



**FAREHAM** BOROUGH  
COUNCIL

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## **CODE OF PRACTICE – PROTOCOL FOR MEMBER/OFFICER RELATIONS**

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## PROTOCOL FOR 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 in such a way as to ensure the smooth running of the Council.
- 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 that most commonly arise. It is hoped, however, that the approach that it adopts to 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. If the advice is followed it should also ensure that members receive objective and impartial advice and that officers are protected from accusations of bias and any undue influence from members.
- 1.4 This Protocol also seeks to reflect the principles underlying the respective Codes of Conduct that 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 The Council's Code of Conduct for Members contains the following general obligations:

(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

Both Councillors and officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give advice to Councillors and the Council, and to carry out the Council's work under the direction and control of the Council, their committees and sub-committees.

Mutual respect between Councillors and officers is essential to good local government. Close personal familiarity between individual Councillors and officers can damage this relationship and prove embarrassing to other Councillors and officers.

- 1.6 In line with the Code's obligation "to treat others with respect", it is important that any dealings between members and officers should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position.
- 1.7 Members should not become personally involved in or raise matters relating to the conduct or capability of a Council employee or of employees collectively at meetings held in public. This is a long-standing tradition in public service. Employees have no means of responding to criticisms like this in public. If members feel they have not been treated with proper respect and courtesy, or have any concern about the conduct or capability of a Council employee, they should raise the matter with the Director or Chief Officer of the department concerned if they fail to resolve it through direct discussion with the employee - and then withdraw from the matter. The Director or Chief Officer will then look into the facts and report back to the member. If the member continues to feel concern, the member should then report the facts to the Chief Executive Officer who will look into the matter afresh.
- 1.8 Members should not become personally involved in matters relating to actual or potential disciplinary proceedings concerning an individual officer.
- 1.9 Where an officer feels that he or she has not been properly treated with respect and courtesy, the matter should be raised with his or her Line Manager, Director, Chief Officer or Chief Executive Officer as appropriate, especially if they do not feel able to discuss it directly with the member concerned. In these circumstances the Director, Chief Officer or Chief Executive Officer will take appropriate action either by approaching the individual member and/or group leader.

1.10 The Council's policy statement on Dignity at Work applies to officers and members equally.

## **2. Statutory Officers**

2.1 Councillors and Officers recognise that there is a requirement to appoint particular officers to undertake certain statutory functions.

2.2 Notwithstanding any provisions in this Protocol, the Council confirms that in all arrangements for relationships between Members and Officers and advice from Officers, the statutory responsibilities of the following will not be compromised:-

- Head of Paid Service (Chief Executive Officer) – appointed under Section 4 of the Local Government and Housing Act 1989, with the responsibilities defined within that Act for the overall corporate management and operational activities (including those relating to staff) of the Council.
- Chief Finance Officer (Director of Finance and Resources) – appointed under Section 151 of the Local Government Act 1972 with overall responsibility for the conduct and legality of the Council's financial administration.
- Monitoring Officer (Solicitor to the Council) – appointed under Section 5 of the Local Government and Housing Act 1989 with responsibility for ensuring the lawfulness of any proposals, decisions or omissions of the Council and for the promotion and maintenance of high standards of conduct within the Council.

2.3 In undertaking their functions, the Statutory Officers referred to at paragraph 2.2 above, will ensure the impartiality of any advice or instruction given.

2.4 The Council's Code of Conduct for members contains the following obligations:

(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

(a) your authority's chief finance officer; or

(b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

### **3. Officer Advice to Party Groups**

- 3.1 It must be recognised by all officers and members that in discharging their duties and responsibilities, officers serve the Council as a whole and not exclusively any political group, combination of groups or any individual member of the Council. This will apply no matter what the decision-making structure of the Council.
- 3.2 There is now 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 called upon to support and contribute to such deliberations by party groups but must at all times maintain political neutrality. All officers must, in their dealings with political groups and individual members, treat them in a fair and even-handed manner.
- 3.3 The support provided by officers can take many forms, ranging from a briefing meeting with the Executive Leader, another member of the Executive, a Chairman or Spokesman prior to a formal meeting to a presentation to a full party group meeting. Whilst in practice such officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.
- 3.4 Certain points must, however, be clearly understood by all those participating in this type of process, members and officers alike. In particular:
  - 3.4.1 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;
  - 3.4.2 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
  - 3.4.3 Similarly, where officers 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 Executive or to the relevant Panel, Committee or Sub-Committee when the matter in question is considered.

- 3.5 Special care needs to be exercised whenever officers are involved in providing information and advice to a party group meeting that includes persons who are not members of the Council. Such persons will not be bound by the Code of Conduct for Members (in particular, the provisions concerning the declaration of interests and confidentiality) and the Council's own Standing Orders with Respect to Meetings. 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.
- 3.6 Any request for advice, together with the advice given to a political group or member will be treated with strict confidentiality by the officers concerned and will not be accessible to any other Political Group. It is acknowledged, however, that factual information upon which any advice is based will, if requested, be available to all political groups.
- 3.7 It must not be assumed by any Political Group or member that any officer is supportive of any policy or strategy developed because of that officer's assistance in the formulation of that policy or strategy.
- 3.8 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 or to anyone else outside the Council without the consent of the group.
- 3.9 Any particular cases of difficulty or uncertainty in this area of officer advice to party groups should be raised with the Chief Executive Officer who will discuss them with the relevant group leader(s).

#### **4. Support Services to Members and Party Groups**

- 4.1 The only basis on which the Council can lawfully provide support services (e.g. stationery, typing, printing, photocopying, 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 activity or for private purposes.

#### **5. Members' Access to Information and to Council Documents**

- 5.1 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 Director or Chief Officer or another senior officer of the Department concerned. In cases of doubt, officers in the Chief Executive Officer's Department should be asked for assistance.

5.2 Most Council information is available to all under the Freedom of Information Act. Where this is not the case, the legal rights of members to inspect Council documents are covered partly by statute and partly by the common law. Detailed advice regarding members' rights to inspect Council documents may be obtained from the Solicitor to the Council, but a general guide is set out in the appendix to this protocol.

5.3 Members may only use any information provided to them 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. This point is emphasised in the Code of Conduct for Members in the following terms:

You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

## **6. Officer/Executive Member/Chairman Relationships**

- 6.1 It is clearly important that there should be a close working relationship between the Executive Leader, members of the Executive, the Chairman of a Panel or Committee and the Director or Chief Officer and other senior officers of any Department that reports to the Executive or to that panel or Committee. 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. It is important that all members of the Council are able to feel confidence in the impartiality of officers.
- 6.2 The Executive Leader and members of the Executive or the Chairman of a Panel or Committee (or Sub-Committee) will routinely be consulted as part of the process of preparing an agenda for a forthcoming meeting. However it must be recognised that in some situations a Director or Chief Officer will be under a duty to submit a report on a particular matter. Similarly, a Director or Chief Officer or other senior officer will always be fully responsible for the contents of any report submitted in his/her name. Any issues arising between a member of the Executive or a Chairman and a Director or Chief Officer in this area should be referred to the Chief Executive Officer for resolution in conjunction with the Executive Leader of the Council or the Chairman, as appropriate.
- 6.3 In addition to the Chairman's briefing before any formal meeting, minority group representatives will be afforded the opportunity of a briefing, if required, through their appropriate spokesman.
- 6.4 In relation to action between meetings, it is important to remember that the law only allows members of the Executive and Officers to take decisions in line with Council policies, budgets and within the scheme of delegated powers.
- 6.5 At Executive, Panel, Committee and Sub-Committee meetings, a resolution may be passed, which authorises named officers to take action between meetings in consultation with a particular member. In these circumstances it is the officer, rather than the member, who takes the action and it is the officer who is accountable for it.
- 6.6 Where the Executive delegates a decision to one of its members then it is that member who is responsible, and accountable, for any decision and action taken.
- 6.7 Officers are accountable to their Director or Chief Officer and whilst officers should always seek to assist a member of the Executive, spokesman or chairman (or indeed any member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Director or Chief Officer.



## **7. Appointments**

- 7.1 Members should not make personal representations on behalf of any applicant for appointment or promotion by the Council or become involved in appointments other than for Chief Officers and their deputies as provided for in the Council's Officer Employment Standing Orders.
- 7.2 Any member taking part in a formal recruitment and selection process should as soon as possible declare an interest to the Chief Executive Officer where a particular applicant is known to him or her personally other than in the normal working relationship with the Borough Council.

## **8. Correspondence**

- 8.1 Correspondence between an individual member and an officer should not normally be copied (by the officer) to any other member. Where exceptionally it is necessary 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.
- 8.2 Official letters on behalf of the Council should normally be sent out over the name of the appropriate officer, rather than over the name of a member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to appear over the name of a member, but this should 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 over the name of a member.

## **9. Forms of Address to Councillors/Officers**

- 9.1 In the forum of a full Council meeting, or of the Executive, a Panel, Committee or Sub-Committee, or similar formal meeting, officers should address or refer to members as "Councillor...". In other situations, an officer may address an individual member by whichever form or name the member prefers and which the particular context indicates. Similarly, members should not address officers informally during meetings open to the public. Members and officers should always remember the parts of this Protocol which seek to avoid over-close familiarity and which promote mutual respect.

## **10. Involvement of Ward Councillors**

- 10.1 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. Where invitations are given by other organisations, through or in association with Council, for members to attend meetings, seminars or similar events, officers should use best endeavours to ensure Ward members and/or group leaders are invited as appropriate.

## **11. Ceremonial Events**

- 11.1 The Mayor, or in his or her absence the Deputy Mayor, will be the appropriate person to lead Council ceremonial events which are not specifically associated with a particular service. A similar arrangement is appropriate where the Council is invited to attend ceremonial events of other organisations which are not specifically associated with a particular service.
- 11.2 Subject to paragraph 11.1 above, the Executive Portfolio Holder is the appropriate representative for ceremonial events within the scope of their areas of responsibility. Where the Portfolio Holder is not available he / she may nominate another member.
- 11.3 Local members should always be informed of, and where possible, invited to ceremonial events taking place within their own wards.
- 11.4 Any member taking part in a ceremonial event must not seek disproportionate personal publicity or use the occasions for party political advantage bearing in mind that the member is representing the Council as a whole.

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

- 12.1 The Council's Public Relations Team serves the Council as a whole and must operate within the limits of the Local Government Act 1986 which prohibits the Council from publishing material which appears to be designed to affect public support for a political party. Officers draft press releases. They will often contain quotations (within the limits of the Local Government Act 1986) from the Executive Leader and Deputy Executive Leader of the Council or Executive Portfolio Holder for a particular service, the Chairman and Vice-Chairman of the Panel, Committee or Sub-Committee whose service is involved and from the Mayor and Deputy Mayor of the Council about ceremonial events. Such press 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.

## **APPENDIX TO PROTOCOL FOR MEMBER/OFFICER RELATIONS**

### **MEMBERS' RIGHTS OF ACCESS TO COUNCIL DOCUMENTS**

1. Members have a statutory right to inspect any Council document which contains material relating to any business which is to be transacted at an Executive, Council, Panel, Committee or Sub-Committee meeting. This right applies irrespective of whether the member is a member of the Executive, Panel, Committee or Sub-Committee concerned and extends not only to reports that are to be submitted to the meeting, but also to any relevant background papers. This statutory right does not, however, apply to documents relating to certain items which may appear on the agenda for meetings where discussion is or is likely to be in private. The items in question are those 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.
2. 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 and is based upon case-law.
3. 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 Director or Chief Officer whose Department holds the document in question (with advice from the Solicitor to the Council/Chief Executive Officer).
4. However, if a member cannot perform his or her duties as Councillor properly or effectively without access to certain documents, then there is likely to be a "need to know", which will be presumed.
5. 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.
6. Furthermore, there will be a range of documents which, because of their nature are either not accessible by members or are accessible

only by the political group forming the administration and not by the 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 disclosure of which prematurely might be against the Council's and the public interest.

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.
8. In the event of a dispute, the question will fall to be determined by the Executive or the relevant Panel, Committee or Sub-Committee, ie the body in connection with whose functions the document is held.
9. It is important to note that this statement of rights applies to all documents, howsoever they are held or stored, on paper media and files or by electronic means.
10. Finally, much information held by the Council is covered by the Data Protection Act, e.g. personal information concerning tenants of the Council, benefit applicants, personnel records, etc. This information may only be used for the purpose for which it is held and which is registered with the Data Protection Register. It is in this area that the "need to know" will need to be demonstrated most particularly and where access is likely to be most circumscribed.