

# Appendix

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## Protocol for member / officer relations

### 5.3.1 Introduction

5.3.1.1 The purpose of this protocol is to set standards of conduct expected from Members and Officers of the Council in their relations with one another and to offer guidance on some of the issues which most commonly arise. It is acknowledged that the quality and effectiveness of the relationship between Members and Officers of the Council lie at the heart of good local governance. The common aim is to ensure good working relationships between Members and Officers of the Council working together to support each other's roles. In this protocol "Officers" means all employees and staff engaged by the County Council including those engaged on short term, agency or other non-employed situations.

5.3.1.2 The Council subscribe to the view that no local authority can function effectively without a good relationship between its Councillors and Officers.

5.3.1.3 The purpose of this protocol is to guide Members and Officers of the Council in their relations with one another.

5.3.1.4 Given the variety and complexity of such relations, this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise. It is hoped however that the approach which it adopts to these issues will serve as a guide to dealing with other issues.

5.3.1.5 This protocol is to a large extent no more than a written statement of current practice and convention. In some respects, however, it seeks to promote greater clarity and certainty.

5.3.1.6 This protocol also seeks to reflect the principles underlying the respective rules and Codes of Conduct which apply to Councillors and Officers. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government by demanding very high standards of personal conduct by all persons.

5.3.1.7 The relationship and its expectation have been described as follows –

"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 Subcommittees. Mutual respect between councillors and officers is essential to good local government. Close personal familiarity between individual councillors and officers can damage this relationship and prove embarrassing to other councillors and officers."

### 5.3.2 Respect and Courtesy

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### 5.3.2 Respect and Courtesy

5.3.2.1 It is important that any dealings between Members and Officers should at all times observe reasonable standards of courtesy and that neither party should seek to take unfair

advantage of their position. Threats, intimidation and verbal abuse will be regarded as serious breaches of this Protocol.

5.3.2.2 For the effective conduct of County Council business there must be mutual respect, trust and courtesy in all meetings and contacts, both formal and informal, between Councillors and Officers. This too plays a very important part in the Council's reputation and how it is seen in public. It is very important that both Councillors and Officers remember their respective obligations to enhance the Council's reputation and to do what they can to avoid criticism of other Councillors, or other Officers, in public places, whether or not that individual is in attendance. Mutual respect between Members and Officers of the Council is essential to good local government and will generate an efficient and unified working organisation. Members and Officers will deal with one another without discrimination and in accordance with the Council's equal opportunities policy.

5.3.2.3 In their dealings with both the Corporate Directors and staff (especially junior employees), Councillors need to be aware that it is easy for Officers to be overawed and feel at a disadvantage. Such feelings can be intensified when Members hold official and/or political office.

5.3.2.4 A Councillor should not apply undue pressure on an Officer either to do anything that he/she is not empowered to do, or to undertake work outside normal duties or outside normal hours. Particular care needs to be taken in connection with the use of Council property and services.

5.3.2.5 Similarly, an Officer must neither seek to use influence of an individual Councillor to make a decision in his/her personal favour, nor raise personal matters to do with their job, nor make claims or allegations about other Officers. The Council has formal procedures for consultation, grievance, and discipline. The one exception to this rule is the right of staff to report possible wrongdoing under the Council's Whistleblowing Policy (5.5).

5.3.2.6 Councillors should recognise that Officers' workloads frequently require extended periods of concentration or involve tight deadlines. Councillors should respect Officers' working time and should arrange appointments for consultations and avoid frequent unscheduled interruptions.

5.3.2.7 Whilst normal, friendly working relationships between Members and Officers are to be encouraged, close personal familiarity between individual Councillors and Officers can damage this relationship and the principle of mutual respect. It could also, intentionally or accidentally lead to the passing of confidential information or information which should not properly be passed between them, such as personal details. Such familiarity could also cause embarrassment to other Councillors and/or other Officers and even give rise to suspicions of favouritism. It can also damage the public perception of the integrity and objectivity of the organisation and should be avoided.

### 5.3.3 Political Neutrality

5.3.3.1 Local government officers are employed by the Council as a corporate body and owe their duty to each and every member of their Council, not just those who are in a majority. They serve this Council and are responsible to the Managing Director and their respective

directors and not to individual Members of the Council whatever office they might hold. They also have a wider duty to the public as a whole.

5.3.3.2 Officers must ensure that the individual rights of all Councillors are respected, and all Officers, whether or not they hold politically restricted posts, when performing their duties for the Council, must not act politically nor appear to do so. Officers must follow the policies of the Council and must not allow their own personal or political opinions to interfere with their work.

5.3.3.3 Members must not put Officers in a situation where their political neutrality might be compromised or appear to be compromised.

#### 5.3.4 Bullying, Intimidation or Harassment

5.3.4.1 Words or actions which are intended unfairly to influence an individual Officer will be regarded as a form of bullying, intimidation or harassment. Officers of the Council should not be pressurised to make a particular recommendation to Council which would be against a professional or technical judgement.

5.3.4.2 Members are not prevented from discussing issues with Officers or lobbying on a particular point of view but if the pressure is such that the Officer, because of the Member's position, feels compelled to go against his/her better judgement, that will be regarded as undue pressure.

5.3.4.3 Members should not give directions to nor make direct criticisms to the Council's employees. Councillors have the 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 and is likely to lead to improved performance in future, rather than solely to apportion blame

This standard of conduct is not intended to prevent Members from disagreeing openly and publicly with an Officer's recommendation, however, in doing so Members must be aware that Officers do not take part in debate at Council or Committee and may not have an opportunity to respond to criticism.

If a Councillor considers that he/she has not been treated with proper respect or courtesy, he/she may raise it with the employee's line manager or direct Corporate Director without delay if it is not possible to resolve it through direct discussion. If the issue still remains unresolved appropriate disciplinary action may be taken against an employee by the Corporate Director in accordance with the Council's normal procedures.

5.3.4.4 Any criticism of an individual employee should be taken up with the relevant Head of Service, Corporate Director, Managing Director or the Monitoring Officer as appropriate. The Council as a whole may be vicariously liable for the actions of individual Members which breach the employer's implied obligation to provide a reasonable congenial working environment, and which could lead to a successful claim against the Council, eg. for wrongful dismissal.

5.3.4.5 It is unacceptable for Members or Officers of the Council to seek to take unfair advantage of their position within the organisation. Members and Officers of the Council should always act in a way that preserves the public confidence.

5.3.4.6 If an employee feels the same way about a Councillor, and a direct discussion is impractical or fails to resolve the matter, he/she should raise the matter with the Line Manager or Corporate Director without delay. In such circumstances, the Director will take such action as is appropriate either by approaching the individual Councillor and/or party group leader. The Corporate Director will inform the Managing Director if the party group leader becomes involved, or in any other case where that is appropriate. Feedback should be given to the employee on the outcome by the Director(s) involved.

### 5.3.5 Honesty and Integrity

5.3.5.1 Members and Officers should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

5.3.5.2 It is unacceptable for Members or Officers of the Council to seek to take unfair advantage of their position within the organisation. Members and Officers of the Council should always act in a way that preserves public confidence.

### 5.3.6 Officer Advice to Political Groups and Members

5.3.6.1 There is now statutory recognition for political groups and 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 (see paragraph 5.3.11.1 for definition of "Senior Officers") may properly be called upon to advise political groups.

5.3.6.2 This advice and assistance provided by Senior Officers can take many forms, but will normally involve a briefing meeting with the Leader, an Executive Member, a Chairperson or other Members prior to a meeting. Officers will not normally be expected to attend political group meetings but may exceptionally do so, but only where the group meeting is a formal meeting and where the Head of Paid Service has authorised such attendance. 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 and unaffiliated Members. Relevant extracts of any Minutes must be supplied to the relevant Officer(s) and the Head of Paid Service for approval.

5.3.6.3 Certain points must however be clearly understood by all those participating in this type of process, members and officers alike, in particular:—

5.3.6.3.1 officer support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of group business. The observance of this distinction will be assisted if Officers are not expected to be present at meetings, or parts of meetings, when matters of group business are to be discussed;

5.3.6.3.2 political 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; and

5.3.6.3.3 similarly, where Officers provide information and advice to a political group in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the Executive or relevant Committee when the matter in question is considered.

5.3.6.4 While Officers will seek to deal even-handedly with all Members, it is inevitable that they will be required to devote more time and effort to the requests of the majority group. Members of minority groups should not misinterpret this as partisanship on the part of Officers and subject them to public and personal attack for that reason.

5.3.6.5 Council Procedure Rule 4.1.20 safeguards the rights of Officers to advise the Council and committees in particular circumstances. In taking decisions, the Council is bound to take into account all the relevant information.

5.3.6.6 Any particular cases of difficulty or uncertainty in this area of Officer advice to Members should be raised with the Managing Director who will discuss them with the relevant group leader(s).

5.3.6.7 Special care needs to be exercised when Senior Officers are involved in providing information and advice to a political group meeting which includes persons who are not Members of the Council. Such persons will not be bound by the relevant Code of Conduct (in particular provision concerning the Declaration of Interest and confidentiality) and for this and other reasons, Officers may not be able to provide the same level of information and advice as they would to a Members only meeting. When a discussion or "meeting" takes place electronically via the Internet the identity of all participants or other people with access to that discussion or "meeting" must be clearly established and made known to all participants before an Officer takes part and any new participants who enter during the discussion must immediately make their presence known.

5.3.6.8 Members must remember that information comes to them individually or to political groups and may well contain confidential information which they are entitled to know as Councillors but which they would not pass on to others, eg. it may contain personal information about an individual or information under the terms of contract which is not a negotiation. More particular guidance is contained in the protocol for handling confidential information. Before passing information provided to them in this way on to another person, a Member must consider whether it is information which they are free to pass on or which should become confidential.

5.3.6.9 Senior Officers must respect the confidentiality of any political group discussions at which they are present. When information disclosed to an Officer during discussions with a political group and the Officers request not to pass information to other groups then the officer will not do so. However Members should be aware that this would not prevent Officers from disclosing such information to other Officers of the Council so far as that is necessary in performing their duties.

### 5.3.7 Support Services to Members and Groups

The only basis on which the Council can lawfully provide support services (eg. stationery, typing, IT, printing, photo-copying, 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 campaigning activity or for private purposes.

### 5.3.8 Members' Access to Information and to Council Documents

#### 5.3.8.1 In accordance with Article 2 (2.2.3.2) :-

5.3.8.1.1 Councillors will have such rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.

5.3.8.1.2 Councillors will not make public information which is confidential or exempt without the consent of the Council or divulge information given in confidence to anyone other than a Councillor or Officer entitled to know it.

5.3.8.1.3 For these purposes, "confidential" and "exempt" information are defined in the Access to Information Procedure Rules in Part 4.2 of the Constitution.

#### 5.3.8.2 In accordance with the Members' Code of Conduct and especially paragraph 5.1.2.5, Members:-

5.3.8.2.1 must not disclose information given in confidence, without the express consent of a person authorised to give such consent, or unless required by law to do so;

5.3.8.2.2 must not prevent any person from gaining access to information to which that person is entitled by law.

5.3.8.3 Members are free to approach any Council Department to provide them with such information, explanation and advice (about that Department's functions) as they may reasonably need in order to assist them in discharging their role as Members of the Council. This can range from a request for general information about some aspect of a Department's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Corporate Director or another senior Officer of the Department concerned.

5.3.8.4 As regards the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law.

5.3.8.5 Members have a statutory right to inspect any Council document which contains material relating to any business which is to be transacted in the public part of the agenda of any Council, Committee or Subcommittee meeting. This right applies irrespective of whether the Member is a member of the Committee or Subcommittee concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers. This principle applies equally to documents relating to certain items which may appear as confidential items on the agenda for meetings. The items in question are those which



contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, the care of individuals, contract and industrial relations negotiations, advice from Counsel and criminal investigations.

5.3.8.6 The common law right of Members is much broader and is based on the principle that any Member has a prima facie right to inspect Council documents so far as his/her access to the 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.

5.3.8.7 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" ie. in order that that Councillor could perform his duties as a Councillor. 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". In some matters, eg. child care work the "screening process must be administered with great strictness". In less sensitive areas, there may be a leaning towards allowing access as opposed to denying it. This question must initially be determined by the particular Senior Officer whose Department holds the document in question. In the event of dispute, the question falls to be determined in accordance with the advice of the Monitoring Officer.

5.3.8.8 In some circumstances (eg. a Committee member wishing to inspect documents relating to the functions of that Committee) a Member's "need to know" will normally be presumed. In other circumstances (eg. 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 and in writing.

5.3.8.9 Further and more detailed advice regarding Members' rights to inspect Council documents may be obtained from the Monitoring Officer and guidance has already been issued separately.

5.3.8.10 Finally, any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, ie. in connection with the proper performance of the Member's duties as a Member of the Council.

Councillors have a personal legal duty to ensure that they do not breach the Data Protection Act 1998.

### 5.3.9 Public Meetings

5.3.9.1 If an individual Member or a political group convenes a public meeting, publicity for the meeting must clearly state the basis on which it is being held and should not state or imply it is a Council meeting. The Member or political group may invite a Senior Officer to attend such a meeting. Whilst the Officer is not obliged to attend, they will normally, when appropriate and convenient, do so. When an individual Member invites an Officer to attend such a meeting, the Officer will notify the appropriate Executive Portfolio Holder for the service area concerned. It is acceptable for a Member to convene a meeting to lobby support for a particular point of view but in doing so the Member must make it clear that she/he is expressing her/his own views and not representing the views of the County Council.

5.3.9.2 Whenever a Senior Officer is invited to represent the Council at a locally organised meeting (eg. a meeting of a local pressure group) or where it comes to her/his attention that a local meeting has been organised by another Local Authority or Government department, she/he must notify the local Member and, when an issue of general relevance to a service area is involved, the appropriate Executive Portfolio Holder. These Members should also be able to attend if they think it is appropriate to do so.

5.3.9.3 Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the wards affected should as a matter of course be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the local Member(s) should be involved from the outset of the exercise. Members may ask Senior Officers to set up local meetings to resolve specific issues arising in their wards, and, when it is agreed between the Member and the Officer that this is appropriate, the officer will make the necessary arrangements. When the meeting involves an issue of general relevance to a service area the appropriate Executive Portfolio Holders will be informed.

#### 5.3.10 Attendance by Members and Officers at other Meetings

5.3.10.1 Members are able at any time by arrangement to meet Officers to discuss any aspects of the Council's business.

5.3.10.2 From time to time as a result of an Executive or Committee decision, arrangements will be made for Member level meetings to take place with other Local Authorities or outside bodies. An appropriate Officer will make arrangements for the meeting and that an appropriate Senior Officer or Officers will attend.

5.3.10.3 Members of the public or representatives of external organisations will occasionally ask to meet an Executive Member or the Chairperson of a Committee about a matter which is currently under consideration. The Member should notify the appropriate Senior Officer of this and the Officer will brief the Member as may be necessary. If agreed between the Member and the officer suitably briefed Officers will also attend.

5.3.10.4 Officers will arrange many meetings with colleagues or third parties to carry on the business of the Council and to action its decision. Members will not normally attend these meetings but will be advised, either informally or through reports to the Executive or Committees, of any relevant discussions.

#### 5.3.11 Executive Members / Chairpersons / Senior Officers Relationships

5.3.11.1 "Senior Officers" means the Managing Director and the Officers who are members of the Chief Officer's management team including other Officers who report directly to them other than secretarial/clerical staff and the Monitoring Officer (who is also the Head of the Legal Services).

5.3.11.2 It is clearly important that there should be a close working relationship between Senior Officers and Members in leadership positions. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officers' ability to deal impartially with other Members and other political groups.

5.3.11.3 Whilst Executive Members / Chairpersons will routinely be consulted as part of the process of drawing up an agenda for a forthcoming meeting, it must be recognised that in some situations the Managing Director, the Chief Financial Officer or the Monitoring 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 an Executive Member / Chairperson and an Officer in relation to this should be referred to the Chief Officer or Managing Director for resolution in conjunction with the Leader of the Council.

5.3.11.4 The Council's Constitution and procedure rules provide that in certain circumstances Officers may make decisions under delegated authority. In such cases it is the Officer rather than the Executive who takes the action and who is accountable for it. The Scheme of delegation provides that (at 3.5.1.5) "each Officer exercising delegated powers shall maintain close liaison with the appropriate Member of the Executive or Regulatory Committee Chairperson or Vice-Chairperson or Corporate Director in respect of any matter which in the opinion of the Officer might be regarded as sensitive or contentious".

5.3.11.5 It must be remembered that Officers within a Department are accountable to their Chief Officer and that whilst Officers should always seek to assist a Chairperson or any other Member, they must not, in so doing, go beyond the bounds of their authority.

#### 5.3.12 Correspondence

5.3.12.1 Correspondence between an individual Member and an Officer regarding an individual matter should not normally be copied (by the Officer) to any other Member other than a Portfolio Holder (where the Officer, according to his/her discretion, deems it appropriate) unless the Member has him/herself sent copies to other Members, and correspondence regarding a general or policy matter can be copied at the discretion of the Officer. When it is necessary to copy the correspondence to another Member, this should be made clear to the original Member. In other words, a system of "silent copies" should not be employed.

5.3.12.2 Official letters on behalf of the Council should normally be sent out over the name of the appropriate Officer, rather than over the name of a Member. It may be appropriate in certain circumstances (eg. representations to a Government Minister sent in pursuance of an Executive or Committee decision) for a letter to appear over the name of a Member, but this should be the exception rather than the norm. Letters which, for example, create obligations or give instructions on behalf of the Council should never be sent out over the name of a Member.

5.3.12.3 Members may use their personal County Council letter heading for correspondence relating to their work as a Councillor but in doing so must avoid giving the impression that they are committing the Council to any particular course of action or binding the Council in any way. Members should take care not to breach the rules which prohibit the Council from being involved with issuing publicity which appears to be designed to affect public support through a political party and therefore should not use this stationery for correspondence which could be construed as having that aim. These rules apply at all times and Members should be particularly cautious around election times because correspondence is more likely to be construed as political at these times.

### 5.3.13 Involvement of Ward Councillors

5.3.13.1 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. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be notified at the outset of the exercise.

5.3.13.2 In accordance with the Delegation Scheme of the Constitution, paragraph 3.5.1.7, when a member of the Council has made known to an Officer with delegated powers his/her legitimate interest in a matter or when a matter is related to or affects the member's electoral division, the Officer shall keep the Member informed of significant developments relating to that matter.

5.3.13.3 In accordance with Article 13 (2.13.9.1) whenever feasible any body or person making a decision on behalf of the Council which affects just a single ward will consult the local Member representing that ward before making the decision.

5.3.13.4 In accordance with Article 13 (2.13.9.2) and paragraph 5.3.8. above, letters received from Members of Parliament or Members of the National Assembly for Wales which affect just a single ward will be copied to the Member representing that ward, except in so far as such letters are expressed to be confidential.

### 5.3.14 Breaches of the Code

5.3.14.1 Serious breaches by Officers of the Protocol would lead to action being taken against them under the Council's agreed disciplinary procedures.

5.3.14.2 Serious breaches by Elected Members of the Protocol will lead to investigation and appropriate action by the Ombudsman who may refer the matter to the Standards Committee.