

Part E4: Member/Officer Protocol

1. Introduction

- (1) The purpose of this protocol is to guide Members and Officers of the Council in their relations with one another.
- (2) Given the variety and complexity of such relations, this Protocol does not seek to be either prescriptive or comprehensive. It simply offers guidance on some of the issues which most commonly arise. It is hoped that the approach which it adopts will serve as a guide to dealing with other issues.
- (3) This protocol also reflects the Codes of Conduct which apply to Members and Officers. Those codes seek to enhance and maintain the integrity (real and perceived) of local government and they therefore demand very high standards of personal conduct.
- (4) If any Member is unsure about any matter the subject of this Protocol, they should contact the Leader of their party and the Head of Paid Service and/or Monitoring Officer for appropriate advice and assistance. If any Officer is unsure about any matter, they should contact the Head of Paid Service and/or the Monitoring Officer. If there is any disagreement over the interpretation of this Protocol, then the opinion of the Monitoring Officer will prevail.

2. Roles of Councillors and Officers

- (1) Councillors and Officers both serve the public. They depend on one another, but their responsibilities are distinct. Councillors are responsible to the electorate and are responsible for setting policy. Officers are responsible to the Council: their job is to give advice to Councillors and the Council and to carry out the Council's work under the direction and control of the Council, its Committees, the Cabinet and individual Cabinet Members.
- (2) It is important that Members are clear about their roles and the roles of Officers and do not get involved in internal office management and employment issues relating to individual Officers other than as provided for in the Officer Employment Procedure Rules set out in Part 4 of the Council's Constitution.

Constitution of the Cotswold District Council

- (3) Mutual trust and respect between Councillors and Officers is essential to good local government. Close personal familiarity between individual Councillors and Officers can damage this relationship and prove embarrassing to other Councillors and Officers.
- (4) Members must, however, respect the impartiality, integrity and political neutrality of all the Council's Officers. They should not pressurise any Officer to change their professional opinion on any matter of Council business. Similarly, Officers must respect the role of Members as elected representatives. It is important that any dealings between Members and Officers should observe proper standards of courtesy and that neither party should seek to take unfair advantage of their position.
- (5) In seeking advice and support, Members should have due regard to the seniority of the Officer with whom they are dealing and recognise that whilst Officers have an overriding duty to the Council as a whole, this is expressed to their line managers and the Head of Paid Service and not to any individual Members. The only Members who have authority to give direct instructions to Officers are Cabinet Members who can instruct the Head of Paid Service, the other Statutory Officers and Lead Managers with regard to the Cabinet Member's particular areas of Cabinet responsibility.
- (6) Whilst Lead Managers will do all that they reasonably can to comply with instructions from Cabinet Members, there may be occasions where the Lead Manager concerned feels unable to comply, say because of pressure of work and competing priorities. In the event that an issue cannot be resolved by a Cabinet Member and the Lead Manager, then it may be referred to the Leader of the Council and the Head of Paid Service for resolution. Again, if a Lead Manager feels unable to comply with an instruction from a Cabinet Member, it may be so referred. A situation which remains unresolved following discussion between the Leader and the Chief Executive shall be determined by a Panel comprising one Member of the Audit Committee and two Independent Persons, acting in consultation with the Chair of the Council. The Panel shall be chaired by one of the Independent Persons. This method of determination shall also apply to situations where the Head of Paid Service feels unable to comply with an instruction from the Leader of the Council or another Cabinet Member.

(Note: 'Independent Persons' are individuals appointed by the Council for the purpose of being consulted by the Council's Monitoring Officer in respect of complaints alleging breaches of the Code of Conduct by

Members. As such, Independent Persons are not Cotswold District Councillors or Council Officers).

3. Members' Access to Information and Council Documents

- (1) The Council believes in open government. Information will generally be freely available to all Members.
- (2) This approach has to be qualified, however, in relation to certain appropriately confidential information. Moreover, devoting a significant amount of staff resources to identify and collate information of marginal benefit cannot be justified. Members are encouraged to use the Council's Intranet to try and find information before contacting Officers.
- (3) Where, in an Officer's view, a request for information will require a significant amount of staff resources to provide the information, which they feel unable to commit, they should seek guidance from their Lead Manager so that a satisfactory solution, in consultation with the Member, can be found. In the event of a disagreement, a decision will be made by the Head of Paid Service, in consultation with the Leader of the Council.
- (4) Members have a statutory right under the Local Government Act 1972 to inspect any Council document which contains material in relation to any business which is to be transacted at a Council, Committee or Sub-Committee meeting (other than one which contains exempt information under the relevant paragraphs of Part I of Schedule 12A of the Act ("exempt information")). This right applies irrespective of whether the Member is a Member of the Committee etc. concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers.

The categories of exempt information under Schedule 12A are set out in the Access to Information Procedure Rules included in Part 4 of the Council's Constitution.

- (5) Members also have a right under the Local Government Act 2000 which applies to Cabinet arrangements, to inspect any relevant document which is in the possession, or under the control, of the Cabinet and contains material relating to any business to be transacted at a public meeting of the Council (other than one which contains exempt information or advice provided by a political adviser or assistant). If, however, the meeting is a private one (which can include a key decision by the Cabinet or a decision taken by a Cabinet Member), any relevant document will be available for

inspection after the meeting or immediately after a decision has been taken.

- (6) In addition to the above, Members of the Overview and Scrutiny Committee will be entitled to a copy of a relevant document which is in the possession or under the control of the Cabinet and contains material relating to:-
- (i) any business that has been carried out at a private or public meeting of the Council;
 - (ii) any decision that has been taken by a relevant Cabinet Member; or
 - (iii) any key decision that has been taken by an Officer.

This is unless the document contains exempt or confidential information, unless it is relevant to any action or decision being reviewed or scrutinised by the Overview and Scrutiny Committee, or unless the document contains advice provided by a political adviser or assistant.

- (7) Draft working documents are subject to change and will be withheld until the matter is formally reported to the Cabinet, the relevant Committee or Cabinet Member.
- (8) In addition to the statutory rights, there is a common law right of Members to access information based on the principle that any Member has a right to inspect Council documents so far as their access to the documents is reasonably necessary to enable the Member properly to perform their duties as a Member of the Council.
- (9) The proper exercise of this common law right depends on whether it is reasonably necessary for the Member to have the information in order to properly perform their duties. The propriety of a request for information must initially be determined by the Head of Paid Service, having consulted with the Officer who holds the document in question. In the event of a dispute, a decision on the point will be made by the Monitoring Officer, in consultation with an 'Independent Person' (see paragraph 2.6 for the definition of an Independent Person).
- (10) Finally, any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, i.e. in connection with the proper performance of the Member's duties as a

Member of the Council. A Member should never disclose or use confidential information for the personal advantage of him/her/them self or of anyone known to him/her/them, or to the disadvantage or discredit of the Council or anyone else.

4. Breach of Confidentiality

Any unauthorised disclosure of confidential information constitutes a breach of the Code of Conduct for Members. In this event, the matter shall be referred by the Monitoring Officer for consideration.

5. Equality Issues

The Council has statutory duties with regard to equality issues and, in accordance with the Council's Code of Conduct for Members, Members must promote equality by not discriminating against others. Members and Officers shall not, therefore, by their behaviour or speech, act in a discriminatory manner with regard to, for example, a person's gender, race, disability, age, religion, ethnicity, nationality or sexual orientation. Such principles will apply to the implementation of human resources policies, recruitment and promotion as they apply to day-to-day dealings with fellow human beings.

6. Conduct or Capability Issues

- (1) Officers shall not be the subject of personal abuse or unsubstantiated criticism by Members. Similarly, Members shall not be the subject of personal abuse or unfair criticism by Officers. Where any Member or Officer considers that this part of the protocol has been breached, the matter will be drawn to the attention of the Monitoring Officer who, if appropriate, will then report the matter (i) in the case of an alleged breach by an Officer, to the appropriate Lead Manager, the Head of Paid Service and the Head of Human Resources for consideration under the Council's Disciplinary Procedures; or (ii) in the case of an alleged breach by a Member, to an 'Independent Person' for consideration in accordance with the agreed standards procedures.
- (2) Members should not raise matters relating to the conduct or capability of an Officer (or of Officers, collectively) at meetings of the Council, any Committee, the Cabinet or Working Group or any other meeting where the public may be present. If a Member feels that they have not been treated with proper respect or courtesy, they should raise the matter, in private, with the Officer's Lead Manager. Any concerns with regard to a

Lead Manager, the Chief Finance officer or the Monitoring Officer should be discussed, in private, with the Head of Paid Service. Any concerns regarding the Head of Paid Service should be discussed, in private, with the Leader of the Council and, if appropriate, the Leader of the political group of the Member concerned.

7. Officer Advice to Council, Cabinet, Committees and Working Groups

It is essential that such advice is impartial and to the highest professional standard. In order to ensure such standard is maintained, the Head of Paid Service will determine which Officers should attend Meetings, including when Cabinet Portfolio Holders make individual decisions.

8. Officer Advice to Political Group Meetings

- (1) There is 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 bodies. Officer support is available to all political groups and individual Members. Any request for Officer support should be made to the Head of Paid Service, who will determine which Officers should attend political group meetings.
- (2) Certain points must, however, be clearly understood by all those participating in this type of process, Members and Officers alike. In particular:-
 - (i) Officer support in these circumstances 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 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.
 - (ii) 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.

- (iii) 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 Cabinet, relevant Committee or Cabinet Member when the matter in question is considered.
- (3) 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 for Members (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.
- (4) Officers must respect the confidentiality of any political group discussions at which they are present. They should not relay the content of any such discussion to another political group or to any individual.
- (5) Any particular cases of difficulty or uncertainty in this area of Officer advice to political groups should be raised with the Head of Paid Service, who will discuss them with the relevant Group Leader(s).

9. Support Services to Members and Political Groups

- (1) 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. They should never be used in connection with political or campaigning activity or for private, business or social purposes.
- (2) Any private use of telephones and fax machines or the Council's Internet services must be reported to the Committee Services Team and a charge for this use may be made.

10. Officer/Cabinet Member/Chair Relationships

- (1) It is important that there should be a close working relationship between Cabinet Members, the Chair of Committees, and the Council's Senior Management Team. However, such relationships should never be allowed to become so close, or appear to be so close as to bring into question the

Officers' ability to deal impartially with the Member(s) concerned or other Members.

- (2) On those occasions when the Chair of a Committee is consulted as part of the process of drawing up the agenda for a forthcoming meeting, the Head of Paid Service will have ultimate responsibility for the final content of that agenda because setting the agenda constitutes an executive act which cannot be delegated to the Chair of a Committee.

(Note: If the Council, the Cabinet, or a Committee has previously instructed that a specific matter should appear on a future agenda, then that item will automatically appear, because that instruction is an executive act).

- (3) The agenda for a forthcoming meeting of the Cabinet will be set by the Leader of the Council, in consultation with the Head of Paid Service.
- (4) A Cabinet Member and/or Officer will always be fully responsible for the contents of any report submitted in their name. If an issue arising from an Officer's report cannot be settled by the Lead Manager concerned and the Leader of the Council, other Cabinet Member or Chair of a Committee who has raised the issue, it shall be referred to the Head of Paid Service for resolution, in consultation with the Chair of the Council.
- (5) Finally, it must be remembered that Officers are accountable to their Lead Manager and that whilst Officers should always seek to assist a Member, they must not, in so doing, go beyond the bounds of whatever authority they have been given.

11. Officers' Delegated Powers

- (1) The Council gives delegated authority to certain Officers to act on the Council's behalf. The terms of that authority frequently require the Officer to consult certain Members, e.g. the Leader of the Council, a Cabinet Member or the Chair of a Committee. In other cases, the Officer should decide whether to consult, as a matter of courtesy.
- (2) If a matter relates solely to a particular Ward, the Officer with delegated authority should consult the appropriate Ward Member(s).

12. Correspondence

- (1) Correspondence between an individual Member and an Officer should not be copied by the Officer to any other Member without the Member's consent. However, where such correspondence concerns Council policy, or the interpretation of Council policy, a copy should be sent to the Leader of the Council and Chair of the relevant Committee, together with the Head of Paid Service and relevant Lead Manager, and this should be made clear to the Member concerned. Under no circumstances should 'silent copies' be made available to a third party, and copies should only be sent to third parties with the express permission of the Member involved.
- (2) 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 for a letter to appear in the name of the Chair of Council, the Leader of the Council or another Cabinet Member.

13. Involvement of Ward Members

Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Ward or Wards affected will, as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultation exercise on a local issue, the Ward Member(s) will be notified at the outset of the exercise.

14. Presentation of Council Policy and Practice

All Officers are expected to explain and implement Council policy and practice, but not to engage in party political matters. Where there is, or is likely to be, criticism, from whatever source, of Council policy and practice, it is incumbent on Officers to assist the Council in explaining and implementing the particular policy or practice in issue.