

## **PART 5 - CODES AND PROTOCOLS SECTION B**

### **MEMBER AND OFFICER PROTOCOL**

#### **1. INTRODUCTION AND PRINCIPLES**

- 1.1 The purpose of this protocol is to provide a guide to good working relationships between officers and councillors (elected Members) and to provide some principles governing appropriate conduct. The object of this Protocol is to enhance and maintain the integrity (real and perceived) of local government by demanding very high standards of personal conduct by elected Members and officers. Throughout this document "officer" shall be defined as being any employee of the Council, whether employed full-time, part-time or on a temporary contract.
- 1.2 The protocol seeks to reflect the principles underlying the separate Codes of Conduct for Members and Officers of the Council, which must be read in conjunction with this document.
- 1.3 In everything they do, the elected Members and officers of the Borough Council are obliged to act within the law and in compliance with relevant standards and codes of conduct.
- 1.4 All elected members of the Council are ultimately accountable to the people of the Borough of Surrey Heath. The officers serve the whole Council as a single statutory corporate body and will provide adequate support to all elected members in their local or representational role. Members and officers need to be clear about their respective roles in the authority. This can only be achieved if there is mutual understanding and good communications.
- 1.5 Mutual respect and courtesy between officers and Members is essential to good local government. The interests of the Council are best served where there is mutual confidence and trust between all elected Members and officers. The working relationship between an officer and a Member must not be so close as to bring into question the officer's ability to deal impartially and fairly with other Members.
- 1.6 Members must recognise that officers are required to be politically neutral and serve all Members equally and that officers owe a duty to the whole Council. Members must ensure that officers are not put in a position that prejudices their overall duty or put an officer in a position where there would be a conflict between that officer and his or her line manager. Members must not give direct instructions to junior officers but must communicate with senior officers. Members must not put pressure on, or seek to intimidate, officers.
- 1.7 Neither Members nor officers must try to take unfair advantage of their position.

## **2. STATUTORY CODE OF CONDUCT FOR MEMBERS**

- 2.1 The Council's Code of Conduct for Members is at Section A of Part 5 of this Constitution. This Code of Conduct sets out the standards of conduct and integrity which are expected of an elected Member. Various provisions of the Code are relevant to member/officer relations and are referred to in this Protocol.
- 2.2 Code of Conduct broadly requires Members:
- a) to treat others with respect;
  - b) not to do anything which could be considered to be a breach of any equality legislation;
  - c) not to bully any person;
  - d) not to intimidate or attempt to intimidate any person in relation to an allegation that a Member has failed to comply with the authority's Code of Conduct; and
  - e) not to do anything likely to compromise the impartiality of officers.
- 2.3 It is important that in any dealings between Members and officers both must observe reasonable standards of courtesy, and that neither party must seek to take unfair advantage of their position.
- 2.4 The Code of Conduct also requires Members, when reaching decisions, to have regard to any relevant advice provided by the Section 151 Officer (when acting in pursuance of his duties under Section 114 of the Local Government Finance Act 1988) and the Monitoring Officer (when acting in pursuance of his duties under Section 5(2) of the Local Government and Housing Act 1989).
- 2.5 The Council confirms that, in undertaking their functions, the Section 151 Officer, acting as Chief Finance Officer, and the Monitoring Officer will ensure the impartiality of any advice or instruction given, and that Members will do nothing to compromise the statutory responsibilities of these officers.
- 2.6 The Code of Conduct also requires Members not to seek to influence improperly a decision and not to exercise functions in relation to any business of the Council where the Member has a Disclosable Pecuniary Interest.
- 2.7 The Code of Conduct states that Members must not disclose information given to them in confidence, or information which they believe to be confidential, without the consent of a person authorised to give it, or unless required by law to do so. If the Monitoring Officer considers that a Member has disclosed confidential information obtained in the course of his/her duties, the matter may be investigated.

## **3. CODE OF CONDUCT FOR OFFICERS**

- 3.1 The Code of Conduct for Officers forms part of officers' Terms and Conditions of Employment. It sets out the standards of conduct and integrity which are expected of a local government officer and the standard of service to the

public. It reiterates that mutual respect between officers and councillors is essential to good government.

- 3.2 Certain provisions within the Code relate to Member and officer relationships and appropriate conduct. The Code requires officers to serve the authority as a whole, serving all councillors whilst maintaining political neutrality at all times, and to ensure that the individual rights of all councillors are respected. Where it is part of their duties officers must provide appropriate advice to councillors and fellow officers with impartiality. They must not release any confidential information or use information obtained in the course of their employment for personal gain or pass it on to others who might use it in such a way.
- 3.3 Officers are responsible to the authority through their Strategic Director or Head of Service and must follow every lawful expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work.

#### **4. THE RELATIONSHIP BETWEEN MEMBERS AND OFFICERS**

##### General

- 4.1 Mutual respect between councillors and officers is essential to good local government. Close personal familiarity between individual Members and officers can damage this relationship and prove embarrassing to other councillors and officers. Such a personal familiarity is discouraged as there is a danger of favouritism being shown to a particular Member or officer or a risk that confidential information will be shared. Members must at all times avoid any occasion for suspicion and any appearance of improper conduct. It is, however, recognised that there may be occasions when familiarity is unavoidable, particularly where family relationships or common interests (eg a club) arise.
- 4.2 The Council recognises that in a large organisation it is inevitable that there may be close social or personal relationships between members and officers. These relationships may have commenced before, or after, a councillor is elected to the Council or before, or after, a person becomes employed by the Council.

##### Disclosure of close personal relationships

- 4.3 The councillor must disclose any relationship with an officer which might be seen as influencing their work to his Group Leader and the Monitoring Officer, and the employee such a relationship to his/her Strategic Director or Head of Service. This includes any family, business or close personal relationships. It is not possible to define exactly the range of relationship that would be considered as close or personal. Examples, however, would include a family or sexual relationship and regular social mixing such as holidays or evening meals together.

- 4.4 Any disclosures must be made in writing to the Monitoring Officer. This is to protect both the individual and the Council.
- 4.5 To ensure that neither the Member nor the employee is placed in a position where their relationship will be seen to conflict with this Protocol or with the Council's Code of Conduct, Members must not hold a portfolio or the position of chairman of a regulatory committee which covers a department for which an officer does significant work if they are related to, or the partner of, that officer. A role in policy making, strategic or operational management or resource allocation would be considered as significant work.

#### Working relationships between Members and officers

- 4.6 It is clearly important that there must be a close working relationship between Members and senior officers. However, such relationships must never be allowed to become so close, or appear to be so close, as to bring into question the officers' ability to deal with other Members and other party groups.
- 4.7 The relevant portfolio holder or the Chairman of a Committee are usually consulted as part of the process of drawing up the agenda for a forthcoming meeting. Sometimes an officer will be under a duty to submit a report to a meeting on a particular matter. A senior officer will always be fully responsible for the contents of any report submitted by his/her service area. This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report. Any issues arising in this area must be referred to the relevant Lead Officer for resolution in conjunction with the Leader of the Council or Chairman of the Committee, as appropriate. The advice of the Monitoring Officer should be sought where necessary.
- 4.8 Members have the right to question/challenge reports and the actions taken by officers but they must always
- a) avoid physical or personal attacks on or abuse of officers
  - b) ensure that any criticism is constructive and well founded
  - c) respect professional advice
  - d) allow the officer an opportunity to explain what might appear to be a performance failure or inconsistency
  - e) recognise that an officer has the final say on the wording of the report
- 4.9 Members recognise that officers have the duty and right to provide appropriate professional advice, and the right to have that advice recorded, so that all elected Members are fully aware of the implications of their decisions. Officers recognise that it is the right of the elected Members to take the final decisions in the light of their advice.
- 4.10 Where the Council, the Leader/Executive or a committee or sub committee authorises a named officer or officers to take action after consultation with a Member or Members, it must be recognised that it is the officer, not the

Member, who takes the action and the officer who is accountable for the implementation of the decision. If an officer has concerns about a decision they have been instructed to action, they should approach the Chief Executive or Monitoring Officer for guidance.

- 4.11 Officers are accountable to their Strategic Director or Head of Service. While officers must always seek to assist Portfolio Holders and Chairmen (or indeed any Member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Strategic Director or Head of Service. Members must not deliberately put staff in a position that could give rise to conflict between them and their Manager and/or Strategic Director or Head of Service.

#### Council's role as employer

- 4.12 In their dealings with officers, Members must recognise and have regard to the Council's role as employer. Members must be aware that officers could rely on inappropriate behaviour of a Member in an employment case against the Council.
- 4.13 A Member must not act as the "friend" of an individual in a staffing matter and must avoid being involved in and lobbying over staffing matters.
- 4.14 It is equally the responsibility of all staff to respect the structural, procedural and managerial arrangements in force at any time and specifically refrain from taking individual matters of terms and conditions or a matter relating to other aspects of employment directly to an elected Member.
- 4.15 Should such an approach occur the Member must refer the matter to the Chief Executive or Monitoring Officer without comment other than to advise the member of staff of such action. The Chief Executive or Monitoring Officer will refer the matter to the Human Resources department where appropriate.

#### The Speak Up Policy

- 4.16 Any concerns of wrong-doing raised by officers with the Chairman or Vice Chairman of the Employment Committee or Political Group Leaders, which are deemed to be qualifying disclosures as set out in the Speak Up Policy, will not be treated as a breach of this Protocol.

### **5. CONCERNS ABOUT CONDUCT AND CAPABILITY**

- 5.1 Members must not raise issues about the conduct or capability of an officer or officers in public as officers cannot respond in public. Members must avoid undermining respect for officers at meetings, or in any public forum. This is a long standing tradition in public service. Officers similarly must not criticise or undermine respect for Members at a Council meeting or at any other meeting they attend in their capacity as an employee. This would be damaging both to effective work relationships and to the public image of the Council.

- 5.2 If a Member feels that an officer has not treated him/her with proper respect or courtesy, or has a concern about the conduct or capability of an officer, he/she must raise the matter with the relevant Strategic Director or Head of Service. The Strategic Director or Head of Service will look into the facts and report back to the Member. If the Member continues to feel concerned, he/she must then report the facts to the Chief Executive who will look into the matter afresh. Any concern about an Strategic Director or a Head of Service must be raised privately with the Chief Executive, Monitoring Officer or the Member's Group Leader. Any concern about the Chief Executive must be raised privately with the Monitoring Officer, or the Member's Group Leader.
- 5.3 If an officer feels that he or she has not been treated with respect and courtesy or is concerned about any action or statement relating to him or her or a colleague by a Member, or the conduct of a Member, the officer must raise the matter with the Monitoring Officer, as appropriate. Informal advice can be sought from their line manager or Strategic Director or Head of Service.
- 5.4 If a Member or an officer believes a Member has breached the Members' Code of Conduct he or she must advise the Monitoring Officer immediately of the circumstances and supply all and any documentation. No opinion or judgement upon that conduct must be offered to the Member or to any other officer or Member without the prior consent of the Monitoring Officer in order to prevent any investigation that may need to be carried out being fettered or damaged.
- 5.5 Where an officer or a Member is concerned about potential unlawful conduct of an officer or Member, the Council's Speak Up procedure is available to raise issues of bad practice, possible fraud or corruption and other matters which seem to be against the interests of the public, the Council or its staff. The Member or officer can also speak to the Monitoring Officer or the Section 151 Officer, or in their absence their deputies.

## **6. OFFICER ADVICE AND SUPPORT**

### Generally

- 6.1 Officers serve the Council as a whole and not exclusively any political group, combination of groups or any individual member of the Council. Officers must treat all political groups and individual Members in a fair and even-handed manner. Whilst in practice support is likely to be in most demand from whichever party group is for the time being in control of the Council, support is available to all party groups.
- 6.2 The advice provided by officers must be factual, honest, objective and politically neutral yet sensitive to the political aspirations and constraints of elected Members but it must not reflect, or be influenced by, those aspirations and constraints. The advice given by officers will have the ultimate aim of serving the interests of the Borough Council as a whole. Members shall take the advice of officers into account.

- 6.3 Officers will often wish to seek political guidance in framing policy proposals but, when officers write formal reports for Member decision, they have a duty to give the advice dictated by their professional expertise. Members must not, therefore, direct the content of formal reports being prepared by any officers.
- 6.4 Officers can only be asked to provide advice to Members on matters which clearly relate to the Council's business and activities and issues which arise from being an elected Member. Any Council information provided to a Member must only be used by the Member in connection with the proper performance of the Member's duties as a member of the Council. Members must not request officers to carry out research for them covertly. Members' access to information will be a 'need to know' basis (as outlined in the Access to Information Procedure Rules at Section E of Part 4 of the Constitution).
- 6.5 Members may approach any officer to obtain such reasonable information, explanation and advice about that officer's service area's functions to assist in discharging their role as members of the Council or any particular role, e.g. representative on an outside body to which they have been appointed by the Council. This can range from a request for general information or research about some aspect of a service area's activities to a request for specific information on behalf of a constituent. Such approaches should normally be made to the Strategic Director, Service Head or another senior officer of the service concerned. In cases of doubt, the appropriate Strategic Director or Head of Service or the Monitoring Officer should be asked for assistance.
- 6.6 Officers responding to Members' queries must do so in accordance with the Council's Customer Care Standards.

#### Support to party groups

- 6.7 It is common practice for political groups to give preliminary consideration to Council business before the matter is considered by the relevant Council decision making body. Officers may properly be called upon to provide support to party groups, and the support can take many forms, ranging from a briefing meeting with a Chairman or spokesman before a formal meeting, to a presentation to a full party group meeting.
- 6.8 Requests for officers to attend any party group meeting must be made through the Chief Executive or Monitoring Officer. Members cannot insist that officers go to meetings of political groups.
- 6.9 Officer support must not extend beyond providing information and advice on 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 part of meetings when matters of party business are to be discussed. To facilitate this, where an officer accepts an invitation to attend a party group meeting, the party secretary must arrange the meeting so that any briefing or presentation given by the officer is

immediately followed by a question/clarification session. The officer will then leave the meeting whilst the political discussion takes place. It may be appropriate to ask the officer to remain outside the meeting for not longer than 15 minutes, in case any further clarifications are necessary.

- 6.10 Officers must interpret any request for advice, and advice given, as confidential and not accessible to any other political group. They must not relay the content of any discussions at which they are present to another political group. However, factual information upon which the advice is based will, if requested, be available to all political groups.
- 6.11 An officer's advice to a political group or member, or help in formulating a policy, must not be assumed to be support by the officer for the policy.
- 6.12 Officers' advice to a party group cannot be a substitute for providing all necessary information and advice to the Leader/Executive, Committee or Working Group when the matter in question is considered.
- 6.13 Group Leaders must ensure that only councillors are present whilst party groups are being briefed by officers. If the officer is aware that non-councillors are present at the group meeting, he/she must leave without addressing the meeting.
- 6.14 Political group meetings are not empowered to make decisions on behalf of the Council. Conclusions reached at party meetings therefore must not be interpreted or acted upon as decisions on behalf of the Council.
- 6.15 In addition to any briefing before a meeting, minority group representatives will also be afforded the opportunity of a briefing through their appropriate spokesman.
- 6.16 Any particular cases of difficulty or uncertainty in this area must be raised with the Chief Executive or Monitoring Officer, who will discuss them with the relevant group leader(s).

## **7. OTHER LOCAL CONVENTIONS GOVERNING MEMBER/OFFICER RELATIONS**

### Correspondence

- 7.1 An officer should not normally copy correspondence between an individual Member and an officer on a matter relating to a single constituent to any other Member. Where, exceptionally, it is necessary to copy the correspondence to another Member, this must be made clear to the original Member. In other words, a system of "silent or blind copies" must not be used. If the officer is unsure he/she must seek clarification from his/her Strategic Director or Head of Service.
- 7.2 In some cases issues are raised by, or with, individual members relating to a matter of general interest in a Borough Council Ward or individual Parish.

Copies of correspondence will therefore normally be sent to all councillors for the ward (and adjacent area if appropriate) and only in exceptional circumstances will a request not to copy to other councillors be granted, for example, the author may have specifically requested that the letter not be copied. Political advantage or sensitivity is not considered to be such a circumstance.

- 7.3 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 circumstances (e.g. representations to a Government Minister) for a letter to be signed by a Member, but this must be the exception rather than the norm. Letters which, for example, create obligations or give instructions on behalf of the Council must never be sent out in the name of a Member.

#### Involvement of Ward councillors

- 7.4 Whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members must be informed or involved, as appropriate, not later than at the outset of the exercise. Similarly whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Ward or Wards affected must, as a matter of course, be invited to attend the meeting. Where officers are invited to make presentations at public meetings organised by external organisations, Ward Members must be informed.

#### Public relations and press releases

- 7.5 The Council's Marketing and Communications Section serves the Council as a whole and must operate within the limits of the Code of Recommended Practice on Local Authority Publicity issued under the Local Government Act 1986. Broadly, the 1986 Act prohibits the Council from publishing material that appears designed to affect public support for a political party.
- 7.6 Officers draft press releases on behalf of the Council. They will often contain quotations (within the limit of the Act and Code of Recommended Practice) from the Leader of the Council, a Portfolio Holder, the Chairman or Vice-Chairman of a Committee or the Mayor or Deputy Mayor of the Council about ceremonial events. Such press releases are issued on behalf of the Borough Council and it would not, therefore, be appropriate when including quotations from Members to indicate the Members' party political affiliation.

### **8. BREACH OF THE PROTOCOL**

- 8.1 Complaints about any breach of this protocol by a Member may be referred to the Monitoring Officer. Certain breaches may also amount to breaches of the Code of Conduct for Members (set out at Section A of Part 5 of the Constitution) and will be dealt with by the Monitoring Officer.

8.2 Complaints about any breach of this protocol by an officer may be referred to the Chief Executive or the Monitoring Officer.

## **9. APPLICATION, INTERPRETATION AND AMENDMENTS**

9.1 If there are any issues of concern which are not dealt with by this protocol, then the relevant Member or officer may discuss the matter with the Chief Executive or Monitoring Officer with a view to advice being provided.

9.2 Should any Member or officer wish to suggest an amendment to this protocol, he or she is asked to contact the Monitoring Officer.