

# Colchester Borough Council

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## Member / Officer Protocol

### Introduction

- (a) This Protocol sets down a framework for the interaction between Members and Officers to seek to ensure that Members and Officers work together effectively and efficiently to conduct the business of the Council.
- (b) The conduct of Members is governed by the Council's Members' Code of Conduct and Localism Act Arrangements. The conduct of Officers is governed by the Council's Code of Conduct for Council Employees.
- (c) This Protocol does not replace or affect those Codes; it contains a framework relating only to the areas of interaction between Members and Officers. However, a breach of the provisions of this Protocol is likely to constitute a breach of the relevant formal Code which in turn could lead to appropriate formal action being taken.

### 1 The Respective Roles of Members and Officers

- (1) Members are elected and represent their constituents. Under the Council's Executive Arrangements, Members will perform roles on the Cabinet, Scrutiny Panel, Planning Committee, Licensing Committee, Local Plan Committee, Governance and Audit Committee, and Policy and Public Initiatives Panel, in addition to sitting as members of the Full Council. Some Members represent the Council upon outside bodies.
- (2) Officers are employed by and serve the whole Council. They provide the same level of support to the various functions of the Council, i.e. the Executive (Cabinet), scrutiny and regulatory. Officers advise the Council, the Cabinet, Panels and Committees. They implement decisions of the Council, the Cabinet, Panels and Committees and make decisions under powers delegated to them.
- (3) This protocol also applies to officers employed by the Council which deliver services and functions on behalf of partner organisations i.e. North Essex Parking Partnership and Colchester and Ipswich Joint Museum Service. Additionally, some officers have also been appointed as directors of the Council's commercial companies as a consequence of their employment by the Council and remain subject to this protocol even whilst acting in their directorship capacity.
- (4) Officers are responsible to their line manager and, ultimately, their Assistant Director. Assistant Directors are accountable to an Executive Director. Executive Directors are accountable to the Chief Executive. The Chief Executive is accountable to the whole Council. Some senior officers have specific statutory responsibilities, including Adrian Pritchard, Chief Executive, as the Head of Paid Service (Section 4, Local Government and Housing Act 1989), Andrew Weavers, Strategic Governance Manager, as Monitoring Officer (Section 5, Local Government and Housing Act 1989), and Paul Cook, Strategic Finance Manager as the Interim Chief Finance Officer (Interim Section 151, Local Government Act 1972).

## **2 Officers' Advice and Political Neutrality**

(1) Officer advice and support will be provided to: -

- Council Meetings;
- meetings of the Cabinet and any Committees established by the Cabinet;
- Portfolio Holders and other Cabinet Members (a greater degree of detail may be necessary for Cabinet Members who also carry portfolio responsibilities);
- meetings of Committees/Sub-Committees and Panels;
- Working Parties/Forums, etc;
- Chairmen/Vice-Chairmen of Committees and Panels;
- all Members of Council on Council business

Officers will provide support and advice to the executive, scrutiny and regulatory functions of the Council and will ensure that there is no conflict of interest in the advice given to each of the functions.

Officers will also provide advice and assistance to individual Members in respect of Council business, including issues raised by constituents.

- (2) Officers must not be requested to advise upon matters of party business or private matters.
- (3) All Officers must treat political Groups and individual Members in a fair and even-handed manner. Officers must maintain political neutrality and Members must respect this.
- (4) Senior officers may be invited to attend political Group meetings. The Chief Executive will decide whether such attendance may take place. If it is agreed that an Officer can attend a Political Group meeting, the Chief Executive will inform the other Group Leaders and offer a similar facility.
- (5) Political Group meetings fall outside the Council's decision-making process. Conclusions reached at such meetings are not formal Council decisions and so should not be relied upon as such.

## **3 Officers' Advice on Declarations of Interest**

- (1) Officers from the Council's Governance team will provide advice and information to Members on declarations of interests. However, Members will know the nature and extent of any interest they may have. It is the Member's responsibility, therefore, to decide whether any interest should be declared. Officers must, when requested to do so, respect Members' confidentiality when providing advice on declarations of interest but may otherwise draw to a Members' attention the need to declare a known interest.

## **4 Personal Relationships**

- (1) Close personal familiarity between individual Members and Officers can damage working relationships and prove embarrassing to other Members and Officers. There is the danger of favouritism being shown to a particular Member or Officer. There may be a risk that confidential information will be passed to a Member. Please refer to the Council's Social Media Policy.
- (2) For these reasons, such a personal familiarity is discouraged. Nevertheless, it is recognised that there may be occasions where it is unavoidable, particularly where family relationships or common interests (e.g. a club) arise.
- (3) A Member must declare to the Chief Executive and his/her respective Group Leader any relationship with an Officer that might be seen as influencing his/her work as a Member. This includes a family or close personal relationship. Similarly, the Officer concerned should notify their Assistant Director or, in the case of an Assistant Director, their Executive Director or, in the case of an Executive Director, the Chief Executive. In the case of the Chief Executive, then all Group Leaders should be notified. The Chief Executive and the relevant Executive Director will arrange for the relationship to be included in the formal Declarations of Interests provided by the Member and Officer.

## **5 Appointment of Officers**

- (1) Members must not take any part in the appointment of anyone to whom they are:
  - married;
  - a partner;
  - otherwise related;
  - a friend;
  - a business associate.
- (2) Members must ensure that Officers are appointed only on merit in line the Council's HR recruitment policies, with a view to their best serving the whole Council.

## **6 Undue Pressure**

- (1) A Member should not apply undue pressure on an Officer to do anything which he/she is not empowered to do, or which is against the Officer's professional judgement, or to undertake work outside normal duties or normal hours.
- (2) Similarly, an Officer must not seek to influence an individual Member to make a decision in his/her favour, nor raise personal matters to do with his/her job, nor make claims or allegations about other employees, except in accordance with any agreed Council procedure or in accordance with law. Members who receive any such approach from an Officer should advise the Chief Executive and/or the appropriate Executive Director immediately. The Council has formal procedures for consultation, grievance and discipline, etc. dealing with these matters.

## **7 Officers' Reports and Advice**

- (1) The named author(s) of a report to the Council or any part of its formal decision-making structure will always be fully responsible for the contents of it. Under overview and scrutiny arrangements, an Officer can be held responsible for the contents of his/her reports or advice and be required to answer for the advice given.
- (2) The Leader, Cabinet Member and/or Chairman of the relevant Committee or body may comment upon a proposed report, either during the original consultation process or following receipt of a draft agenda. The Officer concerned will give due consideration to such comments, consulting his/her relevant Executive Director or Assistant Director and other appropriate Officers as necessary. The Chief Executive will be the final arbiter upon the contents of any report.
- (3) A report will only be amended where the suggested amendment also reflects the professional judgement of the author of the report. Any remaining disagreement between the Cabinet Member/Chairman and the author of the report should be referred to the Chief Executive, or, if the author of the report is the Chief Executive, to the Monitoring Officer for resolution after consultation with the Leader.
- (4) Occasionally, Officers will need to express a professional view on a matter which may not support the view of the leading Group and/or the relevant Senior Officers of the Council.
- (5) Members should not put an Officer in a position where there would be a conflict between himself/herself and his/her line manager, Head of Service or Executive Director, nor should the Officer receive detrimental treatment as a consequence if the Member is aggrieved.

## **8 Officer Decisions made under Delegated Powers**

- (1) Officers may make decisions under powers delegated to them pursuant to the Schemes of Delegation or by specific authority from the Cabinet, a Cabinet Member, Panel or Committee. It must be recognised that it is the Officer, and not any Member, who takes the action and it is the Officer who is accountable for it.

## **9 Officers relationship with the Leader, Cabinet Members and the Chairman of the Scrutiny Panel**

- (1) The working relationship between Senior Officers and the Leader/Cabinet Members will be particularly close. Cabinet Members will have broad-ranging responsibilities. Officers may provide briefing notes, advice and information to the Cabinet Members in respect of reports or questions at Panel, Committee and Council Meetings. This relationship, however, must not:
  - compromise Officers' duties to all members of the Council;
  - be so close as to give the appearance of partiality on the part of the Officer;
  - undermine the confidentiality of any discussions with the Senior

Management Team or between Senior Officers and other Members;

- compromise Officers' professional responsibility to advise Members that a particular course of action should not be pursued;
  - abrogate Officer responsibility for action taken under Delegated Powers.
- (2) There will also be a close working relationship between senior officers and the Chairman of the Scrutiny Panel within the remit of scrutiny of executive functions.

## **10 Constructive Criticism/Complaints**

- (1) It is important that there should be mutual courtesy between Members and Officers. It is important that there are reasonable standards of courtesy and no Member or Officer should seek to take unfair advantage of their position.
- (2) Members and Officers should not criticise or undermine respect for the other at Council Meetings or at any other meeting they attend in their capacity as a Councillor or Council employee.
- (3) Members should not raise matters relating to the conduct or capability of an individual Council Officer or Officers collectively at meetings held in public.
- (4) Members when acting in their official capacity must comply with the Council's Social Media Policy and should not use social media to abuse, harass or undermine respect for officers. Officers should not use social media to criticise or undermine respect for Members and must comply with the Council's Social Media Policy at all times.
- (5) If a Member believes that he/she has not been treated with proper courtesy or has a concern about the conduct or capability of an Officer, he/she should raise the matter with the respective Assistant Director. If he/she is not satisfied with the action that has been taken in response to this, he/she may raise the matter with the Chief Executive who will look into the matter afresh. If the Chief Executive believes that there is a case to answer he/she may determine the action to be taken which might include the Council's formal disciplinary procedures. If the Officer concerned is the Chief Executive then the Member should raise the matter with their Group Leader, who should initially discuss the issue with the Chief Executive.
- (6) If an Officer feels that he/she has not been treated with respect or is concerned about any action or statement relating to him/herself or a colleague by a Member, or conduct of a Member, the Officer should raise the matter with his/her Assistant Director. If the Officer is not satisfied with any action that has been taken as a result, the Officer should raise the matter with his/her Executive Director. If there is a serious case to answer the Executive Director, with the agreement of the Chief Executive, may request that the matter be investigated through the Council's Governance and Audit Committee's procedures.
- (7) Where an Officer or Member is concerned about potential unlawful conduct of an Officer or Member, the Council's Whistleblowing Policy may also be relevant. Nevertheless, the procedure outlined in this protocol should be first reference where possible.

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

- (1) Each Member has the right to inspect and have copies of the reports, minutes and background papers relating to the public part of any Council, Cabinet, Panel or Committee agenda. However, Members do not have an automatic right of access to all documents relating to confidential or "Exempt" items on the agenda. These might include, for instance, information relating to employees, occupiers of Council property, applications for grants, contracts, industrial relations negotiations, legal advice and criminal investigations. These provisions are detailed in the Access to Information Procedure Rules.
- (2) In respect of such confidential information, Members will normally receive, or have access to all papers unless they are of particular sensitivity. A Member may have access to such sensitive documentation insofar as it is reasonably necessary to enable him/her to properly perform his/her duties as a Member of the Council. The relevant question to be asked is whether he/she needs to know the information to perform such duties.
- (3) A member of the Cabinet, Panel or Committee will have a need to know of the documentation relating to that body. In other circumstances, a Member will normally be expected to justify the request in specific terms and the motive for requesting the information will be relevant. The question as to access to the documentation will be determined by the Monitoring Officer.
- (4) Members of the Scrutiny Panel have the additional rights to access contained at Rule 22 of the Access to Information Procedure Rules.
- (5) Where a Member has a Disclosable Pecuniary Interest in a matter, the Member will only be entitled to the same rights of access to documentation as would apply for the public generally, although the Member would continue to receive the same documentation as is sent to other members of the Council.
- (6) Any Council information provided to a Member must only be used by the Member in connection with the proper performance of the Member's duties as a Member of the Council. Confidential information should not be disclosed, discussed with or released to any other persons. Such disclosure would be a betrayal of trust. In particular, Members should never disclose or use confidential information for the personal advantage of themselves or of anyone known to them, or to the disadvantage or the discredit of the Council or anyone else.
- (7) Any confidential information provided to Members should be clearly marked as such prior to its provision.
- (8) Further advice regarding Members' rights to inspect Council documents may be obtained from the Monitoring Officer.

## **12 Public Relations and Press Releases**

- (1) By law the Council is prohibited from publishing material which appears to be designed to affect public support for a political party. News releases are written by Officers but they may contain quotations from a Member. Such news releases are issued on behalf of the Council and it would not, therefore, be appropriate when repeating quotations from Members to indicate their

party political affiliation. The aim will be for the news releases to be objective, factual and informative. The Council has also adopted a guide to pre-election publicity which provides advice upon publicity and activities during a pre-election period.

- (2) The Council will abide by the National Code of Recommended Practice on Local Authority Publicity.
- (3) For detailed guidance please refer to the Council's Media Protocol.

### **13 Council Publications**

- (1) The Council's range of e-magazines shall remain politically neutral. They may contain quotes from Portfolio Holders in line with Council policy. Reports of decisions made shall be those of the Council represented as the body corporate.
- (2) Publications issued by Service Groups may contain quotations from Cabinet members in line with Council policy on the matter. Where policy has yet to be determined, a Cabinet member should not indicate his/her preference. If the Council has no policy on a particular matter and a Cabinet member wishes to comment, the same opportunity must be made available to Shadows.

### **14 Member Support Services**

- (1) The Council provides a range of support services, including stationery, postage and an e-mail address to enable Members to carry out their duties. These may only be used on Council business, such as correspondence between Members or Members and Officers; or in response to queries raised by local people. They must not be used for any party political, mailing list or election purposes whatsoever. Members must not ask Officers to type, photocopy or otherwise process any party political or election material.

### **15 Correspondence**

- (1) Unless a Member or Officer requests confidentiality, it is to be assumed that correspondence between a Member and an Officer is not confidential and may be shown to others. If, in an Officer's view, correspondence between an individual Member and an Officer is of interest to other Members, to keep them fully informed, it should be made clear to the original Member that copies could be sent to other Members.
- (2) Where issues are raised by, or with, individual Members relating to a matter of general interest in a Borough Ward, as it is in the best interests of the Council to ensure that all Members are properly informed of general issues in their Ward, copies of correspondence will only be sent by agreement of the individual Member.
- (3) Officer 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 (e.g. representations to a Government Minister) for a letter to be signed by a Member, but this should be the exception rather than the norm.

### **16 Involvement of Ward Members and MPs**

- (1) Information regarding activities in particular Ward should, when appropriate, be copied to the Ward Member(s) and Essex County Council Divisional Member(s) for information. Ward Members 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.

- (2) If an Officer calls a meeting upon a local issue with or including Ward Members, the Officer will invite all Members for the Ward(s) in question.
- (3) If any of the Members of Parliament that represent the borough are involved in the local issue, the Officer at his/her discretion may invite the relevant MP's to the meeting in addition to the Ward Members. If the Officer considers this to be inappropriate for any reason he/she may meet the MP separately.
- (4) If a Ward Member calls or requests a meeting upon a local issue at which an Officer or Officers is/are requested to be in attendance, the Officer(s) will be required to attend only if all the Members for the Ward have been invited to attend, or are agreeable to the meeting taking place, and if the subject matter of the meeting is not politically controversial.
- (5) If a 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 criteria govern the Officer's attendance as in paragraph (4) above.
- (6) Meetings with Ward Members and/or MP's 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.

## **17 Ministerial Visits**

- (1) If an Officer is made aware that a visit will be made to the Borough by a Minister of Her Majesty's Government (whether at the invitation of the Borough Council or otherwise), the officer shall advise Group Leaders of the visit together with any input required from Members or officers of the Council. Consideration shall be given to inviting the Mayor, the Leader, the relevant Portfolio Holder, other Cabinet Members, Shadow Spokespersons and Ward Councillors.
- (2) Where a visit to the Borough by a Minister of Her Majesty's Government is within the control of the Council, the Member of Parliament in whose constituency the visit is to take place, shall be invited to attend.

## **18 Procedure for dealing allegations of breaches of this Protocol**

- (1) Any allegations that a Member has not complied with this Protocol may be referred to the Governance and Audit Committee who will determine the issue. One of the Council's Independent Persons appointed under the Localism Act 2011 will be invited to attend and advise the Committee (but not vote).
- (2) Any allegations that an Officer has not complied with this Protocol will be dealt with in accordance with the Council's Human Resource procedures.
- (3) This Protocol will be reviewed annually by the Governance and Audit Committee