

## **SECTION 15 – COUNCILLOR AND OFFICER PROTOCOL**

### **1 Introduction**

- 1.1 The council exists to administer local government (together with parish and town councils) in the borough. The elected councillors and officers who make up the council, have a joint responsibility to work collaboratively to ensure an efficient, transparent and democratic council.
- 1.2 Councillors and officers will, from time to time, review the current culture and practices of the council, to ensure that we all continue to maintain high standards in our mutual contacts.
- 1.3 The purpose of this protocol is to guide councillors 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 councillors about their role in relation to specific functions or areas of the council, for example the protocol for councillors in dealing with planning matters. Further guidance and protocols may be adopted by the council.
- 1.6 This protocol is supplemental to, but subject to, the code of conduct for councillors and co-optees.

### **2 Roles of councillors and officers**

- 2.1 Councillors and officers are expected to serve the public and they depend upon each other in carrying out the work of the council. Councillors are responsible to the electorate and serve so long as their term of office lasts, 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 Overview and Scrutiny Commission and its panels, or the cabinet) as well as to individual councillors, 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 councillors belonging to a political group represented on the council, usually supporting the policies of the group to which they belong.

- **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.
- **Ward members** Subject to constraints arising from the code of conduct for councillors and co-optees and the law, councillors represent their communities and bring their views into the council's decision-making process. They deal with individual case work and represent constituents in resolving particular concerns or grievances.
- **Champion** Individual councillors may be designated to act as a positive focus for a particular section of the community or range of activities.

2.3 Legislation requires the council to designate some councillors with specific responsibilities, these include: -

- **The mayor** – to act as the chair of the council and to fulfill certain civic functions.
- **The deputy mayor** – to act as the chair of the council in the absence of the mayor.
- **The leader of the council** – under the system of executive arrangements introduced by the Local Government Act 2000 the leader has the overall responsibility for the cabinet and the performance of the cabinet executive functions.
- **Deputy leader of the council** – under the legislation relating to executive arrangements the council is required to designate a cabinet member to substitute for the leader in their absence.
- **The lead councillor for children's services** – to have responsibility at councillor levels for the discharge of the council's functions as local education authority and those social services functions which relate to children.

2.4 Officers have the following main roles: -

- managing and providing the services and functions for which the council has given them responsibility. They are accountable for the efficiency and effectiveness of those services and for proper professional practice in discharging their responsibilities and taking decisions, within agreed policies.
- providing advice to the council, and to individual councillors, in respect of the services provided.
- initiating policy proposals.
- implementing agreed Policy

- ensuring that the council acts lawfully, and in accordance with the principles of sound financial management.
- representing the council on external organisations.

2.5 By law, the council is required to designate officers with the following responsibilities: -

- **Head of paid service** –who has overall responsibility for advising the council on the manner in which the council's functions are discharged, and the organisation and proper management of the council's staff. The chief executive is the head of paid service.
- **Monitoring officer** - The role of the monitoring officer is, essentially, to ensure that the council acts lawfully, to bring any ombudsman reports with findings of maladministration to the attention of the council and to discharge certain responsibilities under the statutory framework relating to councillor conduct. The borough solicitor is the council's monitoring officer.
- **Responsible financial officer** – designated as the section 151 officer who is responsible for the proper administration of the council's financial affairs, ensuring that the council does not incur unlawful expenditure and that the council's expenditure does not exceed its resources. The executive director: resources is the council's section 151 officer.
- **Director of children's services** – designated as having responsibility for those functions exercisable by the council in its role as local education authority and for social services functions so far as those functions relate to children. The executive director: people is the council's director of children's social services.
- **Director of adult social services** – designated as having responsibility for those social services functions so far as those functions relate to adults. The executive director: people is the council's director of adult social services.
- **Traffic manager** - to have responsibility for the management of traffic under the Traffic Management Act 2004.
- **Statutory scrutiny officer** – the council is required to designate an officer to provide advice and support to the Overview and Scrutiny Commission and its panels. The executive director: communities is the council's statutory scrutiny officer.

### 3 **Respect and courtesy**

- 3.1 Councillors and officers must work together in a harmonious relationship based upon mutual respect, courtesy, trust, honesty and understanding of each other's roles. This should prevail in all meetings and contacts, whether formal or informal.
- 3.2 Neither councillors nor officers should seek to take unfair advantage of their position in their dealings with each other. Councillors should be aware that officers, especially junior officers, may sometimes be overawed and feel at a disadvantage. Such feelings can be intensified where councillors hold official and/or political office.

- 3.3 A councillor should not apply pressure on an officer either to do anything that they are unwilling to do or are not empowered to do. If a councillor considers that an officer has behaved unreasonably in response to the councillor they should take the matter up with the officer's executive director. Similarly, an officer must not seek to use influence on an individual councillor to make a decision in their personal favour. 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 councillors 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 councillors and/or other officers and could even give rise to suspicions of favouritism. It should, therefore, be avoided.

## **4 Officer support to the cabinet**

- 4.1 It is clearly important that there should be a close working relationship between cabinet 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 officer's ability to deal impartially with other councillors and other party groups. Officers must ensure that even if they are predominantly supporting the cabinet, their political neutrality is not compromised.
- 4.2 Whilst cabinet 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, executive director or other senior officer will always be responsible for the contents of any report submitted in their 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 a cabinet member and an executive 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 councillors, for example by excluding presumed unpalatable options. Councillors 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. Councillors 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 cabinet are delegated to officers or other structures outside the cabinet, the cabinet will, nevertheless, remain accountable to the council, particularly through the Overview and Scrutiny Commission and its panels, for the discharge of those functions. This is to say, the cabinet 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 cabinet members are allowed to take formal decisions. The cabinet, cabinet 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 by cabinet members which stipulates that no cabinet decision shall be made by a councillor without a written report, incorporating advice from the borough solicitor and executive director-resources, being submitted by the appropriate executive director to the councillor.

- 4.6 Cabinet members should appreciate that the Overview and 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 cabinet (or an individual cabinet member) and/or to give advice to the Overview and Scrutiny Commission or a panel. Accordingly, cabinet members should not assume that the advice which they receive from officers will not be disclosed and/or subject to scrutiny.

## **5 Officer support for the Overview and Scrutiny Commission and its panels**

- 5.1 It is clearly important that there should be a close working relationship between the chair and vice-chair of the Overview and Scrutiny Commission and the chair and vice-chair of its panels and those officers who support and/or interact with them. 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 councillors and other party groups. Officers must ensure that even if they are predominately supporting the Overview and Scrutiny Commission and/or its panels, their political neutrality is not compromised.

- 5.2 It is not the role of the Overview and Scrutiny Commission, or its panels, to act as a disciplinary tribunal in relation to the actions of councillors 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 councillors are accountable for their behaviour through the code of conduct for councillors and co-optees, local protocols and the respective frameworks established to secure compliance.

## **6 Officer support for the chair 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 Committee
- the Licensing and Safety Committee
- the Employment Committee
- the Governance and Audit Committee

- 6.2 Some officers, as part of their normal duties, will be in regular contact with the chair and councillors of those committees. Much of what is said in this protocol about the relationship between officers and the cabinet will also apply, allowing for the different circumstances, to the relationship between officers and chair/vice-chair and councillors of non-executive committees.

- 6.3 To summarise, the main principles are:

- relevant officers will need to maintain a close working relationship with the chair and vice-chair 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 chair
- it is the report author's responsibility to ensure that reports include only proper advice and correct information
- councillors 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, executive director or relevant senior officer.

## **7 Delegated decision-making by officers**

- 7.1 The cabinet, a cabinet committee or an individual cabinet member may decide to delegate a decision to an executive director, in consultation with one or more councillors. Executive directors must consider carefully any comments made to them by the councillors concerned, but councillors must bear in mind that it is the officer, not the councillor, 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 they do not agree, or which they consider to be wrong or inequitable. An officer must take any such decision in accordance with their professional judgment.
- 7.1 If a non-executive function is delegated to an officer, they are not obliged to take a decision on the matter; and may refer the matter to the appropriate committee for a decision. Indeed, an executive 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 Councillors' access to documents**

- 8.1 Councillors' legal rights to inspect council documents are covered partly by statute and partly by common law. Councillors, generally, have a statutory right to inspect agendas, minutes and background papers of the council, the cabinet, Overview and 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 procedure rules in the council's constitution.
- 8.2 The common law right is based on the principle that any councillor has, on the face of it, a right to inspect council documents if access to those documents is reasonably necessary to enable the councillor properly to perform their duties as a member of the council. This is often referred to as the need-to-know principle. However, councillors do not have a roving commission to examine any documents of the council. Mere curiosity is not sufficient.

- 8.3 A councillor requesting access to documents should direct their enquiry to the relevant executive director or assistant director. Officers will be concerned to provide a councillor with such information, advice and access to documents which they require for the proper performance of their duties as a councillor. There may be occasions, though, when an officer believes that the councillor does not have a right of access to a document and that it would be inappropriate, on that occasion, for the councillor 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 a special need to secure commercial confidentiality in a proposed transaction. If that were the case, the officer should advise the councillor 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 councillor's access to a document should be referred to the monitoring officer.
- 8.4 Further information on councillor rights of access to information can be found in part 4: section 5 of the constitution.

## **9 Information and advice to councillors**

- 9.1 Any council information provided to a councillor must only be used by the councillor for the purpose for which it was provided, namely in connection with their duties as a councillor, unless the information is already in the public domain.
- 9.2 The code of conduct for councillors and co-optees provides that councillors must not disclose information given to them in confidence by anyone (this includes the council), or information acquired by the council which they believe or ought reasonably to be aware, is of a confidential nature except where:
- the councillor has the consent of a person authorised to give it,
  - the councillor is required by law to disclose,
  - the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person, or
  - the disclosure is reasonable and in the public interest **and** made in good faith and in compliance with the reasonable requirements of the council.
- 9.3 In relation to the last stated exception (disclosure thought to be reasonable and in the public interest) disclosure should not be made unless at least two clear working days has elapsed from the councillor notifying the chief executive or in their absence the deputy chief executive in writing (which includes e-mail) that the councillor proposes to disclose the information specifying the information proposed to be disclosed. Both councillors and officers should be aware that the disclosure of confidential information may constitute a breach of data protection legislation; generally, personal information cannot be released without the consent of the person to whom it relates. Improper disclosure of confidential information can put the council at legal and financial risk.
- 9.4 Regular contact between councillors and senior officers is necessary to ensure the efficient working of the council.

Councillors should always bring major concerns about issues affecting a department directly to the attention of the executive director concerned.

- 9.5 In the following circumstances, information or advice provided by an officer to a councillor will be disclosed:
- if the information or advice relates to a matter in the cabinet forward plan, to the relevant cabinet member
  - if the information or advice relates to a matter to be considered at a committee, to the chair of the committee (or in their absence the vice chair)
  - if the information or advice relates to a matter being considered by the Overview and Scrutiny Commission, or one of its panels, to the chair (or in their absence the vice-chair) of the Commission or the relevant panel.

## **10 Officers and political groups**

- 10.1 The operation of political groups is an integral feature of local government. They have an important part to play in the development of policy and the political management of the council. It is in the interest of the council to support the effective operation of political groups.
- 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 executive director and indicate the subject upon which information and/or advice is to be sought. If the chief executive or executive director is of the opinion that it would be inappropriate for there to be an officer in attendance, their decision shall be final. If officer attendance is appropriate, the chief executive or executive director shall determine which officer(s) should attend. Normally it would not be appropriate to request any officer to attend other than the chief executive, executive director, assistant director or head of service.
- 10.3 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.
- 10.4 Where an officer attends a political meeting, the following points should be borne in mind:
- The impartiality of officers should not be compromised through their support of political groups. 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 councillors 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 councillor, 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 third parties present. Persons who are not elected councillors will not be bound by the code of conduct for councillors and co-optees, 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 councillors only meeting

## **11 Correspondence**

- 11.1 Save in exceptional circumstances, all correspondence (letters, 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 a cabinet member or committee chair). This does not, of course, prevent a councillor responding in their own name to correspondence addressed to them in their official capacity (for example cabinet member, chair of the committee) or as a ward councillor 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 councillor.

## **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 council and enjoys the respect of Bracknell Forest residents. Officers and councillors should treat the mayor with the respect due to their office on all occasions when the mayor is acting in that capacity. Officers and councillors 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 their mayoral duties. As a matter of good practice, councillors 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 they deputise for the mayor.

### **13 Public relations and press releases**

- 13.1 The council has a duty to publicise its services and activity and to explain its objectives and policies to citizens in an accessible manner.

- 13.2 The communications and marketing team 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 amongst other relevant considerations) :

- 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 and/or points of view associated with a political party

- 13.3 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, cabinet member or chair 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 councillors to indicate their party political affiliation.

- 13.4 The code of conduct for councillors and co-optees stipulates that councillors when using or authorising the use by others of the resources of the council must:

- (a) act in accordance with the council's requirements and
- (b) ensure that such resources are not used improperly for political purposes (including party political purposes). 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 for councillors and co-optees should be observed. There is, of course, nothing to prevent any councillor 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 councillors, use of photographs**

- 14.1 The only basis on which the council can lawfully provide support services, for example IT equipment to councillors, is to assist them in discharging their role as councillors. Such support services should therefore only be used for council business and not in connection with party political or campaigning activities or private purposes.

- 14.2 Councillors should at all times adhere to the councillors ICT code of conduct and information governance (IG) guide for councillors.
- 14.3 Photographs supplied to councillors 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.
- 14.4 It is in the interest of the council to support the effective operation of political groups, therefore limited administrative support will be provided to political groups to ensure the effective, smooth running of political group meetings. This will include setting meeting dates, and the preparation and circulation of agendas and minutes. Officers supporting the political groups remain politically neutral.

## **15 Involvement of ward councillors**

- 15.1 It is important to all councillors 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 councillor(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 councillors of the consultation and request their views on the matter in issue.

## **16 Councillors acting as advocate for or supporting third parties in appeals against council decisions**

- 16.1 A councillor acting as an advocate for a ward resident 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.
- 16.2 Councillors 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, councillors 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.
- 16.3 Councillors 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 councillor 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
- 16.4 The chief executive should be consulted before a councillor agrees to support a

resident on a council matter who is not in their ward.

## **17 Visits to establishments**

- 17.1** In some circumstances, it will be inappropriate for councillors to visit an establishment, such as for example, a social services care facility, without prior notification being given to an executive director, assistant director or other designated officer. Each department may prepare guidance for councillors on when prior notification is required. In the event of the council giving approval to any such guidance, councillors shall abide by the same. Pending the preparation and approval of any guidance, councillors should give consideration to whether prior notification is appropriate before visiting an establishment.

## **18 Procedure for councillor complaints against officers**

- 18.1** Councillors should not raise matters relating to the conduct of a council employee, or of employees collectively, at meetings held in public. This is a long-standing tradition in public service. Employees have no means of responding to criticisms like this in public.
- 18.2** If a councillor feels that an officer has not treated them with proper respect or courtesy or has any concern about the conduct of a council employee, they should raise the matter with the relevant executive director. The executive director will look into the facts and report back to the councillor. If the councillor continues to feel concerned, they should then report the facts to the chief executive who will look into the matter afresh.

## **19 Procedure for officer complaints against councillors**

- 19.1** Where an officer feels a councillor has not treated them with respect and courtesy or is concerned about any action or statement by a councillor relating to themselves, or to a colleague, they should raise the matter with their line manager, executive director, or the chief executive, as appropriate. Line managers should normally refer matters reported to them to their executive director.
- 19.2** Where the matter is raised with an executive director or chief executive, they will take appropriate action which may include approaching the individual councillor and/or group leader where the councillor is a member of a political group. If the executive director or chief executive considers that the councillor has been in breach of the code of conduct for councillors or co-optees, they will discuss the matter with the monitoring officer who will consider the matter under the council's councillor complaints procedure.
- 19.3** Paragraph 19.2 above should be read as being without prejudice to the right of the officer to refer the matter directly as a formal complaint under the code of conduct for councillors and co-optees.