

Member/Employee Protocol

This protocol is an attempt to codify the existing good practice in Member / Employee relations in Wigan, it is not intended as a prescriptive checklist. It also draws on codes in place elsewhere – notably those of the London Borough of Camden, and Ellesmere Port and Neston. It forms an important part of our code of corporate governance.

1. Introduction

1.1 An effective working relationship between members and officers is crucial to the successful operation of the Council's business.

1.2 Councillors are responsible to the electorate and serve until their term of office expires.

1.3 Officers are employed to advise the Council and to implement its decisions. Officer advice must be full and impartial and should include all relevant options. It must not seek to second-guess the decisions of members, for example by excluding presumed unpalatable options, and must be clear and professional at all times. Members should respect officers' political neutrality at all times. But members are entitled to reject officer advice and to give effect to their lawful policies even if these are clearly at variance with the views of officers. And members are entitled to seek advice and to call for a report to a committee on any matter within its terms of reference. It is by this means that the majority group is able to implement the policies on which it was elected, and the opposition groups are able to challenge the majority group's policies and put forward their own.

1.4 Relations between members and officers - For the effective conduct of Council business there must be mutual respect in all meetings and contact between members and officers. The basic tenets of common courtesy apply in both formal and informal settings. Members should be aware that officers are constrained in the response they may make to public comment from members, and should not abuse officers in public or through the press, nor seek to undermine their position by abuse, rudeness or ridicule. This in no way reduces members' proper right and duty to criticise the reports actions and work of a department or section of the Council, where they believe such criticism is merited. If members believe they have reason to criticise the work of an individual junior officer, the proper approach should be through the senior manager of the section or Director of the Department. Equally, where officers feel they have good cause to criticise a member, an approach by the relevant Chief Officer to that member's Group Leader is a sensible first step.

1.5 It is widely accepted that there will be informal contact between party political groups and employees at a senior level, often of a sensitive nature. This protocol is designed to provide a framework for contact between members and employees, both formal and informal, and to ensure that members and employees are as clear as they can be as to their roles and responsibilities in relation to each other.

2. Specific Issues

2.1 Every appointment to paid local authority employment must be on merit.

2.2 Political impartiality - Senior officers cannot be local authority 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". Such officers are nevertheless able to engage in such activity to "such extent as is necessary for the proper performance of their duties". (Sections 1-3 Local Government and Housing Act 1989 and Local Government Officers (Political Restrictions) Regulations 1990.)

2.3 Officers are employed by the Council, not by committees or individual councillors, and are subject to the Council's employment procedures. Officers cannot be required to advise any political group of the Council, either as to the work of the Group or as to the work of the Council, nor can they be required to attend any meetings of any political groups. This is without prejudice to any arrangements to the contrary which may be made with any officer and which includes adequate safeguards to preserve the political neutrality of the officer in relation to the affairs of the Council.

2.4 Group meetings - Normally, only the Chief Officer shall be expected to attend meetings or write reports for a party political group. At the appropriate Chief Officer's discretion, other senior employees may on occasions be invited to attend or write reports. However, neither the Chief Officer nor any other officer can be so instructed. Officers shall only attend such meetings to give report and give advice on major issues, they should attend for the relevant item, answer questions, and leave prior to any decision being taken. This provision covers meetings of or reports to a party political group, or meetings designated for one party only. It is of course open to any panel or Cabinet to require a report from a Chief Officer on a matter within its terms of reference.

The principle above does not obviate the necessity for regular contact on matters affecting the Council between Chief Officers, other senior officers, and the leadership of political groups, and between Chief Officers, other senior officers, Cabinet members and party spokespersons.

2.5 Preparation of reports - Any report to a party political group from a senior officer should be written as if the report was being prepared for the relevant panel, and should include appropriate legal and financial advice. Political groups and Cabinet Members will often receive draft versions of reports in order that they may give preliminary consideration to the issues raised in them. There is nothing improper in this but there should be no expectation that reports will then be re-written.

Reports contain officer advice and if this is at variance with the wishes of members, the correct course is for members to reject the advice in open committee and for the committee to decide upon an alternative course of action. However, there is equally nothing improper in reports being amended by the Chief Officer if this preliminary consideration discloses that key issues have not been adequately explained or that relevant options have not been properly addressed.

2.6 Authorship of reports - Reports to committee or panels should be written by the Chief Officer or another officer authorised by him or her. The report is the officer's and may not be amended by the Cabinet member or any other member. Nor can a Cabinet member or any individual member instruct an officer not to present a report if the officer considers it proper to do so. If the Chief Officer's report is not regarded as appropriate by the Cabinet member, the remedy is for the Cabinet or panel to reject its recommendations or refer it back. Exceptionally the Cabinet member may write his or her own report in addition to the report submitted by the Chief Officer. In this instance the member should under no circumstances pressure the Chief Officer to withdraw the original report.

2.7 Decision making and political groups - Members and officers must understand that Council decisions can only be made by full Council, Cabinet, or Chief Officers/Cabinet members acting under delegated authority. Members and officers should not act on group decisions. Representations by interested parties on any matter for Council decision should be made to the appropriate committee, and not exclusively to a political group, at which officer advice on the points raised is unavailable.

2.8 Proper communication between members and officers - Chief Officers must recognise that it is their duty to keep members of all political groups (and not just members of the majority party) fully informed about developments of significance in relation to Council activities. Chief Officers must also report promptly to the relevant committee any significant failure to implement a decision of that committee.

As indicated above, regular contact between members and senior officers is necessary to ensure the efficient working of the Council. In this context, it is the responsibility of Chief Officers to identify within each department the senior officers who should have regular contact with members, and this will depend upon the nature of the service they provide and the nature of the member contact envisaged. Members may, for example, need direct contact with relatively junior staff in Housing District Offices

when dealing with constituency casework presented by tenants. But members should always bring major concerns about issues affecting a Department directly to the attention of the Chief Officer concerned. Chief Officers may issue instructions to their staff to ensure that this is the case.

Approaches by members to junior officers are proper when casework is detailed and ongoing or matters are routine, but wherever appropriate members should keep Directors of departments informed by copying them correspondence, e-mails, etc., and routing general enquiries through them. Serious problems can arise if members by-pass appropriate lines of communication to Chief Officers and their senior colleagues and, for example, deal with more junior members of staff to seek views on policy issues, non-routine business, or attempt to give instructions to staff. This has the effect of depriving members of the formal, informed and accountable advice they have a right to expect from Chief Officers and which they have a duty to consider. It may also serve to undermine the formal accountability of staff to their line manager.

2.9 Courtesy and complaints - Contact between members and officers should always be courteous both in public and in private. If an individual member has a complaint about a junior officer, it should be raised with the appropriate Chief Officer. If the complaint concerns a Chief Officer it should be raised with the Chief Executive as Head of the Paid Service. A complaint about the Chief Executive should be raised with the Leader, who will consider whether the issue can be dealt with as part of routine liaison, supervision and appraisal, or should be referred for formal action in accordance with Council procedures and the statutory provisions governing disciplinary action against local authority chief executives. This does not however preclude a member from making public, at a Council meeting or in another appropriate way, a concern about the manner in which a Council Department has acted, or dealt with a constituent, or a service has performed generally. Nor does it prevent members at formal meeting being critical of officer advice or action or of the quality of reports before them.

2.10 Social contact between senior officers and members is beneficial in a public setting and a work related context. For example, a Departmental management team may wish to invite members of the relevant service committee to an office Christmas lunch. However, a professional relationship must be maintained at all times and officers must be careful not to socialise with members of one political group to the exclusion of others. Social contact between a member and a more junior officer may also be appropriate providing this occurs openly and does not result in breaches of confidence or of management instructions, or the reasonable suspicion of them. Officers must always take care in such situations to avoid casting doubt on their impartiality.

2.11 Canvassing and departmental visits- Councillors should be aware that it can be a disciplinary offence for members of staff to seek to circumvent agreed staff consultative procedures by lobbying councillors on matters which directly concern them as employees. Councillors should also remember that informal contacts with staff should not be used to promote their own personal interests.

Members will frequently come into contact with junior officers when visiting Council establishments. Such visits are encouraged as they increase member understanding of Council services, provide reassurance to service users of the involvement of their elected representatives in monitoring services, and will often also be welcomed by staff, especially in services which operate from remote buildings. However, relevant Chief Officers should normally be advised in advance of member visits to front-line services, unless the visits are of a statutory inspection nature in which case other well-established procedures apply. Special circumstances may warrant unannounced visits, but members should take care not to disrupt organisations unreasonably. Visits to schools should be arranged through the Headteacher.

2.12 Close personal relationships between members and officers with whom they have, or are likely to have, contact in the course of their duties as a councillor are to be avoided. This includes close friendships between members and Chief Officers or Assistant Chief Officers and applies with particular force to sexual relationships. If such a relationship arises, the member or officer should disclose this to the Chief Executive who will consult with the Group Leader on the appropriate course of action.

Both members and officers should also avoid establishing business or contractual relationships with each other, or entering into loans or other financial obligations.

2.13 Assistance to all members - Officers have a duty to offer the same assistance and facilities to all members. This particularly applies to briefings, at which officers provide oral advice and information to members outside the formal processes of the Council. It is also appropriate to provide briefings to minority party spokespeople, especially in advance of complex matters being considered by a committee. They may be requested by the relevant members or offered by the Chief Officer, and are confidential in the sense that officers should not disclose matters discussed at such briefings to members of other parties. Individual members may also request briefings from Chief Officers from time to time on general issues affecting the work of the Council. It is the duty of officers to comply with reasonable requests of this kind.

2.14 Correspondence and confidentiality - Frequently, Members and officers correspond, and where not obviously confidential, such correspondence may, subject to the rules below, be copied by either the sender or the recipient to others. Correspondence should be courteous. Wide circulation of it should not be employed as a means of administering a public rebuke to the Council officer or Member. Members should, wherever possible, keep Directors of Departments informed by copying their correspondence, e-mails, etc. or approaching them directly for replies to general queries.

If an officer has information relating to a Ward which is of public or general interest then the information should be given to all Ward Members. Queries about individual matters are dealt with below.

If a Member requires information about an individual matter it is up to the Member formally to request the information. Information given to a Member following such requests will not be circulated to other Ward Members. If the Member requesting such information wishes to share it with his or her colleagues in the same political party then it is up to him/her so to do. This does not preclude a Chief Officer advising a Portfolio Holder or Committee Chair of an issue relevant to his/her portfolio nor does it preclude a Chief Officer giving routine updates on the progress of a project to all Ward Members.

If a Member asks for information about or relating to another Member or asks for comment upon another Member's conduct then the Member requesting the information must be told in writing that any reply will be shared with the Member to whom the information relates. If the Member making the request does not agree to this then they will not be given the information.

2.15 Access to Information - Members have wide-ranging legal rights of access to documents in the possession or under the control of the Council and officers should implement requests for information from members who need that information for the fulfilment of their duties as a councillor.

a) Normally, officers will accept that members do not ask for information without good reason and will not question the member's "need to know". But in the words of relevant legal judgements, a member has no right to a "roving commission" and "mere curiosity or desire" is not sufficient. Nor can the member exercise the right for some improper motive, e.g. to assist someone in litigation with the Council, its staff, suppliers or service users.

b) In rare cases, therefore a Chief Officer may apply the "need to know" test. The member will need to show why the information is necessary to fulfil Council duties. Where an officer considers that a member has not established a "need to know" in support of a request for access to information and refuses to provide the information requested, the officer shall state reasons for doing so.

c) A member asking for complex or bulky information should be flexible in his or her demands if compiling and reproducing the documentation results in significant cost to a department. The member will normally be able to retain material for a reasonable time, and to copy individual documents, but may not make use of such information for an improper purpose or one unrelated to the member's duties as a councillor.

2.16 Press and public relations – in dealing with the press and public relations, members and officers should refer to the code of recommended practice on local authority publicity

3. Legal Rights

Legal rights of councillors - Nothing in this code shall derogate in any way from any right of a councillor enshrined in law and such legal rights override any conflicting provisions in this code.