

CHAPTER 9.3 - MEMBER / OFFICER PROTOCOL

9.3.1 Preamble

The relationship between Members and Officers is important to the successful working of the Authority. This relationship within Wokingham Borough Council is characterised by mutual respect and trust. Members and Officers should feel free to speak to one another openly and honestly. Nothing in this Protocol is intended to change this relationship. The purpose of this Protocol is to help Members and Officers to perform effectively by giving guidance in their respective roles and expectation of their respective roles and on their relationship with each other. This Protocol also gives guidance on what to do on the rare occasions when things go wrong and in its appendices, give supporting guidance in respect of specific subjects.

The Protocol must be read and operated in the context of any relevant legislation, the Member's Code of Conduct, Officer Code of Conduct and the Council's Whistleblowing Policy and Guidance. Nothing in this protocol overrides national legislation or these documents.

9.3.2 Roles of Members and Staff

The respective roles of Members and Officers can be summarised as follows:

Members and Officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Members are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give advice to Members and the Council and to carry out the Council's work under the direction of Members through the Council, Executive and relevant committees.

Mutual respect between Members and Officers is essential to good local government and an important part of that is an understanding of these respective roles and responsibility.

9.3.3 Members' Responsibilities

Members have three main areas of responsibility: determining the strategic policy of the Council and giving it political leadership, representing the Council externally, and acting as advocates on behalf of their constituents. It is not the role of Members to involve themselves in the day to day operation of Council services.

9.3.4 The Mayor, Deputy Mayor, Members of the Executive and Deputy Executive Members, Chairman, Vice-Chairman

The Mayor, Deputy Mayor, Members of the Executive and Deputy Executive Members have additional responsibilities. Because of those responsibilities, their relationships with employees may be different from and more complex than those of Members without those responsibilities and this is recognised in the expectations they are entitled to have.

9.3.5 Opposition Members

Members shall be given timely access to information that they require in their role as Members. As individual Members of the Council, all Members have the same rights and obligations in their relationships with employees and should be treated equally. This principle is particularly in the context of overview and scrutiny. However, where a political group forms an administration, either alone or in partnership with another group or groups,

it is recognised that the relationship between Officers, particularly those at senior level in the organisation and the administration shall differ from that with opposition groups.

9.3.6 Officers

The role of Officers is to give advice and information to Members and to implement the policies determined by the Council.

Certain employees e.g. Head of Paid Services, Monitoring Officer, Chief Financial Officer (Section 151) and the Statutory Chief Officers have responsibilities in law over and above their obligations to the Council and its Members which they must be allowed to discharge.

9.3.7 Expectations

Members can expect from Officers:

- A commitment to the Council as a whole and not to any political group;
- A working partnership;
- An understanding of and support for respective roles, workloads and pressures;
- Timely response to enquiries and complaints;
- Professional advice not influenced by political views or preference, which does not compromise the political neutrality of employees;
- Regular, up to date information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions that they hold;
- Awareness and sensitivity to the political environment
- Respect, dignity and courtesy;
- Training and development in order that they can carry out their role effectively;
- Integrity, mutual support and appropriate confidentiality;
- That Officers shall not use their relationship with Members to advance their personal interests or to influence decisions improperly;
- That Officers shall at all times comply with the relevant Code of Conduct.

Officers can expect from Members:

- A working partnership;
- An understanding of and support for respective roles, workloads and pressures;
- Political leadership and direction;
- Respect, dignity and courtesy;
- Integrity, mutual support and appropriate confidentiality;
- Not to be subject to bullying or to be put under undue pressure. Members should have regard to the seniority of Officers in determining what are reasonable requests, having regard to power relationship between Members and employees and the potential vulnerability of Officers, particularly at junior levels;
- That Members shall not use their position or relationship with employees to advance their personal interests or those of others or to influence decisions improperly;
- That Members shall at all times comply with the relevant Code of Conduct.

9.3.8 If things go wrong

Procedure for Officers

From time to time the relationship between Members and Officers may break down or become strained. Whilst it shall always be preferable to resolve matters informally,

through conciliation by an appropriate senior Manager or Member, Officers should raise any concerns with the Monitoring Officer who will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than informally referring the matter to the Leader of the relevant part group. More serious complaints may involve alleged breaches of the Member Code of Conduct and the process for the consideration of Member Code of Conduct complaints is as set out in Chapter 9.1.12 of Constitution.

Nothing in this process negates the right of Officers to make a Code of Conduct complaint to the Monitoring Officer if they wish.

Procedure for Members

In the event that a Member is dissatisfied with the conduct, behaviour or performance of an Officer, the matter should be raised with the appropriate manager or the relevant Director. Where the matter concerns a Director, it should be raised with the Chief Executive. Where the matter concerns, the Chief Executive it shall be raised with the Director Finance and Resources or with the Leader of the Council as appropriate.

Supporting Guidance on Members' Access to Documents and Information

1. This Guidance should be read in conjunction with the Access to Information Rules contained in Chapter 3.2 of the Council's Constitution.
2. Members may request Directors to provide them with such information, explanation and advice as they may reasonably need to assist them to discharge their roles as Members. This may range from general information about some aspect of the Council's services to specific information on behalf of a constituent. Where information is requested on behalf of a third party, it will only be provided if:
 - a) it is in the public domain, and
 - b) it is not barred by the Data Protection Act from being given.
3. Every Member of the Executive, the Overview and Scrutiny Committees, and/or any other committee or sub-committee has a right to inspect documents about the business of that committee or sub-committee or the Executive.
4. A Member who is not a Member of a specific Overview and Scrutiny Committee, other committee or sub-committee, or the Executive has rights of access to reports which are set out in the Access to Information Procedure Rules set out in Chapter 3.2.
5. Disputes as to the validity of a Member's request to see a document on a need to know basis will be determined by the Monitoring Officer. Officers should seek his/her advice if in any doubt about the reasonableness of a Member's request.
6. A Member should obtain advice from the Monitoring Officer in circumstances where he/she wishes to have access to documents or information:
 - a) where to do so is likely to be in breach of the Data Protection Act, or
 - b) where the subject matter is one in which he/she has a personal or prejudicial interest as defined in the Members' code of conduct.
7. Information given to a Member must only be used for the purpose for which it was requested.
8. It is an accepted convention that a Member 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.
9. Members and Officers must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so.
10. When requested to do so, Officers will keep confidential from other Members advice requested by a Member.
11. Members and Officers must not prevent another person from gaining access to information to which that person is entitled by law.

Supporting Guidance on Media Relations

1. All formal relations with the media must be conducted in accordance with the Council's agreed procedures and the law on local authority publicity.
2. Press releases or statements made by Officers must promote or give information on Council policy or services. They will be factual and consistent with Council policy. They cannot be used to promote a political group.
3. Officers will keep relevant Members informed of media interest in the Council's activities, especially regarding strategic or contentious matters.
4. Before responding to enquiries from the media, Officers shall ensure they are authorised to do so.
5. Likewise, Officers will inform the Council's Communications Unit of issues likely to be of media interest, since that section is often the media's first point of contact.
6. If a Member is contacted by, or contacts, the media on an issue, he/she should:
 - a) indicate in what capacity he/she is speaking (e.g. as ward Member, in a personal capacity, as an Executive Member, on behalf of the Council, or on behalf of a political group);
 - b) be sure of what he/she wants to say or not to say;
 - c) if necessary, and always when he/she would like a press release to be issued, seek assistance from the Council's Communications Unit and/or relevant Director, except in relation to a statement which is party political in nature;
 - d) consider the likely consequences for the Council of his/her statement (e.g. commitment to a particular course of action, image, allegations of jumping to conclusions);
 - e) never give a commitment in relation to matters which may be subject to claims from third parties and/or are likely to be an insurance matter;
 - f) consider whether to consult other relevant Members; and
 - g) take particular care in what he/she says during the moratorium on publicity in the run-up to local or national elections to avoid giving the impression of electioneering, unless he/she has been contacted as an election candidate or political party activist.

Supporting Guidance on Correspondence

1. Correspondence between an individual Member and an Officer should not be copied to another Member unless the author expressly intends and states that this is the case or consents. Where correspondence is copied, this should always be made explicit, i.e. there should be no “blind” copies.
2. Official letters written on behalf of the Council should normally be in the name of the relevant Officer. It may be appropriate in some circumstances (e.g. representations to a Government Minister) for letters to appear in the name of an Executive Member or the chairmen of the Overview and Scrutiny Committees.
3. The Mayor may initiate correspondence in his/her own name.
4. Letters which create legally enforceable obligations or which give instructions on behalf of the Council should never be sent in the name of a Member.
5. When writing in an individual capacity as a ward Member, a Member must make clear that fact.

Supporting Guidance on Access to Premises and Use of Council Resources

1. Officers have the right to enter Council land and premises to carry out their work. Some Officers have the legal power to enter property in the ownership of others.
2. Members have a right of access to Council land and premises to fulfil their duties.
3. When making visits as individual Members, Members should:
 - a) whenever practicable, notify and make advance arrangements with the appropriate manager or Officer in charge;
 - b) comply with health and safety, security and other workplace rules;
 - c) not interfere with the services or activities being provided at the time of the visit;
 - d) if outside his/her own ward, notify the ward Member(s) beforehand; and
 - e) take special care at schools and establishments serving vulnerable sections of society to avoid giving any impression of improper or inappropriate behaviour.
4. The Council provides all Members with a number of services to assist them in discharging their roles as Members of the Council. These goods and services are paid for from the public purse. They should not be used for private purposes or in connection with party political or campaigning activities.
5. Members should ensure they understand and comply with the Council's own rules about the use of such resources, particularly:
 - a) where facilities are provided in Members' homes at the Council's expense;
 - b) in relation to any locally-agreed arrangements e.g. payment for private photocopying; and
 - c) regarding ICT security.
6. Members should not put pressure on staff to provide resources or support which Officers are not permitted to give. Examples are:
 - a) business which is solely to do with a political party;
 - b) work in connection with a ward or constituency party political meeting;
 - c) electioneering;
 - d) work associated with an event attended by a Member in a capacity other than as a Member of the Council;
 - e) private personal correspondence;
 - f) work in connection with another body or organisation where a Member's involvement is other than as a Member of the Council; and
 - g) support to a Member in his/her capacity as a councillor of another local authority.

Supporting Guidance on Role and Responsibilities of Members

1. The Role of Members

Members have a number of roles and need to be alert to the potential for conflicts of interest which may arise between the roles. Where such conflicts are likely, Members may wish to seek the advice of senior colleagues, the relevant senior Officer(s), and/or the Monitoring Officer but the decision whether or not there is a conflict ultimately rests with the Member:

- a) collectively, Members are the ultimate policy-makers determining the core values of the Council and approving the Authority's policy framework, strategic plans and budget;
- b) Members represent the community, act as community leaders and promote the social, economic and environmental well-being of the community often in partnership with other agencies;
- c) every elected-Member represents the interests of, and is an advocate for their ward and individual constituents. He/she represents the Council in the ward, responds to the concerns of constituents, meets with partner agencies, and often serves on local bodies;
- d) some Members have roles relating to their position as Members of the Executive, Overview and Scrutiny Committees, or other committees and sub-committees of the Council.
- e) members of the Executive can have individual delegated powers. They may determine matters within their portfolios but implementation of their decisions is the responsibility of Officers;
- f) Members serving on the Overview and Scrutiny Committees monitor the effectiveness of the Council's policies and services, develop policy proposals and examine community issues. They also monitor local health service provision;
- g) Members who serve on other committees and sub-committees collectively have delegated responsibilities, e.g. deciding planning and licensing applications, which by law are excluded from the remit of the Executive.
- h) some Members may be appointed to represent the Council on local, regional or national bodies.

2 The Responsibilities of Members

As politicians, Members may express the values and aspirations of the party political groups to which they belong, recognising that in their role as Members they have a duty always to act in the public interest.

Instructing Officers

Members are not authorised to instruct Officers other than:

- a) through the formal decision-making process;

- b) where staff have been specifically allocated to give support to a Member or group of Members; and
- c) in the case of political assistants.

Financial Transactions

Members are not authorised to initiate or certify financial transactions, or to enter into a contract on behalf of the Council.

Unlawful Actions

Members must avoid taking actions which are unlawful, financially improper or likely to amount to maladministration. Members have an obligation under their code of conduct to have regard, when reaching decisions, to any advice provided by the Monitoring Officer or the Section 151 (Finance) Officer.

Impartiality of Officers

Members must respect the impartiality of Officers and do nothing to compromise it, e.g. by insisting that an Officer change his/her professional advice.

Members Role in Appointments

Members have a role in:

- a) the appointment of the Chief Executive, and Directors
- b) determining human resources policies and conditions of employment;
- c) determining requests for early retirement and redundancy pay;
- d) involvement in the appointment of political assistants;
- e) hearing and determining appeals; and
- f) a consultative role with staff side and the Trade Unions.

Members shall not act outside these roles.

If participating in the appointment of Officers, Members should:

- a) remember that the sole criterion is merit (other than in the case of political assistants where political consideration may apply);
- b) never canvass support for a particular candidate;
- c) not take part where one of the candidates is a close friend or relative;
- d) not be influenced by personal preferences; and
- e) not favour a candidate by giving him/her information not available to the other candidates.

Supporting Guidance on Role and Responsibilities of Officers

1 The Role of Officers

Officers are responsible for giving advice to Members to enable them to fulfil their roles. In doing so, Officers will take into account all available relevant factors. Advice given by the Section 151 (Finance) Officer and Monitoring Officer in accordance with their Statutory functions must always be followed. All Officer reports for Members' attention, excluding reports relating to planning applications which are due to be discussed at the Planning Committee, should be circulated to the Section 151 Officer and Monitoring Officer for information and comment.

Under the direction and control of the Council (including, as appropriate, the Executive, committees and sub-committees), 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 Responsibilities of Officers

Officers have a duty to implement decisions of the Council, the Executive, committees and sub-committees which are lawful, and which have been properly approved in accordance with the requirements of the law and the Council's Constitution, and duly minuted.

- a) Officers have a contractual and legal duty to be impartial. They must not allow their professional judgement and advice to be influenced by their own personal views.
- b) Officers must assist and advise all parts of the Council. They must always act to the best of their abilities in the best interests of the Authority as expressed in the Council's formal decisions.
- c) Officers must be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for Members, the media or other sections of the public.
- d) Officers have the right not to support Members in any role other than that of Member, and not to engage in actions incompatible with this protocol. In particular, there is a statutory limitation on Officers' involvement in political activities.

3 The Relationship Between Members and Officers - General

The conduct of Members and Officers should be such as to instil mutual confidence and trust:

- a) the key elements are recognition of and a respect for each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately;

- b) Members and Officers should not undermine respect for the other at Council Meetings, or at any other meeting they attend in their capacity as a Member or Council employee. A personal attack by a Member on an Officer, or on staff generally, at a formal or informal Member meeting will never be acceptable, nor will a personal attack by an Officer on a Member;
- c) Members should not raise matters relating to the conduct or capability of an individual Council Officer or Officers collectively at meetings held in public;
- d) informal and collaborative two-way contact between Members and Officers is encouraged. But personal familiarity can damage the relationship, as might a family or business connection;
- e) Members and Officers should inform the Monitoring Officer of any relationship which might be seen as unduly influencing their work in their respective roles;
- f) it is not enough to avoid actual impropriety. Members 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 Member should not sit on a body or participate in any decision which directly affects the Officer on a personal basis;
- g) Officers serve the Council as a whole. They have a duty to implement the properly authorised decisions of the Council;
- h) with the exception of political assistants, Officers work to the instructions of their senior Officers, not individual Members. It follows that, whilst such Officers will always seek to assist a Member, they must not be asked to exceed the bounds of authority they have been given by their managers. Except when the purpose of an enquiry is purely to seek factual information, Members should normally direct their requests and concerns to a Director, at least in the first instance;
- i) Officers will do their best to give timely responses to Members' enquiries. However, Officers should not have unreasonable requests placed on them. Their work priorities are set and managed by Directors. Members should avoid disrupting Officers' work by imposing their own priorities;
- j) Members wishing to see Officers in person should make appointments in accordance with any local service area protocol;
- k) Members and Officers will endeavour to give timely responses to each other's enquiries and requests;

- l) an Officer shall not discuss with a Member personal matters concerning him/herself or another individual employee. This does not prevent an Officer raising on a personal basis, and in his/her own time, a matter with his/her ward Member;
- m) Members and Officers should respect each other's free (i.e. non-Council) time.

4 The Council as Employer

Officers are employed by the Council as a whole.

5 Mayor and Officers

Officers will respect the position of Mayor and provide appropriate support.

6 Executive Members and Officers

Executive Members will take decisions in accordance with the Constitution and will not otherwise direct staff. Directors will be responsible for instructing staff to implement the Executive's decisions.

In addition to individual Members of the Executive, Directors (including the Section 151 Officer) and the Monitoring Officer have the right to submit papers to the Executive as a whole or to individual Executive Members for consideration.

Directors and Executive Members shall agree mutually convenient methods of regular contact. Before taking any formal decisions, the Executive will seek appropriate professional advice including, without exception, the Monitoring Officer and Section 151 Officer, and will not direct Officers in the framing of recommendations.

Before any formal decisions with a financial implication are taken by the Executive, the Section 151 Officer and the Directors for the service(s) concerned must be consulted. This is to ensure that those Officers who are budget holders:

- a) are aware of the proposed decision;
- b) have the opportunity to offer advice; and
- c) are subsequently able properly to authorise the financial transactions needed to implement decisions.

7 Executive Individual Decisions

An individual Executive Member who is minded to write or commission a report or to make a decision about a matter within his/her portfolio must ensure that those other Members and Officers who need to know of the matter are so informed. There is a particular requirement to involve other Executive Members on cross-cutting issues.

Executive Members when making decisions (whether collectively or individually) must state the reasons for those decisions. The written record of the decisions must include the reasons.

8 Officer Delegated Powers

Officers taking decisions under their delegated powers must consult with the relevant Executive Member(s) in advance when the matter to which the decisions relate are likely to be sensitive or contentious, or have wider policy implications.

9 Officer Action

At some meetings, a resolution may be passed which authorises a named Officer to take action between meetings in consultation with the chairman/Executive Member. In these circumstances it is the Officer, not the Member, who takes the action and is responsible for it. A Member has no legal power to take decisions, neither should he/she apply inappropriate pressure on the Officer.

10 Political Groups and Officers (excluding Political Assistants)

The Chief Executive and Directors may properly be asked to contribute to deliberations of matters concerning Council business by political groups:

- a) Officers will not normally be expected to attend a meeting of a political group where some of those attending are not Members of the Council, particularly where there is a likelihood that matters of a confidential or political nature will be considered;
- b) Officer support will not extend beyond providing factual information or professional advice in relation to matters of Council business. Officers must not be involved in advising on matters of a wholly political nature, and therefore should not be expected to be present at meetings or parts of meetings when such matters are to be discussed;
- c) political group meetings are not empowered to make decisions on behalf of the Council, and conclusions reached at such meetings do not rank as formal decisions. The presence of an Officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so;
- d) where Officers provide factual information and advice to a political group in relation to a matter of Council business, this is not a substitute for providing all the necessary information and advice when the matter in question is formally considered by the relevant part of the Council;
- e) it must not be assumed that an Officer is supportive of a particular policy or view considered at a political group meeting simply

because he/she has attended or provided information to the meeting;

- f) Officers will respect the confidentiality of any political group discussions at which they are present and, unless requested to do so by that party group, will not relay the content of such discussions to another party group or to any other Members. This shall not prevent the Chief Executive or a Director providing feedback to other Directors on a need-to-know basis;
- g) in their dealings with political groups, Officers must treat each group in a fair and even-handed manner;
- h) Members must not do anything which compromises or is likely to compromise Officers' impartiality;
- i) during discussions at political group meetings, Members should have regard to the Code of Conduct requiring them to treat others with respect, and to the provisions of this protocol regarding the need for mutual respect between Members and Officers to be maintained at all times. The Clerk to the meeting shall report any comments or behaviour he/she considers to be contrary to these provisions to the Chief Executive and Monitoring Officer;
- j) an Officer accepting an invitation to the meeting of one political group shall not decline an invitation to advise another group about the same matter. He/she must give substantially the same advice to each;
- k) an Officer who is not a Director shall not be invited to attend a party group meeting, but a Director may nominate another Officer to attend on his/her behalf;
- l) an Officer should be given the opportunity of verifying comments and advice attributed to him/her in any written record of a political group meeting;
- m) no Member will refer in public or at meetings of the Council to advice or information given by Officers to a political group meeting, and no Officer will refer in public reports to matters discussed by a political group meeting;
- n) any particular cases of difficulty or uncertainty in relation to this part of the protocol should be raised with the Monitoring Officer or Chief Executive, and the relevant party group leader.

11 Political Assistants

These Officers have been appointed by the Council exclusively to provide support to each of the party groups. Their function is to assist the interests

and work of the group to which they have been assigned. This is in contrast to all other staff whose duty is to serve the Council as a whole:

- a) political Assistants will be treated in accordance with and expected to observe all codes, policies and practices relating to the Council's staff. This includes the courtesy and consideration which the Council expects its Officers to show to one another;
- b) except for their immediate secretarial and clerical support, the assistants will have no line management responsibility or power of direction over other staff;
- c) political Assistants are not authorised to comment publicly on behalf of the Council as a whole, or to commit the Council to any particular course of action, but can comment on behalf of the party group to which they have been assigned;
- d) the level of access to Council documents and information shall be that enjoyed by Members.

12 Ward Issues and Officers

To enable them to carry out their ward role effectively, Members need to be fully informed about matters affecting their ward. Directors must ensure that all relevant staff are aware of the requirement to keep local Members informed, thus allowing Members to contribute to the decision-making process and develop their representative role.

This requirement is particularly important:

- a) during the formative stages of policy development, where practicable;
- b) in relation to significant or sensitive operational matters;
- c) whenever any form of public consultation exercise is undertaken; and
- d) during an overview and scrutiny investigation.

Issues may affect a single ward. Where they have a wider impact, a number of Local Ward Members will need to be kept informed.

Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the wards affected should be invited to attend the meeting as a matter of course.

If a local Member intends to arrange a public meeting on a matter concerning some aspect of the Council's work, he/she should inform the relevant Officer. Provided the meeting has not been arranged on a party political basis:

- a) an Officer may attend but is not obliged to do so, and
- b) the meeting may be held in Council-owned premises.

No such meetings should be arranged or held during the moratorium on publicity during the approximate six week period between the notice of election and the election itself.

Whilst support for Members' ward work is legitimate, care should be taken if staff are asked to accompany Members to ward surgeries. In such circumstances:

- a) the surgeries must be open to the general public; and
- b) Officers should not be requested to accompany Members to surgeries held in the offices or premises of political parties.

Officers must never be asked to attend ward or constituency political party meetings.

It is acknowledged that some Council staff (e.g. those providing dedicated support to Executive Members) may receive and handle messages for Members on topics unrelated to the Council. Whilst these will often concern diary management, care should be taken to avoid Council resources being used for private or party political purposes.

In seeking to deal with constituents' queries or concerns, Members should not seek to jump the queue but should respect the Council's procedures and in particular locally agreed levels of service. Officers have many pressures on their time. They may not be able to carry out the work required by Members in the requested timescale, and may need to seek direction from their managers.

Under no circumstances should Members seek to use their positions to further their own personal interests as recipients of Council services.