

## **THE CONSTITUTION - SECTION 21 PROTOCOL ON MEMBER/OFFICER RELATIONS**

### **1 Introduction**

- 1.1 The purpose of this protocol is to guide members and officers of the Council in their relations with one another. The quality of the interface between the two is vital in ensuring that the highest standards permeate the Council in both its private and public dealings.
- 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. It is hoped however that the approach which it adopts on these issues will serve as a guide to dealing with other issues.
- 1.3 This protocol is to a large extent no more than a written down statement of current practice and convention. In some respects however, it seeks to promote greater clarity and certainty.
- 1.4 This protocol also seeks to reflect the principles underlying the respective Codes of Conduct which apply to members and officers. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government and they therefore demand very high standards of personal conduct.
- 1.5 Relevant extracts from the Codes of Conduct for Members and Employees are reproduced below:
  - a) Employees of authorities work for their employing authority and serve the whole of that authority. They are accountable to, and have a duty to that authority (Employees' Code)
  - b) Mutual respect between employees and Members is essential to good local government and working relationships should be kept on a professional basis.
  - c) Qualifying Employees should deal with the public, Members and other employees, sympathetically, efficiently and without bias (Employees' Code).
- 1.6 The Principles of Conduct which govern the conduct of Members include:-

“They (Members) must respect the impartiality and integrity of the authority’s statutory officers and its other employees”.

In line with the Code’s requirements, it is important that any dealings between members and officers should always observe reasonable standards of courtesy and that neither should seek to take unfair advantage of their position.

### **2 Officer advice to Party Groups**

- 2.1 There is statutory recognition for party 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 requested through the Chief Executive, where appropriate, to support and contribute to such deliberations by party groups. In particular, it is essential that requests for Officer

attendance at full party groups meetings should be made through the Chief Executive. It should be noted that Officers cannot be required to attend such group meetings.

- 2.2 The support provided by officers can take many forms, ranging from a briefing meeting with a Chair prior to a Board or Committee meeting to a presentation to a full party group meeting. Whilst in practice such officer support is likely to be in most demand from a party group in control of the Council, such support is available to all party groups.
- 2.3 Certain points must however be clearly understood by all those participating in this type of process, members and officers alike. In particular:
  - (a) The political neutrality and impartiality of all officers should be respected by members.
  - (b) 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 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;
  - (c) 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; and
  - (d) Similarly, where officers authorised by the Chief Executive 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 Council, Executive Board, Committee or Sub-Committee when the matter in question is considered.
- 2.4 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 will not be bound by the 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.
- 2.5 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.
- 2.6 Any particular cases of difficulty or uncertainty in this area of officer advice to party groups should be raised with the Chief Executive who will discuss them with the relevant group leader(s).

### **3 Support Services to Members and Party Groups**

- 3.1 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 party political or campaigning activity or for private purposes.

#### **4 Members' access to information and to Council documents**

- 4.1 Members are free to approach any Council Department to provide them with such information, explanation and advice (about that Department's functions) as they may reasonably need in order to assist them in discharging their role as members of the Council. This can range from a request for general information about some aspect of a Department's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Chief Officer or to another senior officer of the Department concerned for day to day issues.
- 4.2 As regards the legal rights of members to inspect Council documents, these are covered partly by statute and partly by the common law.
- 4.3 Members have a statutory right to inspect any Council document which contains material relating to any business which is to be transacted at a Council, Executive Board, Committee or Sub-Committee meeting. This right applies irrespective of whether the member is a member of the Committee or Sub-Committee concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers. This right does not however apply to documents relating to items which contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, the care of children, contract and industrial relations negotiations, advice from Counsel and criminal investigations.
- 4.4 The common law right of members is much broader and is 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 properly to perform his/her duties as a member of the Council. This principle is commonly referred to as the "need to know" principle.
- 4.5 The exercise of this common law right depends therefore upon the member's ability to demonstrate that he/she has 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 must initially be determined by the particular Chief Officer whose Department holds the document in question (with advice from the Chief Officer Governance & Customer). In the event of dispute, the question falls to be determined by the relevant Council body - i.e. the Executive Board or the Committee in connection with whose functions the document is held.
- 4.6 In some circumstances (e.g. a Board or a Committee member wishing to inspect documents relating to the functions of the Board or Committee) a member's "need to know" will normally be presumed. In other circumstances (e.g. a member wishing to inspect documents which contain personal information about third parties) a member will normally be expected to justify the request in specific terms.
- 4.7 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 member 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.

- 4.8 Further and more detailed advice regarding members' rights to inspect Council documents may be obtained from the Chief Officer Governance & Customer.
- 4.9 Finally, any Council information provided to a Member should 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. Members need to be mindful of their and the Council's obligations under the Data Protection legislation. The point is also emphasised in the Code of Conduct in the following terms:
- 4.10. Members must not disclose information given in confidence without the express consent of a person authorised to give such consent, or unless required by law to do so.

## **5 Officer/Chair Relationships**

- 5.1 It is clearly important that there should be a close working relationship between the Chairs of the Executive Board and Committees and the Chief Officers and other senior officers who report to those bodies. 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 other members and other party groups.
- 5.2 Whilst the Chairs of the Executive Board and Committees (or Sub-Committees) will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations a Chief Officer will be under a duty to submit a report on a particular matter. Similarly, a Chief Officer will always be fully responsible for the contents of any report submitted in his/her name. Any issues arising between a Chair and a Chief Officer in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.
- 5.3 In relation to action between meetings, it is important to remember that the Council's Constitution only allows for decisions (relating to the discharge of any of the Council's functions) to be taken by the Executive Board, a Committee, a Sub-Committee or an officer. It does not allow for such decisions to be taken by the Leader or indeed by any other single member.
- 5.4 It is customary at the Executive Board, Committee and Sub-Committee meetings for a resolution to be passed, which authorises named officers to take action between meetings in consultation with the Chair and/or Vice Chair. In such situations, it is the officer, rather than the Chair and/or Vice Chair who takes the action and it is the officer who is accountable for it.
- 5.5 Finally, it must be remembered that officers within a Department are accountable to their Chief Officer and that 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 by their Chief Officer.

## **6 Correspondence**

- 6.1 Correspondence between an individual member and an officer should not normally be copied (by the officer) to any other member. Where it is appropriate 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.

6.2 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 will be appropriate on occasions for letters to appear in the name of a Member such as the Leader, but this would be the exception rather than the norm. Letters which for example, create obligations or give instructions on behalf of the Council should never be sent out in the name of a member.

## **7 Involvement of Ward Councillors**

7.1 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.

## **8 Complaints about Breaches of this Protocol**

8.1 Breaches of this Protocol may lead to disciplinary action in the case of Officers or reference to the Council's Standards Committee in the case of Members. Information to explain role of Standards Committee and cross reference to section on Standards Committee in the Constitution.

8.2 If a Member is dissatisfied with the conduct of an officer he/she should in the first place discuss the matter with the relevant Chief Officer in order to try to resolve the matter informally. The Council's disciplinary procedures will not necessarily be relevant and/or appropriate in all circumstances but in appropriate cases the relevant Chief Officer will resort to these procedures.

8.3 If an Officer is dissatisfied with the conduct of a Member, he/she should raise the matter with his/her line manager or Chief Officer in order to try and resolve the matter informally with the Member. The Chief Officer may, depending on the circumstances, consult with the Chief Executive or Monitoring Officer (Chief Officer Governance & Customer) and Chair of the Standards Committee. The Chief Executive or Monitoring Officer may, where appropriate, raise the issue with the Leader of the relevant political group.

8.4 All formal complaints, i.e. those which cannot be resolved informally should be made in the first instance in writing to the Monitoring Officer (Chief Officer Governance & Customer).