

Committee: Council

Agenda Item

Date: 16 May 2017

18

Title: Member Officer Protocol

Author: Interim Head of Legal Services – Simon Pugh

Item for decision:
yes/

Summary

1. On 4 April, Council considered a report recommending the adoption of a revised Member Officer Protocol.
2. At the Council meeting Cllr Artus moved two amendments that were accepted by the Council. The item was then withdrawn for further consideration of the amendments by the Constitution Working Group.
3. The Constitution Working Group met on 25 April to look again at the draft protocol and the amendments moved at the Council meeting. It has made some changes to the version submitted on 4 April. These are set out in the appendix to this report.
4. The differences between the two versions of the protocol are summarised in this report. As explained, the changes do not fully reflect the amendments moved by Cllr Artus and he has expressed his concern about this.

Recommendations

5. That the Council approves the revised Member Officer Protocol set out in the Appendix to this report, subject to its view on the remaining points of difference between Cllr Artus and the Constitution Working Group.

Financial Implications

6. None

Background Papers

7. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

Report to Council meeting on 4 April: Proposal for changes to Audit and Performance Committee

Impact

- 8.

Communication/Consultation	One of the objectives in revising the
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	Protocol is to improve communications and consultation between officers and members..
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	None.
Sustainability	None.
Ward-specific impacts	The revised protocol encourages officers to keep members informed about issues in the ward they represent
Workforce/Workplace	This will affect Council employees, who will need briefing about revisions to the Protocol.

Situation

9. As part of its constitution, the Council has a member/officer protocol. This is designed to ensure clarity of roles between members and officers, to set out some rules of behaviour and to provide a mechanism for dispute resolution.
10. The Monitoring Officer has been reviewing the Member/Officer Protocol and has prepared a revised version. The revision is intended:
- To address some issues raised by members and by officers;
 - To place more emphasis on partnership working between members and officers.
11. A previous draft was considered at the Council meeting on 4 April. At the meeting the Council approved amendments moved by Cllr Artus. The item was then withdrawn from consideration by the Chairman of the Constitution Working Group to allow CWG the opportunity to consider the amendments and to report back.
12. The amendments moved by Cllr Artus and agreed by Council were:
1. To include the word 'Advocate' in the definition of a member.
 2. Include the following clause either at the beginning or the end of the protocol...

“nothing in this protocol shall prevent or hinder a council member from fully engaging with officers of the council, including calling or attending meetings, or offering information and advice in the furtherance of any issue within their wards or wards for which they have responsibility”.

13. The attached version includes the word “Advocate” and some additional text, as follows:

“2.1 Members

Members are democratically elected and have a mandate to represent their ward and to contribute to decisions made by the Council. They are advocates, representatives and community leaders for their ward and the citizens people who live there and will often be seen by their constituents as the local representative of the Council as a whole. If constituents are unhappy about Council services, they will expect their councillor to do something about it.”

Cllr Artus has indicated that he is happy with the way in which his amendment has been incorporated.

14. The CWG was of the view that the scope of Cllr Artus’s second amendment was too broad and is proposing the following wording in its place:

“Nothing in this protocol shall prevent or hinder a council member from fully engaging with officers of the council, including requesting meetings with officers, or offering information and advice concerning any issue within their wards or wards for which they have responsibility”.

This replaces the phrase “calling or attending meetings” with “requesting meetings with officers”. It replaces the phrase “in the furtherance of any issue” with “concerning any issue”.

15. Cllr Artus has commented:

“... that’s not what I proposed and was accepted by the whole council.

“The omission of the words ‘calling or attending’ meetings is not acceptable as it seeks to limit the rights of councillors to attend meetings.

I suggest [the CWG] look at it again and put back the wording the council agreed.”

16. The changes between the version submitted on 4 April and the version agreed by the CWG on 25 April are shown tracked in the Appendix. The changes are mostly stylistic but there is one substantive change. This is in paragraph 7.2, regarding the rights of members to request factual information. The change adds the phrase “commercially sensitive” to the bullet point below:

7.2 All members of the Council are entitled to request factual information from officers about a Council department or service and the information will be provided unless:

- *there is a legal reason why it should not be disclosed (eg. the information is confidential, commercially sensitive or should not be disclosed under data protection principles.*

Risk Analysis

17.

Risk	Likelihood	Impact	Mitigating actions
That members and officers do not work together in a constructive manner, understanding and respecting each others' roles and expectations.	2	3	Approval by the Council of a clear protocol and the promotion of awareness of its content with officers.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

Appendix

Appendix B: Proposed Draft

1. Introduction

Members and officers are indispensable to one another and mutual respect is essential for good local government. Together, they bring the critical skills, experience and knowledge required to manage an effective public sector organisation. However, members and officers have different roles and different expectations.

This protocol is intended to:

- Ensure that there is a clear understanding of the respective roles of members and officers.
- Set out some principles governing the relationship between them;
- Establish some ground rules for the relationship.
- Encourage mutual respect and good communication.
- Allow for the constructive and amicable resolution of any conflict.

The Council is committed to the highest possible standards of operation, integrity, openness and accountability.

Overall, the aim of the protocol is to provide a framework to enable members and officers to work together for the benefit of people who live, work, visit, provide employment or provide services in Uttlesford.

Nothing in this protocol shall prevent or hinder a council member from fully engaging with officers of the council, including ~~calling or attending~~ requesting meetings with officers, or offering information and advice ~~in the furtherance of~~ concerning any issue within their wards or wards for which they have responsibility”.

2. Role of Members and Officers

2.1 Members

Members are democratically elected and have a mandate to represent their ward and to contribute to decisions made by the Council. They are advocates, representatives and community leaders for their ward and the people who live there and will often be seen by their constituents as the local representative of the Council as a whole. If

constituents are unhappy about Council services, they will expect their councillor to do something about it.

Members will have a strong knowledge of the area they represent and the issues that affect it. This local knowledge is important, in ensuring that good decisions are made, and should be respected.

Members are usually, but not always, members of political groups. Political groups are a legitimate aspect of local government democracy.

Members are responsible for setting the budget and policy framework within which the Council works. Beyond this, members may have different roles. Some will be members of the Cabinet and will have a wide ranging responsibility for making strategic and operational decisions on behalf of the Council. Some will be members of Committees which scrutinise and have oversight of policies and performance. Some will be members of regulatory committees; for ~~instance~~example, deciding applications for planning permission and ensuring compliance with licensing conditions.

2.2 Officers

Officers are employees of the Council. Their roles and responsibilities are set out in their contract of employment and job description. Some are mainly responsible for the delivery of services and work within the policies and standards set by the Council. Others will have a role in developing policies and strategies and in providing professional advice aimed at ensuring that the Council operates in an effective and lawful manner.

As employees, it is important that the Council complies with its legal obligations as employer and with good employment practice.

Officers are not politicians and their loyalty is to the Council as a whole. It is important that their professional integrity and impartiality is respected, especially where they are obliged to give advice that is not welcomed.

What members can expect from officers:
A commitment to the Council as a whole and not to an individual political group
A working partnership
A timely response to enquiries and complaints
Professional advice not influenced by political views or preference
Integrity, mutual support and appropriate confidentiality
Respect for the r role <u>of a member</u> as <u>an</u> elected representatives.
What officers can expect from members:
Political leadership and direction

A working partnership
Compliance with ethical standards and probity requirements
Non-involvement in day-to-day management
Fairness
Respect for their position as employees of the Council.

3. Working Relationships

3.1 Officers and members will be guided by these behaviours in their working relationship:

De-To be:	Don't Not to be:
Positive	Unhelpful
Professional	Obstructive
Authoritative	Arrogant
Respectful	Discourteous
Constructive	Imprudent
Communicative	Evasive
Discreet	Secretive
Reliable	Disorganised
Friendly	Friends

3.2 Officers will provide advice and assistance to individual Members in respect of Council business, including issues raised by constituents. They must not be requested to advise upon private matters.

3.3 Officers are employed by, and serve, the whole Council. They are politically neutral and must avoid being identified with any political party. Members must respect this.

3.4 The working relationship between senior officers and the Leader and Cabinet will be particularly close. This relationship, however, must not:

- compromise officers' duties to all Members of the Council;
- be so close as to give the appearance of partiality on the part of officers;
- undermine the confidentiality of any discussions within the Corporate Management Team or between senior officers and other Members;
- compromise officers' professional responsibility to advise Members that a particular course of action should not be pursued;
- undermine officers responsibility for action taken under delegated powers.

3.5 It is important that in any dealings between members and officers neither should seek to take unfair advantage of their position.

~~A member should not apply any pressure on an officer to do work outside of normal duties or normal working hours. A member should not, even in an~~

~~emergency, contact officers, even if they have their mobile phone number. Particularly in an emergency or if a matter cannot wait until normal working hours, the correct course will be to call the Council's out of hours number (01223 849755), which will ensure a speedy and coordinated approach. Pressure should not be put on an officer to do anything that he or she is not empowered to do.~~

3.6 Similarly, an officer must not lobby or use influence on an individual member to make a decision in his or her personal favour. They should not:

- raise personal matters to do with their job;
- make claims or allegations about other officers;
- make negative comments on the competency of another officer or member.

3.7 In their dealings with officers (especially junior employees), members need to be aware that it is easy for officers to be overawed and feel at a disadvantage. Such feelings can be intensified where members hold official and/or political office.

3.8 A member should not apply any pressure on an officer to do work outside of normal duties or normal working hours. A member should not, even in an emergency, contact officers directly, even if they have their mobile phone number. In an emergency or when a matter cannot wait until normal working hours, the correct course will be to call the Council's out of hours number (01223 849755), which will ensure a speedy and coordinated approach. Even in an emergency, pressure should not be put on an officer to do anything that he or she is not empowered to do.

~~3.7~~3.9 Members should approach officers of appropriate seniority when raising queries. Other than for routine service queries, this is likely to be at service manager level or above. If members wish to meet officers, they should generally make an appointment first. This is partly to allow officers to plan their work and partly because of the need to ensure that personal data, which may be visible in offices, is not inadvertently disclosed – for instance information relating to housing or benefit applications.

4. Familiarity

4.1 Close personal familiarity between individual members and officers can damage the principle of mutual respect. It could also, intentionally or accidentally, lead to the passing of confidential information or information which should not properly be passed between them, such as personal details.

4.2 Such familiarity could also cause embarrassment to other members and/or other officers and give rise to suspicions of favouritism.

4.3 Therefore care should be taken by individual members and officers in their relationship with each other. Members should declare to the Chief Executive any close family, business or personal relationship with an officer. Officers should make sure that their line manager is made aware of any similar relationship.

5. Communication

5.1 Officers should reply promptly and helpfully to correspondence, including emails, received from members. As a minimum, they should meet corporate standards for responses but should also recognise that it will sometimes be appropriate to give priority to correspondence from members. If an immediate reply is not possible, correspondence should be acknowledged and the member kept informed about progress.

5.2 Similarly, members should reply promptly and helpfully to communications from officers, especially where a member's view is sought before action is taken.

5.3 Written communication between members and officers should always be professional in tone, avoiding the appearance of over-familiarity. There is a particular risk with email of making inappropriate comments. Emails are a permanent record and may be held up to public scrutiny through, for instance, disclosure under freedom of information legislation or in the course of legal proceedings. Officers and members should always be alert to how correspondence would appear if held up to public gaze.

5.4 Written communication may not be the appropriate first step where, for instance, the facts are uncertain or a matter is controversial. A telephone call or personal discussion should be considered instead. In all cases, the preferred communication method of individual councillors should be taken into account, if known.

5.5 If members raise issues on behalf of constituents, officers should reply in terms that will allow members to give explanations to constituents that are helpful and constructive. Whilst members will hold officers to account, members will, in turn, be held to account by their constituents for the actions of the Council.

5.6 Unless a member or officer requests confidentiality, it will be assumed that correspondence between a member and an officer is not confidential and may be shown to others. (An obvious exception is where an issue relates to an individual constituent and would normally be treated in confidence). If, in an officer's view, correspondence between an individual member and an officer is of interest to

other members, to keep them fully informed, it should be made clear to the original member that copies have been sent to other members.

5.7 Where issues are raised by, or with, individual members relating to a matter of general interest in a ward, copies of correspondence may be sent to other members for the ward. However, a member may specifically request that correspondence is not copied to other members.

5.8 Official letters sent on behalf of the Council should normally be in the name of the appropriate officer, rather than in the name of a member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to be signed by a member, but this should be the exception rather than the norm.

6. Involvement of ward councillors

6.1 Whenever a public meeting is organised by the Council to consider a local issue, all the councillors representing the Ward or Wards affected should, as a matter of course, be invited to attend the meeting with the maximum possible notice being given. Similarly whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Councillors should be consulted at the outset of the exercise.

6.2 Ward Councillors should be notified in advance about any issues likely to affect them. This would include press releases relating to a particular Ward or significant matters likely to affect a Ward.

6.3 Ward councillors should be copied into correspondence with town or parish councils within their ward unless there is a good reason not to.

6.4 Ward councillors should be consulted and involved in significant issues affecting their ward. They will have a strong knowledge of the area they represent and the issues that affect it. This local knowledge is important in ensuring that good decisions are made and should be respected.

7. Requests for factual information

7.1 Officers will use the Members' Bulletin as the primary means of providing factual information to members. There are other sources of information available to members, in particular the "Keep Me Posted/ Gov Delivery e-newsletter, to which members are encouraged to subscribe.

7.2 All members of the Council are entitled to request factual information from officers about a Council department or service and the information will be provided unless:

- there is a legal reason why it should not be disclosed (eg. the information is confidential, commercially sensitive or should not be disclosed under data protection principles.
- the request for information is for private purposes, rather than in connection with the member's elected role.
- the relevant Director or Assistant Director considers the request to be unreasonable in terms of the resources required to provide the information. In case of dispute, the request will be referred to the Chief Executive.

7.3 Members making requests for information should allow adequate time for officers to provide it. Requests relating to committee or Council meetings should be made well in advance. If officers are not given enough notice, they may not be able to supply information in time. Late requests can also divert officers from work of equal or greater importance or urgency. Giving timely attention to agenda papers can mitigate this risk.

7.4 Members do not need to rely on Freedom of Information rights to ask for information, as they have a statutory right of access to information held by the Council, subject to a "need to know" test. This is wider than the rights given to members of the public. In some cases (for instance, where it involves third party personal information) there may be a need for confidentiality. In case of doubt or dispute, the Monitoring Officer will provide advice.

8. Officers' reports and advice

8.1 The Director/Senior Officer in whose name a report to the Council (or any part of its formal decision-making structure) is submitted will always be fully responsible for the contents of it. It is essential that any proposals from members in reports to committees are clearly identified as such.

8.2 A draft or final report will only be amended where the suggested amendment also reflects the professional judgement of the author of the report. Any dispute between a member and the officer responsible for the report which cannot be resolved shall be referred to responsible Director or to the Chief Executive for resolution.

8.3 On occasions, officers will need to express a professional view on a matter which may not support the view of members and/or senior officers. They must be allowed to do so without interference from, or victimisation by, members or other officers.

8.4 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 a-the member, who takes the action and it is the officer who is accountable for it.

9. Officer advice to members and party groups

9.1 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.

9.2 There is statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business. 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.

9.3 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. 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, support is available to all party groups.

9.4 Scrutiny committees have the power to require Cabinet Members and officers to appear before them and answer questions. As a matter of convention, the Council's scrutiny committees will only require the attendance of the Chief Executive, Directors and Assistant Directors. However, to facilitate proper conduct of business, these senior officers may arrange, as necessary, for other officers to attend meetings to assist.

9.5 The Chief Executive, Directors and Assistant Directors may, in exceptional circumstances, be invited to attend political group meetings to explain or to advise on policies and/or issues provided that this facility is available to all political groups represented on the Council. Officer attendance at group meetings will usually be at Assistant Director, Director or Chief Executive level. More junior officers should not generally be asked to attend group meetings and, if they are, they should first obtain permission of a Director or the Chief Executive.

9.6 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 and should not be present when matters of party business are to be discussed.

9.7 Special care needs to be exercised ~~if-by~~ officers ~~are-when~~ 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) and confidential information should not be disclosed.

9.8 Officers must respect the confidentiality of any party group discussions at which they are present.

9.9 Party group meetings are not empowered to make decisions on behalf of the Council. Conclusions reached at group meetings are not Council decisions and should not be interpreted or acted upon as such.

9.10 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.

10. Constructive criticism & redress

10.1 It is important that there should be mutual courtesy between Members and officers. It is important that there are reasonable standards of courtesy and no member or officer should seek to take unfair advantage of their position.

10.2 Members have the 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;
- take up an individual concern with the officer privately, where possible;
- avoid criticising officers in the media or social media.

10.3 Members should not raise matters relating to the conduct or capability of an officer at Cabinet and 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.

10.4 If a member considers that he or she has not been treated with proper respect or courtesy, and fails to resolve it through direct discussion with the officer, he should raise the matter with the appropriate Director or Assistant Director. The Director or Assistant Director will look into the matter and report back to the member. If the member continues to feel concern, they should then report it to the Chief Executive who will look into the matter afresh. A complaint about a Director or an Assistant Director should be raised with the Chief Executive. A complaint about the Chief Executive should be raised with the Leader. 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.

10.5 If an officer considers that he or she has not been treated with proper respect or courtesy, and a direct discussion is impractical or fails to resolve the matter, he or she should raise the matter with their line manager or Director without delay. In such circumstances, the Director will take such action as is appropriate either by approaching the individual and/or Party Group Leader. The Director will inform the Chief Executive if the Party Group Leader becomes involved, or in any other case where it is appropriate. Feedback should be given to the officer on the outcome.

10.6 The Council operates a confidential whistle-blowing policy. The Council is committed to the highest possible standards of operation, integrity, openness and accountability. It is expected that where an officer or member is concerned about potential unlawful conduct of an officer or member, they voice those concerns so that they can be dealt with effectively.

11. Officers' advice on declarations of interest

11.1 The Council's Monitoring Officer will on request provide advice and information to Members on declarations of interest of a personal nature and whether or not such an interest might amount to a disclosable pecuniary interest or a prejudicial interest. However, Members will know the nature and extent of any interest they may have. It is the Member's responsibility, therefore, to decide whether any interest should be declared.

12. Officer decisions taken under delegated powers

12.1 When making a decision under powers delegated to an officer, it must be recognised that it is the officer, and not any member, who takes the action and it is the officer who is accountable for it.

13. Media Liaison

13.1 Communications with the media can be an important part of a member's workload, such as 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 Communications Team or 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 or via social media networks which may be accessible to the public.

13.2 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. If a member is contacted by the media, it may be useful to inform the Communications Team of the query or discussion; the Communications Team may offer guidance on the nature of the response where it is appropriate to do so.

13.3 It is the role of the Communications Team to publicise decisions and services, and to enhance and protect the reputation and profile of the Council. In this regard members should refer to the Council's Media Relations Protocol. The Media Relations Protocol provides guidance on the work undertaken by the Communications Team, and sets out the responsibilities of officers and members acting as media spokespeople in written and verbal communications. It also references the legal obligations of the Council in publishing material, and the Government's Code of Recommended Practice on Local Authority Publicity which covers the rules around content and style of publicity, distribution, advertising, promotion of individual councillors and restrictions during the election period.

14. Unresolved issues and amendments to this Protocol

14.1 If there are any issues of concern which are not dealt with by this Protocol, then the relevant member or officer may discuss the matter with the Chief Executive with a view to advice being provided.

14.2 Should any Member or officer wish to suggest an amendment to this protocol, he/she is asked to contact either the Chief Executive or the Monitoring Officer.

14.3 Any amendments require approval of Council on the recommendation of the ~~[Constitution Working Group]~~Governance, Audit and Performance Committee. The Standards Committee and any other relevant body may be consulted on issues raised by the Protocol and on proposed amendments when appropriate.

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