

Appendix 16 - Protocol for Officer / Member Relations

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1. Introduction

- 1.1 The purpose of this protocol is to guide members and officers of the Council in their relations with one another. The protocol's intention is to build and maintain good working relationships between members and officers as they work together. Employees who are required to give advice to members are referred to as "officers" throughout.
- 1.2 A strong, constructive, and trusting relationship between members and officers is essential to the effective and efficient working of the Council.
- 1.3 This protocol also seeks to reflect the principles underlying the respective codes of conduct which apply to members and officers. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government and they therefore demand very high standards of personal conduct.
- 1.4 The following extract from the Local Government Association

guidance on the 2020 Model Councillor Code of Conduct states that:

“Both councillors and officers are servants of the public and are indispensable to one another. Together, they bring the critical skills, experience and knowledge required to manage an effective local authority.

At the heart of this relationship, is the importance of mutual respect. Councillor-officer relationships should be conducted in a positive and constructive way. Therefore, it is important that any dealings between councillors and officers should observe reasonable standards of courtesy, should show mutual appreciation of the importance of their respective roles and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party.

Councillors provide a democratic mandate to the local authority and are responsible to the electorate whom they represent. They set their local authority’s policy framework, ensure that services and policies are delivered and scrutinise local authority services.

Councillors of the Executive, chairs and vice chairs of committees have additional responsibilities. These responsibilities will result in increased expectations and relationships with officers that are more complex. Such councillors must still respect the impartiality of officers and must not ask them to undertake work of a party-political nature or compromise their position with other councillors or other officers.

Officers provide the professional advice and managerial expertise and information needed for decision making by councillors and to deliver the policy framework agreed by councillors. They are responsible for implementing decisions of councillors and the day-to-day administration of the local authority.

The roles are very different but need to work in a complementary way.

It is important for both sides to respect these differences and ensure that they work in harmony. Getting that relationship right is an important skill. That is why the code requires councillors to respect an officer's impartiality and professional expertise. In turn officers should respect a councillor's democratic mandate as the people accountable to the public for the work of the local authority. It is also important for a local authority to have a councillor-officer protocol which sets out how this relationship works and what both councillors and officers can expect in terms of mutual respect and good working relationships."

- 1.5 The provisions of this protocol are designed to complement the codes of conduct and will be interpreted having regard to the requirements of the Member Code of Conduct, the Employee Code of Conduct, the Council's Whistleblowing Protocol and the Council's policies, procedures and processes.

2. Members

- 2.1 Mutual respect between members and officers is essential to good Local Government. Overly close personal familiarity between individual members and officers can damage this relationship and prove embarrassing to other members and officers.
- 2.2 It is important that any dealings between members and officers should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position.
- 2.3 In line with the Member Code of Conduct, as set out in Appendix 14 of this Constitution, a member must treat others with respect, must not bully or harass people and must not do anything which compromises, or is likely to compromise, the impartiality of those who work for, or on behalf of, the Council.
- 2.4 Officers can expect members:
- to give political leadership and direction and to seek to further their agreed policies and objectives with the understanding that members have the right to take the final decision on issues based on advice
 - to act within the policies, practices, processes and

conventions established by the Council

- to work constructively in partnership with officers acknowledging their separate and distinct roles and responsibilities
- to understand and support the respective roles and responsibilities of Officers and their associated workloads, pressures and reporting lines
- to treat them fairly and with respect, dignity and courtesy
- to act with integrity, to give support and to respect appropriate confidentiality
- to recognise that officers work to the instructions of their senior officers and not to individual members or political groups
- not to subject them to intimidation, harassment, or put them under undue pressure. Members will have regard to the seniority of officers in determining what are reasonable requests, having regard to the relationship between the member and officer, and the potential vulnerability of officers, particularly at junior levels
- not to request them to exercise discretion which involves acting outside the Council's policies and procedures
- not to authorise, initiate, or certify any financial transactions or to enter into any contract, agreement or undertaking on behalf of the Council or in their role as a member without proper and lawful authority
- not to use their position or relationship with officers to advance their personal interest or those of others or to influence decisions improperly
- to comply at all times with the Member Code of Conduct, the law, the Constitution and such other policies, procedures, protocols and conventions agreed by the Council.

2.5 It is important that members of the Council:

- respect the impartiality of officers and do not undermine their role in carrying out their duties
- do not ask officers to undertake work, or act in a way, which seeks to support or benefit a particular political party or gives rise to an officer being criticised for operating in a party-political manner

- do not ask officers to exceed their authority where that authority is given to them in law, by the Council or by their managers.

2.6 The Head of Paid Service, the Monitoring Officer and the Chief Finance (Section 151) Officer and other statutory officers have specific responsibilities placed on them by law. These responsibilities go beyond their obligations as employees of the Council. Where an officer is discharging their responsibilities under any statutory office a member or members shall not:

- improperly interfere with or obstruct the officer in exercising those responsibilities
- victimise any officer who is discharging or has discharged their responsibilities of the statutory office

3. Officers

3.1 The primary role of officers is to advise, inform and support all members and to implement the lawfully agreed policies of the Council.

3.2 Officers are responsible for day-to-day managerial and operational decisions within the Council. Members should avoid inappropriate involvement in such matters.

3.3 In performing their role officers will act professionally, impartially and with political neutrality. Whilst officers will respect a member's view on an issue, the officer should not be influenced or pressured to make comments, or recommendations which are contrary to their professional judgement or views.

3.4 Officers must:

- implement decisions of the Council and its subordinate bodies which are lawful, which have been properly approved in accordance with the requirements of the law and the Council's Constitution and are duly recorded.
- work in partnership with members in an impartial and professional manner
- treat members fairly and with respect, dignity and courtesy
- assist and advise all parts of the Council. Officers must

always act to the best of their abilities in the best interests of the authority as expressed in the Council's formal decisions.

- respond to enquiries and complaints in accordance with the Council's standards protocol
- be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for members, the media or other sections of the public.
- act with honesty, respect, dignity and courtesy at all times
- provide support and learning and development opportunities for members to help them in performing their various roles
- not seek to use their relationship with members to advance their personal interests or to influence decisions improperly
- comply, at all times, with the Employee Code of Conduct at Appendix 15 of this constitution, and such other policies or procedures approved by the Council
- Officers have the right not to support members in any role other than that of member, and not to engage in actions incompatible with this protocol. In particular, there is a statutory limitation on officers' involvement in political activities.

4. The relationship: general

- 4.1 Members and officers are indispensable to one another. However, their responsibilities are distinct. Members are accountable to the public, whereas officers are accountable to the Council as a whole.
- 4.2 At the heart of the codes, and this protocol, is the importance of mutual respect and also of civility. Member/officer relationships are to be conducted in a positive and constructive way. Therefore, it is important that any dealings between members and officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position nor seek to exert undue influence on the other party.
- 4.3 Councillors should not raise matters relating to the conduct or capability of an officer, or of officers collectively, in a manner that is incompatible with this protocol at meetings held in public. This is a long-standing tradition in public service. An officer has no means of responding to criticisms like this in public.

- 4.4 A member who is unhappy about the actions taken by, or conduct of, an officer should:
- avoid personal attacks on, or abuse of, the officer at all times
 - ensure that any criticism is well founded and constructive
 - ensure that any criticism is made in private
 - take up the concern with the Chief Operating Officer or appropriate Chief Officer
- 4.5 Neither should an officer raise with a councillor matters relating to the conduct or capability of another officer or to the internal management of the section or directorate in a manner that is incompatible with the objectives of this protocol.
- 4.6 Potential breaches of this protocol are considered at paragraph 13 below.

5. Officer advice to party groups

- 5.1 There is statutory recognition for party 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 may properly be called upon to support and contribute to such deliberations by party groups.
- 5.2 The support provided by officers can take many forms, ranging from a briefing meeting with a member of the Executive or shadow Executive or chair or spokesperson prior to a committee meeting to a presentation to a full party group meeting. Whilst in practice such officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.
- 5.3 Any requests for advice or attendance are to be directed through the Group Leaders, Executive Members (or their shadows) or chairs/spokespersons for the relevant committee. The request shall be made to the relevant chief officer or, in their absence, to their deputy or the next appropriate lower tier officer. An officer

accepting an invitation to one political group or individual will not decline an invitation to advise another political group or individual on the same subject, although the officer is not obliged to offer to advise another political group on the same subject.

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

- (i) 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 party 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 party business are to be discussed;
- (ii) Party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such, particularly having regard to the risk of challenge on the grounds of pre-determination;
- (iii) The presence of an officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so;
- (iv) Similarly, where officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant Council meeting, committee or sub- committee when the matter in question is considered.

5.5 In relation to budget proposals;

- (a) The administration shall be entitled to confidential discussions with officers regarding options and proposals. These will remain confidential until determined by the Administration or until published in advance of the Executive /Council meetings, whichever is the earlier;
- (b) The opposition groups shall be entitled to confidential discussions with officers to enable them to formulate

alternative budget proposals. These will remain confidential until determined by the respective opposition groups or until published in advance of Executive/Council meetings, whichever is the earlier.

- 5.6 Special care needs to be exercised whenever 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 Council's codes of conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons, officers will only attend in these circumstances where the request has been made to, and agreed by, a chief officer. It must then be understood that officers may not be able to provide the same level of information and advice as they would to a 'members only' meeting.
- 5.7 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group, unless agreed otherwise.
- 5.8 Any particular cases of difficulty or uncertainty in this area of officer advice to party groups should be raised with the Chief Operating Officer who will discuss them with the relevant group leader(s).

6. Support services to members and party groups

- 6.1 The only basis on which the Council can lawfully provide support services (e.g. stationery, typing, printing, photocopying, transport, etc.) to members is to assist them in discharging their role as members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes. Further advice for Members can be found in the Appendix 7 of this constitution.

7. Members' access to information and to Council documents (see Appendix 7 of this constitution)

- 7.1 Members are free to approach any Council directorate to provide

them with such information, explanation and advice (about the directorate'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 directorate's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Chief Officer concerned.

- 7.2 As regards the legal rights of members to inspect Council documents, these are covered partly by statute and partly by the common law.
- 7.3 Members have a statutory right to inspect any Council document *which contains material relating to any business which is to be transacted at a Council, Committee or Sub-Committee meeting*. This right applies irrespective of whether the member is a member of the committee or sub-committee concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers. This right does not, however, apply to documents relating to certain items which may appear in Part II (exempt) of the agenda for meetings. Further details are contained in the Access to Information Procedure Rules at Appendix 7 of this Constitution. Examples are documents that contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, contract and industrial relations negotiations, advice from Counsel and criminal investigations.
- 7.4 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 their access to the documents is reasonably necessary to enable the member properly to perform their duties as a member of the Council*. This principle is commonly referred to as the "need to know" principle.
- 7.5 The exercise of this common law right depends therefore upon the member's ability to demonstrate that they have the necessary "need to know". In this respect a member has no right to "a roving commission" to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination

of the “need to know”. This question must be determined by the particular Chief Officer who holds the document in question (with advice from the Monitoring Officer).

- 7.6 In some circumstances (e.g. 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 (e.g. a member wishing to inspect documents which contain personal information about third parties) a member will normally be expected to justify the request in specific terms.
- 7.7 Whilst the term “Council document” is very broad and includes, for example, any document produced with Council resources, it is accepted by convention that a member of one party group will not have a “need to know”, and therefore a right to inspect, a document which forms part of the internal workings of another party group.
- 7.8 Further and more detailed advice regarding members’ rights to inspect Council documents may be obtained from the Monitoring Officer.
- 7.9 Finally, any Council information provided to a member must only be used by the member for the purpose for which it was provided i.e. in connection with the proper performance of the member’s duties as a member of the Council.
- 7.10 For completeness, members do, of course, have the same right as any other member of the public to make requests for information under the Freedom of Information Act 2000.

8. Officer–executive member/chair relationships

- 8.1 It is clearly important that there should be a close working relationship between the relevant Executive Member or chair of a committee and the chief officers who support that portfolio or committee. 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 party groups.

- 8.2 Whilst the Executive Member or chair and or vice chair of a committee (or sub-committee) will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations an 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 their name. Any issues arising between a chair and or vice chair or Executive Member and an officer in this area should be referred to the Head of Paid Service for resolution.
- 8.3 It is important to remember that the law allows for decisions (relating to the discharge of any of the Council's functions) to be taken only by the Council, Leader, Executive, Executive Member, a committee, a sub-committees or an officer.
- 8.4 Under the Constitution, individual members of the Executive may, in some situations, take decisions. The Council has put in place mechanisms to ensure that the individual Executive Member seeks advice from relevant members and officers before making a decision within their delegated authority. This includes taking legal advice, financial advice and professional officer advice as well as consulting the Monitoring Officer where there is doubt about powers to act.
- 8.5 The Council's scheme of delegation and resolutions passed at Executive or committee meetings may authorise a named officer to take action, sometimes in consultation with one or more members such as the Executive Member or chair and vice-chair of a committee. In these circumstances it is the officer, rather than the member, who takes the decision or action and it is the officer who is accountable for it.
- 8.6 Finally, it must be remembered that officers within a directorate are accountable to their chief officer and that, whilst officers should always seek to assist an Executive Member or chair and or vice chair (or indeed any member) they must not, in so doing, go beyond the bounds of whatever authority they have been given by their senior officer.

9. Officer support: Scrutiny

9.1 It is not the role of scrutiny to act as a disciplinary tribunal in relation to the actions of members or officers. Neither is it the role of officers to become involved in what would amount to disciplinary investigations on a panel's behalf. This means:

- (a) Scrutiny's questioning about the conduct of individuals should be in the sense of establishing the facts about what occurred in the making of decisions or implementing of Council policies, not to imply criticism or blame;
- (b) In these circumstances, it is for the Head of Paid Service to institute a formal enquiry, and Scrutiny may ask (but not require) them to do so.

9.2 Scrutiny should not act as a "Court of Appeal" against decisions or to pursue complaints by individuals, as other procedures exist for this. These are internal, for example, the Corporate Complaints Procedure, and external/statutory, for example the Local Government and Social Care Ombudsman or appeal to the Courts. However:

- (a) Scrutiny may investigate the manner in which decisions are made but should not pass judgement on the merits or otherwise of a decision in individual cases;
- (b) They can comment on the merits of a particular policy affecting individuals.

9.3 Wherever possible Scrutiny should provide written questions or details of indicative topics to someone invited to appear before a panel to ensure they have adequate time to prepare for the meeting. In addition, invitees ought to be told the general line that further questioning is likely to take. Questioning should not stray outside the subject area that the Panel has previously indicated.

10. Correspondence

10.1 Correspondence between an individual member and an officer should not normally be copied (by the officer) to any other member. Where exceptionally 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. Acknowledging that the “BCC” system of e-mailing is used, it should be made clear at the foot of any emails if another member has received an email by adding “CC Councillor x.”

- 10.2 Official letters or emails on behalf of the Council should normally be sent out under the name of the appropriate officer, rather than under the name of a member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter or email to appear over the name of a member, but this should be the exception rather than the norm. Letters or emails which, for example, create obligations or give instructions on behalf of the Council should never be sent out in the name of a member.
- 10.3 Correspondence to individual members from officers concerning regulatory matters such as planning, enforcement, licensing and environmental health matters should not be sent or copied to complainants or other third parties if they are marked “confidential”. In doing so, the relevant officer should seek to make clear what is to be treated as being shared with the member in confidence only and why that is so.

11. Communications

- 11.1 The Council will undertake communications across a full range of audiences in order to;
- ensure local accountability by explaining policies, services and programmes to members, partners, businesses and residents
 - change behaviour (for example by encouraging people to lead healthy, safer lives)
 - support corporate priorities and delivery of service outcomes
 - ensure operational effectiveness by informing people about services
 - promote the Council, enhancing and maintaining its reputation, including promoting its interests, and

- respond in times of crisis

11.2 All communications will be delivered in accordance with the Code of Recommended Practice on Local Authority Publicity (2011), the Council's Media, and Social Media Protocols, and any associated policies. Full guidance on the Council's policy towards interaction with the press and media can be found within the Press and Media Protocol found at the following link:

<https://www.york.gov.uk/downloads/file/1282/media-protocol-october-2019>

11.3 All communications will comply with the seven principles of the Code of Recommended Practice on Local Authority Publicity (2011) so that all communications activity;

- is lawful
- is cost effective
- is objective
- is even-handed
- is appropriate
- has regard to equality and diversity
- is issued with care during periods of heightened sensitivity.

The last principle, to ensure special care is taken during periods of heightened sensitivity, is of particular relevance during the pre-election period.

11.4 The Leader, Deputy-Leader, Executive Members and chairs act as spokespersons for the Council in responding to the press and media and making public statements on behalf of the Council. The Leader, Deputy-Leader, Executive Members and chairs should liaise with the Communications Team on all forms of contact with the press and media.

11.5 A Chief Officer or nominated representative may respond to press enquiries but should confine any comments to the facts of the subject matter and the professional aspects of the function concerned. On no account must an officer expressly or impliedly make any political opinion, comment or statement.

- 11.6 Any press release that may be necessary to clarify the Council's position in relation to disputes, major planning developments, court issues or individuals' complaints should be approved by the appropriate Chief Officer and/or the Monitoring Officer.
- 11.7 For more detailed information and guidance regarding the role of members in connection with the use of social media, reference should be made to the Council's Social Media Protocol found at the following link:
<https://www.york.gov.uk/downloads/download/417/social-media-policy-and-process>

12. Involvement of ward members

- 12.1 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.

13. Breaches of the protocol

- 13.1 Where a member is dissatisfied with the conduct, behaviour or performance of an officer, the matter should be raised with the appropriate Chief Officer. Where the officer concerned is a Chief Officer the matter should be raised with the Head of Paid Service. Where the employee concerned is the Head of Paid Service, the matter should be raised with the Monitoring Officer.
- 13.2 Where the relationship between members and officers breaks down or becomes strained, every effort will be made to resolve matters informally, through conciliation by an appropriate senior manager or members.
- 13.3 Where an officer feels that they have not been properly treated with respect and courtesy, or is concerned about any action or statement relating to themselves or a colleague by a councillor and wishes to raise a grievance, they should raise the matter with their

line manager, director or the Head of Paid Service as appropriate. In these circumstances the Head of Paid Service or relevant Chief Officer will take appropriate action either by approaching the individual councillor and/or the party group leader.

- 13.4 Where an officer wishes to make a complaint under the Member Code of Conduct this should be made to the Monitoring Officer and dealt with in accordance with the procedure in Appendix 14 of the Constitution.
- 13.5 In the event of a grievance being upheld, the matter will be referred to the Head of Paid Service who, having advised the Leader of the Council and the appropriate group leader(s), will decide on the course of action to be taken, following consultation with the Constitution and Joint Standards Committee if appropriate.
- 13.6 Breaches of this protocol by a member may constitute a breach of the Member Code of Conduct.
- 13.7 Breaches of this protocol by an officer may be referred for disciplinary action.

14. Monitoring and review

- 14.1 The application and implementation of this protocol will be monitored and reviewed by the Council's Joint Standards Committee in consultation with the Council's Monitoring Officer.