

### MEMBER/OFFICER PROTOCOL

#### 1. Introduction

- 1.1 The purpose of this Protocol is to promote positive relationships between members and officers of the Council so as to ensure the smooth running of the Council. It is not a statutory requirement and therefore has the status of guidance. However, adoption of this protocol by the Council demonstrates commitment to its principles and the Council expects all members and officers to comply with it. The protocol may also be taken into account by The Standards Committee when considering complaints.
- 1.2 Given the variety and complexity of member/officer 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 these issues will serve as a guide to dealing with other issues.

#### 2. Role of Members/Officers

- 2.1. The Council's Code of Conduct for Members sets out a number of general, mandatory obligations including the following:
- 2.2 A member must treat others with respect and must not:
- 2.2.1 do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
- 2.2.2 bully any person;
- 2.2.3 intimidate or attempt to intimidate any person who is or is likely to be:
- 2.2.3.1 a complainant,
- 2.2.3.2 a witness, or
- 2.2.3.3 involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including him/herself) has failed to comply with the Council's Code of Conduct;

- 2.2.4 do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the authority.
- 2.3 Members undertake many different roles. Broadly these are:
  - 2.3.1 As politicians - expressing political values and supporting the policies of the group to which they belong;
  - 2.3.2 As representatives and advocates - representing the ward and the citizens who live there;
  - 2.3.3 As decision makers - on Full Council, the executive, committees or on partnership organisations;
  - 2.3.4 As policy makers - developing and reviewing policy and strategy;
  - 2.3.5 Providing scrutiny and overview - monitoring and reviewing policy implementation and service quality;
  - 2.3.6 As regulators - regulating certain activities e.g. planning, licensing;
  - 2.3.7 As employers – responsible for the employment conditions and policy direction of the paid workforce;
  - 2.3.8 As community leaders and networkers - through active partnerships with other organisations.
- 2.4 In broad terms, officers have the following main roles:
  - 2.4.1 managing and providing the services for which the Council has given them responsibility and being accountable for the efficiency and effectiveness of those services and for proper practice in discharging their responsibilities;
  - 2.4.2 providing advice to the Council, the executive, committees, sub-committees and members in respect of its services;
  - 2.4.3 initiating policy proposals as well as implementing agreed Policy;
  - 2.4.4 ensuring that the Council always acts in a lawful manner.
- 2.5 Officers thus give professional advice to members who then make decisions for which they are accountable. Members' decisions are collective. They should not expect to receive information about decisions relating to individual residents except where the constituent has raised a concern with the member.

### **3. Relations between Members and Officers**

- 3.1 The General Principles of Conduct in Local Government also includes respect for others. Members should respect the impartiality and integrity of the authority's statutory officers, and its other employees.
- 3.2. These principles of the objectivity of officers and the mutual respect of roles are paramount. It is vital that any dealings between members and officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position.
- 3.3. Officers serve the Council through the executive, committees and sub-committees of the council or the executive and working groups. They work to the instructions of their senior officers - not individual members of the Council, whatever office the member may hold. It follows, therefore, that officers must not be asked to exceed the bounds of authority they have been given by their manager nor should they have unreasonable demands placed on them in terms of support to an individual member (or members).
- 3.4. It is not enough to avoid actual impropriety. Members and officers should, at all times, avoid any occasion for suspicion and any appearance of improper conduct. Members should declare to the Chief Executive any relationship with an officer, which might be seen as influencing their work as a member or vice-versa. This includes any family, business or close personal relationship. It is not possible to define exactly the range of relationships that would be considered as close or personal. Examples, however, would include a family or sexual relationship or regular social mixing such as holidays or meals together.

### **4. Complaints or Concerns about Officers or Services**

- 4.1 Members have the right to criticise reports or the actions taken by officers but they should always:
  - \* avoid physical or personal attacks on or abuse of officers,
  - \* ensure that criticism is constructive and well founded, and
  - \* take up an individual concern with the officer privately, where possible.
- 4.2. Members should not raise matters relating to the conduct or capability of an officer at cabinet or committee meetings or in any public forum. This could be damaging both to effective working relationships and to the image of the Council. An officer has no means of responding to such criticisms in public.

- 4.3. If a member feels he has not been treated with the proper respect, courtesy or has any concerns about the conduct or capability of an officer, and fails to resolve it through direct discussion with the officer, he should raise the matter with the appropriate Director or the Assistant Chief Executives. The Director or the Assistant Chief Executives will look into the matter and report back to the member. If the member continues to feel concern, he should then report it to the Chief Executive who will look into the matter afresh. A complaint about a Director or an Assistant Chief Executive should be raised with the Chief Executive. A complaint about the Chief Executive should be raised with the Leader and/or the chief officers. Any action taken against an officer in respect of a complaint will be in accordance with the provisions of the Council's disciplinary rules and any statutory provisions which may apply.
- 4.4. Where an officer feels that he has not been properly treated with respect and courtesy by a member, the aim should be to try to resolve the matter informally. If he feels able, the officer should in the first instance discuss it with the member concerned. He may then wish to raise the matter with his line manager, Director, Assistant Chief Executive or the Chief Executive as appropriate. In these circumstances line manager, Director, Assistant Chief Executive or the Chief Executive will take appropriate action by approaching the individual member and/or group leader. If it does not prove possible to resolve the matter informally the officer may make a complaint to the Standards Committee in accordance with the normal procedures for complaints about members.
- 4.5. Members and officers have a duty to raise any issues where they have reason to believe fraud or corruption of any sort is involved. (See the Anti-Fraud Policy Statement below and the Council's whistleblowing procedure).

## **5. Officer Advice to Members and Party Groups**

- 5.1. It must be recognised by all officers and members that in discharging their duties and responsibilities, officers serve the Council as a whole and not exclusively any political group, combination of groups or any individual member of the Council.
- 5.2. There is statutory recognition for party 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 provide information to party groups but must at all times maintain political neutrality. All officers must, in their dealings with political groups and individual members, treat them in a fair and even-handed manner. This means that, on occasions, information requested by one group will in fact be provided to all.

- 5.3 The support provided by officers can take many forms, including a briefing meeting with the executive or an executive member or the Chairman/Vice-Chairman of a committee prior to a committee meeting or a presentation to a full party 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 party groups.
- 5.4 Certain points must, however, be clearly understood by all those participating in this type of process, members and officers alike. In particular:
- 5.4.1 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. The observance of this distinction will be assisted if officers are not expected to be present at meetings or parts of meetings, when matters of party business are to be discussed.
- 5.4.2 Party 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.
- 5.4.3 Similarly, where officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the executive, executive member or relevant committee when the matter in question is considered.
- 5.5 Special care needs to be exercised whenever 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 are not bound by the Council's Code of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality). For this and other reasons officers may not attend and give information and advice as they would to a members-only meeting.
- 5.6 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they must not relate the content of any such discussion to another party group.

## **6. Officer/Executive Members/Chairman Relationships**

- 6.1. It is clearly important that there should be a close working relationship between executive members and the Chairmen of committees and the officers who report to 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 members and other party groups. It is good practice for the lead officer for to brief an executive member or committee Chairman in advance of a meeting and similarly to brief an opposition spokesperson as required.
- 6.2. In respect of committees of the Council, lead officers are identified in respect of each committee and that officer is responsible for drawing up the agenda for committee meetings. The officers will always be fully responsible for the contents of any report submitted in their name. It is essential that any proposals from members in reports to committees are clearly identified as such.
- 6.3. At some committee meetings, a resolution may be passed which authorises named officers to take action between meetings in consultation with a member. It must be recognised that it is the officer, rather than the member, who takes the action and it is the officer who is accountable for it.
- 6.4. It should be remembered that officers within a section are accountable to their Divisional Head and that whilst officers should always seek to assist an executive member, the Chairman of a committee (or indeed any member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Divisional Head.

## **7. Correspondence**

- 7.1. Correspondence between an individual member and an officer, particularly when it has been initiated by the member, 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 "silent copies" should not be employed.
- 7.2. Where an officer is dealing with a specific local matter which has been raised by a member or could have significant local implications, the correspondence should be copied to the relevant ward member(s).

## **8. Media Liaison**

- 8.1 Communications with the media can be an important part of a member's workload - issuing press releases or responding to queries. In any media contact, members and officers should always have regard to the reputation of the Council. Generally, members provide comments and views and officers provide factual information. This factual information may well include explaining the Council's policy on a particular issue. If any member is unsure about the facts of any issue he should contact the appropriate officer or ask the media representative to do so. Members should avoid being seen to anticipate decisions and should not criticise officers in the media.
- 8.2 If a member contacts or is contacted by the media he should indicate in what capacity he is speaking e.g. in a personal capacity, as a member of the executive, as a ward member, as Chairman of a committee, on behalf of the Council or on behalf of his political group. Members should avoid giving the impression they are speaking on behalf of the Council when expressing a personal view. It may be useful to advise the Communications Team or other appropriate officer, of the press release or discussion.

## **9. Conclusion**

- 9.1. Mutual understanding, openness and respect are the greatest safeguard of the integrity of the Council, its members and officers.
- 9.2. Copies of the Protocol will be issued to all members along with other documentation (e.g. Procedure Rules) upon election.

## **GIFTS AND HOSPITALITY GUIDANCE**

This note sets out the Council's guidance on dealing with offers of cash, gifts and hospitality from customers, contractors and those the Council regulates.

### **1. Why does the Council need guidance on gifts and hospitality?**

The purpose of this guidance is to protect officers and the Council as a whole. In local government we need to be very careful to maintain public confidence in our own and the Council's actions. We are subject to public scrutiny and perception.

If you have any doubts about an offer of any gift or hospitality seek the advice of the Monitoring Officer. You should always record the offer of cash, gifts or hospitality with the Monitoring Officer within 28 days. Gifts and hospitality accepted to a value of £25 or more will be entered in your register of interests.

## **2. What if I am offered a fee or reward?**

It is a criminal offence for any member to accept any fee or reward other than his proper allowances. Any "fee or reward" can include money, gifts, presents, bribes or vouchers.

Therefore, never accept cash or vouchers. Even if you have declined the offer always notify the Monitoring Officer that it has been offered.

## **3. Can I accept gifts?**

As a general principle, you should not accept gifts in your capacity as a councillor. You should politely and tactfully refuse offers of gifts or return them to the giver as soon as possible. If the refusal or return of a gift would cause offence then details of the gift should be recorded with the Monitoring Officer. Gifts to a value of £25 or more will be entered in your register of interests.

As a general rule, you should not accept gifts from:

- a) contractors or potential contractors i.e. persons or businesses who supply or want to supply goods or services to the Council;
- b) those the Council regulates i.e. persons or businesses which it licenses or gives permissions or consents.

Gifts of the following type may be accepted:

- a) modest gifts of a promotional nature, e.g. calendars, pens etc
- b) a modest gift on the conclusion of a courtesy visit to a business or which are presented at civic or ceremonial occasions;
- c) a modest gift presented to everyone at a conference or seminar.

These exceptions apply only to modest gifts. Expensive gifts should not be accepted.

Gifts which are intended for the Council as a corporate body or for a particular service area may be accepted, but not for personal use. Such gifts must be forwarded to the Personal Assistant to the Chief Executive.

## **4. Can I accept hospitality?**

As a general principle hospitality should not be accepted. Hospitality is more likely to be acceptable when it is offered to a group rather than to just one individual. In any case, you should consider:



- a) the person, business or organisation offering the hospitality;
- b) the scale and nature of the hospitality;
- c) the timing of the hospitality in relation to decisions to be made by the Council.

Some examples where it may be appropriate to accept hospitality are:

- a) Working lunches/dinner if :
  - i you and others are working on a project together;
  - ii you and others are partners in community issues eg Health Authority, Police etc.;
  - iii it is necessary for you to be able to carry out your function as a councillor effectively.
- b) Customary lunches/dinners at conferences or seminars where there are numerous guests;
- c) Civic or ceremonial occasions when representing the Council or accompanying the Chairman or the Council's representative.

Some examples where it will not be appropriate to accept hospitality are:

- a) Expensive meals, dances, other entertainments,;
- b) Paid or concessionary holidays, travel or accommodation;
- c) Other concessionary rates which are not openly and as a matter of practice available equally to other organisations;
- d) Frequent hospitality from one source.

If you have any questions on any part of this guidance do ask the Monitoring Officer.

## **STATUTORY OFFICERS – PROTOCOL**

### **1. Statutory Officers**

#### **1.1 Head of Paid Service (and Chief Executive)**

The Head of Paid Service is responsible for the corporate and overall strategic management of the authority as a whole. He/she must report to and provide information for the executive, the Full Council, the overview and scrutiny committee and other committees. He/she is responsible for establishing a framework for management direction, style and standards and for monitoring the performance of the organisation. The Head of Paid Service is also responsible, together with the Monitoring Officer, for the system of record keeping in relation to all the Full Council's decisions.

#### **1.2 Monitoring Officer**

1.2.1 Pursuant to Section 5 of the Local Government and Housing Act 1989 the Council is under a duty to designate one of its officers (to be known as the Monitoring Officer) as the officer responsible for performing the duties imposed by that Section.

1.2.2 The Monitoring Officer is under a duty to prepare a report to the Council or the executive if at any time it appears to him/her that any proposal, decision or omission by the Council or the executive or one of its committees, or officers, or by a joint committee on which the Council is represented, constitutes or may give rise to a contravention of any enactment, rule of law or statutory Code of Practice, or maladministration under Part III of the Local Government Act 1974. The Monitoring Officer must consult, so far as practicable, with the Head of Paid Service and the Chief Finance Officer and arrange for a copy of the report to be sent to each member. These duties cannot be delegated. They must be performed personally or, when he/she is absent or ill, personally by a nominated deputy.

1.2.2 The officer designated as Monitoring Officer may not be the Head of Paid Service nor the Chief Finance Officer.

#### **1.3 Chief Finance Officer**

1.3.1 Pursuant to Sections 113 to 116 of the Local Government Finance Act 1988, the officer referred to in the Local Government Act 1972 as the Chief Finance Officer must make a report if it appears to him/her that the executive or a member of the executive or an officer performing an executive function or the authority has made or is about to make a decision to incur unlawful

expenditure, or has taken or is about to take unlawful action likely to cause a loss or deficiency, or is about to enter an unlawful item of account, or will incur expenditure in excess of its resources. For non-executive functions the Council is required to consider the report within 21 days. During the time between the report being issued and its consideration the Council is prohibited from making any payments other than those where there are contractual commitments.

1.3.2. The Chief Finance Officer has further duties arising from Section 151 of the Local Government Act 1972, The Local Government and Housing Act 1989 and The Accounts and Audit Regulations 1996.

1.3.3 He/she is responsible for the proper administration of the authority's financial affairs; setting and monitoring compliance with financial management standards; advising on the corporate financial position and on the key financial controls necessary to secure sound financial management; providing financial information and preparing the revenue budget and capital programme.

## **2. Post Holders**

2.1 Reference in this note to the Monitoring Officer also includes the Deputy Monitoring Officer and, with the exception of paragraphs 1.2.1, 1.2.2 and 3.1, the Chief Finance Officer and the Deputy Chief Finance Officer.

2.2 The Council is under a duty to provide the Monitoring Officer with such staff, accommodation and other resources as are, in his/her opinion, sufficient to allow his/her duties to be performed.

## **3. Protocol**

3.1 The Council recognises that the role of the Monitoring Officer is a positive and preventative one, relating to the avoidance of illegality and maladministration and to the observance of Codes of Practice.

3.2 The Council shall publish the existence and nature of the role, by including reference to it in Members' and Staff Handbooks and in training or induction sessions for members and officers.

3.3 Each member and officer shall use his/her best endeavours to ensure the Council does not act unlawfully or against any Code of Practice or so as to give rise to maladministration or injustice.

- 3.4 Each member and officer shall co-operate in every way possible so as to reduce the risk of a need for the Monitoring Officer to issue a formal report.
- 3.5 The Council recognises that it will be required to provide the Monitoring Officer with such resources as he/she requires to carry out his/her responsibilities.
- 3.6 The Council acknowledges the Monitoring Officer's entitlement to see all reports, agendas, minutes, documents and any other information he/she requires in furtherance of his/her duties.
- 3.7 The Council recognises that there is no general need for the Monitoring Officer to report on:
- (i) Minor procedural irregularities
  - (ii) Matters which have already been reported to members by another officer and where members are fully aware of the illegality or maladministration involved.
  - (iii) Matters which are being resolved by other means eg most matters which have been referred to the Council's insurers.
  - (iv) Litigation in which the Council is involved, provided the Council's case is arguable.
  - (v) Cases where the Council has been convicted of some offence and a full report on the circumstances has already been submitted to members.
  - (vi) Most matters dealt with through the Council's complaints procedure unless these raise issues of illegality or maladministration which is inherently present in the Council's systems and therefore will recur unless corrected.
  - (vii) Most cases in which the Ombudsman has made a finding of maladministration as this would duplicate a report which has, in any event, to be considered by members.

## **PROCEDURES FOR DEALING WITH COMPLAINTS OF MISCONDUCT AGAINST MEMBERS OF THE COUNCIL**

### **1. Receipt of complaints**

- 1.1 Any complaint of misconduct against a member of the Council should be made in writing to the Monitoring Officer, Uttlesford District Council, Council Offices, London Road, Saffron Walden, Essex, CB11 4ER or electronically to [mperry@uttlesford.gov.uk](mailto:mperry@uttlesford.gov.uk). Procedural advice regarding a potential complaint can be obtained from the Monitoring Officer.
- 1.2 There is no restriction on who may make a complaint. Complaints may be made by councillors, officers of the Council or by members of the public.
- 1.3 For the purpose of these procedures, "misconduct" means any conduct by a member which is in breach of the Code of Conduct or any protocols or Codes of Practice adopted by the Council

### **2. Preliminary consideration**

- 2.1 The Monitoring Officer will consider any complaint received in consultation with an independent person appointed by the Council under s.28 (7) Localism Act 2011 with a view to determining whether there may be a breach of the Councillor's Code which warrants a full investigation.
- 2.2 If the Monitoring Officer and the independent person are of the view that it does not warrant an investigation it will notify the complainant accordingly. There is no right to challenge a decision not to refer a complaint for investigation other than by way of an application to the High Court for judicial review.
- 2.3 If after consulting the independent person the Monitoring Officer is of the view that the complaint warrants an investigation he or she will either commence an investigation or arrange for an investigation to be carried out.
- 2.4 If the Monitoring Officer is of the view that the complaint does not warrant an investigation but the independent person does not agree with that view the Monitoring Officer may either commence an investigation or arrange for an investigation to be carried out or at his or her discretion the complaint may be referred to the Standards Committee or a sub-committee thereof to determine whether the complaint warrants an investigation. If the committee or sub-committee are of the view that the complaint does merit investigation on such

referral it will refer the case to the Council's Monitoring Officer to carry out an investigation or to arrange for an investigation to be carried out

- 2.5 The purpose of the preliminary consideration is to exclude complaints which:
- (a) are frivolous or unsupported by any reliable information
  - (b) do not justify the use of the resources which would be required to carry out an investigation, or
  - (c) fall outside the scope of the Standards Committee's remit

### **3. Standards Committee meeting (to consider the complaint)**

- 3.1 If the investigator finds that there has been no breach of the Code of Conduct a copy of his or her report shall be sent to the complainant, the subject member and to all members of the Standards Committee. Any member of the Standards Committee may notify the Monitoring Officer in writing within 10 working days commencing on the day after the day upon which the report was sent that notwithstanding the findings of the investigating officer the member requires there to be a hearing before the Standards Committee.
- 3.2 If the investigator finds that there has been a breach of the Code of Conduct the Standards Committee will meet to consider the report of the investigator.
- 3.2 The committee should conduct its consideration of the complaint on an inquisitorial, rather than adversarial, basis.
- 3.3 The report of the investigator should normally provide the committee with all the available information which is relevant to consideration of the complaint. It should not normally be necessary therefore to call persons to provide information at the meeting. There may however be occasions when, in order to provide the committee with a full understanding of the matter and/or in the interests of fairness to the member against whom the complaint has been made, it will be necessary or appropriate to invite persons to provide information or give evidence at the meeting.
- 3.4 The main stages of the committee's consideration will be as below -
- (a) the committee will need to satisfy itself, by consideration of the report of the investigator and (where relevant) by questioning any persons invited to attend the meeting, that the complaint has been properly investigated and that the committee has been provided with sufficient information to allow it to make a properly informed judgement.

- (b) the committee will afford an opportunity to the member against whom the complaint has been made to address the committee on the subject matter of the complaint and, with the committee's consent, to call any witnesses to speak on his/her behalf.
- (c) the committee will then proceed to deliberate and form a judgement on the complaint of breach of the Councillor's Code and where a breach is found to have occurred, decide upon an appropriate sanction.

3.5 The member against whom the complaint has been made and any Council officer called to attend the committee meeting will be entitled to be accompanied by a representative of their choice.

3.6 The member against whom the complaint has been made will be entitled to be present at the meeting throughout the committee's consideration of the complaint until the point at which the committee is in a position to deliberate on its decision. The committee will then deliberate in private, subject only to the attendance of the legal advisor to the Committee and the Committee Administrative Officer.

3.7 Any procedural questions or issues which may arise will be determined by the committee, but within the guiding principle of ensuring fairness to the member against whom the complaint has been made.

## **5. Sanctions**

5.1 The sanctions available to the Standards Committee include -

- (a) taking no action
- (b) censuring the member
- (c) recommend that the member to apologise in a form approved by the Committee
- (d) recommend that the member to undergo mediation or training
- (e) recommending that the member be removed from one or more committees of the council
- (f) recommending that the member be removed from one or more outside bodies to which the member has been appointed by the council
- (g) recommending that the member be removed from the executive of the council
- (h) recommending that the member's use of council facilities be restricted

## **6. Announcement of the Committee's decision**

The committee will announce its decision, together with reasons, in public session and the Monitoring Officer shall send written confirmation of the decision to the member concerned and to the complainant within three working days. Unless the Committee determine otherwise the findings of the Committee will also be published on the council's website. Publication will be dispensed with when there has been a finding that the Code of Conduct has not been breached unless the subject member requests that the decision should be published. Decisions of the Standards Committee are not capable of being appealed but may be challenged by way of judicial review.