councillors, Officers will have recourse to the Grievance Procedure or to the Corporate Director and Monitoring Officer and Monitoring Officer, as appropriate in the circumstances. In the event of a grievance or complaint being upheld, the matter will be referred to the Chief Executive, who, having advised the Leader of the Council and the appropriate group leader will decide on the course of action to be taken, following consultation with the Chair and Vice Chair of the Standards Committee.

**8.2 Procedure for Councillors:**

In the event that a Councillor is dissatisfied with the conduct, behaviour or performance of an officer, the matter should be raised with the appropriate Head of Service. Where the Officer concerned is a Head of Service or Director, the matter should be raised with the appropriate Director or with the Chief Executive. Where the employee concerned is the Chief Executive, the matter should be raised with the Head of Strategy and Human Resources. If the matter cannot be resolved informally, it may be necessary to invoke the Council's Disciplinary Procedure.