

# **PROTOCOL ON MEMBER/OFFICER RELATIONS**

## **Introduction**

1. Given the variety and complexity of Member and Officer relations, this Protocol does not seek to cover everything or be prescriptive in its application. General guidance is offered on some of the issues that most commonly arise or cause concern.
2. This Protocol seeks to encourage best practice and to promote greater clarity and certainty between the various relationships. If any Member is unsure about any matter, they should contact the Monitoring Officer for appropriate advice and assistance. If any Officer is unsure about any matter, they should contact the relevant SLT Director or the Managing Director of oneSource and/or the Monitoring Officer.
3. The Governance Committee and the Monitoring Officer may issue general guidance on the Code of Conduct for Members, this Protocol on Member/Officer relations and the Protocol on Probity in Planning. Where appropriate, the Monitoring Officer will also consult the Chief Financial Officer and the Chief Executive on any further general guidance.

## **General Member/Officer Issues**

4. The opportunity is taken to reinforce the following points:-
  - (a) In order to ensure the business of the Council is transacted in an effective and efficient manner and with a view to ensuring that the Council is not brought into disrepute, the key guiding principle for Members and Officers has to be one of “engendering mutual trust, openness, honesty, fairness, transparency and treating everyone with respect”;
  - (b) Officers, being employees of the Council, must act in the best interests of the Council, as a whole, and must not give politically partisan advice. Anyone breaching this requirement, will face disciplinary action and may, ultimately, be dismissed by the Council;
  - (c) Political Group meetings, whilst they perform an important part in the preliminaries to Council decision-making, are not formal decision-making bodies of the Council and, as such, 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 Members and Officers understand and interpret such decisions accordingly;
  - (d) Officer support to Political Groups must not extend beyond providing information and advice in relation to Council business;

- (e) it is good practice for Party political debates and decision-making to take place in the absence of Officers, in order to avoid any suspicion of impropriety or misunderstanding;
- (f) Officers must respect the confidentiality of any Political Group discussions at which they are present; and
- (g) any breach of this part of the Protocol by an Officer must be brought to the attention of the Chief Executive and / or the Monitoring Officer for consideration.

### **Legal and Audit Commission Considerations**

- 5. Members of the Council do not, as elected members, have any special immunity from civil or criminal wrongs that they may commit against fellow Members, Officers or members of the public. Members must abide by the Code of Conduct for Members and ensure they do not, for example, slander or libel another person. During the course of their normal duties for the Council, Members will, therefore, only have a qualified (not absolute) protection against prosecution or civil action. This requires that there must of necessity be an absence of malice.
- 6. Members must also not pressurise any Officer to change their professional opinion on any Council business matter or do anything that compromises, or which is likely to comprise, the impartiality of Officers or those who work for, or on behalf of the Council. It is also imperative that Members are clear about their roles and the roles of Officers, so as to avoid getting inappropriately involved in, for example, the internal office management, discipline and/or other employment related issues, as the actions of the Member(s) may be held to be the actions of the Council, as an “employer”.

### **Standards Issues**

- 7. Any member of the public (including Officers and other members) can complain to the Monitoring Officer about a Member's breach of the Code of Conduct for Members and/or bring private civil litigation proceedings against an elected member. The Auditor can also take legal action against an elected member and the Council, as a whole, for any breaches of the law.

### **Public Relations Issues**

- 8. The Council's Communications Section is responsible for dealing with the press and other media organisations on behalf of the Council. It is important, therefore, that all official communication relating to the Council (but not party political or private matters) is dealt with by this section, so as to ensure the proactive, effective and efficient management of the Council's public image, relations and interface. The Council will have regard to the Code of Recommended Practice on Publicity.

## **Specific Points on Member/Officer Relations**

9. The relationship between Members and Officers generally is characterised by mutual trust, respect and courtesy. These are essential for good local government and serve to enhance local democracy.
10. Close personal familiarity between individual Members and Officers can damage professional relationships and can prove embarrassing to other Members and Officers. Situations should be avoided, therefore, that could give rise to suspicion and/or appearance of improper conduct or behaviour.

## **Employer/Employee Issues**

11. Members should recognise and pay due regard to their role as an employer in their dealings with Officers, as Officers could use inappropriate behaviour and conduct of Members in bringing employment cases against the Council.
12. Members must guard against putting inappropriate pressure, in particular, on junior officers and must ensure that all communication between them (including written communication) does not bring the Council into disrepute or cause any embarrassment to them.
13. 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 those Officers owe an overriding duty to the Council as a whole, such duties are first expressed to their respective line managers and the Chief Executive and not to any individual Member. For this reason, Members should not give direct instructions to staff, and where possible should ensure their communications are with staff at an appropriate managerial level within the Council.

## **Equality Issues**

14. The Council has statutory duties with regard to equality issues and in accordance with the Code of Conduct for Members; Members must also 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, religion, ethnicity, nationality, sexual orientation or age. Such principles will apply to the implementation of personnel policies, recruitment and promotion as they apply to day to day dealings.

## **Officer Conduct or Capability Issues**

15. Members should not raise matters relating to the conduct or capability of an Officer (or of Officers, collectively) at meetings held in public or before the

Press, as Officers have no means of responding to the same in public. Neither should members display any inappropriate behaviour or language to Officers at such meetings nor at any other meetings to which they are invited or are represented. Inappropriate behaviour or language is considered to be as described in paragraph 26. If any Member feels that they has not been treated with the proper mutual trust, respect or courtesy or has any concern about the conduct or capability of an Officer, they should raise the matter, in private, with the SLT Director of the directorate concerned. Any concerns with regard to a SLT Director should be discussed, in private, with the Chief Executive and/or the Leader of the relevant Political Group. Whispering campaigns against Members and Officers do not project a healthy environment for engendering mutual trust, openness, honesty, fairness, transparency, respect or courtesy and should be avoided.

16. It is legitimate for Members to appropriately challenge Officers' advice but there is a potential breach of the Code of Conduct for Members if they require any Officer to:
  - (a) change their professional advice; or
  - (b) take any action which the Officer considers to be unlawful or illegal or which could amount to maladministration or breach any relevant Codes of Conduct (including professional codes of conduct).

Havering's Code of Conduct states that a Member must not bully any person which would include staff

### **Monitoring Officer/Chief Financial Officer Consultations**

17. Members are required to consult with the Monitoring Officer and the Chief Financial Officer over any legality, maladministration, financial impropriety, or probity issues or where they have any doubt as to whether particular decisions are or were likely to be contrary to the Council's Budget and Policy Framework Rules or the law. Inappropriate or late consultation will not satisfy the need to consult those Officers at the relevant time.

### **Political Impartiality**

18. Members shall, at all times, respect the political impartiality of Officers and must not expect or encourage Officers to give a political view on any matter.
19. For the avoidance of doubt, it must be recognised by all that, in discharging their duties, Officers serve the Council, as a whole, and not exclusively any Political Group, combination of groups, or any individual Members.
20. Officers may properly be called upon to support and contribute to the deliberations of Political Groups but they must, at all times, maintain political neutrality. This applies, in particular, to Politically Restricted Officers, who are governed by the Local Government and Housing Act 1989. All Officers must,

in their dealings with Political Groups and individual Members, treat them in a fair and even handed manner.

21. Any request for advice given to a Political Group or Member will be treated with the strictest of confidence by the Officers concerned and will not be accessible to any other Political Group(s). Factual information upon which any advice is based will, if requested, be available to all Political Groups.
22. When attendance is requested for Political Group meetings:
  - (a) The request to attend a Political Group meeting must normally be made through the relevant SLT Director;
  - (b) Such a request can only be made in relation to Council business; and
  - (c) Officers will:-
    - (i) provide relevant factual advice and assistance;
    - (ii) leave during the deliberations of the Political Group on the issue;
    - (iii) respect the confidentiality of any Political Group decision at which they are present; and
    - (iv) not champion, defend, action or spend any resources of the Council, or be held responsible for actioning in any way whatsoever the decisions of the Political Group(s), unless and until such decisions have become the formal decisions of the Council.

### **Specific Points on Overview and Scrutiny Arrangements**

23. The Council's Overview and Scrutiny Board and Sub- Committees will seek the advice of:-
  - (a) The Monitoring Officer, where they consider there is doubt about the legality of any Executive decision(s); or
  - (b) The Monitoring Officer, Chief Financial Officer and other relevant SLT Directors, where they consider a decision (or decisions) of the Executive might be contrary to the Council's Budget Framework Procedure Rules and Policy Framework Procedure Rules.
24. When asking Officers to give evidence before any Overview and Scrutiny Committee, questions should be confined, so far as is possible, to questions of fact and explanation of any professional opinion relating to policies and decisions. Officers must respond to questions from Members in an open, constructive and helpful manner. Officers must not mislead or be economical with the truth.
25. Where they consider it appropriate, the Chairman of the relevant Overview and Scrutiny Sub-Committee or the Overview and Scrutiny Board may ask SLT Directors to explain any advice given by them to Members of the

Executive and explain any decision(s) the SLT Director may have taken under the Scheme of Delegations to Officers. For the avoidance of doubt, this will not apply to any private or confidential matters.

### **Unacceptable or Inappropriate Behaviour**

26. The relevant Chairman of the Overview and Scrutiny Board or Sub-Committee shall ensure that Members of the Executive and Officers who appear before it are not questioned by Members of the Board or Sub-Committee (whether through the nature, tone or language used), in such a manner as could be considered by a reasonable person to be hostile, offensive, derogatory, harassing, bullying, victimising, discriminatory or otherwise unacceptable or inappropriate.
27. Any allegation of unacceptable or inappropriate behaviour by a Member will be reported to the Leader of the relevant Political Group for consideration and/or the Monitoring Officer, if there has been a breach of the Code of Conduct for Members. The relevant Leader may also refer the matter to the Monitoring Officer for consideration, guidance or sanction, if the matter is a breach of other Protocols.

### **Use of Local Authority Resources**

28. The only basis on which the Council can lawfully provide support services to Members (e.g. computers, telephone, mobile phones, blackberries, stationery, typing, printing, photo-copying, transport etc.) is to assist them in the effective and efficient discharge of their duties and role as Members of the Council. Such support services must, therefore (as set out in the Code of Conduct for Members), be only used for Council business save for under the Council's IT Protocol, limited personal use of telephones only is permissible upon payment of the bill relating to personal use. In all other circumstances the same should never be used for or in connection with Political, Party Political or campaigning activities or for private purposes.

### **Access to Information – ‘Need To Know’**

#### **Statutory provisions**

29. The Local Government (Access to Information) Act 1985 (which is Section 100F of the Local Government Act 1972) was introduced to give additional rights to Elected Members. The Act was at pains to stress that these rights were in addition to those at common law.
30. Section 100F makes it clear that any document which is in the possession or under the control of the Council and contains material relating to any business to be transacted at a meeting of the Council, or a committee or a sub-committee of the Council will be open to inspection by a Member of the Council, unless it contains confidential/exempt information as defined within the section. A non-committee member's right to information is therefore

enhanced by Section 100F subject to the Proper Officer withholding confidential/exempt information within those paragraphs.

31. Section 100F does not, however, go as far as the common law, vis-à-vis, the Committee Member. For non-Committee Members, their position is enhanced by section 100F. In both cases, however, if there appears to be confidential/exempt information, by virtue of the other parts of the Act, there is still the discretion for the relevant Proper Officer to withhold the confidential/exempt information.
32. It is also a matter of fact as to whether or not the information is 'in the possession or under the control of the Council'. The key issue to be determined is whether or not the information belongs to the Council or to another person. If it belongs to another person, Officers will only release any confidential information after an appropriate consent to release such information has been obtained from the relevant person. Officers will not, therefore, "hand over" their files to a Member, without the Officer being clear about the reasonableness of the request and the Officer's ability to share confidential information with a Member. If any Officer is unsure about a request for information, they must discuss the same with their line manager and/or the Monitoring Officer.
33. Under the Local Government Act 2000 Executive arrangements and subject to important exceptions (see paragraph 35 below), any relevant document which:
  - (a) is in the possession, or under the control, of the Executive; and
  - (b) contains material relating to any business to be transacted at a public meeting of the Council, will be available for inspection by Members of the Council.
34. The exceptions, to the above general requirement of paragraph 34, are that exempt information in respect of Schedule 12A of the Local Government Act 1972 (see paragraph 36 below) would be disclosed
35. In addition to the above and subject to important exceptions (see paragraph 37 below), the Overview and Scrutiny Board or relevant Sub-Committee Member will be entitled to a copy of the relevant document which:
  - (a) is in the possession or under the control of the Executive;
  - (b) contains material relating to:-
    - (i) any business carried out at a private or public meeting of the Council;
    - (ii) any decision taken by a relevant Cabinet Member; or
    - (iii) any key decision of the Cabinet.

36. The exceptions to the above general requirements of paragraph 36 are that such a document (or part of it) contains exempt or confidential information, unless it is relevant to any action or decision being reviewed or scrutinised under the overview and scrutiny arrangements
37. For the purposes of completeness, Appendix A provides an extract of the statutory exempt information paragraphs, which permit reports to be considered in private. As a guiding principle and in keeping with good open government, Executive Members, Chairmen of relevant Committees and Officers will ensure that, so far as is possible and permitted by law, reports are considered in public. If any Member or Officer has any concerns over whether a private report ought to be (or should have been) considered in public, they should raise the matter, at the earliest opportunity, with the relevant SLT Director, Chairman of the Committee or the Monitoring Officer for a decision.

### **Common law principles**

38. In addition to the statutory provisions, the common law right of Members to access information is based on the principle that any Member has a *prima facie* 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*. This principle is commonly referred to as the “need to know” principle.
39. This principle applies equally to leaders of the Political Groups and, under common law principles; the courts have not determined that any leader has an ‘automatic’ right to information. Accordingly, for the purpose of legal considerations, leaders fall to be considered as ordinary Members, if they wish to see Council documents; although they will, in most situations, be able to readily satisfy the ‘need to know’ requirements on the submission of reasonable information or by reasonable implication to substantiate the same. Leaders of Political Groups will, therefore, still have to demonstrate that their request is a proper and reasonable one and give adequate reasons for requiring the information.
40. In addition, it should be remembered that the access to information right will vary from Member to Member, will arise at different times and, as such, a Member's 'need to know' will be considered on a case by case basis and will not last indefinitely. The Monitoring Officer has the power to decide on a case by case basis a Member's common law right to access documents. There is a right of appeal to the Chief Executive in instances where the request is denied.
41. The above statements on the common law position are subject to additional safeguards to protect Council information; namely, if the motive of a Member requesting to see documents is indirect, improper or ulterior, this may be raised by the Council as a bar to the Member's entitlement to inspect documents that are addressed to the Council. The entitlement of a relevant Committee Member to inspect documents of the Committee is a strong one

and certainly stronger than that of a non-Member of the Committee. However, as indicated earlier, the rights of the former are not absolute, as it would still be open to the Committee/ Council to raise a bar to the exercise of such a right on the grounds of the Member's motives being improper, indirect or ulterior.

42. Furthermore, the law does not entitle a Councillor to go on a "roving or a fishing expedition" or to receive every working document that Officers have access to or may have had access to in the past. As a Councillor, they will only be entitled to see those documents that are relevant background papers mentioned in any report received by the (Sub-) Committee or other reasonable requests for relevant papers in order to comply with their 'right to know'. Clearly, any confidentiality attached to the same remains and the same must be kept confidential and not released to any other person. This includes, of course, members of the press. A breach of confidence by a Member is actionable by way of a complaint to the Council's Monitoring Officer. If the breach is serious enough, the person whose confidence has been betrayed may also bring a civil action against the Member (and/or the Council) for damages.
43. By equal token, any unreasonable requests for information can and will be declined. A balance has therefore to be struck between a Member's right to know and an individual's/ business'/ organisation's need for confidentiality, especially where the individual/ business/ organisation has requested confidentiality of the information provided to Council Officers.
44. If any confidential information is contained in public documents then it will, of course, lose its confidentiality. Equally, draft-working documents are subject to change and it is reasonable for those documents to be withheld until the matter is formally reported to the relevant committee / decision-maker.

### **Election Period and Special Responsibility Posts**

45. During the election period, special rules apply with regard to local authority publicity and these can be found in "The Code of Recommended Practice on Local Authority Publicity",.
46. In terms of any serving Councillor who may be standing for re-election, it is imperative that they maintain a clear distinction between their private wish to stand for re-election and their official duties as a serving Councillor. They should, therefore, be particularly careful to guard against giving any impression that Council resources are being or could have been used for their re-election and/or private purposes. To do so could amount, in serious cases, to a breach of the Code of Conduct for Members and a written complaint could be made to the Council's Monitoring Officer.
47. The fact that the Councillor is a serving Councillor can, of course, be stated on any elections material. However, the Council address and/or their Council e-

mail address facilities should not be used or allowed to be used on any elections material produced by him/her or produced on their behalf by another person.

48. Members are provided with officer support to assist them with the discharge of their duties for the Council. Such staff should never be asked or used to carry out Party political purposes or private purposes.

#### **Sanctions for Breach of the Code of Conduct for Members and this General Guidance**

49. Complaints against any breach of the Code of Conduct for Members must be referred to the Council's Monitoring Officer. Complaints against any breach of this Protocol by a Member may be referred to the Monitoring Officer. Complaints against any breach of this Protocol by an Officer may be referred to the relevant SLT Director, the Chief Executive or the Monitoring Officer.

## **APPENDIX A**

### **CONFIDENTIAL AND EXEMPT INFORMATION.**

#### **1. Confidential information – requirement to exclude public**

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

“Confidential information” means information given to the Council by a Government department on terms which forbid its public disclosure or information which cannot be publicly disclosed by court order.

#### **2. Exempt information – discretion to exclude public**

The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.

Where the meeting will determine any person’s civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified below. The parties to a hearing will be able to remain throughout until the meeting adjourns to consider a decision.

Exempt information means information falling within the following categories:

<b>Category</b>	
1	Information relating to any individual
2	Information which is likely to reveal the identity of an individual
3	Information relating to the financial or business affairs of any particular person (including the authority holding that information)
4	Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6	Information which reveals that the authority proposes: (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment
7	Information relating to any action taken or to be taken in connection with the prevention investigation or prosecution of crime.

Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under:

- (a) the Companies Act 1985;
- (b) the Friendly Societies Act 1974;
- (c) the Friendly Societies Act 1992
- (d) the Industrial and Provident Societies Acts 1965 to 1978;
- (e) the Building Societies Act 1986; or
- (f) the Charities Act 1993

Information is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission under regulation 3 of the Town and Country Planning General Regulations 1992.

Information which—

- (a) falls within any of paragraphs 1 to 7 above; and
- (b) is not prevented from being exempt by virtue of the above paragraphs, is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

***The provisions of this legislation are modified in their application to meetings of the Cabinet and of the Adjudication and Review Committee as follows:***

### **3. Cabinet:**

The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, as amended, provide for additional requirements in respect of key decisions.

Generally, a meeting must be held in public where a key decision will be made or where there will be discussion of matters relating to a key decision to be made subsequently. Where a meeting is to be held in public there must be advance publication of agendas, reports and background papers for the meeting. Likewise, where key decisions are to be made by individuals the documents relating to these decisions must be available to the public. In general, the terms of the Regulations are identical to those of the 1972 Act and, in particular, the Regulations use the Act's definitions of exempt information.