

CHESHIRE EAST

Governance and Constitution Committee

Date of meeting: 12 January 2009
Report of: Interim Monitoring Officer
Title: Member/Officer Relations Protocol

1.0 Purpose of Report

- 1.1 To seek the approval of the Committee in respect of the new unitary Council's Member/Officer Relations Protocol.

2.0 Decision Required

- 2.1 To endorse the proposed Member/Officer Relations Protocol and recommend to Full Council that the Protocol be adopted into the Constitution.
- 2.2 To recommend that the Protocol apply to all Officers and Members from the date of this meeting.

3.0 Financial Implications for Transition Costs

- 3.1 There are no financial implications for Transition Costs.

4.0 Financial Implications 2009/10 and beyond

- 4.1 No financial implications arise for 2009/10 and beyond.

5.0 Legal Implications

- 5.1 It is proposed that the Protocol should be contained in the unitary Council's Constitution and, therefore the Committee will need to make a recommendation to the Shadow Council to that effect.
- 5.2 It is recommended that the Protocol apply to all Officers and Members of the Authority from the date it is endorsed by this Committee.
- 5.3 The attached draft Protocol contains transitional arrangements in Clause 12. On the 1 April 2009 clause 12 will be deleted and the remaining 11 clauses will continue to be part of the Council's constitution.

6.0 Risk Assessment

- 6.1 Failure to adopt a Member/Officer Relations Protocol may affect the Council's ability to evidence its commitment to good governance.

7.0 Information

- 7.1 One indicator of local authority good governance is that the authority in question has a Member/Officer Relations Policy or Protocol.
- 7.2 The document “Delivering Good Governance in Local Government: Guidance Note for English Authorities” cites such a policy as a source document or good practice that may be used to demonstrate compliance with a number of the CIPFA Code of Corporate Governance requirements.
- 7.3 The Council’s ability to carry out its functions depends on the co-operation of Members and Officers. The service the Council provides to the people of Cheshire East will be improved if Members and Officers have a good working relationship. The aim of the Protocol is to help build these relationships and help resolve problems if they should occur.
- 7.4 A draft Member/Officer Relations Protocol is attached in the Appendix to this report.

8.0 Conclusion

- 8.1 The Committee is asked to endorse the Protocol and make a recommendation to Full Council that the Protocol be adopted and included in the Constitution.

For further information:

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Background Documents:

N/a

PROTOCOL MEMBER/OFFICER RELATIONS

1.0 INTRODUCTION

- 1.1 The aim of this Protocol is to guide Members and Officers of Cheshire East Council in their relations. It is hoped the Protocol will help build good working relationships between Members and Officers as they work together to build the new authority.
- 1.2 A strong, constructive, and trusting relationship between Members and Officers is essential to the effective and efficient working of the Council.
- 1.3 It is recognised that relationships between Members and Officers are very varied and can often be complex. Therefore, this Protocol does not seek to be comprehensive and may not cover all situations. However, it is hoped that framework it provides will serve as a guide to dealing with a wide range of circumstances.
- 1.4 This Protocol forms a key part of the Council's approach to corporate governance and its commitment to uphold standards in public life.

2.0 INTERPRETATION OF THE PROTOCOL

- 2.1 Members and Officers must observe this Protocol at all times.
- 2.2 The provisions of this Protocol will be interpreted having regard to the requirements of the Members' Code of Conduct, the Officers' Code of Conduct, the Council's Whistleblowing Protocol and the Council's policies, procedures and processes.
- 2.3 Where there is a conflict or discrepancy between this Protocol and the Codes and Policies referred to in 2.2 above then those Codes and Policies shall have precedence. Conventions will also be taken into account in cases of conflict or discrepancy. Any questions over interpretation will be decided by the Monitoring Officer in consultation with the Chief Executive.
- 2.4 It is recognised that in the period preceding any Council Election or by-election specific protocols are in place. These protocols will take precedence over this Protocol where there is again conflict or a discrepancy.
- 2.5 This Protocol does not affect or interfere with any rights or protection which a person may have in law.

3.0 THE ROLE OF MEMBERS

- 3.1 Members are accountable to the electorate who determine every four years the people they wish to represent them on the authority. Therefore, this Protocol recognises that Members are elected to serve the people of Cheshire East.
- 3.2 Members, as politicians, may express the values and aspirations of their party political groups but they must recognise that in their role as Members they have a duty to always act in the public interest.
- 3.3 Members may have a number of roles within the Council and need to be alert to the possible conflicts of interest that may arise.
- 3.4 At all times Members should be aware that the role they are performing may impact upon the nature of their relationship with Officers and the expectations that Officers may have of them.
- 3.5 Members are mainly responsible for:
- the political direction and leadership of the Authority
 - the determination of policies, plans and strategies
 - deciding matters to give effect to or implement those policies, plans and strategies particularly in service delivery terms
 - performing the Council's regulatory functions
 - monitoring and reviewing, primarily through the Executive and Overview and Scrutiny functions, the Council's performance in implementing its policies, plans and strategies and in delivering its services
 - participation in partnership working
 - representing the Council on national regional and local bodies and organisations
 - representing the views of their communities and individual constituents
- 3.6 Some Members will have additional responsibilities relating to their membership of the Executive, Scrutiny Boards or other committees and sub-committees. The holding of these roles will involve a different relationship with certain Officers in areas where the Member has particular roles and responsibilities.
- 3.7 Members who serve on committees and sub-committees collectively have delegated responsibilities. These responsibilities may include deciding quasi-judicial matters which by law are excluded from the remit of the Executive.

3.8 Officers can expect Members:

- to act within the policies, practices, processes and conventions established by the Council
- to work constructively in partnership with Officers acknowledging their separate and distinct roles and responsibilities
- to understand and support the respective roles and responsibilities of Officers and their associated workloads, pressures and reporting lines
- to give political leadership and direction and to seek to further their agreed policies and objectives with the understanding that Members have the right to take the final decision in issues based on advice
- to treat them fairly and with respect, dignity and courtesy
- to act with integrity, to give support and to respect appropriate confidentiality
- to recognise that Officers work to the instructions of their senior Officers and not to individual Members
- not to subject them to intimidation, harassment, or put them under undue pressure. Members will have regard to the seniority of Officers in determining what are reasonable requests, having regard to the relationship between the Member and Officer, and the potential vulnerability of Officers, particularly at junior levels
- not to request them to exercise discretion which involves acting outside the Council's policies and procedures
- not to authorise, initiate, or certify any financial transactions or to enter into any contract, agreement or undertaking on behalf of the Council or in their role as a Member without proper and lawful authority
- not to use their position or relationship with Officers to advance their personal interest or those of others or to influence decisions improperly
- to comply at all times with the Members Code of Conduct, the law, the Constitution and such other policies, procedures, protocols and conventions agreed by the Council.

3.9 It is important that Members of the Authority:

- respect the impartiality of Officers and not undermine their role in carrying out their duties

- do not ask Officers to undertake work, or act in a way, which seeks to support or benefit a particular political party or gives rise to an Officer being criticised for operating in a party political manner
 - do not ask Officers to exceed their authority where that authority is given to them in law, by the Council or by their Managers
- 3.10 The Head of Paid Service, the Monitoring Officer and the Chief Finance Officer (section 151 Officer) and other Statutory Officers have specific responsibilities placed on them by law. These responsibilities go beyond their obligations as employees of the Council. Where an Officer is discharging his/her responsibilities under any statutory office a Member or Members shall not:
- interfere with or obstruct the Officer in exercising those responsibilities
 - victimise any Officer who is discharging or has discharged his/her responsibilities of the Statutory Office

4.0 THE ROLE OF OFFICERS

- 4.1 The primary role of Officers is to advise, inform and support all members and to implement the lawfully agreed policies of the Council.
- 4.2 Officers are responsible for day-to-day managerial and operational decisions within the Council. Members should avoid inappropriate involvement in such matters.
- 4.3 In performing their role Officers will act professionally, impartially and with political neutrality. Whilst Officers will report a Members' view on an issue, the Officer should not be influenced or pressured to make comments, or recommendations which are contrary to his professional judgement or views.
- 4.4 Officers should:
- implement decisions of the Council and its subordinate bodies which are lawful, which have been properly approved in accordance with the requirements of the law and the Council's constitution, and are duly recorded.
 - work in partnership with Members in an impartial and professional manner
 - assist and advise all parts of the Council. Officers must always act to the best of their abilities in the best interests of the authority as expressed in the Council's formal decisions.

- respond to enquiries and complaints in accordance with the Council's standards
 - 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.
 - act with honesty, respect, dignity and courtesy at all times
 - provide support and learning and development opportunities for Members to help them in performing their various roles
 - not seek to use their relationship with Members to advance their personal interests or to influence decisions improperly
 - comply, at all times, with the Officer Code of Conduct, and such other Policies or Procedures approved by the Council
- 4.5 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.
- 4.6 Some Officers may be appointed to local, regional or national bodies because of their particular skills and expertise. They may be appointed specifically to represent the Council or in their personal capacity.

5.0 THE RELATIONSHIP: GENERAL

- 5.1 Members and Officers are servants of the public. They are indispensable to one another. However, their responsibilities are distinct. Members are accountable to the Public, whereas Officers are accountable to the Council as a whole.
- 5.2 At the heart of the Codes, and this Protocol, is the importance of mutual respect. Member/Officer relationships are to be conducted in a positive and constructive way. Therefore, it is important that any dealings between Members and Officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position nor seek to exert undue influence on the other party.

6.0 THE RELATIONSHIP: OVERVIEW AND SCRUTINY BODIES

- 6.1 It is accepted that in carrying out the Council's overview and scrutiny functions Members may require an Officer to attend to answer questions or to discuss issues.
- 6.2 It is recognised by this Protocol that challenge in a constructive and non-confrontational way is important in ensuring policies and

performance are meeting the Council's strategic objectives. Therefore, nothing in this Protocol is intended to stop Members holding Officers to account for decisions made under delegated powers. Nor is it intended to affect the Council's overview and scrutiny functions

- 6.3 When deciding whether to require an Officer to attend, the body will consider the seniority of the Officer it would be appropriate to invite. There is a presumption against inviting Officers outside the senior Officers' range to attend in this capacity. Requests for Officer attendance should be made to the Director concerned. Such requests should indicate in broad terms the areas which Members will want to discuss, and should give reasonable notice of the dates when attendance is needed
- 6.4 Where an Officer attends such a body his/her contribution should be confined to matters of fact and explanation. However, an Officer may be asked to explain and justify advice which he/she has given prior to a decision having been taken, including decisions taken by him/her under delegated powers.
- 6.5 Officers should not be drawn, overtly or covertly, into discussions of a political nature which would be inconsistent with the political neutrality requirement. Any questioning of an Officer should not be reasonably interpreted as constituting harassment.
- 6.6 In overview and scrutiny proceedings the capability or competence of Officers must not be questioned. The distinction needs to be drawn between reviewing the policies, performance and decisions of the Council or its services and the appraisal of staff's individual performance. The latter is not a function of overview and scrutiny bodies.
- 6.7 The approach here is consistent with the Overview and Scrutiny Procedure Rules as set out in the Council's Constitution.
- 6.8 In applying this part of the Protocol, account will be taken of any guidance agreed by Overview and Scrutiny bodies provided that guidance is consistent with the principles of this Protocol.

7.0 POLITICAL GROUPS

- 7.1 The Chief Executive, together with Directors and Heads of Service and occasionally other employees all with the permission of the Chief Executive may at times decide that it is appropriate to attend a political group meeting with a view to briefing and advising on the formulation of policy. This may be of his/her own initiative or at the request of a political group. However, the decision on whether he/she should attend is the Chief Executive's, in either case.

- 7.2 If the Chief Executive decides that he/she or another Officer may attend a political group meeting and it concerns a proposed significant policy change which is about to be presented to a meeting of the Council, Executive Group or committee, then he/she must offer the facility to all other political groups within the Authority, indicating the area of policy upon which he/she is offering to brief/advise. He/she will inform the leader of the political group with whom he/she is having the meeting that he/she will be offering the facility to the other political groups.
- 7.3 Certain points must be clearly understood by all those participating in this process, Members and Officers alike. In particular:
- (a) Officer support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if Officers are not expected to be present at meeting, or parts of meeting, when matters of party business are to be discussed;
 - (b) 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; and
 - (c) similarly, where Officers provide information and advice for a political group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the Executive Group or relevant committee when the matter in question is considered.
- 7.4 Special care needs to be exercised whenever Officers are involved in providing information and advice to a political group meeting which includes persons who are not Members of the Council. Such persons will not be bound by the Model Code of Local Government Conduct (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 Members only meeting.
- 7.5 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 discussions to another political group.

8.0 ACCESS TO PREMISES

- 8.1 Officers have the right to enter the Council land and premises to carry out their work. Some Officers have the legal power to enter property in the ownership of others.

8.2 Members have the right of access to Council land and premises to fulfil their duties.

8.3 When making visits as individual Members, Members should:

- notify and make advance arrangement with the appropriate manager or Officer in charge (unless this is not practicable);
- comply with health and safety, security and other workplace rules;
- not interfere with the services or activities being provided at the time of the visit; and
- notify ward Members beforehand if visiting somewhere outside his/her own ward.

9.0 USE OF COUNCIL RESOURCES

9.1 All Members are provided with services such as typing, printing and photocopying and goods such as stationary and computer equipment, to assist them in discharging their roles as Members. These goods and services are paid for by public funds and should only be used for Council purposes.

9.2 Members should not ask Officers to provide resources or support which they are not permitted to give, for example support or resources

- which are to be used for business which is solely to do with a political party;
- for work in connection with a ward or constituency party political meeting or electioneering;
- for work associated with an event attended by a Member in a capacity other than as a Member of the Council;
- for private personal correspondence;
- for work in connection with another body or organisation where a Member's involvement is other than as a member of the Council; and
- which constitutes support to a Member in his/her capacity as a member of another authority.

10.0 BREACHES OF THE PROTOCOL

10.1 Where a Member is dissatisfied with the conduct, behaviour or performance of an Officer, the matter should be raised with the

appropriate Director or Head of Service. Where the Officer concerned is a Director, the matter should be raised with the Chief Executive, and in the case of a Head of Service with the appropriate Director. Where the employee concerned is the Chief Executive, the matter should be raised with the Monitoring Officer.

- 10.2 On the Members' side, where the relationship between Members and Officers breaks down or becomes strained, every effort will be made to resolve matters informally, through conciliation by an appropriate senior manager or Members. Officers will also have recourse to the Grievance Procedure or to the Council's Monitoring Officer, as appropriate, in certain circumstances. In the event of a grievance or complaint being upheld, the matter will be referred to the Chief Executive who, having advised the Leader of the Council and the other appropriate Group Leaders, will decide on the course of action to be taken, following consultation with the Standards Committee if appropriate.
- 10.3 Breaches of the protocol by a Member may also constitute a breach of the Members Code of Conduct.

11.0 STATUS OF THIS PROTOCOL

- 11.1 This Protocol was approved by Full Council on 24 February 2009. It now forms part of the Council's Constitution. As such, it is binding on all Members including co-opted and independent Members, and Officers.
- 11.2 This Protocol shall apply, as appropriate and necessary, to any person appointed individually or on behalf of a body or organisation to advise support or assist the Authority in its work.

12.0 TRANSITIONAL PERIOD

- 12.1 Prior to 1 April 2009 this Protocol will apply to relationships between Cheshire East Council Members and Officers of the following organisations:
- 12.1.1 Cheshire County Council
 - 12.1.2 Chester City Council
 - 12.1.3 Congleton Borough Council
 - 12.1.4 Crewe and Nantwich Borough Council
 - 12.1.5 Ellesmere Port and Neston Borough Council;
 - 12.1.6 Macclesfield Borough Council and
 - 12.1.7 Vale Royal Borough Council
- 12.2 Prior to 1 April 2009 reference to the 'Council' should be interpreted as to include the 'Shadow Authority'.

- 12.3 References to the Monitoring Officer should be interpreted as reference to the Interim Monitoring Officer until such time as the Monitoring Officer for Cheshire East Council is appointed.