

Standards and Ethics Committee
Wednesday, 24 April 2024, 10.00 am, Lakeview Room, County
Hall, Worcester, WR5 2NP

Agenda

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STANDARDS AND ETHICS COMMITTEE

24 April 2024

Review of Member/ Officer Relations Protocol

Recommendation

1. The Assistant Director for Legal and Governance recommends that:
 - a) The progress on the review of the Member/ Officer protocol be noted;
 - b) Further time is given for the ADLG to receive feedback from chief officers and members; and
 - c) The final draft of the protocol to be considered at the Committee meeting on 3 July 2024.

Background

2. At the meeting on 17 January members of the committee provided feedback on matters they would expect to see in a Member/ Officer relations protocol.
3. Suggestions to include were:
 - Specific reference to the Nolan Principles
 - Communication
 - relationships between individuals
 - confidentiality
 - social media
 - Access to information
 - Where is the protocol saved?
 - Sanctions available for breaching the Protocol should be included in the protocol
 - Pre-election guidance
 - Summary of roles of Members and Officers
4. Feedback on the current member/ officer relations protocol has been requested from group leaders and Chief Officers. It is proposed more time is given to receive this feedback to allow for a proper consultation period. An officer group are currently reviewing the contract and finance standing orders. A report will be presented to the Audit and Governance Committee on 6 June 2024. The table below sets out the proposed decision-making timetable for the revised Member/ Officer protocol.

Audit and Governance Committee	6 June 2024
Standards and Ethics Committee	3 July 2024
Council meeting	11 July 2024

5. Attached to this report is a working draft of the Member Officer relations protocol taking into account the initial feedback received from committee members on 16 January 2024. This is not a final draft.

Supporting Documents

Appendix - Working draft of the Member Officer relations protocol

[APPENDIX 12 January 2020 Member officer relations vf.pdf \(moderngov.co.uk\)](#)

Contact Points

Specific Contact Points for this report

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Background Papers

In the opinion of the proper officer (in this case the Assistant Director for Legal and Governance) there are no background papers relating to the subject matter of this report.

PROTOCOL FOR MEMBER/ OFFICER RELATIONS

Summary

Councillors and officers work together in the public interest, to serve the local community and to address local priorities. Councillors are answerable to the electorate and serve until their term of office expires. Officers are employed by, and are responsible to, the Council as a whole. They are not answerable to any one political party or any individual Councillor. Officers are subject to the Council's employment procedures and management disciplines. Their job is to advise Councillors and the Council, and to carry out the Council's work under the direction of Council decision-making bodies, the overall management of the Chief Executive and the specific management direction of their relevant Executive Director or Director.

The Seven Principles of Public Life

Both Councillors and officers must observe the 'Seven Principles of Public Life' which outline the ethical standards to which those working in the public sector are expected to adhere (see Appendix A).

DEFINING THE MEMBER AND OFFICER ROLES

Mutual trust and respect are essential in setting the right tone for effective working relationships between Members and Officers.

Both Officers and Members

- Adhere to respective Codes of Conduct and uphold ethics and values of the Council
- Are accountable for decisions and actions
- Maintain confidentiality as appropriate
- Act as an Ambassador for the Council
- Represent the Council on external bodies and provide feedback

A Quick Guide to the Distinct Roles

Members	Officers
Account to the electorate	Accountable to the Council
Community Leader/representative role for a Ward	Serve the whole Council
Add a political dimension	Be politically impartial
Set high level policy strategy and make high level decisions	Provide guidance on policy. Ensure operational delivery
Do not influence recommendations of reports but may at formal meetings, accept or reject recommendations	Produce reports and make recommendations
	Day to day staff management

Are involved in Chief Officer appointments/ dismissals	
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THE PROFESSIONAL RELATIONSHIP

A Guide to Expectations

In forging an effective working relationship, Members and Officers will have certain basic expectations of each other. Much of this is about ensuring high standards of behaviour and acting within a clear framework of ethical governance.

What Members can expect from Officers

Officers Do	Officers Don't
Pursue lawful policies and comply with the Officers' Code of Conduct	Deviate from the Constitution, legal or contractual obligations
Promote equality, serve all Members equally with dignity, respect and courtesy, regardless of political group or position	
Comply with legal duty to provide professional advice, impartiality and implement Council policy	Allow their personal or political opinions to interfere with their work or professional judgement and advice
Avoid close personal familiarity with Members and follow guidelines on Personal Relationships	Form friendships, close relations with Members
Follow Council procedures for dealing with Member enquires effectively, efficiently and within set timescales	
Act with integrity and appropriate (not absolute) confidentiality	<ul style="list-style-type: none"> • Seek to improperly influence Members; • Improperly disclose information received from one Member to another; or • Raise their personal circumstances or those of another directly with Members. Personal issues that might be raised with a Ward Member should be raised in a private capacity outside of work time.
Respect each other's free (i.e. non-Council) time	
Be prepared to justify and give reasons for decisions made under delegated powers;	

Report the least suspicion of fraud, corruption or impropriety	Conceal any information which it is proper for them to disclose (particularly where they have a duty to reveal it)
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What Officers can expect from Members

Members Do	Members Don't
Comply with the Councillor Code of Conduct – ensuring the highest standards of behaviour	
<p>Promote equality and treat all Officers with dignity and respect. Members are to comply with the equality laws prohibiting discrimination, harassment and victimisation</p> <p>Chairs of meetings are expected to apply the rules of debate/procedures to prevent abusive or disorderly conduct</p>	<p>Subject individuals to unreasonable or excessive personal attack</p> <p>Undermine respect for Officers in public meetings, the media or at any other time when dealing with Council business;</p>
<p>Only ask Officers to provide professional advice on matters that clearly arise from being an elected Councillor;</p> <p>Respect impartiality and integrity of Officers and do not compromise it</p> <p>Respect Officers' free (i.e. non-Council) time.</p>	<p>Ask Council Officers to improperly spend Council time or resources for political purposes.</p> <p>Insist an Officer changes his/her professional advice</p>
Provide political leadership and direction, making timely decisions	<p>Get involved in day to day management</p> <p>Ask Officers to breach Council procedures or policy when acting on behalf of constituents</p> <p>Put pressure on an Officer on matters which have been delegated for Officer decision. A Member who behaves in this way may lead Officers to make decisions that are not objective and that cannot be accounted for</p>
	Seek special or adverse treatment for themselves or any individual by using his/her position as a Member, nor

	improperly seek to gain an advantage or disadvantage for his/herself or any other person when dealing with Council Officers
Apply appropriate confidentiality to information	
Report the least suspicion of fraud, corruption or impropriety	Instruct Officers to take actions which are unlawful, financially improper or likely to amount to maladministration. Members have an obligation under their Code of Conduct to have regard, when reaching decisions, to any advice provided by the Monitoring Officer or the Chief Finance Officer.

THE EMPLOYMENT RELATIONSHIP

Councillors and officers work together in the public interest and for the communities they serve, and regular contact between Councillors and officers is necessary to ensure the efficient working of the Council. Councillors and officers should have regard to and respect for their different roles. The level at which contact occurs will vary depending upon the nature of the service and the reason for the contact. In general, contact will be at senior officer level but Councillors may, for example, need direct contact with relatively junior staff when dealing with constituency casework or ward initiatives. Councillors should always bring concerns about issues affecting a department, or the service they receive as a councillor, directly to the attention of the relevant Strategic Director or Assistant Director and not to more junior staff.

Approaches by Councillors to junior officers are proper when casework is detailed and ongoing or matters are routine, but Councillors should keep the relevant Strategic Director or Director informed by copying them into correspondence, e-mails, etc., and routing general enquiries through them. Councillors should not seek views on policy issues or non-routine business from more junior members of staff. Councillors must not give instructions to junior staff as this may undermine the formal accountability of staff to their line manager and compromise the political impartiality of the officer concerned. Junior staff are advised to respond promptly and courteously to Councillors' requests for information or routine enquiries, but to refer any concerns or wider policy matters to a Strategic Director or Assistant Director.

There must be mutual respect between Councillors and officers. Officers cannot respond to public comment from Councillors. This means that Councillors must take care to avoid public comment about individual officers and not seek to undermine their position, professionalism or reputation by personal criticism, rudeness, abuse or ridicule. This does not prevent Councillors from taking issue with the reports, actions and work of a department or section of the Council, where they believe such criticism is merited or from expressing concern about the manner in which a Council department has acted, or dealt with a constituent, or a service has performed generally. But the manner of such criticism should have regard to this guidance. When officers are called to give evidence to or appear before Scrutiny Committees, Councillors must treat those officers courteously.

If a Councillor has a complaint about a junior officer, it should be raised in a timely way with the appropriate Strategic Director or Assistant Director. If the complaint concerns a Strategic

Director or Assistant Director, it should be raised with the relevant Strategic Director or Chief Executive as Head of the Paid Service. A complaint about the Chief Executive should be raised with the Leader, who will consider how it should be dealt with.

Councillors will also have contact with junior officers when visiting Council offices. Relevant Chief Officers should be advised in advance of Councillor visits to front-line services, unless the visits are of a statutory inspection nature in which case other procedures may apply. Special circumstances may also warrant unannounced visits.

Councillors need to take particular care if their paid employment brings them into contact with officers of the Council. Councillors must not abuse their position as an elected representative to obtain information they require in their professional capacity which would not otherwise be available to them. The Councillors' Code of Conduct provides that they must use their position as a Member in the public interest and not for personal advantage. It may be difficult for officers to distinguish between the professional role of the Councillor concerned and their role as an elected representative. Such situations should be avoided wherever possible.

Officers are bound by the Officers' Code of Conduct which requires them to maintain political neutrality and be impartial so as to act without political bias in their work whether or not they are in politically restricted posts. Officers must not seek to avoid staff consultative, dispute processes or other procedures by lobbying Councillors on matters which directly concern them as employees. If Councillors believe they have been approached by a member of staff in this way they should let the Monitoring Officer know immediately.

Officers, who are local residents, have the same rights as any other local resident, for example, to seek support from their divisional councillor, to make representations about proposed decisions or complaints or to pursue legal action against the Council. They should be clear however about the capacity in which they are acting and should be careful not to confuse their role as an officer with action they take as a resident.

If an officer believes that a Councillor may be in breach of the Councillors' Code of Conduct, they should inform their manager as soon as possible. That manager will then consider whether to seek advice from the Monitoring Officer.

When Acting in this Capacity Members

Do	Don't
Observe the law, standing orders, policies and procedures in relation to all appointments, discipline and dismissal of Officers.	
Declare any interest they have and ensure that they act to protect the public interest	Take part in any process where friends, relatives or Members of their household are involved directly or indirectly
Maintain appropriate confidentiality	
Attend relevant learning and development	

Make decisions based on merit and with access to all the facts	Seek improperly to influence decisions
Promote equality	Canvass support for any candidate for a job
Take continuing responsibility for their appointment decisions once the post holder is in place	

Ceremonial events

The Chairman of the County Council, or in his/her absence the Vice-Chairman, will be the appropriate person to lead County Council ceremonial events and to represent the Council by invitation at ceremonial events of other organisations.

Local Members should always be informed of, and where possible, invited to ceremonial events taking place within their own electoral divisions.

Any Member taking part in a ceremonial event must not seek disproportionate personal publicity or use the occasion for party political advantage, bearing in mind that the Member is representing the Council as a whole.

PERSONAL RELATIONSHIPS

Both Councillors and officers should take care not to give the impression that their distinct roles have become blurred in some way. Maintaining confidence in the separation of these roles necessarily imposes limitations on behaviour. Close personal relationships between Councillors and officers can confuse their separate roles and get in the way of the proper discharge of the authority's functions, not least in creating the perception in others that a particular Councillor or officer may secure advantageous treatment.

THE POLITICAL RELATIONSHIP/ OFFICER ADVICE TO PARTY GROUPS

The political parties represented on the Council hold regular group meetings. Officers do not usually advise these meetings but may be invited to give information. All invitations should be cleared by the Chief Executive.

The Chief Executive and other Executive Directors attend informal meetings with the Leadership Team. At such meetings preliminary consideration may be given to forthcoming policy issues but no Key Decisions will – or can by law - be taken.

Officer advice and analysis will be made available to minority parties – for example, in relation to their preparation of an alternative budget prior to the annual meeting of the Council that sets the annual budget and Council tax.

Officers will give advice and information to any Councillor or group of Councillors whether from the Leadership Team or Scrutiny.

Lead Member Briefings

Lead Members, whether individually or as a group, may meet informally and in private with officers, to receive briefings, to give a steer on emerging policy and forthcoming decisions and to ensure that the work necessary for making key decisions is progressing and will be completed on time. They may also consider the implications and consequences of such decisions, make plans to obtain the views of service users, residents and communities, and assess the legal, financial and equity considerations involved in the decision.

When this work is complete, meetings of the Leadership Team that make key decisions must be conducted in public as set out below in section 2 (subject to the rules allowing resolution to exclude the public for any particular item on the grounds set out in the Local Government Act 1972).

SUPPORT SERVICES TO MEMBERS AND POLITICAL GROUPS

The only basis upon which the County Council can lawfully provide support services such as secretarial support, stationery, typing, printing, photocopying, transport, etc., to Members is in order to assist them discharging their role as Members of the Council.

Such support services must therefore only be used on Council business and must not be used in connection with any party political or campaigning activity or for private purposes.

COMMUNICATIONS

Correspondence

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 “blind” or “silent copies” should not be employed.

Official letters written on behalf of the Council dealing with Council business should normally be in the name of the relevant Officer. It may be appropriate in some circumstances (e.g. representations to a Government Minister) for letters to appear in the name of the Leader or Cabinet Member.

Letters which create legally enforceable obligations or which give instructions on behalf of the Council should never be sent in the name of a Member. Only certain Officers have delegated powers to create legal relations and all Officers must follow Standing Orders if entering into contractual arrangements.

It is appropriate for Members to pass correspondence to Officers and ask them to respond on behalf of the Council. Officers may only correspond for and on behalf of the Council in matters of Council business and not on behalf of the individual Member. Officers can provide Members with technical, Council information, which is used by Members as part of their correspondence.

Members should correspond in their own name. When writing in an individual capacity, Members must make clear that fact.

10.2 Email Communications

Members and Officers are to follow the Council's procedures and are not to use electronic communications (emails, online communications, including social media, or texts) to store/send materials or requests, which are offensive, bullying or causes offence to others.

Where Members and Officers receive any electronic communications, which may breach the Council's Codes of Conduct or other Council policies and /or the law, they must follow the advice in section entitled what to do when things go wrong.

When considering sending emails and online communications to third parties, such as community groups, Members and Officers must be make a clear distinction between what is:-

- Public information which can be shared with third parties
- Internal Council Business which is confidential.

PUBLICITY AND DEALING WITH THE MEDIA

Officers will not publish or assist in publishing material designed to affect public support for any political party this is to ensure compliance with the Local Government Act 1986, which prohibits such activities.

All formal publicity material produced by the Council will state the Council's position and not an individual's view or personal position. Publicity should not be liable to misrepresentation as being party political.

All formal relations with the media must be conducted in accordance with the Council's agreed procedures and the Code of Recommended Practice on Local Authority Publicity.

The Council's contact with the media is led by the Communications team or Members who have been contacted by the media or who wish to issue a press release or statement should seek advice from the Communications Service.

PRE ELECTION RULES ON PUBLICITY

If a Member is fighting an election the Code of Recommended Practice on Local Authority Publicity should be followed.

The general rule is that a local authority must not at any time publish any material that in whole or in part appears to be designed to create support for a political party.

Pre-Election this is even more sensitive and particular care needs to be taken to ensure that publicity could not be perceived as seeking to influence or to promote the public image of a particular candidate or group of candidates. During the PERP period Officers rather than Members should be quoted on news releases about Council initiatives, facilities and services.

Individual Councillors can generate their own publicity during this period subject to their own party's protocols but public funds must not be used to campaign to promote a particular point of view that could be associated with a political initiative. The Council restrictions only apply to official Council organised publicity including press releases or events.

Council events that cannot be re-scheduled for operational reasons must be arranged to ensure that there is no likelihood of criticism arising that the real purpose of the event is to publicise one particular party.

Council functions such as Committee meetings may continue during the period.

Council staff must always be careful not to give the impression of supporting a political party, set of policies or candidate. Council resources may not be used at any time to support party political activity. Officers must not engage in political activity during working hours or with Council facilities. Some staff hold politically restricted posts which limit the political activity they can be involved in outside work.

MEMBERS ACCESS TO INFORMATION AND TO COUNCIL DOCUMENTS

Members are entitled to approach any Council Service to provide them with such information, explanation and advice with regard to that Service's functions as they may reasonably require in order to assist them in discharging their role as Elected Members. This can range from a request for general information about some aspects of a Service's activities to requests for specific information on behalf of a constituent. Such approaches should normally in the first instance be directed to the Head of the Service or the Executive Director for the Portfolio.

A Member's legal rights to inspect Council Documents are partly covered by statutes including Data Protection Act 2018 and Freedom of Information Act 2000, Local Government Act 1972 and Environmental Information Regulations 2004 and partly by decided case law.

Briefly, 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 or Committee Meeting. Such a right applies irrespective of whether the Member is a Member of the Body concerned and extends not only to reports which are to be submitted to the meeting but also to any relevant background documentation. Such a right does not however apply to documents relating to items which are confidential.

Where confidential information is provided, it must not be divulged until it has been made public. As provided for in the Councillors' Code of Conduct, Councillors' conduct will in particular address the statutory principles of the code of conduct by, amongst other requirements, " . . . respecting the confidentiality of information . . . by not disclosing confidential information to third parties unless required by law or where there is a clear and overriding public interest in doing so."

Decided case law gives Members a somewhat broader right to documentation based on the principle that any Member has a prima-facie right to inspect Council documents "so far as his/her access to documents is reasonably necessary to enable the Member properly to perform his or her duties as a Member of the Council". Members will recognise this as the "need to know" principle.

The exercise of such right depends upon a Member's ability to demonstrate that he/she has got a need to know. This does not entitle a Member to make speculative enquiries sometimes referred to as "a fishing expedition" i.e. mere curiosity is not sufficient. The crucial issue is the determination of whether that Member has a need to know.

In certain instances, such as an Elected Member wishing to inspect documents relating to the functions of the Body on which they serve, then there is a presumption that such Member already has a need to know. However, in other instances, for example a Member wishing to inspect documents that contain personal information about third parties, then that individual Member would be required to justify the request in specific terms.

Whilst the expression “Council Document” is very broad and includes for example any document produced from Council resources 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.

Where Officers consider access should be refused and Members disagree, or vice versa, the decision should be made by the relevant Head of Service or Executive Director. This decision should be informed by best practice guidance to local authorities provided by the Information Commissioner’s Office.

Officers and Members must follow the Council’s Information Security Policy which controls how Council information is managed. Members and Officers should be aware of the significant consequences of losing or wrongly disclosing information.

Finally, and very importantly **any Council information provided to a Member must only be used by the Member for the purpose which it was provided**, i.e. in connection with the proper performance of a Member’s official duties.

The Councillor Code of Conduct says that a Member must not disclose information given to them in confidence or information that they believe to be confidential, without consent of a person authorised to give consent, unless very specific requirements are met such as they are required to do so by law.

Members are to take advice from the Monitoring Officer before releasing any confidential information or refusing access to information that a person is entitled to by law.

Further and more detailed advice regarding Members’ right to inspect Council documents may be obtained from the Assistant Director of Legal and Governance

WHAT TO DO WHEN THINGS GO WRONG

Complaints about any breach of this protocol by a Member should be referred to the Monitoring Officer or the relevant political Group Leader and may require consideration by the Standards and Ethics Committee. Complaints about any breach of this protocol by an Officer may be referred to the relevant Chief Officer, the Chief Executive or Monitoring Officer

ANNEX

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs

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