

Part 5.5 - Protocol on Member/Officer Relations

1. INTRODUCTION

- 1.1 This protocol reflects the recommendations of the Committee on Standards in Public Life in relation to standards of conduct in local government. In particular, the Committee recommend the adoption, by all local authorities, of a written code of conduct for members and for officers. The Council has adopted separate codes of conduct for members and officers which embody the mandatory provisions contained in regulations made by the National Assembly for Wales.
- 1.2 This protocol should be read and applied in conjunction with those codes of conduct. The principles and procedures set out in this protocol are already, to a large extent, established and form the basis of the Council's working arrangements. The purpose of this protocol is to provide guidance on member/officer working arrangements, particularly in any case of doubt or difficulty.
- 1.3 In particular, this protocol aims to support the enhancement of local democracy by:
 - 1.3.1 Facilitating the participation of members and officers in the Council's democratic processes;
 - 1.3.2 Assisting members, and those officers who support them, in their role as representatives of the community, within the Council and externally; and
 - 1.3.3 Clarifying arrangements for the provision of information and support for members and their party groups.
- 1.4 This protocol is also intended to assist members and officers in maintaining the highest standards of integrity and propriety, and ensuring that all that they do is seen by others to be done properly, fairly and, where possible, openly.
- 1.5 The following extracts from the respective codes of conduct for members and officers are relevant:
 - 1.5.1 Members must not do anything which compromises, or which is likely to compromise the impartiality of the authority's employees.
 - 1.5.2 Mutual respect between employees and members is essential to good local government, and working relationships should be kept on a professional basis.
 - 1.5.3 Employees should deal with the public, members and other employees sympathetically, efficiently, and without bias.

- 1.6 In line with the reference in the code to “mutual respect”, it is important that any dealings between Members and Officers should observe reasonable standards of mutual courtesy and respect, and that neither should seek to take unfair advantage of their position in any circumstances.

2. MEMBER/OFFICER COMMUNICATION

- 2.1 Members should communicate with officers regarding policy and strategic matters at the appropriate level, which will normally involve the appropriate Director or Head of Service or other Senior Manager.

Members are encouraged to refer enquiries regarding electoral ward matters to the democratic services unit who will usually obtain a written response within a couple of days and within a maximum of 7 working days. This will ensure that issues are referred directly to the appropriate officer thus resulting in a saving of resources and time for the elected member in not having to personally chase up a response. This is an internal process for Carmarthenshire County Council Elected Members only, and Councillors will be expected to convey any responses to their constituents. Any public email addresses will not be included in the email trail.

- 2.2 In communicating with members, officers should have regard to the requirements of this protocol, and any instructions issued by their departmental management.

3. OFFICER ADVICE TO PARTY GROUPS

- 3.1 There is 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 Council, the Cabinet or the relevant Committee. Officers may properly be called upon to support and contribute to such deliberations by party groups (provided that only the Authority’s Councillors are present at the meeting).
- 3.2 The support provided by officers can take many forms, ranging from a briefing meeting with a Chair or Spokesperson prior to a Council, Cabinet, or 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 or groups is for the time being in control of the Council, such support is available to all party groups.

- 3.3 Certain points must however be clearly understood by all those participating in this type of process, members and officers alike. In particular:
- 3.3.1 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.
 - 3.3.2 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 communicated (inside or outside the organisation), interpreted or acted upon as though they have that official status.
 - 3.3.3 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 Cabinet or relevant Committee or Council when the matter in question is considered.
 - 3.3.4 Officers will not provide information and advice to a party group meeting which includes persons who are not members of the Council. Such persons are not bound by the members' code of conduct (in particular, the provisions concerning the declaration of interests and restrictions on disclosure of confidential information) and for this and other reasons officers would not be able to provide the same level of information and advice as they would to a meeting of members only.
 - 3.3.5 Officers must respect the confidentiality of any party group discussions at which they are present and should not, in particular, relay the content of any such discussion to another party group.
 - 3.3.6 Any request by or for an officer to attend a meeting arranged by a party or party group, for the purpose of presenting information to the meeting (e.g. in relation to an issue or proposal affecting or involving the Council) must be made through the Chief Executive via the Leader of the relevant party group Any officer who so attends will do so in his/her official capacity, will be politically neutral, and attendance will not signify support for any particular political view, proposal or response. Such attendance will generally be avoided during the period between the announcement and conclusion of any local or parliamentary election affecting the area involved.

- 3.3.7 At any public meeting organised by any party group, or by any individual Member (rather than by the Council), officers will attend only to provide information which is publicly available. Officer attendance at such a meeting will generally be avoided during any “pre-election” period (between the announcement and conclusion of any local or parliamentary election affecting the locality). Any particular difficulty or uncertainty concerning officer advice to party groups should be raised with the Chief Executive or with the Monitoring Officer who will, where appropriate, discuss with the relevant Group Leader(s).

4. SUPPORT SERVICES AND FACILITIES FOR MEMBERS AND PARTY GROUPS

The only basis on which the Council can lawfully provide support services and facilities (e.g. Computer equipment, stationery, typing, printing, photocopying, meeting rooms, transport and accommodation arrangements etc.) to Members is to assist them in discharging their role as Members of the Council. Except as may be provided in other agreed Council policies, such support services and facilities must therefore only be used on Council business.

They should never be used in connection with party political, campaigning activity, in support of local or other organisations, individuals or, for private purposes.

5. MEMBERS’ ACCESS TO INFORMATION AND TO COUNCIL DOCUMENTS

- 5.1 Members are free to request any department to provide them with such information, explanation and advice about that department’s function 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 a department’s activities to a request for specific information on behalf of a constituent. *Members are encouraged to direct such approaches to the democratic services unit who will usually obtain a written response within a couple of days and within a maximum of 7 working days. This will ensure that issues are referred directly to the appropriate officer thus resulting in a saving of resources and time for the elected member in not having to personally chase up a response.*
- 5.2 The legal rights of members to inspect Council documents arise partly from statute and partly from the common law (judicial decisions).
- 5.3 right does not however apply to documents relating to certain items that appear as exempt items on the agenda for any meeting. These contain information which is (by statute) exempt from publication because, for example, it relates or refers to employees, occupiers of Council property, applicants for grants or other services, the care of children, the proposed terms of a contract or contractual negotiations or other commercially-sensitive information, industrial relations negotiations, legal advice or legal proceedings.

- 5.4 The common law right of members is much broader and based on the principle that any member has a prima facie right to inspect Council documents, so far as his/her access to the documents is reasonably 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.
- 5.5 Whether a member is, in any particular case, entitled to exercise this common law right depends therefore upon the member’s ability to demonstrate that he/she has the necessary “need to know”. In this respect, a member has no right to a “roving commission” to examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the “need to know” for a purpose necessary to enable the member to carry out his or her public duties. This question must initially be determined by the Director whose department holds the document in question (with advice from the Monitoring Officer). In the event of a dispute, the question may be referred for determination by the Executive Board Member(s) and Director responsible for the function or purpose for which the document is held, again with legal advice from the Monitoring Officer.
- 5.6 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.
- 5.7 Whilst the term “Council document” is very broad and includes, for example, any document produced by whatever means with Council resources, it is accepted by convention that a member of one party group will not have a “need to know”, and therefore no right to inspect, a document which forms part of the internal working of another party group.
- 5.8 Further and more detailed advice regarding members’ rights to inspect Council documents may be obtained from the Monitoring Officer.
- 5.9 Finally, Council information provided to a member must only be used by the member for the purpose for which it was provided; that is, only to enable the proper performance of the member’s duties as a Councillor. This point is emphasised in the members` code of conduct in the following terms:

“Members:

- (a) must not disclose information given in confidence, without the express consent of a person authorised to give such consent, or unless required by law to do so;
- (b) must not prevent any person from gaining access to information to which that person is entitled by law.”

6. OFFICER / CHAIR / CABINET MEMBER RELATIONSHIPS

- (a) It is clearly important that there should be a close working relationship between Cabinet Members, Chairs of Committees and the Directors, Heads of Service and other senior officers of any department which reports to decision making meetings. However, such relationships should never 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 members and other party groups, or with any other individual or organisation.
- (b) Whilst a Cabinet Member or a Chair may routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some circumstances the proper conduct of business may require a particular matter to be included on an agenda. Directors will always be fully responsible for the contents of any report submitted in their name. Any issue concerning the inclusion of any item on an agenda, or the submission of any particular report, that cannot be agreed between a Cabinet Member or a Chair and a Director should be referred to the Monitoring Officer. There may also be circumstances in which the Chief Executive or the Director of Corporate Services (as statutory Finance Officer), or Monitoring Officer, will be under a duty to submit a report.
- (c) It must be remembered that officers within a department are accountable to their Director and that whilst officers should always seek to assist a Cabinet Member/Chair (or indeed any Member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Director. It should also be noted that the Chief Executive has statutory responsibility, as Head of Paid Service, for ensuring the proper organisation and management of the Council's staff and has therefore an overall responsibility for the direction and management of all officers.

7. MEMBERS AND OFFICERS GIVING ACCOUNT

- (a) With regards to scrutinising and reviewing decisions made, as well as reviewing documentation, in fulfilling the scrutiny role a Scrutiny Committee may require any member of the Cabinet, the Head of Paid Service and/or any Chief Officer or Head of Service to attend before it to explain in relation to matters within their remit:
 - i. any particular decision or series of decisions;
 - ii. the extent to which the actions taken implement Council policy; and/or
 - iii. the performance of their duties.

and it is the duty of those persons to attend if so required.

- (b) Where any officer is required to attend a meeting of a Scrutiny Committee under this specific provision, the Chair of that committee will inform the Chief Executive who will inform the member or officer in writing giving at least fifteen working days notice of the meeting at which they are required to attend. The notice will state the nature of the item on which they are required to attend to give account and whether any papers are required to be produced for the Committee. Where the account to be given to the Committee will require the production of a report, then the officer concerned will be given sufficient notice to allow for preparation of that documentation i.e. an additional 15 working days.
- (c) Where, in exceptional circumstances, the member or officer is unable to attend on the required date, then the Scrutiny Committee shall in consultation with the member or officer arrange an appropriate alternative date for attendance. In setting the dates the Chief Executive will take into account exceptional circumstances, for example illness or planned holidays.
- (d) It should be noted that it is not the role of a Scrutiny Committee to either:
 - i. Act as a disciplinary hearing in relation to the actions of Officers - this is the Chief Executive's function alone in relation to staff; or
 - ii To act as a quasi 'court of appeal' against decisions, or to pursue complaints by individuals (Councillors, Officers or members of the public) – as other procedures exist for this – these are internal e.g. Corporate Complaints Procedure, and external/statutory e.g. Local Government Ombudsman or appeal to the Courts.

8. CORRESPONDENCE

- 8.1 Correspondence including e-mails between an individual member and an officer should not normally be copied (by the officer) to any other member, except at the discretion of the departmental Director, or with the agreement of the members concerned, where necessary for the proper conduct of business. Where exceptionally it is necessary to copy the correspondence to another member, this should be made clear to the original member. In other words, "blind" copies of such correspondence should not be circulated.
- 8.2 Official letters on behalf of the Council should normally be sent out in the name of the appropriate officer rather than in the name of a member. It may be appropriate in certain exceptional circumstances (e.g. representations to a government minister or correspondence with the Leader of another local authority) for a letter to be issued in the name of the Leader of the Council. Letters which, for example, create obligations, confirm or deny the acceptance of any liability, or give instructions on behalf of the Council should always be sent out in the name of the Chief Executive or the appropriate Director or Head of Service or other senior officer.

9. PUBLICITY AND THE MEDIA

- 9.1 Contact with the media on issues related to the Council, or to Council business, including the issue of press releases, will be handled through the Press Manager of the Communications Unit of the Chief Executive's Department.
- 9.2 If a member speaks to the media without having first consulted with the Leader or relevant Cabinet Member or Committee Chair and/or Press Manager then it will be deemed to be the member's own personal view.

10. PERSONAL RELATIONSHIPS

- 10.1 No member or officer should allow any personal connection or relationship with any other member or officer to affect the performance of his or her official responsibilities, or the taking of any action or decision by or on behalf of the Council. This includes, for example, any family relationship, membership of the same household, or any business connection. Members and officers should always consider how such a relationship or connection would be likely to be regarded by anyone outside the Council, or by any other member or officer, and avoid creating any impression of bias or unfairness.
- 10.2 An officer who is personally connected or related to any member should notify his or her Chief Officer in writing.
- 10.3 Members should take into account any personal relationship or connection with any other member or officer, in considering the need to register or declare a pecuniary or non-pecuniary interest whenever appropriate.

11. INVOLVEMENT OF WARD COUNCILLORS

Whenever a public meeting is organised by the Council to consider a local issue, all the local members representing the County Council Divisions 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 local members should be notified at the outset of the exercise.

12. FURTHER GUIDANCE

Any member of the Council who needs further guidance on any of the matters referred to in this protocol, or on any similar or related issue, is advised to contact the Chief Executive or the Monitoring Officer. Any officer needing such guidance should refer initially to their Line Manager, who will consult senior management and obtain advice as necessary.