

Advice to Councillors – 5th December 2016

Dear Councillor,

During the recent 'bitesize' training events the question of 'references' requested by members of the public from Councillors was raised and I was asked to provide some guidance given that Members often feel under pressure to provide reference for people in a variety of circumstances.

This could be for a job the person is applying for, a character reference related to another type of application or something more direct like, because a person is due to attend court for whatever reason.

In the first instance if approached Councillors should reflect carefully on the requirements of the Members Code of Conduct as set out in the Council's Constitution. The General principles of which are reproduced below:

“General Principles of Conduct for Members and Co-opted Members

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.

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

Honesty 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.*

Objectivity *Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.*

Accountability *Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.*

Openness *Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.*

Personal Judgement *Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.*

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.*

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.*

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.*

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.“*

Councillors when approached for a reference should therefore reflect on their wider role as a Councillor and other responsibilities that come with that role. This was recently highlighted

during the Corporate Parenting Training in November when some members indicated they had been approached on occasions to 'support' one of the parties (mum, dad or other family member) in an ongoing social care matter. Members were reminded that there is specific advice and guidance in the Constitution which assists in this regard which would facilitate their rejection of such an approach. In addition this guidance also covers circumstances where a councillor's own family or friends may be involved. For ease of reference, this advice and guidance as approved by the Council's Standards Committee last year is attached to this e-mail.

Please remember there is **normally no legal obligation to provide a reference or testimonials.**

If however you are requested to do so, and you are minded to provide such a reference you should ensure you know what the reference is going to be used for – to avoid your reference being taken out of context, or used for other purposes.

You also need to consider in what capacity you are being asked to provide the reference given our experience is that the requestor is obviously in 99% of cases requesting you to provide a reference because of your status as a Councillor. This automatically brings with it the responsibility to take account of the Code of Conduct for Members and your responsibilities as a Councillor related to Council Policies and Procedures.

Also bear in mind other aspects of providing references especially the need to be accurate, fair and reasonable.

Within the Code of Conduct you can see that you have a duty of care to exercise reasonable skill and care in the preparation of a reference. If this is not done adequately, the person who requested the reference and/or the organization to whom the reference has been provided could bring a claim potentially of Negligence – where reasonable care is not taken, Defamation – where malicious information has been imparted, or Deceit – where a false statement is knowingly made.

Golden Rules

- That the reference is honest and the facts are correct.
- That it is for a specific reason and is not an "open reference", to be used on an ad-hoc basis i.e., more frequently referred to as a character reference which is given openly to the subject of the reference.
- That it is not being used for a purpose in conflict with your role as a Councillor

Monitoring Officer

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 Councillor'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 Councillor 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 Councillor 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.