

# Part 4

## Appendix D - Protocol for Member/Officer Relations

### 1. Introduction

- 1.1. Members are democratically elected and are responsible for the strategic direction, policing and budget of the County Council. They are supported by the County Council's officers who provide professional and managerial expertise in the running of the County Council's business and in implementing the decision of the County Council.
- 1.2. The purpose of this Protocol is to guide members and officers of the County Council in their relations with one another in such a way as to ensure the smooth running of the County Council.
- 1.3. Given the variety and complexity of such relations, this Protocol does not seek to be either prescriptive or comprehensive. It does, however, offer guidance on some of the issues which most commonly arise.
- 1.4. This Protocol is, to a large extent, no more than a written statement of current practice and convention. It seeks to promote greater clarity and certainty. If the advice is followed it should also ensure that members receive objective and impartial advice, and that officers are protected from accusations of bias and any undue influence from members.
- 1.5. 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.
- 1.6. 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."
- 1.7. 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. Conduct and Capability Issues**

- 2.1. Members should not raise matters relating to the conduct or capability of a County Council employee or of employees collectively at meetings held in public. This is a long-standing tradition in public service. Employees have no means of responding to criticisms like this in public. If members feel they have not been treated with proper respect or courtesy or if they have any concern about the conduct or capability of a County Council employee, they should raise the matter with the chief officer of the department concerned if they fail to resolve it through direct discussion with the employee. The chief officer will then look into the facts and report back to the member. If the member continues to feel concern, they should then report the facts to the Chief Executive who will look into the matter afresh.
- 2.2. Officers are bound by the Officer's Code of Conduct and relevant contractual and disciplinary Codes. The Chief Executive may inform the relevant political group leader of the matter, if it is referred to him following ongoing concerns by the Member, but should only do so in full knowledge of the facts surrounding the issue and where doing so would not contravene any legal or confidentiality requirements or other Protocol contained within this Constitution, or would otherwise prejudice determination of the matter.
- 2.3. If an officer feels that he or she has not been properly treated with respect and courtesy they should raise the matter with their line manager, their chief officer, the Monitoring Officer or the Chief Executive as appropriate, especially if they do not feel able to discuss it directly with the member concerned. In these circumstances and subject to Paragraph 2.4, the chief officer, the Monitoring Officer or the Chief Executive will take appropriate action either by approaching the individual member or group leader.
- 2.4. Members are bound by the Members' Code of Conduct. Where a complaint is made by an Officer under the Members' Code of Conduct, then regard must be given to any statutory requirements or statutory guidance thereon regarding confidentiality. Whilst a Member subject of a complaint under the Members' Code of Conduct may inform his political group leader of the matter, Officers may not inform the group leader without the permission of the Member.

## **3. Officer advice to party groups**

- 3.1. It must be recognised by all officers and members that in discharging their duties and responsibilities, officers serve the County Council as a whole and not exclusively any political group, combination of groups or any individual member of the County Council.

- 3.2. It is common practice for party groups to give preliminary consideration to matters of County Council business in advance of such matters being considered by the relevant County Council decision-making body. Officers may properly be called upon to support and contribute to such deliberations by party groups, but they must maintain political neutrality at all times. All officers must, in their dealings with political groups and individual members, treat them in a fair and even-handed manner.
- 3.3. The support provided by officers can take many forms, ranging from a briefing meeting with a chairman 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 County Council, such support is available to all party groups.
- 3.4. Certain points must however, be clearly understood by all those participating in this type of process, members and officers alike. In particular:
  - 3.4.1. Officer support in these circumstances must not extend beyond providing information and advice in relation to matters of County 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.
  - 3.4.2. Party group meetings, while they form part of the preliminaries to County Council decision making, are not empowered to make decisions on behalf of the County Council. Conclusions reached at such meetings do not therefore rank as County Council decisions and it is essential that they are not interpreted or acted upon as such; and
  - 3.4.3. Similarly, where officers provide information and advice to a party group meeting in relation to a matter of County Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant committee or sub-committee when the matter in question is considered.
- 3.5. 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 County Council. Such persons will not be bound by the Members' Code of Conduct (in particular, the provisions concerning the declaration on interests and confidentiality) and for this and other reasons, officers may not be able to provide the same level of information and advice as they would do for a members-only meeting.

- 3.6. Any request for advice, together with the advice given to a political group of Members, will be treated with strict confidentiality by the officers concerned and will not be accessible to any other political group. It is acknowledged, however, that factual information on which any advice is based will, if requested, be available to all political groups.
- 3.7. It must not be assumed by any political group or Member that any officer is personally supportive of any policy or strategy developed because of that officer's assistance in the formulation of that policy or strategy.
- 3.8. 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 or other non-involved officers.
- 3.9. Any particular cases of difficulty or uncertainty in this area of officer-advice to party groups should be raised with the Chief Executive who will discuss them with the relevant group leader(s).

#### **4. Support services to members and party groups**

- 4.1. The only basis on which the County 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 County Council. Such support services must therefore only be used on County Council business. They should never be used in connection with party political or campaigning activity, or for private purposes.
- 4.2. It is acknowledged however, that certain equipment provided, such as personal computers and mobile phones, can be put to ancillary personal use by members, provided that such use incurs no cost to the County Council. Any such equipment provided by the County Council, such as personal computers, must however only be used in accordance with any County Council policies which apply at the time. Furthermore, the member will be fully responsible for the use or misuse of the equipment, including any use or misuse by anyone to whom the member has given access to the equipment.

#### **5. Members' access to information and to County Council documents**

- 5.1. Members are free to approach any County 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 County 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 chief officer or another senior officer of the Department concerned. In cases of doubt, the Monitoring Officer should be asked for assistance.

- 5.2. As regards the legal rights of members to inspect County Council documents, these are covered partly by statute and partly by the common law.
- 5.3. By virtue of Section 100F(1) of the Local Government Act 1972 (“the 1972 Act”), Members have a statutory right to inspect any County Council document which contains material relating to any business which is to be transacted at a County Council, Committee, Sub-Committee or Standing Panel Meeting. This right applies irrespective of whether the Member is a Member of the Committee, Sub-Committee or Standing Panel concerned, and it extends not only to Reports which are to be submitted to the Meeting, but also to any relevant background papers.
- 5.4. Similar provisions apply in respect of Executive documents by virtue of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (“the Access to Information Regulations”), in respect of documents in the possession or under the control of the Executive. Where the document contains information relating to business to be transacted at a public meeting of the Executive or individual Executive Member Decision Day, Members have a right to inspect the document once it is available. Where the document contains information relating to business to be discussed at a private meeting of the Executive, or to an individual Executive Member decision made in private, or an Executive Decision to be made by an Officer, then the document should be available for inspection on conclusion of the Meeting. Members may also inspect any contemporaneous notes taken by the Chief Executive’s business support staff at any such meeting.
- 5.5. This right does not, however, apply to documents relating to some exempt items. The items in question are described in Schedule 12A of the 1972 Act, and are those which contain exempt information relating to:
  - 5.5.1. Information relating to any individual (e.g. appointment of staff),
  - 5.5.2. Information which is likely to reveal the identity of an individual,
  - 5.5.3. Information relating to the financial or business affairs of any particular person (including the County Council), where the information relates to any terms proposed or to be proposed by the County Council in the course of negotiations for a contract (e.g. property transactions),

- 5.5.4. Employment and industrial relations negotiations (e.g. pay and other employment matters),
- 5.5.5. Information in respect of which a claim to a legal professional privilege could be maintained in legal proceedings (e.g. legal advice),
- 5.5.6. Criminal investigations
- 5.6. Additional rights of access are given to Members of Select (Overview and Scrutiny) Committees, who are entitled to a copy of any document which is in the possession or under the control of the Executive, and contains material relating to any business transacted at a meeting of the County Council, or any decision made by an individual Executive Member, or any Executive decision made by an Officer in accordance with delegated powers, provided that this shall not apply to any exempt or confidential document in the possession of or under the control of the Executive, unless the information is relevant to an action or decision the Member is reviewing or scrutinising, or which is relevant to any review contained in a work programme of such Committee.
- 5.7. However, the statutory position is in addition to any common law right of Members to have access to information. The common law right members have is much broader and is based in the principle that *prima facie* a Member has a right to inspect County Council documents. This right exists because Members are under a duty to keep themselves informed of business which enables a Member to properly perform his or her duties as a Member of the County Council. This principle is commonly referred to as the 'need to know' principle. This same principle applies to Meetings where exempt information is discussed.
- 5.8. The exercise of this common law right depends therefore, upon the Member's ability to demonstrate that he or she has the necessary 'need to know'. In this respect a Member has no right to 'a roving commission' to go and examine documents of the County Council. Mere curiosity is not sufficient. The crucial question is determination of the 'need to know'.
- 5.9. In some circumstances (e.g. a Committee Member wishing to inspect documents relating to the business of that Committee or an Opposition Group Spokesperson for an Executive Portfolio) 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), such Member will be expected to justify the request in specific terms. Furthermore, there will be a range of documents which, because of their nature, are either not accessible by members or are accessible only by the political group forming the administration and not by the other political groups. An example of this latter category would be draft documents compiled in the context of emerging County Council policies and draft committee reports, the

premature disclosure of which might be against the County Council's and the public interest.

- 5.10. Any question as to whether a Member has a right to an exempt document or to attend a Meeting where exempt information is discussed should be referred to the Monitoring Officer as Proper Officer for Access to Information.
- 5.11. The term 'County Council document' is very broad and includes, for example, any document produced with Council resources, but 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.
- 5.12. Finally, any County Council information provided to a Member must only be used by the Member for the purpose for which it was provided, that is in connection with the proper performance of the Member's duties as a Member of the County Council. Unauthorised disclosure of exempt or confidential information is prejudicial to the effective conduct of public affairs, and detrimental to the effective delivery of the County Council's business. Unauthorised disclosure of exempt or confidential information is also potentially a breach of the Members' Code of Conduct.

## **6. Officer, Executive Member and Chairman relationships**

- 6.1. It is clearly important that there should be a close working relationship between an executive member, a chairman of a committee and the chief officer and other senior officers of any department which reports to that committee. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the officer's ability to deal impartially with other members and other party groups.
- 6.2. The executive member or chairman or a committee (or sub-committee) will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting but it must be recognised that in some situations, a chief officer will be under a duty to submit a report on a particular matter. It is at this stage executive members should make clear their requirements for any changes. Similarly, a chief officer or other senior officer will always be fully responsible for the contents of any report submitted in his or her name. This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report. Executive members are entitled to accept, amend or change recommendations of officers in reports. For legal reasons, reports may not be amended after publication. Any issues arising between an executive member, a chairman and a chief officer in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the County

Council.

- 6.3. In addition to the Chairman's briefing before any committee or sub-committee, minority group representatives on that committee or sub-committee will also have the opportunity of a briefing through their appropriate spokespersons.
- 6.4. At some executive member, committee and sub-committee meetings, a resolution may be passed, which authorises named officers to take action between meetings in consultation with the executive member or chairman. It must be recognised that in such circumstances it is the officer, rather than the executive member or chairman, who takes the action and it is the officer who is accountable for it.
- 6.5. Finally, it must be remembered that officers within a department are accountable to their chief officer and that while officers should always seek to assist an executive member or chairman (or indeed any member), they must not, in doing so, go beyond the bounds of whatever authority they have been given by their chief officer.

## **7. Correspondence**

- 7.1. 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.
- 7.2. If correspondence is received by an officer from a member of the public asking for any details about a member, that letter and the officer's reply will be sent to the individual member. The member of the public requesting the information will be so informed.
- 7.3. Official letters on behalf of the County Council should normally be sent out in the name of the appropriate officer, rather than in the name of a member. It may be appropriate in certain circumstances (e.g., representations to a government minister) 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 County Council should never be sent out over the name of a member.

## **8. Involvement of divisional members**

- 8.1. Whenever a public meeting is organised by the County Council to consider a local issue, all the members representing the division or divisions affected must, as a matter of course, be invited to attend the meeting. Whenever a member is invited to such a meeting or any seminar or conference or any ceremonial event the member will, at the same time, be informed as to whether they are entitled to claim any

attendance, travelling or subsistence allowance. Similarly, whenever the County Council undertakes any form of consultative exercise on a local issue, the divisional members should be notified at the outset of the exercise.

## **9. Ceremonial events**

- 9.1. The Chairman of the County Council, or in his or her absence the Vice-Chairman, will be the appropriate person to lead County Council ceremonial events which are not specifically associated with a particular committee, and to represent the County Council by invitation at ceremonial events of other organisations which are not specifically associated with a particular committee.
- 9.2. Executive members or their nominees are the appropriate candidates for ceremonial events within the scope of their portfolios.
- 9.3. Local members should always be informed of and, where possible, invited to ceremonial events taking place within their own divisions, as should district and parish councils as appropriate.
- 9.4. Any member taking part in a ceremonial event must not seek disproportionate personal publicity or use the occasions for party political advantage, bearing in mind that the member is representing the County Council as a whole.

## **10. Public relations and press releases**

- 10.1. The County Council's Corporate Communications Office services the County Council as a whole and must operate within the limits of the Local Government Act 1986 and the Code of Recommended Practice on Local Authority Publicity. This Act and the Code prohibits the County Council from publishing material which appears to be designed to affect public support for a political party. County Council press releases are drafted by officers and will often contain quotations (within the limits of the Local Government Act 1986 and the Code) from the Leader of the County Council and executive members whose service is involved, and from the Chairman and Vice-Chairman of the County Council about ceremonial events. Such press releases are issued on behalf of the County Council and it would not, therefore, be appropriate when repeating quotations from members to indicate their party political affiliation.