

# **PART 7 - THE CODES, PROTOCOLS AND ADVICE**

## **D – MEMBER / OFFICER PROTOCOL**

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## **1 INTRODUCTION**

- 1.1 Mutual respect, understanding and co-operation between Councillors and Officers are the greatest safeguard of the integrity of the Council. They also provide a framework within which Councillors and Officers can work together for the benefit of the Royal Borough and the people who live or work here. The purpose of this guidance is to assist Councillors and Officers of the Council in their relations with one another.
- 1.2 Given the variety and complexity of such relations, this guidance does not seek to be either prescriptive or comprehensive. It seeks simply to offer advice on some of the issues which most commonly arise. It is hoped, however, that the approach which it adopts to these issues specifically raised in the guidance will serve as a guide to dealing with circumstances as they arise.
- 1.3 This guidance seeks to promote greater clarity and to reflect changes that the new modernising agenda has developed, it also aims to ensure all Councillors receive objective and impartial advice whilst protecting Officers from accusations of bias and any undue influence from Councillors.
- 1.4 It also seeks to reflect the principles underlying the Codes of Conduct. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government and the Code of Conduct, therefore demand very high standards of personal conduct.

In any dealings between Councillors and Officers both should observe reasonable standards of courtesy and neither party should seek to take unfair advantage of their position.

## **2 OFFICER ADVICE TO COUNCILLORS**

- 2.1 Officers are available to assist and advise all Councillors upon matters relating to the Council's business. Unless otherwise agreed, Officers and Councillors will treat such discussions as confidential and Officers will not reveal the contents to other Councillors or to third parties. It may be necessary however for the Officer to advise his/her Head of Service/Director of the discussions.
- 2.2 When Councillors seek assistance and advice from Officers they should adhere to the requirements of this protocol and should not seek information to which they are not properly entitled.
- 2.3 Whilst any Councillor may ask a relevant Head of Service, Director or the Managing Director for written factual information about a service, such requests must be reasonable. Requests will be met subject to any overriding legal considerations (which will be determined by the

Monitoring Officer) or if the recipient of any request considers the cost of providing the information requested or the nature of the request to be unreasonable. If that is the case, she/he will raise the matter with the relevant Director who will discuss the issue with the relevant Group Leader(s) or, in the absence of a Group Leader, with the Member concerned.

- 2.4 Where a Councillor requests factual information (usually written) from an Officer as set out in paragraph 2.3 above, that information will also be supplied to the Chairman of the appropriate Panel, Forum or Committee, or the relevant Lead Member of the Cabinet, and relevant Officers
- 2.5 Where a Councillor requests policy advice (usually oral) that advice will not be supplied to any other Councillor without the consent of the requesting Councillor.
- 2.6 When advice is requested for a Member or Political Group by the Group's Political Assistant, these rules apply as if the Group Assistant was a Councillor.

### **3 OFFICER ADVICE TO POLITICAL GROUPS**

- 3.1 In discharging their duties and responsibilities, Officers serve the Council as a whole and not exclusively any political group, combination of groups or any individual Councillor of the Council.
- 3.2 It is common practice for political 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 party groups but must at all times maintain political neutrality. All Officers shall, in their dealings with political groups and individual Councillors treat them in a fair and even-handed manner.
- 3.3 The support provided by Officers can take many forms, ranging from a briefing meeting with a Chairman, Lead Member or Spokesperson prior to a meeting to a presentation to a full party group meeting. Whilst in practice such Officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups. When attending a group meeting the following protocol applies:
  - a) Officers will attend Group meetings subject to other commitments, to provide advice and information, but their attendance should not be compulsory. Officers cannot insist upon being present if the Group decides otherwise.

- ii) The Group should decide at what point during the meeting an Officer should be requested to leave, always recognising that an Officer should not be present during discussions on subjects which could prejudice his/her political neutrality.
- iii) Having accepted an invitation to attend a meeting of one Group, Officers should not decline an invitation to offer advice or information to another Group on the same subject matter.
- iv) All invitations to attend Group meetings should be made to the appropriate Director accepting that he may nominate another Officer to attend on his behalf.
- v) Advice given by Officers at Group meetings will be either of a factual, informative nature or based on their professional expertise.
- vi) If an Officer is asked to give advice and information to more than one Group on the same issue, each Group will be entitled to receive from the Officer the same advice and information.
- vii) Officers, when questioned by Members of a Group, should not disclose or be asked to disclose the views expressed at a meeting of any other Group except to ensure that action is taken on a particular matter, if appropriate.
- viii) Councillors should not identify in public, at Council, Cabinet, Forum or Panel meetings, or in communication with the media, Officers who have provided advice and information at Group meetings.
- vix) If the proceedings of the group meeting attended by an Officer are recorded in minute or note form, the Officer concerned should be given the opportunity of verifying those records insofar as they relate to the advice or information he gave.

3.4 All those participating in this type of process, Councillors and Officers alike, will understand that the following limits apply:-

- i) 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 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 party business are to be discussed.
- ii) Party 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 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 Cabinet, Panel, Forum or Council meeting when the matter in question is considered.

- 3.5 Special care needs to be exercised whenever Officers are involved in providing information and advice to a party group meeting which includes persons who are not Members of the Council. Such persons are not 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 and advice as they would to a Councillor only meeting.
- 3.6 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group.
- 3.7 In relation to budget proposals:
- a) The Administration shall be entitled to confidential discussions with Officers regarding options and proposals. These will remain confidential until determined by the Administration or until published in advance of the Cabinet/Committee/Forum/Panel/ Council meetings, (if appropriate) whichever is the earlier; and
  - b) The opposition groups shall also be entitled to confidential discussions with Officers to enable them to formulate alternative budget proposals. These will remain confidential until determined by the respective opposition groups or until published in advance of Cabinet/Committee/Forum/Panel/ Council meetings, whichever is the earlier.
- 3.8 It must not be assumed by any party group or Councillor that any Officer is supportive of any policy or strategy developed because of that Officer's provision of information or advice in the formulation of that policy or strategy.
- 3.9 Any particular cases of difficulty or uncertainty in this area of Officer advice to party groups should be raised with the Managing Director who will discuss them with the relevant Group Leader(s).

#### **4 WARD-BASED INVOLVEMENT**

- 4.1 Information regarding activities in a particular ward should, when appropriate, be copied to the Ward Councillor(s) for information. Ward Councillors should be invited to take part in or attend any public meeting, consultative exercise or launch event organised by the Council concerning a local issue. If an Officer calls a meeting upon a local issue with or including Ward Councillors, the Officer will invite all Members for the Ward in question.
- 4.2 If a Ward Councillor calls or requests a meeting upon a local issue at which an Officer or Officers is/are requested to be in attendance, the request will be referred to the relevant Director to determine whether an Officer in attendance is appropriate.

- 4.3 Similarly if an MP calls or requests a meeting upon a local issue at which an Officer or Officers is/are requested to be in attendance, the same procedure will govern the Officer(s) attendance as in 4.2 above.
- 4.4 Meetings with Ward Councillors and/or MPs and/or others are generally private. Officers may confirm the events which occurred at the meeting and the outcome of it with the Members who attended, but will not reveal those matters to other Members or to other political groups except with the specific authority of the Member(s) who attended or called the meeting.

## **5 OFFICER SUPPORT TO THE OVERVIEW AND SCRUTINY PROCESS**

- 5.1 The Council's Overview and Scrutiny Panels will be supported by a Senior Officer as the Scrutiny Officer. In addition other Officers may attend Panels to give advice. The Scrutiny Officer will be responsible for ensuring the preparation of reports is undertaken as required by the Panels, in consultation with other relevant Officers, the Democratic Services Manager, the Chief Finance Officer, the Overview and Scrutiny Chairmen and the Managing Director.
- 5.2 The Managing Director, the Monitoring Officer and the Chief Finance Officer and the Directors may attend any Committee, Forum or Panel meeting and will attend where required to do so.
- 5.3 The Overview and Scrutiny Panels are independent from the Council's executive so that information requested by an Overview and Scrutiny Panel and work undertaken for them by Officers should not be discussed with any Members not part of the relevant Overview and Scrutiny Panel until the reports become public documents. Any conflict that the Panel's Senior Officer or Support Officers may identify between the work for the Overview and Scrutiny Panel and other work undertaken for the Council should be referred to the Democratic Services Manager who will discuss such issues, as necessary, with the relevant Overview and Scrutiny Panel Chairmen and the Director.

## **6 SUPPORT SERVICES TO COUNCILLORS AND PARTY GROUPS**

- 6.1 The only basis on which the Council can lawfully provide support services (e.g. office accommodation, stationery, typing, printing, photocopying, transport etc) to Councillors is to assist them in discharging their role as Councillors to 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. In the event that any items, such as telephones, fax machines or computers, provided for Councillors are

used by them other than for Council business, the cost of such use (provided that it can be separately identified) must be reimbursed to the Council.

## **7 COUNCILLORS' ACCESS TO INFORMATION AND COUNCIL DOCUMENTS**

The Access to Information Procedure Rules set out the rights of Councillors to Council Information.

- 7.1 Councillors are free to approach any Officer of the Council to ask for information. This right extends to such information, explanation and advice as they may reasonably need in order to assist them in discharging their roles as Councillors 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. Such approaches should normally be made to the Director/Head of Service. In cases of doubt, Councillors should approach the Democratic Services Manager.
- 7.2 As regards the legal rights of Councillors to inspect Council documents, these are covered partly by statute and partly by the common law and the statutory position set out is in the Access to Information Procedure Rules.
- 7.3 The common law right of Councillors is much broader and is based on the principle that any Councillor has a right to inspect Council documents so far as his/her access to the document is reasonably necessary to enable the Councillor properly to perform his/her duties as a Member of the Council. This principle is commonly referred to as the "need to know" principle.
- 7.4 The exercise of this common law right depends therefore, upon an individual Councillor being able to demonstrate that he/she has the necessary "need to know". In this respect a Councillor 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 particular Head of Service whose Service holds the document in question (with advice from the Monitoring Officer if required).
- 7.5 In some circumstances (e.g. a Panel Member wishing to inspect a document relating to the business of that Panel) a Councillor's "need to know" will normally be presumed. In other circumstances (e.g. a Councillor wishing to inspect documents which contain personal information about third parties) the Councillor will normally be expected to justify the request in specific terms. Furthermore, there will be a range of documents which, because of their nature are either not



accessible to Councillor or are accessible only to the political group forming the Administration and not by other political groups. An example of this latter category would be draft documents compiled in the context of emerging Council policies and draft Cabinet and Panel reports, the disclosure of which prematurely might be against the Council's and the public interest.

- 7.6 Whilst the term "Council document" is very broad and includes for example, any document produced with Council resources, it is accepted by convention that a Councillor of one party 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 group.
- 7.7 Any Council information provided to a Councillor must only be used by the Councillor for the purpose for which it was provided, i.e. in connection with the proper performance of the Councillor's duties as a Member of the Council.

There is a specific requirement in the Code of Conduct which states the Monitoring Officer's advice should be sought as to whether the criteria below apply.

You must not:

- a) 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 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; or
    - (c) prevent another person from gaining access to information to which that person is entitled by law.
- 7.8 The provision of personal data which would breach the Data Protection Act must not be provided to Councillors unless the data subject has given written authority for the disclosure to be made.
- 7.9 The 'need to know' basis and the preservation of personal information are the guiding principles when dealing with oral or telephone requests in direct conversation. It is proper for an Officer to ask a Councillor to justify the reason for his/her request and if the Officer does not think it is sufficient the matter will be referred to the Proper Officer).

- 7.10 If a Councillor purports to represent a constituent and seeks information about that person's circumstances, details should not be provided unless the constituent has given prior authority.
- 7.11 An Officer should not disclose to a Councillor information which is not in the public domain and which the Councillor does not need to know in order to carry out his/her duties as a Councillor.
- 7.12 In addition to the rights that Councillors have to access Council information set out above, they also enjoy the same rights to access information as any member of the general public under the Freedom of Information Act 2000. Further information about those rights and how to exercise them is available on the Council's website or from the Council's Transactional Legal Team Leader on 01628 796000, or from the Monitoring Officer.

## **8 OFFICER/COUNCILLOR RELATIONSHIPS**

- 8.1 Whilst there will necessarily be a close working relationship between the Leader of the Council, Cabinet Members, Chairmen of Forums, Panels and Committees and the relevant Directors, Heads of Service and other senior officers, 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 the other members and other political groups.
- 8.2 In some situations an Officer will be under a professional duty to submit a report, in their name such as reports by the Council's statutory officers. Similarly, a Director or Head of Service will always be fully responsible for the contents of any report submitted in his/her name. This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report. This applies equally to joint Officer reports.
- 8.3 Reports submitted in the name of one or more Members, usually Lead Members, will be the responsibility of the Member(s) under whose name(s) it appears. It is the duty of the Member(s) to ensure that a report has been prepared, taking into account the professional advice of relevant officers and in particular the advice of the relevant Director and Head of Service for the service area and that the necessary legal and financial advice has been obtained in all cases from the appropriate officers. Depending on the subject matter of the report, such other specialist officer advice as is relevant must be obtained. The final report and its recommendation(s) will be the responsibility of the Member(s) submitting it.
- 8.4 Finally, it must be remembered that Officers are accountable to their Head of Service and Directors and that whilst Officers should always seek to assist a Cabinet Member, Chairman (or indeed any Councillor),

they must not in so doing go beyond the bounds of whatever authority they have been given by their Head of Service.

## **9 PUBLICITY AND DEALING WITH THE MEDIA**

- 9.1 In line with the requirements of the Local Government Act 1986 and the Code of Recommended Practice on Local Authority Publicity (set out in Part 5K), Council publications and other publicity material produced by the Council will not normally feature individual Councillors (except the Lead Member for the relevant service area, the Committee, Forum or Panel Chairman (if appropriate) and the Mayor and Deputy Mayor, beyond providing a list of names and addresses.
- 9.2 The Council has a policy of allowing media access to a wide range of Officers to provide them with the factual information they need. Requests for comments or opinion on Council policy or political matters shall be referred to the appropriate Cabinet Member or Committee, Forum or Panel Chairman. The names of Group Spokespersons and Ward Councillors shall be publicly available.
- 9.3 Press releases may quote the appropriate Cabinet Member, Committee, Forum or Panel Chairman. Group Spokespersons and Ward Councillors shall be made known to journalists for contact at their discretion. The Council may issue press releases on behalf of Cabinet Members but will not otherwise issue press releases, letters to the editor etc. on behalf of Councillors though Officers will be available as in Paragraph 3.1 above to provide information which a Councillor needs for their own correspondence with media.

## **10 CORRESPONDENCE**

- 10.1 Correspondence between an Officer and a Councillor shall not normally be copied by the Officer to any other Councillor(s). Where exceptionally it is necessary that it is copied to another Councillor(s) this should be made clear to the original recipient. 'Silent copies' should not be used.
- 10.2 Letters on behalf of the Council will normally be sent out under the name of the appropriate Officer, not the name of the Councillor. It may be appropriate in some circumstances for a letter to appear in the name of a Councillor (e.g. letters of representation to the Government Members, letters from Cabinet Members), but this is likely to be the exception. Letters creating obligations or giving instructions on behalf of the Council should never be sent out in a Councillor's name.
- 10.3 In most cases it will be inappropriate for Officers to become involved in public debates or issues affecting the Council, unless they are authorised to do so. Officers should generally not make public

comment on any issues of policy or on political matters affecting the Council and this would include becoming involved in correspondence with persons or making any comment publicly including the press, on matters otherwise than in the course of their normal professional activities. If any Officer wishes to make any such comment verbally, in writing or by any other method, they shall first obtain the consent of their Head of Service.

## **11 COMPLAINTS AGAINST OFFICERS**

- 11.1 Where a Councillor has concerns about the conduct or capacity of an Officer, this should be raised initially with the Officer's Head of Service and then with the relevant Director or the Managing Director. Special rules apply to the Head of Paid Service, the Monitoring Officer and the Finance Officer. It is not appropriate for such matters to be raised at public meetings and at meetings chaired by Councillors. The Chairman will ensure that this procedure is followed. This does not prevent Members raising general concerns about service standards which are not directed at any particular Officer.
- 11.2 If a Councillor feels that he/she is not being treated with proper respect and courtesy or has any concern about the conduct or capability of an Officer which the Councillor has failed to resolve directly with the Officer, the procedure set out above should be followed. Any action taken against an Officer in respect of a complaint will be in accordance with the Council's Disciplinary Rules and Procedures.
- 11.3 Officers are expected to behave towards Councillors in a way that is politically neutral and many officers occupy politically restricted posts. Officers are not expected to comment in public on any Council Policy or activity other than a matter on which they are authorised by making public statements on behalf of the Council. Public statements include verbal comment and written statements in letters and other publications. It is therefore inappropriate and may be treated as a breach of contract for an Officer, not authorised to do so, publicly commenting on a Council Policy, procedure or activity.
- 11.4 There is the potential for complaints or allegations to be made to Councillors against Officers in a variety of situations. Such complaints and allegations can be extremely damaging to the Council and to the Officers involved. They can easily be made, particularly in respect of Officers carrying out their duties on behalf of the Council, to make sure that public funds are being managed responsibly and/or that legal requirements are being complied with, but can be very difficult to correct in the wider public arena. If not managed correctly, they can leave the Council open to legal challenge as well as causing considerable adverse impact on staff morale and effectiveness and great personal distress to the individuals involved and their families. Ill founded and malicious allegations can tarnish Officers' careers and

their livelihoods and also impact on the reputation and credibility of the Council. At the same time, it should be recognised that complaints and allegations must be handled on their individual merits, in accordance with a recognised process that is transparent, prompt and reaches unequivocal conclusions.

- 11.5 Where a Councillor receives a verbal complaint about an Officer of the Council she/he should inform the complainants that the complaint must be made in writing to the Managing Director and that, in the absence of a written complaint, no further action will be taken.
- 11.6 Where a complaint is made directly or indirectly about an Officer of the Council at a meeting attended by Members of the Council and members of the public and/or other organisations, Councillors present should adopt the following procedure:-
- a) Immediately acknowledge the complaint and inform the complainant that the Council supports its Officers in the work they have undertaken;
  - b) Inform the complainant that any complaint should be made in writing to the Officer concerned or their Head of Service/Director where it will be considered under the Council's Complaints' Policy concerned and/or the Managing Director (preferably within 24 hours) and that, in the absence of a written complaint, no further action will be taken;
  - c) Remind the complainant of the potential legal implications of defamatory allegations;
  - d) In the event that the complainant is a member of the management of an organisation represented at the meeting, request the submission of a complaint on behalf of the organisation rather than on the part of the individual complainant alone.
- 11.7 Complaints will be considered in accordance with the Council's HR Policies and its Anti-Fraud and Corruption Policy and Whistleblowing Policy.

## **12. COMPLAINTS AGAINST COUNCILLORS**

- 12.1 In the same manner as for complaints about Officers, complaints about Councillors can be extremely damaging to the Council and the Councillor concerned. If not managed correctly they can leave the Council open to legal challenge and can cause great personal distress. Each complaint must be handled on its individual merits and in accordance with a recognised process which is transparent, prompt and reaches unequivocal conclusions.
- 12.2 Where an Officer feels that s/he has not been properly treated with respect and courtesy s/he should raise the matter with his/her Head of Service, especially if s/he does not feel able to discuss it directly with

the Councillor concerned. In these circumstances the Head of Service, Director or Managing Director will take appropriate action either by approaching the individual Councillor and/or group leader.

- 12.3 Where an Officer receives a verbal complaint about a Councillor of the Council she/he should inform the complainants that the complaint must be made in writing to the Councillor concerned and/or to the Managing Director and that, in the absence of a written complaint, no further action will be taken.
- 12.4 Where a complaint is made directly or indirectly about a Councillor of the Council at a meeting attended by Officers and members of the public and/or other organisations, Officers present should adopt the following procedure:-
- a) Immediately acknowledge the complaint;
  - b) Inform the complainant that any complaint should be made in writing to the Councillor concerned and/or the Managing Director (preferably within 24 hours) and that, in the absence of a written complaint, no further action will be taken.
  - c) Remind the complainant of the potential legal implications of defamatory allegations;
  - d) In the event that the complainant is a member of the management of an organisation represented at the meeting, request the submission of a complaint on behalf of the organisation rather than on the part of the individual complainant alone.
- 12.5 Complaints about Councillors will be considered by the Monitoring Officer against the Council's Members' Code of Conduct. Complaints will also be considered in accordance with the Council's Anti-Fraud and Corruption Policy and its Whistleblowing Policy.