

Protocol on Member/Officer Relations



Introduction

1. This Protocol is primarily based on the model prepared by Birmingham City Council and which was referred to in the Nolan Committee report¹ as an example of good practice.
2. The purpose of this Protocol is to guide Councillors and Officers in their dealings with one another. The protocol applies equally to co-opted members of council bodies in their relationship with officers where appropriate.
3. Given the variety and complexity of such relationships, this Protocol does not seek to cover everything or to be prescriptive in its application. Guidance is offered on some of the issues that most commonly arise.
4. This protocol seeks to reflect the principles underlying the respective codes of conduct which apply to councillors (including co-opted members) and officers. The shared objective of these codes is to maintain and enhance the integrity (real and perceived) of Local Government and they therefore demand very high standards of personal conduct by all parties.
5. The Protocol seeks to encourage best practice and to promote greater clarity and certainty about the relationships between the Council's members and its officers.
 - If a councillor is unsure about any matter s/he should contact the relevant Group Leader or the Monitoring Officer for appropriate advice and assistance.
 - If an officer is unsure about any matter s/he should contact their Head of Service or the Monitoring Officer.
 - If there is any disagreement in the interpretation of this Protocol the opinion of the Chief Executive and/or the Monitoring Officer will prevail.

Legal and Audit Considerations

6. Councillors must abide by the Council's Members' Code of Conduct. As elected members councillors do not have any special immunity from civil or criminal

¹ "**Standards in Public Life**", the report of the Nolan Committee can be accessed at: <http://www.archive.official-documents.co.uk/document/parlment/nolan2/nolan.htm>

wrongs that they may commit against fellow councillors, officers or members of the public. During the course of their normal council duties, councillors will only have qualified (and not absolute) privilege against prosecution or civil action.

7. Councillors must not pressurise any officer to change his/her professional opinion on any Council business or do any thing that compromises the impartiality of officers. It is also very important that councillors are very clear about their roles and the roles of officers so as to avoid (for example) becoming involved in internal office management, discipline or other employment related issues.

Roles of Councillors and Officers²

8. The “National Code of Local Government Conduct” (which preceded the current mandatory Code of Conduct for councillors) stated:

“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 and sub-committees.

“Mutual respect between Councillors and Officers is essential to good local government. Close personal relationships between individual Councillors and Officers can damage this relationship and prove embarrassing to other councillors and Officers.”

9. The Council’s Constitution sets out the clear distinction between the roles of councillors and officers:
 - a. Councillors are responsible to the electorate and are responsible for setting policy and ensuring that services and policies are delivered.
 - b. Officers are accountable to the Council and 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, its Executive and its Committees.
 - c. Officers implement the policy and deliver the services set by the Council. Councillors should not get involved in the day to day management of services. Officers should not get involved in politics.

² The Code of Conduct for members, and the introduction of a code for employees, is under review by the Department of Communities and Local Government. Consultation closed on 28th December 2008. See <http://www.communities.gov.uk/documents/localgovernment/pdf/981962.pdf>

- d. Councillors must respect the impartiality and integrity of all the Council's Officers. Similarly, Officers must respect the role of Councillors as elected representatives. All should treat the others with courtesy at all times.
- e. It is important that any dealings between Councillors and Officers should observe proper standards of courtesy and that neither party should seek to take unfair advantage of their position.

Officer conduct or capability issues

- 10. On occasions, Councillors may have reason to complain about the conduct or performance of an Officer. All such complaints should be made personally to the Head of Service, Strategic Director or Chief Executive as appropriate. It is particularly important that complaints are made in this way and are not raised on any other occasion, such as at a public meeting of the Council or Committee, as an Officer has no means of responding to criticisms made in public. To complain in public could be characterised as bullying an officer, and that, and seeking to get him or her to change a professional opinion, is contrary to the Members' Code of Conduct³.
- 11. Similarly, if an Officer has concerns about the conduct or performance of a Councillor, such concerns should be expressed personally to the Chief Executive or the Monitoring Officer. They may be able to resolve any misunderstanding and avoid a formal complaint being made.
- 12. Exceptions to the above are where complaints express concern about possible racist attitudes when the Corporate Equality Scheme will apply. Copies of the Corporate Equality Scheme are available on the intranet or from the Head of Improvement.
- 13. If a relationship exists between Councillors and officers which could give the appearance of bias, advice should be sought from the Chief Executive or from the Monitoring Officer.
- 14. Although relationships should be declared on application forms, a situation may arise where a relative or close friend becomes a councillor of the Council after the appointment of the officer. In such cases the councillor and officer should make the circumstances known to the Chief Executive.

Officer/Leader/Chairmen Relationships

- 15. It is important that there should be close working relationship between Senior Officers and the Leader, Deputy Leader and Chairmen of committees. 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 councillors.

³ South Hams Code of Conduct for Members, 2007, paragraph 3 (2)

16. Whilst the Leader and chairmen 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 senior officer will be under a duty to submit a report on a particular matter. An Officer will always be fully responsible for the contents of any report submitted in his/her name. Any disagreement arising between a councillor and an Officer on what should, or should not, be included on an agenda should be referred to the Chief Executive or the Monitoring Officer for resolution.
17. In relation to action between meetings, it is important to remember that the law allows decisions relating to the discharge of any of the Council's functions to be taken only by the Council, Committees, or an Officer. The law does not allow for such decisions to be made by an individual Councillor. The Scheme of Delegation (Part 3 of the Constitution) contains the procedure for the relevant Officer to make urgent decisions in consultation with the Leader or a member of the Executive, a Committee Chairman or a ward councillor as circumstances require.
18. The Council gives delegated powers to Senior Officers to act on the Council's behalf (Scheme of Delegation: see Part 3 of the Constitution). The terms of that authority may require officers to consult certain Councillors (e.g. the Chairman of a Committee). In other cases, the Officer should decide whether to consult as a matter of courtesy or to keep the Members informed. If a matter relates solely to a particular Ward the appropriate Ward Member(s) will be consulted.
19. It must be remembered that an officer is accountable to his/her Line Manager and that whilst Officers should always try and assist a councillor they must not go beyond the bounds of whatever authority they have been given by their Line Manager. In the case of uncertainty, the Officer should always check with his/her Line Manager.

Political Groups and officer advice

20. Councillors must at all times respect the political impartiality of officers and not expect or encourage officers to give a political view on any matter.
21. In discharging their duties, officers serve the Council as a whole and not any particular political group or individual councillors.

Use of Council resources

22. The only basis upon which the Council can lawfully provide facilities and support services (e.g. computers, stationery, typing, printing, photocopying, transport etc) to Councillors 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.

23. The Code of Recommended Practice on Local Authority Publicity issued under the Local Government Act 1986 prohibits Councils from publishing material which appears to be designed to affect public support for a political party. To this end Members must not attach blog or web links on their email correspondence⁴.

Access to Information – “need to know”

24. The Council believes in open government. It wishes to conduct its affairs as openly as possible and to give Councillors maximum access to information and documents to enable them to discharge their role as Councillors.

25. Councillors are free to approach any Council department for such information, explanation, and advice as they may reasonably need in order to help them to discharge their role as Councillors. Requests may be for general information about some aspect of the Council's work, or specific requests for information on behalf of a member of the public. Such requests for information or advice should normally be made to the relevant Head of Service or, if about a planning matter, to the Case Officer.

26. The **legal rights** of Councillors to inspect Council documents are partly set out in statute (the Local Government Acts, Data Protection Act, and Freedom of Information Act) and partly by common law.

27. Councillors have a **statutory right** to inspect any Council document and have access to other Council information that contains material in relation to any business that is to be transacted at a Council, Executive, committee or sub-committee meeting. This right applies irrespective of whether the Councillor is a member of the committee concerned and extends not only to reports which are to be submitted to the meeting but to all relevant background papers.

28. This right does not, however, extend to documents relating to items that may appear in Part II (or the “exempt” part) of the Agenda for meetings. The items in question are those which contain “exempt information” as contained in Schedule 12A to the Local Government Act 1972 (see ‘Access to Information’ in Part 4(2) of the Constitution). These may concern employees, occupiers of Council property, applicants for grants and other services, contract and industrial relations negotiations, advice from Counsel, criminal investigations, matters which are confidential or involve national security, or complaints before the Standards Committee.

29. Information considered to be exempt under these provisions may also be exempt from disclosure under the Freedom of Information Act.

⁴ Note: the present Publicity Code is currently the subject of consultation by the Dept for Communities and Local Government: see <http://www.communities.gov.uk/documents/localgovernment/pdf/1100762.pdf>.

30. The **common law right** of Councillors is much broader. It is based on the principle that any Councillor has a right to inspect Council documents so far as his/her access to the document/information is reasonably necessary to enable the Councillor properly to perform his/her duties as a member of the Council. This is commonly referred to as the “need to know” principle.

31. The proper exercise of this common law right depends upon an individual Councillor being able to show that s/he has the necessary “need to know”. The Courts have held that Councillors have no right to a “roving commission” to go and examine documents. Mere curiosity is not sufficient. The crucial question is the determination of the “need to know”. This right will be considered on a case by case basis and will not last indefinitely. Where a question on the “need to know” arises the following procedure will apply:

- The question will be initially determined by the relevant Head of Service (in consultation with the Monitoring Officer or the case solicitor).
- If it is considered that the request is reasonably in furtherance of the Councillor’s need to know, then the document/information will be produced for the Councillor’s inspection. Where the documents contain personal information about third parties, the Councillor will be expected to justify the request in specific terms.
- A Councillor may be refused the right to inspect a document or have access to other information if the Chief Executive believes that there is a good reason why inspection or access to the document/information should be refused. S/he may refuse if :
 - The cost of providing the access is unreasonably high; or
 - The giving of access would unreasonably disrupt the work of the Council.
- In the event of a dispute, the matter will be determined by the Standards Committee.

32. 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 will not have a “need to know” (and therefore a right to inspect) the contents of a document which forms part of the internal workings of a political group of which s/he is not a member.

Confidentiality

33. A Councillor must only use any Council information provided to him/her for the purposes for which it was provided, i.e. in connection with the proper performance of the Councillor's duties as a Member of the Council. Care should be taken with such things as an early draft Committee report/briefing paper as this will usually not be suitable for public disclosure and should not be used other than for the purpose for which it was supplied. A Councillor should never disclose or use confidential information for the personal advantage of himself/herself or of anyone known to him/her or to the disadvantage or discredit of the Council or anyone else. Doing so can be a breach of the Code of Conduct⁵.

Confidentiality of Reports

34. All Officers have a duty to satisfy themselves that Committee reports are only classified as "exempt information" when the statutory criteria for exemption⁶ are met, and when the consequences of publication justify taking advantage of the exemption (Please see "Access to Meetings" in Part 4(2) of the Constitution) . The Chief Executive and the Monitoring Officer have overriding responsibility to determine this compliance.

35. Once a report has been issued within Part II of the Agenda for a meeting, and especially once it has been resolved that is exempt from disclosure to the press and public, Councillors and Officers must respect the "exempt" status of the report and not disclose it to a third party. Should the Committee decide the report (or part of it) may be discussed in the presence of the press and public, it will lose its exempt status in respect of the whole or the part released.

36. It does not follow that all the contents of the report must be regarded as secret. It may be only certain items of information or terms of negotiations which justify the inclusion of that report in Part II. Other aspects of the report may already be within the public domain or otherwise outside the definition of "exempt". A Councillor may accordingly refer to these aspects in discussion with third parties but must exercise proper care and judgement not to reveal those elements of the document which are protected. It will always be prudent to consult the Monitoring Officer or a council solicitor before doing so.

37. Any unauthorised disclosure of confidential information by Councillors constitutes a breach of paragraph 4(a) of the Members' Code of Conduct⁷.

⁵ South Hams Code of Conduct for Members, 2007, paragraph 4

⁶ Set out in Schedule 12A to the Local Government Act 1972. "Exempt" means exempt from public disclosure. Please note that under the 1972 Act the term "confidential" applies only to documents so denoted by HM Government.

⁷ Standards for England has now issued guidance on "Disclosing Confidential Information": see <http://www.standardsforengland.gov.uk/Guidance/TheCodeofConduct/Guidance/Quickguides/DisclosingConfidentialInformation/>

Correspondence

38. Correspondence between an individual councillor and an officer should not be copied by the officer to another councillor unless there is a “need to know” or it falls within a category where the Executive should be aware of it.
39. Where correspondence is justifiably copied to another Councillor or Officer, this should be made clear to the original Councillor/Officer. ‘Silent’ or ‘blind’ copies should not normally be used.
40. Where an e-mail is initially sent to a large group of people outside the Council, blind copies should be used to avoid publishing e-mail addresses. (Please also see the Council’s E-mail Policy which is available on the Intranet).
41. 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 Councillor. It may be appropriate in certain limited circumstances (e.g. representations to a Government Minister) for a letter to be sent out in the name of a Councillor, but this should be the exception rather than the rule. Letters that, for example, create obligations or give instructions on behalf of the Council should never be sent in the name of a Councillor, because an executive act cannot be delegated to an individual Councillor. However, councillors are of course entitled to write to the Council and to members of their community in their capacity as ward or community representatives.

Involvement of Ward Councillors

Public meetings

42. Wherever a public meeting is organised by the Council to consider a local issue, Officers should invite all relevant Ward Councillors to attend the meeting as a matter of course. Where a Councillor arranges a public meeting s/he should advise the responsible Officer or Head of Service and invite him/her to attend.

Consultation on Local Issues

43. Whenever the Council undertakes any form of consultation exercise on a local issue, the Ward Councillor(s) should be notified at the outset of the exercise. Where such consultation exercise encompasses the whole District, all Councillors must be advised.
44. Where a member of the Executive is considering something in another member’s ward they should liaise with the local member(s). The use of email will be central to the officer delivery of information.

Attendance at meetings arranged by Officers

45. Within the Council, Councillors are free at any time to meet Officers to discuss aspects of the Council’s business and to ask Officers to set up local meetings to resolve specific issues.

46. Officers will arrange many meetings with colleagues or third parties to discharge the routine business of the Council or to action its decisions. Councillors will not be present at these meetings but will be advised either informally or through reports to Committees of any relevant discussions and/or outcomes.
47. Officers have a duty to keep councillors informed about issues which may be of particular interest to their ward. It is important to ensure that ward councillors, chairmen and vice-chairmen are given early notice of something which is likely to be reported in the media and in which they will probably have an interest. Officers should try to avoid Councillors first learning about something that affects them through the media.
48. In a multi member ward, any case work raised by an individual member should not normally be disclosed by officers to other members in that ward unless either all the ward members agree, or it requires an Executive decision when it can be communicated to other members in that ward as part of the consultation, if appropriate.

Public Relations issues

49. The Council's Communications Manager is responsible for dealing with press and other media organisations on behalf of the Council. It is important therefore that all press releases and other official communications relating to the Council (but not party political or private matters) are dealt with via the Communications Manager so as to ensure proactive and effective management of the Council's public relations.
50. Further guidance (which takes into account the Government's Code of Recommended Practice on Local Authority Publicity) is set out in the Council's Media Protocol which is available on the Council's Intranet.

Publicity During Elections

51. During elections, special rules apply with regard to local authority publicity. These rules are set out in the Government's "Code of Recommended Practice on Local Authority Publicity" which is available from the Council's Communications Manager.
52. Any proactive work by existing members leading up to an election should be suspended. During the election period, i.e. the date from the publication of the Notice of Election to the Election itself, any requests from Councillors for new work in a ward should be referred to the appropriate Strategic Director for determination.

Breaches of the Code of Conduct and this Protocol Code

53. Many of the points covered in this Protocol are dealt with under the Members' Code of Conduct. Any member of the public (including officers and councillors)

can complain to the Council's Standards Committee that a councillor has broken the Code of Conduct. This could lead to an investigation and ultimately sanctions being made against the councillor (including suspension or, in serious cases referred to the Adjudication Panel for England, disqualification).

Protocol

54. More general concerns about the relationships between Councillors and Officers (or perceived breaches of the principles embodied in this Protocol) can be discussed with the Chief Executive or Monitoring Officer.
55. A complaint that this protocol has been broken by a councillor may be referred to the Standards Committee, the Chief Executive, and/or the relevant Group Leader.
56. Complaints that this Protocol has been broken by an officer may be referred to the relevant Head of Service, the Chief Executive or the Monitoring Officer. Specific breaches of this Protocol may ultimately be the subject of either grievance or disciplinary procedures.
57. The procedure that will be followed where a complaint is made is laid out in the flowchart in the appendix to this Protocol.

Review

58. The Protocol will be reviewed by the Standards Committee every three years, or earlier if necessary.
59. The Protocol was reviewed by the Standards Committee on 17th March 2009 and adopted by the Council on *dd mmmm yyyy*.