

## **Part 5C – Protocol for Member/Officer Relations**

### **1. Introduction - Respective Roles of Members and Officers**

- 1.1 The purpose of this Protocol is to guide Members and Officers of the Council in their relations with one another.
- 1.2 This Protocol reflects the principles underlying the Code of Members' Conduct and the Code of Conduct for Employees. The object of those Codes is to enhance and maintain the integrity (real and perceived) of local government and demand high standards of personal conduct.
- 1.3 The Code of Members' Conduct (Constitution Part 5A) provides, inter alia, at Part IV – Rules of Conduct that:

6. Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

7. Members shall observe the following rules:-

#### General Requirements

- (1) Do treat others with respect.
- (2) Do not bully any person.
- (3) Do not do anything which may cause your Authority to breach any of the equality enactments.
- (4) Do not use your position improperly, to confer on or secure for yourself or any other person, an advantage or disadvantage.
- (5) Do not do anything which compromises, or is likely to compromise, the impartiality of those who work for, or on behalf of, your Authority.
- (6) Do 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 legal 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.

- (v) before making any disclosure under the provision and (iv) above, the written advice of the Borough Solicitor must be sought and considered.
- (7) Do not prevent another person from gaining access to information to which that person is entitled by law.
- (8) Do promote and support high standards of conduct when serving in your public post by leadership and example.

When using the resources of the Authority, or authorising the use of those resources by others:

- (9) Do act in accordance with the Authority's reasonable requirements including the requirements of the Authority's IT Policy;
- (10) Do make sure that such resources are not used improperly for political purposes (including party political purposes); and
- (11) Do have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986;
- (12) Do not improperly use knowledge gained solely as a result of your role as a Member for the advancement of your own interests.

When making decisions on behalf of, or as part of, the Authority:

- (13) Do ensure that decisions are made on merit, particularly when making public appointments, awarding contracts, or recommending individuals for rewards or benefits.
- (14) Do have regard to any relevant advice provided to you by the Council's Chief Financial Officer and Monitoring Officer where such advice is offered pursuant to his or her statutory duties.
- (15) Do be as open as possible about your own decisions and actions and those of your authority and be prepared to give reasons for those decisions and actions.
- (16) Do ensure that you are accountable for your decisions and co-operate fully with whatever scrutiny is appropriate to your office.

1.4 In line with the Code's reference to "*respect*" it is important that in any communications/dealings between Members and Officers the parties should be courteous and that neither party should seek to take unfair advantage of their position.

1.5 The fundamental principles essential for ensuring proper relationships between Members and Officers are:

- (i) the political neutrality of Officers; and
- (ii) a clear understanding of, and respect for, their distinct roles.

**2. Political Neutrality**

- 2.1 The primary responsibility of any Officer is to serve the Council as a corporate body. Where this duty conflicts with any duty to individual Members of the authority then the duty to the Council shall prevail.
- 2.2 Officers must act apolitically, whether or not they hold politically restricted posts, and Members must try to avoid putting Officers, whether intentionally or otherwise, in situations where their political neutrality might be compromised or appear to be compromised. This would include actions such as applying pressure on an Officer to alter the presentation or substance of their advice in reports.

**3. Officers as Employees**

- 3.1 Officers are employed by the Council as a corporate body.
- 3.2 The Employment Rules (Part 4F of the Constitution) deal with the appointment, disciplining and dismissal of officers. In general terms Members shall not be involved in such matters other than in respect of Chief Officers, Deputy Chief Officers, Statutory Officers and Political Assistants.
- 3.3 Members can expect Officers to:
- Maintain confidentiality where necessary and lawful
  - Perform their duties effectively, efficiently and with political neutrality
  - Behave in a professional and courteous manner
  - Be helpful to Members and respect their role
  - Avoid close personal familiarity with Members and not use their relationship with Members to advance their personal interests or to influence decisions improperly
  - Report to the relevant Director any time a Member asks or pressurises the Officer to deal with a matter outside of Council procedure or policy
  - Demonstrate an understanding of and support for respective roles, workloads and pressures
  - Comply with any relevant Code of Conduct
- 3.4 Officers can expect from Members:
- Leadership within the political sphere and direction
  - Respect, dignity and courtesy
  - An understanding of and support for respective roles, workload and pressures
  - Not to be subjected to bullying or undue pressure, including through written and verbal communications

- Not to use their position or relationship with Officers to advance their personal interests or those of others to improperly influence decisions
- Compliance with the relevant code of conduct

**4. Relationship between the Leader and Officers**

4.1 The Leader will be at the centre of the Cabinet and will need the close working support of a number of Officers. The relationship between the Leader and those Officers must never be, or give the appearance of being, so close as to bring into question the Officers' ability to deal impartially with other Members, especially those belonging to other party political groups.

**5. Relationships between Members of the Cabinet and Chairmen and Officers**

5.1 It is clearly important that there should be a close working relationship between Members of the Cabinet (whether or not they exercise personal executive powers), Chairs of Overview and Scrutiny and other Committees and the Senior Officers who support them in their respective roles.

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 political groups.

5.2 Whilst Officers should always seek to assist Cabinet Members, a Committee Chair or, indeed, any Member, they must not in so doing go beyond the limits of the authority they have been given by their Manager.

**6. Partnerships et cetera**

6.1 The increasing involvement of the Council in various forms of partnerships with other bodies, creates situations where Members and Officers are drawn into new non-traditional working relationships. These could pose difficulties if Members and Officers lose sight of the fundamental principles which define their different roles.

**7. Officer Advice to Party Political Groups (Political Groups)**

7.1 Political Groups are a recognised part of the local government structure and their role is recognised and facilitated by statute.

Officers may properly be called upon to support and contribute to deliberations by political groups on matters likely to come before the Council, the Cabinet or Committees. They must do so in ways which do not compromise their political neutrality.

- 7.2 The support provided by Officers can take many forms, ranging from a briefing meeting with a Cabinet Member or a Committee Chair to a presentation to a full political group meeting.

Whilst in practice such Officer support is likely to be most in demand from whichever political group forms the administration of the Council, such support is available to all political groups.

- 7.3 Any request for an Officer to attend a political group meeting should be made through the Chief Executive or the appropriate Director.

- 7.4 The following matters must be understood by all those participating in political group meetings, Members and Officers alike -

- (a) Officer support 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 political 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 political party business are to be discussed;
- (b) where Officers provide information to a political group meeting in relation to a matter of Council business, this cannot act as a substitute for the obligation to provide all necessary information and advice to the Council, Cabinet or a Committee when the matter in question is considered;
- (c) any strategy or policy which may emerge from the meeting is that of the political group alone;
- (d) special care needs to be exercised whenever Officers are involved in providing information and advice to a political group meeting which includes persons who are not Members of the Council;

If, at a meeting of a Political Group attended by an Officer, there are other persons who are in attendance who are not Officers or Members of Cheltenham Borough Council and therefore not bound by the relevant Code of Conduct (including the declaration of interests and confidentiality) Officers may not be able to provide the same level of information and advice as they would to a Member only meeting.

- 7.5 Officers must respect the confidentiality of any political group meetings at which they are present in the sense that they should not relay the content of any such discussion to another political group. Officers

should not be requested, by the Overview & Scrutiny Committee to answer questions on such matters.

**8. Support Services to Members and Party Political Groups**

8.1 The only basis on which the Council can provide support services (e.g. stationery, typing, printing, photo-copying, I.T., 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.

**9. Members' Access to Information and to Council Documents**

9.1 Members are free to approach the Chief Executive or any other Director to provide them with such information, explanation and advice, especially about the functions of the Directorate concerned, 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 be made only to the relevant Director, unless the relevant Director has agreed otherwise.

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

9.3 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, Cabinet or Committee meeting. These rights are summarised in the Access to Information Rules (Part 4E) and extend 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 as exempt items on the agenda (pink papers), or to documents which are in evolution and have not been finalised.

9.4 The common law right of Members is broader; it is based on the principle that any Member has a prima facie right to inspect Council documents so far as his or her access to the documents is reasonably necessary to enable the Member properly to perform his or her duties as a Member of the Council. This principle is commonly referred to as the "need to know" principle.

9.5 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".

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 initially be determined by the relevant Director holding the document in question, with advice, if necessary, from the Borough Solicitor/One Legal.

- 9.6 In some circumstances (e.g. a Committee member wishing to inspect documents relating to the functions of that Committee or a member of Overview and Scrutiny Committee wanting to be informed about a matter within the remit 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. It is unlikely that a Member will ever have a "need to know" in respect of personal details about individual Officers.
- 9.7 Whilst the term "Council document" is broad and includes for example, any document produced with Council resources, it is accepted by convention that a member of one party political 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 political group.
- 9.8 A Member is not entitled to inspect any document, or have access to any information, about a matter in which
- (1) he/she has, in accordance with the Code of Members' Conduct, a disclosable interest which would restrict participation or
  - (2) he/she is acting in a professional capacity, for example, on behalf of a client negotiating with the Council or involved in litigation against the Council.
- 9.9 A Director may refuse a Member access to a document for the above or other good reasons such as the request being frivolous, vexatious or where a reasonable amount of information has already been provided. The Director must inform the Member in writing of the actual reason.
- 9.10 If a Member is not satisfied with a decision by a Director he/she may refer the matter to the Chief Executive, who having sought such advice as he/she considers appropriate, shall determine finally whether or not the Member should be given the access requested.
- If the original request had been made to the Chief Executive and a Member is not satisfied with the Chief Executive's decision, the matter shall be referred to the Monitoring Officer for determination.
- 9.11 Members have the same rights as any member of the public to access to information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

- 9.12 Further and more detailed advice regarding Members' rights to inspect Council documents may be obtained from the Borough Solicitor/One Legal.

**10. Involvement with Ward Councillors**

- 10.1 Wherever a public meeting is organised by the Council to consider a local issue, all the Members representing the ward or wards affected must 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 must be notified at the outset of the exercise.

**11. Public Meetings called by Individual Councillors or Party Political Group**

- 11.1 If an individual Member or a party 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 that it is a Council meeting.
- 11.2 Any request for an Officer to attend such a meeting must be made through the Chief Executive or the relevant Director.

It must be made clear to those attending such a meeting that any Officer is there in his or her official capacity, is politically neutral and that his or her presence does not signify support for a particular political proposal or initiative. This is essential because of the need for Officers to act, and to be seen to act, impartially and to comply with any political restrictions under which they operate.

**12. Member/Officer Dealings and Correspondence**

- 12.1 It is permissible and practical for Members to seek straightforward factual information from any Officer and to enquire as to technical or professional matters of appropriately qualified Officers whose duties include advising Members. In this respect it is important that Members should not take advantage of an Officer less senior in order to make demands which are inappropriate to that level of post. Members should also appreciate that less senior Officers may need to discuss with their line managers any requests made, or information (confidential or otherwise) provided, by the Member. Anything which is contentious, or which requires a complex opinion, or judgment should be directed to the relevant Director.
- 12.2 Correspondence between an individual Member and an Officer should not normally be copied by the Officer to any other Member, unless the Member has himself or herself sent copies to other Members; in this case copies will normally also be sent to those Members as well.

Where, exceptionally, it is necessary to copy the correspondence to another Member, this should be made clear to the original Member.

- 12.3 Official letters on behalf of the 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. in respect of executive matters or representations to a Government Minister) for a letter to appear in the name of a Member, but this should be the exception rather than the norm.

Letters which create obligations or give instructions on behalf of the Council should never be sent out in the name of a Member.

### **13. Complaints**

- 13.1 Should a Member have cause to complain about the actions or behaviour of any Officer of the Council he/she should lodge their complaint, preferably in writing with the Director with Management responsibility for that Officer. If the complaint is against a Director, the complaint must be made to the Chief Executive. If the complaint is against the Chief Executive personally the complaint must be made to the Monitoring Officer. The Officer to whom the complaint is made will take appropriate action to resolve it and will notify the Member of the Council who made the complaint of the action which has been, or is intended to be, taken to resolve it.

- 13.2 Should an Officer have cause to complain about the actions or behaviour of any Member of the Council, the Officer should draw his/her concern to the attention of his/her Manager who will consider the matter and, acting through the appropriate Director / Chief Executive, will seek to resolve the issue with the Member concerned or, if this is not possible, with the Member's Political Group Leader. If the complaint is against a Political Group Leader then it should be drawn to the attention of the Deputy Group Leader. The Member to whom the complaint has been referred, will deal with it and will notify the Officer making the referral of the action which has been, or is intended to be, taken to resolve the complaint.

Where the complaint appears to involve an allegation of a breach of the Code of Members' Conduct, the appropriate Director/Chief Executive will consult the Monitoring Officer.

- 13.3 Complaints should not be raised or referred to during Council, Cabinet or Committee meetings, except for those meetings expressly called for that purpose.