

**COUNCIL
3 DECEMBER 2003**

**MEMBER/OFFICER PROTOCOL
(Report of the Standards Committee – 18 November 2003)**

1. INTRODUCTION

- 1.1 On 18 November 2003 the Standards Committee considered a draft Member Officer Protocol for adoption as part of the Council's Constitution. The Committee was advised that the Council had previously adopted a Member Officer protocol setting out a framework for relationships between Members and officers, which was last amended in July 2000.
- 1.2 The existing protocol was drawn up before the advent of executive arrangements under the Local Government Act 2000: it includes references to the former committee structure and takes no account of the new constitutional arrangements. There is, therefore, a need to revise the Protocol to reflect the new constitutional arrangements. That need was expressly referred to in the Council's Corporate Governance Statement of Assurance published with the statement of accounts (and which is subject to external audit).
- 1.3 The Standards Committee considered a proposed revised Member Officer Protocol, which had been developed after consultation with leaders of the political groups represented on the Council. A revised protocol is set out at Annexe A to this report, which reflects the views and comments of the Standards Committee.
- 1.4 The meeting of the Standards Committee was chaired by the Vice Chairman, Councillor Finnie, in the absence of the Chairman, Mr David Briggs. Other Committee Members present at the meeting were Councillors Mrs Beadsley, Jones and Thompson, together with the Independent Member, Revd David Osborn.

2 RECOMMENDATIONS

- 2.1 That the Member Officer Protocol, as set out in the Annexe to this report, be adopted as part of the Council's Constitution; and**
- 2.2 That it be noted, with reference Paragraph 17 of the Protocol, that further guidance will be prepared for approval by the Council with regard to visits by Members to Council establishments.**

3 SUPPORTING INFORMATION

General Provisions

- 3.1 The existing Member Officer Protocol which was last revised in July 2000 contains provisions on the following:
- Roles of Members and Officers
 - Members Access to Information and Council Documents

- Officer Advice and Agenda Preparation
- Council Property, Support Services to Members and the Use of Photographs
- Involvement of Ward Members
- Members Acting on Behalf of Third Parties
- Disputes

3.2 The proposed revised protocol largely covers the same topics as the existing protocol, but amongst the more significant revisions/additions are:-

- a more closely defined explanation of the roles of Members and officers;
- separate sections on officer support to the Executive, the Public Scrutiny Commission and the Chairmen and the Members of Committees respectively;
- a re-casting of the provisions relating to information and advice to Members; with provision for Directors to designate which officers in their department will have regular contact with Members; and
- a new section relating to the Mayor.

3.3 The Standards Committee considered in detail three parts of the protocol: Paragraph 12 (The Mayor); Paragraph 13 (Press and Public Relations); and Paragraph 17 (Visits to Council Establishments).

Paragraph 12 – The Mayor

3.4 In terms of the provisions relating to the Mayor the Standards Committee was of the opinion that it was not always possible for a Member to know in advance if they were due to attend a function at which the Mayor would be present. Furthermore, in certain circumstances a Member might be attending an event in a capacity other than as a member of the Council and it would not always be appropriate to notify the Mayor in advance. The protocol as attached reflects these comments.

Paragraph 13 – Public Relations and Press Releases

3.5 The Standards Committee was concerned in relation to the provisions relating to press and public relations on the basis that these appeared to be restrictive and in need of some clarification. The Committee was advised that the provisions in the Local Government Act 1986 had to be observed and the Standards Committee agreed to recommend the inclusion of additional provisions for clarification. The Standards Committee was advised that if there was an area of doubt in a particular case, a Member may seek the advice of the Monitoring Officer or the Director of Corporate Services.

Paragraph 17 – Visits to Council Establishments

3.6 The Standards Committee considered a draft which advised that Members should give adequate prior notification to the relevant Director or an Assistant Director where a visit to the a council facility was planned, unless the visit was at the request of a resident of the facility for the purposes of constituency business, where the manager of the facility need only be advised. The Committee considered that this provision was too restrictive and agreed that rather than specify this in the Protocol, further guidance would be agreed with regard to such visits.

Conclusion

- 3.7 In addition to the matters considered in paragraphs 3.3 – 3.5 above, the Standards Committee agreed other minor amendments and concluded that the attached protocol should be adopted to form part of the Council's Constitution. As a locally adopted protocol, the Standards Committee will determine any alleged breaches of the Protocol which may be referred to it by the Monitoring Officer.

COUNCILLOR JAMES G FINNIE
Vice Chairman

Background Papers
Existing Member Officer Protocol

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1 INTRODUCTION

- 1.1 The Council exists to administer local government (together with Parish and Town Councils) in the Borough. Members and officers have a joint responsibility to ensure that they work collaboratively to ensure an efficient, transparent and democratic Council.
- 1.2 Members and officers will from time to time review the current culture and practices of the Authority, to ensure that we all continue to maintain high standards in our mutual contacts.
- 1.3 The purpose of this Protocol is to guide Members and officers of the Council in their relations with one another.
- 1.4 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. It is hoped, however, that the approach which it adopts to those issues will serve as a guide to dealing with other issues.
- 1.5 The Council also has in place additional guidance for Members about their role in relation to specific functions or areas of the Council. Examples of this additional guidance include the planning protocol, additional guidance for Members regarding Social Services and Housing and guidance to Members about the Corporate Parenting role. Further guidance and protocols may be adopted by the Council.
- 1.6 This Protocol is supplemental to but subject to the Member's Code of Conduct.

2 ROLES OF MEMBERS AND OFFICERS

- 2.1 Members and officers are servants of the public and they depend upon each other in carrying out the work of the Council. Members are responsible to the electorate and serve so long as their term of office last, whilst officers are responsible to the Council. Officers give advice to the Council (whether in the form of full Council, committees of the Council, including the Public Scrutiny Commission and its Panels, or the Executive) as well as to individual Members, and carry out the Council's work under the direction and control of the Council and its various bodies.

- 2.2 Members undertake many different roles. Broadly, these are:-

- **Politician** In expressing political values and, in the case of Members belonging to a political group represented on the Council, usually supporting the policies of the group to which he/she belongs
- **Policy and Strategic Direction** They set the policy and direction for the Council; are responsible for ensuring that adequate management arrangements are in place; develop and allocate the Council's physical, financial and human resources and monitor the performance, development, continuity and overall well-being of the organisation

3 RESPECT AND COURTESY

- 3.1 The Council's vision is set out in the Community Plan. For that vision to be realised, Members and officers must work together in a harmonious relationship based upon mutual respect, courtesy, trust, honesty and understanding of each others roles. This should prevail in all meetings and contacts whether formal or informal.
- 3.2 Neither Members nor officers should seek to take unfair advantage of their position in their dealings with each other. Members should be aware that officers, especially junior officers, may sometimes be overawed and feel at a disadvantage. Such feelings can be intensified where Members hold official and/or political office.
- 3.3 A Member should not apply pressure on an officer either to do anything that he/she is unwilling to do or is not empowered to do. Similarly, an officer must not seek to use influence on an individual Member to make a decision in his or her personal favour. They (officers) should not raise personal matters to do with their job or make claims or allegations about other employees except through the Council's formal personnel procedures for consultation, grievances, whistle blowing and so on. Officers who wish to pursue issues of this nature must do so through the appropriate procedure.
- 3.4 Close personal familiarity between individual Members and officers can damage the perception of disinterested mutual respect. It could also, intentionally or unintentionally, lead to the passing of confidential information which should not properly be passed between them, such as personal details. Such familiarity could also cause embarrassment to other Members and/or other officers and could even give rise to suspicions of favouritism. It should therefore be avoided.

4 OFFICER SUPPORT TO THE EXECUTIVE

- 4.1 It is clearly important that there should be a close working relationship between Executive Members and the officers who support and/or interact with them. 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. Officers must ensure that even if they are predominantly supporting the Executive their political neutrality is not compromised.
- 4.2 Whilst Executive Members will routinely be consulted as part of the process of drawing up proposals for consideration on the Agenda of a forthcoming meeting, it must be recognised that in some situations an officer will be under a professional duty to submit a report. The Chief Executive, Director or other senior officer will always be responsible for the contents of any report submitted in his/her name. 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 between an Executive Member and a Director in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.
- 4.3 Officer advice must be full and impartial and should include all relevant options. It should not seek to second-guess the decisions of Members, for example by excluding presumed unpalatable options. Members are entitled to reject officer advice and to give effect to their lawful policies even if these are clearly at variance with the views of officers. Members should be particularly careful if they propose not to follow advice given in a capacity as Monitoring Officer or Section 151 Officer.

- 4.4 Where functions which are the responsibility of the Executive are delegated to officers or other structures outside the Executive, the Executive will nevertheless remain accountable to the Council, through the Public Scrutiny Commission and its Panels, for the discharge of those functions. This is to say, the Executive will be held to account for both its decision to delegate a function and the way that the function is being carried out.
- 4.5 Under Executive arrangements, individual Members of the Executive are allowed to take formal decisions. The Executive, Executive Members and officers must satisfy themselves that they are clear what exactly they can and cannot do. The Council has put in place a protocol for Executive decision making which stipulates that no Executive decision shall be made by a Member without a written report, incorporating advice from the Borough Solicitor and Borough Finance Officer, being submitted by the appropriate Director to the Member.
- 4.6 Executive Members should appreciate that the Public Scrutiny Commission or one of its Panels may require an officer to attend before them to explain advice which the officer has given to the Executive (or an individual Executive Member) and/or to give advice to the Public Scrutiny Commission of the Panel, as the case may be. Accordingly, Executive Members should not assume that the advice which they receive from officers will not be disclosed and/or subject to scrutiny.

5. OFFICERS SUPPORT FOR THE PUBLIC SCRUTINY COMMISSION AND ITS PANELS

- 5.1 It is clearly important that there should be a close working relationship between the Chairman and Vice Chairman of the Public Scrutiny Commission and the Chairman and Vice Chairman of its Panels and those officers who support and/or interact with them. 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. Officers must ensure that even if they are predominately supporting the Public Scrutiny Commission and/or its Panels their political neutrality is not compromised.
- 5.2 It is not the role of the Public Scrutiny Commission or its Panels to act as a Disciplinary Tribunal in relation to the actions of Members or officers. Neither is it the role of officers to become involved in what would amount to disciplinary investigation on behalf of the Commission or a Panel. In relation to staff such matters must be dealt with under the Council's disciplinary procedures whilst Members are accountable for their behaviour through the Code of Conduct for Members, local protocols and the respective frameworks established to secure compliance.

6 OFFICER SUPPORT FOR THE CHAIRMEN AND MEMBERS OF OTHER COMMITTEES

- 6.1 The Council has a range of Committees which deal with "Non-Executive" matters. The main ones are:-
- the Planning & Highways Committee
 - the Licensing & Safety Committee
 - the Employment Committee

6.2 Some officers, as part of their normal duties, will be in regular contact with the Chairman and Members of those Committees. Much of what is said in section 4 about the relationship between officers and the Executive will also apply, allowing for the different circumstances, to the relationship between officers and Chairmen/Vice-Chairmen and Members of Non-Executive Committees.

6.3 To summarise, the main principles are:-

- relevant officers will need to maintain a close relationship with the Chairmen and Vice-Chairmen concerned
- that relationship must not be such as to call in to question officers impartiality
- there should be dialogue between relevant senior officers and the Chairman
- it is the authors responsibility to ensure that reports include only proper advice and correct information
- Members must not put officers under pressure to give advice or information in any other way
- officer advice should be full and impartial
- the decision whether or not a report should be submitted to a Committee is for the Chief Executive, Director or relevant senior officer

7 DELEGATED DECISION MAKING BY OFFICERS

7.1 The Executive, a Committee of the Executive or an individual Executive Member may decide to delegate a decision to a Director in consultation with one or more Members. Directors must consider carefully any comments made to them by the Members concerned, but Members must bear in mind that it is the officer, not the Member, who takes the decision in these circumstances and is responsible for it. It needs to be borne in mind that no officer can be compelled to take a decision with which he/she does not agree, or which he/she considers to be wrong or inequitable; an officer must take any such decision in accordance with his/her professional judgment.

7.2 If a Non-Executive function is delegated to an officer he/she is not obliged to take a decision on the matter; he/she may refer the matter to the appropriate Committee for a decision. Indeed, a Director should refer the matter to the Committee if they feel that the matter raises some new point of principle which was not contemplated when the delegation was first agreed.

8 MEMBERS ACCESS TO DOCUMENTS

8.1 Members' legal rights to inspect Council documents are covered partly by statute and partly by common law. Members generally have a statutory right to inspect Agendas, Minutes and Background Papers of the Council, the Executive, Public Scrutiny Commission and its Panels and Committees. However, this does not apply to certain items which contain "exempt information", for example because they relate to individual employees, to contractual negotiations or applicants for Council's services.

The statutory rights are set out more fully in the Access to Information Rules in the Council's Constitution.

- 8.2 The common law right is based on the principle that any Member has, on the face of it, a right to inspect Council documents if access to those documents is reasonably necessary to enable the Member properly to perform his/her duties as a Member of the Council. This is often referred to as the "need to know" principle. However, Members do not have a "roving commission" to examine any documents of the Council. Mere curiosity is not sufficient.
- 8.3 A Member requesting access to documents should direct his/her enquiry to the relevant Director, Assistant Director or Head of Service. Officers will be concerned to furnish a Member with such information, advice and access to documents which he/she requires for the proper performance of his/her duties as a Councillor. There may be occasions, though, when an officer believes that the Member does not have a right of access to a document and that it would be inappropriate on that occasion for the Member to see the document. Examples of when it might be considered inappropriate to disclose a document to a Councillor who does not have a right of access include sensitive Social Services cases or where there is an especial need to secure commercial confidentiality in a proposed transaction. If that were the case, the officer shall advise the Member that in the officer's view disclosure is neither required nor appropriate and the reasons why disclosure would not be appropriate. Any dispute regarding a Member's access to a document should be referred to the Monitoring Officer.

9 INFORMATION AND ADVICE TO MEMBERS

- 9.1 Any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, namely in connection with the Member's duties as a Councillor, unless the information is already in the public domain.
- 9.2 The Code of Conduct provides that a Member must not disclose information given in confidence by anyone without the consent of the person authorised to give it, or unless by law the Member is required to do so. Equally, a Member must not prevent another person from gaining access to information to which that person is entitled by law.
- 9.3 In order to safeguard against possible breaches of the Data Protection Act (which applies to all information of a personal nature) Members should always seek advice from the Monitoring Officer before disclosing confidential information. Generally, personal information cannot be released without the consent of the person to whom it relates. Improper disclosure of confidential information can put the Member and the Council at legal and financial risk.
- 9.4 Regular contact between Members and senior officers is necessary to ensure the efficient working of the Council. In this context it is the responsibility of Directors to identify within their departments the senior officers who should have regular contact with Members; this will depend upon the nature of the service they provide and the nature of the Member contact envisaged. In identifying which officers will have regular contact with Members, Directors should take into account that with some services which regularly impact upon Ward interests it may be appropriate to designate officers at a relatively less senior level than for other services. Members should always bring major concerns about issues affecting a Department directly to the attention of the Director concerned.

9.5 In the following circumstances information or advice provided by an officer to a Member will be disclosed:-

- if the information/advice relates to a matter in the Forward Plan, to the relevant Executive Member
- if the information/advice relates to a matter to be considered at a Committee, to the Chairmen of the Committee
- if the information/advice relates to a matter being considered by the Public Scrutiny Commission or one of its Panels to the Chairmen of the Commission or the relevant Panel

10 OFFICERS AND POLITICAL GROUPS

10.1 Officers are politically neutral and must be seen to be so. They serve the whole Council and not a political group. However, it is recognised that from time to time there will be occasions, particularly on major policy matters, when it is in the Council's interests that a political group should receive the professional advice of officers on a specific matter.

10.2 Officers cannot be required to attend party group meetings. Any request for an officer to attend a party group meeting should be directed to the Chief Executive or relevant Director and indicate the subject upon which information and/or advice is to be sought. If the Chief Executive or Director is of the opinion that it would be inappropriate for there to be an officer attendance, his/her decision shall be final. If officer attendance is appropriate, the Chief Executive or Director shall determine which officers should attend. Normally it would not be appropriate to request any officer to attend other than the Chief Executive, a Director, Assistant Director or Head of Service.

10.3 If an officer does attend a political meeting the following points should be borne in mind:-

- officer support 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. Both Members and officers should refrain from any conduct which could lead to the political impartiality of officers being seriously called into question
- political 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
- officers may at their discretion decline to disclose exempt information
- any advice given to a political group will be treated with strict confidentiality by the officers concerned and will not be accessible to any other political group. It is acknowledged, however, that information upon which any advice is based will, if requested, be available to all political groups

- it must not be assumed by any political group or Member that an officer is supportive of any policy or strategy developed because of that officer's assistance in the formulation of that policy or strategy
- officers must respect the confidentiality of any political group discussions at which they are present in the sense that they should not relay the content of any such discussion to another political group
- where officers provide information and advice to a political group meeting in relation to a matter of Council business, it should be understood that the officers have a duty to provide all necessary information and advice to a relevant decision making body of the Council whenever the matter in question is considered
- special care needs to be exercised by officers involved in providing information and advice to political group meetings where there are non Members of the Council present. Persons who are not elected Members will not be bound by the Code of Conduct for Members, in particular the provisions relating to the Confidentiality of Information. 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

11 CORRESPONDENCE

- 11.1 Save in exceptional circumstances, all correspondence (letters, faxes or e-mails) on official Council business should be sent out only in the name of the appropriate officer (exceptions might be, for example, the Leader of the Council raising an issue on behalf of the Council with a Government Minister or special circumstances where it would be appropriate for correspondence setting out the policy of the Council to be sent in the name of an Executive Member or Committee Chairman). This does not, of course, prevent a Member responding in his/her own name to correspondence addressed to him/her in his/her official capacity (e.g Executive Member, Chairman of the Committee) or as a Ward Member such as a letter of complaint.
- 11.2 Correspondence which creates obligations or give instructions on behalf of the Council should never be sent out under the name of a Member.

12 THE MAYOR

- 12.1 The Mayor presides at meetings of the Council and takes the leading role in the civic life of the Borough, representing the Borough at civic engagements, within and outside Bracknell Forest. The role of Mayor, as the leading resident of the Borough, although largely ceremonial, is important to the public perception of the Authority and enjoys the respect of Bracknell Forest residents. Officers and Members should treat the Mayor with the respect due to his/her office on all occasions when the Mayor is acting in that capacity. Officers and Members must do everything appropriate to ensure that the dignity of the office is upheld. The Mayor is entitled to receive support and advice from all levels of the organisation in carrying out his/her Mayoral duties. As a matter of good practice Members should, when appropriate, advise the Mayor's office in advance if they propose to attend a function at which they know the Mayor will be present.
- 12.2 The provisions of Paragraph 12.1 above apply in respect of the Deputy Mayor when he/she deputises for the Mayor.

13 PUBLIC RELATIONS AND PRESS RELEASES

13.1 The Communications team within the Chief Executives Office serves the Council as a whole and must operate within the limits of the Local Government Act 1986, which prohibits the Council from publishing material which appears to be designed to affect public support for a political party. The legislation provides that in determining whether or not the publication of any material is prohibited regard shall be had to (inter alia):-

- the content and style of the material
- the time and other circumstances of publication (particular caution is required during an Election period)
- the likely effect on those to whom the material is directed
- whether the material refers to a political party or to persons/points of view associated with a political party

13.2 Council press releases are drafted by officers and will often contain quotations (within the limits of the Local Government Act 1986) from the Leader, the Deputy Leader, Executive Member or Chairman of a Committee whose service is involved as well as from the Mayor or Deputy Mayor about ceremonial events. Such press releases are issued on behalf of the Council and it would not therefore be appropriate when repeating quotations from Members to indicate their party political affiliation.

13.3 The Member's Code of Conduct stipulates that Members must not use Council resources for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the Council or of the office to which the Member has been elected or appointed. "Resources" includes the time, skills and assistance of anybody employed by the Council. Accordingly, when drafting press releases or any other publication with the assistance of officer advice the provisions of the Code of Conduct should be observed. There is, of course, nothing to prevent any Member from communication with the media in a personal or political capacity using their own resources or those of their political party.

14 COUNCIL PROPERTY, SUPPORT SERVICES TO MEMBERS, USE OF PHOTOGRAPHS

14.1 Support Services (such as typing, printing, photocopying and transport) and resources (such as stationery and lap-top computers) can lawfully be provided to Members to assist them in discharging their role as Councillors. However, such services and resources should only be used for Council business and not for personal or political use. In relation to the use of computer and other ICT equipment supplied by the Council, Members should observe the terms of any agreement between the Member and the Council and should also ensure that they comply with all relevant Council policies relating to such equipment. Members have a responsibility to ensure that any such resources made available to them are not used by any other person.

- 14.2 Photographs supplied to Members or taken on behalf of the Council shall not be reproduced (nor permitted to be reproduced) in any form whatsoever or be used in any publication without the express consent in writing of the Monitoring Officer.

15 INVOLVEMENT OF WARD MEMBERS

- 15.1 It is important to all Members that they should be kept particularly informed of and have an input into matters of Council business which affect their Wards, including the Mayor's official engagements. Therefore, whenever a public meeting is arranged by the Council to consider an issue local to a Ward or one or more Wards in a part of the Borough, the Ward member(s) should normally be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on an issue local to a Ward or particularly affecting a part of the Borough the appropriate officers should normally notify the Ward members of the consultation and request their views on the matter in issue.

16 MEMBERS ACTING AS ADVOCATE FOR OR SUPPORTING THIRD PARTIES IN APPEALS AGAINST COUNCIL DECISIONS

- 16.1 Members have the same rights to represent third parties on appeals against Council decisions or to support third parties in such appeals as any member of the public. However, it is important to ensure that when acting in either role Members should not seek to take improper advantage of their position as a Member of the Council and that Council officers are not deterred from defending the Council's decision as vigorously as in any other case. For those reasons Members should in such circumstances be particularly careful:-
- (a) not to disclose any information which they have received from the Council in their capacity as a Member which would not be available to a member of the public
 - (b) not to disclose or make reference to briefings on the relevant matter which they have received from officers (other than in a part of a Committee meeting which the public are not excluded from)
 - (c) to ensure that in the conduct of the appeal they do not seek or appear to seek preferential treatment
 - (d) not to present themselves as representing the views of the Council
- 16.2 Members acting as an advocate or as a supporter of an appeal against a Council decision must expect to be treated by officers in exactly the same way as any other advocate or supporter

17 VISITS TO ESTABLISHMENTS

- 17.1 In some circumstances it will be inappropriate for Members to visit an establishment, such as, for example, a Social Services care facility, without prior notification being given to a Director, Assistant Director or other designated officer. Each department may prepare guidance for Members on when prior notification is required; in the event of the Council giving approval to any such guidance Members shall abide by the same. Pending the preparation and approval of any guidance Members should give consideration to whether prior notification is appropriate before visiting an establishment.

18 DISPUTES

- 18.1 With goodwill, respect and integrity on both sides there ought to be very few occasions when a disagreement between an officer and a Member cannot be resolved amicably. If there is a serious dispute of substance it should be discussed in the first instance between the Member and the officer concerned, involving the officer's Director if appropriate. If such discussions should not produce an acceptable settlement reference may be made to the Chief Executive, but this should be seen as a last rather than a first resort. If the matter cannot be resolved satisfactorily after reference to the Chief Executive it may be referred to the Monitoring Officer who shall, in consultation with the Chairman of the Standards Committee, determine whether the matter should be brought before the Standards Committee.