

North East Derbyshire District Council

Standards Committee

14 December 2017

Review of Protocol on Councillor - Officer Relations

Report of the Assistant Director – Governance and Solicitor to the Council & Monitoring Officer

This report is public

Purpose of the Report

- For Members to consider the Protocol on Councillor - Officer Relations

1 Report Details

- 1.1 Following the review of the Constitution in 2016/17, the Constitution Working Group considered that the Protocol on Councillor - Officer Relations would be a suitable focus for the review in 2017/18.
- 1.2 The Committee will consider a wider review of the Constitution as well during the year; however this report allows Members to focus on this Protocol in particular, as an opportunity for more targeted scrutiny.
- 1.3 The Council's Protocol on Councillor - Officer Relations is contained within Part 5 of the Constitution and is part of a suite of Codes and Protocols applying to Members and Officers. There is a dedicated Code of Conduct for Members and a separate one for Employees.
- 1.4 The purpose of the Protocol on Councillor - Officer Relations is to provide guidance to Members and Officers in their relations with one another. It is not a prescriptive or exhaustive set of rules, but provides guidance and principles to be followed to achieve the shared aim of enhancing and maintaining the integrity of local government through high standards of personal conduct.
- 1.5 At this stage, it is not envisaged that any major changes will be recommended to the Protocol or the ways in which Members and Officers interact, however some revisions may be suggested to make the text more accessible and the guidance easier to understand and follow.
- 1.6 The Monitoring Officer will be carrying out consultation with Members and the Senior Management Team on the Protocol and will bring a further report to the next meeting.

2 Conclusions and Reasons for Recommendation

- 2.1 It is best practice that the Council's Constitution be reviewed on a regular basis and the Standards Committee has usually carried this out annually. It was agreed that the Protocol on Members/Officer Relations be the focus of this year's review.
- 2.2 Members are therefore asked to give their comments on the Protocol which Officers can take away to be included in the review that will be presented to the next meeting.

3 Consultation and Equality Impact

- 3.1 This report forms part of the process for Members to contribute to the review of the Constitution. The Senior Management Team will also be consulted as part of the review. It is not envisaged that there are any equalities issues arising from this review.

4 Alternative Options and Reasons for Rejection

- 4.1 The Committee could agree that the Protocol does not require further review or could suggest other areas of focus.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 None

5.2 Legal Implications including Data Protection

- 5.2.1 Any legal implications will be dealt with as part of the review.

5.3 Human Resources Implications

- 5.3.1 None

6 Recommendations

- 6.1 That Members consider the Protocol on Member/Officer Relations and make any comments arising from this to be included in the review.

7 Decision Information

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC: Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p>Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)</p>	No
<p>District Wards Affected</p>	All
<p>Links to Corporate Plan priorities or Policy Framework</p>	All

8 Document Information

Appendix No	Title
Appendix 1	Protocol on Member/Officer Relations taken from the Council's Constitution
<p>Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)</p>	
None	
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PART 5 OF THE CONSTITUTION

Protocol for *Councillor* – Officer relations**1 INTRODUCTION**

- 1.1 The purpose of this protocol is to guide Members and employees of the Council in their relations with one another.
- 1.2 Given the variety and complexity of such relations this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise.
- 1.3 This protocol also seeks to reflect the principles set out in the respective codes of conduct which apply to Members and employees. The shared objective of these codes is to enhance and maintain the integrity (real and perceived) of local government and it, therefore, demands very high standards of personal conduct.
- 1.4 The protocol reflects good practice. It aims to provide an open and honest working relationship between Members and employees which ensures the delivery of the Council's statutory and other proper functions in a transparent and accountable way.

2 PRINCIPLES

- 2.1 The provisions of the Code of Conduct apply to all Members. Breach of those provisions can be the basis for a complaint to the Monitoring Officer. The employees Code of Conduct is part of the terms of conditions of their employment. Employees are accountable to their Senior Manager and while employees will seek to assist any Member they must not be asked by Members to go beyond the bounds of whatever authority they have been given by their Senior Manager.
- 2.2 Any dispute over any provision of this protocol in relation to employees should be referred in the first instance to the responsible service manager or the *Chief Executive*. If agreement cannot be reached the *Chief Executive* will seek to resolve the issue in conjunction with the *Leader* of the Council and/or the *Leader* of the appropriate party group. Issues relating to employee conduct will be dealt with under disciplinary procedures. Any unresolved dispute relating to Member conduct under this protocol will be determined by the Standards Committee in accordance with Article 7 of the Council's Constitution.
- 2.3 This protocol is also read in conjunction with the Planning Code and the Protocol on Hospitality and any other policies of the Council, for example the Whistle-Blowing Policy (Public Interest Disclosure) and the Harassment and Bullying Policy.

3 MEMBERS' CODE OF CONDUCT

Members of North East Derbyshire District Council are committed to:-

- Dealing with people fairly, appropriately and impartially.
- Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- Valuing colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between everyone that is essential to good local government.
- Always treating people with respect, including the organisations and public they engage with and those the member works alongside.

4 EMPLOYEE CODE OF CONDUCT

4.1 The Employee Code of Conduct was drawn up broadly in line with the Local Government Management's Board Code of Conduct for local government employees with variations to reflect North East Derbyshire's conditions and circumstances.

(1) Standards

Employees are expected to give the highest possible standard of service to the public and where it is part of their duties to provide appropriate advice to other employees and Members with impartiality and courtesy.

(2) Disclosure of Information

- (i) The law requires that certain types of information must be made available to Members, Auditors, Government Departments, Service Users and the public.
- (ii) Under the Local Government Act 1972 the public have a right to see certain information. In most circumstances these rights are related to committee reports and background documents.
- (iii) Employees must not use any confidential information obtained in the course of their employment for personal gain or benefit nor shall they use it to pass onto others who might use it in such a way.

- (iv) Only employees authorised by a Senior Officer or Senior Manager to do so may talk to the press or otherwise make public statements on behalf of their Service or Directorate. Generally an employee contacted by the press should refer the matter to the Communications Team who will deal with it as appropriate.”
- (v) The Local Authorities (*Executive Arrangements*) (Meetings and Access to Information) (England) Regulations 2012 provide additional rights of access to documents for Members of Scrutiny Committees.

(3) Political Neutrality/Activities

- (i) Employees serve the Council as a whole. It follows, therefore, that they must serve all Members, not just the Members of any controlling group and must ensure that the individual rights of all Members are respected.
- (ii) Some senior employees will be expected within the Council’s guidelines to advise political groups. These employees have a duty to advise minority groups as well as the majority group.
- (iii) Some employees who are normally those in more senior positions are in politically restricted posts and by law are prevented from taking part in certain political activities outside their work. Employees who are in this position should have been told of this in writing and of the rules about claiming exemption but any employee who is in doubt about their position should contact a Senior Officer.

(4) Relationships

Some employees are required to give advice to Members as part of their job. Mutual respect between employees and Members is essential to good local government but close personal familiarity between employees and individual Members can damage the relationship and prove embarrassing to other employees and should, therefore, be avoided.

5 ADVICE TO PARTY GROUPS

- 5.1 Party group meetings form part of the preliminaries to Council decision making and are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not, therefore, rank as Council decisions. Members must not ask employees to implement a party group decision unless and until that decision has been properly taken in accordance with the Council’s Constitution:-

“2.6 Where officers provide information and advice to a party 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 relevant meeting of Cabinet or a committee when the matter in question is considered.”

Any particular cases of difficulty or uncertainty in this area of employee advice to party groups should be raised with the *Chief Executive* who will discuss them with the relevant group *Leaders*.

6 SUPPORT SERVICES TO MEMBERS AND PARTY GROUPS

6.1 The only basis on which the Council can lawfully provide support services (eg stationery, typing, printing, photocopying, transport etc) to Members is to assist them in discharging their role of 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 activities or for private purposes.

7 MEMBERS' ACCESS TO INFORMATION, COUNCIL DOCUMENTS AND EMPLOYEE ADVICE

7.1 Members will need in the discharge of their duties to access information from employees, this will usually be most efficiently achieved through the Senior Managers who are able to provide an overview or direct the Member to the most appropriate employee. For individual cases Members may approach case officers, but junior staff are entitled to refer the Member to the responsible Senior Manager.

7.2 Members who wish to obtain information from employees should request it as early as possible recognising that employees may require reasonable time to collate or research the information. Members will state any deadline for the provision of this information. This also applies where a Member wishes to obtain information to supplement a report after the agenda for a meeting has been issued.

7.3 Employees will make every reasonable effort to provide Members with accurate factual information and professional advice in a timely manner, unless this would exceed the officer's authority or there are lawful reasons to prevent disclosure of the information.

7.4 Members have the same statutory right as any member of the public to inspect any Council document which contains material relating to any business which is to be transacted at a Council or Committee meeting or a meeting of *Cabinet* and any relevant background papers. This right applies irrespective of whether or not the Member is a Member of the committee concerned or acting as a substitute. This right does not, however, apply to documents relating to items containing information which is exempt from publication.

Correspondence held by the *Monitoring Officer* in relation to his/her duties is similarly exempt unless released by him/her in the interest of furthering any enquiry.

- 7.5 The common law right of Members is much broader and based on the principle that any Member has a prima facie right to inspect Council documents so far as his/her access to the documents is reasonably necessary to enable the Member to perform properly his/her duties as Member of the Council. This principle is commonly referred to as the 'need to know' principle and will be determined in the first instance by the particular Senior Manager whose service holds the document in question. Any disputes may be referred to the *Monitoring Officer* whose decision shall be final. Written reasons will be provided on request.
- 7.6 A Member who requests to inspect documents which contain personal information about third parties will normally be expected to justify their request in specific terms.
- 7.7 A Member of one party group will not have a 'need to know' and, therefore, does not have a right to inspect any document which forms part of the internal workings of another party group and is in the possession of the Council or of an individual employee.
- 7.8 A member of a Scrutiny Committee of the Council is entitled to a copy of any document which:-
- (a) is in the possession or under the control of the Cabinet; and
 - (b) contains material relating to:-
 - (i) any business that has been transacted at a meeting of a decision-making body of the Council;
 - (ii) any decision that has been made by an individual member of the Cabinet in accordance with executive arrangements; or
 - (iii) any decision that has been made by an officer of the authority in accordance with executive arrangements.
- 7.9 Subject to paragraph 7.10, where a member of a Scrutiny Committee requests a document which falls within paragraph 7.8, the Cabinet must provide that document as soon as reasonably practicable and in any case no later than 10 clear days after the Cabinet receives the request.
- 7.10 No member of a Scrutiny Committee is entitled to a copy:-
- (a) of any such document or part of a document as contains exempt or confidential information unless that information is relevant to:-

- (i) an action or decision that the member is reviewing or scrutinising;
or
 - (ii) any review contained in any programme of work of such a committee or sub-committee of such a committee; or
- (b) of a document or part of a document containing advice provided by a political adviser or assistant.
- 7.11 Where the Cabinet determines that member of a Scrutiny Committee is not entitled to a copy of a document or part of any such document for a reason set out in paragraph 7.8 or 7.10, it must provide the Scrutiny Committee with a written statement setting out its reasons for that decision.
- 7.12 More detailed advice regarding Members' rights to inspect Council documents may be obtained from the *Monitoring Officer*.
- 7.13 Any Council information is provided to a Member on the basis that it must only be used by the Member in connection with the proper performance of the Member's duties as a Member of the Council. This forms part of the Council's data protection requirements. This obligation for confidentiality is part of the Code of Conduct.

8 RELATIONSHIPS BETWEEN OFFICERS AND CABINET MEMBERS/ CHAIRS OF COMMITTEES/LEADER

- 8.1 It is important to the efficient discharge of the Council's functions that there should be a good working relationship between Members of the *Cabinet*, Senior Officers and Senior Managers and between the Chair of a committee and the lead officer and other senior officers who deal with matters within the terms of reference of that body. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the employee's ability to deal impartially with other Members and other party groups.
- 8.2 Senior Officers and Senior Managers frequently write reports having undertaken background research and professional and technical appraisals of proposals.
- 8.3 These reports are then presented by the *Cabinet* Member with Portfolio.
- 8.4 Members must accept that in some situations officers will be under a duty to submit an opinion or advice in a report on a particular matter. In those situations the officer will always be fully responsible for those elements of the report submitted in the Member's name.

- 8.5 The principles set out in paragraph 8.3 and 8.4 will apply to such elements of the report.
- 8.6 Where an officer wishes to consult a Cabinet Member or Chair as part of the preparation of a report to a decision making body within the Council's Constitution, the following principles will apply. The *Cabinet* Member or Chair may ask the report author:
- (1) To include particular options;
 - (2) To clarify the report by expanding, simplifying or re-phrasing any part of the report or including other particular information;
 - (3) To check or correct any error or omission of any matter or fact including statements of summaries of policy or budget;
 - (4) To check or correct any typing errors, omissions or duplications;
 - (5) To check any estimate of costs or savings.
- 8.7 The *Cabinet* Member or Chair may not ask officers:
- (1) To exclude any option contained in the draft report;
 - (2) To exclude or alter the substance of any statement in the draft report of any officers' professional opinion.
 - (3) To alter the substance of any recommendations that compromises the officer's integrity or would result in illegality;
 - (4) To exclude any statement that a course of action would be a "key decision" or would be contrary to a policy or budget or to exclude any statement regarding legality, fairness or financial prudence, made by officers exercising their designated functions under Article 10 of the Council's Constitution;
 - (5) To exclude any report, comments or representations arising from consultations, publicity or supply of information to the community.
- 8.8 Certain statutory functions are undertaken by officers. Their reports on such matters are then their own full responsibility.

9 SCRUTINY ARRANGEMENTS

- 9.1 The principles of the Employee's Code of Conduct remain in place under the *Cabinet* arrangements. However, these arrangements raise particular issues for local authority employees because:-

- (a) The advice which officers have given to the *Cabinet*, its Members or to any group may now be subject to scrutiny and examined by a Scrutiny Committee.
- (b) Officers may have written reports for presentation by a Cabinet Member with Portfolio or provided advice to the *Cabinet*. Where such a decision is subject to Scrutiny by a Scrutiny Committee in their scrutiny roles, or when a decision is called-in, an officer may provide information or advice to a Scrutiny Committee. Members must recognise that there is an inherent tension between these two roles. As circumstances change or more information comes to light, advice may reflect the difference.
- (c) Scrutiny Committees or their members will need active assistance from officers if they are to perform their role of scrutinising the *Cabinet* effectively.

These factors will require understanding by Members of the role that officers have to perform.

10 OVERVIEW AND SCRUTINY

- 10.1 The scrutiny role of the Council is performed by Scrutiny Committees and the Standards Committee. Employees may need to attend a Scrutiny Committee to give evidence and assist it in its scrutiny.
- 10.2 Where an employee is required to attend a Scrutiny Committee, to report to it or provide evidence for it, it shall be his/her duty to do so, or to provide an explanation as to why he or she is unable or unwilling to do so. If after considering his/her report the Scrutiny Committee insist on him/her providing the information requested he/she must do so or appeal to the Standards Committee.
- 10.3 Where a Scrutiny Committee or the Standards Committee has resolved to undertake a review it is the duty of the Senior Officers and Senior Managers to co-operate fully with the review or to arrange for a senior member of his/her staff to act in their place. This duty extends beyond merely answering the Committee's questions and involves a requirement to assist the Committee in addressing the right questions and seeking the information which may be required to help them in their work.

11 PUBLICITY

- 11.1 The Council abides by the provisions of the DETR Local Authority Publicity Code (April 2001).
- 11.2 Information on Council services will be produced in collaboration with the Communications Unit and will be impartial reflecting Council approved policy.

11.3 All news releases will be written and issued by the Communications Team following consultation with the Senior Officers and Portfolio Member concerned.

11.4 Publicity will not be party political and will report on and reflect Council policy.

11.5 Media requesting political comments will be referred to the political group *Leaders*.

11.6 It is the intention of the Council to make public information available on the website accessible to Members and residents as resources allow.

12 THE ROLE OF THE HEAD OF THE PAID SERVICE (CHIEF EXECUTIVE)

12.1 The *Chief Executive* has a specific statutory function in relation to employees, appointment, discipline, terms and conditions of employment and collective bargaining. Members will recognise and respect those responsibilities and duties.