

Agenda item 9
Council Issues

1. Update of Constitution: Protocol for Member/Officer Relations (part 25)

- 1.1 The Council approved a revised constitution at its October 2023 meeting. The protocol on Member/Officer relations was not included as it was felt that this required a more substantial re-write.
- 1.2 A revised protocol has been produced, it has been the subject of consultation with the three Statutory Officers and with the Leader of the Council and agreed by the Constitutional Working Group.
- 1.3 It is aimed at making the protocol more reflective of today's operating environment and of experiences of other authorities. It attempts to set the division of roles between Officers and Members and set the tone and expectations of how Members and Officers should behave towards each other and ensure that relationships are harmonious but not too close.
- 1.4 It is fair to say that this protocol is not a well-known part of the constitution and if Council sees fit to agree the changed protocol it is proposed that we seek a Member development session and training for Officers as well as publicity within the Council.

Recommendation:

Members are asked to agree the revised protocol for inclusion in the Constitution.

[draft] Protocol for Member/Officer Relations

25.1 Introduction

It is important that there should be a close working relationship between a Cabinet Member and the Chief Executive, Corporate Leadership Team, and Senior Officers. However, such relationships should never be allowed to become so close, or appear to be so close, as to give the impression that the relationship may impact upon any Officer's ability to deal impartially with that Member or other Members and party groups.

It is important that dealings between Members and Officers should observe normal standards of courtesy.

This can be summed up as 'friendly, but not friends'.

Members and Officers must not seek to take unfair advantage of their position.

This protocol seeks to set out the standards that the County Council expects Members and Officers to follow. Whilst the Protocol cannot be comprehensive it sets out guidance on some of the key issues that arise in those relationships.

The Protocol reflects the principles underlying the respective Codes of Conduct, which apply to Members and Officers and the Principles of Public Life.

The shared objective of these codes is to enhance and maintain the integrity of local government, therefore demanding very high standards of personal conduct.

25.2 Member Conduct

The principles of public life are set out elsewhere in the constitution and set out the general principles govern the conduct of Members. More detailed rules are set out in the Code of Conduct.

25.3 Reports to Cabinet

In accordance with the Constitution, the Leader of the Council is responsible for the Cabinet agenda and most items submitted to Cabinet will be in the name of the relevant Cabinet Member. However, there will be occasions when the Chief Executive, a Statutory Officer or a member of the Corporate Leadership Team will need to submit a report to Cabinet (for example, by Statutory Officers in the discharge of their legal duties). The named author is fully responsible for the contents of any report submitted in their name.

25.4 Decision Making

Decision making by the Council is regulated by law. Courts are generally concerned to see that a decision is properly made and has been taken:

- by someone who was authorised to make it
- following an appropriate process; and
- taking account of all relevant information

Other than this the courts will normally respect the decision taken by the council as Parliament has given the local authority the right to make the decision. Any failure to follow the above when making a decision could lead to the decision being quashed or in some circumstances an injunction being granted or damages being awarded against the council.

Decisions may only be taken by an individual or group of individuals authorised by the law or the constitution to take a decision. If a decision is taken by the wrong person/body or in the wrong way it may be invalid or vulnerable to being overturned by a court at a later date. Cabinet Members may only take valid decisions by a properly recorded decision after considering a report including legal and financial advice.

The Cabinet, Committees and Council may only take decisions at a properly constituted meeting.

Outside formal decisions, Members may express a view about how a policy may be implemented but Members and Officers must remember that unless a Member has made a formal decision it is Officers who have taken the actual decisions and who are accountable for them.

All Members and Senior Officers must understand the parameters of the authority they exercise and recognise that acting outside those parameters leaves the authority open to legal liability and/or public criticism. For Members, such actions may amount to a breach of the Code of Conduct and for Officers, may lead to disciplinary proceedings.

When Members take decisions, they are accountable for the decisions they make, but Officers are accountable for the information they provide to Members and for the advice upon which the decision is based. Paragraph 25.4.4 deals with Officer advice.

If the Chief Executive and/or the Monitoring Officer consider that a decision is unlawful or in breach of existing Council policy or procedure, they will refer the matter back to the relevant Cabinet Member asking them to reconsider. Ultimately, and in a case of serious disagreement, the Monitoring Officer is under a legal duty to report any likely breach of the law to a meeting of the full Cabinet.

25.4.1 Cabinet Members' role in decision making

Individually, Cabinet Members may take decisions in accordance with those functions delegated to them, as set out in Part 3 of this Constitution and, with

Officer advice, may express a strategic view as to the implementation of those decisions.

All formal decisions must be properly recorded, noting which Officers have provided advice in the taking of the decision. The decision must then be published unless the decision is exempt for publication for some lawful reason.

Any views expressed by Members should be to an Officer of appropriate seniority and they must not direct junior employees to take a particular approach.

It is the responsibility of the Chief Executive and these Senior Officers to manage the implementation of policy.

Cabinet Members may take decisions on the resourcing of Council services and on the purchase of goods or services provided they are within their delegated authority and in accordance with the budget and policy framework.

The management of such allocated resources and how they will be applied is a matter for the Chief Executive, Corporate Leadership Team members or Senior Officers subject to any policy or budgetary constraints imposed by the Council or Cabinet.

25.4.2 Deputy Cabinet Members etc

Deputy Cabinet Members or Members who are undertaking project or other work on behalf of Cabinet Members, have no formal decision making power and any formal decision must be made by the Cabinet or Cabinet Member in the usual way. They may ask – but not require - Officers to take certain action, although they should discuss any significant request with the sponsoring Cabinet Member.

25.4.3 Officer Advice

Formal decisions taken by the Council, by Committees, by the Cabinet or by any Cabinet Member must be based on advice and information provided by Officers. That advice will normally be recorded in writing in a report presented to the decision maker.

A Cabinet Member must always have the advice of the Monitoring Officer and Section 151 Officer when taking decisions.

Members are entitled to decide whether they require additional advice from the relevant service areas in respect of the particular issue to be addressed, provided that they have enough information to take a proper decision. The Cabinet Member must give Officers adequate opportunity to provide them with the advice on the issue prior to them taking the decision.

25.5 Chairmen of Committees

Chairmen of Committees do not have authority to take executive decisions or direct staff, but can expect Officers to work with them in discharging the Committee's business. For example the Chairman may give their views concerning the agenda, actions to be taken in preparing the agenda and action to be taken as a result of Committee decisions. Officers will work with the Chairman to give effect to the Chairman's requirements.

If there is a situation where the Chairman wishes something to be done and an Officer does not feel able to act then the Chairman should raise the matter with the Chief Executive, a Corporate Leadership Team member or Director.

25.6 Officers

Officers are responsible for the management of the Authority and ensuring the implementation of agreed policies.

Where Members give strategic direction in the exercise of their delegated authority, the Officer(s) directed is/are responsible for ensuring the prompt actioning of those instructions and should keep the Member updated as to progress in the carrying out of the necessary work.

Officers should always seek to assist any Members of the Council, but they may not go beyond the bounds of the authority given to them by their Senior Manager.

Officers should be aware of rules governing access to information set out in part 4 of the Constitution and within the operation of those rules, ensure that Members are properly informed about information to which they have a right of access. Officers should not use professional expertise to discourage or intimidate Members from pursuing lines of inquiry.

Officers must comply with the formally expressed policy of the Authority and must not allow their own personal or political opinions to interfere with their work.

25.7 Members' Influence

Members who are not acting within their portfolio or on something commissioned by a Cabinet Member may raise issues with Officers and make suggestions in relation to them.

Those Members should not however expect Officers to have to implement suggestions made as individual Members have no decision making power in these circumstances.

Members should not seek to influence Officers below the level of Head of Service.

Members may not ask Officers to change their decision.

25.8 Raising Concerns

Any Member who has a concern about the conduct or performance of an Officer, should tell the Chief Executive, a Corporate Leadership Team member or a Director about their concern. That Officer will decide what action to take. It should be noted, that if the concern relates to a failing in the Officer's performance, the Council's normal processes will be followed and in most cases, it will initially be appropriate for this to be dealt with by means of a discussion between a Senior Manager and the Officer concerned.

If an Officer is concerned about the conduct of a Member, they should report such concern to their Head of Service, the Chief Executive or Monitoring Officer. If an Officer is concerned about another Officer, that concern should be referred to a relevant Senior Manager, not to a Member, in accordance with the terms of the Whistleblowing policy.

25.9 Members' role in recruitment

Matters relating to the creation of a post, the appointment, conditions of service and dismissal of the Chief Executive, a member of the Corporate Leadership Team and any Officer directly reporting to them are matters for the Senior Management Employment Committee, as set out in Article 8 of the Constitution.

Matters relating to the creation of a post, the appointment, conditions of service and dismissal of posts below this level are for the Chief Executive. Members may not be involved in decision making, but they may for certain roles provide advice to the interview panel (N.B. Members will be involved with the appointment of political assistants if the council employs such persons).

Members must respect the fact that Officers act for the Council as a whole and must be politically neutral. The relationship between a Member and an Officer should not be so close as to call into question the Officer's political impartiality.

25.10 Officer Advice and Support to Political Groups

There is statutory recognition for registered 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. Officers may properly be called upon to support and contribute to such deliberations by political groups.

The support provided by Officers can take many forms, ranging from a briefing meeting with a Cabinet Member or Chairman or an individual Member (either jointly or individually) prior to a meeting, to a presentation to a group meeting. Whilst in practice such Officer support is likely to be in most demand

from whichever party group is for the time being in control of the Council, such support is available to all registered political groups.

In providing Officer advice to Political groups, Members and Officers shall have regard to the following.

- (i) 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 not normally be present at meetings, or parts of meetings, when matters of party business are to be discussed.
- (ii) Group meetings are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings are not Council decisions and should not be considered as such.
- (iii) Where Officers provide information and advice to a group meeting in relation to a matter of Council business, they will still need to provide all necessary information and advice to the decision maker when a formal decision is taken.
- (iv) The attendance of any Officers at a political group meeting does not confer any status on that meeting – it is still a political group.

Where an Officer attends a political group meeting they should not normally be expected to provide advice unless everyone present is an Officer or Member of the Council. Others are not bound by the Member Code of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and 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.

Officers must respect the confidentiality of any political group discussions at which they are present and should not relay the content of any such discussion to a Member who is not a member of that political group.

Any particular cases of difficulty or uncertainty relating to Officer advice to party groups should be raised with the Chief Executive who will discuss them with the Leader of the relevant group.

Council resources (e.g. IT facilities, stationery, typing, printing, photocopying, transport, etc.) are provided to Members strictly to assist them in discharging their role as Members of the Council. Resources must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private party purposes or for purposes not directly related to Council business.

25.11 Members Access to Information and Council Documents

Members may approach any Council Service and ask them to provide them with such information, explanation and advice (about the Service's 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 Service's activities to requests for specific information on behalf of a Constituent. Such approaches should normally be directed to the Head of Service or another Senior Officer of the Service concerned.

The legal right of Members to inspect Council documents is covered partly by statute and partly by the common law 'need to know'. These are summarised in the Access to Information Procedure Rules contained within part 4 of the Constitution (part19).

Further and more detailed advice regarding Members' rights to inspect Council documents may be obtained from the Monitoring Officer.

Officers should ensure that they keep Members informed in relation to information regarding their division. Members are in many cases the first point of contact in the communities which they represent. It is therefore vital that County Members are informed about significant developments regarding their electoral division, before other groups and always before the press.

25.12 Correspondence

Correspondence between an individual Member and an Officer should not normally be copied (by the 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. In other words, a system of 'blind carbon copies' (bcc) should not be used.

Official letters on behalf of the Council are normally to be sent out under the name of the appropriate Officer, rather than under the name of a Member.

Sometimes it is appropriate for a letter to be sent from a Member (eg representations to a Government Minister or another politician), 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 under the name of the Member.

The Monitoring Officer should be asked for advice on significant letters which may create legal obligations or give rise to a 'legitimate expectation'.

25.13 Involvement of Local Members

Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the areas affected should, as a matter of course, be invited to attend the meeting. Similarly, whenever the Council consults the public on a local issue, the local Members should be notified at the outset.

2. Call-in arrangements and Deputy Cabinet Members

- 2.1 The Constitutional Working Group and Scrutiny Board have reviewed the appointment of Deputy Cabinet Members to Policy and Scrutiny Committees.
- 2.2 They have recommended that we update the Constitution to be clear that no Deputy Cabinet Members should sit on a Policy and Scrutiny Committee when it is considering a call-in regardless of whether the call-in relates to the portfolio covered by the Deputy Cabinet Member.

Recommendation:

Agree to:

- (a) the insertion of a new paragraph 18.16 into the Constitution as follows::

18.16 No Deputy to a Cabinet Member should attend a meeting of a Policy and Scrutiny Committee as a member of that Committee during consideration of a call-in, regardless of whether the call-in relates to the portfolio covered by the Deputy Cabinet Member.

- (b) Renumbering the current paragraphs 18.16 - 18.22 as 18.17- 18.23

- (c) Updating cross-references in part 18 of the constitution.