

# **Member/Officer Protocol**

## **1. THE ROLE OF MEMBERS**

- 1.1 Members are elected democratically. It is their policies, ideas and decisions which people vote for. Members agree a policy framework, set the corporate goals and promote the Council in all its work. Members are also the key channels of democratic accountability and Members are the channel for the voices of the people in their wards.
- 1.2 The Council meets as a body when all its Members are summoned to attend a Council meeting. This meeting has ultimate authority over the affairs of the local authority, subject only to the law. The Council can delegate authority to the Executive, committees and sub-committees of Members (and co-opted members in some circumstances) and to Officers. So when Members meet as the Executive, a committee or sub-committee they can take decisions and act on behalf of the Council, within that body's terms of reference and delegated powers, again subject only to the law.
- 1.3 Members will also be involved in a variety of less formal meetings, correspondence and discussions with other Members, Officers and people outside the Council, to help the Council develop policies and deliver services.
- 1.4 As a Member attending a meeting of Council, the Executive, or of a committee or sub-committee, or in less formal settings, Members may have different roles:
  - \* the policy making role - deciding the broad direction of Council policy
  - \* the executive role - deciding how those policies are to be delivered in practice
  - \* the scrutiny role - holding Executive and Officers to account for their decisions and actions
  - \* the ward member role - representing the interests of individual residents or residents' groups within their ward, in the overall public interest.
- 1.5 The Officers of the Council will support all Members to enable them to perform these roles effectively in the interests of the Council and the public. They will provide support, information and advice to Members to help them in these roles in accordance with these protocols.
- 1.6 *Mutual respect and trust should be founded on the ten principles of public life which the Leader and Chief Executive have undertaken to uphold. The principles, which apply equally to members and employees are:-*
  - *Selflessness*
  - *Honesty and Integrity*
  - *Objectivity*
  - *Accountability*
  - *Openness*
  - *Personal Judgment*
  - *Respect for Others*
  - *Duty to Uphold the Law*
  - *Stewardship*
  - *Leadership*

## **2. SUPPORT SERVICES FOR MEMBERS**

- 2.1 The Council provides a range of support services for Members. These include computer hardware and software, stationery and office equipment which can be selected by the individual member, subject to a maximum cost allowance for each Member, the use of photocopying facilities and postage.
- 2.2 The only basis on which the Council can provide support services of this kind to Members is to assist them discharge their role as Members of the Council. They are for use on Council business and to help Members in their roles as advocates for their local communities. They should not be used in connection with party political campaigning.
- 2.3 The Chief Executive, Monitoring Officer and Member Development Group will from time to time arrange training programmes for Members. These might involve induction for new Members, presentations and discussions on particular topics, and training in specialist areas of the Council's work, planning for example. Sometimes training may be a requirement before a Member can take part in a specialised committee. Training may be for all Members of the Council and or targeted at members of particular committees.

## **3. MEMBERS' ACCESS TO INFORMATION AND TO COUNCIL DOCUMENTS**

- 3.1 Information will be provided to the members of the public and Members of the Council unless it falls within a list of items which are exempt or confidential or for other proper reasons. Also, Councillors have rights to access committee papers and other information. If a Member can establish that in order to carry out their duties as Councillor they need information to which they are not automatically entitled to have access then the Chief Executive may provide access.
- 3.2 Members are free to approach any Council service to provide them with information, explanation and advice (about the service's functions) as they may reasonably need in order to respond to a request for specific information on behalf of a constituent.
- 3.3 Members are not entitled to confidential information which is not directly relevant to their role as a Councillor. Members should not request confidential information in order to use it for a purpose not legitimate for their role as a Councillor, because they are in a position of trust. A Member's motive for requesting confidential information is relevant and Members should be prepared to disclose the reason for their request.
- 3.4 Confidential information should not be disclosed to any third party unless:
  - \* the Member is legally compelled to do so, for example there is a legal duty to make disclosure in the public interest
  - \* the disclosure is at the request, or with the consent, of the party that provided the information.
- 3.5 Members who believe that the disclosure of confidential information is necessary for the effective performance of their duties as Members should seek advice from the Chief Executive or the Monitoring Officer. Improper disclosure of confidential information can put the Council at legal and financial risk.

- 3.6 Members should not ask for information on a matter on which they would have to declare an interest.
- 3.7 If a Member is refused access to documents they feel they have the right to see, the dispute will be determined by the Chief Executive or the Monitoring Officer.

#### **4. THE ROLE OF OFFICERS**

- 4.1 Officers can also have a variety of roles.

- \* They are responsible for the operational management of the Council.
- \* They advise Members to help them to take decisions in the Executive, committee, sub-committee and Council.
- \* Some Officers have personal statutory powers and duties, for example, the Officers designated as Head of Paid Service (Chief Executive), Chief Finance Officer (Head of Finance and the Monitoring Officer (Head of Members' Services and Monitoring Officer.
- \* The Council has given delegated powers to the Chief Executive, Deputy Chief Executives and other officers as defined under Article 12, so that they can act and take decisions on behalf of the Council in many areas, provided they follow the rules of delegation and Members have access to their decisions.
- \* The Council is a large organisation, and Officers have a role to play within the organisation itself.

- 4.2 The organisational role of Officers has two important dimensions. Some Officers have professional skills relevant to a particular organisational task. Others have a primarily managerial responsibility. Many have elements of both in their job.

- 4.3 Professional Officers reasonably expect to have the opportunity to give 'honest advice' and to have their professional integrity respected (e.g. not to be required to make recommendations they cannot professionally support) and the chance to 'explain' what appears to be a performance failure or inconsistency.

- 4.4 In addition Members and Officers must understand there is a clear and acceptable division of responsibilities regarding policy and implementation. It is the duty of Officers to manage the implementation of policy, in agreement with Members.

- 4.5 Officers serve the Council through its committees and other Council bodies. They work to the instructions of their Head of Service or the Chief Executive - not individual Members of the Council, whatever office the Member might hold.

- 4.6 Officers should:

- \* pursue every known lawful policy of the Council
- \* implement the decisions of Council, the Executive, committees and sub-committees
- \* inform Members through their head of service of any decision that they cannot fully implement and the reasons for this
- \* be helpful and respectful to Members
- \* behave in a professional manner
- \* serve all members, not just those of the administration group(s)
- \* maintain confidentiality
- \* deal with Member enquiries efficiently
- \* strive continually to comply with the Council's performance management and scrutiny processes

- \* support Members in their role as ward Councillors

## **5. THE COUNCIL AS EMPLOYER**

- 5.1 Officers are employed by the Council and both they and the Council are governed by their contracts of employment and the Council's HR procedures.
- 5.2 Members should remember that, although the Council has an open access to information policy, there is no automatic right to information about:
- \* any individual applicant to become an employee,
  - \* any individual who is an employee (this includes details of grade and pay, and any disciplinary, grievance or other employment issue that involves a particular employee), or
  - \* consultations or negotiations over any employee relations matter.
- 5.3 When acting as employer, Members are bound by the complete framework of national and European employment law and may be personally liable for decisions which discriminate on the basis of all strands of sex, age, race, religion, gender, sexual preference, or disability. The Council is an equal opportunity employer and Members should be guided by this principle in all their relationships with staff.
- 5.4 In addition, under Constitution:
- \* Members must not solicit a job with the Council for any person (but may give them a written testimonial)
  - \* Canvassing support for a candidate for a job with the Council disqualifies the candidate from that job.
- 5.5 Members will be involved in individual staffing matters only if they are a member of a committee or panel set up for that purpose. This may include being part of an appeals process or in the case of the Chief Executive and other senior officers the appointment process.
- 5.6 In other circumstances, however, Members must not become embroiled in the management of the Council (for example, most disciplinary, capability or grievance processes dealt with by officers). They must not engaged in activities which might undermine the management line of command or adherence to Council HR procedures, or try to influence the recruitment process.
- 5.7 Likewise, Officers must not raise directly with Members, either acting independently or on behalf of others, any personal matter to do with their jobs, or relating to any potential appointment within the Authority. Formal procedures have been agreed with the trade unions for dealing with such issues.

## **6. MONITORING THE PERFORMANCE OF OFFICERS**

- 6.1 Members should set the parameters for Council work and then let Officers deliver services within these whilst guaranteeing that strong scrutiny and performance management systems are in place.
- 6.2 Members have a right to criticise reports or the actions taken by Officers, but they should always:
- \* avoid personal attacks on Officers

- \* ensure that criticism is constructive and well founded

6.3 Complaints about Officers or Council services should be made to the Head of Service where a Member feels the fault lies. Members have a duty to raise any issues that they have reason to think might involve fraud or corruption of any sort.

6.4 Members should avoid undermining respect for Officers at committee meetings, or in any public forum including the media. This would be damaging both to effective working relationships and to the public image of the Council. In general Officers are unable to answer back or defend themselves against criticism in a public forum.

## **7. OFFICER ADVICE/POLITICAL NEUTRALITY OF OFFICERS**

7.1 There is a statutory recognition for party groups. It is common practice for party group meetings to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision-making body or Officers under delegated powers.

7.2 The extent to which it is appropriate for Officers to attend meetings of this kind depends on the nature of the meeting, but the general principles governing the basis on which they attend and take part are the same. In principle, equivalent facilities are available to all political groups represented on the Council if they so request.

- \* Officers should not attend party group meetings, or party political meetings without the agreement of the Chief Executive.
- \* Officers may make presentations to party groups of members of the Council on request. All requests for advice of this kind should be routed through the Chief Executive who would be responsible for advising the other groups who could then ask for the same briefing.
- \* Officers may attend briefing meetings with the Leader, Group Leaders, Chairmen, Vice-Chairmen, Portfolio Holders or spokespersons either on a specific topic or prior to a committee meeting or the like.
- \* Officers may meet Chairmen prior to consulting them formally as a precondition to exercising delegated powers.
- \* Officers may attend for briefing with the Group Leaders of all political parties on the Council.
- \* Officers should not, except in exceptional circumstances, attend party group meetings involving party colleagues who are not members of the Council (see paragraph 7.4 below).

7.3 Certain points must however be understood by all those participating in this type of process, Members and Officers alike. In particular:

- (a) Officer support in these circumstances should not extend beyond providing information and advice in relation to matters of Council business, and Officers should not be expected to be involved in advising on matters of party business.
- (b) Such meetings, whilst they may 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 should not be interpreted as such.

(c) Similarly, where Officers provide information and advice to such meetings 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 or sub-committee when the matter in question is considered.

(d) Officers should not be asked to provide advice on how to undermine or prevent from being implemented agreed Council policy.

7.4 Special care needs to be exercised if Officers are involved in providing information and advice to a party group meeting which includes persons who are not Members of the Council. Such persons will not be bound by the Code of Conduct (in particular, the provisions concerning the declarations 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 meeting where those in attendance are bound by the provisions of the code.

7.5 Officers must respect the confidentiality of any discussions at which they are present with Members. If Officers receive information which, although confidential, they have a duty to disclose elsewhere, they must indicate that this is the case.

7.6 Any particular cases of difficulty or uncertainty in this area of Officer advice to party groups should be raised with the Chief Executive who will discuss them with the relevant Group Leader(s).

7.7 Officers must never allow their own personal or political opinions to interfere with their work. Officers should not take part and Members should not ask Officers to take part in any activity which could be seen as influencing support for a party. Members should raise with the Chief Executive any concerns about the political neutrality of an Officer.

7.8 Senior Officers and political assistants are subject to legal rules limiting their political activities outside work.

7.9 The role of Officers advising Members at group meetings was examined by the Divisional Court in the case of Porter v Magill. The judgement in this respect was not affected by the later decision of the Court of Appeal. A note on this is set out as an appendix to these protocols.

## **8. EXCESSIVE FAMILIARITY**

8.1 Members and Officers will often work closely together and develop good relationships. This can be beneficial, but there are limits and risks for all concerned in this area and it is not enough to avoid actual impropriety. Members and Officers should at all times avoid any situation which can give rise to suspicion and any appearance of improper conduct. This includes excessive socialising between officers and individual members.

8.2 Members must declare to their Group Leader and to the Chief Executive any relationship with an Officer which might be seen as influencing their work as a Member.

8.3 Members must not sit on or participate in decisions by any Council committee or other Council body which directly affects an employee to whom they are:

\* the partner

- \* otherwise closely related such as sisters, brothers, parents and grandparents
- \* in any other relationship which would jeopardise the work of the Council or make their attendance improper under the National Code of Local Government Conduct.

## 9. **COMBATIVENESS AND PRESSURE**

- 9.1 It is important that any dealings between Members and Officers both written and oral should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position.
- 9.2 Members must remember that Officers cannot respond to personal criticism in the same way that politicians can and should make their comments accordingly. Members need to be especially careful about contact with less senior staff and must avoid deliberately or unwittingly intimidating staff.
- 9.3 Members should not put pressure on an Officer on matters which have been delegated for Officer decision. This might lead Officers to make decisions that:
- \* are not objective and cannot be account for
  - \* favour unfairly one member of the public over the other.
- 9.4 Nor should they bring undue influence to bear on an Officer to take any action which is against procedure or policy, such as:
- \* a breach of personnel procedures
  - \* conflict with the constitution; or
  - \* conflict with planning procedures and policies.
- 9.5 Members must declare any special relationships with constituents when dealing with Council Officers. Although Members are elected to represent the interests of their constituents, they should not seek special treatment for any individual.

## 10. **REPORTING IMPROPER CONDUCT : ALLEGED MISCONDUCT BY MEMBERS**

- 10.1 Any complaints made regarding the alleged conduct of Councillors will be dealt with in accordance with the Local Standards Framework of Standards For England.
- 10.2 The Monitoring Officer will investigate allegations of fraud or criminal misconduct against Members. They may investigate other allegations of misconduct against Councillors, but only if:
- \* the matter affects the business of the Council or its reputation; and
  - \* it is proper for the Monitoring Officer to investigate.
- 10.3 Some issues are matters of party discipline. Even if the allegations were proved, there may be no action or sanction that the Council can apply. Normally such matters must be investigated by the party itself. The Monitoring Officer will refer the matter to the Group Leader.
- 10.4 The Monitoring Officer:
- \* will investigate any matters which are properly raised with them
  - \* will always inform the Councillor who is the subject of the allegations -

- unless this would prejudice the investigation
  - \* has no obligation to report the findings to the Councillor making the allegation but is responsible for satisfying the Councillor that appropriate action has been taken
  - \* has a duty to take whatever action they think fit as a result of the investigation, in accordance with their statutory duties.

10.5 Investigations will be subject to supervision by and report to the Standards Committee of the Council or any equivalent body.

10.6 Where the allegation is within the terms of reference of the Council's auditors, the police, the matter will be referred to them.

## 11. **WHISTLEBLOWING**

11.1 The Council's commitment to the highest standards of openness and accountability mean that both Officers and Members have a duty to:

- \* raise with the Chief Executive or Heads of Service any irregularities and matters which they feel have been dealt with improperly
- \* provide them with any evidence or relevant information they have.

11.2 In particular, Members have a duty to raise any issues they have reason to think might involve fraud or corruption of any sort.

11.3 However, the Chief Executive will take appropriate action if frivolous or malicious allegations are made.

11.4 The provisions of this code are in addition to the right of any Member or employee to raise an issue of concern with an appropriate body outside the Council. For example, they may choose to raise a criminal matter directly with the police.

11.5 The Council had adopted a whistleblowing code for Officers. This sets out the process under which Officers can raise concerns with their manager or, if they prefer, with the Monitoring Officer. It sets out how this works, and the responsibilities of the people concerned.

## 12. **CEREMONIAL EVENTS**

12.1 The Chairman of the Council or in their absence the Vice-Chairman will be the appropriate person to lead the District Council ceremonial events which are of particular significance or are not specifically associated with a particular Committee. Similarly, the Chairman of the Council or in their absence the Vice-Chairman will be the appropriate person to represent the Council at ceremonial events of other organisations which are not specifically associated with a particular Committee.

12.2 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/Town Councillors as appropriate.

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



### **13. PUBLIC RELATIONS AND PRESS RELEASES**

- 13.1 Press releases 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.
- 13.2 Council press releases are drafted by Officers and may contain quotations (within the limits of the Local Government Act 1986) from Group Leaders, portfolio holders or relevant Committee Chairman. Press releases about ceremonial events may contain a quotation from the Chairman or Vice Chairman. Otherwise, quotations will be made by Officers.
- 13.3 Before issuing a press release of any significance a draft will be issued to the relevant Councillor, as set out in 13.2, to comment.

## APPENDIX A

### Decision of Divisional Court with respect to Officers

This case (Porter and others v Magill) concerns the legality of Westminster City Council's housing policies and whether or not former Members and Officers of the Council should be surcharged for any losses caused by adopting the policies on the grounds of their wilful misconduct. The District Auditor certified that three Members and two Officers should be surcharged. The Divisional Court allowed appeals by the Officers and one of the Members. The Court of Appeal allowed further appeals by the other two Members. The District Auditor has appealed to the House of Lords.

Officers faced liability although the District Auditor never identified any personal gain or motive for wilful misconduct. The District Auditor placed reliance on Officers having attended Conservative Group meetings and discussed the formation of the policies with majority group members.

The Divisional Court stated the following principles in relation to Officers undertaking their duties. The Court of Appeal did not reverse this aspect of the judgement of the Divisional Court. Further advice will be given if the House of Lords speeches cover these points.

- Officers **must** at all times retain their impartiality. They must not imperil their independence by:
  - (a) Political partiality
  - (b) Suppressing their professional views in the face of political pressure
  - (c) Lending support to policies of a party-political or sectional-serving character which are not in the interest of the authority's council-tax payers as a whole.
- Officers may attend political meetings of a Group or Council Members if invited to do so. There is nothing wrong in merely attending the meeting as the presence of Officers does not, in itself, convey assent to party political views. It provides Officers with the opportunity to hear the formation and development of ideas which may develop into Council policy.
- It is appropriate for Officers to provide Members with information about their local authority and its inhabitants which is available to Officers and can be supplied at modest cost.
- When dealing with Members, Officers may hear a substantial amount of talk which is party-political in nature. Officers are not required to give advice or take action until such time as it is clear that such talk is to become policy.