

## Section 4 – Member/Officer relations code

### 5.4.1 Introduction and principles

- 5.4.2 The objectives of this protocol are 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 in a transparent and accountable way, and to foster good working relationships.
- 5.4.3 The council has adopted codes of conduct for both employees and members. The protocol reflects the principles underlying the two codes of conduct and the values of the council. The shared objective of these codes is to enhance and maintain the integrity (real and perceived) of local government and the codes, therefore, demand very high standards of personal conduct.
- 5.4.4 This protocol should be read in conjunction with the member and employee codes of conduct, the council's constitution and any guidance issued by the monitoring officer.
- 5.4.5 This protocol is to a large extent a written statement of current practice and convention. It seeks to promote greater clarity and certainty. If the protocol is followed it should ensure that members receive objective and impartial advice and that officers are protected from accusations of bias and any undue influence from members.
- 5.4.6 Given the variety and complexity of relations between members and officers, this protocol does not seek to be comprehensive. It is hoped, however, that the framework it provides will serve as a guide to dealing with a range of circumstances.

### 5.4.7 The role of members

- 5.4.8 Members have a number of roles and need to be alert to the potential for conflicts of interest which may arise between the roles. Where such conflicts are likely, members may wish to seek the advice of their group leader, the relevant senior officer, and/or the monitoring officer.
- 5.4.9 At all times members should be aware that the role they are performing may impact upon the nature of their relationship with officers and the expectations that officers may have of them.
- 5.4.10 Collectively, members are the ultimate policy-makers determining the core values of the council and approving the council's policy framework, strategic plans and budget.
- 5.4.11 Members represent the community, act as community leaders and promote the social, economic and environmental well-being of the community often in partnership with other agencies.
- 5.4.12 Every member represents the interests of, and is an advocate for, their ward and individual constituents. They represent the council in their ward, respond to the concerns of constituents, meet with partner agencies, and may serve on local bodies.

- 5.4.13 Some members have roles relating to their position as members of the cabinet, scrutiny committee, or other committee of the council. These roles are explained in more detail in the [functions](#) scheme and the [guide](#) to roles and responsibilities of councillors elsewhere in the constitution.
- 5.4.14 Some members may be appointed to represent the council on local, regional or national bodies.
- 5.4.15 As politicians, members may express the values and aspirations of the party political groups to which they belong, recognising that in their role as members they have a duty always to act in the public interest. Further guidance for members is available in the council's communications [protocols](#).
- 5.4.16 Members are not authorised to instruct officers other than:
- through the formal decision-making process;
  - to request the provision of consumable resources provided by the council for members' use;
  - to request service information or officer advice in accordance with this protocol.
- 5.4.17 Members are not authorised to initiate or certify financial transactions, or to enter into a contract on behalf of the council.
- 5.4.18 Members must avoid taking actions which are unlawful, financially improper, in breach of the council's own policies or procedures, or likely to amount to maladministration.
- 5.4.19 Members must have due regard to the impartiality and integrity of the council's statutory officers and its other employees, and do nothing to compromise it, e.g. by insisting that an officer change their professional advice.
- 5.4.20 Members should only become involved in commercial transactions at the formal decision making stage. When dealing with a commercial transaction members should be aware of the requirements of the [contract procedure rules](#) and relevant guidance.
- 5.4.21 When using council resources, members must ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate the functions of the council and any office of the council to which a member has been elected or appointed. Members may use council resources on council business (including setting up political group meetings or communicating with members of a political group on council business). A council email address will be provided and should be used for all communications made when carrying out council duties. Members should comply with relevant council policies and procedures when using council resources.
- 5.4.22 Members should not use council resources:
- (a) for the publication of material which, in whole or in part, appears designed to affect public support for a political party. This includes campaigning leaflets and correspondence.
  - (b) for mass mailings, even if these are related to council business.

- (c) during an election period to promote yourself or others as candidates to the electorate
- (d) for personal use.

#### **5.4.23 The role of officers**

- 5.4.24 Officers are responsible for giving advice to members to enable them to fulfil their roles. In doing so, officers will take into account all available relevant factors.
- 5.4.25 Under the direction and control of the council, officers manage and provide the council's services within the framework of responsibilities delegated to them. This includes the effective management of employees and operational issues.
- 5.4.26 Officers have a duty to implement decisions of the council which are lawful, and which have been properly approved in accordance with the requirements of the law and the council's constitution.
- 5.4.27 Officers have a contractual and legal duty to be impartial. They must not allow their professional judgement and advice to be influenced by their own personal views.
- 5.4.28 Officers must assist and advise all parts of the council. They must always act to the best of their abilities in the best interests of the council as expressed in the council's formal decisions.
- 5.4.29 Officers must be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for members, the media or other sections of the public. Where a decision could affect members' wellbeing group leaders will be consulted.
- 5.4.30 Officers have the right not to support members in any role other than that of member, and not to engage in actions incompatible with this protocol. In particular, there is a statutory limitation on officers' involvement in political activities.
- 5.4.31 Some officers may be appointed to local, regional or national bodies because of their particular skills and expertise. They may be appointed specifically to represent the council or in their personal capacity.
- 5.4.32 The chief executive has a specific statutory function in relation to employees, appointments, discipline, terms and conditions of employment and collective bargaining. Members must recognise and respect those responsibilities and duties.

#### **5.4.33 The relationship**

- 5.4.34 Members are elected by, and officers are servants of the public and members and officers are indispensable to one another. However, their responsibilities are distinct as outlined above. Members are accountable to the electorate and serve as long as their term of office lasts. Officers are accountable to the council as a whole. Their job

is to give advice to members (individually and collectively) and to carry out the council's work under the direction and control of the council.

- 5.4.35 The conduct of members and officers should be such as to instil mutual confidence and trust. The key elements are a recognition of and a respect for each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately.
- 5.4.36 At the heart of the codes, and this protocol, is the importance of mutual respect. Member/officer relationships are to be conducted in a positive and constructive way. Therefore, it is important that any dealings between members and officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position nor seek to exert undue influence on the other party. The use of more extreme forms of behaviour, language or emotion is rarely conducive to establishing mutual respect and is not a basis for constructive discussion.
- 5.4.37 Informal and collaborative two-way contact between members and officers is encouraged. But personal familiarity can damage the relationship, or the public perception of the relationship, as might a family or business connection. Inappropriate relationships can be inferred from language/behaviour. Close personal familiarity between individual members and officers can damage the relationship of mutual respect and prove embarrassing to other members and officers. To protect both members and officers, officers should address members as 'councillor XX' or 'chairperson/leader', save where circumstances clearly indicate that a level of informality is appropriate, e.g. a one to one meeting between a director and a cabinet member.
- 5.4.38 Members and officers should inform the monitoring officer of any relationship which might be seen as unduly influencing their work in their respective roles.
- 5.4.39 It is not enough to avoid actual impropriety. Members and officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be perceived. Specifically, a member should not sit on a body or participate in any decision which directly affects the officer on a personal basis.
- 5.4.40 A member should not raise openly or through the media matters relating to the conduct or capability of an officer in a manner that is incompatible with the objectives of this protocol, and particularly in relation to any pending or ongoing complaint or disciplinary process involving the officer. This is a longstanding tradition in public service. An officer has no means of responding to such criticisms in public. Furthermore, open criticism or comment may prejudice the bringing of disciplinary proceedings in circumstances where this might otherwise be appropriate, or prejudice the council's position in any subsequent employment tribunal or similar legal action.
- 5.4.41 A member who feels they have not been treated with proper respect, courtesy or has any concern about the conduct or capability of an officer should:
- avoid personal attacks on, or abuse of, the officer at all times,
  - ensure that any criticism is well founded and constructive,

- never make a criticism in public, and
- take up the concern with the officer privately.

5.4.42 If direct discussion with the officer is inappropriate or fails to resolve the matter, the member should raise the matter with the respective director. The director will then look into the facts and report back to the member. If the member continues to feel concern, then they should raise the issue with the chief executive who will look into the matter afresh. Any action taken against an officer in respect of a complaint will be in accordance with the provisions of the council's performance management and disciplinary policies and procedures.

5.4.43 Challenge in a constructive and non-confrontational way is important in ensuring policies and service performance are meeting the council's strategic objectives, especially during the scrutiny process. Nothing in this protocol is therefore intended to stop members holding officers to account for decisions made under delegated powers. Officers are accountable to the council for any decision they make and may be required to report to and answer questions from a scrutiny committee except in relation to council functions. A scrutiny committee may also call-in executive officer decisions before they are implemented. Members may also raise queries about a planned or published decision with the decision-maker or an appropriate senior officer.

5.4.44 Where an officer feels that they have been the subject of a sustained or systematic challenge which is unfounded or in any other way unreasonable by a member, they should raise the matter with their director, especially if they do not feel able to discuss it directly with the member concerned. In these circumstances the director will, after consultation with the complainant, take appropriate action either by approaching the individual member and/or political group leader or by referring the matter to the monitoring officer as a breach of the code of conduct.

#### **5.4.45 Advice to political groups**

5.4.46 Political groups have a role in the successful running of the council, and officers may on occasion be asked to provide information or support to political groups.

5.4.47 This support can take many forms, ranging from a briefing meeting with a group leader to a presentation at a political group meeting. It is an important principle that such support is available to all political groups. Requests for such support should be made in the first instance to the relevant director or chief executive.

5.4.48 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) Political group meetings form part of the preliminaries to council decision making but 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 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 decision maker 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.

5.4.49 Special care needs to be exercised whenever officers are involved in providing information and advice at a political 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.

5.4.50 Officers must respect the confidentiality of any political group discussions at which they are present and should not relay the content of any such discussion to another political group. Although 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 difficulty or uncertainty should be raised with the chief executive who will discuss them with the relevant group leader(s).

#### **5.4.51 Members' access to information, council documents or employee advice**

5.4.52 Members will need in the discharge of their duties to access information from employees. General service information is available both on the council website and in the online councillor handbook on the council's intranet.

5.4.53 Requests for particular information should be made through the service contacts listed in the councillor handbook (usually more senior employees) who are able to provide an overview or direct the member to the most appropriate employee. For individual cases (such as planning application or social care cases) members may directly approach the relevant case officers, but employees are entitled to refer the member to the responsible senior manager if appropriate.

5.4.54 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 should state any deadline for the provision of this information.

5.4.55 Employees will make every reasonable effort to provide members with accurate factual information and professional advice in a timely manner, unless there are lawful reasons to prevent disclosure of the information.

5.4.56 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 public meeting of the council 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 or her duties is similarly exempt unless released by him or her in the interest of furthering any enquiry.

- 5.4.57 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 access to the documents is reasonably necessary to enable the Member properly to perform duties as a 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 relevant director. Any disputes may be referred to the monitoring officer whose decision shall be final.
- 5.4.58 A member who asks to inspect documents which contain personal information about third parties will normally be expected to justify that request in specific terms.
- 5.4.59 A member of one political group will not have a 'need to know' and does not have a right to inspect any document which forms part of the internal workings of another political group and is in the possession of the council or of an individual employee.
- 5.4.60 A member of a scrutiny committee is entitled to a copy of any document which:
- (a) is in the possession or under the control of the cabinet; 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 council; or
    - ii any decision that has been made by an individual member of the cabinet, or an officer in accordance with the delegation of executive functions.
- 5.4.61 No member of a committee is entitled to a copy of a document or part of a document which contains exempt information or confidential information unless that information is relevant to an action or decision that they are reviewing or scrutinising; or which is relevant to any review contained in any agreed programme of work of such a committee or sub-committee.
- 5.4.62 More detailed advice regarding members' rights to inspect council documents may be obtained from the monitoring officer.
- 5.4.63 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 and in accordance with the policies and procedures of the council. This obligation of confidentiality is part of the [member code of conduct](#).

#### **5.4.64 Involvement of members**

5.4.65 Where an officer consults a member as part of the preparation of a report to a decision-making body under the council's constitution, the following principles will apply. The member may ask the report author:

- (a) to include particular options;
- (b) to clarify the report by expanding, simplifying or re-phrasing any part of the report or including other particular information;
- (c) to check or correct any error or omission of any matter or fact including statements of summaries of policy or budget;
- (d) to check any estimate of costs or savings.

5.4.66 The member may not ask officers:

- (a) to exclude any option contained in the draft report;
- (b) to exclude or alter the substance of any statement in the draft report of any officers' professional opinion;
- (c) to alter the substance of any recommendation that compromises the officer's integrity or would result in illegality;
- (d) to exclude any report, comments or representations arising from consultations, publicity or supply of information to the community;
- (e) certain statutory functions are undertaken by the head of paid service, monitoring officer and chief finance officer. Their reports on such matters are their own full responsibility.

5.4.67 Officers must recognise that ward members are, in many cases, the first point of contact, especially if local people, stakeholders and other community groups are concerned about or want an issue dealt with or simply want information about an issue. It is therefore important that ward members are appropriately informed, engaged with and involved in issues affecting their areas, at as early a stage as possible.

5.4.68 Members should be kept informed and, where possible, consulted about all developments which relate to council activity that affect both Herefordshire as a whole, and/or their ward at the outset of the exercise and, if a press release is to be issued or the media are to be contacted, before a public announcement is made by the Council. Whenever a public meeting is organised by the council to consider a local issue, all the members representing the wards affected should, as a matter of course, be invited to attend the meeting. More generally, officers should consider whether other policy or briefing papers, or other topics being discussed with a cabinet member, should be discussed with the relevant local member(s). Situations where a member is contacted by a resident or the press for a comment or assistance on a matter council is or should be dealing with and of which they were unaware should be avoided, wherever possible

5.4.69 Examples of where members should be contacted by the relevant officer include:

- changes to services provided by the council (directly or commissioned) which affect the ward;
- where decisions are to be taken by a decision maker which affect their ward specifically or which are key decisions;
- controversial issues (e.g. planning applications, petitions, formal complaints, local campaigns, etc.);
- wherever practicable, where any visits by the chairperson, committee chairmen or cabinet members to council sites or establishments in their ward, except where these are purely courtesy visits.

5.4.70 Members whose ward may be affected by the change should be briefed on issues in order that they are equipped to be informed and proactive in handling such issues and in responding to individuals or interest groups that may choose to lobby them. These may include:

- representations by local interest groups;
- works to local council facilities;
- complaint outcomes specific to facilities in the local area;
- variations to local service provision;
- sale of land/property owned by the council;
- enforcement action;
- school matters;
- where the council is contacted by the media in respect of a local issue.

5.4.71 In speaking to and corresponding with members, officers shall ensure that they comply with the standards for response times set out in the council's [customer service standards](#), including meeting the council's response times in relation to telephone messages, acknowledging letters and emails, responding in full within its target and, if it cannot, letting members know why and keeping them informed of the progress being made.

5.4.72 Correspondence between an individual member and an officer should not normally be copied (by the officer) to any other member. Where 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.

5.4.73 Official letters on behalf of the council should normally be sent in the name of the appropriate officer, rather than in the name of a member. It shall, however, be appropriate in certain circumstances (e.g. representations to a government minister) for a letter to appear in the name of a cabinet member, the leader or the chairperson

of the council. Letters which, for example, create legal obligations or give instructions on behalf of the council should never be sent out in the name of a member.

#### **5.4.74 Scrutiny**

- 5.4.75 The reports drafted by officers for decision makers may be subject to scrutiny and examined by a scrutiny committee.
- 5.4.76 Where such a decision is subject to scrutiny by a scrutiny committee, or when a decision is called-in, an officer may provide information or advice to a 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.
- 5.4.77 Scrutiny committees and 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.
- 5.4.78 Employees may need to attend scrutiny committee to give evidence and assist it in its scrutiny. Where an employee is required to attend a scrutiny committee, to report to it or provide evidence for it, it is the employee's duty to do so, or to explain why they are unable to do so.
- 5.4.79 Where a scrutiny committee has resolved to undertake a review it is the duty of directors to co-operate fully with the review and to arrange for relevant officers to attend. 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.

#### **5.4.80 Publicity**

- 5.4.81 Councils are accountable to their electorate. Accountability requires local understanding. This shall be promoted by the council, explaining its objectives and policies to the electors and council taxpayers, and encouraging public engagement in accordance with the council's [code of corporate governance](#).
- 5.4.82 Publicity is, however, a sensitive matter in any political environment because of the impact it can have. Officers and members of the council shall, in making decisions on publicity, take account of the provisions of the Code of Recommended Practice on Local Authority Publicity and the council's communication strategy and protocols. If in doubt, officers and/or members should initially seek advice from the communications team, who, if necessary, shall refer the matter to the monitoring officer. Particular care should be paid to any publicity used by the council around the time of an election and more so during the period of heightened sensitivity during the pre-election period known as 'purdah'. Advice shall be given on this by the monitoring officer, as appropriate.

#### **5.4.83 Breaches of this protocol**

5.4.84 Members and officers must at all times observe this protocol. This protocol is a local extension of the member and employee codes of conduct. Consequently a breach of the provisions of this protocol may also constitute a breach of those codes.