

PROTOCOL ON MEMBER/OFFICER RELATIONS

1.0 Introduction

- 1.1 The purpose of this protocol is to guide members and officers of the Council in their relations with one another.
- 1.2 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.
- 1.3 This protocol is to a large extent no more than a written statement of current practice and convention. In some respects however, it seeks to promote greater clarity and certainty.
- 1.4 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.
- 1.5 A relevant extract from the National Code of Local Government Conduct for members is reproduced below:

23. 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.

24. 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.

- 1.6 In line with the National Code's 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.

2.0 Officer advice to Political and Party Groups

- 2.1 There is now statutory recognition for political groups and party groups are a well established feature of modern local government. It is common practice, particularly for party 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 the deliberations by both political and party groups.
- 2.2 The support provided by officers can take many forms, ranging from a briefing meeting with a Chairman or Spokesperson prior to a Committee 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, it is an important principle that such support is available to all political or 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;
 - (c) similarly, where officers provide information and advice to a political or 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 relevant Committee when the matter in question is considered; and
 - (d) Members often seek officers' assistance in drafting resolutions or amendments which they wish to move at a meeting. It is proper for an officer to advise on the wording of such a proposal to ensure it is accurate, practical and lawful but there can be no inference that the officers supports the substance or merits of the proposition.
- 2.4 Special care needs to be exercised whenever officers are involved in providing information and advice to a political or party group meeting which includes persons who are not members of the Council. Such persons will not be bound by the Members' Code of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons officers may not be able to provide the same level of information and advice as they would to a members only meeting.
- 2.5 Officers must respect the confidentiality of any political or 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. It follows that whilst there is no reason why other such groups should not be aware that a Group has sought and received officer advice or be inhibited from requesting officer support themselves no political point should be made of that fact.
- 2.6 Any particular cases of difficulty or uncertainty in this area of officer advice to political or party groups should be raised with the Chief Executive who will discuss it with the relevant group leader(s).

3.0 Support services to members and political or party groups

- 3.1 The only basis on which the Council can lawfully provide support services (e.g. stationery, typing, printing, photo-copying, transport, etc) to members is to assist them in discharging their role as members of the Authority. Such support services must only therefore be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes unless full payment for this use is made.

4.0 Members' access to information and to Council documents

- 4.1 Members are free to approach any council service area to provide them with such information, explanation and advice (about that 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 service's activities to a request for specific information on behalf of a constituent. Such approaches should however normally be directed to a Chief Officer or Head of Service for the service activity area concerned.

- 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, Committee or Sub-Committee meeting. This right applies irrespective of whether the member is a member of the 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 does not however apply to documents relating to items which may appear in Part II of agenda for meetings. The items in question are those which contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, the care of children, contract and industrial relations negotiations, advice from Counsel and criminal investigations.
- 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 document 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 particular Chief Officer whose Directorate holds the document in question (with advice from the County Solicitor). In the event of dispute, the question falls to be determined by the relevant Committee — i.e. the Committee in connection with whose functions the document is held.
- 4.6 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.
- 4.7 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 County Solicitor as Monitoring Officer.
- 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 was emphasised in the former National Code of Local Government Conduct in the following terms:

26. As a councillor or a 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.

5.0 Confidentiality of Reports

- 5.1 All Chief Officers have a duty to satisfy themselves that Committee reports to which they are signatories are only classified as 'exempt information' when the statutory criteria for confidentiality are met. The Chief Executive and the County Solicitor (Monitoring Officer) have an overriding responsibility to determine this compliance.
- 5.2 Once a report has been issued within Part II of the agenda for a meeting and until the Cabinet or Committee decides that it should not be discussed in the absence of the press and public a member must respect the confidentiality of the report and not disclose it to a third party.
- 5.3 It does not however follow that all the contents of the report must be regarded as secret. It may only be certain items of information or terms of negotiations that justify the inclusion of that report within Part II: other aspects may already be within the public domain or otherwise outside the definition of 'exempt'. A member may accordingly refer to these aspects in discussions with third parties but must exercise proper care and judgement not to reveal those elements of the paper which are protected but it will always be prudent for that member to consult the County Solicitor before doing so.

6.0 Officer/Chairman Relationships

- 6.1 It is clearly important that there should be a close working relationship between a Chairman of a Committee or Cabinet Member and a Chief Officer, Head of Service or other senior officer(s) of an service activity area who report to that Committee or Member. 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.
- 6.2 Whilst the Chairman of a Committee (other than the Cabinet, where the responsibility is the Leader's) may be consulted in drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations a Chief Officer or Head of Service will be under a duty to submit a report on a particular matter. Similarly, a Chief Officer 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 and a Chief Officer or Head of Service in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.
- 6.3 Part 3 of this Constitution (Scheme of Delegation) provides that:
- (a) a Cabinet Member has delegated powers to take any decision (other than a key decision) in respect of the functions of the Cabinet; or
 - (b) in the case of any other committee, the Chairman (or, in his or her absence, the Vice-Chairman) has delegated powers to take any urgent decision in respect of that Committee.

When this process is used, a report of the action taken must be made to the Chief Executive who will arrange for it to be reported to all members and made available for public inspection.

- 6.4 Finally, it must be remembered that officers within a service activity area are accountable to their Head of Service and that whilst officers should always seek

to assist a Chairman (or indeed any member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by the Head of Service.

7.0 Correspondence

7.1 Correspondence between an individual member and an officer should not normally be copied (by the officer) to any other member. Where exceptionally it is necessary to copy the correspondence to another member, this should be made clear to the original member. In other words, a system of “silent copies” must not be employed.

7.2 Official letters on behalf of the Council should normally be sent out over the name of the appropriate officer, rather than over the name of a member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to appear over 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 over the name of a member.

8.0 Involvement of Local Councillors

8.1 Whenever a public meeting is organised by the Council to consider a local issue, all the members representing the Divisions 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 local member(s) should be notified at the outset of the exercise. Wherever practicable, local members should be consulted on dates for such meetings.

8.2 County Councillors will also be notified of any visits by the Chairman or Vice-Chairman of the Council or Committee Chairmen or Cabinet Members to County Council sites or establishments in their electoral divisions.

8.3 Officers must at all times keep members fully informed about issues which affect their divisions or bodies on which they represent the Council including, for example, correspondence with other public bodies, members of parliament or matters affecting county council establishments or services in their divisions and development proposals.

8.4 In addition to the general responsibility at 8.3 above, Chief Officers and Heads of Service shall ensure that members are alerted at the earliest possible stage to any proposals that might require consideration by a Committee of the Council and arrange to:

- notify a member that a report on any such matter is being tabled or discussed as soon as the decision to place that item on the agenda of a Committee is taken;
- ensure that this report is subsequently sent to the member as soon as it is published.

8.5 There may be occasions when Members are aware of issues or proposals affecting their divisions or of interest to them or which affect the Council about which the Council has not been advised. In those cases Members are asked to alert the Council, through the appropriate officer, in order that action may be taken.

8.6 County Councillors will also be notified of all decisions taken by the Cabinet or by Cabinet Members and will have the opportunity to have certain decisions reconsidered by the Cabinet or called in by a Scrutiny Committee as provided for in Article 7.2 (d) of the Council's Constitution.

8.7 There may be occasions on which Members are approached by constituents for advice and help on employment matters. Where such constituents are employees of the County Council it is important to avoid any potential conflict of interest and all such requests should be referred automatically to the County Solicitor or the Head of Human Resources.

9.0 Bullying

9.1 Any act against an individual may be regarded as a form of bullying, intimidation or harassment if it is intended to influence unfairly that person's actions, thoughts or deeds. While no policy statement can give guidance on every instance where such behaviour may occur the Council is committed to promoting standards of behaviour which reflect the proper, professional, working relationship which should exist between members and officers at all times and to ensure normal standards of courtesy and behaviour between individuals. It is unacceptable for members or senior officers to seek to take unfair advantage of their position within the organisation. The separate policy document on Acceptable Behaviour sets out, in more detail, how members or officers may raise such issues or instances.

10.0 Attendance by Members at Meetings Arranged by Officers

10.1 Within the Council, members are free at any time to meet officers to discuss all aspects of the Authority's business and to ask officers to set up local meetings to resolve specific issues arising in their divisions.

10.2 From time to time Committees will also resolve that member level meetings will take place with other local authorities or outside bodies. Once convened the appropriate officers will be in attendance. Conversely, members of the public or representatives of external organisations will occasionally ask to meet the Chairman and spokespersons of a Committee. One or more suitably briefed officers will normally be present but if the Chairman decides that the meeting should take place without officers in attendance he/she should explain the reasons for that decision to the relevant Head of Service in advance of the meeting.

10.3 Additionally, the officers will arrange many meetings with colleagues or third parties to discharge the routine business of the Council or to action its decisions. The convention is that members will not be present at these meetings but will be advised either informally or through reports to committees, of any relevant discussions and/or outcome.

11.0 References to Standards Board

Many of the points covered in this Protocol are touched upon in the Members' Code of Conduct which the Council has adopted for local application on the recommendation of the Standards Committee. The Committee is however concerned by the implications of the requirement in the Code that a member who reasonably believes that another member has failed to comply with the Code must make a written allegation to that effect to the Standards Committee. The Committee encourages any member who is minded to make such a reference to the Board to discuss the matter first with the Monitoring Officer to ensure that such an allegation can be substantiated: also, to give the Monitoring Officer a copy of any allegation which a member decides to send to the Standards Board.

12.0 Breaches of the Code

- 12.1 Specific breaches of this code may ultimately be the subject of either grievance or disciplinary procedures but potential problems may be resolved by early discussion between a Member and a Strategic Director or a Head of Service or, if necessary, between a Leader of a Party Group and the Chief Executive. More general concerns about relationships between Members and Officers or perceived breaches of the principles embodied in this Code can be discussed with or the Independent Chairman of the Council's Standards Committee or the Monitoring Officer.