



<b>Title:</b>	<b>Constitution of the Council (Part 5C: Councillor/Officer Protocol)</b>
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<b>Date of version:</b>	<b>17<sup>th</sup> May 2019</b>
<b>Version:</b>	<b>2.6</b>
<b>Review due:</b>	<b>May 2020</b>
<b>Approved by Monitoring Officer:</b>	<b>Angela Wakefield</b>
<b>Date of Equality Impact Assessment:</b>	<b>29<sup>th</sup> October 2013</b>

<b>Date sent to officer responsible for website:</b>	<b>20<sup>th</sup> May 2019</b>
<b>Date sent to officer responsible for Learning and Development:</b>	<b>20<sup>th</sup> May 2019</b>
<b>Date sent to officer responsible for CMIS:</b>	<b>20<sup>th</sup> May 2019</b>

**Adopted by Full Council on 17<sup>th</sup> May 2019**



# PROTOCOL FOR COUNCILLOR/OFFICER RELATIONS

## 1 INTRODUCTION

- 1.1 The purpose of this protocol is to guide Councillors and Officers of the Council in their relations with one another. It explains what Councillors and Officers should expect from one another as part of their ongoing working partnership.
- 1.2 The protocol sets out the basic guidelines that will help to maintain a good working relationship between Councillors and Officers which is essential for the successful working of the Council. This relationship is characterised by mutual respect, honesty and trust. Councillors and Officers must feel free to speak to one another openly and honestly.
- 1.3 Given the variety and complexity of any relationship, this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which arise.
- 1.4 The protocol is to a large extent no more than a statement of current practice and convention. In other respects however, it seeks to promote greater clarity and certainty.
- 1.5 It is designed to enhance and maintain the integrity (real and perceived) of local government and the very high standards of personal conduct. It takes account of the Council's Code of Conduct for Councillors.
- 1.6 The Protocol also gives guidance on what to do on the rare occasions when things go wrong.

## 2 ROLES OF COUNCILLORS AND OFFICERS

- 2.1 The respective roles of Councillors and Officers can be summarised as follows.
- 2.2 Councillors and Officers are servants of the public and are indispensable to one another. Their responsibilities however are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the whole Council. Their job is to give advice to Councillors and to

the Council and to carry out the Council's work under the direction and control of the Council, the Cabinet, relevant committees, etc.

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

## COUNCILLORS

- 2.4 Councillors have four main areas of responsibility:
- 2.4.1 determining the policy of the Council and giving it political leadership;
  - 2.4.2 monitoring, reviewing and scrutinising the performance of the Council in implementing that policy and delivering services;
  - 2.4.3 representing the Council externally; and
  - 2.4.4 acting as advocates and community leaders on behalf of their constituents.
- 2.5 It is not the role of the Councillors to involve themselves in the day to day management of the Council's services.

## MEMBERS OF THE CABINET, CHAIRMEN AND VICE CHAIRMEN

- 2.6 Members of the Cabinet and Chairmen and Vice Chairmen of Committees, Boards, Panels etc. have additional responsibilities. Because of those responsibilities, their relationships with employees may differ from, and be more complex than, those of Councillors without such responsibilities. This is recognised in the expectations that they are entitled to have. However, such Councillors must still respect the impartiality of officers. They must not ask Officers to undertake work of a party political nature, nor to do anything which would put the Officers in difficulty in the event of a change in the political composition of the Council.

## OPPOSITION COUNCILLORS

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

## OFFICERS

- 2.8 The role of Officers is to give advice and information to Councillors in the context of the Council's Corporate Plan and priorities and to implement the policies determined by the Council.
- 2.9 In giving advice to Councillors, and in preparing and presenting reports, it is the responsibility of the Officer to express his/her own professional views and recommendations. Whilst an Officer may report the views of individual Councillors on an issue, if the Councillor wishes to express a contrary view they should not seek to pressure the officer to make a recommendation contrary to the officer's professional view. Officers may, of course, change their professional views following discussions with Councillors and others, provided that no improper influence is placed upon them to do so.
- 2.10 Certain Officers e.g. Head of Paid Service, Monitoring Officer and Chief Finance Officer (Section 151 Officer) have responsibilities in law over and above their obligations to the Council and to individual Councillors, and Councillors must respect these obligations, must not obstruct Officers in the discharge of these responsibilities, and must not victimise Officers for discharging these responsibilities.

## 3 EXPECTATIONS

- 3.1 Councillors can expect from Officers:
- 3.1.1 A commitment to the Council as a whole, and not to any political group;
  - 3.1.2 A working partnership;
  - 3.1.3 An understanding of, and support for, respective roles, workloads and pressures;
  - 3.1.4 Timely responses to enquiries and complaints;
  - 3.1.5 Professional advice, not influenced by political views or political preference, which does not compromise the political neutrality of Officers;
  - 3.1.6 Regular, up to date information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions that they hold;
  - 3.1.7 Awareness of and sensitivity to the political environment;
  - 3.1.8 Respect, dignity and courtesy;

- 3.1.9 Training and development in order to carry out their role effectively;
  - 3.1.10 Integrity, honesty, mutual support and appropriate confidentiality;
  - 3.1.11 That personal issues will not be raised outside the agreed procedures;
  - 3.1.12 That relationships will not be used to advance personal interests or to influence decisions improperly;
  - 3.1.13 That Officers will at all times comply with any relevant Code of Conduct;
  - 3.1.14 Support for the role of Councillors as the local representatives of the Council, within any scheme of support for Councillors which may be approved by the Council;
  - 3.1.15 Due regard for compliance with Health & Safety duties.
- 3.2 Officers can expect from Councillors:
- 3.2.1 A working partnership;
  - 3.2.2 An understanding of and support for respective roles, workloads and pressures;
  - 3.2.3 Political leadership and strategic direction;
  - 3.2.4 Respect, dignity and courtesy;
  - 3.2.5 Integrity, honesty, mutual support and appropriate confidentiality;
  - 3.2.6 That personal issues will not be raised outside the agreed procedures;
  - 3.2.7 Not to be subject to bullying or to be put under undue pressure.  
Councillors should have regard to the seniority of Officers in determining what are reasonable requests, having regard to the power relationship between Councillors and Officers and the potential vulnerability of Officers, particularly at more junior levels;
  - 3.2.8 That relationships will not be used to advance personal interests or to influence decisions improperly;
  - 3.2.9 That Councillors will at all times comply with any relevant Code of Conduct;
  - 3.2.10 Due regard for compliance with Health & Safety duties.

## 4 LIMITATIONS UPON BEHAVIOUR

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

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

## 5 KEEPING COUNCILLORS INFORMED

- 5.1 It is very important that all Councillors are kept informed from the outset in respect of major issues concerning the Borough Council and any proposals specifically affecting their Ward. This includes any form of consultative exercise proposed to be carried out in the Ward.
- 5.2 Whenever a public meeting is organised by the Council to consider a local issue, all the Councillors representing the Ward or Wards affected should as a matter of course be invited to attend the meeting.
- 5.3 All Councillors shall as a matter of course be kept updated and informed of issues that are of importance to them. Copies of Press Releases shall be sent to all Councillors by email.

## 6 REQUESTS FOR INFORMATION

- 6.1 Officers should deal with enquiries from all Councillors as a priority. All Councillors must be kept regularly informed and updated of progress on matters which are of concern/interest to them. This is of paramount importance in ensuring the efficient conduct of the Council's affairs and in helping Councillors discharge their community leadership role.
- 6.2 Requests for information received by Officers from Councillors in emails, letters and faxes must be replied to within two working days.
- 6.3 Requests for information sent by Officers to Councillors in emails, letter and faxes must also be replied to within two working days.

- 6.4 Telephone calls or queries raised at meetings with Officers must be responded to expeditiously, preferably on the same day the initial contact is made. In any event contact must be made within twenty four hours informing the Councillor of the action being taken.
- 6.5 Where a Councillor requests information, the fact of that request, and the information supplied, will as appropriate be brought to the attention of the Leader / Deputy Leader or Chairman concerned by the Chief Executive or the relevant Head of Service.

## 7 ACCESS TO PAPERS AND OTHER BOROUGH COUNCIL INFORMATION

- 7.1 The legal rights of Councillors to inspect Borough Council documents are covered partly by statute and partly by the common law. The Access to Information Procedure Rules contained in the Constitution explain the position in detail.
- 7.2 Councillors have all the rights available to Councillors of the public and have access to electronic copies of all agendas of the Cabinet and of Committees, Sub-Committees or Panels of which they are not Councillors. They also have access to electronic copies of reports which are not to be considered in private.
- 7.3 In the light of the Councillors' Code of Conduct special care needs to be taken when a Councillor has a significant personal or business relationship with a constituent about whom he or she is seeking information. An appropriate option may be that another Councillor could act for the constituent.

### STATUTORY RIGHTS

- 7.4 Statutory rights under the Local Government Acts 1972 and 2000 are additional to the common law rights to inspect information. Elected Councillors have a statutory right to inspect any Borough Council document which contains material relating to any business which is to be transacted at a Council or Cabinet or Committee, Sub-Committee or Panel meeting (other than Exempt Information). This right applies irrespective of whether the Councillor is a Member of the Cabinet or the Committee concerned and extends not only to reports that are to be submitted to the meeting, but also to any relevant background papers.

### COMMON LAW

- 7.5 The common law right of a Councillor to inspect documents is based on the principle that any Councillor has a prima facie right to inspect Borough Council



documents so far as their access to the documents is reasonably necessary to enable them properly to perform their duties as a Councillor. This principle is commonly referred to as the “need to know” principle.

- 7.6 The exercise of this common law right depends upon the Councillor’s ability to demonstrate that they have the necessary “need to know”. In this respect a Councillor has no right to “a roving commission” to go and examine documents of the Borough 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 relevant Head of Service. In the event of dispute, the question would fall to be determined by the Monitoring Officer.
- 7.7 In some circumstances (e.g. a Committee Member wishing to inspect documents relating to the functions of that Committee) a Councillor’s “need to know” will normally be presumed. In other circumstances (e.g. a Councillor wishing to inspect documents which contain personal information about third parties) a Councillor will normally be expected to justify the request in specific terms.
- 7.8 Whilst the term “Borough Council document” is very broad and includes for example, any document produced with Borough Council resources, it is accepted by convention that a Member of one party group will not have the right to inspect, a document which forms part of the internal workings of another party group.
- 7.9 Further advice regarding Councillors’ rights to inspect Borough Council documents may be obtained from the Monitoring Officer.

## REDRESS

- 7.10 If a Councillor is not satisfied with the response they receive from an Officer they should raise the matter with the appropriate manager. If still dissatisfied the matter should be referred to the relevant Head of Service for appropriate action who will consult the Chief Executive as necessary. If the Officer is a Head of Service the Councillor should raise the matter with the Chief Executive. The Councillor may contact the Monitoring Officer for advice, just as Officers will seek guidance from him.

## 8 HOW CAN THE INFORMATION BE USED?

- 8.1 Any Borough Council information provided to a Councillor must only be used by the Councillor for the purpose for which it was provided i.e. in connection with the

proper performance of the Councillor's duties as a Borough Councillor. This point is emphasised in the Code of Conduct for Councillors included in the Constitution.

- 8.2 Confidential information must not be made available by any Councillor to the public. Councillors are reminded that any breach of this requirement is a breach of the Code of Conduct for Councillors which may be referred to the Standards Committee for action.

## 9 INSPECTION OF PREMISES

- 9.1 Unless specifically authorised to do so, Councillors are not entitled to inspect land or premises which the Council have the right or duty to inspect. Nor may they enter, or issue orders relating to, works being carried out by or on behalf of the Council. This includes, for example, building sites. An example where visits have been authorised is the system of site visits for Members of the Planning Committee.

## 10 POLITICAL ACTIVITY

- 10.1 Senior Officers, except those politically exempted, cannot be Local Councillors or MPs; nor can they "speak or publish written work for the public at large or to a section of the public with the apparent intention of affecting public support for a political party".
- 10.2 Officers are employed by the Borough Council as a whole. They serve the Council and are responsible to the Head of Paid Service and their respective Heads of Service, and not to individual Councillors of the Council whatever office they might hold.
- 10.3 It is obviously important, though, for there to be regular contact between the Chief Executive, Heads of Service and the leaders of political groups on matters affecting the Borough Council: and between the Chief Executive, Heads of Service and the Leader of the Council, Deputy Leaders and Committee Chairmen on matters affecting their respective responsibilities.
- 10.4 Borough Council decisions can only be made in accordance with the Constitution. Decisions by party political groups do not constitute Council decisions and it is essential that they are not interpreted or acted upon as such. Where Officers provide information and advice to a Councillor or group of Councillors in relation to a matter of Borough Council business, this does not obviate the requirement to provide all necessary information and advice to the relevant decision making body when the matter in question is considered. It is essential therefore that

representations to the Borough Council at any stage in the formal decision-making process with regard to any matter should be made to the Cabinet or the relevant Committee, Sub-Committee or Panel and not to a political group.

## 11 POLITICAL GROUPS

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

### BRIEFINGS

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

### OFFICER ATTENDANCE

- 11.5 Any political group may request the Chief Executive or a Head of Service to attend a meeting of the group to advise on any particular matter relating to the Council.
- 11.6 The Chief Executive or Head of Service may arrange for the attendance of a representative in their stead, or may decline to attend or to provide a representative where they are of the opinion that the particular issue is of such a political nature that it would be inappropriate to attend.
- 11.7 Officers' advice to political groups will be limited to a statement of material facts and identification of options and the merits and demerits of such options for the Council. Advice will not deal with any political implications of the matter or any option, and Officers will not make any recommendation to a political group.

- 11.8 Special care needs to be exercised whenever Officers are involved in providing information and advice to an advisory group meeting, which includes persons who are not Councillors. Such persons will not be bound by the Code of Conduct for Councillors (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 Councillors only meeting.
- 11.9 Where an Officer attends a political group meeting, the Chief Executive will advise all other groups that the Officer has attended and the subject upon which they have advised.
- 11.10 Officers will respect the confidentiality of any matter which they hear in the course of attending a political group meeting.
- 11.11 Whilst officers are in attendance at group meetings, Councillors should ordinarily refrain from making political comments or statements or expressing opinions which might adversely affect the impartiality of such officers. Such matters should be dealt with in the private part of group meetings.
- 11.12 Any particular cases of difficulty or uncertainty in this area of Officer advice to advisory groups should be raised with the Chief Executive who will discuss them with the relevant Group Leader(s).

## 12 SUPPORT TO COUNCILLORS AND PARTY GROUPS

- 12.1 The only basis on which the Borough Council can lawfully provide support services (e.g. stationery, typing, printing, photocopying, transport, etc.) to Councillors is to assist them in discharging their role as Councillors. Such support services must therefore only be used on Borough Council business. They should never be used in connection with party political or campaigning activity or for private purposes.

## 13 OVERVIEW AND SCRUTINY

- 13.1 The Council's Scrutiny Committees will seek the advice of:
- 13.1.1 the Monitoring Officer, where they consider there is doubt about the legality of any Executive decision(s);
  - 13.1.2 the Chief Financial Officer (S151 Officer), where they consider a decision (or decisions) of the Executive might be contrary to the Council's budget;
- and

- 13.1.3 the Monitoring Officer and other relevant Heads of Service, where they consider a decision (or decisions) of the Executive might be contrary to the Council's policy framework.
- 13.2 When considering calling Officers to give evidence to the Scrutiny Committees, the Chairman shall not, without the consent of the relevant Head of Service, request the attendance of a junior Officer.
- 13.3 When asking Officers to give evidence before the Scrutiny Committees, questions should be confined, so far as is possible, to questions of fact and explanation of any professional opinion relating to policies and decisions. Officers must respond to questions from Councillors in an open, constructive and helpful manner. Officers must not deliberately mislead or be economical with the truth.
- 13.4 Where they consider it appropriate the Chairman of the relevant Scrutiny Committee may ask the Chief Executive or Heads of Service to explain any advice given by them to Members of the Cabinet and explain any decision(s) the Chief Executive or Heads of Service may have taken under the Scheme of Delegations to Officers. For the avoidance of doubt, any private or confidential matter must be dealt with in a private or confidential manner.

#### UNACCEPTABLE OR INAPPROPRIATE BEHAVIOUR:

- 13.5 The Chairman of the relevant Scrutiny Committee shall ensure that Members of the Cabinet and Officers are not questioned (whether through the nature and frequency of the questions, or through the tone or language used) in such a manner as could be considered by a reasonable person to be hostile, offensive, derogatory, harassment, bullying, victimisation, discriminatory or otherwise unacceptable or inappropriate.
- 13.6 Any allegation of unacceptable or inappropriate behaviour by a Councillor, as set out in paragraph 13.6, will be reported to the Leader of the relevant Political Group for consideration and/or the Standards Committee, if there has been a breach of the Code of Conduct for Councillors.

## 14 WHEN THINGS GO WRONG

### PROCEDURE FOR OFFICERS

- 14.1 From time to time the relationship between Councillors and Officers may break down or become strained. Whilst it will always be preferable to resolve matters

informally, through conciliation by an appropriate senior Manager or Councillors, Officers will have recourse to the Grievance Procedure or to the Heads of Service as appropriate in the circumstances. In the event of a grievance or complaint being upheld, the matter will be referred to the Chief Executive, who, having advised the Leader of the Council and the appropriate group leader will decide on the course of action to be taken, following consultation with the Chairman and Vice Chairman of the Standards Committee.

## PROCEDURE FOR COUNCILLORS

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