

**Milton Keynes City Council**

**Councillor and Officer Charter**

**Protocol on Councillor-Officer Relations**



## COUNCILLOR AND OFFICER CHARTER

### Councillors

'Democratically elected politicians who set the Council's strategic direction and main decision-makers'

### Councillor's will

Respect employed staff and recognise professional boundaries

Encourage constructive challenge from officers

Consider the advice from professional officers

Embrace innovation and celebrate success

Engage with officers in an honest and straightforward way

Recognise legal and financial constraints

### Officers

Politically neutral staff employed to manage and deliver services using their skills and professional knowledge'

### Officer's will

Be sensitive to councillor issues, including operational and political sensitivities, and focussed on solutions

Take responsibility for their actions and outcomes

Listen to and respect Councillors' insight

Make recommendations based on evidence

Be honest and open with Councillors

Understand the constraints that Councillors operate under

**We serve our communities, are guided by our values, take pride in the Council and respect the mutual work we do**



## **Protocol on Councillor-Officer Relations**

### **1. Introduction**

- 1.1. This Protocol is to guide Councillors and Officers of the Council in their relations with one another to ensure the smooth running of the Council.
- 1.2. This Protocol acknowledges the varied and complexity of relationships between Councillors and Officers so is neither prescriptive nor comprehensive. It offers guidance on issues that commonly arise and offers an approach to adopt on issues that are less common.
- 1.3. If the Protocol is followed, it should frame an effective working relationship between Councillors and Officers which is essential for the successful operation of the Council's business. It will ensure that Councillors are treated fairly and receive objective and impartial advice and that Officers are protected from accusations of bias. Mutual trust, respect and understanding between Councillors and Officers is crucial.
- 1.4. The Protocol reflects the principles underlying the respective Codes of Conduct<sup>1</sup> which apply to Councillors and Officers. The shared object of these Codes and this protocol is to enhance and maintain the integrity (real and perceived) of local government by demanding very high standards of personal conduct.
- 1.5. The Protocol is a local extension of the Councillors' and Officers Codes of Conduct.

### **2. The Relationship: General Points**

- 2.1. Both Councillors and Officers serve the public and they are indispensable to one another however 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. Their job is to advise all Councillors and the Council and to carry out the Council's work under the direction and control of the Council, the Cabinet, their committees and sub committees.
- 2.2. Mutual respect is at the heart of the Codes and this Protocol on Councillor/Officer relationships should be conducted in a positive and constructive way. It is therefore important that dealings between Councillors and Officers should be courteous and neither party should seek to take unfair advantage of their position or exert undue influence on the other.
- 2.3. Inappropriate relationships can be inferred from language/style therefore Councillors and Officers should always seek to address each other with courtesy. To protect both Councillors and Officers, Officers should address Councillors as 'Councillor XX/Mr. or Madame Mayor' save where circumstances clearly indicate that a level of informality is appropriate for example one to ones between a Director and their respective Cabinet Councillor/Committee Chair.

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<sup>1</sup> hyperlink to the codes

- 2.4. A Councillor should not raise matters relating to the conduct or capability of an Officer in a manner that is incompatible with the objectives of this Protocol. This is a longstanding tradition in public service. An Officer has no way of responding to such criticisms in public. If a Councillor feels she/he has not been treated with proper respect, courtesy or has any concern about the conduct or capability of an Officer, they should raise it with the Officer in a courteous and respectful manner. If they fail to resolve it through direct discussion with the Officer, then she/he should raise the matter with the respective Head of Service or relevant Director who will look into the matter and report back to the Councillor. If the Councillor remains concerned, then she/he should raise it with the relevant Director or Chief Executive/Deputy Chief Executive who will look at the matter afresh. Any action taken against an Officer in respect of a complaint will be in accordance with the Council's Disciplinary and Capability Procedures.
- 2.5. An Officer should not raise or discuss with any Councillor, matters relating to the conduct or capability of another Officer or the internal management of the Council or any directorate. Such concerns should be raised through appropriate Officer reporting lines.
- 2.6. Where an Officer feels that she/he has not been properly treated with respect and courtesy by a Councillor, she/he should raise the matter with his/her Director, especially if they do not feel able to discuss it directly with the Councillor concerned. In these circumstances the Director will take appropriate action either by approaching the individual Councillor and/or group leader or referring the matter to the Monitoring Officer.

### **3. The Relationship: Officer Support to Councillors**

- 3.1. Officers are responsible for day-to-day managerial and operational decisions within the Council and provide services to both the Cabinet and all Councillors in their service areas.
- 3.2. Certain statutory Officers – the Chief Executive, the Monitoring Officer, Statutory Scrutiny Officer and the Chief Financial Officer (Section 151 Officer) – have specific roles and these are set out in the Constitution. These roles need to be understood and respected by all Councillors and Officers.<sup>2</sup>
- 3.3. The following key principles reflect the way in which Officers generally relate to Councillors:
  - 3.3.1. Officers are employed by, and are responsible to, the Council as a whole;

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<sup>2</sup> link to relevant protocols e.g. mon Officer protocol

- 3.3.2. support from Officers is needed for all of the Council's functions including Full Council, Overview and Scrutiny, the Cabinet and individual Councillors representing their communities;
  - 3.3.3. day to day managerial and operational decisions should remain the responsibility of the Chief Executive and other Officers; and
  - 3.3.4. the authority will seek to avoid potential conflicts of interest for Officers arising from the separation of the Cabinet and the Overview and Scrutiny role.
- 3.4. On occasion, a decision may be reached which authorises named Officers to take action between meetings following consultation with a Councillor or Councillors. It must be recognised that it is the Officer, rather than the Councillor or Councillors, who takes the action and is accountable for it.
  - 3.5. It is important that all Councillors in exercising their function as a Councillor take appropriate legal, financial and professional Officer Advice, particularly about contractual matters. In order to ensure that the highest standards of conduct are maintained at all times in relation to this important area of the Council's functions, additional guidance on Best Practice for Councillor conduct during a procurement is laid out in Appendix D.
  - 3.6. Generally, all Councillors – whether Cabinet members or otherwise – should consider submitting a request, when invited to / attending a meeting, whether or not minutes should be taken and/or an Officer should be present. Such a request is to be considered by the appropriate Director. It is a matter for Councillors' judgement whether this is necessary / appropriate, but factors such as whether any commitment is likely to be given on behalf of the Council and/or whether any complex financial, legal or procurement issues may be discussed will be relevant in deciding that. In such situations, Councillors are generally recommended to have an Officer present and to ensure that contemporaneous minutes are taken and, where appropriate, shared with the other parties present to ensure that an accurate record is maintained. It will, however, be a case of judgement on each and every occasion as to how and when this principle is applied.
  - 3.7. Finally, it must be remembered that Officers within a Directorate are accountable to their Director and that whilst Officers should always seek to assist a Councillor, they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Director.

#### **4. The Relationship: Officer Support: Councillors and Party Groups**

- 4.1. It must be recognised by all Officers and Councillors that in discharging their duties and responsibilities, Officers serve the Council as a whole and not any political group, combination of groups or any individual Councillor. The role of political assistants is covered under specific legislation.
- 4.2. There is statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to support and contribute to such deliberations by party groups but must at all times maintain political neutrality. All Officers must, in their dealings with political groups and individual Councillors, treat them in a fair and even-handed manner.
- 4.3. Certain points must, however, be clearly understood by all those participating in this type of process, Councillors and Officers alike. In particular:
  - 4.3.1 That Officers do not engage in political discussion when attending party group meetings, limiting their activities to providing information on the specified business and answering appropriate questions. Officers should only attend these meetings for the length of time necessary to provide briefings and answer questions before withdrawing to allow political discussion to take place.
  - 4.3.2 Party group meetings, whilst they form part of the early stages of Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not form part of the Council's formal decision-making process and it is essential that they are not interpreted or acted upon as such; and
  - 4.3.3 similarly, where Officers provide information and advice to a party 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 relevant Committee or Sub-Committee when the matter in question is considered.
- 4.4. Special care needs to be exercised whenever Officers are involved in providing information and advice to a party group meeting which includes persons who are not Councillors of the Council or Officers of the Council. Due regard should be paid to the fact that such persons are not bound by Codes of Conduct for Councillors (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons Officers must be cautious about attending and/or giving advice to such meetings.



- 4.5 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group save where the content being relayed is general information that the other groups or other Officers would be expected to receive.
- 4.6 Whilst any Councillor may ask a Head of Service, Director or the Chief Executive/Deputy Chief Executive for written factual information about a directorate or service, such requests must be reasonable and not seek information relating, for instance, to case work of a confidential nature. Requests will be met subject to any overriding legal considerations (which will be determined by the Director - Law and Governance, or if the recipient of any request considers the cost of providing the information requested or the nature of the request to be unreasonable. If a Councillor requesting such information is dissatisfied by such a response, she/he should raise the matter with the Chief Executive who will discuss the issue with the relevant Group Leader.
- 4.7 Requests for information about generic group employee matters such as divisional structures, the overall cost of service provision for a group of employees etc. should be considered in the normal way as set out above. Directors, the Chief Executive/Deputy Chief Executive should ensure that any information supplied does not contain any personal information (within the meaning of the General Data Protection Regulations (EU) 2016/679 (GDPR)) relating to individual employees such as salary, grade, Trade Union affiliation etc.
- 4.8 Requests for personal information about specific employees or where the group of employees is so small that individual employees personal details are likely to be revealed should only be considered where a Councillor has a demonstrable need for such detailed personal information in order to carry out the business of the Council and they could not carry out that business without the information being supplied in a redacted form. Any such request must be accompanied by the Councillor's reasons for requiring the information and must be forwarded to the Head of Human Resources for determination (following consultation with the Council's Information Governance Officer and/or Monitoring Officer as appropriate). In such circumstances, the Councillor receiving such information must comply with the requirements of GDPR with regard to protecting the personal data.
- 4.9 All information held by the Council, in whatever form, is confidential to the Council unless and until such confidentiality is waived by the Proper Officer and subject to the requirements of the GDPR and the Data Protection Act 2018. Officers and elected Councillors are responsible for ensuring that personal information and data is only handled and processed in accordance with the provisions of the data protection laws and as such should familiarise themselves with their obligations under the law accordingly. Officers or Councillors who

require advice or assistance in relation to their duties under the data protection laws should take advice from the Director - Law and Governance or the Legal Team as appropriate.

#### 4.10 In relation to budget proposals:

- 4.10.1 The Administration shall be entitled to confidential information/discussions with Officers regarding options and proposals. These will remain confidential until determined by the Administration or until published in advance of Committee / Council meetings, whichever is the earlier.
- 4.10.2 The opposition groups shall also be entitled to confidential information/discussions with Officers to enable them to formulate alternative budget proposals. These will remain confidential until determined by the respective opposition groups or until published in advance of Committee / Council meetings, whichever is the earlier.
- 4.10.3 As part of the Budget process, Officers may be called upon to give advice on budgetary proposals, wherever they may emanate from (once political confidentiality has been lifted). This is in addition to the "normal" rights that any Councillor has to seek advice "in confidence" from Officers. In addition, Officers may feel it appropriate to offer advice to individuals, groups or all Councillors. In doing so, they should be aware of the need to remain impartial. It is appropriate and indeed, in certain circumstances, necessary that as a matter of professional judgement, if a proposed course of action is imprudent, that Officers should advise the Councillors that this is so. It would, however, be for the Officer to decide how and when to do so, subject to the general rules outlined in paragraph 4.8 above. This is without prejudice to issues of legality and financial administration which are covered by specific duties placed on the S151 Officer and Monitoring Officer.
- 4.10.4 In view of the need to ensure that the professional integrity of Officers is not impugned, deliberately or inadvertently, the following principles will be applied (although they may be departed from by the Chief Executive, Monitoring Officer or S151 Officer as and when appropriate given their specific statutory duties):
  - 4.10.4.1 any advice or information provided to any Councillor(s) in writing will be marked 'strictly confidential', signed and dated by the responsible Officer and shall follow the guidelines set out in Appendix B;
  - 4.10.4.2 generally, such advice / information will be provided to the Group Leaders, unless there are over-riding considerations associated with the statutory responsibilities of the Chief Executive Officer, Financial Officer (S151 Officer)/Monitoring Officer which would warrant the advice being shared with all Councillors;

- 4.10.4.3 Group Leaders and Councillors who received such advice will treat such advice as strictly confidential to the Council and will ensure that, if such advice is further shared or disseminated within their groups, their groups understand that the advice is confidential to the Council and not to be disclosed further under any circumstances;
- 4.10.4.4 Officers will also provide, as appropriate, briefings for either Group Leaders and/or all Councillors as requested by the Group Leaders and/or determined by the Chief Executive, Chief Financial Officer (S151 Officer) and/or Monitoring Officer prior to the Budget on any particular issues or matters which those Officers, as a matter of professional judgement, consider should properly be drawn to Councillors' attention.
- 4.11 The over-riding obligation will be to ensure that the integrity of the administration of public affairs is maintained. The prime responsibility of Officers in the matter of any challengeable decision arises in advising Councillors before decisions are reached. It is incumbent, in these circumstances, for Councillors to be fully advised on the legal and financial consequences of any proposed course of action.
- 4.12 It must not be assumed by any party group or Councillor that any Officer is supportive of any policy or strategy developed because of that Officer's assistance in the formulation of that policy or strategy. As per the Code of Conduct Officers should not be put under undue pressure to recommend a particular policy or strategy. If Officers perceive they are being put in such a position they should contact their direct line manager and the Monitoring Officer who will make an assessment and agree an appropriate course of action.
- 4.13 Any particular cases of difficulty or uncertainty in this area of Officer Advice to party groups should be raised with the Chief Executive who will discuss them with the relevant Group Leader(s).

## **5. The Relationship: Officer Support: The Cabinet**

- 5.1. It is clearly important that there should be a close working relationship between Cabinet Councillors and the Officers who support and/or interact with them. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officer's ability to deal impartially with other Councillors and other party groups.
- 5.2. Whilst Councillors who form the Cabinet will routinely be consulted as part of the process of drawing up proposals for consideration or the agenda for a forthcoming meeting, it must be recognised that in some situations an Officer will be under a professional duty to submit a report. Similarly, a Director or other senior Officer will always be fully responsible for the contents of any report submitted in his/her name. Any issues arising between a Cabinet

member and an Officer in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.

- 5.3. The Cabinet has wide ranging leadership roles. It will:
  - 5.3.1. lead the community planning process and the search for Best Value, with input and advice from Overview and Scrutiny Committees, area committees and any other persons as appropriate;
  - 5.3.2. lead the preparation of the local authority's policies and budget;
  - 5.3.3. take in-year decisions on resources and priorities, together with other stakeholders and partners in the local community, to deliver and implement the budget and policies decided by the Full Council; and be the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.
- 5.4. Where functions which are the responsibility of the Cabinet are delegated to Officers or other structures outside the Cabinet, the Cabinet will nevertheless remain accountable to the Council, through Overview and Scrutiny Committees, for the discharge of those functions. That is to say, the Cabinet will be held to account for both its decision to delegate a function and the way that the function is being carried out.
- 5.5. Under Cabinet Arrangements, individual Councillors who make up the Cabinet are allowed to formally take decisions. The Cabinet and Cabinet Councillors must satisfy themselves that they are clear about what exactly they can and cannot do.
- 5.6. The Council has put in place mechanisms / protocols which ensure that (as with the Council, its Committees and Sub-Committees, and the Cabinet and its Committees) an individual Cabinet member seeks advice from relevant Officers before taking a decision within her or his delegated authority. This includes taking legal advice, financial advice and professional Officer advice (particularly about contractual matters) as well as consulting the Monitoring Officer where there is doubt about the legality of any decisions.
- 5.7. As a result of the particular issues arising during contractual discussions, particular guidance has been provided for all Councillors at Appendix D to this Officer / Councillor Protocol. This guidance is not exclusively aimed at Cabinet members – it is specifically aimed at all Councillors, and for that reason, all Councillors should be aware that their conduct during a procurement exercise should follow the guidance in Appendix D.

- 5.8. Decisions taking by individual Cabinet members give rise to legal and financial obligations in the same way as decisions taken collectively. Therefore, individual Cabinet members should always be aware of legal and financial liabilities (consulting the Monitoring Officer and S151 Officer as appropriate) which will arise from their decisions. To ensure effective leadership for the community and the communities it serves, there are arrangements to ensure co-ordination of and sharing responsibility for Cabinet decisions including those made by individuals.
- 5.9. Officers will continue to work for and serve the local authority as a whole. Nevertheless, as the majority of functions will be the responsibility of the Cabinet, it is likely that in practice many Officers will be working with the Cabinet for most of their time. The Cabinet must respect the political neutrality of the Officers. Officers must ensure that, even when they are predominantly supporting the Cabinet, that their political neutrality is not compromised.
- 5.10. In organising support for the Cabinet, there is a potential for tension between Chief Officers and Cabinet members. All Councillors and Officers need to be constantly aware of the possibility of such tensions arising and they need to work together to avoid such tensions and conflicts existing or being perceived and to resolve the same where they exist.

## **6. The Relationship: Officer Support: Overview and Scrutiny**

- 6.1. Overview and Scrutiny is an important constituent part of effective democracy and the Council's constitutional arrangements. Officers have a significant role in making it effective. However, it is not Overview and Scrutiny's role to act as a disciplinary tribunal in relation to the actions of Councillors or Officers. Neither is it the role of Officers to become involved in what would amount to disciplinary investigations on a committee's behalf. This is the Chief Executive's function alone in relation to staff, the Monitoring Officer's and the Standards Committee as regards the conduct of Councillors. This means:
  - 6.1.1. Overview and Scrutiny's questioning should not be directed to the conduct of individuals with a view to allocating criticism or blame but should be directed, with a sense of establishing the facts about what occurred in the making of decisions or implementing of Council policies; and
  - 6.1.2. in these circumstances, it is for the Chief Executive to institute a formal enquiry, and Overview and Scrutiny may ask (but not require) him/her to do so.

- 6.2. Overview and Scrutiny should not act as a “court of appeal” against decisions or to pursue complaints by individuals (Councillors, Officers or Councillors of the public) as other procedures exist for this. These are internal, e.g. the Corporate Complaints Procedure, and external/statutory, e.g. Local Government Ombudsman or appeal to the Courts. That said,
  - 6.2.1. Overview and Scrutiny may investigate the manner in which decisions are made but should not pass judgements on the merits of a decision in individual cases;
  - 6.2.2. they can comment, however, on the merits of a particular policy affecting individuals.
- 6.3 It is recommended that Overview and Scrutiny Committees advise Officers of indicative topics about which they will be asked by a Committee, so giving them adequate time to prepare. Where possible Overview and Scrutiny Committees should provide written questions beforehand, so that the answers can form the basis of the questioning and discussion. Questioning should not stray outside the subject area that the Committee has previously indicated.
- 6.4 Consideration should be given to any Overview and Scrutiny Guidelines or guidance for Councillors and Officers when an Overview and Scrutiny Committee is taking evidence’ including:
  - 6.4.1 the level and extent of questioning, and the depth to which Overview and Scrutiny Committees may probe Officers is dependent upon the seniority of the Officers present – accordingly when calling Officers to give evidence, Committees may wish to consider the level and nature of the Officer it wishes to have before them in the light of the line of questioning it wishes to follow;
  - 6.4.2 Officers may be asked to give a professional opinion, and Officers may be asked to give alternative options. Officers may not confine themselves solely to justifying either the position of or the advice that they gave to the Cabinet, although in giving options, it is to be expected that they will explain the rationale for the advice that they gave and if the advice given to the Cabinet reflects, in their professional opinion, the best option, to justify that;
  - 6.4.3 it is appropriate for Overview and Scrutiny Councillors to ask Officers to explain and justify advice given to Councillors, whether on the Cabinet or otherwise, prior to decisions being taken, and to justify decisions Officers have taken under delegated powers.
- 6.5 Officers are expected:
  - 6.5.1 to maintain political impartiality at all times when commenting on the Cabinet’s / Council’s policies and actions;

- 6.5.2 to be prepared to explain and justify advice given to Councillors, including the Cabinet and the Council prior to decisions being taken and to justify decisions they themselves have taken under the Scheme of Delegation;
- 6.5.3 to ensure that an Officer of sufficient seniority appears before the relevant meeting in the light of the indicative topics supplied by Overview and Scrutiny in advance;
- 6.5.4 where requested to provide information to Scrutiny, e.g. on alternative options, to provide that information in as a comprehensive and timely fashion as if the request had come from the Cabinet.
- 6.5.5 to respond to questions from Councillors in an open, constructive and helpful manner;
- 6.5.6 not to mislead or be economical with the truth.

## **7. Support Services to Councillors and Party Groups**

- 7.1. The only basis on which the Council can lawfully provide support services (e.g., stationery, typing, printing, photo-copying, transport etc.) to Councillors is to assist them in discharging their role as Councillors of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes.

## **8. Councillors' Access to Information and to Council Documents**

- 8.1. Councillors have the ability to ask for information pursuant to their legal rights to information. This right extends to such information, explanation and advice as they may reasonably need in order to assist them in discharging their role as a Councillor of the Council. This can range from a request for general information about some aspect of the Council's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the relevant Director or another senior Officer of the Directorate concerned. Requests for employee related information (whether a group of employees or individual employees) must be treated in accordance with paragraphs 4.8 – 4.10 above. In cases of doubt, Councillors should seek assistance from the Director - Law and Governance.
- 8.2. As regards the legal rights of Councillors to inspect Council documents, these are covered partly by statute and partly by the common law.
- 8.3. Councillors will find set out in Appendix C guidance on their rights to obtain information. The law in this area is complex, legislation including the Access to Information provisions of the Local Government Act 1972; the GDPR and Data Protection Act 2018 as well as the Local Government Act 2000 have all had an impact. The guidance note set out in Appendix C maps the hierarchy of rights of Councillors to information, but should be read in combination with the

contents of the Constitution, most particularly the Access to Information Procedure Rules which cover the statutory obligations of the Council in terms of information and its relationship with the decision-making process.

- 8.4. Finally, any Council information provided to a Councillor is deemed to be information provided in confidence, is subject to the protections afforded by the GDPR and Data Protection Act 2018 and must only be used by the Councillor for the purpose for which it was provided, i.e. in connection with the proper performance of the Councillor's duties as a Councillor of the Council. Therefore, for example, early drafts of Committee reports / briefing papers are not suitable for public disclosure and should not be used other than for the purpose for which they were supplied. This point is emphasised in the Councillors' Code of Conduct.
- 8.5. Failure to observe this obligation or disclosure of confidential information may amount to a breach of the Code of Conduct. Failure to safeguard and protect the confidentiality of personal information within the meaning of the GDPR and Data Protection Act 2018 may result in prosecution of the Authority and / or any individual Officer or Councillor by the Information Commissioner and the imposition of significant monetary penalties.

## **9. Correspondence and Advice**

- 9.1. Councillors seeking advice from Officers shall be entitled to assume that such advice is given under "Chatham House rules" i.e. not for further disclosure in terms of disclosure to other Councillors, unless otherwise agreed with the Officer(s) concerned.
- 9.2. Correspondence between an individual Councillor and an Officer should not normally be copied (by the Officer) to any other Councillor. In other words, a system of "silent copies" should not be employed.
- 9.3. Official letters on behalf of the Council should normally be sent in the name of the appropriate Officer, rather than in the name of a Councillor. It may be appropriate in certain limited circumstances (e.g., representations to a Government Minister) for a letter to appear in the name of a Cabinet member or the Leader or the Leaders of all political groups represented on the Council by agreement, but this should be the exception rather than the norm. Letters which, for example, create legal obligations or give instructions on behalf of the Council should never be sent out in the name of a Councillor, Cabinet or otherwise.
- 9.4. Correspondence received by Democratic Services from the public with a request that it is either copied to Councillors and/or forwarded to Councillors will, subject to any overriding legal considerations / excessive cost, be forwarded / copied at the discretion of the Director - Law and Governance.



9.5. Officers responding to Councillors' queries should do so in a timely manner, and in accordance with the agreed standards for replying to letters and emails from Councillors namely:

9.5.1. Councillors will receive an acknowledgement within two working days of the date of the enquiry, to include the name and contact details of the Officer dealing with the enquiry (subject to leave, etc.);

9.5.2. a response will be given as soon as possible but not later than 10 working days of the date of the enquiry. If it is not possible to give a detailed response within 15 working days, the Councillor should be informed within that period of the date by which they can expect to receive the information requested and be given a reason for the delay.

## **10. Publicity and Press Releases**

10.1. Councils are accountable to their electorate. Accountability requires local understanding. This will be promoted by the Council, explaining its objectives and policies to the electors and Council Tax payers. In recent years, all Councils have increasingly used publicity to keep the public informed and to encourage public participation. Every Council needs to tell the public about the services it provides. Increasingly, Councils see this task as an essential part of providing services. Good, effective publicity aimed to improve public awareness of a Council's activities is, in the words of the Government, 'to be welcomed'.

10.2. Publicity is, however, a sensitive matter in any political environment because of the impact it can have. Expenditure on publicity can be significant. It is essential, therefore, to ensure that local authority decisions on publicity are properly made in accordance with clear principles of good practice. The Government has issued a Code of Recommended Practice on Local Authority Publicity. It is appended to this Officer/Councillor Protocol (Appendix A). The purpose of the Code is to set out such principles. The Code affects the conventions that should apply to all publicity at public expense and which traditionally have applied in both central and local government.

10.3. Officers and Councillors will, therefore, in making decisions on publicity, take account of the provisions of this Code. If in doubt, Officers and/or Councillors should initially seek advice from the Head of Communications who will refer the matter to the Monitoring Officer, if necessary / appropriate. Particular care should be paid to any publicity used by the Council around the time of an election. Particular advice will be given on this by the Director - Law and Governance as appropriate.

## **11. Involvement of Ward Councillors**

11.1. Whenever a public meeting is organised by the Council to consider a local issue, all the Councillors representing the Ward or Wards affected should as a matter of course, be invited to attend the meeting. Similarly, whenever the Council

undertakes any form of consultative exercise on a local issue, the Ward Councillors should be notified at the outset of the exercise. More generally, Officers should consider whether other policy or briefing papers or other topics being discussed with a Cabinet member should be discussed with relevant Ward Councillors. Officers should seek the views of the appropriate Cabinet member(s) as to with whom and when this might be done.

## **12. Conclusion**

- 12.1. Mutual understanding, openness on these sorts of sensitive issues and basic respect are the greatest safeguard of the integrity of the Council, its Councillors and Officers.
- 12.2. This version of the Protocol on Councillor-Officer Relations was approved by the Council as part of the Constitution in January 2019.
- 12.3. Copies of the Protocol will be issued to all Councillors as part of the Constitution upon election.
- 12.4. Questions of interpretation of this Protocol will be determined by the Director - Law and Governance.

**GUIDELINES FOR COUNCIL-WIDE BRIEFING NOTES**

1. This Guidance applies to briefing notes issued on a Council-wide basis associated with / during the Budget process.
2. All Officer Advice should always take account of and follow the general guidance set out in this Officer / Councillor Protocol and the Council's Constitution.
3. Specific advice is contained in this Officer / Councillor Protocol as to Council-wide briefing notes issued as part of / during the Budget process at paragraphs 5.12 and 5.13 and this should be followed.
4. The content of any briefing notes issued on a Council-wide basis associated with/during the Budget process, should follow this guidance as to its contents:
  - (a) Topic;
  - (b) Provenance - who requested the note be produced. Advice may be reactive or proactive – so it may be an Officer decision that this advice was needed to be placed before Councillors – in which case state who made that decision;
  - (c) What is the current Council policy?
  - (d) What is professional Officer Advice – including what are the ramifications of the current Council policy and any possible / proposed changes to that?
  - (e) Who is the author of the briefing note?
  - (f) The note should be dated.
5. Any such Council-wide briefing notes associated with the Budget process should, if not written by the relevant Directors, be cleared with them as well as the Chief Financial Officer.
6. Before being issued, any Council-wide briefing notes associated with the Budget process should be cleared with the Chief Executive.
7. Councillors should be left in no doubt as the provenance of any Council-wide briefing notes associated with / issued during the Budget process and should be clear what is Officer professional advice regarding the ramifications of policy options / decisions.

**BEST PRACTICE GUIDANCE ON CONDUCT FOR COUNCILLORS DURING A PROCUREMENT EXERCISE**

**A Background**

1. Under the Council's Code of Conduct for Councillors, a Councillor must not, amongst other things, in his/her official capacity or any other circumstance, conduct him or herself in a manner which could reasonably be regarded as bringing his/her office or the authority into disrepute, nor do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the Council.
2. In the context of a procurement exercise, this would include taking any action which could, in the opinion of the Monitoring Officer or Chief Financial Officer, compromise the objective handling of the tendering processes and lead to (or likely to expose the Council to) a successful legal challenge.
3. Tendering procedures are highly complex and there are risks involved in the failure to comply with the UK and European legislation. This guidance is intended to assist in raising awareness of the risks and to ensure that proper procedures are in place to minimise such risks.

**B. Legal Context**

4. When awarding contracts, the Council is subject to the requirements of administrative law, contractual law, EU requirements on non-discrimination and free movement of goods and services, general common law principles and the specific rules on public procurement discussed below.
5. There is a general statutory obligation under procurement law for contracting authorities to comply with the public procurement rules. There are also specific provisions which establish the procedures for remedy where an aggrieved contractor, supplier or service provider suffers, or is at risk of suffering, some form of loss due to non-compliance by the contracting authority with the procurement rules.
6. Enforcement of the procurement rules operate both at the EU and at the national level. The national courts or tribunals in each state are empowered to take measures to remedy any violation of the law and to compensate for loss. At the EU level, the Commission can commence proceedings against the national government concerned under the EC Treaty if any contracting authority breaches the rules. In the UK, the obligation to comply with the provisions of the Regulations in relation to contracts that fall within the ambit of those regulations is considered in law to be a 'duty' owed to providers.
7. Non-compliance with EU law is not a criminal offence, but it can give rise to a breach of statutory duty and will open the Council to a legal challenge by way of Judicial Review and/or claim for damages. If a Councillor's action(s) or

inaction(s) have caused the same, the Councillor may have acted beyond his/her powers and/or be in breach of the Code of Conduct for Councillors. In such event, the Monitoring Officer will refer the matter to the Standards Committee for determination by way of a written complaint against the relevant Councillor(s). Ultimate sanction is disqualification from office and/or civil action in damages.

8. If a corrupt practice or other criminal activity is alleged or discovered under the Prevention of Corruption Acts or Bribery Act 2010 against a Councillor or Officer, the Monitoring Officer will consider how the Police may be used to help safeguard and protect the interests of the Council.

**C. Best Practice Guidance**

9. In light of the inherent risks involved in a failure to comply with legal requirements affecting tendering procedures, Councillors / Officers should have regard to the following:
  - 9.1 Communication (including any information, instruction, or response) from and to the Council and Tenderers (or potential Tenderers or potential subcontractors to Tenderers) involved in a procurement process must be clear, duly recorded, appropriate and understood by the parties;
  - 9.2 Tenderers / sub-contractors are always advised not to arrange or participate in any meeting(s) or other form of communication with any Councillor(s) or Officer(s) of the City Council that has not been arranged under and in accordance with any specific guidance/protocol issued in relation to the procurement process in question. As a general rule, where no such specific guidance/protocol has been issued, such meetings or other form of communication should not take place without the written consent of the Monitoring Officer and the Chief Financial Officer;
  - 9.3 Where an existing supplier / sub-contractor to the Council seeks a meeting or other form of communication with a Councillor - ostensibly about matters related only to the existing supply - and that existing supplier / subcontractor may potentially be or is, at that time, also a Tenderer / subcontractor in relation to either a planned / foreseen procurement process or an ongoing procurement process of which the Councillor ought reasonably to be aware of, the Councillor should decline to meet or otherwise ensure that a sufficiently senior Officer is present at such meeting to safeguard the probity and propriety of the Council's actions or inactions;
  - 9.4 Any meeting between any Tenderer / sub-contractors and a Councillor or Officer of the Council, should be kept to an absolute minimum, as the risk of allegation(s) of fraud and/or corrupt practices is a high possibility and one to be avoided. Any meetings that do take place with Tenderers / subcontractors must be contemporaneously minuted / noted and, in the exceptional event that a one-to-one meeting does take place, the contemporaneous minutes / notes of

the meeting must be provided to the Monitoring Officer within three days of the meeting, for the file, so as to protect and safeguard the relevant Councillor / Officer from any unwarranted accusations; and

- 9.5 Confidential information relating to any Tenderer / sub-contractor (or prospective Tenderer or sub-contractor) must remain confidential, unless the Courts or the law orders otherwise. Where any Councillor or Officer is in any doubt about whether a meeting or other form of communication with a Tenderer / sub-contractor is appropriate or permitted, s/he should seek guidance from the Monitoring Officer.

**GUIDANCE ON THE PROVISION OF WARD / BOROUGH WIDE INFORMATION TO COUNCILLORS**

This guidance identifies when officer colleagues should inform / consult councillors on issues in their ward or across the borough.

Officer colleagues should be aware that councillors:

- (a) are elected to represent the community in their wards; and
- (b) are expected by the community, parish and town councils to be aware of Council decisions and issues affecting the ward.

**The Golden Rules:**

**1. No Surprises**

Ward councillors should be the first in their ward to hear about proposed decisions and operational issues that affect their ward. Ward councillors should not learn about any matter from the parish / town council, constituents or the media.

Officer colleagues, when responding to requests from ward councillors' constituents; or a parish / town council, should always consider copying the ward councillor(s) into any response, or alerting them to the issue if it is not of a confidential nature.

Report authors must inform councillors of any impact the recommendations in the report would have on the councillors' ward by no later than when the report is published. Officer colleagues should never rely on the councillors picking up the issue from the agenda papers.

**2. Engage Constructively**

Officer colleagues should engage constructively with ward councillors to seek their views and shape decisions that affect their ward. Ward councillors can provide helpful guidance and help identify key contacts.

**3. Keep Informed of Progress**

Officer colleagues should regularly update ward councillors on issues as they develop. This includes when officers are dealing with casework raised by a ward councillor, but this information should only be shared with other ward councillors if requested by the ward councillor who originated the case work.

When the issue is of borough-wide significance the Golden Rules should be applied to all councillors.