

# **Protocol on Member/Officer Relations**

## **1. Purpose of Protocol**

- 1.1 The purpose of this protocol is to guide members and officers in their relations with one another.
- 1.2 It is intended as a statement of current practice and convention and aims to provide clarity and advice rather than to be prescriptive. It should be read alongside a number of other important documents including the Model Code of Conduct and other sections of this constitution.

## **2. Conduct of Councillors and Officers**

- 2.1 The public expects the highest standards of conduct from both the Councillors they elect to represent them and the officers employed by the Council.
- 2.2 Councillors are required to sign a written undertaking that they will abide by the statutory Code of Conduct for members of local authorities – see Part 5 of this constitution.
- 2.3 All Exeter City Council employees are required to abide by the Council's Model Code of Conduct which deals with similar issues such as personal interests and acceptance of gifts and hospitality as well as other important principles such as political neutrality and equality. The Government intends to strengthen existing arrangements by introducing a statutory code of conduct for employees. Once it is approved it will form part of employees' terms and conditions of employment.

## **3. The Roles of Councillors and Officers**

- 3.1 The Code of Conduct provides guidance on the required standards of conduct for members in carrying out their duties and in their relationship with the Council and its officers. It covers matters such as promoting equality and high ethical standards, as well as use of Council resources.
- 3.2 Separate local guidance notes exist to provide advice for staff when dealing with the Lord Mayor.

## **4. Political Neutrality of Officers**

- 4.1 Both Councillors and officers are public servants but Councillors are responsible to the electorate and officers are responsible to the Council. Officers serve the whole Council and support all Councillors. They must

maintain political neutrality and must ensure that the individual rights of all Councillors are respected.

- 4.2 On occasions employees may be required to advise political groups and, in exceptional circumstances, to attend group meetings. It is an important principle that the same level of advice and support is available to all Groups or Councillors. This must not extend beyond providing advice and information in relation to Council business and officers must ensure that they do not compromise their political neutrality in doing so. Advice to individual political groups is provided on a confidential basis and must not be the subject of briefing with another political group.
- 4.3 Officers, whether or not politically restricted, must follow every lawful expressed policy of the Council and must not allow their own personal or political opinions to interfere with their work. Councillors should not seek to ascertain or influence the personal political convictions of officers.

## **5. Equality**

- 5.1 Exeter City Council is committed, both as an employer and as a deliverer of services, to ensuring that no recipient of services provided by the Council receives less favourable treatment on any grounds such as disability, ethnic origin, age, gender, sexuality, language, religion, political or other opinion, national or social origin, association with a national minority, locality, property, birth or social status.
- 5.2 The Council has undertaken to develop a culture which enables Councillors and officers to deliver services and act towards each other in a fair and equitable manner without discrimination, whether direct or indirect.
- 5.3 The Council will develop, implement and review its policy in consultation with service users, community organisations, staff and trade unions and will monitor its effectiveness through the appropriate Committee. It has also undertaken to produce an annual Equalities Plan (to identify future Action) and a Corporate Training Plan for Equalities, together with Directorate Action Plans. The Council has adopted the definition of a racist incident arising out of the Stephen Lawrence Inquiry and the Commission for Racial Equality Standards and monitors complaints of racial incidents. It also monitors other equalities data including the number of staff meeting the Disability Discrimination Act definition of disability and the number of women in the employ of the Council in senior management posts.
- 5.4 Councillors must ensure that in their work (including their representational, executive and scrutiny roles), they take account of the Council's policy and promote social inclusion throughout the city.
- 5.5 Officers must ensure that the individual needs of customers are met and that no-one receives inhuman or degrading treatment as a result of contact with the Council.

- 5.6 The Council has adopted a number of individual policies and procedures aimed at ensuring equality in addition to the Equalities Policy, including those relating to Violence at Work, the Code of Conduct, Disciplinary Rules and Procedures, Grievance Procedure and Harassment and Bullying. Both Councillors and officers must adhere to the practice and principles set out in these documents, in addition to the requirements of the law. The principles of equal opportunities extend to the relationship between Councillors and officers.
- 5.7 The Council has adopted a Whistleblowing Policy which aims to provide a procedure whereby officers can report perceived instances of wrong-doing within the organisation without fear of victimisation.

## **6. Staffing issues**

- 6.1 No Councillor or officer must use their position and influence to ensure that relatives, friends or colleagues are given jobs.
- 6.2 If Councillors are asked to take part in appointing officers, the only question that they should consider is which candidate would best serve the whole Council. Personal or political preferences should not influence their judgement.
- 6.3 The Officer Employment Procedure Rules in Part 4 of the Constitution deal with arrangements for the appointment and dismissal of the Chief Executive and other senior officers of the Council.
- 6.4 Councillors may be involved in disciplinary or grievance appeals hearings involving officers. They must base their decisions solely on the factual information before them.
- 6.5 Similarly officers must follow the formal procedures of the Council for consultation with staff, handling grievance and disciplinary matters.

## **7. Decision-making**

- 7.1 The Council decides the policy and officers carry out the instructions of the Council in accordance with their professional skill and knowledge. Unless specifically authorised by the Council, a councillor should not undertake works or actions ordered by the Council. The officer's duty is to have in mind the best and most effective and efficient means of carrying out the Council's decision.
- 7.2 It has become accepted practice that Chairs of Committees are briefed by senior officers prior to dispatch of committee papers and may have some input in drawing up the agenda. However, it must be recognised that an Strategic Director, the Strategic Director for Corporate Resources may have a duty to report on particular matters. In some situations, they may have a legal

or professional responsibility to report an issue in a certain way or to make a specific recommendation, for example, in relation to a planning or licensing application. More detailed guidance relating to planning issues will be found in the Local Planning Code.

- 7.3 Officers will always be required to provide unbiased written advice and responsibility for making policy decisions clearly rests with Members. Strategic Directors and the Strategic Director for Corporate Resources are responsible for giving policy guidance. Internal advice leading to that decision is confidential.
- 7.4 Officers with appropriate delegated authority will take any urgent decisions in accordance with the procedures allowed within the Council's constitution.
- 7.5 Councillors should take care, especially when dealing with less experienced officers, not to create the impression that either a personal preference or policy or proposal of his/her Group is in fact a formal Council decision.

## **8. Communicating**

### ***In person***

- 8.1 In the course of their responsibilities, Councillors will naturally have direct contact with specific officers of the Council on a day-to-day basis. This contact is beneficial on both sides and where the relevant officer dealing with a particular matter is known, this is often an effective and pragmatic way of seeking information or progressing issues.
- 8.2 In this way Councillors should feel free to approach officers in the relevant directorate. Obviously officers will have their own work commitments and priorities and, whilst Councillors queries will be given the highest possible priority, officers may not be in a position to respond instantly. Direct approaches to staff should not interfere with an officer's ability to undertake their normal work programme and any demands which are regarded as excessive may be referred to the Strategic Director the Strategic Director for Corporate Resources for resolution.
- 8.3 Councillors should be aware of the limits of individual officers' responsibilities. Personal contacts should not be used as a way of obtaining information to which the Councillor would not normally expect to be given access. Any issues of a policy nature should be raised with either the Strategic Director, the Strategic Director for Corporate Resources, or the Chief Executive depending on their nature.
- 8.4 Officers should be aware of Councillors' special interest in, and knowledge of their wards and make use of this wherever possible by involving Councillors in or advising them of issues pertinent to their wards.

- 8.5 Councillors may choose to respond personally to letters sent to them by residents or may request a Council officer to do so on their behalf. However it would not be appropriate for officers to make a “political” response to a letter.

### ***Letters and E-mail***

- 8.6 Under the Local Government Act 1992, the Audit Commission requires every local authority to collect, monitor and publish its targets for answering letters, detail what performance was achieved and how performance was monitored against the targets.
- 8.7 Exeter City Council’s target for acknowledging and/or responding to all letters (including complaints) under the Customer Charter is five working days. This target applies to all letters requiring a reply, including those from the authority’s own Councillors and business correspondence. The definition of “letter” has been extended to cover all methods of external communication including external e-mails and faxes.
- 8.8 Wherever possible, officers should send a full response to the matters raised in the Councillors letter within five working days. Where this is not possible, an acknowledgement should be sent to the Councillor within that period giving the name and phone number of the officer dealing with the matter and the date by which to expect a full reply.
- 8.9 In order to keep Chairs or portfolio holders informed of issues, officers will normally copy to them their responses to Councillors’ correspondence, particularly where these involve policy issues. Subject to the discretion of the Strategic Director or the Strategic Director for Corporate Resources, responses will not normally be copied where correspondence relates to routine operational issues or individual residents. Where appropriate, correspondence may also be copied to the relevant ward Councillor. All recipients will be indicated openly on the response, however, confidential or personal information should not be divulged to others simply ‘for information’. If in doubt the writer should seek the advice of the Council’s Data Protection Officer. The same general principles apply to other written forms of communication.

## **9. Access to Information**

### ***Statute***

- 9.1 Councillors’ rights to inspect documents in the Council’s possession are governed by statute, the Council’s Standing Orders and the National Code of Local Government Conduct. There has also been extensive case law on the subject.
- 9.2 Section 100F of the Local Government Act 1972 states that any Councillor can inspect any document in the possession or control of the Council which contains material relating to any business to be transacted at a meeting of the

Council, a Committee or Sub-Committee (i.e. a decision-making body). This relates to both reports and “background documents”, subject only to certain exceptions relating to information which is “exempt” from public access, identified in Schedule 12A of the Act. Paragraphs 1-6, 9, 11, 12 and 14 are applicable to Councillors.

- 9.3 If it appears to the Council’s Monitoring Officer (in the case of Exeter City Council, this is the Head of Legal and Democratic Services that a document discloses exempt information as defined in these paragraphs, then there is no requirement to make it available to a Councillor. However as Section 100F is in addition to a Councillor’s other rights other tests may need to be applied - these are summarised below.

### **Case Law**

- 9.4 Case law has extended the statutory rights of Councillors to view documents.
- 9.5 A councillor as an elected representative needs to be kept informed of council business, and therefore has a right to inspect documents in the possession of the Council, if they can demonstrate that they “need to know” to perform their role.
- 9.6 As a general rule, if a councillor is a member of a Committee then they have the right, within reason, to inspect documents directly relating to the business of that Committee. If they are not a Committee member, then they have to demonstrate why they must see the document to enable them to perform their duties as an elected Councillor and ward representative. In all cases, Councillors should be aware of the need for discretion.
- 9.7 Councillors do not have a “roving commission” to examine books or documents and must precisely specify the documents or information they want to see - mere “curiosity” is not sufficient.
- 9.8 Any dispute regarding the rights of a councillor to view information, should first be addressed by the Strategic Director/ Strategic Director for Corporate Resources, and if they cannot resolve the matter should be referred to the Council’s Monitoring Officer.

## **10. Confidentiality**

- 10.1 Confidential information is often provided to Councillors, sometimes within Committee reports, which has not yet been made public. It would be a betrayal of trust to disclose or use this information for personal advantage or to discredit the Council or another party. Councillors should be aware of the advice of the National Code of Conduct on this point.

- 10.3 Officers may also find themselves in possession of confidential information by virtue of their position. The same principles apply. Disclosure of this information would similarly be regarded as a betrayal of trust.

## **11. Data Protection**

- 11.1 Councillors should also be aware of the requirements of the Data Protection Act. Officers will require the explicit consent of individuals such as tenants before divulging personal information at the request of Councillors, even where Councillors are acting as an advocate for those individuals.
- 11.2 The names, addresses and home phone numbers of Councillors are generally a matter of public record. Officers will not normally disclose work telephone numbers or e-mail addresses of Councillors to the general public without their explicit consent. Neither will information unrelated to a member's duties as a Councillor be supplied to anyone outside the Council's employment without the express consent of the member. However Councillors are required to register financial and other interests in the Register of interests, which is open to inspection by the public, and are reminded to update this on an annual basis. They are required for example to register interests in relation to ownership of property, employment, sponsorship, contracts, land etc.

## **12. Dealing with the Media**

- 12.1 The Council's Communications Service provides a press and public relations service for the Council and is the central point for media enquiries and requests for interviews with Councillors or officers. It aims to promote effective media relations and to encourage positive and accurate reporting and coverage of events and issues relating to the Council, whilst recognising that the media may represent alternative views to those of the Council.
- 12.2 Council officers are not permitted to take part in any broadcast, publish articles or give information to the media relating to Council business without the express permission of their Strategic Director/ Strategic Director for Corporate Resources. All media enquiries should be referred to one of the Council's authorised Media Contact Officers or the Communications Service. All media releases need to be sent out through the Council's Communications Service who will ensure political neutrality is maintained.
- 12.3 The Chair of a Committee or portfolio holder acts as spokesperson for the appropriate area of the Council's work and their quotes contained in media releases should reflect that role and not necessarily their views as an individual Councillor. Similarly, interviews and photocalls are usually fronted by the relevant portfolio holder or Committee Chair. (See also Media Protocol for Portfolio Holders and Scrutiny Chairs).

## **13. Support Services to Members**

- 13.1 The only basis on which the Council can lawfully provide support services (e.g. stationery, typing, printing, photo-copying, IT) to a Councillor is to assist them in discharging their role as a members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with non-Council party political or campaigning activity or for propaganda or private purposes. Councillors should avoid asking officers to undertake work of a political nature as this places them in a difficult position.

#### **14. Complaints**

- 14.1 If a Councillor has cause to complain about the actions or failings of any officer of the Council, they should lodge their complaint, preferably in writing, with the officer's line manager or the Strategic Director/Strategic Director for Corporate Resources for the area where the officer concerned works.
- 14.2 Should an officer have cause to complain about the actions or failings of any member, the officer should raise their complaint with their Strategic Director/Strategic Director for Corporate Resources who may then take the matter up either directly with the Member concerned or with their Group Leader.
- 14.3 In the event of a serious, repeated or unresolved breach, it may be appropriate for the Monitoring Officer or the Chief Executive to report the matter to the Council's Audit and Governance Committee.
- 14.4 The Audit and Governance Committee may also wish to be advised on a regular basis of complaints received regarding conduct in order to monitor the frequency and nature of issues and, where appropriate, provide advice and support.