

## 4. PROTOCOL FOR COUNCILLOR / OFFICER RELATIONS

### Purpose

- 4.1 This Protocol provides guidance on how councillors and officers can and should work together effectively to deliver positive outcomes for the Council's residents, businesses and communities. It seeks to apply the seven principles of public life (the NOLAN Principles) into practice.
- 4.2 This Protocol is not a set of rules. It provides guidance on best practice on how councillors and officers can meet the standards of public life and comply with their respective obligations detailed in the Code of Conduct for Councillors, as set out above under section 2 and the Employee Code of Conduct set out under Part 7 of this Constitution.
- 4.3 A breach of a Protocol set out below may be evidence that councillor or officer has breached a provision of their respective code of conduct.
- 4.4 The Protocol supplements and does not seek to replace the Council's existing policies and should be considered in conjunction with the codes of conduct and other rules set out elsewhere in this Constitution.

### The NOLAN Principles

- 4.5 The Council's ethical framework is underpinned by the Seven Principles of Public Life also called the NOLAN Principles which apply to anyone who is a public office holder. This Protocol aims to implement the NOLAN Principles as follows:

Nolan Principle	Indicative Behaviour
Selflessness	Ensuring councillors and officers work together for the public benefit.
Integrity	Avoiding in appropriate influence on officers' activities and the delivery of services.
Objectivity	Officers act impartially and fairly between Political Groups and they are not asked or pressured to act otherwise by councillors.
Openness	Councillors are aware of their rights to information and their obligations in respect of confidential information.  Officers respect councillors rights to information and the limits of such rights with regards to confidential information and personal data.

Accountability	Complying with this Protocol – a breach may be evidence of a breach of the Code of Conduct for Councillors / the Employee Code of Conduct as applicable.
Honest	Councillors and officers are truthful.
Leadership	Councillors and officers treat each other and all persons with respect and actively support and demonstrate the upholding of the NOLAN Principles.

### Overview of Councillor/Officer Relations

4.6 All councillors and officers are public servants with complementary but different roles and responsibilities. All councillors and officers work to achieve the common aim of delivering services and policies that improve the lives of the Council's residents, workforce and businesses, all of whom will benefit from effective working relationships between councillors and officers.

4.7 This Protocol aims to create an understanding of:

- (a) The different roles of councillors and officers;
- (b) The boundaries between councillors and officer; and
- (c) The expectations both councillors and officers can have of each other.

Understanding these factors will enable councillors and officers to conduct themselves in accordance with the NOLAN Principles and avoid dispute. The Protocol also sets out below how to deal with disputes appropriately.

4.8 This Protocol should not be considered as formal advice. Councillors and officers should contact the Monitoring Officer if they require specific advice.

### Councillor and Officer Roles

4.9 The below table is a guide to the main differences between the roles and responsibilities of councillors and officers.

Councillors	Officers
Status	
<p><b>Elected by Residents every Four years</b></p> <ul style="list-style-type: none"> <li>• Can resign but cannot be dismissed;</li> </ul>	<p>Employees of the Council</p> <ul style="list-style-type: none"> <li>• Have a contract of employment;</li> <li>• Can resign or be dismissed.</li> </ul>

<ul style="list-style-type: none"> <li>• Can be disqualified in limited circumstances;</li> <li>• Up to nine councillors appointed by the Leader to form the Cabinet – the Council’s principal decision-making body.</li> </ul>	
<p>No Formal Management</p> <ul style="list-style-type: none"> <li>• May be subject to Political Group control and discipline</li> <li>• Accountable to all residents and the local electorate</li> </ul>	<p>Line-managed by officers</p> <ul style="list-style-type: none"> <li>• Officers are managed, by and report to, a more senior officer;</li> <li>• Chief Executive is the Council’s ‘head of paid service’ and ultimately responsible for all officers.</li> </ul>
<p>Subject to the Code of Conduct for Councillors</p> <ul style="list-style-type: none"> <li>• Must comply with duties and obligations set out in the Code, including as regards the declaration of interest and gifts and hospitality</li> </ul>	<p>Legal Rights under Employment Law</p> <ul style="list-style-type: none"> <li>• Employment rights provided under law and the Councils internal policies / procedures;</li> <li>• Subject to the Employee Code of Conduct and terms and conditions of employment.</li> </ul>
<p>Role</p>	
<p>Strategic Decision Makers</p> <ul style="list-style-type: none"> <li>• Leader and Cabinet set the Council’s political direction, corporate vision, objectives, strategies and policies;</li> </ul>	<p>Advisors</p> <ul style="list-style-type: none"> <li>• Provide professional advice to councillors to ensure best, value, financial and legal compliance;</li> <li>• Deliver services in accordance with priorities agreed by councillors;</li> </ul>
<p>Overview of Operational Delivery</p> <ul style="list-style-type: none"> <li>• Overview and Scrutiny of the operational delivery of services by officers</li> </ul>	<p>Operational Delivery</p> <ul style="list-style-type: none"> <li>• Responsible for the operational delivery of services;</li> <li>• Accountable to councillors for effective delivery of services.</li> </ul>
<p>Regulatory and Governance Decision Making</p>	<p>Regulatory Enforcement</p>

<ul style="list-style-type: none"> <li>As members of Committees, councillors determine regulatory matters and maintain an overview of finance, governance and risk;</li> <li>Councillors cannot make decisions individually.</li> </ul>	<ul style="list-style-type: none"> <li>Officers enforce regulatory decisions and the implementation of policy;</li> <li>Ultimately report to the Chief Executive.</li> </ul>
<p>Political Representative</p> <ul style="list-style-type: none"> <li>Councillors have an overtly political role and are usually a member of, or aligned with, a Political Group</li> </ul>	<p>Political Neutrality</p> <ul style="list-style-type: none"> <li>Officers must remain politically neutral at all times;</li> <li>Some roles are politically restricted meaning the post holder cannot be politically active in their private life.</li> </ul>

### Statutory Officers

4.10 A number of officers have a personal, statutory responsibility to ensure the proper conduct of the Council's administrative, staffing, legal and financial affairs.

4.11 The table below details the Council's (Statutory Officers) and their statutory responsibilities.

Statutory Officer	Statutory Responsibility
Head of Paid Service (Chief Executive)	Responsible for the management of the Council's officers and the delivery of statutory services
Monitoring Officer	Responsible for the Council's governance and compliance with the law.
Chief Finance Officer (Section 151 Officer)	Responsible for the Council's financial affairs and ensuring the Council sets a balanced budget.
Director Adult Social Services	Responsible for the safeguarding of vulnerable adults. There is an equivalent councillor role.
Director of Children's Services	Responsible for the safeguarding of children. There is an equivalent councillor role.

## **Personal Conduct and Behaviour**

- 4.12 When councillors and officers treat each other with respect it is likely to foster good working relationships and improve efficiency. The underlying principle for councillor and officer relations is mutual respect for each other's roles, especially where differences of opinion and approach arise. This includes having mutual respect for the different pressures on councillors and officers. Mutual respect means:
- (a) Valuing each other's different expertise and knowledge;
  - (b) Avoiding a blame culture;
  - (c) Avoiding tone and language in communications that is critical of individual officers or councillors;
  - (d) Zero tolerance of bullying or harassing behaviour;
  - (e) Councillors understanding that officers, especially junior officers, cannot respond or answer back to a councillor's criticism of them, especially in public;
  - (f) Avoiding unreasonable deadlines or excessive demands on each other;
  - (g) Remembering the importance of public perception. The public rightly expect high standards from councillors and officer and do not expect them too rude or publicly critical of each other.

## **Political Neutrality**

- 4.13 A key difference between councillors and officers is their political involvement. Whilst councillors are elected as the candidate of a Political Group or as an independent councillor, officers must remain politically neutral at all times in all aspects of their work.
- 4.14 For councillors, the political neutrality of officers means:
- (a) Not asking officers about their political views or discussing with them local or national party political matters;
  - (b) Not attempting to draw officers into criticising a councillor or Political Group;
  - (c) Respecting officers' obligation to advise different Political Groups equally;
  - (d) Not making allegations of bias against officers, especially in public, or because an officer's advice does not agree with the position of a councillor or their Political Group;
  - (e) Not accusing officers of having ulterior or malign motives. The Council and officers have to make difficult decisions with finite resources and very often these will leave some residents or councillors dissatisfied. It is wholly inappropriate to make unsubstantiated allegations of corruption, political bias or incompetence in such circumstances. Any concern should first be raised with the Monitoring Officer on a confidential basis. If need be, the dispute resolution process set out below can be implemented;

- (f) Not copying in officers, councillors or citizens into correspondence with officers, particularly where councillors are critical of officers or the Council. Where a dispute between councillors and officers arises, the dispute resolution process set out below must be implemented.

4.15 Political neutrality for officer means:

- (a) Providing balanced advice and equal facilities to all Political Groups and ungrouped councillors;
- (b) Providing advice and support to the Council's political administration and delivering the Council's policies, but not to the wider Political Group from which the administration is formed;
- (c) Not bringing personal politics into their work;
- (d) Not being improperly influenced by councillors to change their mind on any matter that affects a political matter and not advising on the basis of political expediency;
- (e) Raising concerns with, or seeking advice from, the Monitoring Officer.

### **Support to Political Groups**

- 4.16 Officers can provide support to councillors in their capacity as a political representative, provided that in doing so an officer is not breaching their duty of political neutrality.
- 4.17 The Council's political administration will almost invariably be formed by the Political Group with a majority on the Council. Officers are required to advise and implement the political policies of the administration and provide additional support to the Leader and Cabinet (the Executive) to reflect the status of the Leader and Cabinet. A key feature of a successful, functioning local authority is the executive and senior management having close and effective working relationships.
- 4.18 It is an officer's duty to act in the Council's interests. This means advising where political commitments are not in the Council's overall interests or will not deliver best value, ie (speaking truth to power). If differences between officers and councillors cannot be resolved through the below dispute resolution procedure, they should be referred to the Council's Chief Executive who will consult with the relevant statutory officers.
- 4.19 Officers' additional support to the administration does not however extend to and must not be confused with, support to the majority Political Group.
- 4.20 Political Groups are an important but informal part of the Council's political architecture. They have no decision-making role and exist to allow those with the same political or similar political views to join together to ensure representation on the Council and its Committees and other bodies. A key feature of a successful, functioning local authority is good working relationships and interaction between all Political Groups and officers.

4.21 It is important that the Political Groups are treated fairly and with equity, but also that they are not considered or viewed as part of the formal decision making structure of the Council. This means:

#### **For Officers**

- Ensuring relevant senior officers director and / or the Chief Executive is aware of and has approved a briefing to a Political Group;
- Providing an equal opportunity of access to briefings and advice on the same matter to all Political Groups;
- Withdrawing from Political Group meetings when political matters are discussed;
- Being open and transparent about Political Group briefings or meetings, but not disclosing confidential Political Group discussions;
- Avoiding briefings which could be used in a forthcoming election campaign.

#### **For Councillors and Political Groups**

- Directing requests for briefings to the Chief Executive or relevant Executive Director;
  - Accepting that any briefing will be offered to all Political Groups and councillors and not seeking to prevent this;
  - Not asking officers about political matters or political implications;
  - Accepting that officers will feedback comments made in a Political Group meeting to senior officers (but not other Political Groups unless consent is provided);
  - Informing officers if a Political Group meeting includes non-councillors so officers can consider the disclosure of information;
  - Respecting confidentiality where information is provided on a confidential basis.
- 4.22 It should be recognised that officers will spend the time supporting the Administration as the Members in control of the Council and will assist all other Members as far as possible.

#### **Councillors' Ward Work**

- 4.23 Councillors carry out vital work as community Leaders in their Ward. They are often the only voice available to residents. Officers must respect this and provide councillors with support in their constituency work but officers and councillors must acknowledge and accept that there are limits to the support that officers can provide.
- 4.24 Individual councillors cannot make decisions on behalf of the Council or instruct officers in their work. This means:

## **For Councillors**

- An expectation that officers will respond to enquiries in accordance with the Council's policies, or explain why there is a delay;
- An expectation that officers will inform and consult them Ward matters in accordance with the Council's policies;
- Not instructing an officer to do something – and not taking offence if they refuse;
- An expectation that officers will provide reasons as to why a request or query cannot be met;
- Not 'shooting the messenger' and criticising officers where a request has been declined;
- Requesting that query or request be escalated if unhappy with response but accepting the final decision once it has been made.

## **For Officers**

- Treating all councillor queries and request equally, including opposition councillors;
- Meeting the Council's standards for response time and explaining when doing so is not possible;
- Providing reasons with responses to councillors;
- Escalating matters where a councillor is not satisfied with a response.

## **Personal Relationships and Privacy**

4.25 Whilst it is beneficial for the Council if councillors and officers are able to interact and be friendly, professional standards must be maintained, especially when members of the public or other stakeholders are present. Councillors and officers often undertake their duties at very different hours and councillors may also have 'day jobs' during the working week. Maintaining professional relationships involves:

- (a) Officers using formal titles such as (Leader) or (Councillor) when addressing councillors and in correspondence, especially in formal or public settings;
- (b) Councillors and officers taking care when socialising with each other. Whilst it is not unlawful to do so, the public perception of such relationships may be negative;
- (c) Declaring any close or intimate relationships between councillors and officers (eg family, partner) to the Monitoring Officer and taking necessary steps to avoid any conflicts of interest either under the respective codes of conduct for councillors and Employees. (personal information will held in confidence);
- (d) Councillors and officers respecting each other's private lives and work-life balance when making request and in their communications.



## **The Employment of Officers**

- 4.26 Officers are employees of the Council and ultimately answerable to the Chief Executive (as the Head of Paid Service). The Chief Executive has ultimate responsibility for the delivery of services by the Council and the performance and conduct of officers. This means:
- (a) Councillors, including the Leader and Cabinet, accepting that they cannot direct the work of individual officers or manage services;
  - (b) A councillor who is concerned about an officer's performance or conduct, referring their concerns to the officer's line manager;
  - (c) Councillors accepting that they cannot be involved in any formal action taken against individual officers except where a councillor is a witness of fact in the matter;
  - (d) Officers not asking councillors to support them in any employment dispute with the Council, except if where a councillor is a witness of fact in the matter;
  - (e) Councillors not lobbying on behalf of individual officers where they are subject to a formal course of action or applying for a position.

## **Councillors' Rights of Access to Information and Confidentiality**

- 4.27 Councillors have rights of access to information held by the Council in accordance with the Access to Information Procedure Rules set out under Part 1 of this Constitution and as elsewhere provided for in this Constitution and under the law.
- 4.28 A Councillor's rights of access to information are not unrestricted and are not always the same. Councillors remain bound by confidentiality in respect of information which is deemed exempt or confidential in accordance with Schedule 12A of the Local Government Act 1972. Councillors also remain subject to the requirements of the Data Protection Act 2018, the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and all applicable law.

## **The Common Law Right to Information and the 'Need to Know'**

- 4.29 Councillors' rights of access to information under the common law have now largely been incorporated into various statutes. However, the decisions of judges over the years (case law) have developed the principle of the need to know in respect of common law rights to information. As such, a Councillor's rights of access to information under the common law (as under statutory law) is not unrestricted. The key elements of the need to know principle are:
- (a) The common law right of access to information does not permit fishing expeditions or the (trawling) of information;
  - (b) Councillors have a right of access to information to the extent that their having the information is reasonably necessary in the performance of their duties as an elected councillor;

- (c) The (need to know) will vary according to a councillor's particular role. For example, a member of the Audit and Governance Committee would be expected to have a greater 'need to know' detailed financial information than other councillors;
- (d) Councillors must be able to demonstrate their (need to know) and must seek access to information in good faith;
- (e) Councillors can only use the information in pursuance of their official duties: they cannot use it for political or personal purposes;
- (f) The refusal of access to information may take into account the affect, or potential affect, on third parties of the disclosure of the information;
- (g) Information disclosed on a confidential basis remains confidential and the councillor is under a legal duty to maintain such confidentiality.

### **The Disclosure of Confidential Information**

4.30 As detailed above, councillors remain bound by a duty of confidentiality under the common law and in accordance with the provisions of various statutory law, in respect of confidential information and 'personal data'. The disclosure of confidential information or personal data may result in:

- (a) Legal or regulatory action being taken against the Council and / or against the councillor personally;
- (b) A complaint against the councillor being made under the Code of Conduct for Councillors;

**Councillors should seek Confidential Advice from the Monitoring Officer if they consider it may be necessary to Disclose Confidential or otherwise Restricted Information.**

### **Dispute Resolution**

4.31 Whilst the purpose of this Protocol is to limit them, on occasion disputes between councillors and officers will arise.

4.32 Concerns as to the performance or conduct of officers will be dealt by their line managers in accordance with the Council's internal policies and procedures.

4.33 Where complaints are appropriately submitted against councillors under the Code of Conduct for Councillors, they will be dealt with in accordance with the Council's Arrangements for Dealing with Complaints Against Councillors. The Code and the Arrangements are set out above under section 2 and section 3 respectively.

4.34 Except where the above applies, where disputes and differences between councillors and officers cannot otherwise be resolved, their resolution will be sought through the procedure set out below.

### **Councillor Issues with Officers**

- 4.35 Councillors should first seek to resolve any issues they have with officers, with officer's immediate line manager.
- 4.36 Councillors should avoid the public and personal criticism of the officer – it is likely to escalate rather than resolve the problem and may result in complaints being made under the Code of Conduct for Councillors;
- 4.37 Councillors should avoid (copying-in) third parties on correspondence about problems with an officer – particularly other councillors and external parties;
- 4.38 Councillors must not make unsubstantiated against officers and must support their position with evidence;
- 4.39 Where it is not possible to resolve the matter with the officer's line manager, a formal complaint should be submitted to the relevant Executive Director;
- 4.40 Councillors must respect the decision of the line manger dealing with the matter, whether or not any further action has been taken and the nature of any such action.
- 4.41 Councillors must accept that other than as a witness of fact, they have no right to be involved in any disciplinary process or action taken against an officer.

### **Officer Issues with Councillors**

- 4.42 Junior officers are not expected to seek to resolve issues with councillors without the support of their line manager(s).
- 4.43 Where problems between officers and councillors cannot be resolved informally, officers may submit a complaint against a councillor under the Code of Conduct for Councillors.
- 4.44 If they are a member of a trade union, officers are entitled to seek advice and representation from their trade union.
- 4.45 Officers should seek advice from the Monitoring Officer.

### **Whistle-blowing and the Reporting of Wrongdoing**

- 4.46 Councillors or officers concerned about corruption, fraud, an abuse of office or other such wrongdoing should report their concerns to the Monitoring Officer in the first instance, or use the Council's whistleblowing policy if applicable.