

<p>Non-Executive Report of the:</p> <p><b>Standards Advisory Committee</b></p> <p>Thursday, 4 February 2021</p>	 <p><b>TOWER HAMLETS</b></p>
<p><b>Report of:</b> Janet Fasan, Divisional Director, Legal Services and Interim Monitoring Officer</p>	<p><b>Classification:</b> Open (Unrestricted)</p>
<p><b>Member / Officer Relations Protocol</b></p>	

<b>Originating Officer(s)</b>	Matthew Mannion, Head of Democratic Services
<b>Wards affected</b>	(All Wards);

### **Executive Summary**

The report presents to the Committee the current Member/Officer Protocol from Part C of the Constitution. The Protocol also includes a section on Member to Member behaviour.

In light of previous discussions by Committee Members and recommendations in external reviews of the Council's governance that this Protocol should be reviewed (And in particular the Member to Member Protocol be strengthened and split off as a separate document) the Committee are asked to consider whether it wishes to recommend changes or improvements.

### **Recommendations:**

The Standards Advisory Committee is recommended to:

1. To review and comment on the attached Member/Officer Relations Protocol attached at Appendix 1 to the report.

#### **1. REASONS FOR THE DECISIONS**

- 1.1 The Standards Advisory Committee has a role in overseeing standards in relation to how Members and officers interact with each other. It is therefore appropriate for the Committee to consider and review the existing protocol.

#### **2. ALTERNATIVE OPTIONS**

- 2.1 The Committee may make any suggestions it deems appropriate for consideration by the Interim Monitoring Officer.

### **3. DETAILS OF THE REPORT**

- 3.1 The Member / Officer Relations Protocol in Part C of the Council's Constitution sets out the parameters through which Members and Officers should engage with each other through their roles.
- 3.2 It deals with a large number of issues including general conduct, decision making, use of resources and day to day contact.
- 3.3 The Protocol also includes a section setting out how Members should interact with each other and the basic standards expected.
- 3.4 The Standards Advisory Committee has a role in monitoring Member standards including how Members interact with each other and with officers.
- 3.5 The Committee are therefore asked to review the current protocol set out in Appendix 1 to the report and make any comment as appropriate for the Interim Monitoring Officer to consider. The Committee could also request that officers undertake a more detailed review looking at any specific issues of concern.
- 3.6 It should be noted that on a number of occasions, including in external reviews of the Council's governance, it has been suggested that the Member to Member portion of the protocol could be reviewed or set out separately to give it more prominence.

### **4. EQUALITIES IMPLICATIONS**

- 4.1 The Committee should consider the extent to which the Protocol supports equality of opportunity and engagement for all Members and officers including any impact on protected characteristics.

### **5. OTHER STATUTORY IMPLICATIONS**

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
  - Best Value Implications,
  - Consultations,
  - Environmental (including air quality),
  - Risk Management,
  - Crime Reduction,
  - Safeguarding.
  - Data Protection / Privacy Impact Assessment.
- 5.2 None.

## **6. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 6.1 There are no direct financial implications arising from this report.

## **7. COMMENTS OF LEGAL SERVICES**

- 7.1 The Members/Officer protocol set out at Part 3, section 32 Constitution forms part of the Council's ethical framework and should be read in conjunction with the Council's Constitution, the Code of Conduct for Members, disciplinary codes which regulate the conduct of officers and other relevant codes and guidance.
- 7.2 Paragraph 11 of the Code specifies that the Standards Advisory Committee and the Monitoring Officer will jointly keep this Protocol under review, taking place on an annual basis, and make recommendations for changes as appropriate.
- 7.3 As part of this process the report requests that the Committee review the current protocol set out in Appendix 1 to the report and make any comment or specific requests for a detailed review of particular areas of concerns as appropriate for the Interim Monitoring Officer to consider in accordance with this process.
- 7.4 As set out at paragraph 4.1 of the report, the Committee should pay regard to the Council's Public Sector Equality Duty (Equality Act 2010) and its obligations to equality and diversity in facilitating and/or discharging the business of the Council including the extent to which have informed the protocol and any proposed revisions to it as part of the Committee's review.

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- None

### **Appendices**

- Appendix 1 – Member / Officer Relations Protocol

### **Local Government Act, 1972 Section 100D (As amended)**

### **List of “Background Papers” used in the preparation of this report**

List any background documents not already in the public domain including officer contact information.

- None

### **Officer contact details for documents:**

N/A

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### **1. INTRODUCTION**

- 1.1 Councillors and officers are indispensable to one another and mutual respect between both is essential for good local government. Together, they bring the critical skills, experience and knowledge required to manage an effective public sector organisation. Councillors provide a democratic mandate to the Council, whereas officers contribute the professional expertise needed to deliver the policy framework agreed by Councillors.
- 1.2 The protocol is part of the Council's ethical framework and should be read in conjunction with the Council's Constitution, the Code of Conduct for Members, disciplinary codes which regulate the conduct of officers and other relevant codes and guidance.
- 1.3 This Protocol seeks to define what should be considered a proper working relationship between Councillors and officers in Tower Hamlets and to provide a framework within which confidence in the machinery of local government can be maintained. It contains interpretation and guidance on some of the issues which commonly arise. It cannot cover every matter which will arise in council life but it reflects an approach and sets standards which will serve as a guide to dealing with other issues. It is intended to guide Councillors and officers and explain what they can expect of each other. It also explains what to do when things go wrong.

- 1.4 This protocol also applies to co-opted members of committees and also to consultants and agency staff working for the Council, to whom a copy will be supplied. With regard to associates from partnership organisations, where their organisation has no code of conduct, it is expected they will abide by the principles of Tower Hamlet's code and this protocol.
- 1.5 Councillors appointed to outside bodies or partnership organisations as representatives of Tower Hamlets Council need to be aware that the Code of Conduct for Members applies to these appointments. However, Councillors are advised to be aware that other conduct arrangements of the outside body are likely to exist. In those circumstances, Councillors should comply with both sets of conduct arrangements, unless the Code of Conduct for Members conflicts with the lawful obligations of the outside body.
- 1.6 A failure to abide by this Protocol by Councillors is likely to be a breach of the Code of Conduct for Members and may result in a complaint being made to the Monitoring Officer. As to officers, a failure to abide by this Protocol may result in a disciplinary investigation.
- 1.7 Any reference to 'Councillor' or 'Councillors' in this Protocol, or any appendices or related Codes/ Protocols, means the Mayor, elected and co-opted members. This Code applies at all times when Councillors act in their capacity as Councillors (or claim to act or give the impression of acting in their capacity as a Councillor).
- 1.8 'Officers' and 'staff' mean all persons employed by the Council: whether full or part time; fixed term contract; agency; or consultant.
- 1.9 A Councillor in need of advice about the application of this Protocol should contact the Monitoring Officer, whereas an officer in need of advice about the application of this Protocol should contact their line manager in the first instance.

## **2. ROLES OF COUNCILLORS AND OFFICERS**

- 2.1 Councillors and officers are indispensable to one another and mutual respect between both is essential for good local government. Together, they bring the critical skills, experience and knowledge required to manage an effective public sector organisation but their responsibilities are distinct.

### **Councillors**

- 2.2 Councillors are democratically accountable to residents of their Wards and serve only so long as their term of office lasts. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.
- 2.3 All Councillors have responsibilities to determine the policy of the Council, monitor its performance, represent the Council externally and act as advocates on behalf of their constituents.

## Officers

- 2.4 Officers are employed by and are accountable to the Council as a whole. With the exception of Political Assistants and the Mayor's Assistant, officers work to the instructions of their senior officers, not individual Councillors or Political Groups.
- 2.5 Officers manage and provide the Council's services within the framework of responsibilities delegated to them. This includes the effective management of employees and operational issues.
- 2.6 Officers have a duty to keep Councillors of all political groups fully informed about developments of significance in relation to council activities.

## **3. THE RELATIONSHIP BETWEEN COUNCILLORS AND OFFICERS**

- 3.1 Bad relations between Councillors and officers are counter-productive to good governance and therefore the conduct of Councillors and officers should be such as to instil mutual trust and respect. Councillors and officers should understand and respect each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately.

### Obtaining or granting favours

- 3.2 The Code of Conduct for Members emphasises the need for Councillors to avoid behaviour which could be viewed as conferring an advantage or disadvantage on an officer. Councillors must not seek personal favours from officers. Officers must not be tempted to give favours to please a Councillor. An example of favour seeking would be asking whether a Councillor's parking ticket could be withdrawn or whether an application for a service could be expedited. Similarly officers must not seek to circumvent agreed staff consultative procedures by lobbying Councillors on matters which directly concern them as employees

### Councillor involvement in officer issues

- 3.3 Issues relating to the appointment, management and dismissal of most officers are reserved by law to the Head of Paid Service and officers appointed by him/her. Councillor involvement in employment issues generally, including where they relate to senior officers, is set out in the Local Authorities (Standing Orders) (England) Regulations 2001.
- 3.4 Occasions may arise where officers try to involve Councillors in day-to-day staff/ management issues. Councillors should strongly discourage such approaches. Officers should be advised to pursue matters with their management through the established procedures for resolving grievances etc. Officers must not raise matters concerning their employment with individual Councillors; to do so may result in disciplinary action being taken.

## Personal Familiarity

- 3.5 Personal familiarity between Councillors and officers can create the suspicion of improper conduct, however unfounded and can undermine public confidence in the Council. Whilst it is clearly important that there should be a close working relationship between officers and Cabinet members or chairs of Committees, 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 Councillors and other party groups.
- 3.6 Informal and collaborative two-way contact between Councillors and officers is encouraged; personal familiarity can damage the relationship, as might a family or business connection. It is accepted that some close relationships will develop, particularly when Councillors and officers work closely together but it is important that close relationships between Councillors and officers are openly declared and if any relationship might be seen as unduly influencing their work in their respective roles then they should inform the Monitoring Officer.
- 3.7 It is not enough to avoid actual impropriety, Councillors and officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be perceived. Specifically, a Councillor should not sit on a body or participate in any decision which directly affects the officer on a personal basis.

## Courtesy

- 3.8 Councillors and officers should respect each other's non-working time.
- 3.9 Councillors and officers should be courteous to each other at all times even if they disagree strongly with their respective views. Councillors and officers should not shout or raise their voice in an aggressive or rude manner.

## Bullying

- 3.10 Councillors and officers must not bully or harass any person. Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person whom the Councillor or officer has some actual or perceived influence over. This can be contrasted with the legitimate challenges which a Councillor or officer can make in challenging policy or scrutinising performance.
- 3.11 Bad relations between Councillors and officers can be destructive to good governance. Councillors may from time to time become frustrated by what they regard as unacceptable or incompetent officer behaviour. It is self-evident that sometimes these feelings may be entirely justified although occasionally there may be a legitimate reason why member expectations

cannot be met, e.g. because of a council policy or a legal requirement such as confidentiality.

- 3.12 Where a Councillor has a concern about an officer or the Council services then this should be made to the Director of the service where the Councillor feels the fault lies or to the Chief Executive where it involves a Director personally. Indeed, Councillors have a duty to raise any issues where they have reason to think that fraud/ probity, corruption or malpractice of any sort is involved within the Council. Councillors should not criticise officers in public as Councillors should bear in mind that officers are instructed not to “answer back” in public. Attacking an officer’s conduct in public can constitute bullying, as will undue pressure brought by either officers or Councillors in private.

#### Lines of conduct between Councillors and officers

- 3.13 Councillors must remember that Officers within Directorates are accountable to their chief officer. Chief officers, through their senior management, are responsible for the allocation and prioritising of work by their staff. Councillors should not seek to influence such decisions.
- 3.14 A Councillor is free to approach any Council Department to provide them with such information, explanation and advice about the Department’s functions as they may reasonably need as a Councillor. This can range from a request for general information or documentation about some aspect of the Department’s activities, to a request for specific information on behalf of a constituent.
- 3.15 In making such an approach, the request should be made to the Chief Officer or Divisional Director for the Department concerned. If access is denied or the Chief Officer/ Divisional Director is in doubt, the matter must be referred to the Monitoring Officer for determination.
- 3.16 Councillors should raise constituents’ queries or concerns through the proper channels and not go direct to junior officers. Further in seeking to deal with constituents’ queries or concerns, Councillors should not seek to jump the queue, but should respect the Council’s procedures. Officers have many pressures on their time and officers may very well not be able to carry out the work required by Councillors in the requested timescale. Councillors should respect this. The Council does operate a Member’s Enquiries system (see section 8.1 for more details).
- 3.17 Where Councillors and officers share an office building particular care needs to be taken to maintain appropriate lines of contact. Councillors and officers are reminded that within an open plan environment office certain standards are expected to be maintained. In particular meetings should not be held at workstations, Councillors and officers should use the meeting facilities provided and sensitive or confidential issues should not be discussed in the open plan environment.
- 3.18 Officers within a Directorate are accountable to their Corporate Director and whilst officers should always seek to assist a Councillor, they must not go

beyond the bounds of whatever authority they have been given by their Corporate Director.

#### **4. COUNCILLOR TO COUNCILLOR EXPECTATIONS**

4.1 Whilst this Protocol is primarily aimed at the interaction between Councillors and Officers, the same principles apply to interactions between Councillors. Therefore Councillors should be entitled to expect from each other:

- respect, dignity and courtesy;
- not to be subjected to bullying or personalised attacks;
- respect for differing political views and values;
- maintenance of confidentiality;
- commitment to high standards of debate; and
- compliance with the Council's Constitution including the Code of Conduct for Members.

#### **5. COUNCILLORS AND LEGAL ACTION BY OR AGAINST THE COUNCIL**

5.1 There is a whole range of circumstances where the Council as a corporate body may be involved in legal proceedings. This could be against residents or other individuals, organisations and companies, and across the whole range of service areas including housing, planning, highways, etc. Councillors have a clear role in representing residents' and general public interests. In this representative capacity, Councillors will inevitably become involved in issues where the Council is considering, or is in the process of taking legal action, or where the Council is the defendant to legal actions brought by third parties.

5.2 Conflicts of interest will almost certainly occur when a Councillor is enquiring on behalf of an individual or body involved in legal action by or against the Council. In such cases, Councillors will be required to balance their representative role with their wider responsibilities in representing the corporate interests of the authority. For this reason, Councillors must be circumspect in any dealing with persons taking action against the Council, or against whom any legal action is being taken. Particularly, Councillors must be extremely cautious about having any dealings with professional representatives, advisers or witnesses in the case. Not only could such intervention prejudice the Council's position but the Councillor could find himself/ herself accused of an offence of Misconduct of Public Office or, Perverting the Course of Justice or an attempt or conspiracy to do so.

5.3 It is therefore particularly important that Councillors should be sure not only to avoid any actual impropriety, but at all times avoid any occasion for suspicion or any appearance of improper conduct.

5.4 In that regard, Councillors must not:

- attempt in any way to exercise improper influence over the legal process in which the Council is involved;

- attempt to exert improper influence on Council officers involved in the legal process or witnesses in the case;
  - attempt to engage the community to exert improper influence on Council officers involved in the legal process or witnesses in the case.
- 5.5 Whilst Councillors have every right to information on how any such matter is being dealt with and a duty to represent their constituents, Councillors must also realise that the response on behalf of the Council must be limited to comments on process, so as not to prejudice the proceedings.
- 5.6 In respect of any ongoing or contemplated proceedings, all enquiries must be addressed to either the appropriate Divisional Director or Corporate Director. On no account is the Councillor to contact any officers involved in the proceedings to discuss or make any enquiries regarding the proceedings.
- 5.7 If a Councillor believes that the Council's actions or intentions are wrong, they should inform the Corporate Director concerned. It must then be for the Corporate Director to determine what action to take. If the Councillor remains unhappy with the action taken, then they should refer the matter to the Council's Monitoring Officer or to the Chief Executive.

## **6. REPORTS**

- 6.1 Officers' reports should contain clear, evidence-based advice as to why a course of action is being recommended. From time to time corporate advice is given to officers on report writing and they should take care to follow it. The report should lay out all relevant factors for the decision maker, and examine all alternatives in an even handed way. Officers should take care to include even unpopular options if they feel they are relevant.
- 6.2 The relevant Corporate Director will always be fully responsible (and retains ultimate responsibility) for the contents of any report submitted in their name. Any issues arising between a Councillor and a Corporate Director in this area should be referred to the Monitoring Officer or Chief Executive for resolution.
- 6.3 Councillors have the right to criticise reports or the actions taken by officers, but they should always:-
- seek to avoid personal attacks on officers; and
  - ensure that criticism is constructive and well-founded.
- 6.4 Councillors have the ability to agree or reject proposals placed before them by officers, irrespective of the advice or recommendations made by officers so long as they generally act in good faith and exercise reasonableness in decision-making and specifically:-
- take into account relevant and dismiss irrelevant matters; and
  - do not come to a conclusion that no reasonable authority would come to.

Officers must therefore, be able to report to Councillors as they see fit and without any political pressure.

- 6.5 A resolution may be passed at meetings which authorises an officer to take action between meetings after consultation with the Chair/ Lead Member/ Portfolio Member etc. It is the officer, not the Chair etc., who takes the action and is responsible for it. The Chair etc. does not himself/ herself have the power between meetings to make decisions.

## 7. OFFICER ADVICE TO PARTY GROUPS

- 7.1 It must be recognised by all officers and Councillors 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 Councillor. Special rules apply to Political Group Assistants and the Mayor's Assistant and those post holders are made aware of them through separate guidance.
- 7.2 There is statutory recognition for party 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. Senior officers may properly be called upon to support and contribute to such deliberations by political groups but must at all times maintain political neutrality. All officers must, in their dealings with political groups and individual Councillors treat them in a fair and even-handed manner.
- 7.3 The support provided by officers can take many forms, ranging from a briefing meeting with the Mayor, a Cabinet Member/ Chair/ Spokesperson prior to a Council, Cabinet, Committee or Sub-Committee meeting to a presentation to a political group meeting. Whilst in practice such officer support is likely to be in most demand from whichever political group is in control of the Council at the time, such assistance is available to all political groups.
- 7.4 Certain points, however, must be clearly understood by all those participating in this process, Councillors and Officer alike. In particular:
- I. Requests for officers to attend any political group meeting must be made only to the appropriate member of the Corporate Leadership Team. Normally only that person will attend the meeting, although in exceptional circumstances they may be accompanied by one or more Senior Officers.
  - II. Unless otherwise agreed in advance with the Chief Executive, officers will not attend political group meetings that include persons who are not Councillors. However, where the Chief Executive has authorised such attendance special care needs to be exercised by officers involved in providing information and advice to such political group meetings. Persons who are not elected Councillors will not be bound by the Code of Conduct for Members (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 Councillors only meeting.
- III. Officer support (whether in the form of a written report or otherwise) must not extend beyond providing information and advice in relation to matters of Council business. Officer support will be limited to a statement of material facts and identification of options and the merits and demerits of such options for the Authority. Reports or other support will not deal with any political implications of the matter or any option, and officers will not make any recommendations to a political group. Officers (with the exception of Political Group/ Mayor's Assistants) are not expected to be present at meetings or part of meetings when matters of party business are to be discussed.
  - IV. 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.
  - V. It must not be assumed by any political group or Councillor that any Officer is supportive of any policy or strategy developed because of that officer's assistance in the formulation of that policy or strategy.
  - VI. Officers must respect the confidentiality of any political group discussions at which they are present in the sense that they should not relay the content of any such discussion to another political group or Councillor thereof. However, Councillors should be aware that this would not prevent officers from disclosing such information to other officers of the Council so far as is necessary to perform their duties.
  - VII. Where officers provide information and advice to a political group meeting in relation to a matter of Council business, it should be understood that the officers have a statutory duty to provide all necessary information and advice to the Mayor or Cabinet or relevant Committee/ Sub-Committee when the matter in question is considered.

## **8. MEMBERS' SERVICES AND THE USE OF COUNCIL FACILITIES**

### **Members' Services and Members' Enquiries**

- 8.1 The Council operates a Member's Enquiries system which is for the Mayor and Councillors to use for routine requests for information and advice. The maximum turn round time expected for such enquiries is 10 working days and officers will chase outstanding enquiries exceeding this period. Matters which are not routine or involve policy should be directed initially to the relevant Corporate Director or Divisional Director or any officer nominated by them.
- 8.2 Both Mayor's Office secretarial staff and the Councillors' Support Team provide assistance to Councillors in their role as Council Members. Staff in these sections may, therefore, be used, as appropriate, to help with work such as casework, meetings and correspondence to do with Council matters. Full details of the service offered are contained in the Members' Services Guide.

- 8.3 The Mayor's Office and Councillor Support Team staff will assist with booking venues for, and publishing details of, Councillor' surgeries. Councillors' surgeries should normally be held within a Councillor's own ward, but Councillor may arrange a surgery in premises outside their ward if this is necessary to provide suitable surgery facilities for their own constituents. Councillor must not ask Council officers to assist with any personal, business or party political matters; attend surgeries; or decide how case work will be dealt with.

#### Council Facilities

- 8.4 Councillors must use any Council facilities that are provided in their role as a Councillor strictly for that purpose and no other. For example, Councillors must not use rooms in the Town Hall or other buildings or any of the Council's paper, computers, photocopiers, or printers for any personal, business related or party political matter, nor, for example, on behalf of any community groups of which the Councillor is a member, unless formal approval has been given by the appropriate chief officer.
- 8.5 The use of Council facilities and services by Councillors during a pre-election period for election campaigning or political purposes is not allowed. Specific guidance will be issued at that time to both Councillors and officers.
- 8.6 The Council can only provide legal representation to an individual Councillor where the action is taking place in the name of the Council and the individual deserves the protection of the Council. All such matters should be raised with the Chief Executive in the first instance.

#### Political Party Workers

- 8.7 Councillors are often assisted by political party workers. There is no objection to this, but no non-elected party worker has any entitlement to:
- information to which a Councillor has access in their role as Mayor or Councillor;
  - use Council facilities provided for the use of Councillors.

The principles which apply to use of facilities provided for Councillors (and the officers employed to assist them) apply equally to all Council property and facilities and all Council employees.

#### Use of IT

- 8.8 From time to time training and guidelines on the proper and effective use of Council IT resources will be issued.

### **9. POLITICAL ASSISTANTS**

- 9.1 Section 9 of the Local Government and Housing Act, 1989 gives councils a power to appoint political assistants to qualifying political groups. Whilst the

Act allows the political affiliation of an individual to be taken into account in the appointment of any Political or Mayor's Assistant, they remain officers of the Council and must therefore not undertake any activity, which may be deemed unlawful. In this context, it should be realised that officer support to the political groups is in the context of their role in the discharge of Council business and although it may require liaison with political parties, at both local and national level, should not be used in promoting the views of an individual political party or undertaking campaigning or other party political business.

- 9.2 Political assistants hold politically restricted posts and therefore also face restrictions on their personal political activity.

## **10. COUNCILLORS' ACCESS TO INFORMATION**

### **General**

- 10.1 The following paragraphs identify the rights of Councillors and the procedures that they must comply with when applying for access to Cabinet/ Committee/ Sub-Committee papers and other documents/ information. These paragraphs take into account the following:

- Relevant legislation including the Local Government Act 1972; the Data Protection Act 1998; the Freedom of Information Act 2000; and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (SI 2012/2089)
- Local Government Transparency Code 2015
- Open and accountable local government: plain English guide
- Access to Information Procedure Rules (Part B Section 27 of the Constitution)
- Relevant case law

- 10.2 In principle, Councillors have the same ordinary rights of access to certain information as is enjoyed by the general public but they also have the right to access any other information (i.e. confidential or exempt) held by the Council of which they are a Councillor provided that it is reasonably necessary to enable the Councillor to properly perform their duties as a Councillor (see "Need to Know" below). This right of access of additional access may not extend to the publication of or otherwise making public such information as there may be issues of confidentiality.

### **Access to Committee Papers for Forthcoming Meetings**

- 10.3 The rights of Councillors can be summarised as follows:-

- I. Councillors enjoy the same access rights as members of the public in respect of Part I Cabinet/Committee/Sub-Committee papers.
- II. Councillors of the appropriate Cabinet/ Committee/ Sub-Committee will have a good reason for access to all Part II exempt information on the respective Cabinet/ Committee/ Sub-Committee agenda under the "Need to Know" principles (see below).

- III. Councillors of the Overview and Scrutiny Committee will have a *prima facie* “Need to Know” where they require access to Part II Cabinet agenda items as part of their scrutiny function provided the subject matter is within the Committee/ Sub-Committee’s terms of reference.
- IV. All other Members who require access to confidential/ exempt Cabinet/ Committee/ Sub-Committee documentation will need to request disclosure under the Freedom of Information Act 2000 or demonstrate a “Need to Know” by complying with the principles set out below.

#### Access to Other Documents/Information – “The Need to Know”

- 10.4 It is important to note that in some cases access to information to which the public is not entitled only applies where Councillors are clearly carrying out their role as elected representatives. Where a Councillor has a financial or personal interest in a matter the Councillor will only be entitled to the same access as would be the case for a private individual. In these circumstances, the Councillor must make it clear that they are acting in their private capacity and not as a Councillor.
- 10.5 Under common law principles Councillors have the right to access information held by the Council where it is reasonably necessary to enable the Councillor to properly perform their duties as a Councillor. This is known as the “Need to Know”. This means that information must not be used for party political purposes.
- 10.6 The common law “Need to Know” is the *prima facie* right of Councillors to inspect documents of the authority which exist as Councillors are under a duty to keep themselves informed of Council business which relate to their role as elected representatives. Thus, this right applies to Councillors who do not have statutory rights to exempt or confidential information and to other documents held by the Council under local government legislation or the Freedom of Information Act 2000.
- 10.7 For example, a Councillor is likely to have a *prima facie* “Need to Know” where they have a legitimate Ward problem and needs access to the documents that are relevant to that specific problem. Also, for example, a Cabinet Member whose Portfolio covers the matter in question and they need to be aware of what is occurring for the purpose of their Cabinet position.
- 10.8 Access to information on the basis of a ‘Need to Know’ does not exist where the Councillor is considered to be “fishing” for information or seeks access for an ulterior/improper purpose (e.g. for a private purpose). Case law has established that mere idle curiosity as to what is in the documentation will not be sufficient.
- 10.9 It should be noted that some material (for example if commercial sensitive) may be redacted from information that is disclosed, if this does not affect the ability of a Councillor to exercise their role as an elected representative.

- 10.10 There will also be a range of documents which, because of their nature are either not accessible by Councillors (such as the personal records of an individual) or are accessible only by the political group forming the administration and not by the Councillors of other political groups. An example of this latter category would be draft documents compiled in the context of emerging Council policies and draft Committee reports, the premature disclosure of which might be against the Council's and the public interest.
- 10.11 Whilst the term "Council document" is very broad and includes, for example, any document produced with Council resources, it is accepted by convention that a Councillor of one political group will not have a "Need to Know" and therefore, a right to inspect, a document which forms part of the internal workings of another political group.

#### Use of Council Information – Confidentiality

- 10.12 Procedural Rules and specific local procedures (e.g. on contracts) require Councillors and officers to maintain confidentiality in certain circumstances. Officers are bound by their contracts of employment and any breach of confidentiality will almost certainly lead to disciplinary action. Officers must distinguish between assisting an elected representative in the course of the Councillor's Council business and dealing with the same person as a client or customer, e.g. a Housing Benefit claimant. In the latter case, Officers will treat the Councillor with the same degree of helpfulness, courtesy and confidentiality as would be afforded to any other member of the public in the same situation, and interpret the relevant rules and procedures as they would for any other client or customer.
- 10.13 Equally, any Council information provided to a Councillor on the basis of a 'Need to Know' must only be used by the Councillor for the purpose for which it was provided, i.e. in connection with the proper performance of the Councillor's duties as an elected representative of the Council. Confidential or exempt information provided to Councillors may be discussed in Part II Committee meetings or in private meetings of appropriate Councillors and Officers. However, it should not be discussed with, or released to, any other persons. Any information that is provided should be clearly marked as confidential before it is released to Councillors.
- 10.14 In cases where a Councillor discloses information given to him/her in confidence by anyone, or information acquired by the Councillor which they believe, or ought reasonably to be aware, is of a confidential nature then that Councillor may find themselves the subject of a complaint to the Standards Advisory Committee that they have contravened the Code of Conduct for Members.
- 10.15 Similarly, the unauthorised disclosure of confidential or exempt information is regarded by the authority as a serious disciplinary offence for Officers. This includes an unauthorised disclosure to a Councillor.

- 10.16 Any request from a Councillor for information will be treated in confidence by Officers and will not be made known to any other Councillor or political group. Officers are also under a duty not to relate any information disclosed privately by a Councillor(s) (e.g. during Part II discussions at Committee, etc., informal briefings, private conversations or Group meetings) to another Councillor, Officer or person not already privy to that information.
- 10.17 The duty of officers to observe a Councillor's confidence however will not apply if the information disclosed relates to something which could severely damage the Council or which is illegal or constitutes maladministration. In this event the matter will be referred to the appropriate Corporate Director and/or Monitoring Officer and Chief Executive for further investigation and action as appropriate.

## 11. WHEN THINGS GO WRONG

### Procedure for officers

- 11.1 If an officer has a complaint about a Councillor it is always preferable to resolve matters informally, through an appropriate senior manager. If the matter cannot be resolved informally or it is not suitable for such then officers can make a complaint to the Monitoring Officer.

### Procedure for Councillors

- 10.2 If a Councillor has a concern about the conduct or capability of an officer, they should raise the matter privately with the appropriate Divisional Director or Corporate Director. Any concern about a Corporate Director should be raised privately with the Chief Executive. Any concern about the Chief Executive should be raised privately with the Monitoring Officer.

## 11. REVIEW

- 11.1 The Standards Advisory Committee and the Monitoring Officer will jointly keep this Protocol under review and make recommendations for changes as appropriate. A review will take place annually in any event.