

HEREFORDSHIRE COUNCIL CONSTITUTION

CODES OF CONDUCT AND PROTOCOLS

PROTOCOL FOR COUNCILLOR/OFFICER RELATIONS (BASED ON ADVICE FROM THE STANDARDS COMMITTEE)

1. Introduction

- 1.1 The purpose of this protocol is to guide Members and employees of the Council in their relations with one another.
- 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.
- 1.3 This protocol also seeks to reflect the principles set out for or underlying the respective codes of conduct which apply to Members and employees. The shared object of this code is to enhance and maintain the integrity (real and perceived) of local government and they, therefore, demand very high standards of personal conduct in respect of both employees and Members.
- 1.4 The protocol reflects good practice. It aims to provide an open and honest working relationship between Members and employees which ensures the delivery of the Council's statutory and other proper functions in a transparent and accountable way.

2. Principles

- 2.1 That the provisions of the Model Code of Conduct for Members apply to all Members. Breach of those provisions can be the basis for a complaint to the Standards Board for England or the Monitoring Officer. The employees Code of Conduct is part of the terms of conditions of their employment. Employees are accountable to their Line Manager and while employees will seek to assist any Member they must not be asked by Members to go beyond the bounds of whatever authority they have been given by their Line Manager.
- 2.2 Any dispute over any provision of this protocol in relation to employees should be referred in the first instance to the responsible Head of Service or the Chief Executive. If agreement cannot be reached the Chief Executive will seek to resolve the issue in conjunction with the Leader of the Council and/or the Leader of the appropriate party group. Issues relating to employee conduct will be dealt with under disciplinary procedures. Any unresolved dispute relating to a Member's conduct under this protocol will be determined by the Standards Committee.
- 2.3 This protocol is also read in conjunction with the the Planning Code and the Protocol on Hospitality and any other policies of the Council, for example the Whistleblowing Policy (Public Interest Disclosure) and the Harassment and Bullying Policy.

3. Members Code of Conduct

- 3.1 The relevant Authority's (General Principles) Order 2001 specified the principles which were to govern the conduct of Members. These are set out in the schedule to this protocol. However, particular attention is drawn to principle No. 7:

"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."

3.2 The Members Code of Conduct provides: -

General Obligations

A member must:

- (a) treat others with respect;
- (b) not do anything which may cause the Authority to breach any of the equality enactments (as defined in Section 33 of the Equality Act 2006);
- (c) not bully any person;
- (d) not intimidate or attempt to intimidate any person who is likely to be:
 - (i) a complainant
 - (ii) a witness
 - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member has failed to comply with the Members Code of Conduct;
- (e) not do anything which compromises or which is likely to compromise the impartiality of those who work for or on behalf of the Authority.

A member must, when reaching decisions:

- (a) Have regard to any relevant advice provided to them by –
 - (i) the Authority's Chief Finance Officer; or
 - (ii) the Authority's Monitoring Officer where that officer is acting pursuant to their respective statutory duties
- (b) Give reasons for those decision in accordance any statutory requirements and any reasonable additional requirement imposed by the Authority.

4. Employee Code of Conduct

4.1 The Employee Code of Conduct was drawn up broadly in line with the Local Government Management's Board Code of Conduct for local government employees. Any variations affect the conditions and circumstances of Herefordshire Council.

(1) Standards

Employees are expected to give the highest possible standard of service to the public and where it is part of their duties to provide appropriate advice to other employees and Members with impartiality and courtesy."

(2) Disclosure of Information

- (i) The law requires that certain types of information must be made available to Members, Auditors, Government Departments, Service Users and the public.
- (ii) Under the Local Government Act 1972 the public have a right to see certain information. In most circumstances these rights are related to Committee Reports and background documents
- (iii) Employees must not use any confidential information obtained in the course of their employment for personal gain or benefit nor shall they use it to pass onto others who might use it in such a way
- (iv) Only employees authorised by a Head of Service to do so may talk to the press or otherwise make public statements on behalf of their Service or Directorate. Generally an employee contacted by the press should refer the matter to the Communications Unit who will deal with it as appropriate.”
- (v) The Local Authorities Executive Arrangements (Access to Information) (England) Regulations 2000 provide additional rights of access to documents for Members of Overview and Scrutiny Committees

(3) Political Neutrality/Activities

- (i) Employees serve the Council as a whole. It follows, therefore, that they must serve all Members, not just the Members of any controlling group and must ensure that the individual rights of all Members are respected.
- (ii) Some senior employees will be expected within the Council's guidelines to advise political groups. These employees have a duty to advise minority groups as well as the majority group.
- (iii) Some employees who are normally those in more senior positions are in politically restricted posts and by law are prevented from taking part in certain political activities outside their work. Employees who are in this position should have been told of this in writing and of the rules about claiming exemption but any employee who is in doubt about their position should contact their Head of Service.

(4) Relationships

Some employees are required to give advice to Members as part of their job. Mutual respect between employees and Members is essential to good local government but close personal familiarity between employees and individual Members can damage the relationship and prove embarrassing to other employees and should, therefore, be avoided.”

5. Advice to Party Groups

- 5.1 No officer can be a Member of their employer local authority. Also, senior officers, except those specially exempted, cannot be a member of any other local authority or an MP. Nor can they speak or publish written work for the public with the apparent intention of affecting public support for a political party.

- 5.2 Because political groups are a feature of modern local government and have a role in the successful running of the Council, on occasion officers may be asked to provide support and assistance to political groups.
- 5.3 This support can take many forms, ranging from a briefing meeting with a Group Leaders or spokesperson, to a presentation to a full party group meeting. It is an important principle that such support is available to all political or party groups. In accordance with the Council's Code of Conduct for employees, officers must not be involved in advising any political group of the Council or attend any meeting without the express consent of their Director or the Chief Executive.
- 5.4 Certain points must however be clearly understood by all those participating in this type of process, Members and officers alike. In particular:
- (a) 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;
 - (b) 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;
 - (c) similarly, where officers provide information and advice to a political or 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 relevant Committee when the matter in question is considered; and
 - (d) Members often seek officers' assistance in drafting resolutions or amendments which they wish to move at a meeting. It is proper for an officer to advise on the wording of such a proposal to ensure it is accurate, practical and lawful but there can be no inference that the officer supports the substance or merits of the proposition.
- 5.5 Special care needs to be exercised whenever officers are involved in providing information and advice to a political or 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.
- 5.6 Officers must respect the confidentiality of any political or 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. It follows that whilst there is no reason why other such groups should not be aware that a Group has sought and received officer advice or be inhibited from requesting officer support themselves no political point should be made of that fact. Any particular cases of difficulty or uncertainty in this area of employee advice to party groups should be raised with the Chief Executive who will discuss them with the relevant group Leaders.

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6. Support Services to Members and Party Groups

- 6.1 The only basis on which the Council can lawfully provide support service (e.g. stationery, typing, printing, photocopying, transport, etc...) to Members is to assist them in discharging their role of 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, campaigning activities or for private purposes.

7. Members' Access to Information, Council Documents and Employee Advice

- 7.1 Members will need in the discharge of their duties to access information from employees, this will usually be most efficiently achieved through the Heads of Service or Directors who are able to provide an overview or direct the Member to the most appropriate employee. For individual cases Members may approach case officers, but junior staff are entitled to refer the Member to the responsible Service Manager or Head of Service.
- 7.2 Members who wish to obtain information from employees should request it as early as possible recognising that employees may require reasonable time to collate or research the information. Members will state any deadline for the provision of this information. This also applies where a Member wishes to obtain information to supplement a report after the agenda for a meeting has been issued.
- 7.3 Employees will make every reasonable effort to provide Members with accurate factual information and professional advice in a timely manner, unless this would exceed the officer's authority or there are lawful reasons to prevent disclosure of the information.
- 7.4 Members have the same statutory right as any member of the public to inspect any Council document which contains material relating to any business which is to be transacted at a Council or Committee meeting or a meeting of Cabinet and any relevant background papers. This right applies irrespective of whether or not the Member is a Member of the committee concerned or acting as a substitute. This right does not, however, apply to documents relating to items containing information which is exempt from publication. Correspondence held by the Monitoring Officer in relation to his/her duties is similarly exempt unless released by him/her in the interest of furthering any enquiry.
- 7.5 The common law right of Members is much broader and 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 to perform properly his/her duties as Member of the Council. This principle is commonly referred to as the 'need to know' principle and will be determined in the first instance by the particular Head of Service whose service holds the document in question. Any disputes may be referred to the Monitoring Officer whose decision shall be final. Written reasons will be provided on requests.
- 7.6 A member who requests to inspect documents which contain personal information about third parties will normally be expected to justify their request in specific terms.

- 7.7 A Member of one party group will not have a 'need to know' and, therefore, does not have a right to inspect any document which forms part of the internal workings of another party group and is in the possession of the Council or of an individual employee.
- 7.8 A member of an Overview and Scrutiny Committee of a Local Authority shall be entitled to a copy of any document which:
- (a) is in the possession or under the control of the Cabinet of that Authority; and
 - (b) contains material relating to: -
 - (i) any business that has been transacted at a private meeting or a public meeting of a decision making body of the Authority;
 - (ii) any decision that has been made by an individual Member of that Cabinet in accordance with Cabinet arrangements; or
 - (iii) any key decision that has been made by an officer of the Authority in accordance with Executive arrangements.
- 7.9 No Member of an Overview and Scrutiny Committee shall be entitled to a copy of such document or part of a document as contains exempt information or confidential information unless that information is relevant to an action or decision that he/she is reviewing or scrutinising; or which is relevant to any review contained in any programme of work of such a committee or sub-committee.
- 7.10 More detailed advice regarding Members' rights to inspect Council documents may be obtained from the Monitoring Officer (Head of Legal and Democratic Services, HOLD).
- 7.11 Any Council information is provided to a Member on the basis that it must only be used by the Member in connection with the proper performance of the Member's duties as a Member of the Council. This forms part of the Council's Data Protection requirements. This obligation for confidentiality is part of the Members Code of Conduct and is set out in paragraph 3 in it.

8 Relationships Between Officers and Cabinet Members/Chairs of Committees/Leader

- 8.1 It is important to the efficient discharge of the Council's functions that there should be a good working relationship between Members of the Cabinet, Officers, Heads of Service and Directors and between the Chair of a committee and the lead officer and other officers who deal with matters within the terms of reference of the body. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the employee's ability to deal impartially with other Members and other party groups.
- 8.2.1 Officer and Heads of Service frequently write reports having undertaken background research and professional and technical appraisals of proposals.
- 8.2.2 These reports are then presented by the Cabinet member with Portfolio, with the assistance of officers where necessary.

8.2.3 Members must accept that in some situations officers will be under a duty to submit an opinion or advice in a report on a particular matter. In those situations the officer will always be fully responsible for those elements of report submitted in the Member's name.

8.2.4 The principles set out in paragraph 8.3 and 8.4 below will apply to such elements of the report.

8.3 Where an officer wishes to consult a Cabinet Member or Chair as part of the preparation of a report to a decision making body within the Council's constitution, the following principles will apply. The Cabinet Member or Chair may ask the report author:

- (1) To include particular options;
- (2) To clarify the report by expanding, simplifying or re-phrasing any part of the report or including other particular information;
- (3) To check or correct any error or omission of any matter or fact including statements of summaries of policy or budget;
- (4) To check or correct any typing errors, omissions or duplications;
- (5) To check any estimate of costs or savings.

8.4 The Cabinet Member or Chair may not ask officers:

- (1) To exclude any option contained in the draft report;
- (2) To exclude or alter the substance of any statement in the draft report of any officers' professional opinion.
- (3) To alter the substance of any recommendations that compromises the officer's integrity or would result in illegality;
- (4) To check or correct any typing errors, omissions or duplications;
- (5) To exclude any report, comments or representations arising from consultations, publicity or supply of information to the community.

8.5 Certain statutory functions are undertaken by officers. Their reports on such matters are then their own full responsibility.

9. Local Members

9.1 You will be kept fully informed about significant issues which affect your ward or bodies on which you represent the Council. Officers will be alert to advise members at the earliest possible stage of relevant development proposals. Over and above this general responsibility the Head of Legal and Democratic Services will:

- notify a Member that a report on any such local matter is being tabled or discussed as soon as the decision to place that item on the agenda of a Committee is taken;
- ensure that this report is sent to the Member as soon as it is published.

- 9.2 You will be invited to any public meeting organised by the Council to consider an issue affecting your ward. You will be notified of any consultative exercise at the outset of the exercise proposed for your ward or on an issue affecting your ward.
- 9.3 You will, wherever practicable, also be notified of any visits by the Chairman or Vice-Chairman of the Council or Committee Chairmen or Cabinet Members to Council sites or establishments in your ward, except where these are purely courtesy visits.
- 9.4 You will be notified of all decisions taken by the Cabinet or by Cabinet Members affecting your ward.

10. Scrutiny Arrangements

- 10.1 Cabinet arrangements. However, these new arrangements raised particular issues for local authority employees because: -
 - (a) The advice which officers have given to the Cabinet, its Members or to any group may now be subject to scrutiny and examined by an Overview and Scrutiny Committee.
 - (b) Officers may have written reports for presentation by a Cabinet Member with Portfolio or provided advice to the Cabinet. Where such a decision is subject to Scrutiny by an Overview and Scrutiny Committee in their overview and scrutiny roles, or when a decision is called-in, an officer may provide information or advice to an Overview and Scrutiny Committee. Members must recognise that there is an inherent tension between these two roles. As circumstances change or more information comes to light, advice may reflect the difference.
 - (c) Overview and Scrutiny Committees or their members will need active assistance from officers if they are to perform their role of scrutinising the Cabinet effectively.

These factors will require understanding by Members of the role that officers have to perform.

11. Overview and Scrutiny

- 11.1 The scrutiny role of the Council is performed by Overview and Scrutiny Committees and Audit and Corporate Governance. Employees may need to attend an Overview and Scrutiny Committee to give evidence and assist it in its scrutiny.
- 11.2 Where an employee is required to attend before an Overview and Scrutiny Committee, to report to it or provide evidence for it, it shall be his/her duty to do so, or to provide an explanation as to why he or she is unable or unwilling to do so. If after considering his/her report the Overview and Scrutiny Committee insist on him/her providing the information requested he/she must do so.
- 11.3 Where an Overview and Scrutiny Committee has resolved to undertake a review it is the duty of Senior Officers to co-operate fully with the review or to arrange for the Head of Service or Director to act in their place. This duty extends beyond merely answering the Committee's questions and involves a requirement to assist the Committee in addressing the right questions and seeking the information which may be required to help them in their work.

11.4 Officers below of Service Manager level should not present such reports or assistance.

12. Publicity

12.1 The Council abides by the provision of the DETR Local Authority Publicity Code (April 2001).

12.2 Information on Council services will be produced in collaboration with the Communications Unit and will be impartial reflecting Council approved policy.

12.3 All news releases will be written and issued by the Communications Unit following consultation with the Head of Service and the Cabinet Member concerned.

12.4 Publicity will not be party political and will report on and reflect Council policy.

12.5 Media requesting political comments will be referred to the political group Leaders.

12.6 It is the intention of the Council to make public information available on the web site accessible to Members and residents as resources allow.

13. The Role of the Head of the Paid Service (Chief Executive)

13.1 The Chief Executive has a specific statutory function in relation to employees, appointment discipline, terms and conditions of employment and collective bargaining. Members will recognise and respect those responsibilities and duties.

**Herefordshire Council
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