

SECTION 21 – PROTOCOL ON MEMBER / OFFICER RELATIONS

Introduction

- 21.1 The purpose of this Protocol is to guide Members and employees of the Council in their relations with one another.
- 21.2 Mutual respect between Members and employees is essential to good local government. However, close personal familiarity between individual Members and employees can damage this relationship and prove embarrassing to other Members and employees.
- 21.3 The relationship has to function without compromising the ultimate responsibilities of employees to the Council as a whole, and with due regard to such technical, financial, professional and legal advice that employees can legitimately provide to Members. The Protocol seeks to set a framework that assists the working relationships between Members and employees.

Roles of Members

- 21.4 Members undertake many different roles. Broadly these are:
 - 21.4.1 Members express political values and support the policies of the party or group to which they belong (if any).
 - 21.4.2 Members represent their electoral division and are advocates for the citizens who live in the area.
 - 21.4.3 Members are involved in active partnerships with other organisations as community leaders.
 - 21.4.4 Members contribute to the decisions taken in Full Council and in its various bodies on which they serve, as well as joint committees, outside bodies and partnership organisations. When reaching decisions Members must reach decisions having regard to any relevant advice provided by the authority's officers - in particular by:
 - 21.4.4.1 the authority's chief finance officer acting in pursuance of that officer's duties under section 114 of the Local Government Finance Act 1988:
 - 21.4.4.2 the authority's Monitoring Officer acting in pursuance of that officer's duties under section 5 of the Local Government and Housing Act 1989;
 - 21.4.4.3 the authority's chief legal officer, who should be consulted when there is any doubt as to the authority's power to act, or as to whether the action proposed lies within the policy framework agreed by the authority; where the legal consequences of action or failure to act by the authority might have important repercussions.
 - 21.4.5 Members help develop and review policy and strategy including approval of the budget and policy framework.
 - 21.4.6 Members monitor and review policy implementation and service quality.

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- 21.4.7 Members are involved in quasi-judicial work through their Membership of regulatory committees.
- 21.4.8 From time to time Members will receive professional advice from officers and Members may wish to test this advice by questioning and challenging something they do not agree with, but they should not, by their conduct or actions, make employees feel intimidated or threatened. They should ensure that any challenge of advice given is made to an employee of suitable seniority, generally the Chief Executive, Strategic Director / Director, or Head of Service. Employees should remember that councillors are democratically elected to secure their objectives and fully entitled to question advice given, and to receive a full and complete explanation. Employees should always seek to meet the Council's objectives when advising, provided that this can be done legally and within financial resources.

Roles of Employees

- 21.5 Briefly, employees have the following main roles:
- 21.5.1 Managing and providing the services for which the Council has given them responsibility and being accountable for the efficiency and effectiveness of those services.
 - 21.5.2 Providing impartial advice to the Council and its various bodies and to individual Members in respect of the services provided.
 - 21.5.3 Initiating policy proposals.
 - 21.5.4 Implementing agreed policy.
 - 21.5.5 Ensuring that the Council always acts in a lawful manner.

Respect and Courtesy

- 21.6 For the effective conduct of Council business there must be mutual respect, trust and courtesy in all meetings and contacts, both formal and informal, between Members and employees. This plays a very important part in the Council's reputation and how it is seen in public. It is very important that both Members and employees remember their respective obligations to enhance the Council's reputation and to do what they can to avoid criticism of other Members, or other employees, in public places.

Undue Pressure

- 21.7.1 It is important in any dealings between Members and employees that neither should seek to take unfair advantage of their position.
- 21.7.2 In their dealings with employees (especially junior employees) Members need to be aware that it is easy for such employees to be overawed and feel at a disadvantage. Such feelings can be intensified where Members hold senior official and/or political office.
- 21.7.3 A Member should not apply undue pressure on an employee either to do anything that s/he is not empowered to do or to undertake work outside normal duties or outside normal hours. Particular care needs

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to be taken in connection with the use of Council property and services.

- 21.7.4 Similarly, an employee must neither seek to use undue influence on an individual Member to make a decision in his / her favour, nor raise personal matters to do with their job, nor make claims or allegations about other employees. (*The Council has formal procedures for consultation, grievance and discipline, and employees have the right to report possible wrongdoing under the Council's Whistleblowing Policy.*)

Familiarity

- 21.8.1 Such familiarity could also cause embarrassment to other Members and/or other employees and even give rise to suspicions of favouritism.
- 21.8.2 For these reasons close personal familiarity must be avoided.

Breach of Protocol

- 21.9 If an employee considers that a Member has contravened the protocol he should consult his / her line manager who will if necessary involve the Head of Service, Director or Strategic Director. In certain circumstances breach of the Protocol may also constitute a breach of the Members' Code of Conduct. If the breach is sufficiently serious this may warrant a formal reference to the Monitoring Officer who may suggest that the matter is either dealt with under the Council's Local Resolution Process (Section 25) or where appropriate that the officer should complain to the Public Services Ombudsman for Wales.

Provision of Advice and Information to Members

- 21.10.1 Members are free to approach employees of the Council to provide them with such information and advice as they may reasonably need in order to assist them in discharging their role as a Member of the Council. This can range from a request for general information about some aspect of the Council's activities to a request for specific information on behalf of a constituent.
- 21.10.2 Employees should always endeavour to respond to requests for information promptly and should in any event inform the Member if there is likely to be any appreciable delay in dealing with an enquiry. As a minimum the timescale for responding to correspondence should be observed i.e. either a full response or, if this is not possible, an acknowledgement that fully explains what is happening within [five] working days of the receipt of the enquiry.
- 21.10.3 The legal rights of Members to inspect Council documents are covered partly by statute and partly by common law.
- 21.10.4 The Access to Information Procedure Rules (Section 14) of this Constitution explain the position with regard to access to papers relating to the business of a Council body.
- 21.10.5 The exercise of the common law right depends upon a Member's ability

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to demonstrate a “need to know”. In this respect a Member has no right to “a roving commission” to examine any documents of the Council. Mere curiosity is not sufficient.

- 21.10.6 The information sought by a Member should only be provided by the respective Service as long as it is within the limits of the Service’s resources. For their part, Members should seek to act reasonably in the number and content of the requests they make.
- 21.10.7 It is important for Services and their staff to keep Members informed both about the major issues concerning the Council and, more specifically, about issues and events affecting the area that s/he represents. Local Members should be informed about proposals that affect their electoral division and should also be invited to attend Council initiated events within their electoral division.
- 21.10.8 If a Member asks for specific information relating to the work of a particular Service, and it appears possible or likely that at a subsequent meeting an issue could be raised or question asked on the basis of the information provided, then the appropriate Cabinet Member or Committee Chair concerned should be advised about the information provided.
- 21.10.9 Officers have to advise Members from time to time that a certain course of action cannot be carried out. Members sometimes assume that this is a case of officers deliberately obstructing the wishes of politicians. In fact this is hardly ever the case. Officers are employed to give unbiased professional advice even if it is not what Members want to hear. They do this as much for the protection of Members as for any other reason. However, the mark of an effective officer is that if they do have to give negative advice, this will be accompanied by suggestions as to how Members might achieve some or all of their objectives in other ways. Such officers are invaluable to any Council.
- 21.10.10 Members may be entitled under the Freedom of Information Act 2000 to receive information which falls outside their common law rights based on the “need to know”. Employees are encouraged to supply documents to Members without the need for a formal FOI request if it is apparent from the Member’s enquiry that any individual would be entitled to receive such documentation. The Council’s Information Governance Manager will be able to advise in consultation if necessary with the Monitoring Officer on whether any request would fall within the Freedom of Information Act.

Confidentiality

- 21.11.1 In accordance with the Code of Conduct for Members, a Member must not disclose information given to him/her in confidence by anyone, or information acquired which s/he believes, or ought reasonably to be aware, is of a confidential nature, except where:

21.11.1.1 s/he has the consent of a person authorised to give it;

21.11.1.2 s/he is required by law to do so;

21.11.1.3 the disclosure is made to a third party for the purpose of

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obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
21.11.1.4 the disclosure is:

- (i) reasonable and in the public interest; and
- (ii) made in good faith and in compliance with the reasonable requirements of the authority.

21.11.2 Confidential committee papers are to be treated as confidential information unless the relevant committee resolves not to exclude press and public. Members are reminded that the author of the report makes the initial decision as to whether or not the papers are to be treated as confidential. The decision as to whether they remain confidential is for the committee. Other information may be confidential because to disclose it would be against the Council's or the public interest. Information may also be confidential because of the circumstances in which it was obtained.

21.11.3 Information and correspondence about an individual's private or business affairs will normally be confidential.

21.11.4 Officers should make it clear to Members if they are giving them confidential information. If a Member is not sure whether information is confidential, he or she should ask the relevant officer, but treat the information as confidential in the meantime.

21.11.5 Any Council information provided to a Member must only be used by the Member in connection with the proper performance of the Member's duties as a Member of the Council.

21.11.6 If a Member receives confidential information and considers it should be disclosed to another person because it is reasonable and in the public interest to do so then he or she must first consult with the Monitoring Officer and shall not disclose the information without having regard to any advice given by that officer.

Provision of Support Services to Members

21.12 The only basis on which the Council can lawfully provide support services (e.g. stationery, word processing, 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.

Correspondence

21.13 Officers should always try to respond to Members within the Council's target timescales for response to members of the public, and if they cannot, should keep the Member informed as to progress. If correspondence is referred by an officer to a Member for response, the Member should also use best endeavours to reply within Council target response times.

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Media

21.14 Communication with the media can be an important part of a Member's workload. In general, Members provide comment and views while employees provide factual information. If a Member is unsure about the circumstances of a particular issue s/he should contact the appropriate Strategic Director, Director or Head of Service concerned or ask the Communications Team to do so.

The Council's Role as Employer

21.15 In their dealings with officers, Members should recognise and have regard to the Council's role as employer. Members should be aware that officers could rely on inappropriate behaviour of a Member in an employment case against the Council.

Political Activity

21.16.1 There are a number of constraints that apply to an employee who occupies a post that is designated as "politically restricted" under the terms of the Local Government and Housing Act 1989.

21.16.2 In summary, such employees are prevented from:

- 21.16.2.1 being a Member of Parliament, European Parliament, National Assembly for Wales or local authority;
- 21.16.2.2 acting as an election agent or sub-agent for a candidate for election as a Member of any the bodies referred to in 21.16.2.1;
- 21.16.2.3 being an officer of a political party or any branch of a political party or a Member of any committee or sub-committee of such a party or branch, if his / her duties would be likely to require him / her to:
 - (i) participate in the general management of the party or branch; or
 - (ii) act on behalf of the party or branch in dealings with persons other than Members of the party;
- 21.16.2.4 canvassing on behalf of a political party or a candidate for election to any the bodies referred to in 21.16.2.1;
- 21.16.2.5 speaking to the public with the apparent intent of affecting public support for a political party; and
- 21.16.2.6 publishing any written or artistic work of which he is the author (or one of the authors) or acting in an editorial capacity in relation to such works, or to cause, authorise or permit any other person to publish such work or collection - if the work appears to be intended to affect public support for a political party.

Presentations / Attendance of Officers at Political Group Meetings.

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- 21.17 The political neutrality and impartiality of all officers should be respected by Members.
- 21.18 Officers cannot be compelled to attend political group meetings.
- 21.19 The overriding principle is that any presentation that will be of benefit to members will be available to all political groups equally.
- 21.20 Consideration should first be given as to whether there is a more appropriate forum for the presentation e.g. County Council seminar, scrutiny committee.
- 21.21 The role of staff is to give information to members and assist them in making a decision. The presentations will focus on conveying information and facts rather than on giving an opinion. For the avoidance of doubt information which is essentially service based will be relayed to Members via Area (Shire) meetings or whole Council Seminars; only major issues such as those concerning the policy framework, budget or strategic matters will normally be the subject of officer briefings to the Groups.
- 21.22 Officers will not be involved in advising on matters of political group 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 group business are to be discussed.
- 21.23 Political 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.
- 21.24 Similarly, where officers provide information to a political 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 Council, Executive, Committee or Sub-Committee when the matter in question is considered.
- 21.25 Special care needs to be exercised whenever officers are involved in providing information to a political group meeting which includes persons who are not members of the Council. Such persons will not be bound by the Members' Code of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons officers may not be able to provide the same level of information as they would to a Members' only meeting.
- 21.26 Officers must respect the confidentiality of any political group discussion at which they are present in the sense that they should not relay the content of any such discussion to another political group.
- 21.27 Any particular cases of difficulty or uncertainty in this area of officer information to political groups should be referred to the Monitoring Officer who will discuss them with the relevant political group leader(s).

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Support Services to Political Groups.

- 21.28 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. Support services should never be used in connection with party political or campaigning activity or for private purposes.
- 21.29 Assistance will however be given to all political groups in connection with the booking of rooms in Council buildings for political group meetings (which may be arranged using the Council email system), and the provision of photocopies of documents which officers have requested the political groups to consider.

Presentations / Advice to Non-Affiliated Members of the Council.

- 21.30 It is likely that there will be Members of the Council who choose not to be affiliated with any political group which is formed. In such cases officers will provide advice to those Members in the same manner as they would to the political groups.

Sanctions

- 21.31.1 Complaints about any breach of this Protocol by a Member may be referred to the Monitoring Officer. It should be noted that certain breaches may also amount to breaches of the Code of Conduct for Members.
- 21.31.2 Complaints about any breach of this protocol by an officer may be referred to the relevant Chief Officer, the Chief Executive or the Solicitor to the Council.

Conclusion

- 21.32 It is hoped that, by following good practice and securing sensible and practical working relationships between Members and employees, we can provide one of the cornerstones of a successful local authority and thereby enhance the delivery of high value quality services to the people of the area. Mutual understanding, openness and respect are the greatest safeguard of the integrity of the Council, its Members and employees.