

## **Document 5.1**

# **PROTOCOL COUNCILLOR AND OFFICER RELATIONS**

**(Helping to Ensure Good Governance)**

**Adopted 27 March 2017**  
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## **PROTOCOL ON COUNCILLOR/OFFICER RELATIONS**

### **1. Introduction**

- 1.1 Elected councillors and paid officers fulfil different but complementary roles. Councillors are the elected representatives of the community and the officers provide the professional advice and support and are primarily responsible for execution / implementation. As stated in the Nolan report, this relationship operates at its best as one of partnership. This protocol seeks to guide councillors and officers in their relations with one another.
- 1.2 The majority of this protocol is a statement of current practice. However, it is hoped that it will ensure that Councillors and Officers will continue with their respective roles secure in the knowledge that, provided the conditions contained within this protocol are observed, both councillors and officers will be protected from accusations of inappropriate conduct or bias.
- 1.3 The underlying principle of councillor/officer relations will, of course, remain the same, namely that the elected councillors are responsible for agreeing policy and taking all non-delegated decisions; officers are responsible for providing advice and support, for making decisions under delegated authorities and for ensuring that all the Council's decisions are efficiently and professionally carried out under the direction and control of the Council and its Committees.
- 1.4 The protocol is supplementary to the Councillors' Code of Conduct, which Councillors undertook to be guided by in their declarations of acceptance of office after election.
- 1.5 In addition to the above, the Widdicombe Committee reported in 1988 in their report of inquiry into the conduct of local authority business that:

*“Local Government has derived strength over the years from a complementary relationship between part-time councillors drawn from and representative of the general public, and full-time officers with professional expertise. We accept that this cannot be a rigid or static model. Some councillors will need to devote considerable time to council business, and there has sometimes been too great a stress on officer professionalism. Councillors moreover have the right to ensure that some of their decisions for which they are statutorily responsible and accountable are implemented by officers. Nevertheless, a merging of roles is not desirable. Councillors should leave the day-to-day implementation of council policies, including staff management as far as possible, to officers, and officers should demonstrate that they are sensitive to the political aspirations underlying those policies”.*

- 1.6 The Committee on Standards in Public Life, established by the government in 1997 recommended that all councils should adopt a protocol which should set out how the relationship would work and be tailored to each authority's traditions and practices.

## **PROTOCOL ON COUNCILLOR /OFFICER RELATIONS**

### **2. General Rules**

- 2.1 It is important that any dealings between Councillors and Officers should observe high standards of courtesy and neither party should seek to take unfair advantage of their position.
- 2.2 A Councillor should not raise matters relating to the conduct or capability of an officer at any public session of a meeting. In the event that any Councillor has a complaint concerning an Officer's behaviour, conduct or capability and is unable to resolve same through discussions with the Officer concerned, they should raise the matter in the first instance with the Officer's manager. If after receiving a written report from the manager, a Councillor remains concerned, the Town Clerk should be advised. In the event that a decision is taken to take action against an Officer in respect of a complaint lodged by a Councillor, such action shall be conducted in accordance with the Council's disciplinary rules and procedures.
- 2.3 Similarly, Officers should not raise matters relating to the conduct or capability of a Councillor at any public session of a meeting. Where an Officer feels that he/she has not been properly treated by a Councillor, they should raise the matter with their manager, or the Town Clerk, as appropriate. In the event that the member of staff does not feel able to discuss the matter directly with the Councillor concerned, the manager, or Town Clerk will take the appropriate action by approaching the Councillor concerned and/or his or her group leader.

### **3. Officer Advice to Councillors and Groups**

- 3.1 Officers serve the Council as a whole and not any individual political group or any individual Councillor.
- 3.2 The support provided by Officers may involve a briefing meeting prior to a Committee or Sub-Committee meeting, such support in whatever form it takes, is available to all councillors and all party groups.
- 3.3 There are rules for those who provide advice and support to councillors, such rules relate to both councillors and officers. In particular, the rules comprise:
- (a) Officer advice and support must relate only to matters of Council business and not to advice on political issues. In the event that an Officer is of the view that it would be inappropriate to provide the advice and support requested by an individual Councillor, he/she may refuse to provide same and will advise their manager or the Town Clerk as appropriate.
- (b) Decisions made at party group meetings are not decisions of the Council and must not be treated or acted upon as such by either Councillors or Officers. Group decisions can however give Officers a steer around the majority group's thinking and should therefore be a useful consideration for officers when producing papers for formal council consideration.
- (c) Officers should not normally attend formal meetings of political groups. Political groups may request the Town Clerk to prepare written reports on matters relating to the Council for consideration by the group. These requests should be kept to the minimum, be timely and will not take precedence over the need to carry out the Council's formal business

The Town Clerk's reports to political groups will be limited to a statement of material facts and identification of options and the merits and demerits of such options for the Council. Reports will not deal with any political implications of the matter or any option, and the Town Clerk will not make any recommendation to a political group

#### Officer Attendance

- 1 Any political group may request the Town Clerk to attend a meeting of the group to advise on any particular matter relating to the Council
- 2 The Clerk may arrange for the attendance of a representative in his/her stead, or may decline to attend or to provide a representative where he/she is of the opinion that the particular issue is of such a political nature that it would be inappropriate to attend
- 3 The Town Clerk's advice to political groups will be limited to a statement of material facts and identification of options and the merits and demerits of such options for the authority. Advice will not deal with any political implications of the matter or any option, and the Town Clerk will not make any recommendation to a political group
- 4 Where an Officer attends a political group, the Town Clerk will advise all other groups that the Officer has attended and the subject upon which he/she has advised

(d) Where a Councillor requests information from an Officer, that information will not be supplied to any other Councillor unless the Officer supplying the information states at the time of supplying same that the information in question will be made available to other councillors.

(e) It must not be assumed by any group or individual Councillor that an Officer is supportive of any policy simply because of that Officer's assistance in the formulation of same.

(f) In the event that any Councillor or group requires further information of a factual nature prior to a Council, Committee or Sub-Committee meeting or wishes to query any facts contained in an agenda item or report, they should, wherever possible, ask the relevant officer prior to the meeting.

(g) In giving advice to Councillors, and in preparing and presenting reports, it is the responsibility of the Officer to express his/her own professional views and recommendations. Whilst an Officer may report the views of individual Councillors on an issue, if the Councillor wishes to express a contrary view he/she should not seek to pressure the Officer to make a recommendation contrary to the Officer's professional view, nor victimise an Officer for discharging his/her responsibilities.

#### **4. Councillors' Access to Information and Council Documents**

- 4.1 Access to accurate and up-to-date information and professional advice is vital to enable Councillors to fulfil their elected role effectively. However, access to information and protection of individual and community rights is an increasingly

sensitive area, and there is a great deal of legal regulation, both common law and statutory, which governs the rights and restrictions relating to councillors' access to Council-held information. This section attempts to set out the basic principles and rules to enable Councillors to operate effectively within the law.

- 4.2 Councillors have a right to approach any lead officer to ask for information or seek advice. This right extends only to information, explanation and such advice as they may reasonably need in order to assist them in discharging their role as a councillor. When seeking such advice or information, councillors should normally approach a senior officer of the service concerned and copy the request to the Town Clerk for awareness and to facilitate oversight around appropriateness. In the event of any difficulty, Councillors should approach the Town Clerk.
- 4.3 As indicated in Paragraph 4.1 above, the legal rights of Councillors to inspect Council documents are covered partly by statute and partly by common law.
- 4.4 Councillors have a statutory right to inspect any Council documents which contain material relating to any business which is to be transacted at a Council, Committee or Sub-Committee meeting. Such right applies irrespective of whether the Councillor is a member of the body concerned and applies not only to reports which are to be submitted to the meeting in question, but also to any relevant background papers. This statutory right does not, however, apply to documents relating to items which appear within the confidential part of any agenda for a meeting.
- 4.5 There is no 'roving commission' for a Councillor to examine books and documents and the common law right of Councillors is based on the principle that Councillors have a prima facie right to inspect Council documents so far as access to the document in question is reasonably necessary to enable the councillor to perform his/her duties. This is commonly known as "the need to know" principle.
- 4.6 To exercise the common law right, councillors must, therefore, prove a need to know. Officers will always do their best to ensure that Councillors are properly informed of significant issues or events affecting their wards or other areas of responsibility. Nevertheless, the requirements of the legislation and, in particular, the Data Protection Act 1998 and the Human Rights Act 1998, make this a difficult area. In matters of concern on this issue, it is for the lead Officer which holds the document in question to determine whether an individual councillor has a need to know, and such lead officer may seek advice from the Town Clerk and Monitoring Officer in particular cases of difficulty. In the event of dispute relating to a Councillor's need to know, the matter will be determined by the Monitoring Officer
- 4.7 In many cases, a need to know can be presumed. However, where councillors request to see documents containing confidential information, the councillor will be required to justify the request in specific terms. Certain documents will not be available to councillors. These documents may contain information which is covered by statute or may be documents which are in the possession of officers but are likely to be sensitive material, the release of which in the opinion of the officer would be prejudicial to the Council's interests.

- 4.8 Further and more detailed advice regarding councillors' rights to inspect Council documents may be obtained upon request to the Town Clerk and Monitoring Officer.
- 4.9 Any Council information provided to a councillor must only be used by the councillor for the purpose for which it was provided (i.e. in connection with the proper performance of the Councillors' duties). Attention is drawn to the relevant section of the Members' Code of Conduct in the Council's Constitution:
- 'You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
- (i) you have the consent of a person authorised to give it;
  - (ii) you are required by law to do so;
  - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
  - (iv) the disclosure is:
    - (a) reasonable and in the public interest; and
    - (b) made in good faith and in compliance with the reasonable requirements of the authority'.
- 4.10 Any Councillor found to be or suspected of being in breach of the requirement to keep the confidentiality of items taken 'in committee' will be the subject of a report to the District Council's Standards Committee.

## **5. Officer/Chair Relationships**

- 5.1 It is important that there should be a close working relationship between the Chairman of a Committee and the Officers who report to or interact with that Committee. This will also apply between the Mayor and Leader. It is particularly important that the lead officer and Chairman of a Committee have regular contact in between meetings and that the Officer provides timely reports on information which can reasonably be considered appropriate and relevant to the committee to enable the Chairman to stay fully informed of matters concerning their Committee. However, such relationships should never be allowed to become so close, or appear to be so close as to bring into question an individual officer's ability to deal impartially with other Councillors and other party groups.
- 5.2 The Chairman of a Committee or Sub-Committee will naturally be closely involved in the process of formulating an agenda for a meeting, and the Chairman may request that matters are placed on an agenda. In addition, Councillors will appreciate that in certain circumstances an officer will be under a professional duty to submit a report, the content of which may not be supported by the Chairman. The author of a report will be responsible for the contents of any report submitted in his/her name and, therefore, any amendment to the report will only be made if such amendment reflects the professional judgement of the author of the report, although officers will strive to submit reports to Committee that have been discussed with the Chair and, where possible, reflect the direction of travel that the Council wants to take. Any issues arising between a Chairman and a Senior Officer should be referred to

the Town Clerk for resolution, in consultation with the Council Leader. The parties involved will both be informed of the decision to refer the matter to the Town Clerk.

- 5.3 A decision on Council business may only be taken by the Council, a Committee or Sub-Committee or Officer acting pursuant to delegated powers. It has been established in law that no individual Councillor can lawfully have delegated authority and/or issue instructions to Officers on behalf of the Council. The day to day running of the Council and implementation of the Council's decisions is responsibility of the Officers, and it is important to retain the distinctive roles of Policy Maker (Councillors) and Executive (officers), although as noted above there are times where it may be appropriate for Councillors to become involved in implementation of Council decisions.

5.4 Finally, it must be remembered that, while Officers may work closely with the Mayor, Leader and Committee Chairmen, they are accountable to their manager, Town Clerk and the Council and cannot go beyond the bounds of whatever authority they may have been given by their manager, Town Clerk or by the Council.

## **6. Correspondence**

- 6.1 Correspondence, including e-mails, between an individual councillor and officer, particularly when it has been initiated by a Councillor, should not normally be copied by the officer to any other Councillor, unless the councillor who initiated the correspondence copied it to other Councillors in which case the officer shall copy his correspondence to those other Councillors. In the event that in certain circumstances it proves necessary to copy the correspondence to another Councillor, this should be made clear to the original Councillor through notation on the correspondence. A system of 'silent copies' should not be employed. Similarly, correspondence sent to all Councillors or groups of Councillors will make the circulation list clear.
- 6.2 Official letters on behalf of the Council must normally be sent in the name of the appropriate officer rather than in the name of a Councillor. Letters which create obligations or give instructions on behalf of the Council must never be sent out in the name of a Councillor and letters sent out by officers must reflect Council policy / strategy

## **7. Ward Councillors**

- 7.1 Whenever a public meeting is organised by the Council to consider a local issue, all Councillors 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, Ward Councillors should be notified at the outset of the exercise.
- 7.2 Officers will not normally attend meetings arranged by Councillors unless this has been discussed and agreed with the appropriate manager in advance in order that proper representation and briefing can be arranged.

**8. Conclusion**

- 8.1 Both Councillors and Officers must bear in mind that mutual understanding and basic respect are the greatest safeguard of the integrity of the Council, its Councillors and Officers.
- 8.2 Copies of this protocol will be issued to all Councillors, together with any other relevant documentation upon their election to the Council.
- 8.3 Except as specifically provided in this document, questions on interpretation of this protocol will be determined by the Town Clerk and Monitoring Officer.