

Bolsover District Council

Standards Committee

5th September 2017

Review of Protocol on Member/Officer Relations

Report of the Assistant Director – Governance and Solicitor to the Council & Monitoring Officer

This report is public

Purpose of the Report

- For Members to consider the Protocol on Member/Officer Relations

1 Report Details

- 1.1 Following the review of the Constitution in 2016/17, the Constitution Working Group considered that the Protocol on Member/Officer Relations would be a suitable focus for the review in 2017/18.
- 1.2 The Committee will consider a wider review of the Constitution as well during the year; however this report allows Members to focus on this Protocol in particular, as an opportunity for more targeted scrutiny.
- 1.3 The Council's Protocol on Member/Officer Relations is contained within Part 5 of the Constitution and is part of a suite of Codes and Protocols applying to Members and Officers. There is a dedicated Code of Conduct for Members and a separate one for Employees.
- 1.4 The purpose of the Protocol on Member/Officer Relations is to provide guidance to Members and Officers in their relations with one another. It is not a prescriptive or exhaustive set of rules, but provides guidance and principles to be followed to achieve the shared aim of enhancing and maintaining the integrity of local government through high standards of personal conduct.
- 1.5 At this stage, it is not envisaged that any major changes will be recommended to the Protocol or the ways in which Members and Officers interact, however some revisions may be suggested to make the text more accessible and the guidance easier to understand and follow.

2 Conclusions and Reasons for Recommendation

- 2.1 It is best practice that the Council's Constitution be reviewed on a regular basis and the Standards Committee has usually carried this out annually. It was agreed that the Protocol on Members/Officer Relations be the focus of this year's review.

2.2 Members are therefore asked to give their comments on the Protocol which Officers can take away to be included in the review that will be presented to a future meeting.

3 Consultation and Equality Impact

3.1 This report forms part of the process for Members to contribute to the review of the Constitution. The Senior Management Team will also be consulted as part of the review. It is not envisaged that there are any equalities issues arising from this review.

4 Alternative Options and Reasons for Rejection

4.1 The Committee could agree that the Protocol does not require further review or could suggest other areas of focus.

5 Implications

5.1 Finance and Risk Implications

5.1.1 None

5.2 Legal Implications including Data Protection

5.2.1 Any legal implications will be dealt with as part of the review.

5.3 Human Resources Implications

5.3.1 None

6 Recommendations

6.1 That Members consider the Protocol on Member/Officer Relations and make any comments arising from this to be included in the review.

7 Decision Information

| | |
|---|---------------|
| <p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC: Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p> | <p>Yes/No</p> |
|---|---------------|

| | |
|---|--------|
| Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In) | Yes/No |
| District Wards Affected | All |
| Links to Corporate Plan priorities or Policy Framework | All |

8 Document Information

| Appendix No | Title |
|--|--|
| Appendix 1 | Protocol on Member/Officer Relations taken from the Council's Constitution |
| Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers) | |
| None | |
| Report Author | Contact Number |
| Donna Cairns, Governance Manager (Acting) | Ext 2505 |

5.3 PROTOCOL ON MEMBER/OFFICER RELATIONS

1. Introduction

- (1) The purpose of this protocol is to guide Members and officers of the Council in their relations with one another.
- (2) Given the variety and complexity of such relations, this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise.
- (3) This protocol also seeks to reflect the principles underlying the respective Codes of Conduct which apply to Members and officers. The shared aim of these codes is to enhance and maintain the integrity (real and perceived) of local government and they, therefore, demand very high standards of personal conduct.
- (4) The Council's Code of Conduct for Members and the Code of Conduct for employees make it clear how the Members and Officers should treat each other:

2. Members and Officers

- (1) Both Members and Officers are servants of the public, and they are indispensable to one another but 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. Their job is to give advice to Members and the Council, and to carry out the Council's work under the direction and control of the Council, its committees and sub-committees and the Executive.
- (2) Members must not do or threaten to do anything which compromises or which is likely to compromise the impartiality of an employee of the Council.
- (3) Mutual respect between Members and officers is essential to good local government. Close personal familiarity or hostility between individual Members and officers can damage this relationship and prove embarrassing to other Members and officers.
- (4) The law and the Council's procedures lay down rules for the appointment, discipline and dismissal of staff. Members must ensure that they observe these scrupulously at all times. Special rules apply to the appointment of assistants to political groups. In all other circumstances, if a Member is called upon to take part in appointing an Officer, the only questions which the Member should consider is which candidate would best serve the whole Council. Members should not let their political or personal preferences influence their judgement. They should not canvass the support of colleagues for any candidate and should resist any attempt by others to canvass theirs. In consequence, Members should not provide references in support of applications for employment by the Council.

(5) In line with the Council's Codes' reference to "mutual respect", it is important that any dealings between Members and officers should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position or be hostile to the other.

(6) The Employee Code adopted by the Council has similar wording:

"Mutual respect between employees and councillors is essential to good local government. Close personal familiarity or hostility between employees and individual councillors can damage the relationship and prove embarrassing to other employees and councillors and should therefore be avoided."

3. Officer advice to Party Groups

(1) There is now statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to support and contribute to such deliberations by party groups.

(2) The support provided by officers can take many forms, ranging from a briefing meeting with a Chairperson or Spokesperson prior to a Committee meeting to a presentation to a full party group meeting. Whilst in practice such officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.

(3) Certain points must, however, be clearly understood by all those participating in this type of process, Members and officers alike. In particular:

(a) Officer support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if Officers are not expected to be present at meetings, or parts of meetings, when matters of party business are to be discussed;

(b) Party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not, therefore, rank as Council decisions and it is essential that they are not interpreted or acted upon as such; and

(c) Similarly, where Officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant Committee or Sub-Committee when the matter in question is considered.

- (4) Special care needs to be exercised whenever Officers are involved in providing information and advice to a party group meeting which includes persons who are not Members of the Council. Such persons will not be bound by the Council's 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) Officers must respect the confidentiality of any party group discussions at which they are present and should not relay the content of any such discussion to another party group.
- (6) Any particular cases of difficulty or uncertainty in this area of officer advice to party groups should be raised with the Chief Executive who will discuss them with the relevant group leader(s).

4. Support Services to Members and Party Groups

The only basis on which the Council can lawfully provide support services (e.g. stationery, typing, printing, photo-copying, transport, etc.) to Members is to assist them in discharging their role as Members of the Council. Such support services must, therefore, only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes.

5. Members' Access to Information and to Council Documents

- (1) Members are free to approach any Director or Assistant Director, as appropriate, to provide them with such information, explanation and advice (about that Directorate or Service functions) as they may reasonably need in order to assist them in discharging their role as Members of the Council. This can range from a request for general information about some aspect of Directorate or service activities to a request for specific information on behalf of a constituent. There is no automatic right to such information, except in the circumstances outlined below where the "Need to Know" is established. Such approaches should normally be directed to the Director or Assistant Director.
- (2) As regards the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by common law.
- (3) Members have a statutory right to inspect any Council document, which contains material relating to any business which is to be transacted at a Council, Committee or Sub-Committee or Executive meeting. This right applies irrespective of whether the Member is a Member of the Executive, a Committee or Sub-Committee concerned and extends not only to reports, which are to be submitted to the meeting, but also to any relevant background papers. This right does not, however, apply to documents relating to certain items which may appear on the "Exempt" part of the agenda for meetings. The items in question are those which contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, contract and industrial relations negotiations, advice from Counsel and criminal investigations.

- (4) The common law right of Members is much broader and is based on the principle that any Member has a prima facie right to inspect Council documents so far as access to the document is reasonably necessary to enable the Member properly to perform their duties as a Member of the Council. This principle is commonly referred to as the "Need to Know" principle.
- (5) The exercise of this common law right depends, therefore, upon the Member's ability to demonstrate the necessary "Need to Know". In this respect a Member has no right to "a roving commission" to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the "Need to Know". This question must initially be determined by the particular Director or Assistant Director as appropriate whose staff holds the document in question (with advice from the Monitoring Officer). It follows from this that the Member must give the reason for the enquiry. In the event of dispute, the question falls to be determined by the relevant Committee - i.e. the committee in connection with whose functions the document is held or the Executive.
- (6) In some circumstances (e.g. a Committee Member wishing to inspect documents relating to the functions of that Committee) a Member's "Need to Know" will normally be presumed. In other circumstances (e.g. a Member wishing to inspect documents which contain personal information about third parties) a Member will normally be expected to justify the request in specific terms.
- (7) Whilst the term "Council document" is very broad and includes, for example, any document produced with Council resources, it is accepted by convention that a Member of one party group will not have a "Need to Know", and, therefore, a right to inspect, a document which forms part of the internal workings of another party group.
- (8) Further and more detailed advice regarding Members' rights to inspect Council documents may be obtained from the Assistant Director – Governance and Monitoring Officer.
- (9) Finally, any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, i.e. in connection with the proper performance of the Member's duties as a Member of the Council.

7. Officer/Chairperson Relationship

- (1) It is clearly important that there should be a close working relationship between the Chairperson of a Committee or Member Working Group and the Director, Assistant Director and other senior Officers, which reports to that Committee or Member Working Group. However, such relationships *should never be allowed to become so close, or appear to be so close, as to bring into question the Officers' ability to deal impartially with other Members and other party groups.*

- (2) In relation to action between meetings, it is important to remember that the law allows for decisions (relating to the discharge of any of the Council's functions) to be taken by a Committee, a Sub-Committee or an Officer and in relation to Executive functions by the Executive or an Officer. Legislation allows for Members to take individual decisions where the Council decides that this should happen. These decisions can only be taken in specific circumstances following appropriate advice and the decision must be recorded. This does not mean that any decision can be taken by a Member. The rules relating to decision making where it is a Committee or Sub Committee or Officer decision remain unchanged.
- (3) The Council's delegation scheme is contained within the Constitution. This contains the majority of delegations to officers. From time to time the Executive, Committees and the Council give additional delegations which are added to the Constitution as it is updated annually.
- (4) Finally, it must be remembered that Officers within any department are directly accountable to the Chief Executive Officer. Whilst Officers should always seek to assist a Chairperson (or indeed any Member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by the Chief Executive Officer.

8. Correspondence

- (1) Correspondence between an individual Member and an Officer should not normally be copied (by the Officer) to any other Member. Where exceptionally 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.
- (2) Official letters on behalf of the Council should normally be sent out over the name of the appropriate officer, rather than over the name of a Member generally. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to appear over the name of a Member. Letters which, for example, create obligations or give instructions on behalf of the Council should never be sent out over the name of a Member.

Where Members send correspondence in their own name as a Member of the Council, such correspondence may be sent on Council headed notepaper headed with the words "from the Office of [Name of Councillor]"

9. Involvement of Ward Councillors

- (1) Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Ward or Wards affected should as a matter of course be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be notified at the outset of the exercise.

10. When and how Members can access information from data systems.

- (1) On occasion elected members require personal customer data (as defined by the Data Protection Act) to carry out their duties, for example for declaring interests on Licensing Committee or considering objections at Planning Committee. Usually this data is presented to elected members in a format which protects the original data.
- (2) Elected members should not have direct access to systems which control or process personal data; unless it is contained in a public register. Elected members do though have the right (whether or not they have a personal data protection registration) to view data which enables them to carry out their duties e.g. viewing a collated list of personal data submitted as part of a licensing function.
- (3) With regard to CCTV, an authorised list of users has been established. The authorised users include Police Officers (which are covered in the legislation) and employees of the Council who need access to carry out their operational duties as defined in their job description. The system should only be accessed for a specific purpose by specific authorised people. The Council has a duty to ensure all data is fully protected at all times.

On some occasions it is appropriate for elected members, third parties and senior officers to 'view' CCTV data. This is documented in the CCTV Code. If

- (4) someone in a senior position wanted to view (not access or operate) the CCTV they must have a valid reason e.g. major incident in Bolsover Market Place between 1.00 - 2.00 am on Sunday. They would not be given a password or allowed to operate the system themselves. They would have to sign the viewing confidentiality declaration and viewing log. This is designed to remove any security risk for the person and the Authority. By completing this documentation the senior officer or elected member can then sit with the authorised person and 'view' the data on the screen. The authorised person controls the system and viewing at all times to ensure privacy is maintained for people and houses in the vicinity of the cameras. This is detailed in the Code.