

Section 3 Protocol on Member/Officer Relations

A. INTRODUCTION

1. Purpose of the Protocol

- 1.1 An effective working relationship between members and officers is critical to the successful operation of the Council's business and to maintaining confidence in the machinery of local government in Blackburn with Darwen.
- 1.2 The purpose of this protocol is to guide members and officers of the Council in their relationships with one another. It is not intended to be prescriptive or comprehensive and seeks simply to offer guidance on some of the issues, which most commonly arise.

2. Status of the Protocol

- 2.1 This Protocol has been endorsed by the Council's Standards Committee and approved by Council.

3. Roles and Responsibilities – Elected Members

- 3.1 Members are elected democratically. It is their policies, ideas and decisions which people vote for. Members set the core values of the organisation, agree a policy framework, set the corporate goals and promote the Council in all its work. Members are also the key channels of democratic accountability and scrutiny ensuring that Officers uphold the values of the organisation and deliver those policies that have been determined by the organisation. Members are the advocates for their constituents and deal with individual casework. Members are responsible for making the most senior appointments in the Council through the Chief Executive and Chief Officer Employment Committee.
- 3.2 Members are responsible to the electorate and serve only so long as their term of office lasts.

4. Roles and Responsibilities - Officers

- 4.1 The role of officers is to deliver services according to the policies and requirements set by Members, to draft policy proposals which accord with the overall framework set by members, to give professional advice in the course of policy development and to manage the organisation.
- 4.2 Directors are responsible for appointments of staff below Chief Officer level. Officers are accountable to their Director. They work to the instructions of their Director and not to individual members - whatever office a Member might hold.
- 4.3 Officers are responsible for operational delivery of services and Members should not interfere with this. For example in relation to procurement of contracts matters whilst members are responsible for overall strategy and oversight of procuring contracts they should not attempt to influence the outcome of the procurement process, unless specifically agreed to be part of the evaluation panel. If they are aware of a local provider's capable of meeting Council requirements they can pass this information to

the relevant procuring officer but should not attempt to influence the process any further.

B. LEGITIMATE EXPECTATIONS

1. What members can expect of officers

Members can expect officers:

- To do their job effectively and efficiently
- To strive to provide services which offer best value
- To behave in a manner which accords with the standards set by the Council
- To be helpful, respectful and courteous
- To assist members in carrying out their role as elected members (but not in any party political or campaigning activity, or with private business)
- To deal with members' enquiries fairly and efficiently
- To be open and honest with members.
- To work with all members equally and fairly
- To act lawfully
- To give advice or recommendations based on reasoned options
- To ensure that members have all the information necessary to make informed judgments
- To maintain confidentiality where it is proper for them to do so
- Not to canvass members or otherwise seek to gain favour from them for personal or career advantage
- To have regard to social hours and generally to be sensible about contacting members at potentially inconvenient times, unless in an emergency or otherwise agreed.
- To remember that they are employed by Blackburn with Darwen Council as a whole and not by any part of the Council or individual member

2. What officers can expect of members

Officers can expect members:

- To accept that officers are accountable to their Manager
- To be helpful, respectful and courteous to officers
- Not to become involved in the day to day management of the Council
- To accept that officers act independently of political bias
- To fully consider advice and recommendations for the purpose of making informed judgments
- Not to ask officers to breach Council policy or procedures, or to act unlawfully, or outside the terms of their job
- Not to exert influence or pressure, or request special treatment,
- Not to request unauthorised access to resources or information held by the Council
- To treat officers in a reasonable manner
- To be open and honest with officers
- To act lawfully and to maintain confidentiality when appropriate to do so
- To remember that Officers have a duty to support all parts of the organisation
- To respect that officers have private lives and not to contact them outside normal working hours, or at home, unless in an emergency, or if the officer is officially working from home, or otherwise agreed.

C. SPECIFIC GUIDANCE

1. Officer/Member relationships

Personal relationships

- 1.1 It is clearly important that Senior Officers should have a close working relationship with Executive Members, opposition Group Spokesmen, Scrutiny Committee Chairmen and other senior officers. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the individual's ability to deal impartially with others.
- 1.2 Members must not sit on a Council body or assume an Executive role responsible for any officer with whom they have a close personal relationship.

Members' Constituency Role & Individual Officers

- 1.3 A member may be asked for advice and support by an officer who is one of their constituents. Officers are entitled to seek such assistance in the same way as any other member of the public. However, members should be careful not to prejudice the Council's position in relation to employment matters in respect of an officer.

Dealings with officers

- 1.4 Members, as citizens, will deal routinely with officers of the Council. However, when acting as Councillors, members should take care not to place officers (and in particular officers with less experience on lower grades) in a difficult position for example by seeking information from them which is not in the public domain or by requesting special treatment for themselves or another person.

Giving Instructions to Officers

- 1.5 Members should not give instructions to staff unless they are authorised to do so under the Council's Constitution. Any such instructions should be addressed to the relevant Chief Officer.

Complaints about officers or services

- 1.6 Members have the right to criticise reports or the actions taken by officers, but they should always:
- avoid personal attacks on officers
 - ensure that criticism is constructive and well-founded.
- 1.7 Members should avoid undermining respect for officers at meetings, or in any public forum including through the press. This would be damaging, both to effective working relationships and to the public image of the Council. It would also undermine the mutual trust and courtesy that is an essential element of a well run authority. It is important to note that this requirement is not intended to prevent members from undertaking polite but robust and probing scrutiny of the work of Officers.
- 1.8 Complaints about officers or Council services should be made to the Director of the service where the member feels the fault lies.

Officers and Whole Council

- 1.9 Officers are required at all times to serve the whole Council and will need to exercise judgement in fulfilling this obligation. Members must recognise this obligation on officers.
- 1.10 Directors are responsible for the contents of all reports submitted in their name. The advice contained in such reports is independent and members must not seek to suppress or amend any aspect of such advice.

2. Support to Members and Party Groups

Equipment, accommodation and staff resources

- 2.1 Members are provided with ICT (information and communication technology) equipment to enable them to better perform their policy and constituency role as elected members.
- 2.2 Members are also provided with accommodation sufficient for their needs.
- 2.3 Members should not use – and officers should not provide - such equipment and support services in connection with party political or campaigning activity or for purposes not related to Council business.
- 2.4 Where it would otherwise cause undue inconvenience the Council may permit Members to use equipment for personal as well as Council business. This permission may extend to the use of Personal Computers, mobile phones etc. Members who use such equipment on personal business must abide by any specific conditions attached to such usage including conditions as to payment and/or compliance with Council's IT and data policies.
- 2.5 All requests for support which require staff resources will be subject to the request not being unreasonable, not placing undue demands on resources and there being sufficient resources available to meet the request.
- 2.6 Officer support which is made available is to be used to support Council business only and not for general party political activities.

Officers and Political Party Group Meetings

- 2.7 It is usual practice for officers to provide support for individual party groups and there is a common understanding that the Chief Executive and Directors will ensure that such support is provided. However, no individual Officer can be *required* to attend a political group meeting or to write a report for such a meeting.
- 2.8 Officer support to individual political groups must not extend beyond providing information in relation to matters of Council business. Officers must not be involved in advising on matters of party business. Officers should not be expected to be present when matters of party business are being discussed.
- 2.9 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. Officers are more likely to feel unable to attend such meetings. Where they do attend they may not be able to provide the same level of

information and advice as they would to a member only meeting and in certain circumstances may feel constrained to refuse to give advice.

- 2.10 When Officers attend such meetings the members present are responsible for the proper behaviour of non-Members present.
- 2.11 Officers will respect confidentiality in respect of issues discussed at Group meetings. If non-Members are present then Officers must be careful not to discuss any confidential information as non-Members will not be bound by the same duties of confidentiality. Members should not expect Officers to disclose confidential information to non-Members.

Meetings with Individual Members

- 2.12 Group leaders, Executive Members, Committee Chairs and Vice Chairs and Opposition Spokespersons are entitled to private and confidential briefings from a Director on matters of policy which have already been or may be discussed by the Council or which are within its decision-making process. Normally such briefings will be organised on a Portfolio basis but separate meetings may be arranged with individual Directors where appropriate.
- 2.13 Officers will respect confidentiality in respect of issues discussed at such meetings.

3. Information Sharing

Local Information

- 3.1 It is essential that members should be fully informed about matters on which they may be required to make decisions or which affect their Wards.
- 3.2 Directors must ensure that all relevant staff are aware of the requirement to keep local members informed of issues affecting their ward and that the timing of such information allows members to contribute to any proposed decisions.
- 3.3 If a public meeting is organised by the Council to consider a local issue, all the members representing the Wards affected should be invited to attend the meeting.
- 3.4 Similarly, whenever the Council undertakes any form of consultative exercise affecting a particular Ward or Wards, the local Ward members should be notified at the outset of the exercise.

Information Sharing with Individual members or Political Groups

- 3.5 Individual members may request any Director to provide them with factual information. There is much information which will be freely shared with members. However, if a Director considers the cost of providing the information requested - or the nature of the request - to be unreasonable, he/she may decline to provide that information unless the Member establishes a legal right to that information. Any requests made for information shall be kept confidential.
- 3.6 The legal rights of members to information are contained within statute, the Constitution and in common law. The law in relation to information sharing is complex. This section provides an overview of some key principles. It is not intended to be a detailed examination of the specific legal provisions.

- 3.7 In summary, as members of the public, members have the right to see agendas, reports and background papers relating to meetings of the Council and its Committees even where they are not members of the Committee in question. However, this right does not extend to seeing papers which contain confidential or exempt information such as information relating to individual service users or information which is commercially confidential.
- 3.8 Under the Council's Constitution these same rights apply to matters to be dealt with by the Executive Board. In addition members have the right to see other documents which relate to business to be transacted at Committee or the Board. Certain confidential and exempt information is excluded from this right.
- 3.9 Members also have a right to see information relating to any decision of an individual Executive member once the decision has been made. Once again certain confidential and exempt information is excluded from this right.
- 3.10 Under common law principles Members have the right to access information held by the Council where it is reasonably necessary to enable the Member to properly perform their duties as a Member. This is known as the "Need to Know". This means that information must not be used for party political purposes. The common law "Need to Know" is the prima facie right of Members to inspect documents of the authority which exist as Members are under a duty to keep themselves informed of Council business which relate to their role as elected representatives. Thus, this right applies to Members who do not have statutory rights to exempt or confidential information and to other documents held by the Council under local government legislation or the Freedom of Information Act 2000.

For example, a Member is likely to have a prima facie "Need to Know" where they have a legitimate Ward problem and needs access to the documents that are relevant to that specific problem. Also, for example, an Executive Member whose Portfolio covers the matter in question and they need to be aware of what is occurring for the purpose of their Executive position.

Access to information on the basis of a 'Need to Know' does not exist where the Member is considered to be "fishing" for information or seeks access for an ulterior/improper purpose (e.g. for a private purpose). Case law has established that mere idle curiosity as to what is in the documentation will not be sufficient. It should be noted that some material (for example if commercial sensitive) may be redacted from information that is disclosed, if this does not affect the ability of a Member to exercise their role as an elected representative.

There will also be a range of documents which, because of their nature are either not accessible by Members (such as the personal records of an individual) or are accessible only by the political group forming the administration and not by the Members of other political groups. An example of this latter category would be draft documents compiled in the context of emerging Council policies and draft Committee reports, the premature disclosure of which might be against the Council's and the public interest. 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 political 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 political group. It is for the Director of the Department which holds the document in question, to determine whether an individual member has a need to know. The Director may consult the Deputy Director, Legal & Governance in particular cases of difficulty.

- 3.11 In many cases a need to know can be presumed. However, where members wish to see documents containing confidential information, that request will need to be specifically justified if the information is to be provided.
- 3.12 Where confidential information has been shared it must only be used by the Member for the purpose for which it was provided (i.e. in connection with the proper performance of the Member's duties as a Member of the Council). It should not be circulated without the approval of the relevant Director. Failure to comply with this rule may breach the Code and, in certain circumstances may be a criminal offence.
- 3.13 There are separate rules under the Local Audit and Accountability Act 2014 which give members (as well as residents and journalists) the right to information about the Council's finances.
- 3.14 Where a Member has a financial or personal interest in a matter the Member will only be entitled to the same access as would be the case for a private individual. In these circumstances, the Member must make it clear that they are acting in their private capacity and not as a Member.

Information Sharing and Scrutiny

- 3.14 Scrutiny Committees have additional rights to information which are set out in the Access to Information and Decisions and Attendance at Public Meetings Rules within the Constitution. Briefly these rules enhance individual members' rights so as allow the Committee to have access to documents which contain information where that information is relevant to an action or decision which is being scrutinised or is within the Committee's work programme. This provision allows the Committee to have access to confidential or exempt information.
- 3.15 When a decision has been subject to call in, the relevant Director should produce a pack of the documents relevant to the decision which may be accessed by members of the Scrutiny Committee. Where that pack would be very large the Director should attempt to identify the most important documents and draw Members attention to these.

4. Correspondence

- 4.1 Correspondence, including e-mails, between an individual member and officer, should not normally be copied by the officer to any member, unless the member who initiated the correspondence copied it to other members in which case the officer should normally copy his correspondence to those other members.
- 4.2 Members can expect Officers to treat their correspondence with the utmost discretion. However, Officers and particularly more junior officers may need to seek advice on answering Members' queries and Directors need to be able to monitor the quality of information being supplied. For that reason correspondence may, where necessary be copied by an Officer to his /her Manager, Director, the Director of Finance, the Deputy Director, Legal & Governance, or the Chief Executive but should not normally be circulated more widely.

5. Members roles in representing individual citizens

5.1 Members should not normally appear before a quasi-judicial body administered by the Council to represent an individual citizen. Note separate arrangements are in place to facilitate representation for Planning & Highways Committees.

5.2 If a Member proposes to attend a meeting between an officer and a citizen, they should advise the appropriate Chief Officer in advance of this intention.

6. Members involvement in respect of Family members and social care matters

6.1 In the event that any Member's relative becomes the subject of any Policies/Procedures/Applications related to the conduct of the Council's social care responsibilities the following protocol is to be observed to allow the member to fulfil their family role aside other citizens of the Borough whilst ensuring they do not compromise their role as Member's.

- 1 The Member should notify the Monitoring Officer or relevant Chief Officer (DCS or DASS) and may ask for advice or clarity.
- 2 The Member must not seek to influence the Officers/Members who are conducting the proceedings on behalf of the Council – and approved processes will be followed in the same way as for any other citizen of the Borough. (See Code of Conduct references in Guidance – Appendix A).
- 3 At all times during and after the conclusion of the matter, the Member must behave in accordance with The Code of Conduct.
- 4 Dependent upon the particular circumstances of the matter and the legislative framework, the respective Chief Officer may or may not be able to share further information with the Member involved.
- 5 Dependent upon the nature of the matter, a member may request to be temporarily relieved of individual portfolio or committee/sub-committee responsibilities should they identify a potential conflict of interest.

Further information is available via a Guidance note for Members from the Monitoring Officer approved by the Standards Committee on 8th January 2015 and is attached as Appendix A to this Protocol.

7. Public statements and dealings with the media

- 7.1 Officers responding to requests from the media must do so in accordance with the corporate media protocol.
- 7.2 Officers will not assist in party political publicity and all publicity issued by the Council will abide by the provisions of the Local Government Act 1986 and the Code of Conduct issued under the Local Government Act 1988.
- 7.3 When making public statements on matters affecting the Council officers should follow the following principles:
 - Statements should be made without political bias;
 - Statements should not be made where they could reasonably be regarded as bringing the Council into disrepute;

Officers should not normally express a view in public as to decisions which members ought to take. This principle does not, of course, prevent officers giving professional advice to decision making bodies. It is also not intended to prevent officers giving advice in respect of planning applications and similar matters.

APPENDIX A
ADVICE NOTE FOR MEMBERS/OFFICERS
INVOLVEMENT IN RESPECT OF FAMILY MEMBERS AND SOCIAL CARE
MATTERS

Introduction

In the event that any Member's relative becomes the subject of any Policies/Procedures/Applications related to the conduct of the Council's social care responsibilities the following protocol is suggested be observed to allow the member to fulfil their family role aside other citizens of the Borough whilst ensuring they do not compromise their role as Member's.

- 1 The Member should notify the Monitoring Officer or relevant Chief Officer (DCS or DASS) and may ask for advice or clarity.
- 2 The Member must not seek to influence the Officers/Members who are conducting the proceedings on behalf of the Council – and approved processes will be followed in the same way as for any other citizen of the Borough. (See Code of Conduct references below).
- 3 At all times during and after the conclusion of the matter, the Member must behave in accordance with The Code of Conduct.
- 4 Dependent upon the particular circumstances of the matter and the legislative framework, the respective Chief Officer may or may not be able to share further information with the Member involved.
- 5 Dependent upon the nature of the matter, a member may request to be temporarily relieved of individual portfolio or committee/sub-committee responsibilities should they identify a potential conflict of interest.

If these arrangements are followed, this protects both the Council and the Member from potential challenge.

More background information:

(i) The Council

For example, looking at social case matters - The Council has certain statutory duties it must fulfil which it must do so with no favour to one citizen over another and at all times **act in the best interests** of the 'vulnerable adult' or 'child' (depending on the type of case). Clearly it must also **be seen to act all times** be act in the best interests of the 'vulnerable adult' or 'child' (depending on the type of case).

(ii) The Member

Clearly the member has a family duty and expectation placed upon them and this can be a very emotional and personally distressing time on occasions. This family event however may come into conflict with their role as Member given the duties placed upon the Council only briefly outlined in example in (i) above.

It would be very easy for the member to find themselves in direct conflict with the Code of Conduct if they attempt to influence (or even give the impression of seeking to influence) any formal proceeding the Council is carrying out under its statutory obligations.

The Members Code of Conduct is quite explicit in parts in this respect Paragraph 2 (See Constitution) refers:-

"2 - Members and co-opted members must behave according to the highest standards of personal conduct in everything they do as a member. In particular they must observe the following principles of conduct, some of which are set out in law.

2.1 – Selflessness – Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person

2.2 – Honestly and Integrity – Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour

2.7 – Respect for others – Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority’s statutory officers, and its other employees.

2.8 – Duty to uphold the law – Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

2.9 – Stewardship – Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

2.10 – Leadership – Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.”

The current Protocol on Member/Officer relations is also very explicit (see Constitution):

“Members can expect officers to:

To do their job effectively and efficiently

To act lawfully

To maintain confidentiality where it is proper for them to do so

Officers can expect of members:

Not to become involved in the day to day management of the Council

Not to ask officers to breach Council policy or procedures, or to act unlawfully, or outside of the terms of their job

Not to exert influence or pressure, or request special treatment

Not to request unauthorised access to resources or information held by the council

To act lawfully and to maintain confidentiality when appropriate to do so”

What else could we do to help the member and support the protocol being applied reasonably?

It would be advisable to protect the Member and Council further, to instruct another local authority to conduct the case matter in such situations like this example if they arise. This may also include should the matter require legal support, to instruct outside Council ensuring there can be no accusations of the Member not following the Code of Conduct by exerting influence on staff and also protect the social work employees from accusations that they only made case assessment decisions as they were aware of the member family relationship.

