

# PART 5 (SECTION C)

## PROTOCOL ON MEMBER AND EMPLOYEE RELATIONS

### 1. Introduction

- 1.1 Government guidance for the preparation of local authority constitutions refers to the perceived requirement for a protocol to underpin member/officer relations. This accords with the recommendations of the Nolan Committee's Report on Standards of Conduct in Local Government that every local authority should have its own written statement or protocol governing relations between members and officers.

Please note the term "Officer" is not considered to be as inclusive as "employee" due to the professional nature of the roles Officers are deemed to undertake, which does not necessarily include all staff. Therefore, this Protocol applies to all employees of the Council and where the term "Officer" is used, that person is also considered an employee.

- 1.2 The guidance suggests that protocols should be developed locally to reflect local political arrangements and approaches but gives an indication of those areas that are expected to be covered in each protocol. In adopting this protocol, the Council has had regard to broad headings proposed in the guidance.
- 1.3.1 The purpose of this protocol is to guide members and employees of the Council in their relationships with one another. Generally, it is not intended to be prescriptive or comprehensive and seeks simply to offer guidance on some of the issues that most commonly arise but it should be noted that where members or officers do not comply with the Protocol, this could give rise to a breach under the Members' Code of Conduct or the Officer Code of Conduct.

### 2. Principles Underlying Member/Employee Relations

- 2.1 The Nolan Report suggests that;

*'No local authority can function properly without a good relationship between its councillors and its officers. Where the relationship breaks down, an atmosphere of suspicion or dislike can make it very difficult to devise and implement policies in any consistent way.'*

The general principles which govern the conduct of members (selflessness, honesty and integrity, objectivity, accountability, openness, personal judgement, respect for others, duty to uphold the law, stewardship and leadership) which are embodied in The Relevant Authorities (General Principles) Order 2001 require members to respect the impartiality and integrity of an authority's statutory officers and other employees. Those principles are equally appropriate for employees in their dealings with members.

2.2 This protocol should also be read in conjunction with the Members Code of Conduct and Officer Code of Conduct which are designed to ensure high standards of conduct and probity within the Council. Together they contribute to the effective and efficient transaction of Council business and ensuring that the Council is not brought into disrepute. The main principles that underpin the codes are:-

- Mutual respect and courtesy both between members and between officers and members;
- An awareness of each other's responsibilities and duties;
- Equal treatment, regardless of personal, political opinions or any other factor;
- An adherence to the law and the lawful instructions and advice of others;
- An avoidance of close personal familiarity.

Public confidence in the integrity and honesty of both members and employees is critical to the Council's community leadership role and compliance with the Codes and this Protocol will serve to enhance local democracy.

### **3. The Roles of Members and Employees**

3.1 The roles of members and employees have changed with the Local Government Act 2000 and the introduction of executive decision-making (the great majority of decisions now fall within the remit of the Cabinet). The greater impact upon the time of individual members brought about by the new system has tended to blur the traditional distinction between the roles of members and employees. Nevertheless members and employees do have separate roles which should be readily distinguishable. These are defined more specifically in the Council's constitution.

3.2 Members are democratically elected and are accountable to the electorate for their actions. An important feature of each member's role is to represent the interests of his/her constituents, irrespective of how they may have voted in an election. The expectation is that members will be more aware of the views of their constituents on major policy developments before decisions are made. The Executive Leader and other executive councillors are responsible for the delivery of those policies. Members who sit on overview and scrutiny have an important role in both holding the executive to account and in contributing to policy development. Members of regulatory panels make decisions on applications by the public for permissions and licences of varying types.

- 3.3 Employees are responsible for day-to-day managerial and operational decisions within the Council and should provide support to both the executive and all members in their several roles. They are employed by and accountable to the Council as a whole under the ultimate authority of the Head of Paid Service. The Cabinet system can create tensions and conflicts of interest for employees servicing both the executive and overview and scrutiny and the executive and the Council. Members should recognise the potential difficulties that this can present and should respect the obligation placed on employees to serve the Council as a whole.
- 3.4 In this protocol, any reference to a senior officer is a reference to the Head of Paid Service, Corporate Directors and Heads of Service as defined in the Council's constitution.
- 3.5 Certain employees, commonly referred to as "statutory officers", derive some duties and responsibilities directly from legislation. The Council's statutory officers are –
- the Head of the Paid Service is the Council's principal adviser on matters of general policy;
  - the Council's Monitoring Officer is required to report on any proposals, decisions or omissions which in their view are likely to result in a contravention of the law or which fail to comply with legal duties, are unjust or fail to take account of an applicable code of practice; and
  - the Director of Resources, who as the Council's Chief Financial Adviser is required to report on any proposal, decision or course of action which would involve incurring unlawful expenditure, or is unlawful or is likely to cause a loss or deficiency or if the Council was proposing to enter an item of account unlawfully.
- 3.6 There may be occasions when a Statutory Officer's responsibilities may conflict or not wholly correspond with a strategy, policy, decision or course of action proposed/taken by the Council or a member. In those circumstances members should acknowledge the primacy of the statutory responsibilities and treat the Statutory Officer with the same courtesy and respect shown to them and to other employees in all other dealings.

#### **4. Employer/Employee Issues**

- 4.1 Any dealings between members and employees should be conducted with mutual respect, trust and courtesy. The Council is an employer and Members should have due regard to their role in dealings with employees and be conscious that inappropriate conduct or behaviour on their part could lead to a case being brought to an employment tribunal by an aggrieved employee. The Council as an employer must provide a safe environment for employees to work within and Members conduct towards employees forms part of this environment. For the avoidance of doubt, shouting and swearing at

employees, whether in a group setting, in public or in one to one situation, is not acceptable in the workplace.

It is proper for a member to make written or oral representations about a matter affecting a constituent who also happens to be an employee but he/she should avoid taking a proactive part or represent or act as an advocate on behalf of the employee in any disciplinary or grievance procedures brought against the Council by the employee.

- 4.2 Members should not place inappropriate pressure on employees and must ensure that all communication between them (including both verbal and written communication) does not bring the Council into disrepute, cause any embarrassment to them, or lead to a breakdown of mutual trust, respect and courtesy in member/employee relations.
- 4.3 In seeking advice and support, members should recognise that, whilst those employees owe an overriding duty to the Council as a whole, such duties are first expressed to their respective line managers and the Head of Paid Service and not to an individual member. For this reason, members should not give direct instructions to employees, unless they are authorised to do so by the Council's constitutional arrangements. If so authorised, instructions should, under normal circumstances, still be given to a senior officer and not to a more junior employee.
- 4.4 In particular, members and employees should promote equality by not discriminating unlawfully or otherwise against any person. They should treat people with respect, regardless of their age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity. Such principles will apply equally to the implementation of personnel and other policies, recruitment and promotion as they apply to day to day dealings with members of the public.

## **5. Mutual Respect and Courtesy**

- 5.1 Officers have a duty to all Councillors to give high quality professional advice, which must be politically impartial.
- 5.2 For the effective conduct of Council business there should be mutual respect and courtesy in all meetings and contacts, both formal and informal, between Councillors and Officers.
- 5.3 Officers and Councillors should, particularly in the public forum, be mutually supportive in order to minimise any potential embarrassment to the Council. Criticism of Officers should, wherever possible, be handled beyond the glare of public scrutiny – particularly the media which in extreme cases may lay the person open to challenge in the courts. By the same token, Officers should never publicly criticise decisions taken by the Council or any of its committees.

- 5.4 National custom and practice has traditionally recognised that whilst there should be mutual respect between Councillors and employees, the development of close personal relationships is incompatible with their different roles. It is undesirable that such relationships should be allowed to become so close or appear to be so close as to bring into question the Officer's ability to deal impartially with other Councillors and other parties.

In the event a Councillor and employee develop a close personal relationship, by way of example where a friendship extends beyond the confines of a working relationship and becomes social outside of working hours, advice should be taken from the Monitoring Officer as to whether this relationship should be declared in accordance with the provisions of the Officer Code of Conduct.

Where a family relationship exists or where a friendship was in place prior to the Councillor being elected or the employee commencing employment, this must be declared by the employee in accordance with the Officer Code of Conduct.

## **6. Relationships between Cabinet and Officers**

- 6.1 Any decision by the Cabinet must be supported by a written report by the appropriate employee. An employee's obligation to the whole Council requires the advice to be tendered professionally and impartially and Cabinet Portfolio Holders should not seek to suppress or amend any aspect of such professional advice.
- 6.2 Reports to the Cabinet will normally be produced by employees but there may be occasions when a Cabinet Portfolio Holder prepares a report. In either situation, the appropriate employee shall place on record his/her professional advice to the Cabinet and ensure that advice is considered when a decision is taken.
- 6.3 As part of their duties, employees will represent (both internally and externally) the decisions of the Cabinet. Other members should recognise that, in doing so, an employee is representing an executive decision of the Council.

## **7. Relationships between Overview and Scrutiny and Officers**

- 7.1 Overview and scrutiny plays an important role within the Council in holding the Executive (Cabinet) to account and in the formulation of policy. The committees may seek the advice of the Monitoring Officer and the Chief Finance Officer where they consider there is doubt about the legality or financial probity of any decisions or prospective decisions of the Cabinet or where these may be contrary to the Council's policy and financial framework.

- 7.2 When requiring employees to give evidence to an Overview and Scrutiny Committee, the Committee and its Chairman shall not, without the consent of a member of the Corporate Management Team, request the attendance of a junior employee. When employees are required to give evidence before an Overview and Scrutiny Committee, questions should be confined, so far as is possible, to questions of fact and explanation of any professional opinion relating to policies and decisions. Employees must respond to questions from members in an open, constructive and helpful manner. Employees must not be misleading or economical with the truth in their answers. The Chairman of an Overview and Scrutiny Committee shall ensure that Cabinet Members and employees are not questioned (whether through the nature, tone or language used) in such a manner as could be considered by a reasonable person to be hostile, offensive, derogatory, harassing, bullying, discriminatory or otherwise unacceptable or inappropriate.
- 7.3 Where they consider it appropriate, the Chairmen of the Overview and Scrutiny Committee may ask the Head of Paid Service, Corporate Directors and Heads of Service to explain any advice given to the Cabinet or individual Portfolio Holders and explain any decision(s) that they may have taken under the Council's scheme of delegation. Any private or confidential matter must be dealt with in a private or confidential manner.

## **8. Relationships between Other Committees and Officers**

- 8.1 Decisions made by other Committees etc. must be taken collectively, normally following the receipt and consideration of a report by the appropriate employee. Such advice will be independent and professional. Due to the nature of the business conducted by the Planning Committee, a separate Code of Good Practice for Planning has been approved by the Council.

Reports to other Committees will normally be produced by employees but there may be occasions when a Cabinet Member prepares a report. In either situation, the appropriate employee shall place on record his/her professional advice to that Committee and ensure that advice is considered when a decision is taken.

## **9. Relationships between Political Groups and Officers**

- 9.1 Political groups comprising members of an individual political party are a recognised feature of local government and it is common practice for such groups to give preliminary consideration to matters of business in advance of their consideration by a relevant Council body.
- 9.2 Employees will not attend group meetings of the Council's political parties.
- 9.3 Employee support to members of political groups must not extend beyond providing information in relation to matters of Council business. When giving advice in such circumstances, employees must demonstrate political impartiality and must not suppress their professional advice in the face of political views. Employees must not champion, defend, action or spend any

resources of the Council on, or be held responsible for actioning in any way whatsoever, the decisions of a political group, unless and until such decisions have become the formal decisions of the Council and any consequential provision has been made in the Council's Medium Term Plans and/or Revenue Budget.

## **10. Relationships between Individual Members and Officers**

- 10.1 The Leader, Deputy Leader, individual Portfolio Holder, Committee Chairman, Group Leader or such other members nominated by a Group Leader may request a briefing from the Head of Paid Service, Corporate Directors or senior officer on matters of policy which have already been or may be discussed by the Council or within its decision-making or advisory processes. All such requests should be addressed to the appropriate senior officer.
- 10.2 Local members have an important role to play in representing the Council in their constituencies, responding to the concerns of their constituents, in meetings with partners and when serving on outside organisations. It is essential for the efficient functioning of the Council that members should be fully informed about matters on which they may be required to make decisions or which affect their wards. Senior Officers should ensure that all relevant staff are aware of the requirement to keep local members informed and that, as far as practicable, the timing of such information allows members to contribute to those decisions. Local members shall also be kept informed about matters affecting their wards during the formative stages of policy development. Whenever a public meeting is organised by the Council to consider a local issue, all of the members representing the ward(s) affected should, as a matter of course, be invited to the meeting.
- 10.3 Members will be asked by their constituents, from time to time, to pursue matters on their behalf. Where such matters affect the Council, a member may request information or advice from the appropriate employee and such a request should only be refused if a member cannot demonstrate a 'need to know' – see paragraph 12.2 and reference the Members' Protocol on Data Protection 3.1.1. Such action is without prejudice to the right of a member to raise an item at any meeting of the Cabinet or another committee and particularly an Overview and Scrutiny Committee.

## **11. Political Neutrality and Officers**

- 11.1 As individual Councillors, all Councillors have the same rights and obligations in their relationship with officers and should be treated equally. This principle is especially important in the context of overview and scrutiny.
- 11.2 However, where a political group or combination of political groups have majority control of the Council, senior officers have a responsibility to assist the political administration of the Council in implementing their policies. Where this occurs it is recognised that the relationship between Officers, particularly those at a senior level of the Council, and the administration will differ from that with opposition groups.

- 11.3 Upon a change in political administration, Officers will serve the incoming administration in the same way as the outgoing, and will continue to respect any continuing political confidentiality except in so far as it adversely impacts on the operation of the Council.
- 11.4 Officers, whether or not politically restricted, must not allow their personal or political opinions to interfere with their work. This requirement for impartiality is all the more important in respect of an Officer who exercises regulatory functions in respect of the Council itself and is called upon to adjudicate between the Council and the Cabinet.

## **12. Access to Documents and Information**

- 12.1 A member's right to access to documents and information is described in the Access to Information Procedure Rules in the Council's constitution.
- 12.2 In addition, a member has a right to inspect Council documents *so far as his/her access to the documents is reasonable 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. It applies equally to the leaders of political party groups who, although they may be able more readily to substantiate a requirement for information, still have to demonstrate that their request is proper and reasonable and give adequate reasons for requiring the information. Access to such information will vary from member to member and will arise at different times. As such, a Member's 'need to know' will be considered on a case by case basis and will not last indefinitely.
- 12.3 The right of access to information is subject to an additional safeguard and if the motive of the member in requesting to see documents is indirect, improper or ulterior, a request to inspect documents will be refused. Furthermore the law does not entitle a member to go on a 'roving or fishing expedition' or to receive every working document that employees have access to or may have had access to in the past.
- 12.4 A Member is only entitled to see those documents that are relevant background papers mentioned in any report to a meeting or which are to be taken into consideration in the making of an executive decision by the Cabinet or a Key Decision by an employee or where information would be available under the Freedom of Information Act 2000. However, an overview and scrutiny committee may request information that is exempt or confidential if it relates to a matter that they are scrutinising.
- 12.5 Confidential information that is obtained by a member must not be disclosed to another person. Any such breach of confidence may result in a complaint to the Monitoring Officer or, if sufficiently serious, to a civil action against the member and/or the Council for damages. Reference should be made to the Members' Protocol on Data Protection.

- 12.6 Briefing meetings, where discussion of draft papers is involved, are not open to other councillors or the public as they are not available under the Freedom of Information Act.
- 12.7 Both Members and Officers are subject to the requirements of the Data Protection Act and where Members request personal information relating to individuals, reference should be made to the Member Data Protection Protocol.

### **13. Relations with the Media**

#### **Officers**

- 13.1 Only Officers authorised by the Chief Executive, their Corporate Director or Head of Service to do so may talk to the press, or otherwise make public statements on behalf of their service area. Generally speaking, an employee contacted by the press should refer the matter to their Corporate Director or Head of Service who will deal with it as appropriate.
- 13.2 Officers authorised under paragraph 13.1 may comment on matters which are the subject of delegation, but will need to exercise judgement and integrity in making such comment. Representatives of the press must be requested to seek political comment from the Leader or Deputy Leader of the Council or the appropriate Cabinet Portfolio Holder or Chairman of the appropriate Committee.
- 13.3 When preparing draft press releases the appropriate Cabinet Portfolio Holder and/or Ward Members (where appropriate) will normally be approached for comments.
- 13.4 Information published on the Council's behalf must comply with the statutory Code of Practice, i.e. be objective, balanced and non-party political.

#### **Members**

- 13.5 The Council's adopted Communication Policies provides as follows:-
- The Leader of the Council is the lead spokesperson for those communications activities identified as corporate communications areas. As the principle spokesperson for the Borough, the Leader may also choose to take a lead in the media on major corporate announcements even when they are usually matters for Cabinet Members to comment on, for example on a large scale leisure investment announcement.
  - Cabinet Portfolio Holders are the lead spokespeople for service related media activity. As such they will be the quoted spokesperson for issues within their remit.

- Where it is inappropriate for legal, or other reasons, for an elected Member to act as spokesperson it may be necessary for the Chief Executive, or another officer to act as the spokesperson.

13.6 When dealing with the press not in their capacity as a nominated spokesperson for the Council, Members will endeavour to ensure the press are both aware and give clear pointed acknowledgment of the fact that they are acting in their own capacity and not as a spokesperson for the Council.

13.7 From six weeks prior to full elections, no Council publicity will be produced with names of individual Members of the Council other than the Mayor in his or her official capacity, throughout the period until the publication of the election results. This is the period of time known as Purdah.

#### **14. Enquiries and Access to Service Areas and Property**

14.1 As a general rule, a Councillor's first port of call for advice on routine matters should be the relevant Head of Service or Line Manager. Only in those cases where the Councillor is dissatisfied with the response should the relevant Corporate Director be approached. Under normal circumstances Councillors should refrain from approaching junior members of staff to seek advice, information or to ask for work to be carried out. Councillors have a position of authority within the Council and junior employees may not be aware of all appropriate rules and guidance in releasing information or undertaking work requested and may feel they are unable to say "no" leading to possibility of undue influence being exerted.

14.2 In the interests of operational efficiency, where possible, Councillors should make advance appointments to visit departments (excluding Member Support) or Council facilities in order to reduce disappointment if an Officer is not available. Care should be taken as unnecessary presence in offices may create Data Protection issues or impact on the ability of employees to undertake their work – particularly in the larger open plan offices. Reference is made to the Members' Protocol on Data Protection paragraph 3.1.3

14.3 Unless authorised by the appropriate Committee, a Councillor must not claim to exercise any right of the Borough Council to inspect or enter any property (whether Council or private) or gain access to Council information systems etc. For the avoidance of doubt, this provision does not preclude Councillors from undertaking site inspections, familiarisation visits or tours of Council or private facilities where appropriate arrangements have been made in advance with the relevant Corporate Director or Head of Service.

#### **15. Support Services**

15.1 Members are provided with a range of information and support services to assist them in their policy and representative roles. Members should not use such information and support in connection with party political or campaigning activity or for purposes not related to Council business.

- 15.2 Administrative support is provided to enable members to carry out their official duties and roles as Councillors effectively. These services can be accessed via the Civic & Member Services Officer who also provides a research facility and co-ordinates attendance at training courses, seminars, external meetings etc as required.
- 15.3 Some limited support will also be provided for ward surgeries including the design and production of posters and notices. Accommodation costs associated with the provision of ward surgeries will be reimbursed to a maximum of £50 per Councillor in any one financial year upon production of appropriate receipts.
- 15.4 Councillors are expected to comply with the specific guidance on computer security and data protection issued by the Council's IT Section from time to time and reference is made to the Members' Protocol on Data Protection.

## **16. Representation on External Organisations**

- 16.1 The Borough Council has a wide range of contacts within the community through appointments to external organisations, both locally and regionally. These are a resource to be employed in the Council's best interests.
- 16.2 Appointments are made by either full Council or the Cabinet. These are usually made on an annual basis, unless the constitution of the organisation concerned states otherwise.
- 16.3 All appointments are subject to the requirement that the Member concerned must resign from the membership of an external organisation immediately upon ceasing to be a Member of this Council, where he/she has been appointed to that organisation as one of the Council's representatives, unless the Council agrees to their continuing.
- 16.4 Councillors should familiarise themselves with the Boston Members' Code of Conduct, particularly the requirement to comply with the Council's Code when acting for that body, except and insofar as it conflicted with any lawful obligations to which that body may be subject, and the need to declare an interest when an item involving that body is considered by the Council, Cabinet, Standing Committees and Working Groups.

## **17. Council Tax Arrears**

- 17.1 A Councillor who has not paid an amount due in respect of Council Tax for at least two months after it has become payable, may not vote on matters concerning the level of Council Tax or the administration of Council Tax. If present at a meeting, he/she must disclose the fact that the provision applies to him/her. He/she may, however, speak. Non-compliance is a criminal offence.

## **16. Arbitration**

- 16.1 Where necessary, the Head of Paid Service (or in their absence the Monitoring Officer) will arbitrate on the interpretation of this protocol.
- 16.2 Any breach of this Protocol that is considered to have also breached the Member Code of Conduct, and will be dealt with in accordance with the provisions of the Boston Member Code.

### **Members Obligations to Understand the Requirements of this Protocol**

The Council will provide opportunities for training and Member development through the Councillor Development Group.

If a Member does not understand the meaning of the requirements of this Protocol, it is their personal responsibility to raise directly with the Monitoring Officer, their Group Leader or Chairman of the Councillor Development Group to ensure the appropriate training is identified and offered.