

Taunton Deane Borough Council

Standards Committee - 19 January 2010

Member Officer Protocol

Report of the Monitoring Officer, Tonya Meers

1. Purpose of the Report

- 1.1 To agree a revised protocol for inclusion within the Constitution.

2. Background

- 2.1 The Constitution is undergoing a complete review and the current protocol, a copy of which is attached at Appendix A, has been in place since 2001.
- 2.2 Therefore it seemed appropriate for the protocol to be reviewed and brought up to date with changes that have occurred over the years.
- 2.3 A revised protocol is attached at Appendix B and members are requested to review the revised protocol and agree a new protocol for inclusion within the revised Constitution.

3. Recommendation

- 3.1 To approve a revised Member Officer Protocol.

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Appendix A

PROTOCOL FOR MEMBER-OFFICER RELATIONS

Protocol for Member/Officer Relations

1. Introduction

Members and officers are both involved in furthering the best interests of the community they serve. Although they work together to fulfil certain goals, the roles played out by members and officers are different and the relationship between elected member and professional officer needs to reflect those roles.

Both Councillors and officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council as a whole.

Comment [apf1]: Update needed

- 1.3 In TDBC the culture between members and officers is one of openness and approachability, with members able to contact officers at the most appropriate level to discuss an issue or raise a query. This approach has worked well for both members and officers, and it has built up good working relationships. In the interests of maintaining these good relationships this protocol aims to offer guidance to members and officers in their dealings with one another. It will not cover every possible situation, but is intended to be a framework for good relations.

2. Members' Access to Information

- 2.1 Members are free to approach any Service Unit to provide them with such information, explanation and advice (about the Unit's functions) as they may reasonably need to assist them in their role as councillors. This can range from a request for general information about some aspect of a Unit's activities to specific information on behalf of a constituent. There is a presumption towards disclosure under the FOI Act unless exceptional circumstances apply. The most important of these is the need to protect personal information about an individual under the DPA.
- 2.2 This balance between an individual's right to confidentiality and a councillor's need to have full information as a member of the Council is a delicate one. There may well be a conflict between a councillor's request and the protection provided to individuals by the DPA. Members have a right to inspect council documents *so far as their access to the documents is reasonably necessary to enable the member properly to perform their duties as a member of the Council*. This principle is commonly known as the 'need to know' principle. But, on the other hand, a member has no right to a 'roving commission' to examine council documents. Mere

curiosity is not a sufficient reason. The crucial question is the determination of the 'need to know'. This question must initially be determined by the particular Service Manager whose Unit holds the document in question. In the case of continuing disagreement the issue shall be decided by the Monitoring Officer or Head of Paid Service.

- 2.3 In most cases, the FOI Act will give a councillor the right to disclosure of the information requested. But - in other circumstances (for instance where a member wants to inspect documents which contain personal information about third parties) - a member will be expected to justify that request. This may be done - for example - by producing a letter from a third party giving permission for the councillor to have access to such personal information.
- 2.4 Any Council information provided to a member must only be used by the member for the purpose for which it was provided, that is, in connection with the proper performance of the member's duties as a member of the Council - and not for any personal or business purpose.
- 2.5 The importance of non-disclosure of confidential information is a point which is heavily emphasised in the Council's Code of Conduct:-

(take in 4a from Code – not the numbered sub-**paras**)

Comment [apf2]: Code

3. Officer/Executive or Chairman Relations

- 3.1 It is important that there should be a close working relationship between Executive Councillors and Directors. A similar approach is needed with Chairmen of Panels and other senior reporting officers. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the officers' ability to deal impartially with other members and other party groups.
- 3.2 While the Leader of the Executive or the Chairman of a Panel will be fully involved in the process of drawing up agenda, it must be recognised that there will be some situations where an officer has a duty to submit a report on a particular matter. Similarly, an officer (in the same way as any member) will always be fully responsible for the contents of any report which is submitted in their name. Any disagreements arising between an Executive Councillor or Chairman and an officer over this kind of issue should be referred to the relevant Director to resolve with the Executive Councillor or Chairman. Where necessary any unresolved issues should be referred to the Chief Executive and the Leader of the Executive or (where appropriate) the Chairman of the Review Board.

- 3.3 Finally, to avoid misunderstandings, it must be remembered that officers are accountable to their Director. So, while officers will always seek to assist an Executive Councillor or Chairman (or indeed any member), they must not, in doing so, go beyond the bounds of whatever authority they have been given by their Director.

4. Members Requesting Action from Officers

- 4.1 Members are encouraged to approach the relevant officer for any issue or query they wish to raise. Every Executive/Panel report and Bulletin item will have the name of a contact officer printed on it. For other issues, if members are not sure who to contact, they should ask someone in the Member Services Unit for help.
- 4.2 Because of the limits placed on officers' authority, there will be times when members may approach an officer with a request which they are unable to respond to because it lies outside the officer's remit, the budget or Council policy. If this occurs, the officer can properly refuse that request and, instead, advise the member to take the issue to the officer's Service Manager or Director for clarification.

5. Officers Providing Advice to Political Groups

- 5.1 The only officers who should normally be invited to give presentations or to respond to questions from the political groups are the Chief Executive and the Directors. Any invitation for any other officer to attend such a meeting should similarly be made to the Chief Executive or a Director.
- 5.2 All officers, in their professional capacity, must be seen to be politically neutral and any such support given to one party should, as a matter of course, be offered to the other parties. Support offered to political groups should only relate to matters of Council business and great care should be taken to avoid officers becoming involved in any way in matters of party business.
- 5.3 Party group meetings, while they form part of the preliminaries to Council decision making, are not empowered to make decisions on the behalf of the Council. Conclusions reached at such meetings are not Council decisions and should not be interpreted or acted upon as such. Similarly, where officers provide information and advice to a party group meeting, this should not be seen as a substitute for their duty to provide all necessary information and advice to the relevant decision-maker when the matter in question comes formally before the Council.
- 5.4 Care should be exercised when officers are providing information and advice to any party group meeting which includes people who are not

councillors. Such people are not bound by the Council's Code of Conduct (in particular, the provisions concerning the declarations of interests and confidentiality) and for this reason officers may not be able to provide the same level of openness as they would to a members-only meeting.

- 5.5 Officers must respect the confidentiality of any discussions or correspondence they have with representative(s) of a party group, and should not relay the content of any such discussion to another party group.
- 5.6 Any cases of difficulty or uncertainty in this area should be raised with the Chief Executive who will discuss them with the relevant Group Leader(s).

6. Support for Members

- 6.1 The basis on which the Council provides support services (for example, stationery, typing, printing, photocopying, IT services, personal computers and fax machines) to members is to help them to be fully effective in undertaking their role as members of the Council. Such support services must therefore only be used on Council business. They should not be used in connection with any party political or campaigning activity or for private purposes.

7. Correspondence

- 7.1 Correspondence between an individual member and an officer should not normally be copied by the officer to any other member. Where exceptionally it is necessary to copy correspondence to another member, this should be made clear to the original member. In other words, a system of 'silent copies' should not be employed.
- 7.2 Any quote or text attributed to a member in a press release or correspondence with the public, must first be approved by that member with an opportunity for them to make amendments as they see fit.

8. Involvement of Ward Councillors

- 8.1 Officers should be aware of the ward implications of a Councillor's work and keep them informed of any development or consultation happening in their ward. The Democratic and Legal Services Unit provides a ward-based information service which aims to find items which will help members in their local representative role. For consultation exercises, such as public meetings organised by the Council, officers should ensure that ward members are invited to attend.

9. Members' and Officers' Free Time

- 9.1 Both members and officers have a right to free time outside their Council roles. Council business should only be discussed when both member and officer are acting in their official capacity and free time outside those roles should be respected.

10. Disputes Between a Member and an Officer

- 10.1 If a dispute arises between a member and an officer, the issue should be referred to the relevant Director or to the Chief Executive. They will take the issue up with the member's Group Leader and/or the individual member concerned.
- 10.2 Local Government is dependent on good working relations and respect between members and officers. It is important, therefore, that members do not harass or verbally abuse officers, and vice versa. (Note: Paragraph 3 of the Members' Code of Conduct proscribes any bullying conduct by a councillor). Officers may not feel in a position to respond to the member's criticism. If such an incident should occur - and has not been settled - it should be drawn to the attention of the Chief Executive or the Monitoring Officer for it to be resolved in consultation with the Leader of the Executive and the individual councillor's Group Leader.

Appendix B

**PROTOCOL
FOR
MEMBER-OFFICER
RELATIONS**

Protocol for Member/Officer Relations

1. Introduction

Members and officers are both involved in furthering the best interests of the community they serve. Although they work together to fulfil certain goals, the roles played out by members and officers are different and the relationship between elected member and professional officer needs to reflect those roles.

Both Councillors and officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council as a whole

In TDBC the culture between members and officers is one of openness and approachability, with members able to contact officers at the most appropriate level to discuss an issue or raise a query. This approach has worked well for both members and officers, and it has built up good working relationships. In the interests of maintaining these good relationships this protocol aims to offer guidance to members and officers in their dealings with one another. It will not cover every possible situation, but is intended to be a framework for good relations.

This protocol should be recognised both as a central element of the Council's corporate governance, and as a commitment to upholding standards of conduct in public life. It's one way of demonstrating to the public at large that local government is serious about protecting and its integrity and reputation.

Members and officer must at all times observe this protocol. It should not be considered simply as a list of do's and don'ts but also as guidance on cultural and behavioural matters to ensure that the Council benefits from good working relationships and achieves its full potential in delivering services to the community it serves.

2. Fundamental Principles

- Members and Officers of the Council are obliged to act within the law and in compliance with relevant standards and codes of conduct.

- The role of a Member is defined by Statute. In law all Members are equal and have the responsibility of trustees.
- The over-riding duty of a Member is to the whole community, with a special duty (if a councillor) to their constituents.
- Officers serve the whole Council as a single statutory corporate body.
- Officers advise the Executive, the Council and its committees and are responsible for ensuring that the decisions of the Council are effectively implemented.
- Officers are required to be politically neutral and, for some employees, this is enforced through political restrictions imposed by the Local Government and Housing Act 1989.
- The interests of the Council are best served where there is mutual confidence and trust between all Members and Officers.
- Both Members and Officers have responsibility for decision making within the schemes of delegation for both Council and Executive functions as set out in the Council's Constitution
- Members should understand and respect the roles of the Council's main statutory officers (namely, the Chief Executive as Head of Paid Service, the Legal & Democratic Services Manager as Monitoring Officer and the Strategic Director as Section 151 Officer)
- The Chief Executive and Senior officers working with her should work closely with members of the ruling group to ensure effective policy development and efficient executive decision making.
- Officers will provide adequate support to all Members in their local or representational role.

3. The relationship between members and officers: general

Respect and courtesy

- (a) For the effective conduct of Council business there must be mutual respect and courtesy in all meetings and contacts, both formal and informal, between Members and Officers. It is very important that both Members and Officers remember their respective obligations

to enhance the Council's reputation and to do what they can to avoid criticism of Members and Officers.

- (b) If an Officer is in breach of this requirement, some form of disciplinary action may result as a consequence of investigation by a Strategic Director or Chief Executive.
- (c) If a Member is in breach, then the matter will be discussed, if appropriate with the Chief Executive and/or Monitoring Officer, and can then be dealt with within their political group or referred to the Council's Standards Committee

Undue Pressure

- (a) In their dealings with Chief Officers and, more particularly, other Officers, Members must remain aware at all that Officers have no discretion to act outside Council policies.
- (b) A Member should not apply undue pressure on an officer either to do anything that they are not empowered to do, or to undertake work outside normal duties, or outside normal hours. A Member should not seek to instruct, or direct the work of, individual employees, nor create a situation that places, or could place, any Officer in conflict with his or her line manager.
- (c) Similarly, an Officer must neither seek to use undue influence on an individual Member to make a decision in that Officer's favour or to his or her advantage, nor raise with a Member personal matters to do with their work, nor make claims or allegations to a Member about another Member or Officer.

Familiarity

Close familiarity between Members and Officers must be avoided. It can damage the principle of mutual respect and could lead to passing of confidential information, or information which should not properly be passed between them. Such familiarity could also cause embarrassment to other Members and/or Officers or could give rise to a suspicion or perceptions of favouritism.

4. Provision of Advice

- (a) Members should recognise that Officers have the duty and right to provide appropriate professional advice, and the right to have that advice recorded, so that all Members are fully aware of the implications of their decisions.
- (b) Officers should recognise that it is the right of the Members to take the final decisions in the light of their advice.
- (c) The provision of that advice is that principal means by which Members can gain assurance that their decisions comply with the law and relevant standards or codes of conduct and are in accordance with Council policies and procedures. 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 to, when reaching decisions, to any advice provided by the Monitoring Officer or the S151 Finance Officer
- (d) The advice provided by the Officers should be factual, honest, objective and politically neutral and based on professional experience and expertise.
- (e) The advice should be sensitive to the political aspirations and constraints of Members but should not reflect, or be influenced by, those aspirations and constraints.
- (f) The advice given by Officers will have the ultimate aim of serving the interests of the Council as a whole, irrespective of whether the current emphasis of an Officer's role and to help members attain their policy goals.
- (g) It is improper for any Member to seek to influence Officer advice and/or recommendations by subjecting any officer to undue pressure. Such advice and recommendations must be those of the officer only.

Information and the political perspective

- (a) All information will be open and accessible, subject to legislative requirements on exempt and confidential information and the Data Protection Act.
- (b) For the proper functioning of the Council as a whole, Officers will normally be permitted to share information freely between each other.
- (c) Where the information has been supplied/received subject to a request for party political confidentiality, an Officer will be permitted to share that information with other Officers if he/she believes that to be necessary - for example for the purpose of verifying the legality, financial probity or procedural regularity of any proposed course of action disclosed by that information. However, the request for party political confidentiality will be confirmed to, and honoured by, any Officers with whom the information is shared.
- (d) Appropriate and regular liaison between Members and Officers connected with the Executive and Overview & Scrutiny aspects of the Council should avoid the relationship between Overview & Scrutiny and the Executive becoming adversarial and polarised. This liaison, combined with the politically balanced nature of Overview & Scrutiny, should reduce the number of occasions on which it is necessary for information to be supplied by Councillors to Officers on a party political confidential basis at the Executive/Overview & Scrutiny levels.
- (e) Officers can share with the appropriate Portfolio holder any factual information supplied to any other Member.
- (f) Where information is supplied to Officers on a party political confidential basis, the Officers will respect that confidentiality unless the Officers believe that the proposed course of action appears to be in conflict with the law, or any relevant standards or codes of conduct, or would amount to an abuse of the processes of the Council.
- (g) Where party political confidentiality would be maintained in accordance with the preceding sub-paragraph, the Officers may, nonetheless, seek to persuade the Members requesting the confidentiality to agree to that information being shared with the other political groups on the grounds that it would assist the more effective functioning of the Council; however, in the absence of any

such agreement to waive the confidentiality, the Officers would continue to respect it.

- (h) Where there is a change in Political Administration, the Officers will act in relation to the new Administration and Opposition party or parties in the same way as they did for the old; and will continue to respect any continuing party political confidentiality.

Party group meetings and Officers

- (a) Senior officers may properly be asked to provide advice and information on matters concerning Council business by party groups but should not contribute to deliberations of the group. An officer who is not a senior officer shall not be invited to attend a party group meeting, but a senior officer may nominate another officer to attend on his/her behalf. In their dealings with party groups, officers must treat each group in a fair transparent and even-handed manner. If one group requests particular support then other groups will be offered the opportunity to have similar support.
- (b) Officers have the right to refuse such requests, and will not attend a meeting of a party group where some of those attending are not members of the Council, unless specific authority has been given by the Chief Executive who has the discretion to discuss the request with other group leaders.
- (c) 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 party business, and therefore should not be expected to be present at meetings or parts of meetings when such matters are to be discussed.
- (d) Party 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 does not confer formal status on such meetings in terms of Council business and must not be interpreted as doing so.
- (e) Where officers provide factual information and advice to a party group in relation to a matter of Council business, this will not be 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.
- (f) It must not be assumed that an officer is supportive of a particular policy or view considered at a party group meeting simply because

he/she has attended or provided information to the meeting of the group.

- (g) Officers will respect the confidentiality of any party 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 an officer providing feedback to other senior officers on a need-to-know basis.
- (h) Members must not do anything which compromises or is likely to compromise officers' impartiality. The duration of an officer's attendance at a party group meeting will be at the discretion of the group, but an officer may leave at any time if he/she feels it is no longer appropriate to be there.
- (i) An officer should be given the opportunity of verifying comments and advice attributed to him/her in any written record of a party group meeting.

5. Members' and Officers' free time

Both Members and Officers have a right to free time outside of their Council roles. Council business should only be discussed when both Member and Officer are acting in their official capacity and free time outside of those roles should be respected.

6. Redress

- (a) Local Government is dependent on good working relations and respect between members and officers. It is important, therefore, that members do not harass or verbally abuse officers, and vice versa. (Note: Paragraph 3 of the Members Code of Conduct proscribes any bullying conduct by a Member and the attached appendix to this Protocol). Officers may not feel in a position to respond to the Member's criticism. If such an incident should occur – and has not been settled – it should be drawn to the attention of the Chief Executive and/or the Monitoring Officer for it to be resolved in consultation with the Leader of the Executive and the individual Member's Group Leader.
- (b) If a Member considers that they have not been treated properly by an Officer, they should first try to resolve the matter through direct discussion with that Officer.
- (c) The Member may raise the matter with the officer's Line Manager or Strategic Director if the matter cannot be resolved through such

discussion. A Member may raise the issue with the Chief Executive if it remains unresolved. Where appropriate, disciplinary action may be taken against an Officer

- (d) Similarly, if an Officer feels that they have not been treated properly by a Member and they feel unable to resolve the matter directly with that Member, the Officer should raise the issue with the appropriate Strategic Director. In such circumstances the Strategic Director will take such action as is appropriate, including, if necessary, raising the matter with the relevant Group Leader.
- (e) The Strategic Director will inform the Chief Executive if the Group Leader becomes involved, and, in other cases, where appropriate.
- (f) If any matter covered by (d) above involves an actual or potential breach of the Code of Conduct for Members, it should be referred to the Monitoring Officer.

7. Arbitration

When necessary or appropriate, the Chief Executive will arbitrate on the interpretation of this Protocol.

PROTOCOL ON HARASSMENT, INTIMIDATION AND UNACCEPTABLE BEHAVIOUR

1. INTRODUCTION

Taunton Deane Borough Council expects the highest standard of behaviour from its Members and Officers. It recognizes acceptable behaviour as the norm and any form of inappropriate behaviour, including harassment or intimidation is unacceptable. The Council views any harassment or other inappropriate behaviour with the utmost seriousness and is committed to taking positive action to eradicate it.

Unacceptable behaviour by Officers will be dealt with through the Council's grievance and disciplinary procedures. As Members and non-elected members are not employees and therefore not subject to employee disciplinary procedures this protocol will apply where a Member or non-elected member or officer feels that they are being treated in an unacceptable way by a Member or non-elected Member of the Council.

2. WHAT IS HARASSMENT AND INTIMIDATION?

Harassment and intimidation take many forms, therefore it is difficult to give a single definition. It may be directed at an individual or a group, and it may be unintentional. If you feel that you have been treated in a way that is detrimental to your dignity, then you may have been subjected to harassment. Essentially, harassment is unwanted, unreasonable, unwelcome and offensive treatment and includes bullying and threatening behaviour. It includes any treatment which the officer considers to be unreasonable and unwelcome and which causes intimidation or offence.

Members and non-elected Members are not employees of the Council and are therefore not part of the usual management arrangements. It is easy for Officers to be overawed by Members and non-elected Members and Members and non-elected Members need to be aware that they are not in the usual manager/subordinate relationship.

Harassment may show itself in different ways, including the following:

- . physical contact, from touching to serious assault;

- . bullying, e.g. threatening behaviour, constant unwarranted criticism, belittling or exclusion by colleagues;
- . intimidation including threats concerning job security or promotion;
- . jokes, offensive language, suggestive remarks or gossip;
- . visual display, e.g. pictures or posters which could cause offence;
- . discrimination, e.g. on the grounds of race, religion, ethnic origin, disability, gender or sexual orientation, or age coercion;
- . indecent, suggestive or over-familiar behaviour or obscene gestures;
- . undue pressure to take or make a particular decision;
- . misuse of powers in order to intimidate or undermine.

3. THE IMPLICATIONS OF HARASSMENT

There are many consequences for the Council if it accepts or tolerates intimidation, harassment, threatening and bullying and other forms of unacceptable behaviour. For example, it can result in a “blame culture” which hampers flair and innovation. Furthermore, such incidents could result in substantial employment claims against the Council for discrimination, stress or other matters. The Council is also mindful of the comments by the Society of Local Authority Chief Executives that they believe that:

“good local authorities are characterised by two things: clear political leadership and strong management competencies. We believe that these cannot exist in places where a climate of bullying and fear is seen as acceptable. We further believe that such behaviour provides a breeding ground for poor performance and may even contribute to corruption where Officers (and Members) feel unable to challenge decisions of overly powerful Councillors or colleagues.”

4. MAKING A COMPLAINT

Any complaints by an officer about a Member or a non-elected Member should be referred in the first instance to their Strategic Director or the Chief

Executive.

Complaints by a Member or non-elected Member about another Member or non-elected Member should be referred in the first instance to their Group Leader.

The response to a complaint of harassment will be:

- . the complaint will be treated seriously;
- . the complaint will be dealt with in a sensitive and confidential way;
- . help and support throughout the process of dealing with the issue will be provided;
- . anyone subjected to harassment will not suffer or be victimised through making a complaint;
- . The Council will regard any such incidents as serious and they will be fully investigated and acted upon as appropriate.

Initially unacceptable behaviour will be approached by mediation by or within the political group concerned where appropriate. In the event of no change in conduct or other acceptable outcome then, if appropriate, the matter may be referred to the Council's Standards Committee.

5. ENCOURAGING ACCEPTABLE BEHAVIOUR

Acceptable behaviour in the workplace is behaviour that demonstrates a commitment to the Council's Core values. In support of this all Members, non-elected Members and Officers can:

- . afford dignity, trust and respect to everyone and ourselves;
- . be aware of the effect of our behaviour on others;
- . only make reasonable and manageable demands;
- . communicate honestly and openly, clearly stating what we mean and expect of others;
- . provide honest feedback based on evidence and be open to constructive criticism;

. start from the assumption that everyone is working to the best of their ability, considering the current stage of personal and professional development.