

Part 5(c)

A Protocol For Member/Officer Relations

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1. Introduction

- 1.1 The purpose of this Protocol is to guide Councillors and Officers in their relations with one another.
- 1.2 This Protocol is primarily based on the model prepared by Birmingham City Council and which was referred to in the Nolan Committee report** as an example of good practice.
- 1.3 Given the variety and complexity of such relationships, this Protocol does not seek to cover everything or be prescriptive in its application. Guidance is offered on some of the issues that most commonly arise.
- 1.4 This protocol seeks to reflect the principles underlying the respective codes of conduct which apply to Councillors (including co-opted members) and Officers. The shared objective of these codes is to maintain and enhance the integrity (real and perceived) of Local Government and they therefore demand very high standards of personal conduct by all parties.
- 1.5 The Protocol seeks to encourage best practice and to promote greater clarity and certainty between the various relationships.
- 1.6 If a Councillor is unsure about any matter s/he should contact the relevant Group Leader and/or the Monitoring Officer for appropriate advice and assistance.
- 1.7 If an Officer is unsure about any matter s/he should contact the Senior Officer and/or the Monitoring Officer.
- 1.8 If there is any disagreement in the interpretation of this Protocol the opinion of the Monitoring Officer will prevail.

2. Legal and Audit Considerations

- 2.1 Councillors do not (as elected members) have any special immunity from civil or criminal wrongs that they may commit against fellow Councillors, Officers or members of the public. Councillors must abide by the Council's Members' Code of Conduct. During the course of their normal council duties, Councillors will only have a qualified (and not absolute) privilege against prosecution or civil action.
- 2.2 Councillors must not pressurise any Officer to change his/her professional opinion on any Council business or do any thing that compromises the impartiality of Officers. It is also very important that Councillors are very clear about their roles and the roles of Officers so as to avoid (for example) becoming involved in internal office management, discipline and or other employment related issues.

3. Roles of Councillors and Officers

- 3.1 The "National Code of Local Government Conduct" for Councillors stated:

"Both Councillors and Officers are servants of the public and they are indispensable to one another but their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give advice to Councillors and the Council, and to carry out the Council's work under the direction and control of the Council, their Committees and sub-committees."

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

- 3.2 The Council’s Constitution sets out the clear distinction between the roles of Councillors and Officers:
 - 3.2.1 Councillors are responsible to the electorate and are responsible for setting policy, ensuring that services and policies are delivered.
 - 3.2.2 Officers are accountable to the Council and their job is to give advice to the Councillors and the Council, and to carry out the Council’s work under the direction and control of the Council, and its Committees.
 - 3.2.3 Officers implement the policy and deliver the services set by the Council. Councillors should not get involved in the day to day management of services. Officers should not get involved in politics.
 - 3.2.4 Councillors must respect the impartiality and integrity of all the Council’s Officers. Similarly, Officers must respect the role of the Councillors as elected representatives. It is important that any dealings between Councillors and Officers should observe proper standard of courtesy and that neither party should seek to take unfair advantage of their position.

4. Officer conduct or capability issues

- 4.1 On occasions, Councillors may have reason to complain about the conduct or performance of an Officer. All such complaints should be made personally to the Monitoring Officer, Group Manager or Head of Paid Service as appropriate. It is particularly important that complaints are made in this way and are not raised at any other occasion, such as at a public meeting of the Council or Committee, as an Officer has no means of responding to criticisms made in public. To do so (and seeking to change an Officer’s professional opinion) is contrary to the Members’ Code of Conduct (see Part 5 of the Constitution).
- 4.2 Similarly, if an Officer has concerns about the conduct or performance of a Councillor, such concerns should be expressed personally to the Head of Paid Service or the Monitoring Officer. The facts of the matter will be looked into and discussed with the Mayor, Leader, relevant Chairman or Group Leader.
- 4.3 Exceptions to the above are where complaints express concern about possible discriminatory attitudes when the Corporate Equality Scheme shall apply. Copies of the Equality Scheme are available on the Council’s intranet.
- 4.4 If a relationship exists between Councillors and Officers which could give the appearance of bias, advice should be sought from the Head of Paid Service or from the Monitoring Officer.
- 4.5 Although relationships should be declared on application forms, a situation may arise where a relative or close friend becomes a Councillor of the Council after the appointment of the Officer. In such cases the Councillor and Officer should make the circumstances known to the Head of Paid Service and the Monitoring Officer. Specific rules apply to the recruitment and appointment of Officers which are set out in Part 4 of the Constitution.

5. Officer/Mayor/Leader/Chairmen Relationships

- 5.1 It is important that there should be close working relationship between Senior Officers and the Mayor/Deputy Mayor, Leader/Deputy Leader, Portfolio holders and Chairmen/Vice Chairmen (Leading Councillors). However, such relationships should never be allowed to become so close (or appear to be so close) as to bring into question the Officers ability to deal impartially with other Councillors.
- 5.2 Whilst Leading Councillors should be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations a senior Officer will be under a duty to submit a report on a particular matter. Similarly, an Officer will always be fully responsible for the contents of any report submitted in his/her name. Any issues arising between a Leading Councillor and an Officer on such matters should be referred to the Head of Paid Service or the Monitoring Officer for resolution.
- 5.3 It is important to remember that individual Councillors cannot make decisions. Decisions must be made by the Council, Committees or Officers in accordance with the delegation scheme (part 3 of the Constitution). Officers may make decisions in consultation with the relevant Councillors but it must be the Officer who makes the decision.
- 5.4 In relation to action between meetings, it is also important to remember that the law allows decisions relating to the discharge of any of the Council's functions to be taken only by the Council, Committees, or an authorised Officer. The law does not allow for such decisions to be made by an individual Councillor. The Delegation Scheme (Part 3 of the Constitution) contains the procedure for the relevant Officer to make urgent decisions in consultation with the relevant Chairman and Vice Chairman or ward councillor (please check with the relevant Constitution or the Monitoring Officer).
- 5.5 The Council gives delegated powers to Senior Officers to act on the Council's behalf (see Part 3 of the Constitution). The terms of that authority may require Officers to consult certain Councillors (e.g. the Chairman of a Committee). In other cases, the Officer should decide whether to consult as a matter of courtesy. If a matter relates solely to a particular ward the appropriate Ward Member(s) will be consulted.
- 5.6 Officers are accountable to their Line Managers and whilst Officers should always try and assist a Councillor they must not go beyond the bounds of whatever authority they have been given by their Line Manager. In the case of uncertainty, the Officer should always check with his/her Line Manager.

6. Political Groups and Officer advice

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

7. Use of Council resources

- 7.1 The only basis upon which the Council can lawfully provide facilities and support services (e.g. computers stationery, typing, printing, photocopying,

transport etc) to Councillors is to assist them in discharging their role as members of the Council. Such support services must, therefore, only be used on Council business. They should never be used in connection with party, political or campaigning activity or for private use.

7.2 Access to Information – “need to know”

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

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

7.3 Legal rights

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

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

7.3.3 This right does not, however, extend to documents relating to items that may appear in Part II (or the “exempt” part) of the Agenda for meetings. The items in question are those which contain “exempt information” as contained in Schedule 12A to the Local Government Act 1972 (see ‘Access to Information’ in Part 4(2) of the Constitution).

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

7.4 Common Law

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

7.4.2 The proper exercise of this common law right depends upon an individual Councillor being able to show that s/he has the necessary “need to know”. The Courts have held that Councillors have no right

to a “roving commission” to go and examine documents. Mere curiosity is not sufficient. The crucial question is the determination of the “need to know”. This right will be considered on a case by case basis and will not last indefinitely. Where a question on the “need to know” arises the following procedure will apply:

- 7.4.3 The question will be initially determined by the relevant Senior Officer (in consultation with the Monitoring Officer). A Councillor will normally be expected to give reasons for seeking the information;
- 7.4.4 If it is considered that the request is reasonably in furtherance of the Councillor’s need to know, then the document/information will be produced for the Councillor’s inspection. Where the documents contain personal information about third parties, the Councillor will be expected to justify the request in specific terms.
- 7.4.5 A Councillor may be refused the right to inspect a document or have access to other information if the Monitoring Officer believes that there is a good reason why inspection or access to the document/information should be refused. She may refuse if:
 - The cost of providing the access is unreasonably high; or
 - Giving access would unreasonably disrupt the work of the Council
- 7.4.6 In the event of a dispute, the matter will be determined by the Monitoring Officer.
- 7.4.7 Whilst the term ‘Council document’ is very broad, it is accepted by convention that a Councillor will not have a “need to know” (and therefore a right to inspect) the contents of a document which forms part of the internal workings of a political group of which s/he is not a member.

8. Confidentiality

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

9. Confidentiality of Reports

- 9.1 All Officers have a duty to satisfy themselves that Committee reports are only classified as “exempt information” when the statutory criteria for confidentiality are met, and when the consequences of publication justify taking advantage of the exemption (Please see “Access to Meetings in Part 4(2) of the Constitution) . The Head of Paid Service and the Monitoring Officer have overriding responsibility to determine this compliance.
- 9.2 Once a report has been issued within Part II of the Agenda for a meeting, especially once it has been resolved that it is exempt from public disclosure, Councillors and Officers must respect the confidentiality of the report and not disclose it to a third party.

- 9.3 It does not follow that all the contents of the report must be regarded as confidential. It may be only certain items of information or terms of negotiations which justify the inclusion of that report in Part II. Other aspects of the report may already be within the public domain or otherwise outside the definition of “exempt”. A Councillor may accordingly refer to these aspects in discussion with third parties but must exercise proper care and judgement not to reveal those elements of the document which are protected, and it will always be prudent to consult the Monitoring Officer before doing so.
- 9.4 Any unauthorised disclosure of confidential information by Councillors may constitute a breach of the Members’ Code of Conduct (See Part 5(a) of the Constitution).

10. Correspondence

- 10.1 Correspondence between an individual Councillor and an Officer should not normally be copied by the Officer to another Councillor unless there is a ‘need to know’.
- 10.2 Where correspondence is justifiably copied to another Councillor or Officer, this should be made clear to the original Councillor/Officer. ‘Silent’ or ‘blind’ copies should not normally be used.
- 10.3 Where an e-mail is initially sent to a large group of people outside the Council, blind copies should be used to avoid publishing e-mail addresses. (Please also see the Council’s E-mail Policy which is available on the Intranet).
- 10.4 Official letters on behalf of the Council should normally be sent out in the name of the appropriate Officer rather than in the name of a Councillor. It may be appropriate in certain limited circumstances (e.g. representations to a Government Minister) for a letter to be sent out in the name of a Councillor, but this should be the exception rather than the rule. Letters that, for example, create obligations or give instructions on behalf of the Council should never be sent in the name of a Councillor, because an executive act cannot be delegated to an individual Councillor.

11. Involvement of Ward Councillors

11.1 Public meetings

- 11.1.1 Wherever a public meeting is organised by the Council to consider a local issue, all relevant Ward Councillors should be invited to attend the meeting as a matter of course. Where a Councillor arranges a public meeting s/he shall advise the responsible Officer who should and invite him/her to attend.

11.2 Consultation on Local Issues

- 11.2.1 Whenever the Council undertakes any form of consultation exercise on a local issue, the Ward Councillor(s) should be notified at the outset of the exercise. Where such consultation exercise encompasses the whole Borough or District, all Councillors will be advised.
- 11.2.2 where a member of the Executive is considering something in another member’s ward, s/he should liaise with the local Ward Member(s)

11.3 Attendance at meetings arranged by Officers

- 11.3.1 Within the Council, Councillors are free at any time to meet Officers to discuss aspects of the Council's business and to ask Officers to set up local meetings to resolve specific issues.
- 11.3.2 Officers will arrange many meetings with colleagues or third parties to discharge the routine business of the Council or to action its decisions. Councillors will not be present at these meetings but will be advised either informally or through reports to Committees of any relevant discussions and/or outcomes.
- 11.3.3 Officers have a duty to keep Councillors informed about issues which may be of particular interest to their ward. It is important to ensure that ward Councillors, chairmen and vice-chairmen are given early notice of something which is likely to be reported in the media and in which they will probably have an interest.

12. Public Relations issues

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

13. Publicity During Elections

- 13.1 During elections, special rules apply with regard to local authority publicity. These rules are set out in the Government's "Code of Recommended Practice on Local Authority Publicity" which is available from the Council's Communications and Media Officer.

14. Breaches of the Code of Conduct and this Protocol

14.1 Code

- 14.1.1. Many of the points covered in this Protocol are dealt with under the Members' Code of Conduct. Any member of the public (including Officers and Councillors) can complain to the Council's Monitoring Officer that a Councillor has broken the Code of Conduct. This could lead to an investigation and ultimately sanctions being made against the Councillor.

14.2 Protocol

- 14.2.1. More general concerns about the relationships between Councillors and Officers (or perceived breaches of the principles embodied in this Protocol) can be discussed with the Head of Paid Service or Monitoring Officer.

14.2.2 A complaint that this Protocol has been broken by a Councillor may be referred to the Monitoring Officer, Senior Officer, and/or relevant Group Leader.

14.2.3. Complaints that this Protocol has been broken by an Officer may be referred to the relevant Senior Officer, the Head of Paid Service or the Monitoring Officer. Specific breaches of this Protocol may ultimately be the subject of either grievance or disciplinary procedures.

15. Review

15.1 The Protocol will be reviewed by the Audit Committee every three years, or earlier if necessary.

15.2 The Protocol was reviewed by the former Standards Committee on 8 March 2011 and adopted by the Council in April 2011.

** Details on **Standards in Public Life** can be accessed at:
<http://www.archive.official-documents.co.uk/document/parlment/nolan2/nolan.htm>