

# 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 *Head of Paid Service*. If agreement cannot be reached the *Head of Paid Service* 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 in accordance with the Councillor Complaints Procedure.
- 2.3 This protocol is also read in conjunction with the Planning Code/Protocol 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

- (i) Both Members and Officers are servants of the public, and they are indispensable to one another but their responsibilities are distinct. Members are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give advice to Members and the Council, and to carry out the Council's work under the direction and control of the Council, its committees and sub-committees and the Cabinet.
- (ii) Members must not do or threaten to do anything which compromises or which is likely to compromise the impartiality of an employee of the Council.
- (iii) In line with the Council's Codes' reference to "mutual respect", 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 or be hostile to the other.
- (iv) 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.
- (v) It is important that in any dealings between Members and Officers that neither party should act discriminatively against the other in regard to all elements covered by the Equalities Act 2010 including: Race, Religion, Gender, Sexual Orientation and Disability.
- (vi) In their dealings with Chief Officers and Officers (especially junior Officers) Members need to be aware that it is easy for the Officers to be overawed and feel at a disadvantage. Such feelings can be intensified when Members hold additional official and/or political office. A Member should not apply undue pressure on an Officer either to do anything that he/she is not empowered to do or to undertake work outside normal duties or normal hours or to allow or aid the Member to do something which the Member is not authorised to do. Particular care needs to be taken in connection with the ease of use of Authority property and services.
- (vii) Similarly, an Officer must neither seek to use undue influence on an individual Member to make a decision in their favour nor raise personal

matters to do with their job nor make claims or allegations about other staff. The Authority has formal procedures for consultation, whistleblowing, grievance and discipline. As an exception to this provision an officer may raise issues (other than those relating to the officer's employment or engagement with the Council) relating to Authority business where the Member is the local ward Councillor of the officer concerned.

- (viii) Whilst the Chairman of a committee or sub-committee or Leader of the Cabinet will routinely be consulted as part of the process for drawing up the agenda for a forthcoming meeting it must be recognised that in many situations an officer will be under a duty to submit a report on a particular matter. Similarly, an officer will always be fully responsible for the contents of any reports submitted in his or her name. Any issues which cannot be resolved as the result of a decision/negotiation between the relevant Chairman and an officer in this area should be referred to the Head of Paid Service for resolution. Where individual Members wish to place an item on an agenda they should notify the appropriate meeting Chairman or Head of Paid Service and comply with the Council's Constitution.

## **5 ADVICE AND SUPPORT TO POLITICAL GROUPS**

- 5.1 There is now statutory recognition for political groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to support and contribute to such deliberations by political groups.
- 5.2 Political 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.
- 5.3 Similarly, where Officers provide information and advice 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 relevant Committee or Sub-Committee when the matter in question is considered.
- 5.4 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. Such persons will not be bound by the Council's 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 and advice as they would to a Members only meeting.
- 5.5 Officers must respect the confidentiality of any political group discussions at which they are present and should not relay the content of any such discussion to another political group.
- 5.6 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 political group meeting. Whilst in practice such officer support

is likely to be in most demand from whichever political group is for the time being in control of the Council, such support is available to all political groups.

- 5.7 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 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.
- 5.8 Any particular cases of difficulty or uncertainty in this area of employee advice or support to party groups should be raised with the *Head of Paid Service* who will discuss them with the relevant group *Leaders*.

## **6 MEMBERS' ACCESS TO INFORMATION, COUNCIL DOCUMENTS AND EMPLOYEE ADVICE**

- 6.1 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.
- 6.2 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.
- 6.3 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.
- 6.4 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 Cabinet, Committee or Sub-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. The items in question are those which contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, contract and industrial relations negotiations, advice from Counsel and criminal investigations.
- 6.5 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.
- 6.6 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

- 6.7 The exercise of this common law right depends, therefore, upon the Member's ability to demonstrate 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 will be determined by the particular Director or Head of Service as appropriate whose staff holds the document in question (with advice from the Monitoring Officer). It follows from this that the Member must give the reason for the enquiry. Written reasons will be provided on request. In the event of dispute, the question falls to be determined by the relevant Committee - i.e. the committee in connection with whose functions the document is held or the Cabinet.
- 6.8 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.
- 6.9 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.
- 6.10 More detailed advice regarding Members' rights to inspect Council documents may be obtained from the *Monitoring Officer*.
- 6.11 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.

## **7 RELATIONSHIPS BETWEEN OFFICERS AND CABINET MEMBERS/ CHAIRS OF COMMITTEES/LEADER**

- 7.1 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 Chairman 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.
- 7.2 Senior Officers and Senior Managers frequently write reports having undertaken background research and professional and technical appraisals of proposals.
- 7.3 These reports are then presented by the *Cabinet* Member with Portfolio.
- 7.4 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.

7.5 Where an officer wishes to consult a Cabinet Member or Chairman 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 Chairman 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.

7.6 The *Cabinet* Member or Chairman 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.

7.7 Certain statutory functions are undertaken by officers. Their reports on such matters are then their own full responsibility.

7.8 Whenever a public meeting is organised by the Council to consider a local issue, all the Members 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, the Ward members should be notified at the outset of the exercise.

7.9 In relation to action between meetings, it is important to remember that the law allows for decisions (relating to the discharge of any of the Council's functions) to be taken by a Committee, a Sub-Committee or an Officer and in relation to Executive functions by the Cabinet or an Officer. Legislation allows for Members to take individual decisions where the Council decides that this should happen and as set out the Functions Scheme. These decisions can only be taken in specific circumstances following appropriate advice and the decision must be recorded. This does not mean that any decision can be taken by a Member. The rules relating to decision making where it is a Committee or Sub Committee or officer decision remain unchanged.

7.10 The Council's delegation scheme is contained within the Constitution. This contains the majority of delegations to officers. From time to time the Cabinet, Committees

and the Council give additional delegations which are added to the Constitution as it is updated annually.

- 7.11 Finally, it must be remembered that Officers within any department are directly accountable to their relevant Director. Whilst Officers should always seek to assist a Chair (or indeed any Member), they must not, in so doing, go beyond the bounds of whatever authority they have been given.

## **8 SCRUTINY ARRANGEMENTS**

- 8.1 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.

## **9 PUBLICITY AND CORRESPONDENCE**

- 9.1 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.
- 9.2 Official letters on behalf of the Council should normally be sent out over the name of the appropriate officer, rather than over the name of a Member generally. 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. Letters which, for example, create obligations or give instructions on behalf of the Council should never be sent out over the name of a Member.
- 9.3 Where Members send correspondence in their own name as a Member of the Council, such correspondence may be sent on Council headed notepaper headed with the words "from the Office of [Name of Councillor]"
- 9.4 The Council abides by the provisions of the DETR Local Authority Publicity Code (April 2001).

- 9.5 Information on Council services will be produced in collaboration with the Communications Unit and will be impartial reflecting Council approved policy.
- 9.6 All news releases will be written and issued by the Communications Team following consultation with the Senior Officers and Portfolio Member concerned.
- 9.7 Publicity will not be party political and will report on and reflect Council policy.
- 9.8 Media requesting political comments will be referred to the political group *Leaders*.
- 9.9 It is the intention of the Council to make public information available on the website accessible to Members and residents as resources allow.

## **10 THE ROLE OF THE HEAD OF THE PAID SERVICE**

- 10.1 The *Head of Paid Service* 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.

## Appendix to the Protocol for Member/Officer Relations

<b>What Members Can Expect From Officers</b>	
<b>Officers Do</b>	<b>Officers Don't</b>
Pursue lawful policies and comply with the Officers' Code of Conduct	Deviate from the Constitution, legal or contractual obligations
Promote equality, serve all Members equally with dignity, respect and courtesy, regardless of political group or position	
Comply with legal duty to provide professional advice, impartiality and implement Council policy	Allow their personal or political opinions to interfere with their work or professional judgement and advice
Avoid close personal familiarity with Members and follow guidelines on Personal Relationships	Form friendships, close relations with Members
Follow Council procedures for dealing with Member enquires effectively, efficiently and within set timescales.	
Act with integrity and appropriate [ <i>not absolute</i> ] confidentiality	<ul style="list-style-type: none"> <li>• Seek to improperly to influence Members;</li> <li>• Improperly disclose information received from one Member to another; or</li> <li>• Raise their personal circumstances or those of another directly with Members. Personal issues that might be raised with a Ward Member should be raised in a private capacity outside of work time.</li> </ul>
Respect each other's free (i.e. non-Council) time	
Be prepared to justify and give reasons for decisions made under delegated powers;	
Report the least suspicion of fraud, corruption or impropriety	Conceal any information which it is proper for them to disclose (particularly where they have a duty to reveal it);

<b>What Officers can expect from Members</b>	
<b>Members Do</b>	<b>Members Don't</b>
Comply with the Members' Code of Conduct – ensuring the highest standards of behaviour	
<p>Promote equality and treat all Officers with dignity and respect.</p> <p>Members are to comply with the equality laws prohibiting discrimination, harassment and victimisation</p> <p>Chairs of meetings are expected to apply the rules of debate/procedures to prevent abusive or disorderly conduct</p>	<p>Subject individuals to unreasonable or excessive personal attack</p> <p>Undermine respect for Officers in public meetings, the media or at any other time when dealing with Council business;</p>
<p>Only ask Officers to provide professional advice on matters that clearly arise from being an elected Councillor;</p> <p>Respect impartiality and integrity of Officers and do not compromise it</p> <p>Respect Officers' free (i.e. non-Council) time.</p>	<p>Ask Council Officers to improperly spend Council time or resources for political purposes.</p> <p>Insist an Officer changes his/her professional advice</p>
Provide political leadership and direction, making timely decisions	<p>Get involved in day to day management</p> <p>Ask Officers to breach Council procedures or policy when acting on behalf of constituents</p> <p>Put pressure on an Officer on matters which have been delegated for Officer decision.</p> <p>A Member who behaves in this way may lead Officers to make decisions that are not objective and that cannot be accounted for</p>
	Not to seek special or adverse treatment for themselves or any individual by use his/her position as a Member nor improperly to gain an advantage or disadvantage for his/herself or any other person when dealing with Council Officers

Apply appropriate confidentiality to information	
Report the least suspicion of fraud, corruption or impropriety	Instruct Officers to take actions which are unlawful, financially improper or likely to amount to maladministration. Members have an obligation under their Code Of Conduct to have regard, when reaching decisions, to any advice provided by the Monitoring Officer or the Chief Finance Officer.
Where relevant to casework or a decision, declare any special relationships/personal interests with constituents to relevant Officers and/or constituents.  Where the relationship causes a conflict of interests, Members will ask another Ward Member to assist.	

**When acting in their role as employer as part of the Council, Members:**

<b>Do</b>	<b>Don't</b>
Observe the law, standing orders, policies and procedures in relation to all appointments, discipline and Dismissal of Officers.	
Declare any interest they have and ensure that they act to protect the public interest	Take part in any process where friends, relatives or Members of their household are somehow involved
Maintain appropriate confidentiality	
Attend relevant learning and development	
Make decisions based on merit and with access to all the facts	Seek improperly to influence decisions
Promote equality	Canvass support for any candidate for a job
Take continuing responsibility for their appointment decisions once the post holder is in place.	