

Protocol for Member/Officer Relations (incorporating Guidance on Multi-Member Wards)

August 2007

Why Have a Protocol?

This protocol is a positive tool to aid relations between members and officers.

Its key guiding principles are for officers and members to:

- work together effectively
- act within the law and the standing orders of the Council
- behave with mutual courtesy
- communicate effectively with one another
- adopt a constructive approach to resolving differences and difficulties

The protocol also sets out to clarify areas where new working arrangements are in place and gives guidance on what to do when problems occur.

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1. INTRODUCTION

- 1.1 This protocol sets out the way in which members and officers of the Council should behave towards one another. It defines the roles and responsibilities of members and officers. It cannot cover every eventuality, but sets a framework for dealing with issues as they arise.
- 1.2 The protocol takes account of the Ethical Standards in Public Life (Scotland) Act 2000, and covers the elements contained in the Councillors' Code of Conduct, (Standards Commission for Scotland – March 2002). It should also be used in conjunction with other existing guidance such as the West Dunbartonshire Council Code of Conduct for Employees and the Council's Standing Orders.

2. WHO IS AFFECTED?

The most frequent contacts are between members and senior officers at Chief Executive, Executive Director or Head of Service level, and this protocol is largely about those contacts. There are also many contacts between members and other officers in their daily business, and the principles of this protocol also apply to them. The particular position of officers who provide support services for members is dealt with separately in paragraph 11.

3. THE ROLE OF ELECTED MEMBERS

- 3.1 Within a Council, members have a number of different roles:
 - some are conveners or spokespersons for specific issues
 - most generally belong to political groups
 - each has a local ward to represent along with other elected members, involving contact with local groups and providing surgeries for individual constituents
 - each may represent the Council in partnership arrangements and on outside organisations.
- 3.2 Collectively, elected members also:
 - provide strategic leadership
 - determine policy aims and objectives
 - take decisions not delegated to officers and
 - review performance.

In all such roles, councillors should act in accordance with the principles of the Code of Conduct for Councillors and this protocol.

3.3 *The Council and Committees*

The main functions of Council are to:

- debate and agree policy proposals;
- debate and agree budgets;
- appoint the members of regulatory and other committees;
- make appointments to outside bodies;
- provide a forum for debating key issues.

Details of remits for the Council and committees are included in the Standing Orders and Scheme of Administration.

4. THE ROLE OF OFFICERS

4.1 Various documents concerned with modernising local government decision making define the role of officers as follows:

- The Chief Executive and Executive Directors are responsible for assisting the Council in the development of its policies and the discharge of its responsibilities.
- The Chief Executive and Executive Directors have responsibility for ensuring policy implementation.
- The Chief Executive has responsibility for providing advice and management and publishing decisions.
- The Executive Directors and Service Heads have managerial accountability for their service areas and act as the first point of contact for that service.
- Some officers have personal statutory powers and duties, for example the officers designated as Head of Paid Service (Chief Executive), the Monitoring Officer (Head of Legal, Administrative & Regulatory Services) and the Section 95 Officer (currently the Head of Finance).

4.2 The following duties will apply to the position of Chief Executive:

- The Chief Executive is the statutory Head of the Paid Service and as such will be “responsible for managing and securing the professional body of staff needed to deliver modern, well-focussed services effectively.” (DETR, June 2000);
- The Chief Executive, as the most senior manager, is the main point of contact for members when difficulties arise; however members should generally raise any problem with the appropriate Executive Director or Head of Service in the first instance;
- The Chief Executive will, on occasion, be the representative of the Council’s officers on partnership and external bodies;
- The Chief Executive, as the Head of Paid Service, will work closely with the Leader of the Council in ensuring policy implementation but will work impartially with all party groups and individual members.

- 4.3 The organisational role of officers has two important dimensions. Some officers have professional skills relevant to a particular organisational task. Others have primarily a managerial responsibility. Many have elements of both in their jobs.
- 4.4 Officers should also know that they must:
- pursue lawful policies of the Council;
 - implement the decisions of Council, committees and sub-committees;
 - inform members immediately of any decision that cannot be fully implemented, (senior officers should undertake this task);
 - behave in a professional manner;
 - treat all councillors fairly and openly in their role as local representatives;
 - serve all members of the Council;
 - deal with member enquiries efficiently and promptly;
 - strive continually to comply with the Council's performance management processes; and
 - maintain political neutrality at all times.
- 4.5 Council officers have an obligation to follow Council policies and to implement the decisions of the Council and its committees even if they have professional misgivings about proposed decisions. The role of officers in that situation is to advise elected members and to voice concerns in giving that advice. An officer will normally have a duty not to implement a Council decision if it is manifestly illegal. In such circumstances, the officer should seek the advice of the Head of Legal, Administrative & Regulatory Services and the Chief Executive.
- 4.6 Officers' delegated powers are outlined in the Council's Standing Orders.

5. PERSONAL CONDUCT

- 5.1 Courtesy – in line with the Councillors' Code of Conduct reference to 'mutual trust and respect' – it is important that members and officers should behave courteously to one another. None should take unfair advantage of their position.
- 5.2 Disagreements should be acknowledged and worked out in private rather than in public view.
- 5.3 Close personal friendships between individual councillors and officers can also damage good relationships and prove embarrassing to other councillors and officers. Councillors and employees should, therefore, be cautious in developing close personal friendships while they have an official relationship.

- 5.4 Constructive criticism – members have the right to make reasonable and constructive criticism of the work of officers. Members should remember that officers cannot respond to personal criticisms of themselves or other officers in the same way that politicians can and should make their comments accordingly. In accordance with the Code of Conduct for Councillors, Councillors should not raise matters relating to the conduct or capability of employees in public.
- 5.5 Lines of accountability – members must be aware of the lines of accountability within departments. They must not apply pressure to an officer to act against the instructions of management.
- 5.6 Decisions delegated to officers – members should not put pressure on an officer on matters which have been delegated for officer decision. Officers should be left to make decisions that are:
- objective and can be accounted for and
 - fair and consistent in their application.
- See paragraph 4.6.
- 5.7 Undue influence – members should not bring undue influence to bear on an officer to take any action which is contrary to law or against the Council's approved procedures. This could include action which is:
- a breach of personnel procedures
 - in conflict with standing orders/financial regulations
 - in conflict with planning procedures and policies
 - in conflict with Codes of Conduct.
- 5.8 Declaring relationships with constituents – members must declare any relevant close personal relationships with constituents when dealing with council officers. Although members are elected to represent the interests of their constituents, they should not seek special treatment for any individual.

6. ACCESS TO INFORMATION AND DOCUMENTS

- 6.1 Members are free to request council departments to provide them with information, explanation and advice about that department's functions, which they may reasonably need in order to help them carry out their roles as members of the Council. Councillors should normally approach the Executive Director or, in the Executive Director's absence, a Head of Service. This can be for general information about aspects of the department's activities or specific information on behalf of a constituent.
- 6.2 Members have certain statutory and common law rights to request and inspect Council documents. The common law rights are wider and more significant than those given by the Access to Information legislation. For instance, papers which contain "exempt information" relating to the categories specified in the Access to Information legislation may fall within the rights of inspection given to councillors by common law.

- 6.3 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, committee or sub-committee meeting. This extends not only to reports which are to be submitted to the meeting but also to any relevant background papers. This right does not however apply to documents relating to certain items, for example, those which contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, the care of children, contract and industrial relations negotiations, advice from Counsel and criminal investigations.
- 6.4 The common law right is based on the principle that any member has a right to inspect Council documents if access is reasonably necessary to enable the member to perform his/her duties as a member of the Council – commonly referred to as the “need to know” principle.
- 6.5 The exercise of this common law right depends upon the member’s ability to demonstrate that he/she has the necessary “need to know”. The crucial question is the determination of the “need to know”. This question must initially be determined by the Executive Director who holds the document in question. In the event of a dispute, the question should be referred to the Chief Executive (taking advice if necessary from the Head of Legal, Administrative & Regulatory Services).
- 6.6 A ‘need to know’, and therefore a right to inspect, will not exist in relation to:
- a document which forms part of the internal workings of another party group;
 - the working draft of an officer’s report before it has been authorised for circulation to Council or other committee;
 - information covered by the provisions of the Data Protection Act, and The Access to Information Act. See 6.2
- 6.7 In some areas there are specific statutory codes which deal with the treatment of confidential information. This is especially true of Education and Social Work records. At all times, both members and officers must recognise the need to operate within the overall legislative framework surrounding information. There is no automatic right to confidentiality of any communication. In addition, members and officers are required to be aware that the Council is subject to the rigours of the Freedom of Information (Scotland) Act and Environmental Information (Scotland) Regulations and Re-use of Public Sector Information Regulations which require the council to provide, subject to exceptions, recorded information held by it. Members and officers should be aware of the provisions of the Data Protection Act 1998.
- 6.8 Members should not put pressure on officers to provide them with documents to which they have no statutory or common law right or to withhold from other councillors documents to which they have a statutory or common law right of access. The advice of the Head of Legal, Administrative & Regulatory Services and the Chief Executive should be sought promptly if there is doubt about whether access should be given.

- 6.9 Both members and officers have access to information which has not yet been made public and is still confidential. It is a betrayal of trust to breach such confidences. Confidential information must never be disclosed or used for personal advantage or to the disadvantage or the discredit of the Council or anyone else.
- 6.10 In light of the above procedures, members will not normally be expected to request information under the Freedom of Information arrangements.

7. ACCESS TO ADVICE

- 7.1 Officers provide professional and managerial advice to councillors in a number of settings:
- to the Council, Committees, sub-committees and working groups in written reports;
 - to the political leadership;
 - to the party groups;
 - to individual councillors with political roles (committee conveners, departmental spokespersons);
 - to individual councillors as local members.
- 7.2 Officers within a Department are accountable to their Executive Director and Heads of Service and should take this into account when giving advice to elected members.
- 7.3 In the spirit of informed and co-operative working, and without prejudice to professional integrity, officers may involve members in the preparation of complex reports. However, the Executive Director will always be fully responsible for the contents of any report submitted in his/her name. An elected member has the right to submit a recommendation to the Council or Committee which disagrees with the advice and recommendation of an officer. The member should state his or her reasons.
- 7.4 ***Party Groups and Officers***
- 7.4.1 Officers may properly be called upon to support and contribute to deliberations by party groups on matters of Council business under consideration. This support can be provided in many forms, ranging from a briefing meeting with a spokesperson to a presentation to a full party group meeting. Whilst in practice such support is likely to be in most demand from the group or groups in control of the Council, support is available to all party groups. The advice given by employees to different party groups should be consistent.
- 7.4.2 If attendance at a party group meeting is required, the office bearers of the political group should contact the Chief Executive and outline the type of advice they are seeking. The Chief Executive will decide whether attendance at the meeting is appropriate, and which officer(s) should attend.

- 7.4.3 Officer support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. Officers should be asked to leave meetings when party groups start to discuss and reach conclusions on the information and advice provided. The chair of a political group meeting attended by employees has a responsibility for ensuring that those attending are clear on the status of the meeting and the basis on which employees are attending.
- 7.4.4 Officers must respect the confidentiality of any party group discussions at which they are present. It is acknowledged however that factual information upon which any advice is based will, if requested, be available to all political groups.
- 7.4.5 Special care needs to be exercised if officers are involved in providing information and advice to a party group meeting which includes *persons who are not members* of the Council. Such persons will not be bound by the Councillors' Code Conduct (in particular, the provisions concerning the declaration of interests and confidentiality). For this and other reasons, officers may not be able to provide the same level of information and advice as they would to a meeting where those in attendance are bound by the provisions of the Code. It is open to an officer attending a party group meeting to request that non councillors be absent for the period of their attendance.
- 7.4.6 Officers must respect the confidentiality of any discussions at which they are present with members. If officers receive information which, although confidential, they have a duty to disclose elsewhere, they must indicate that this is the case.
- 7.4.7 Conclusions reached at party group meetings do not rank as Council decisions, and it is essential that they are not interpreted or acted upon as such.
- 7.4.8 Providing information and advice to a party group cannot act as a substitute for providing all necessary information and advice to Council or the relevant committee or sub committee.
- 7.4.9. Elected members should recognise that information and advice given by employees should be used to enhance discussion and debate at Council and committee meetings. If such information is used for political advantage, for example media briefings beforehand, then the process could become devalued and place employees in a difficult position in giving information and advice.
- 7.4.10 Officers must never allow their own personal or political opinions to interfere with their professional advice. Officers should not take part and members should not ask officers to take part in any activity which could be seen as influencing support for a party. Members should raise with the Chief Executive any concerns about the political neutrality of an officer.

7.4.11 Senior officers, and other officers providing advice and support services to elected members, are subject to legal rules limiting their political activities outside work.

7.4.12 Should any difficulty or uncertainty arise in the area of employee advice to party groups, this shall be raised with the Chief Executive, who should discuss the matter with the group leader.

8. THE COUNCIL AS EMPLOYER

8.1 Officers are employed by the Council and both they and the Council are governed by contracts of employment and the Council's personnel policies and procedures. The Council has a duty of care towards all of its employees and it is important that this protocol reflects this.

8.2 In making employment decisions, the key principles for elected members to follow are:

- Members involved in appointments of employees must act fairly and openly and judge candidates solely on merit;
- Members should not gain financially or personally, nor should their families or friends;
- members have a duty to declare any private interest, and to protect the public interest;
- members should have no involvement in employment or recruitment decisions in which they have a personal interest;
- in making public appointments or recommending people for rewards or benefits, members must make choices on merit, using objective criteria;
- members should be open about, and are accountable for, the decisions they make in the role of employer. However, some employment matters should be dealt with in confidence.

It is recommended that, given the importance of these issues, members involved in recruitment and selection should undertake the training available from the Organisational Development & Human Resources Section.

8.3 Members are collectively responsible when acting as employer and are bound by the complete framework of national and European employment law. However, it must be noted that an individual who commits an act of discrimination on the basis of race, gender or disability can be personally liable. The Council is an equal opportunity employer and members should be guided by this principle in all their relationships with staff.

8.4 In addition, under the Code of Conduct:

- Members must not solicit a job with the Council for any person (but, in appropriate cases, may give them a written testimonial);

- Canvassing support for a candidate for a job with the Council disqualifies the candidate from that job.
- 8.5 Members will be involved in individual staffing matters if they are a member of a committee set up for that purpose. Panels of members are normally established for Chief Executive and Executive Director appointments, and for certain disciplinary and grievance processes relating to the Chief Executive and Chief Officers. There are Appeals committees which hear appeals lodged by individual members of staff against grievances (including job gradings) and certain disciplinary decisions.
- 8.6 In other circumstances, however, members must not become involved in the management of the Council employees and all other disciplinary, capability or grievance processes are officer based decisions. Members must not engage in activities which might undermine the management lines of responsibility or adherence to Council personnel procedures, or try to influence the recruitment process.
- 8.7. Members will frequently come into contact with representatives of the Joint Consultative Forum (JCF). The remit of this forum is:
- To provide a channel for consultation between the Council and the unions;
 - To discuss significant changes to the Council affecting the welfare or conditions of employment of its employees; and
 - To consider any employment matter referred to them by the staff side or the Council.
- 8.8 This forum does not have a remit to become involved in matters affecting an individual employee's terms, conditions and pay and members must observe this remit in their contacts with Trades Union officials.
- 8.9 Members must, at all times, adopt a professional approach in their dealings with the Trades Unions and in particular should:
- Avoid giving unauthorised commitments;
 - Take a balanced view of information provided by Trades Unions along with that of officers;
 - Not allow undue influence to be placed upon themselves.
- 8.10 Likewise, officers must not raise directly with members any personal matter to do with their jobs, or relating to any potential appointment.
- 8.11 There are restrictions on former elected members' employment within the Council, described in Management Bulletin 01/07, Policy on Politically Restricted Posts. In particular it should be noted that restrictions include former members of the Council, who within the 12 months before they ceased to be a member, participated directly in the appointment of a number of senior posts as described in the Bulletin referred to.

9. MONITORING THE PERFORMANCE OF OFFICERS

- 9.1 Members should set the parameters for Council work and then let officers get on with running things as much as possible, whilst guaranteeing that strong monitoring and performance management systems are in place.
- 9.2 Members have a right to criticise reports or the actions taken by officers, but they should always:
- avoid personal attacks on officers;
 - ensure that criticism is constructive and well founded;
 - avoid undermining respect for officers at committee meetings, in any public forum or through the media; and,
 - use the agreed grievance procedures (when resolution cannot be achieved through normal lines of communication).
- 9.3 The Chief Executive, as the statutorily appointed Head of Paid Service, is the first point of contact for members regarding organisational and staffing matters. Executive Directors and Heads of Service are the first point of contact in their respective service areas.
- 9.4 Complaints about officers or Council services should be made to the Executive Director or to the Chief Executive as appropriate. Members have a duty to raise any issues that they have reason to think might involve fraud or corruption of any sort. These issues must, however, be raised through the proper channels.
- 9.5 The Monitoring Officer is specifically responsible for reporting any proposal, decision or omission by the Council or its officers which causes or is likely to cause:
- A contravention of the law or any code of practice;
 - A maladministration or injustice which could be investigated by the Scottish Public Services Ombudsman.

10. SUPPORT TO OFFICERS

Just as Section 9 of this protocol provides members with a mechanism for criticising the actions or decisions of officers, officers too must have some protection where they feel that members' expectations are unreasonably demanding or in conflict with managerial instruction or Council policy or procedure. Complaints or concerns should be raised with the appropriate departmental Executive Director, or with the Chief Executive.

11. SUPPORT SERVICES TO MEMBERS AND PARTY GROUPS

- 11.1 The Council can only lawfully provide support services to members to assist them in discharging their role as members of the Council – secretarial and typing support, stationery, printing, photocopying, transport and such like.

Support services must be used only for Council business. They must never be used in connection with party political or campaigning activity or for private purposes. Members should never ask staff to provide improper support.

- 11.2 The protocols governing the duties of members' support services staff are as follows:
- They are Council employees and subject to Council contracts of employment, standing orders and staff instructions. As such they cannot be required to breach Council procedure, the terms of their contract of employment or the legal restrictions on them.
 - They are responsible to officers for the conduct of their duties. Any issues about conflicting priorities, conduct or performance must be referred to their line managers.
 - They cannot represent or stand in for members.
 - The existence of members' services support staff should not detract from normal member/officer relationships.

12. MULTI-MEMBER WARDS

- 12.1 The introduction of multi-member wards has implications for the co-ordination of constituents' enquiries.
- 12.2 Individual constituents have the right to choose to approach any of the elected members representing their ward.
- 12.3 When constituents seek contact with a local elected member, information should be provided in a consistent manner, leaving the constituent to choose which elected member they wish to contact. Elected members' names and contact details should be provided in alphabetical order, by surname, along with their political affiliation.
- 12.4 Where a constituent has not identified a particular councillor to deal with their concerns, officers should contact the constituent to clarify which member they would like to deal with their query.
- 12.5 If a constituent does not wish to specify a member, the last resort should be to copy the query to all the ward members, with the express permission of the constituent.
- 12.6 Members within a particular ward may agree among themselves on ways of allocating responsibilities, however the individual constituent has the right to approach the elected member of their choice.
- 12.7 The relationship between the elected member and constituent is of a confidential nature, therefore the consent of the constituent is required before any information about them or the nature of their query is passed between elected members.

- 12.8 An elected member may suggest to a constituent passing on their query to another elected member. Such a referral should only be made with the express approval of the constituent who may request that the enquiry be dealt with by the member of their choice.
- 12.9 There is the possibility that constituents could raise their concerns with more than one elected member, without the elected members knowing this. This could lead to the situation where one officer is dealing with an enquiry without knowing that another officer is also dealing with the same enquiry. To avoid this potential duplication, departments should ensure that a central record of enquiries is kept.
- 12.10 All members in a multi-member ward should be kept informed of, and have input into, matters of council business which affect their wards, including the provost's and leader's official engagements.

13. MEETINGS AND CORRESPONDENCE

- 13.1 Both members and officers should take proper account of the time demands each is under when arranging meetings, particularly at short notice.
- 13.2 Officers should respond to requests for meetings with members with priority but where these are requested at short notice, members should accept that officers may have pre-arranged commitments.
- 13.3 There is no requirement for officials to invite other ward members to, or notify them about, meetings organised by an individual councillor with that official.
- 13.4 When Councillors initiate a meeting, officers should always ensure that the Councillors are given the opportunity to have other ward members attend.
- 13.5 Whenever a public meeting is arranged by the Council to consider an issue local to a ward, or one or more wards, all ward members should generally be invited to attend that meeting.
- 13.6 Correspondence between an individual member and an officer should not normally be copied by an officer to any other member. Where it is necessary to copy the correspondence to another member, this should be made clear to the original member at the time.
- 13.7 When officers write to or meet with residents regarding matters of general concern in an area, all ward councillors should be sent copies or informed.
- 13.8 When the Council undertakes a consultative exercise on an issue local to one or more wards, the appropriate officers should generally notify the ward members of the consultation and request their views on the issue.

14. MEDIA RELATIONS

- 14.1 The Chief Executive in consultation with the Council Leader and Manager of Corporate Communications & Marketing will issue press releases and similar information on behalf of the Council, deal with media enquiries and implement the Council's Public Relations policies.
- 14.2 Individual Executive Directors may issue press releases and deal with media enquiries in relation to their own service in consultation with the public relations/marketing officers.
- 14.3 Where a response is required to circumstances which are corporate or 'council wide', the Chief Executive, in consultation with the Council's Senior Press Officer, will express the views of the authority within the corporate policies agreed by the Council.

15. REVIEW OF THE PROTOCOL

This protocol will be kept under review and may be amended by the Council from time to time. It will be up-dated to take into account any future relevant legislation. Any amendments will be communicated to employees and members.