

32 Member / Officer Relations' Protocol 31.1.22

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1. INTRODUCTION

1.1 CouncillorsMembers 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. CouncillorsMembers provide a democratic mandate to the Council, whereas officers contribute the professional expertise needed to deliver the policy framework agreed by CouncillorsMembers.

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.**

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1.3 This Protocol seeks to define what should be considered a proper working relationship between CouncillorsMembers 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

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~~Councillors~~Members 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, ~~directly-employed~~ and agency staff working for the Council, ~~accessible via the Council's intranet through the Democratic Services pages, 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.

Commented [JF2]: Check with HR

Commented [AA3R2]: Waiting for HR response

1.5 ~~Councillors~~Members 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~~Members are advised to be aware that the outside bodies are likely to have their own other conduct arrangements, of the outside body are likely to exist. In those circumstances, ~~Councillors~~Members should comply with both sets of conduct arrangements, unless the Code of Conduct for Members conflicts with the lawful obligations of the outside body.

Commented [JB4]: Can this wording be cleared up - I am not entirely clear what it means

Commented [AA5R4]: Members also have to consider the rules that apply to any outside bodies that they are on.

1.6 A failure to abide by this Protocol by ~~Councillors~~Members 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~~Member' or '~~Councillors~~Members' 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).~~ This Code applies in all aspects of your activities as a member, including when acting on Council business or when you are perceived by the public to be acting as a member. The Code does not seek to regulate what you do in your private and personal life

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~~Member in need of advice about the application of this Protocol should contact the Monitoring Officer, whereas an officer in need in need of advice about the application of this Protocol should contact their line manager in the first instance.

2. ROLES OF ~~MEMBERS~~COUNCILLORS AND OFFICERS

2.1 ~~Councillors~~Members 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

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manage an effective public sector organisation but their responsibilities are distinct.

CouncillorsMembers

- 2.2 CouncillorsMembers are democratically accountable to residents of their Wards and serve only so long as their term of office lasts. The overriding duty of CouncillorsMembers 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 CouncillorsMembers 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 CouncillorsMembers 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 CouncillorsMembers of all political groups including and Independents fully informed about developments and events of significance in relation to council activities in general, and within Members' wards or portfolios.
- 2.7 Officers have a duty to make ward CouncillorsMembers aware of council activities or council related activities within their wards

3. THE RELATIONSHIP BETWEEN MEMBERSCOUNCILLORS AND OFFICERS

- 3.1 Bad relations between CouncillorsMembers and officers are counter-productive to good governance and therefore the conduct of CouncillorsMembers and officers should be such as to instil mutual trust and respect. CouncillorsMembers 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

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3.2 The Code of Conduct for Members emphasises the need for CouncillorsMembers to avoid behaviour which could be viewed as conferring an advantage or disadvantage on an officer. CouncillorsMembers must not seek personal favours from officers. Officers must not be tempted to give favours to please a CouncillorMember. An example of favour seeking would be asking whether a CouncillorMember'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 CouncillorsMembers on matters which directly concern them as employees

CouncillorMember 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. CouncillorMember 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 CouncillorsMembers in day-to-day staff/ management issues. CouncillorsMembers 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 CouncillorsMembers; to do so may result in disciplinary action being taken.

Personal Familiarity

3.5 Personal familiarity between CouncillorsMembers 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 when 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 CouncillorsMembers and other party groups.

3.6 Informal and collaborative two-way contact between CouncillorsMembers 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 CouncillorsMembers and officers work closely together but it is important that close relationships between CouncillorsMembers 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.

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3.7 It is not enough to avoid actual impropriety, **CouncillorsMembers** 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 **CouncillorMember** should not sit on a body or participate in any decision which directly affects the officer on a personal basis.

Courtesy

3.8 **CouncillorsMembers** and officers should respect each other's non-working time and not make contact during non-working time-except in emergencies.

3.9 **CouncillorsMembers** and officers should be courteous to each other at all times even if they disagree strongly with their respective views. **CouncillorsMembers** and officers should not shout or raise their voice in an aggressive or rude manner.

Bullying

3.10 **CouncillorsMembers** and officers must not bully or harass any person. Bullying may be characterised as offensive, intimidating, malicious, insulting / or humiliating behaviour, or an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person whom the **CouncillorMember** or officer has some actual or perceived influence over. [This] can be contrasted with the legitimate challenges which a **CouncillorMember** or officer can make in challenging policy or scrutinising performance.

Commented [JF6]: Ensure language is consistent with section of Code of Conduct on bullying

Commented [AA7R6]: Code says at point 6 -You should treat all people with respect, you should not bully or harass any person and you should respect the impartiality and integrity of the Council's officers.

3.11 Bad relations between **CouncillorsMembers** and officers can be destructive to good governance. **CouncillorsMembers** 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 **CouncillorMember** has a concern about an officer or the Council services then this should be made to the Director of the service where the **CouncillorMember** feels the fault lies or to the Chief Executive where it involves a Director personally. Indeed, **CouncillorsMembers** 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.

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~~Councillors~~Members should not criticise officers in public as ~~Councillors~~Members 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~~Members in private.

Lines of conduct between ~~Councillors~~Members and officers

- 3.13 ~~Councillors~~Members 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~~Members should not seek to influence such decisions.
- 3.14 ~~A Councillor~~Member 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~~Member. ~~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.~~~~Councillors~~Members
- ~~3.16 Councillors~~Members 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~~Members 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~~Members in the requested timescale. ~~Councillors~~Members should respect this. The Council does operate a Member’s Enquiries system (see section 8.1 for more details).
- 3.17 Where ~~Councillors~~Members and officers share an office building particular care needs to be taken to maintain appropriate lines of contact. ~~Councillors~~Members 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~~Members 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~~Member, they must not go beyond the bounds of whatever authority they have been given by their Corporate Director.

Commented [JB8]: I think we should reword this paragraph as it seems to suggest that the first post of call for a member needing information is to approach the DD rather than use the Members' Enquiries system. How about: Members will need to obtain information from council departments to carry out their functions. For routine requests for information and advice, councillors should use the Members' Enquiries (see paragraph 8.1 below). For more detailed requests, such as a request for specific information on behalf of a constituent, Members should approach 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.

4. **MEMBER COUNCILLOR TO MEMBER COUNCILLOR PROTOCOL EXPECTATIONS**

4.1 Whilst this Protocol is primarily aimed at the interaction between **CouncillorsMembers** and Officers, the same principles apply to interactions between **CouncillorsMembers**. Therefore **CouncillorsMembers** 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.

Commented [MM9]: Need to expand this to make it feel like its own document (requirement of various governance reviews)

5. **MEMBERS 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. **CouncillorsMembers** have a clear role in representing residents' and general public interests. In this representative capacity, **CouncillorsMembers** 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 **CouncillorMember** is enquiring on behalf of an individual or body involved in legal action by or against the Council. In such cases, **CouncillorsMembers** will be required to balance their representative role with their wider responsibilities in representing the corporate interests of the authority. For this reason, **CouncillorsMembers** must be circumspect in any dealing with persons taking action against the Council, or against whom any legal action is being taken. Particularly, **CouncillorsMembers** 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 **CouncillorMember** 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.

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- 5.3 It is therefore particularly important that CouncillorsMembers 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, CouncillorsMembers 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 CouncillorsMembers have every right to information on how any such matter is being dealt with and a duty to represent their constituents, CouncillorsMembers 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 CouncillorMember to contact any officers involved in the proceedings to discuss or make any enquiries regarding the proceedings.
- 5.7 If a CouncillorMember 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 CouncillorMember 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 CouncillorMember and a Corporate Director in this area should be referred to the Monitoring Officer or Chief Executive for resolution.

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- 6.3 **CouncillorsMembers** have the right to criticise reports or the actions taken by officers, but they should **always**:-
- **not make seek to avoid** personal attacks on officers; and
 - ensure that criticism is constructive and well-founded.
- 6.4 **CouncillorsMembers** 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 **CouncillorsMembers** 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 **CouncillorsMembers** 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 **CouncillorMember**. 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 **CouncillorsMembers** 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

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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. In addition to the above, all members grouped (or ungrouped) are entitled to receive support in relation to ~~including ungrouped Councillors~~.

- Members Enquiries
- Members Support
- Questions about services
- Help with IT and similar general support

Commented [MM10]: Need to maybe expand a little as we don't offer the same to ungrouped but need to be clear there are lines of communication for them. Maybe include it as a separate para to describe the difference?

Commented [AA11R10]: updated

7.4 Certain points, however, must be clearly understood by all those participating in this process, CouncillorsMembers 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 CouncillorsMembers. 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 CouncillorsMembers 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 CouncillorsMembers 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 CouncillorMember 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.

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- (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~~Member thereof. However, ~~Councillors~~Members 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 AND ACCESS TO INFORMATIONS' 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~~Members to use for ~~residents' queries or concerns, routine requests for information FOI's and casework 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 The Members' Enquiries system should be used for all requests for information and advice except urgent requests. An urgent request should be made to the Chief Officer or Director for the Department concerned. If access is denied or the Chief Officer/ Director is in doubt, the matter must be referred to the Monitoring Officer for determination.
- 8.3 In considering any request for information from Members officers will take into account the access to information procedure rules set out at Part B section 27 of the Council's Constitution.
- ~~8.3 Members will need to obtain information from council departments to carry out their functions. For all requests for information and advice except urgent requests, members should use the Members' Enquiries (see paragraph 8.1 below).~~
- ~~3.15 An urgent request should be made to the Chief Officer or Director for the Department concerned. If access is denied or the Chief Officer/ Director is in doubt, the matter must be referred to the Monitoring Officer for determination.~~

Commented [JB12]: I think we should reword this paragraph as it seems to suggest that the first post of call for a member needing information is to approach the DD rather than use the Members' Enquiries system. How about: Members will need to obtain information from council departments to carry out their functions. For routine requests for information and advice, councillors should use the Members' Enquiries (see paragraph 8.1 below). For more detailed requests, such as a request for specific information on behalf of a constituent, Members should approach 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.

Commented [JB13]: I think we should reword this paragraph as it seems to suggest that the first post of call for a member needing information is to approach the DD rather than use the Members' Enquiries system. How about: Members will need to obtain information from council departments to carry out their functions. For routine requests for information and advice, councillors should use the Members' Enquiries (see paragraph 8.1 below). For more detailed requests, such as a request for specific information on behalf of a constituent, Members should approach 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.

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~~8.43.16~~ — Members should raise ~~residentse~~constituents' queries or concerns through the channels referred to in paragraphs 8.1, ~~8.2 or 8.33-14 or 3-15~~ and not go direct to junior officers. Further in seeking to deal with ~~residentse~~constituents' queries or concerns, Members 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 Members in the requested timescale. Members should respect this. ~~The Council does operate a Member's Enquiries system (see section 8.1 for more details).~~

9. SUPPORT FOR MEMBERS AND MEMBERS' USE OF COUNCIL FACILITIES

~~9.18.2~~ Both Mayor's Office secretarial staff and the ~~Councillors~~Members' Support Team provide assistance to ~~Councillors~~Members 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 ~~on the Members' Hub~~in the Members' Services Guide.

~~9.28.3~~ The Mayor's Office and ~~Councillor~~Member Support Team staff will assist with booking venues for, and publishing details of, ~~Councillor~~Member' surgeries. ~~Councillors~~Members' surgeries should normally be held within a ~~Councillor~~Member's own ward, but ~~Councillor~~Member may arrange a surgery in premises outside their ward if this is necessary to provide suitable surgery facilities for their own constituents. ~~Councillor~~Member 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

~~9.38.4~~ ~~Councillors~~Members must use any Council facilities that are provided in their role as a ~~Councillor~~Member strictly for that purpose and no other. For example, ~~Councillors~~Members 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~~Member is a member, unless formal approval has been given by the appropriate chief officer.

~~9.48.5~~ The use of Council facilities and services by ~~Councillors~~Members 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~~Members and officers.

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~~8.9.55 Councilors~~Members should act to ensure Council resources are used prudently, are expected to ~~must not use~~ Council IT (such as email addresses, laptops) should be used for legitimate Council purposes and not for any other purpose ~~business~~. email addresses Members are expected to use access IT training and guidelines on the proper and effective use of Council IT resources when provided. Officers should use Members council email addresses when corresponding with Members unless previously agreed by the Monitoring Officer. ~~and telephone numbers for council business. C non-council functions..... (reflect wording in members bulletin message), they are provided at public expense and may only be used in connection with, or in support of, council functions.~~

10. Legal representation for Members

~~10.18.6 The Council can~~will only provide legal advice and representation to an individual ~~Councillor~~Member or officer in connection with where the action taken is taking place in the name of the Council, i.e. a whilst carrying on any function at the request of, with the approval of, or for the purposes of, the authority with some additional xxx ~~nd the individual deserves the protection of the Council. All such matters should be raised with the Chief Executive in the first instance. NEED TO CONSIDER FURTHER~~

~~8.7 The Council~~CouncillorsMembers cannot provide legal advice where a ~~councillor~~member is sued in his personal capacity. (Check local authority indemnity Order 2004 see above)

11. Political Party Workers

~~11.18.7 Councilors~~Members 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~~Member has access in their role as Mayor or ~~Councillor~~Member;
- use Council facilities provided for the use of ~~Councillors~~Members.

The principles which apply to use of facilities provided for ~~Councillors~~Members (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.~~

Commented [JB14]: Do we really need to put this in there? Is it really relevant to the member / officer relationship? It's more for each individual and I don't think it's relevant here.

Commented [AA15R14]: It may be helpful to warn that indemnity is not available in all circumstances

Commented [JB16]: The Council will only provide legal advice or representation to an individual Member or officer where the need for legal advice or representation arises solely out of the individual's position as a Member or officer of the Council, and the Monitoring Officer has approved the provision of legal advice or representation by the Council for that individual. January 25, 2022, 4:50 PM

Commented [AA17R16]: There are limited circumstances where this can be extended. (I'm not including all of this wording in the draft, however, Artic 5 of the Indemnity Order says this can be extended where the officer or member acts as a director of a company at the request of the authority , and is therefore acting in their capacity as a director - SeaHomes?)

129. POLITICAL ASSISTANTS

12.19.4 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.

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

103. MEMBERS' COUNCILLORS' ACCESS TO INFORMATION

General

103.1 In principle, Members 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 Member provided that it is reasonably necessary to enable the Member to properly perform their duties as a Member (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.

13.2 The following paragraphs identify the rights of ~~Councillors~~Members 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

Commented [MM18]: Should this just be in the main Access to Information Section of the constitution and then referenced here to avoid conflicting advice?

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~~10.2 In principle, CouncillorsMembers 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 CouncillorMember provided that it is reasonably necessary to enable the CouncillorMember to properly perform their duties as a CouncillorMember (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

103.3 The rights of ~~CouncillorsMembers~~ can be summarised as follows:-

- (i) ~~CouncillorsMembers~~ enjoy the same access rights as members of the public in respect of Part I Cabinet/Committee/Sub-Committee papers.
- (ii) ~~CouncillorsMembers~~ 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) ~~CouncillorsMembers~~ 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”

103.4 It is important to note that in some cases access to information to which the public is not entitled only applies where ~~CouncillorsMembers~~ are clearly carrying out their role as elected representatives. Where a ~~CouncillorMember~~ has a financial or personal interest in a matter the ~~CouncillorMember~~ will only be entitled to the same access as would be the case for a private individual. In these circumstances, the ~~CouncillorMember~~ must make it clear that they are acting in their private capacity and not as a ~~CouncillorMember~~.

103.5 Under common law principles ~~CouncillorsMembers~~ have the right to access information held by the Council where it is reasonably necessary to enable the ~~CouncillorMember~~ to properly perform their duties as a ~~CouncillorMember~~. This is known as the “Need to Know”. This means that information must not be used for party political purposes.

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- 103.6 The common law “Need to Know” is the prima facie right of CouncillorsMembers to inspect documents of the authority which exist as CouncillorsMembers are under a duty to keep themselves informed of Council business which relate to their role as elected representatives. Thus, this right applies to CouncillorsMembers 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.
- 103.7 For example, a CouncillorMember is likely to have a prima facie “Need to Know” where they have yes 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.
- 103.8 Access to information on the basis of a ‘Need to Know’ does not exist where the CouncillorMember 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.
- 103.9 It should be noted that some material (for example if commercially sensitive) may be redacted from information that is disclosed, if this does not affect the ability of a CouncillorMember to exercise their role as an elected representative.
- 103.10 There will also be a range of documents which, because of their nature are either not accessible by CouncillorsMembers (such as the personal records of an individual) or are accessible only by the political group forming the administration and not by the CouncillorsMembers 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.
- 103.11 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 CouncillorMember 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

- 103.12 Procedural Rules and specific local procedures (e.g. on contracts) require CouncillorsMembers 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.

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Officers must distinguish between assisting an elected representative in the course of the Councillor/Member'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/Member 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.

103.13 Equally, any Council information provided to a Councillor/Member on the basis of a 'Need to Know' must only be used by the Councillor/Member for the purpose for which it was provided, i.e. in connection with the proper performance of the Councillor/Member's duties as an elected representative of the Council. Confidential or exempt information provided to Councillors/Members may be discussed in Part II Committee meetings or in private meetings of appropriate Councillors/Members 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/Members.

103.14 In cases where a Councillor/Member discloses information given to him/her in confidence by anyone, or information acquired by the Councillor/Member which they believe, or ought reasonably to be aware, is of a confidential nature then that Councillor/Member may find themselves the subject of a complaint to the Standards Advisory Committee that they have contravened the Code of Conduct for Members.

103.15 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/Member.

103.16 Any request from a Councillor/Member for information will be treated in confidence by Officers and will not be made known to any other Councillor/Member or political group. Officers are also under a duty not to relate any information disclosed privately by a Councillor/Member(s) (e.g. during Part II discussions at Committee, etc., informal briefings, private conversations or Group meetings) to another Councillor/Member, Officer or person not already privy to that information.

103.17 The duty of officers to observe a Councillor/Member'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.

144. WHEN THINGS GO WRONG

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Procedure for officers

144.1 If an officer has a complaint about a ~~Councillor~~Member 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~~Members

~~144~~10.2 If a ~~Councillor~~Member 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.

~~152~~4. REVIEW

~~15.2~~4.1 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.

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