

## **Part 5 C**

### Protocol on Member / Officer Relations

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### **Purpose**

1. The purpose of this protocol is to define the respective roles of members and officers and to provide guidance on what the relationship between those roles should be.
2. The protocol also reflects the principles underlying the respective Codes of Conduct which apply to members and officers. The shared object of these Codes is to promote high standards of behaviour.

### **Principles**

3. The fundamental principles underpinning this protocol are:
  - (a) The County Council is a democratically elected local authority delivering a range of services to the people of Leicestershire.
  - (b) The County Council is a single entity, a statutory corporate body. This relates to both the officer structure and the different areas of activity (Cabinet, Regulatory and Overview and Scrutiny) that members can be involved in.
  - (c) In everything they do, elected members and officers of the County Council are obliged to act within the law and in compliance with relevant standards and codes of conduct.
  - (d) All elected members of the County Council are ultimately accountable to the people of Leicestershire through the ballot box for their actions as County Councillors.
  - (e) The Political Administration of the day, whether single or joint, is ultimately politically accountable for the effectiveness and delivery of its policies and plans which have been approved by the County Council and will, therefore, have an interest in ensuring that services are delivered by the officers in accordance with those approved policies and plans.
  - (f) The officers serve the whole County Council as a single statutory corporate body.
  - (g) The Head of Paid Service (Chief Executive), Monitoring Officer, Chief Finance Officer (Section 151 Officer) and Scrutiny Officer are all statutory roles with responsibilities as set out in the Articles of this Constitution.

- (h) The officers will provide adequate support to all elected members in their local or representational role.
- (i) Dealings between elected members and officers should be based on mutual trust and respect.

### **Role of Members and Officers**

4. Members and officers are both servants of the public and indispensable to one another, although their responsibilities are distinct. Members are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council as a whole, and they are accountable to the Chief Executive. Their role is to give advice to members (individually and collectively) and to carry out the Council's work as determined by the Cabinet and full Council under the direction of the Chief Executive and the Council's Corporate Management Team.
5. Members should not get involved in the day to day operational management of services, although this does not preclude Members from raising constituency related operational issues. Equally, officers should not get involved in politics.
6. Members will take decisions in their role as members of the Cabinet and other decision-making bodies detailed in the Constitution, including the full Council. They will do this in the light of appropriate professional advice from officers, which will ensure that all decisions comply with the law and relevant standards or codes of conduct. Officers have the right to have their advice recorded, so that elected members are fully aware of the implications of their decisions.
7. The advice given by officers will aim to serve the interests of the County Council as a whole. It should be fearless, factual, honest, objective and politically neutral. Officers must be alert to issues which are, or are likely to be, contentious or politically sensitive. Officers must be aware of the implications for the council and its members, and for the community as a whole.

### **Relationships between Members and Officers**

8. The relationship between members and officers should be one of mutual trust and respect. Members and officers should behave courteously to each other and neither party should seek to take advantage of their position. Close personal familiarity between individual members and officers can harm professional relationships and prove embarrassing to other members and officers. Situations should be avoided that could give rise to the suspicion or appearance of any improper conduct, or the perception that a member and an officer treat one another differently from others due to the nature of a personal relationship between them. Officers are required to declare

any close personal relationships with members in the same way as they would declare a relationship with another employee.

9. Members should not raise matters relating to the conduct or capability of officers either individually or collectively at meetings held in public or in the press. Officers have no means of responding to such criticism in public. If Members feel that they have not been treated with proper respect, and courtesy or have any concern about the conduct or capability of an officer and are unable to resolve it through direct discussion with the officer they should raise the matter with the relevant Director concerned or with the Council's Monitoring Officer.
10. Members will not publish any material which is derogatory of officers generally, or specific individuals, whether directly or indirectly through their agents or political groups.
11. Members should respect the confidence of officers and, when information is shared with them, should not share it more widely, especially with the press, parish councils or members of the public, without seeking the consent of the relevant Head of Service or Assistant Director beforehand. More details of how to engage with the media are set out in the Media Relations Protocol.

### **Information and the political perspective**

12. For the proper functioning of the County Council as a whole, officers will normally be permitted to share information freely between themselves, irrespective of whether the officer's role is connected with the Cabinet, Overview and Scrutiny or the Regulatory aspects of the County Council. Where the information has been supplied/received subject to a request for party political confidentiality an officer will be permitted to share that information with other officers if they believe that to be necessary - for example for the purpose of verifying the legality, financial probity or procedural regularity of any proposed course of action disclosed by that information. The request for party political confidentiality will be confirmed to, and honoured by, any officers with whom the information is shared.
13. Appropriate and regular liaison between elected members and officers connected with the Executive and Overview and Scrutiny aspects of the County Council should avoid the relationship between Scrutiny and the Executive becoming adversarial and polarised. This liaison, combined with the politically balanced nature of Overview and Scrutiny, should reduce the number of occasions on which it is necessary for information to be supplied by elected members to officers on a party political confidential basis at the Executive/Overview and Scrutiny level.
14. On request and where appropriate, officers will provide a briefing on a policy matter or individual topic to a particular political group, provided

that the same offer is made to the other political groups. There will be times when officers consider it more appropriate to brief all members at the same; this will be discussed with the political group making the request.

15. Where information is supplied to officers on a party political confidential basis, the officers will respect that confidentiality unless the officers believe that the proposed course of action appears to be in conflict with the law, or any relevant standards or codes of conduct, or would amount to an abuse of the processes of the County Council.
16. Where party political confidentiality would be maintained in accordance with the preceding paragraph, the officers may, nonetheless, seek to persuade the elected members requesting the confidentiality to agree to that information being shared with the other political groups on the grounds that it would assist the more effective functioning of the County Council; however, in the absence of any such agreement to waive the confidentiality, the officers would continue to respect it.
17. Where there is a change in Political Administration, the officers will act in relation to the new Administration and Opposition party or parties in the same way as they did for the old; and will continue to respect any continuing party political confidentiality.

### **Relationship between the Cabinet and Overview and Scrutiny**

18. Given the nature and purpose of the County Council and the respective roles of elected members and officers, it is accepted that the officers, while remaining politically neutral, will inevitably give advice on a wider range of issues and on a more regular basis to the Cabinet. For their part, Cabinet members will continue to respect the political neutrality of the officers and accept that officers are obliged to respond positively to any requests from Overview and Scrutiny for appropriate information and advice relevant to the issue being considered by Overview and Scrutiny. When a committee requests it, the Executive will provide an appropriate Lead Member to attend an overview and scrutiny meeting to explain an Executive's decision and the reasons for it.

### **Decisions under delegated powers**

19. No executive powers will, as a matter of policy, be delegated to individual members, either as the Leader or as a member of the Cabinet. Although neither the Leader nor individual members of the Cabinet will have any personal delegated executive powers, they may, nevertheless, develop, a personal special interest in specific areas of County Council activity. The term "Lead Member", rather than "Portfolio Holder", is used to describe members with any such special interest, to avoid creating any misleading impression that the member

concerned does have personal delegated powers. The Leader may decide that there should be more than one Lead Member for any particular area of special interest.

20. The role of a Lead Member will include:

- (a) Providing a leadership role in their particular area, demonstrating familiarity and understanding of their brief.
- (b) providing a point of reference for a chief officer who wishes to sound out the elected member perspective before taking an executive decision under powers delegated to that chief officer.
- (c) Providing a better-informed elected member perspective and opinion on any relevant proposals before (or likely to come before) the Cabinet.
- (d) Appearing, as appropriate, before any relevant overview and scrutiny committee on behalf of the Executive.
- (e) Making position statements or responding to questions on the relevant area of activity, on behalf of the Executive, at any meeting of the County Council.
- (f) Speaking to the media to publicise and explain relevant decisions made at and policy proposals emerging from meetings of the Cabinet.

The role of the Lead Member for Children's Services is a statutory role and as such holds political accountability for all local authority children's services, including education and social care.

21. Where a chief officer decides (rather than volunteers) to consult a Lead Member before exercising his or her delegated powers, both will understand, and accept, that the final decision (and the responsibility which goes with it) remains with the chief officer; and that the process of reference to a Lead Member is not intended to operate as a delegation of power to the Lead Member.
22. The same principles apply where authority to take a decision has been specifically delegated to a chief officer "after consultation with" one or more elected members, whether Lead Member or local member or both. Although the process of consultation is required by the specific delegation of authority, this does not change the fact that the process is still one of consultation with, not specific approval by, the member(s) concerned. If the consultation process was handled as if it was one of specific approval, then that could reasonably be regarded as tantamount to *de facto* personal delegation to the member concerned.
23. Since consultation alone is involved, a chief officer can, theoretically, decide to proceed with his or her proposed course of action even in the face of some degree of objection from the member(s) consulted. However, a wiser course of action may be for the chief officer to decline to exercise the delegated authority and refer the decision back to the body which conferred the authority on the chief officer.

24. In implementing any process of consultation, if the view of the Lead Member is not in conformity with the professional view of the chief officer and the difference of view is material and cannot be reconciled, then the chief officer should consider:
- (a) seeking advice from the Chief Executive, Monitoring Officer or Chief Finance Officer as appropriate; and
  - (b) referring the issue to a meeting of the Cabinet or the body which conferred the delegated power -
- to protect the interests of the Lead Member, the chief officer and, ultimately, the County Council.
25. Chief officers should be careful about the methods they use to record, for internal purposes, that the process of consultation has taken place and its result. There should be mutual trust and understanding between chief officers and Lead Members - a degree of trust which should be sufficient to render inappropriate a formalised process whereby a chief officer expects Lead Members to sign written confirmation that they have read and understood the relevant material supplied to them and that they agree its content.

### **Keeping Members informed of matters affecting their electoral division**

26. To enable members to carry out their representative and divisional role effectively, they should be fully informed as early as possible about matters affecting their division, especially where it can be anticipated that members will become involved, for example in the case of the likelihood of complaints. Residents expect their County Council representative(s) to be aware of all the activities which they may believe are in some way the responsibility of the County Council. This arrangement does not extend to individual service-related complaints.
27. Members have an important role to play in representing the County Council in their electoral division by responding to the concerns of their constituents.
28. Members must be invited to any event that has been organised in their electoral division, which is relevant to their role as a County Councillor, for example the opening of a new facility from which County Council services are being delivered. If the facility or the service provides services to adjoining electoral divisions the additional members should also be invited.
29. Whenever a public meeting is organised by the Council to consider an issue, all the members representing the electoral division(s) affected should be invited to attend the meeting as a matter of course.

30. If a member intends to arrange a public meeting on a matter concerning some aspect of the Council's work, they should inform the relevant officer(s).
31. Similarly, whenever the Council undertakes any form of consultative exercise, the relevant member(s) should be notified immediately prior to the outset of the exercise.
32. Where a report to the Cabinet, Scrutiny or Regulatory Body includes a sensitive issue affecting one or more electoral divisions, report authors must draw this to the attention of the relevant member(s) concerned, whether or not they are a member of that body. This does not apply to reports considered by informal panels or working parties.
33. Members may attend as observers at meetings of the Cabinet, Overview and Scrutiny Committee and Regulatory Bodies (Standing Order 34), including those parts of the meetings from which the public has been excluded. Subject to the consent of the Chairman a member so attending may speak (but not vote) on any matter. Representations may also be made by members in writing, particularly if they are not able to attend the meeting.
34. Where Members have notified that they have a particular interest in a matter to be considered by the Cabinet or some other body, but they are not the local member, officers are still expected to provide them with the relevant information. Care must be taken on matters on which a member has an interest as defined in the Member Code of Conduct. Members have a common law right to inspect documents and attend meetings if they can demonstrate a "need to know" for the purposes of their duties as a Councillor. (if in doubt seek advice from the Monitoring Officer).
35. Further circumstances where it would be appropriate to notify individual members include, for example:
  - An issue arising from the exercise of a Chief Officer delegated power relating to their division;
  - An approach being made to a Chief Officer by the press for comments on a particular matter relating to their division;
  - A partnership body, which includes the County Council; proposing to take action on a matter relating to their division
  - A Freedom of Information request covering a controversial issue relating to their division;
  - Where officers have received significant complaints from residents in their division, likely to lead to adverse media coverage (excluding individual service-related complaints);
  - A potentially controversial operational matter that will have a significant impact on the community in their division such as



major road works, changes in opening hours, closure of a facility etc.;

- Where a major incident has taken place.

In most cases notification via a short e-mail or simple phone call is all that is required.

36. There may be times when, in addition to the local member(s), it would be appropriate for the officer concerned to notify other members, for example the Leader, Deputy Leader or Cabinet Lead Member.

## **Guidance to Elected Members on providing advice and support to Officers**

### Constituent Issues

37. A member may be asked for advice and support by an officer who is one of their constituents. Officers are entitled to seek such assistance in the same way as any other member of the public. However, members should be aware of the Officer Employment Procedure Rules in Part 4 of this constitution and be careful not to prejudice the County Council's position in relation to disciplinary procedures or employment matters in respect of an officer. A member approached for help in such circumstances should first seek advice from the Monitoring Officer.

### Employment Issues

38. A member should generally treat officers as they would a member of the public in relation to the personal receipt of council services and deal with the issue accordingly.
39. Although employees are not encouraged to do so, elected members may occasionally find themselves being approached by employees on matters relating to their personal circumstances as a member of the Council's staff.
40. This puts the elected member in some difficulty because they will potentially have a conflict of interest. On the one hand the member may well want to offer assistance to the employee, particularly if they reside in their electoral division. On the other hand, as a member of the County Council, all elected members have responsibilities as "the employer".
41. It is advised in such circumstances that the member concerned should limit their role to the following:-
- listening to the nature of the issue;
  - offering advice about where the employee can get assistance and support e.g. trade union, HR staff, manager, website;

- pointing to the various mechanisms which the Authority has in place for resolving issues and disputes with groups of employees and individuals. (These are explained below);
  - satisfying themselves that the Council's procedures (including the Whistleblowing Procedure where appropriate) are being followed correctly in that case and receiving details of the outcome. If there is concern that this may not be the case the member should seek advice from a relevant officer (i.e. Monitoring Officer, Head of Democratic Services, Head of Law and Deputy Monitoring Officer, Head of Member Service or Head of People Services).
42. Beyond the above, it would not be wise for an elected member to pursue any particular case on behalf of the employee. To do so could prejudice any procedures which are already underway and would not be in the Council's or public's interests.
43. There are a number of policies and procedures available for employees to raise individual issues in relation to their employment, in line with the Employee Code of Conduct which forms Part 5B of this Constitution.
44. The Whistleblowing Procedure is available to raise issues of bad practice, possible fraud or corruption or other matters which seem to be against the interests of the public, the Council or its staff.

**[end of Part 5C]**