

MEETING	STANDARDS COMMITTEE
DATE	23, June, 2009
TOPIC	PROCEDURE FOR ALLEGATIONS OF BREACHING THE MEMBER-OFFICER RELATIONS PROTOCOL
PURPOSE	CONSIDER THE DOCUMENT AND MAKE A RECOMMENDATION TO FULL COUNCIL.
AWDUR	DILYS PHILLIPS, MONITORING OFFICER.

1. At its meeting of the 15th May the Committee decided it would recommend that the Council should adopt a local procedure for allegations that members have breached the Member-Officer Relations Protocol. At the same time it was requested that the Protocol itself be strengthened.
2. Attached to this report are:-
 - a) An amended copy of the Member-Officer Relations Protocol. The parts which have been amended are those which are underlined in the document. As well as strengthening the Protocol in accordance with the committee's wishes, I have taken the opportunity to correct some other points in it such as referring to the new Code of Conduct.
 - b) A procedure for dealing with allegations that a member has breached the Protocol. The procedure is based on discussions in the Standards Committee at its last meeting.
3. As well as these documents, the Committee will receive an annual report on allegations against members and any steps taken to resolve them and it may make recommendations to full Council.

RECOMMENDATIONS.

4. The Committee is requested to :-
 - i) Recommend the amended Protocol to the Full Council for adoption, and
 - ii) Recommend the procedure for dealing with allegations of breaching the Protocol to the full Council for adoption.

PROTOCOL FOR MEMBER/OFFICER RELATIONS

1. Introduction

- 1.1 The purpose of this protocol is to guide members and officers of the Council in their relations with one another.
- 1.2 This protocol seeks to offer guidance on some of the issues which most commonly arise. It is hoped however that the approach which it adopts to these issues will serve as a guide to dealing with other issues.
- 1.3 This protocol seeks to promote greater clarity and certainty. If it is followed it should ensure that members receive objective and impartial advice and that officers are protected from accusations of bias and undue influence.
- 1.4 This protocol is based on the following principles:-
- An understanding by both members and officers of the requirements of each other's functions.
 - Respect for each other's time and priorities.
 - Courtesy and sensitivity at all times.

It also seeks to reflect the principles underlying the respective Codes of Conduct which apply to members and officers. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government and therefore they demand very high standards of personal conduct.

- 1.5 The Council's Code of Conduct for members states at paragraph 4:-

"You must-

- (a) carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion;
- (b) show respect and consideration for others;
- (c) not use bullying behaviour or harass any person, and
- (d) not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your authority."

The statutory Code of Conduct for officers, which is incorporated in their conditions of employment, states at paragraphs 4 and 5 of the Schedule:-

"Relations with members, the public and other employees.

4. *Mutual respect between qualifying employees and members is essential to good local government, and working relationships should be kept on a professional basis.*
 5. *Qualifying employees of relevant authorities should deal with the public, members and other employees sympathetically, efficiently, and without bias.”*
- 1.6 In line with the principle of “mutual respect”, it is important that any dealings between members and officers should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position. The use of threats, intimidation or verbal abuse will be regarded as serious breaches of this protocol.
- 1.7 Members should not put officers under inappropriate pressure to act in accordance with the members’ wishes and officer are free at all times to offer a professional opinion which is contrary to the opinion of the member.
- 1.8 It is not acceptable for a member to bully or harass an officer. Any action against an officer would be considered as bullying or harassing if the intention was to improperly or unfairly influence his opinion or his activity. There is no room for personal abuse in a discussion between member and officer and it is not considered appropriate for one to voice a complaint against the other publicly in a committee or in the press, without first using the internal arrangements within the Council to try and solve the complaint.
2. **Officer advice to Members.**
- 2.1 Local authority officers are employed by and are responsible to the Council as a whole. They owe a duty to each and every member and not to a political group, even if it is in a majority. They also have a wider duty to the public as a whole.
- 2.2 There is now statutory recognition for political groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Directors or chief officers may properly be called upon to advise the chairs or spokespersons of political groups, but they should only attend group meetings in exceptional circumstances and in such a case the other political groups should be informed of the advice given and be given the opportunity to receive the same presentation. All instances of an officer (other than a political assistant) attending a meeting of a political group should be registered with the Monitoring Officer
- 2.3 Certain points must however be clearly understood by all those participating in this type of process, members and officers alike. In particular:-
- (a) 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 political group business;

- (b) 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; and
 - (c) similarly, where officers provide information and advice to the chair or spokesperson of a political group in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant committee or sub-committee when the matter in question is considered.
- 2.4 Any particular cases of difficulty or uncertainty in this area of officer advice to political groups should be raised with the Chief Executive who will discuss them with the relevant group leaders.
- 2.5 Provisions relating specifically to planning applications are to be found in the Planning Code of Conduct in Part 5 of this constitution.
- 3. Support services to members and political groups.**
- 3.1 The only basis on which the Council can lawfully provide support services (e.g. stationery, typing, printing, photo-copying, transport, information technology, etc.) to members is to assist them in discharging their role as members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes.
- 4. Members' access to information and to officers.**
- 4.1 Members are free to approach any council service provide them with such information, explanation and advice (about the services functions) as they may reasonably need in order to assist them in discharging their role as members of the Council. This can range from a request for general information about some aspect of a department's activities to a request for specific information on behalf of a constituent. Bearing in mind the requirements of the data protection legislation any request for personal information relating to a constituent should be supported by a written authorisation by that constituent. Such approaches should normally be directed to the chief officer or another senior officer of the services concerned.
- 4.1 Scrutiny committees have the right to require that certain officers appear before them. Details of this procedure can be found in the Scrutiny and Overview Procedure Rules in Part 4 of this constitution.
- 4.3 A member's ability to contact officers is essential to his/her work.

- 4.4 ~~Office doors are not closed to members.~~ However it will not always be possible for a member to contact an officer at a time when it is convenient for him/her. These guidelines aim to make the best use of both members' and officers' time.
- 4.5 As a matter of principle a member should always contact an officer he/she may wish to see beforehand. This will ensure that the officer is available and will enable that officer to prepare to answer the member's questions in order to make the most effective use of the meeting.
- 4.6 A member should always call at reception and ask for the officer. This is a matter of personal safety as it is essential in case of fire that the name of everyone in the building is known.
- 4.7 Officers should always ensure, bearing in mind the reasonable calls of their other duties, that they can respond to a reasonable request for information relevant to a member's work or a request for a meeting.
- 4.8 Members can always contact the Democratic Services Manager or one of the committee officers who act as the primary point of contact for members in relation to any need for information and to accept enquiries and forward them to the appropriate officers.

5. **Members rights to inspect Council documents.**

- 5.1 As regards the legal rights of members to inspect Council documents, these are covered partly by statute and partly by the common law.
- 5.2 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 right applies irrespective of whether the member is a member of the committee or sub-committee concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers. This statutory right does not extend to information falling within paragraphs 1 to 6, 9, 11, 12 and 14 of Part I of Schedule 12A of the Local Government Act 1972. However, the common law right (see below) would 'a fortiori' override this restriction.
- 5.3 The common law right of members is much broader and is based on the principle that any member has a prima facie right to inspect Council documents so far as his/her access to the documents is reasonably necessary to enable the member properly to perform his/her duties as a member of the Council. This principle is commonly referred to as the "need to know" principle.
- 5.4 The exercise of this common law right depends therefore upon the member's ability to demonstrate that he/she has the necessary "need to know". In this respect a member has no right to "a roving commission" to go and examine documents of the Council. Mere curiosity is not sufficient. If a member's motive for seeing

documents is indirect, improper or ulterior access may be refused. The crucial question is the determination of the “need to know”. This question must initially be determined by the head of service or strategic director who holds the document in question (with advice from the Monitoring Officer). In the event of a dispute, the question falls to be determined by the Monitoring Officer. There is a subsequent right of appeal to the Board of the Council.

- 5.5 In some circumstances (e.g. a committee member wishing to inspect documents relating to the functions of that committee) a member’s “need to know” will normally be presumed. In other circumstances (e.g. a member wishing to inspect documents which contain personal information about third parties) a member will normally be expected to justify the request in writing, in specific terms and in the light of the data protection legislation.
- 5.6 Further and more detailed advice regarding members’ rights to inspect Council documents may be obtained from the Monitoring Officer.
- 5.7 Finally, any Council information provided to a member must only be used by the member for the purpose for which it was provided, i.e. in connection with the proper performance of the member’s duties as a member of the Council. The Council’s Code of Conduct for members states at paragraph 5:-

“You must not:

(a) disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of person authorised to give such consent, or unless require by law to do so.”

- 5.8 Further information on the right to information may be found in the Access to Committee Information Procedure Rules in Part 4 of this Constitution and in the Code of Practice on Members’ Rights to have Access to Information, contained in Part 5 of the Constitution.

6. Officer/Chair/Portfolio Leader Relationships.

- 6.1 It is clearly important that there should be a close working relationship between the chair of the Board, a committee or sub-committee, or portfolio leader and the director, head of services and other senior officers of any directorate which reports to that committee. 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 members and other political groups.
- 6.2 Whilst the chair of the Board, a committee or sub-committee or a portfolio leader will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations a director or head of service will be under a duty to submit a report on a particular matter. Similarly, a director or head of service will always be fully responsible for the contents of any report submitted in his/her name. Any issues arising between a chair and a chief officer in this area should be referred to the Chief Executive for resolution in conjunction with the Chair of the Council.

- 6.3 If a report is to be presented to a meeting of the Board by a portfolio leader, then the author of that report should discuss its contents with the relevant portfolio leader beforehand.
- 6.4 In exercising their delegated powers, portfolio leaders must consult with or inform the chief executive, monitoring officer and chief financial officer (and the local member if appropriate) in accordance with the provisions more fully described in the Delegation Scheme for Portfolio Leaders in Part 3 of this constitution.
- 6.5 Finally, it must be remembered that officers are accountable to their head of service and that whilst officers should always seek to assist a chair, portfolio leader (or indeed any member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their chief officer..

7. Correspondence.

- 7.1 Correspondence between an individual member and an officer should not normally be copied by the officer to any other member. Where exceptionally it is necessary to copy the correspondence to another member, this should be made clear to the original member. In other words, a system of “silent copies” should not be employed.
- 7.2 Official letters on behalf of the Council should normally be sent out over the name of the appropriate officer, rather than over the name of a member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to appear over the name of a member, but this should be the exception rather than the norm. Letters which, for example, create obligations or give instructions on behalf of the Council should never be sent out over the name of a member.

8. Involvement of Ward Councillors.

- 8.1 All officers should always consider local members during their work as a matter of course. Local members should be kept informed of anything which may affect their work so that their views may be taken into account as the work progresses. Care should be taken that the local member does not first find out about something which is happening in his/her ward from his/her constituents or in the press!
- 8.2 Whenever a public meeting is organised by the Council to consider a local issue, all the members representing the ward or wards affected should as a matter of course be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the ward members should be notified at the outset of the exercise.

9. Breaches of the Protocol.

- 9.1 Breaches of this protocol may lead to disciplinary action in the case of officers or, in the case of members, an allegation to the Ombudsman that they have breached the code of conduct, or reference to the Council’s Standards Committee.

- 9.2 If a member should be dissatisfied with the conduct of an officer, he/she should in the first place discuss the matter with the relevant head of service in order to try to resolve the matter. The Council's disciplinary procedures will not necessarily be relevant and/or appropriate in all circumstances but the relevant head will resort to these procedures in appropriate cases. When dealing with a matter the head could, depending on the circumstances, consult with the Chief Executive, the Monitoring Officer, the Chairman of the Council or the leader of the relevant political group.
- 9.3 Should a member be dissatisfied with an officer's response to a request for information or service he/she should in the first instance refer this to the relevant head. Should he/she continue to be dissatisfied with the head's response he/she can then refer the matter to the relevant portfolio leader. The portfolio leader will investigate the application and the response to it and then come to a decision on the matter.
- 9.4 Similarly, if an officer is dissatisfied with the conduct of a member he/she should also raise the matter with his/her head of service in order to try to resolve the matter with the member without the need to resort to the formal procedures that could lead to the Standards Committee.
- 9.5 Should the officer continue to be dissatisfied, he/she can refer his complaint to the procedure adopted by the Council for dealing with instances of breaching the protocol by members and this ultimately could lead to reprimand by the Standards Committee. However, this does not supersede the officer's right, as any other individual, to make an official complaint that a member has breached the code of conduct to the Public Services Ombudsman for Wales.

A PROCEDURE FOR DEALING WITH ALLEGATIONS THAT A MEMBER HAS BREACHED THE PROTOCOL FOR MEMBER-OFFICER RELATIONS.

INTRODUCTION.

1. The Protocol for Member-Officer Relations is an important weapon to promote good co-operation between members and officers within the Council and thereby allow the council to fulfil its duties effectively and professionally. It is therefore important that any allegations by an officer against a member that he/she has breached the protocol can be dealt with quickly and effectively. The purpose of this procedure is to introduce a simple and easy way to understand the method of dealing with such allegations.

STAGE 1 OF THE PROCEDURE

2. Any officer who wishes to submit an allegation under this procedure should send the complaint, following consultation with the Head of Department to the Monitoring Officer. Following receipt of the complaint the Monitoring Officer will act as follows:-
3. In the first place the allegation will be referred either the Deputy Monitoring Officer or the Propriety Officer to provide the officer with general advice. At this stage it will be possible to advise whether the allegation falls within this procedure or whether it should be referred to the Ombudsman as an allegation of breach of the Members Code of Conduct. The Monitoring Officer will not deal with the allegation at this stage in order to preserve their ability to advise the Standards Committee later in the process.
4. If following the first stage the officer wishes to proceed with the allegation under this procedure the matter may be referred either to a conciliation meeting under Stage 2 or to a hearing by the Standards Committee under Stage 3.

STAGE 2 OF THE PROCEDURE.

5. At Stage 2 a meeting will be held between the officer making the complaint, the member against whom the complaint is made, the Leader of the relevant Political Group and the Chief Executive. It is possible for the officer to have a colleague or senior officer from the department with him/her. It is also possible for the matter to be dealt with in the officer's absence in exceptional cases. The purpose of this meeting will be to try and resolve the matter without it going further. If deemed necessary the Chief Executive can call on the Monitoring Officer, the Deputy Monitoring or the Propriety Officer for advice and assistance.

STAGE 3 OF THE PROCEDURE.

6. The third Stage is a hearing before the Standard Committee. The Officer making the complaint will be asked to submit the substance of his complaint in writing and the member concerned will be asked for a written response. These papers, together with any additional written evidence that is submitted by either side will be distributed to the member of the Standards Committee.
7. Both the officer and the member have the right to appear before the Standards Committee and to submit evidence from witnesses. Both will have the right to representation or to have a colleague present. The Council will not meet the costs of representations.
8. If either side wishes not to be present or fails to attend the hearing may be held in their absence.
9. After the evidence has been heard, both sides and their representatives will be asked to leave the chamber and the Standards Committee will come to a conclusion on the allegation. The Monitoring Officer will be available to advise the Committee.
10. The Committee can come to one of three conclusions, namely :-
 - a) That there is basis to the complaint.
 - b) That there is a basis to the complaint but that no further action is required.
 - c) That there is a basis to the complaint and that the member should be censured.

In addition the Committee can make recommendations to the Council regarding changing any procedures or taking any further action.

SUPPLEMENTARY MATTERS.

11. Publicity will not be given to the names of either the member or the officer unless it is decided to uphold to the complaint and that the member should be censured. The hearing before the Standards Committee will be exempt.
12. Stages 2 and 3 do not have to be following sequentially. Although it is possible for an officer who remains dissatisfied after the conciliation meeting to ask for the matter to be referred to a hearing before the Standards Committee, it is also possible for a matter to proceed directly to the Standards Committee without going first to a conciliation meeting.
13. The aim of this procedure is to try and resolve complaints regarding members quickly and effectively. Nothing in this procedure prevents an officer from submitting a complaint to the Public Services Ombudsman for Wales that a member has breached the Members Code of Conduct.