



PROTOCOL FOR 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 in such a way as to ensure the smooth running of the Council.
- 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 that most commonly arise. It is hoped, however, that the advice given on 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. It seeks to promote greater clarity and certainty. If the advice is followed, it should also ensure that members receive objective and impartial advice and that officers are protected from accusations of bias and any undue influence from members.
- 1.4 This Protocol also seeks to reflect the principles underlying the Code of Conduct and associated Protocols, and recognised practices that apply to members and officers. The object is to enhance and maintain the integrity (real and perceived) of local government and, therefore, to require very high standards of personal conduct.
- 1.5 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.
- 1.6 Members should not raise matters relating to the conduct or capability of a Council employee or of employees collectively at meetings held in public. This is a longstanding tradition in public service. Employees have no means of responding to criticisms like this in public.

If a Member believes that

- he/she has not been treated with proper respect and courtesy or
- has any concern about the conduct or capability of a Council employee

he/she should raise the matter with the Head of the Team concerned, if it fails to be resolved through direct discussion with the employee.

The Head of Team will then look into the facts and report back to the member. If the member continues to feel concerned the member should then report the facts to the Head of Legal and Democratic Services, who will look into the matter afresh. If necessary the member can raise the matter with the Leader and the Chief Executive, if it is considered that the matter has not been satisfactorily resolved.

If a Member has a concern about the conduct or capability of a Director then he/she should raise that concern directly with the Chief Executive.

1.7 Where an officer believes that:

- he or she has not been treated with respect and courtesy, or
- is concerned about any action or statement relating to him/herself or a colleague by a member,

he/she should raise the matter with the member concerned or his/her Line Manager, Head of Team, the Head of Organisational Development or Head of Legal and Democratic Services. A colleague or trade union representative can also raise the matter on behalf of a member of staff.

Where the matter is raised with a Head of Team or the Head of Legal and Democratic Services, he/she will take appropriate action either by approaching the individual member and/or Group Leader.

- 1.8 The Council recognises that there may be close social or personal relationships between members and officers that commenced before, or after a councillor is elected to the Council or before, or after, a person becomes employed by the Council. In these circumstances, the councillor should disclose this relationship to his/her Group Leader and the Head of Legal and Democratic Services and the employee to his/her Director. The Group Leaders and Head of Team/Directors will endeavour to ensure that neither the councillor, nor the employee, is placed in a position where such relationship between the councillor and the employee will be seen to conflict with the remaining provisions of this Protocol.

2 STATUTORY OFFICERS

- 2.1 Councillors and officers recognise that there is a requirement to appoint particular officers to undertake certain statutory functions.
- 2.2 Notwithstanding any provisions in this Protocol, the Council confirms that in all arrangements for relationships between members and

officers and advice from officers, the statutory responsibilities of the following will not be compromised:

- Head of Paid Service (Chief Executive) – appointed under Section 4 of the Local Government and Housing Act 1989, with the responsibilities defined within that Act for the overall corporate management and operational activities (including those relating to staff) of the Council.
- Head of Finance – appointed under Section 151 of the Local Government Act 1972 with overall responsibility for the conduct and legality of the Council's financial administration.
- Monitoring Officer (Head of Legal and Democratic Services) appointed under Section 5 of the Local Government and Housing Act 1989 who has responsibility for ensuring the lawfulness of any proposals, decisions or omissions of the Council and for the promotion and maintenance of high standards of conduct within the Council.

2.3 In undertaking their functions, the Statutory Officers referred to at paragraph 2.2 above, will ensure the impartiality of any advice or instruction given.

3 OFFICER ADVICE TO PARTY GROUPS

- 3.1 It must be recognised by all officers and members that in discharging their duties and responsibilities, officers serve the Council as a whole and not exclusively any political group, combination of groups or any individual member of the Council.
- 3.2 There is now statutory recognition for party groups. 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 must at all times maintain political neutrality. All officers must, in their dealings with political groups and individual members, treat them in a fair and even-handed manner.
- 3.3 The support provided by officers can take many forms, ranging from a briefing meeting with a Chairman or Spokesman prior to a formal 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.
- 3.4 Certain points must, however, be clearly understood by all those participating in this type of process, members and officers alike. In particular:

- (a) requests for an officer to attend any party group meeting must be made through the appropriate Head of Team. The Head of Team will advise the Head of Legal and Democratic Services of any requests made.
- (b) officer support 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 part of meetings, when matters of party business are to be discussed.
- (c) 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.
- (d) any request for advice, together with the advice given to a political group or member, will be treated with strict confidentiality by the officers concerned and will not be accessible to any other political group. It is acknowledged, however, that factual information upon which any advice is based will, if requested, be available to all political groups.
- (e) it must not be assumed by any political group or member that any officer is supportive of any policy or strategy developed, because of that officer's assistance in the formulation of that policy or strategy.
- (f) 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.
- (g) where officers provide information and advice to a party group meeting in relation to a matter of Council business, this process cannot act as a substitute for providing all necessary information and advice to the Cabinet or Committee or Sub-Committee, when the matter in question is considered.
- (h) unless otherwise agreed in advance with the Head of Legal and Democratic Services, officers will not attend party group meetings that include persons who are not members of the Council. However, where exceptionally attendance in these circumstances has been agreed by the Head of Legal and Democratic Services, special care needs to be exercised by officers involved in providing information and advice to such party group meetings. Persons who are not councillors will not

be bound by the Code of Conduct, in particular, the provisions concerning the declaration of interests and confidentiality. 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.

4 SUPPORT SERVICES TO MEMBERS AND PARTY GROUPS

- 4.1 The only basis on which the 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 Council business. They should never be used in connection with party political or campaigning activity or for private purposes.
- 4.2 In particular, the post distribution system should only be used by members for circulating correspondence and literature relating specifically to Council business, including Group correspondence directly relating to Council business.
- 4.3 It is acknowledged, however, that certain equipment provided, such as personal computers, can be put to ancillary personal use by members, provided that such use incurs no cost to the Council and any requirements of HMRC are met by the Member concerned.
- 4.4 The Members Charter (contained within Part 8 of the Constitution) sets out the detailed provisions on the Support Services which are currently provided to members. The IMT Security and Conduct Policy (contained within Part 5 of the Constitution) is also relevant.

5 MEMBERS' ACCESS TO INFORMATION AND TO COUNCIL DOCUMENTS

- 5.1 The following paragraphs identify arrangements for members' access to information and documents. It is important to note that such access only applies where members are undertaking Council business. Where a member has a private or personal interest in a matter, the member will only be entitled to the same access to documents as would be the case for a private individual. In these circumstances, the member must make it clear to the employee that he/she is acting on his/her own behalf and not acting as a Councillor.
- 5.2 Members may approach any Council Team to obtain such reasonable information, explanation and advice about that Team's functions, to assist in discharging their role as members of the Council, or any other particular role, e.g. representative on an outside body to which they have been appointed by the Council. This can range from a request for general information or research about some aspect of a Team's activities, to a request for specific information on behalf of a constituent. Such approaches should normally be made to the Head of

Team, or another senior officer of the Team concerned. In cases of doubt, the appropriate Head of Team, Director or Head of Legal and Democratic Services should be asked for assistance.

- 5.3 As regards the legal rights of members to inspect Council documents, these are covered partly by statute and partly by the common law.
- 5.4 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 any of the bodies concerned and extends not only to reports that are to be submitted to the meeting, but also to any relevant background papers or other documents. Similar rights apply to documents related to executive decisions made by portfolio holders or officers, after the decision has been made. These rights do not, however, apply to documents relating to certain items, including background papers, which may appear under exempt business on the agenda for meetings or are otherwise considered to be exempt by the Head of Legal and Democratic Services. Therefore, members do not normally have a statutory right to inspect confidential or exempt information e.g. that relating to employees, occupiers of Council property, applicants for grants and other services, contract and industrial relations negotiations, advice from Counsel and criminal investigations unless they are a decision maker for the matter involved.
- 5.5 However, Members of Overview and Scrutiny Committees have the additional statutory right of access to documents relevant to any executive decision they are scrutinising including parts of exempt and confidential material that are relevant to such scrutiny.
- 5.6 The common law right of members is much broader. It is based on the principle that any member has a prima facie right to inspect Council documents, provided 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.
- 5.7 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".
- 5.8 This question must initially be raised with the particular Head of Team whose Team holds the document in question. In the event of dispute, the question falls to be determined by the Head of Legal and Democratic Services as the Council's appointed officer for this purpose.

- 5.9 In some circumstances (e.g. a member wishing to inspect documents relating to the business of a body of which he/she is a member) 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. Furthermore, there will be a range of documents which, because of their nature, are either not accessible by members or are accessible only by the political group forming the administration and not by the other political groups. An example of this latter category would be draft documents compiled in the context of emerging Council policies and draft reports, the premature disclosure of which might be against the Council's and the public interest.
- 5.10 The term "Council document" is very broad. It includes, for example, any document produced with Council resources, but 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 with forms part of the internal workings of another party group.
- 5.11 Further and more detailed advice regarding members' rights to inspect Council documents may be obtained from the Head of Legal and Democratic Services.
- 5.12 Any information provided by the Council to a member must only be used 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. Any member who obtains any information or documents from any source provided to another member should not make use of, or release that information or document(s), without the consent of the member for whom it was intended. Any information relating to employee matters should always be regarded as confidential. Confidential information provided to members should normally not be discussed with, or released to, any other persons. This point is emphasised in the Code of Conduct in the following terms :-
"As a Member of Winchester City Council, your conduct will address the principles of the Code of Conduct by;

...3.3. restricting access to information when the wider public interest, the Council's Constitution or the law requires it"

.Accordingly, you must not

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where
- (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

- (iii) the disclosure is
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law."

If a member considers that the Code might allow confidential information to be disclosed then advice must first be sought from the Head of Legal and Democratic Services before any disclosure is made.

6 CONVENTIONS FOR USE OF COUNCIL OFFICES AND SERVICES

- 6.1 All services provided to members by the Council are solely to support councillors to meet their legitimate duties as elected members. Apart from accommodation and services that are specifically dedicated to members, the Council's offices, services and sources of information may be used only through the officers. Members should not go into, or use, any offices or sources of information without an officer in attendance. This does not apply to the use of the Members' Library and Group and Meeting Rooms in the Guildhall.

7 OFFICER/CABINET/CHAIRMAN RELATIONSHIPS

- 7.1 It is clearly important that there should be a close working relationship between a Member of the Cabinet, the Chairman of a Committee, Portfolio Holder and the Director and other senior officers of any Team. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the officer's ability to deal with other members and other party groups.
- 7.2 A Chairman of Cabinet or of a Committee (or Sub-Committee) or Portfolio Holder will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting. It must also be recognised that in some situations a Head of Team will be under a duty to submit a report to a meeting on a particular matter. Similarly, a Head of Team or other senior officer will always be fully responsible for the contents of any report submitted by his/her Team.

This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report. Any issues arising in this area should be referred to the Head of Legal and Democratic Services for resolution, in conjunction with the Leader of the Council or Chairman of the Committee, as appropriate.

- 7.3 In addition to any Chairman's briefing before any meeting, minority group representatives will also be afforded the opportunity of a briefing through their appropriate spokesman. At the first meeting of each

Committee in the municipal year, the Committee may determine whether such meetings are required.

- 7.4 In relation to action between meetings of Cabinet or Committees, the current scheme of delegation allows for some minor decisions to be taken by individual Portfolio Holders (see Part 3 – Responsibility for Functions). The individual Portfolio Holder takes responsibility for such decisions and must obtain officer advice before making a decision. He/she will also have to comply with any procedures adopted by the Council to ensure that the Head of Legal and Democratic Services can maintain the statutory records of those decisions.
- 7.5 At Cabinet, Committee and Sub-Committee meetings, a resolution may be passed, which authorises named officers to take action between meetings in consultation with the Chairman or Portfolio Holder. In these circumstances, it must be recognised that it is the officer, rather than the Chairman or Portfolio Holder, who takes the action and it is the officer who is accountable for it.
- 7.6 Officers within a Team are accountable to their Head of Team and while officers should always seek to assist Portfolio Holders and Chairmen (or indeed any member), they must not in so doing, go beyond the bounds of whatever authority they have been given by their Head of Team. Members should not put staff in a position that could give rise to conflict between themselves and their Manager and/or Head of Team or Director.

8 CORRESPONDENCE

- 8.1 Correspondence between an individual member and an officer on a matter relating to a single constituent should not normally be copied (by the officer) to any other member. Where it is necessary to copy the correspondence to another member, (e.g. another ward member or Chairman/Portfolio Holder) this should be made clear to the original member. In other words, a system of “silent or blind copies” should not be employed.
- 8.2 In some cases, issues are raised by, or with, individual members relating to a matter of general interest in a District Council Ward or individual Parish or Town. It is recognised that it is in the best interests of the Council to ensure that all members are properly informed of general issues in their Ward/Parish or Town. Copies of correspondence will therefore normally be sent to all councillors for the particular area, unless the member specifically requests that correspondence is not copied to other members, or there is a political, or any reason, why this is not appropriate. Where correspondence is copied to other members this will be made known to the original member.
- 8.3 Where correspondence is received by an officer from a member of the public, asking for any details about a member, that letter together with

the officer's reply will be sent to the member and the member of the public requesting the information will be so informed.

- 8.4 The Members' Charter contains detailed provisions of the circumstances in which officers will copy correspondence with other parties to individual members.
- 8.5 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 (e.g. representations to a Government Minister) for a letter to be signed by 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.

9 INVOLVEMENT OF WARD COUNCILLORS

- 9.1 Whenever the Council undertakes any form of consultative exercise on a local issue, the Ward members should be informed or involved, as appropriate, before the outset of the exercise. Similarly, whenever a public meeting is organised by the Council 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.
- 9.2 Whenever a member is invited to such a meeting, or any seminar, or conference or any ceremonial event, the member will, at the same time, be informed as to whether they are entitled to claim any travelling or subsistence allowance.

10 CEREMONIAL EVENTS

- 10.1 The Mayor or in his/her absence the Deputy Mayor, will be the appropriate person to lead Council ceremonial events, which are of particular significance or are not specifically associated with a particular committee. Similarly the Mayor, or in his/her absence the Deputy Mayor, will be the appropriate person to represent the Council at ceremonial events of other organisations, which are not specifically associated with the Cabinet or a particular Committee.
- 10.2 Subject to paragraph 10.1, Portfolio Holders, or where they are not available another Member of the Cabinet, is the appropriate representative for ceremonial events within the scope of their Portfolios. Where a Portfolio Holder or another Member of the Cabinet is not available, the Portfolio Holder may nominate another member.
- 10.3 Local members should always be informed of and, where possible, invited to ceremonial events taking place within their own parishes/towns, as should County and Parish Councillors as appropriate.

- 10.4 Any member taking part in a ceremonial event must not seek disproportionate personal publicity, or use the occasions for party political advantage, bearing in mind that the member is representing the Council as a whole.

11 PUBLIC RELATIONS AND PRESS RELEASES

- 11.1 The Council's Head of Communications serves the Council as a whole and must operate within the limits of the Local Government Act 1986, which prohibits the Council from publishing material which appears to be designed to affect public support for a political party. The publicity shall also comply with the Code of Practice on Local Authority Publicity.
- 11.2 Officers normally draft Council press releases. These official press releases will often contain quotations (within the limits of the Local Government Act 1986) from the Leader and/or Deputy Leader of the Council, a Portfolio Holder or the Chairman or Vice-Chairman of a committee or sub-committee, and from the Mayor and/or Deputy Mayor of the Council about ceremonial events. Such press releases are issued on behalf of the Council, in the agreed press release format from the Communications Team, and it would not, therefore, be appropriate when repeating quotations from members to indicate their party political affiliation.
- 11.3 Individual Members who may issue statements of a political nature to the press, must not use the Council's press release format and should make it clear that such statements are not made on behalf of the City Council.
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