

Appendices: 1



# COUNCIL

**20 JULY 2020**

**Agenda Status: Public**

**Directorate: Borough Secretary**

<b>Report Title</b>	<b>Member/Officer Relations Protocol</b>
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## **1. Purpose**

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- 1.1 To consider the recommendations in respect of the Member/Officer Protocol made to full Council by the Standards Committee at its meeting on 29 June 2020.

## **2. Recommendations**

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2.1 It is recommended:

2.1.1 That full Council notes and thanks the Standards Committee and relevant officers for their work on the Protocol on Member/Officer relations.

2.2. That full Council considers the comments of the Standards Committee on the draft Protocol on Member / Officer relations, subject to any additions Members may consider appropriate.

2.1.1 That full Council approves the Member/Officer Relations Protocol attached as Appendix one for adoption into the Council's Constitution and delegates the power to the Monitoring Officer to incorporate the changes into the constitution.

### **3. Issues and Choices**

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#### **3.1 Report Background**

- 3.1.1 In December 2018 internal audit made recommendations on various issues relating to member/officer relations at the Council. The audit included interviewing various Officers and Members to obtain their views on working relations; a survey of Officers and Members to establish whether the roles and expectations set out in the Constitution are met; a comparison of parts of the Council's Constitution with those of other authorities; and, observation of a meeting of the Executive Programme Board to assess its working practices.
- 3.1.2 The Internal Audit Report made several recommendations which can be summarised as, revise the Protocol; convene a Member / Officer Working Group to contribute to the revision; launch a training programme to raise awareness of the revised Protocol; and ensure that the revised Protocol contains a full description of Members' role on the Council.
- 3.1.3 At its meeting in September 2019, the Standards Committee considered a draft revised Protocol and, in line with the recommendation in the BDO report, appointed a Working Group consisting of Members and Officers to consider and contribute to the draft. The Standards Committee Working Group met on 27 January 2020 to consider the report.
- 3.1.4 Members of the Standards Committee raised a number of practical issues based on their experience of the relationship between Members and Officers and considered whether the draft Protocol dealt with these satisfactorily. These included:
- 3.1.4.1 That Members should not 'ambush' officers at short notice and should make appointments were possible. The Group recognised that the work being undertaken in relation to other parts of the BDO report addressed this issue, specifically the re-launch of the Member Contact Centre.
- 3.1.4.2 That where possible, technology should be utilised to provide information to Members to reduce the impact on Officers. The Group recognised that this was also addressed to an extent by the work to re-launch of the Member Contact Centre.
- 3.1.4.3 That timescales should be established for Officers to respond to Members' requests for information. The Group suggested that this could be incorporated into the work being undertaken to re-launch the Customer Contact Centre.
- 3.1.4.4 That advice from officers should be available to all Members, regardless of which political group (if any) they belong to. The Group agreed that the draft Protocol clearly stated that advice should be available to all Members.

3.1.4.5 The Working Group agreed that the draft Protocol addresses the issues highlighted in the BDO report along with those issues which Members and Officers experience in the course of their usual working relationship. The Working Group did, however, form the view that addressing the matters referred to at paragraphs 3.1.4.1 to 3.1.4.3 above may assist in delivering the objects of the Protocol.

3.1.4.6 The Standards Committee, at its meeting on 29 June 2020, received the report of the Working Group. The Committee highlighted that action may only be taken against a Member where they are alleged to have breached the Code of Conduct adopted by the Council under the provisions of Part 1 of the Localism Act 2011. When such a complaint is made it must be dealt with in accordance with the *Arrangements for dealing with allegations of breaches of the Northampton Borough Council Members' Code of Conduct and of Codes of Conduct adopted by Parish Councils* which are contained in the Constitution for the purpose of implementing those provisions of the Localism Act 2011. Case law in 2018 has made clear that it is not permissible to have a 'dual system' of considering allegations against Members by using an authority's grievance procedure and, should such a course of action be taken, it will not bind the Member concerned. Accordingly, full Council should note that action may only be taken against a Member in relation to any alleged breach of any revised Protocol if the allegation concerned would also be a breach of the Council's Code of Conduct.

3.1.4.7 The Standards Committee therefore resolved that:

"RESOLVED:

- (1) The work undertaken by the Member and Officer Working Group was noted.
- (2) Having considered the comments of the Working Group it was agreed, to recommend the Protocol to full Council for adoption into the Constitution.

### **3.1 Decision details**

3.1.2 Members may decide not to approve the draft Member/Officer Relations Protocol for inclusion in the Council's constitution.

## **4. Implications (including financial implications)**

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### **4.1 Policy**

4.1.1 There are none arising directly from this report.

### **4.2 Resources and Risk**

4.2.1 This report does not have any direct resource implications.

### **4.3 Legal**

- 4.3.1 As stated in section 3 of this report, action may only be taken against a Member where they are alleged to have breached the Code of Conduct adopted by the Council under the provisions of Part 1 of the Localism Act 2011. When such a complaint is made it must be dealt with in accordance with the *Arrangements for dealing with allegations of breaches of the Northampton Borough Council Members' Code of Conduct and of Codes of Conduct adopted by Parish Councils* which are contained in the Constitution for the purpose of implementing those provisions of the Localism Act 2011.
- 4.3.2 Case law in 2018 has made clear that it is not permissible to have a 'dual system' of considering allegations against Members by using an authority's grievance procedure and, should such a course of action be taken, it will not bind the Member concerned.
- 4.3.3 Accordingly, full Council should note that action may only be taken against a Member in relation to any alleged breach of any revised Protocol if the allegation concerned would also be a breach of the Council's Code of Conduct.

### **4.4 Equality**

- 4.4.1 There are no direct equality and diversity implications arising from this report

### **4.5 Environmental Implications (including climate change issues)**

- 4.5.1 There are none arising from this report.

### **4.6 Other Implications**

- 4.6.1 The constitution will be incorporate the Member/Officer Protocol if approved.

## **5. Background Papers**

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- 5.1 Reports and minutes of the meetings of the Standards Committee/working Group of September 2019 and June 2020
- 5.2 Internal Audit Report (BDO) December 2018.

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## **Protocol on Member / Officer Relations**

### **1. Introduction**

- 1.1** As a supplement to the Northampton Borough Council Code of Conduct for Councillors, this Protocol provides clarity in respect of Member / Officer relations.
- 1.2** Relations between Members and Officers can be complex and cover a wide variety of matters. This Protocol therefore gives guidance and explanation on the issues that most commonly arise and give cause for concern as a result of that arrangement. The principles set out in this Protocol will also apply to dealing with other similar issues which may arise from time to time and are not expressly covered.
- 1.3** This Protocol seeks to establish best practice and promote greater clarity and certainty. If any Member is unsure about any matter they should contact the relevant Chief Whip and/or the Chief Executive and/or the Monitoring Officer for appropriate advice and assistance. If any Officer is unsure about any matter, they should initially contact their Head of Service.

NB A separate Protocol on Planning can be found in Part 5 of this Constitution in respect of conduct on planning matters. There is also a Northampton Borough Council Employees' Code of Conduct, which can be found on the intranet.

### **2.0 Roles**

#### **2.1 Elected members**

The role of members is complex, being set out in the Council's Constitution, including Article 2.3.1. Members have a number of rights and duties under the Constitution however, these can be summarised as:

- initiating, developing and directing policy;
- being involved in decision making;
- setting the Council's strategic direction;
- managing the Council at a strategic level;
- being democratically accountable to the electorate;
- dealing with case work on behalf of constituents; and,
- representing the Council on other bodies.

#### **2.2 Officers**

The role of Officers is also complex and varied including many specialist functions however, it can be summarised as follows:

- to provide professional advice needed by Members to develop policy and perform the Council's functions;
- to implement the Council's lawfully made decisions;

- to run the Council's services;
- make day to day managerial and operational decisions under the Council's Scheme of Delegations; and
- to provide information relating to the Council's Services and Policies.

## 2. General Member/Employment Issues

### Key Issues

- 2.1 In order to ensure the business of the Council is transacted effectively, efficiently and lawfully, and with a view to ensuring that the Council is not brought into disrepute, the **key guiding principle** for Members and Officers is one of “**engendering mutual trust, openness, honesty, fairness, transparency and treating everyone with respect**”.
- 2.2 **Officers must act in the best interests of the Council as a whole**, and must not give politically partisan advice. Anyone breaching this requirement could face disciplinary action. Advice given by Officers should:
- 2.2.1 be objective;
  - 2.2.2 be consistent;
  - 2.2.3 be based on professional judgment;
  - 2.2.4 be politically neutral; and,
  - 2.2.5 include all factors which are relevant to the issue concerned.
- 2.3 Political Group meetings and Executive Programme Board, while they perform an important part in the preliminaries to Council decision-making, are **not** formal decision-making bodies and, as such, are **not empowered, to make decisions** on behalf of the Council. Conclusions reached at such meetings do not, therefore, **rank as Council decisions** and **do not bind later meetings** at which decisions are to be **lawfully made**.
- 2.4 Officer support should be equally available to all political Groups but must **not** extend beyond providing information and advice in relation to **Council business**.
- 2.5 It is good practice for party political debates and decision-making at political Group meetings to take place **in the absence of Officers**, in order to avoid any suspicion of impropriety or misunderstanding.
- 2.6 Officers must respect the confidentiality of any discussions on formulation of policy with Members at which they were present and, when any information is disclosed to them at a group meeting, must not pass this on to any other group.
- 2.7 Any breach of this part of the Protocol by an Officer must be brought to the attention of the Chief Executive for consideration.

### Legal and District Audit Considerations

- 2.8** Members of the Council do not, as elected Members, have any special immunity from civil or criminal wrongs involving fellow Members, Officers or members of the public. Members must abide by the Code of Conduct for Councillors and ensure they do not, for example, slander or libel another person.
- 2.9** Members must also not pressurise any employee to change their professional advice or opinion on any Council business matter given in accordance with paragraph 2.2 above or do anything that compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, the Council. It is also essential that Members are clear about their roles and the roles of employees, so as to avoid getting inappropriately involved in, for example, the internal office management, discipline and/or other employment related issues, as the actions of a Member may be held to be the actions of the Council as an “employer”, giving rise to legal proceedings against the Council.

### **Standards Issues**

- 2.10** Any member of the public (including employees) can complain to the Council’s Monitoring Officer in respect of any alleged breach of the Code of Conduct for Councillors in accordance with the Arrangements for Dealing with Allegations of Breaches of the Northampton Borough Council Members’ Code of Conduct and of Codes of Conduct adopted by Parish Councils, and/or bring private civil litigation proceedings against an elected Member. Breach of this Protocol could amount to a breach of the Code of Conduct and lead to such a complaint. The External Auditor can also take legal action against an elected Member and/or the Council as a whole, for certain breaches of the law.

### **Public Relations Issues**

- 2.11** The Council’s Communications Team is, subject to the direction of the Cabinet of the Council, responsible for dealing with the press and other media organisations on behalf of the Council. It is important, therefore, that all official communications relating to the Council (but not party political or private matters) are dealt with by the Communications Team, so as to ensure the proactive, effective and efficient management of the Council’s public image, relations and interface with the community. The Communications Team will take appropriate legal and other advice in relation to any such contact with the press or other media.

## **3. Specific Points on Member/Employee Relations**

- 3.1** The relationship between Members and employees generally is characterised by **mutual trust, respect and courtesy**. These are **essential** for good local government and enhance local democracy.
- 3.2** Close personal familiarity between individual Members and employees can damage professional relationships and can prove embarrassing to other Members and employees. Therefore, close personal relationships between

Members and employees and situations which could give rise to suspicion and/or the appearance of improper conduct or behaviour should be avoided.

### **Chief Executive**

- 3.3** The Chief Executive is an employee of the Council as a whole with overriding responsibility to the Council, and not to any party political group.

The Chief Executive must nevertheless work closely with the Administration to give it information, assistance, and advice. Subject to maintaining political neutrality the Chief Executive may develop a special relationship with the Administration leadership and will not without consent disclose to the other Groups any matters discussed with that leadership.

The political neutrality of the Chief Executive should be respected by Members and employees alike. The Chief Executive should not be asked to take any action which could prejudice that neutrality, or make it difficult to serve a different majority political party at some future time in the Council.

- 3.4** All Members of the Council have a right of access to the Chief Executive. Where a Member requires information, it will be provided if it is readily available, subject to any restrictions in the Council's Constitution or relevant legislation. The Chief Executive is free to give advice on a confidential basis about procedural matters to any Member. In doubtful cases, the Chief Executive is entitled to seek the instructions of the Leader or a Chair, Cabinet Member, the Cabinet or a Committee before responding to a request from a Member.

- 3.5** The following principles govern the relationship between the Chief Executive and Groups not comprising all or part of the Administration:

It is proper for the Chief Executive to develop a working relationship with such other Groups on the Council.

The Chief Executive is free to provide information and answer procedural inquiries to Members of any Group, and will not advise as to the policies which any Group should pursue.

Subject to the confidentiality required by paragraph 3.15 the Chief Executive will ensure that the Leadership of the Administration is aware of any factual information that they have provided to representatives of other Groups, unless it either be of a routine or trivial nature or to do so would be a breach of confidence or other statutory, formal or Guideline requirement.

Because the Chief Executive is an employee of the whole Council, they accordingly, will draw the attention of the Leader to any case where consideration should be given to affording information, consultation, or representation to the Minority Groups.

In applying these principles to any given situation, the Chief Executive will have regard to any statutory, Constitutional or procedural rules governing the rights of other Groups to information, consultation or representation.

- 3.6** If the Chief Executive attends a meeting of any Group, the leadership of the other Groups on the Council need not be informed. The Chief Executive will ensure that the part played in the proceedings is consistent with the political neutrality of his/her role and will not attend Group meetings at which there are persons present who are neither elected Members nor employees of the Council.

### **Other Employees**

- 3.7** The foregoing principles apply similarly to all Heads of Service (and employees acting under their direction), all of whom shall act under the general direction, seeking advice of the Chief Executive as statutory Head of Paid Service where necessary.

- 3.8** To advance the requirement that all dealings between Members and employees are conducted with mutual trust, respect and courtesy, neither party should seek to take an unfair advantage of their position. In particular, Members should recognise and pay due regard to the Council's role as an employer in their dealings with employees, as inappropriate behaviour and conduct of Members could give rise to employment cases against the Council. In particular, it is quite proper for a Member to make written/oral representations about their [constituent] employee to the Head of Service, but the Member should avoid taking a proactive part to represent or in any other way advocate on behalf of any such employee in any disciplinary procedures.

- 3.9** In seeking advice and support, Members should have due regard to the seniority of the employees with whom they are dealing and recognise that those employees owe an overriding duty to the Council as a whole, via their respective line managers and the Chief Executive, and not to any individual Member. For this reason, Members should not give direct instructions to employees unless they are specifically authorised to do so by the Council's Constitution. If so authorised, instructions should, under normal circumstances, still be given to the relevant Head of Service and not to a less senior employee and should be clearly recorded in writing.

- 3.10** Members must not put inappropriate pressure on employees (in particular junior employees) and must ensure that all communication between them (including written communication) does not bring the Council into disrepute, or lead to the breakdown of mutual trust, respect and courtesy in Member/employee relations.

### **Equality Issues**

- 3.11** The Council has statutory duties in respect of equality issues and, in accordance with the Code of Conduct for Councillors, Members must also promote equality and not discriminate against others. Members and employees

should not, therefore, by their behaviour or speech act discriminatorily with regard to a person's gender, race, age, disability, religion, ethnicity, marital status, sexual orientation or gender reassignment.

### **Employee Conduct or Capability Issues**

**3.12** Members should not raise matters relating to the conduct or capability of an employee (or of employees collectively) at meetings held in public or before the press, as employees have no means of responding publicly. If any Member feels as that they have not been treated with the proper mutual trust, respect or courtesy or has any concern about the conduct or capability of an employee, they should raise the matter privately with the relevant employee and, if necessary, the employee's Head of Service. Any concerns with regard to a Head of Service should be discussed privately with the Chief Executive and/or the Leader of the relevant Political Group.

### **Political Groups**

**3.13** Members of the Cabinet, the Overview and Scrutiny Committee and Regulatory Committees shall at all times respect the political impartiality of employees, and must not expect or encourage them to give a political view on any matter.

**3.14** Employees may properly be called upon to support and contribute to the deliberations of Groups but they must at all times remain politically neutral. This applies in particular to politically restricted posts, where employees are governed by the Local Government and Housing Act 1989. All employees must, in their dealings with Groups and individual Members, treat them in a fair and even-handed manner.

**3.15** Any request for advice given to a Group or Member will be treated with the strictest of confidence by the employees concerned, and will not be accessible to any other Group(s). Factual information upon which any advice is based will, if requested, be available to all Groups.

**3.16** When attendance is requested for Group meetings:

3.16.1 the request to attend a Group meeting must normally be made through the Chief Executive, unless previously agreed by them;

3.16.2 such a request can only be made in relation to **Council business**; and

3.16.3 employees will:

- (i) provide relevant factual and professional advice and assistance;
- (ii) normally leave during the deliberations of the Group on the issue;
- (iii) respect the confidentiality of any Group decision at which they are present; and
- (iv) not champion, defend, action or spend any resources of the Council, or be held responsible for actioning in any way whatsoever the decisions of the Group(s), unless and until such decisions have become the formal

decisions of the Council, i.e. until the person or body with responsibility for making such decisions under the Constitution has done so in accordance with all legal and procedural formalities.

#### **4. Specific Points on Overview and Scrutiny Arrangements**

- 4.1** When considering calling employees to give evidence to the Overview & Scrutiny Committee, the Chair of the Overview and Scrutiny Committee may call the Chief Executive, and/or senior Officers to give evidence to the Committee as prescribed by paragraph 13.1 of the Overview and Scrutiny Procedure Rules.
- 4.2** When asking employees to give evidence before the Overview and Scrutiny Committee, questions should be confined, so far as possible, to questions of fact and explanation of any professional opinion relating to policies and decisions. Employees must respond to questions from Members in an open, constructive and helpful manner, and must not mislead or be economical with the truth.
- 4.3** Where they consider it appropriate, the Chair of the Overview and Scrutiny Committee may ask Heads of Service to explain any advice given by them to the Cabinet or its members. For the avoidance of doubt, any private or confidential matter must be dealt with in a private or confidential manner.

#### **Unacceptable or Inappropriate Behaviour:**

- 4.4** The Chair of the Overview and Scrutiny Committee shall ensure that members of the Cabinet and employees are not questioned (whether through the nature, tone or language used), in such a manner as could be considered by a reasonable person to be hostile, offensive, derogatory, harassing, bullying, victimising, discriminatory or otherwise unacceptable or inappropriate behaviour by a Member. Equally, the Overview and Scrutiny Committee has no jurisdiction to deal with matters, which are of a disciplinary nature for the relevant Group (in respect of Members) or the relevant Head of Service/Chief Executive (in respect of employees).

#### **NB Note on Use of Local Authority Resources**

- 4.5** The only basis on which the Council can lawfully provide support services to Members (e.g. computers, or other IT software, stationery, typing, printing, photocopying, transport etc.) is to assist them in the effective and efficient discharge of their duties and role as Members of the Council. Such support services must, therefore be only used for Council business. The same should not be used for, or in connection with, party political or campaigning activities, or for private purposes.

#### **5. Examples of Acceptable and Unacceptable Behaviours**

- 5.1** Examples of behaviours which are acceptable

Officers and Members treating one another with mutual respect

Officers and Members recognising and respecting each other's roles

Members understanding that Officers give advice based on their professional qualifications and experience

Use of courteous language in all dealings

Prompt responses by Officers to enquiries by Members

5.2 The following are examples of behaviours which are unacceptable:

Officers failing to respond to enquiries by members

Expression of political opinions by Officers, particularly in relation to Council policy or matters being considered by Members

Attempts by Members to persuade Officers to change their professional advice

Members becoming involved in day to day staff management issues

Use of inappropriate or offensive language by Members or Officers toward one another

Officers seeking to persuade Members to make a particular decision in relation to a matter

Officers failing to give accurate or comprehensive advice to Members

Members seeking to bypass legal or Constitutional requirements