

## **Part 5 – Codes and Protocols**

### **Chapter 5 – Protocol for Councillor / Employee Relations**

#### **1. Introduction**

- 1.1 The aim of this protocol is to describe the relationships, roles and behaviours which should exist between elected Councillors and employees in a modern, well run local Council. The protocol provides guidance on how the complementary but very different roles of Councillors and employees should work. Equalities, natural justice and reasonableness are strong underlying intentions throughout.
- 1.2 This protocol is not intended to be definitive and should be read alongside other relevant documents such as the Code of Conduct for Councillors, the Code of Conduct for Employees, conditions of service, the whistle blowing procedures and the Council's Scheme of Delegation.
- 1.3 This Protocol is adopted Council policy and applies to all Councillors and, where relevant, statutory co-opted members, and to all employees of the Council. The protocol has a serious objective which may have significant consequences for those who choose not to follow these principles.
- 1.4 It is also intended that the Protocol should apply to any consultants, contractors or agency personnel working on behalf of the Council and it is the responsibility of the employing manager to ensure that this protocol is brought to the attention of such individuals at the beginning of their employment.
- 1.5 This protocol does not apply to schools unless they have specifically chosen to adopt it.

#### **2. The Distinctive Roles of Councillors and Employees**

- 2.1 The primary role of both Councillors and employees is to serve the local community to the best of their abilities.
- 2.2 To do this most effectively, Councillors and employees need to work together in a manner which combines their essential skills, knowledge and experience in a way which produces the best outcomes for individuals and communities and which is fair, sustainable and responsive.
- 2.3 It is important that both Councillors and employees respect their distinctive roles in order for relations to be clear and appropriate.

##### **Councillors:**

- (i) Councillors are elected democratically. It is their policies, ideas and decisions that people vote for.
- (ii) It is their role to:

- (a) Represent the local community and ensure that its best interests are considered during policy making;
- (b) Set the Council's strategic direction, the policy framework, corporate goals, overall priorities and targets;
- (c) Develop policy proposals with professional advice from employees;
- (d) Monitor the implementation and effect of their decisions;
- (e) Add a political dimension when appropriate.

### **Employees:**

- (i) Employees are employed by the Council to undertake an organisational role. It is their job to:
    - (a) Deliver services to the community according to the policies and requirements set by the Council;
    - (b) Draft policy proposals which accord with the overall framework set by Councillors;
    - (c) Give impartial, professional advice in the course of policy development;
    - (d) Manage the organisation.
- 2.4 Put simply, Councillors are responsible for determining policy and the Council's strategic direction; employees are responsible and accountable for suggesting and implementing policy, and delivering services.
- 2.5 Given these roles, employees are employed to work within and pursue Council policies and priorities, unaffected by personal inclinations.
- 2.6 Employees are accountable to their managers and, ultimately, the Chief Executive. They work to the instructions of their manager, and not to individual Councillors - whatever office a Councillor might hold. Councillors should not interfere with matters that are properly the responsibility of employees.
- 2.7 It follows that Councillors should not get involved in any operational situations. If a Councillor considers that something is seriously of concern, they should report the matter to the relevant Strategic or Divisional Director and leave it with them to sort out as necessary. Councillors should not engage with staff on the ground regarding what they perceive to be a problem, nor must they inflame any such problem by engaging with any members of the public who may be in the vicinity at the time.
- 2.8 The Council's Scheme of Delegation explains in more detail where specific responsibilities lie.

## **3. What Councillors Can Expect of Employees**

- 3.1 Councillors can expect employees:

- To do their job effectively and efficiently;
- To strive to provide services which offer best value;
- To behave in a manner which accords with the standards set by the Council;
- To be helpful, respectful and courteous to Councillors;
- To assist Councillors in carrying out their role in connection with Council business (employees cannot, however, assist with party political or campaigning activity, or with private business);
- To deal with Councillors' enquiries fairly and efficiently, in accordance with agreed protocols and timescales;
- To be open and honest with Councillors. To tell the whole story, giving any bad news as well as the good;
- To keep Councillors well informed;
- To work with all Councillors equally and fairly;
- To act lawfully;
- To give advice or recommendations based on reasoned options;
- To ensure that Councillors have all the information necessary to make informed judgements in a timely fashion and presented in a way which is easy to understand in accordance with Plain English guidance wherever practicable;
- To maintain confidentiality where it is proper for them to do so;
- Not to canvass Councillors or otherwise seek to gain favour from them for personal or career advantage;
- To have regard to social hours and generally to be sensible about contacting Councillors at potentially inconvenient times, unless in an emergency or otherwise agreed;
- Not to raise personal issues related to their employment with Councillors.

#### **4. What Employees Can Expect of Councillors**

##### **4.1 Employees can expect Councillors:**

- To accept that employees are accountable to their Manager;
- Not to become involved in the day to day management of the Council;
- To fully consider advice and recommendations for the purpose of making informed judgements;
- Not to ask employees to breach Council policy or procedures, or to act unlawfully, or outside the terms of their job;
- Not to exert influence or pressure, or request special treatment, because they are a Councillor;
- Not to request unauthorised access to resources or information held by the Council;
- Not to attempt to intervene in case management nor attempt to delve into the personal details of individuals and families;
- To accept that employees act independently of political bias;
- To treat employees in a reasonable manner and with respect;
- To be open and honest with employees;
- To act lawfully;

- To maintain confidentiality when appropriate to do so;
- To respect that employees have private lives and not to contact them outside normal working hours or at home (unless the employee is officially working from home), except in an emergency, or if otherwise agreed.

## **5. Political Neutrality and Impartiality of Employees**

5.1 The National Code of Conduct for local government employees states:

“Employees serve the Authority as a whole. They must serve all Councillors and not just those of the controlling group, and must ensure that the individual rights of all Councillors are respected”.

5.2 Councillors should understand that employees will generally operate in a politically neutral capacity. By law, some posts are specifically designated as “politically restricted”, meaning that they cannot be filled by employees who are linked to a political party or group, either through direct involvement or by, for example, canvassing on their behalf. These are mainly posts at a senior level within the organisation or where the post-holders are regularly involved, as part of their work, in advising Councillors.

5.3 Councillors should not discuss party politics with employees nor must they assume that there is an allegiance to a particular party. Councillors should not place employees in an embarrassing situation where, for example, they feel they have to agree with a particular political line, whether this be nationally or locally based, although employees must follow the overall objectives of the Council and must not work against them.

5.4 Within the framework of a formal meeting, however, it is natural that Councillors will make political statements. Employees should have a general awareness of the Council’s political direction and acknowledge that at a strategic level this is bound to have an influence. But, it is not for employees to challenge such direction and they will co-operate with it – unless it is illegal.

5.5 It is not improper that employees may sometimes wish to seek political guidance in framing policy proposals. However, when they write reports or give advice they have a duty to give professional advice and to make Councillors aware of all the options available.

## **6. Political Groups and Officers**

6.1 It is common practice for party groups to give preliminary, informal consideration to Council business in advance of the formal decision making process. Whilst it is not normal practice, employees may be asked to attend party group meetings to brief Councillors in a professional capacity. However, this is seen as happening rarely, not regularly, and attendance may only occur with the express permission of the Chief Executive. Such attendance will be on the understanding that other party groups will be similarly served should they so request. The political neutrality of any employee attending a group meeting must be respected.

- 6.2 Employees will respect the confidentiality of any party group discussions at which they are present and, in particular, not relay any such discussion to another group.
- 6.3 All requests for an employee to attend a party group meeting should be made through the Chief Executive, who will judge which employee is the most appropriate to attend. This avoids any danger of an individual employee being identified with the party concerned. The employee will be at senior (usually Strategic or Divisional Director) level.
- 6.4 Employees must not attend political group meetings in a private capacity without the express permission of the Chief Executive.
- 6.5 Employees may also be asked to give support in other ways such as briefing Chairs or spokespersons prior to a formal meeting. Again, whilst in practice such support is likely to be in most demand from whichever party group is in control of the Council, such support is available to all groups.
- 6.6 In all these instances it is important that Councillors and employees understand the following:
- employee support cannot extend beyond providing information and advice in relation to Council business – employees cannot be involved in party business. Where possible, this rule can be assisted if employees are not present when party business is being discussed – thought should be given to the way in which the business for the meeting in question is structured
  - party group meetings cannot make Council decisions and any conclusions reached cannot be interpreted as such or acted upon
  - where employees provide information and advice to a political group this cannot act as a substitute for providing all necessary detail to a formal meeting.
- 6.7 Employees' attendance at Group Meetings will usually take place in the presence of London Borough of Barking and Dagenham Councillors only. Special care is needed where employees are involved in providing information or advice to a party group which includes non-Councillors. Such people are not bound by the Councillors' Code of Conduct (in particular the provisions concerning declaration of interests and confidentiality). Employees may not, therefore, be able to provide confidential detail as they would to a Councillors' only meeting.
- 6.8 Any cases of particular difficulty or uncertainty in relation to employee advice to party groups should be raised with the Chief Executive.

## **7. Councillors' Enquiries**

- 7.1 Councillors are free to approach any Council department for any information, explanation or advice that they need to assist them in carrying out their role as a Councillor.
- 7.2 Contact between Councillors and employees should be via the relevant Strategic or Divisional Director with the exception that all case work should be channelled through a Members' Casework officer, the contact details of whom will be provided to Councillors. The other exceptions are Members' Support and Democratic Services officers for day to day general support and matters relating to meetings.
- 7.3 Councillors should always contact the Strategic or Divisional Director, or the Council's Monitoring Officer, regarding anything very serious or sensitive.
- 7.4 Care must be taken to ensure that a complaint, as opposed to an enquiry, on behalf of a constituent is put through the official complaints procedure.
- 7.5 Details of an appropriate contact employee should be given in all written communications with Councillors.
- 7.6 Councillors are required to ensure that Members' Services are provided at all times with an address for the delivery of any hard copy correspondence. As far as possible, however, written communications will be through email. Electronic communications with Councillors will only be via recognised council email addresses.
- 7.7 Where an enquiry imposes a disproportionate burden on employees' work, this should be explained and discussed with the Councillor concerned and senior management should agree an alternative deadline and/or response.
- 7.8 This Councillors' enquiry procedure supplements and does not replace Councillors' statutory and common law rights to information as referred to in the "Summary of Councillors' Rights of Access".
- 7.9 Meetings which take place between Councillors and employees in relation to enquiries are effectively private meetings to discuss Council-related business. Councillors should not therefore invite external visitors such as party officials or workers, commercial representatives or local residents to such meetings without the prior agreement of the employee.

## **8. Roles on Outside Organisations and Groups**

- 8.1 It is natural that some Councillors and employees will be members - in their own right - of organisations or groups (political, voluntary or otherwise), within the community. Some Councillors and employees may work for such bodies.
- 8.2 It is essential that Councillors and employees do not use their Council position to obtain preferential treatment for the organisation or group concerned in a

way that a non-Councillor or non-employee could not. To do so would be totally improper. In particular it would make it very awkward for staff who might find it difficult to suggest that a Councillor should use the proper channels when they are clearly not carrying out constituency work.

- 8.3 If a Councillor or employee has a role on an outside organisation or group, whether it be in a personal capacity or as a result of a position held on the Council, it is important to be aware that this could create a conflict of interest. A Councillor can act in the interest of the external body but must recognise the need not to take part in any Council decisions that affect the organisation or group - whether they be nominated by the Council or not - or to take part in any work associated with the organisation or group which could place them in a situation whereby they might be asked to make a judgement on a Council action.
- 8.4 Councillors and employees should remove themselves from any potential conflict of interest. Where there is doubt, it is always wise to err on the side of caution.

## **9. Familiarity, Friendships and Relationships**

- 9.1 Close personal familiarity, in the office or at meetings, between individual Councillors and employees should be avoided as this can damage working relationships and prove embarrassing to colleagues on both sides. In particular, it could bring into question an employee's ability to deal impartially with other Councillors, and vice-versa.
- 9.2 However, it is recognised that personal, family or business relationships or friendships will exist between some Councillors and employees. Some of these relationships will be disclosable pecuniary interests and must be recorded in the individual's Register of Interests. Other relationships which fall outside of those requirements should be notified to the Chief Executive.
- 9.3 Persons engaged in such friendships or relationships should take special care not to seek, or be seen, to influence their positions through their respective friend or partner. Name dropping to seek advantage is totally unacceptable. People should also go out of their way to ensure that colleagues are not placed in an awkward or embarrassing situation as a result of a friendship or relationship.
- 9.4 Certain informal gestures in a formal work setting may be innocently made but could be perceived by the recipient to be unwelcome or embarrassing. Such gestures should always be avoided. Similarly, jokes or pranks should be avoided.
- 9.5 A Councillor involved in a relationship or otherwise associated with an employee should declare an interest if, on any occasion, they are involved in decision-making directly related to the employee concerned, or the service in which they work. Where appropriate, they should seek to avoid being a member of a related meeting.

- 9.6 Councillors must be careful never to become engaged in any matter related to an individual's employment (except through formal meetings when these are relevant). Any employee attempting to raise such issues with Councillors should be advised to take the matter up with their manager and/or their trade union representative, and the Councillor should take no part in any discussion.
- 9.7 Councillors should not invite or encourage employees to partake in unofficial social activities, irrespective of whether this is outside normal working hours. This could be perceived by the recipient to be unwelcome and may result in them feeling obliged to become involved.

## **10. Social Media**

- 10.1 Councillors and officers interacting via social media must ensure that their actions cannot be construed in any way to bring the Council into disrepute or undermine the political neutrality of officers. Officers should not, therefore, respond to any comments or feeds posted by Councillors which have a political connotation or relate to Council business.
- 10.2 The Council's "Social Media Policy" and "Rules for staff on the use of social media sites" should be followed at all times. Any breach of these rules may result in disciplinary action / sanctions being taken.

## **11. Appointment or Dismissal of Employees**

- 11.1 Councillors should take no part in the appointment or dismissal of an employee nor should they seek to influence in any way the appointment or dismissal of a particular person to a post, other than where this is explicitly provided for in the Constitution (e.g. the recruitment of certain statutory chief officer posts).

## **12. Employees' Personal Life**

- 12.1 Many employees live in the Borough and may wish to attend local events or public meetings in a personal capacity - for example, a Ward Surgery. Councillors should respect this and not regard the individual concerned as an employee at such times.
- 12.2 Anything raised or discussed by an employee (in confidence or otherwise) as a resident at such events should be so respected by the Councillor and not discussed in the workplace.
- 12.3 At public meetings and the like, an employee, as a resident, may wish to voice concerns about certain services or facilities in the area, or to ask questions or make suggestions. This is natural and acceptable to a certain degree. However, that person should not maliciously undermine the Council by adverse or negative comments. At all times, employees must observe the standards set out in the Code of Conduct for Employees. Also, any employees who hold politically restricted posts are generally prohibited from



speaking publicly with the apparent intention of affecting support for a political party.

- 12.4 The area in which an employee lives should have no bearing on their employment and Councillors should not, at any time, show favour to those who live in the Borough or those who originated from the area. Employees should not publicly demonstrate support for a political party in carrying out their duties.

### **13. Councillors and the Use of Council Services as a Resident of the Borough**

- 13.1 There will be many times when Councillors use Council services as a resident - sometimes the service may be of a sensitive, confidential or personal nature (e.g. a social service, financial benefits etc.) and there may be some awkwardness or embarrassment on either side.
- 13.2 In all instances, the employee providing the service will maintain full confidentiality where this is appropriate and will treat the Councillor concerned in the same way as any other customer. The Councillor will not seek or expect any preferential treatment.

### **14. Trade Unions**

- 14.1 The Council has traditionally welcomed and recognised trade union membership and the important role that trade union involvement and participation offers.
- 14.2 The Employee Joint Consultative Committee provides a forum for effective communication and consultation between employee representatives and the Council. This meeting is represented on the Council side by Councillors and on the employee side by trade union officials. It provides an opportunity to promote and foster good employee relations, and prevent or remove any friction or misunderstanding.
- 14.3 Trade union representatives may sometimes express views on behalf of their union which may be critical of the Council as an employer. This is acceptable in this context and a normal part of trade union negotiations or discussions. The fact that a representative may speak out in this way on behalf of colleagues should not be held against that person in their personal employment.

### **15. Conduct at Meetings and Events**

- 15.1 Councillors and employees should observe the degree of formality in behaviour that is appropriate to the event.
- 15.2 A formal approach should generally be applied in open meetings although the use of first name terms is acceptable if there is a consensus. The important

issue is that the audience should be able to identify who is speaking or being addressed.

- 15.3 Such formality between Councillors and employees is not usually necessary at social events. However, any event attended as a result of the Councillor or employee's role with the Council should have regard to the fact that close personal familiarity might embarrass others or damage external relationships, and therefore should be avoided. Where there is doubt, a more formal approach is potentially less damaging than a casual one.
- 15.4 Councillors and employees should not undermine each other at meetings or in any public forum, as this would be likely to damage working relationships as well as the public image of the Council.

## **16. Documents and Information - Accessibility and Confidentiality**

- 16.1 Information and documents should be made available on request by officers to Councillors unless:
- a) there is a clearly and properly justifiable reason for declining access, and
  - b) the Councillor in question cannot establish a legal right to the information or documentation.
- 16.2 Councillors are entitled on a “need to know” basis to receive documents and information on request where it is clear that the Councillor concerned requires the documentation or information because of their position within the Council or by virtue of their membership of a committee or sub-committee.
- 16.3 Access to personal data (information about a living individual) is governed by the Data Protection Act. Personal data can be released to Councillors in specific circumstances, such as when they are acting on behalf of a resident. In such cases, the Council does not generally have to obtain the consent of the individual to disclose their personal information to a councillor, as long as:
- The councillor represents the ward in which the individual lives; and
  - The councillor makes it clear that they are representing the individual in any request for their personal information with the Council; and
  - The information is necessary to respond to the individual's complaint/enquiry.
- 16.4 There is no general right of access to personal data held by the Council.
- 16.5 More details of Councillors' rights of access to information can be found in the Access to Information Procedure Rules in Chapter 17, Part 2 of the Constitution.

## **17. Correspondence**

- 17.1 Correspondence (hard copy or email) between an individual Councillor and an employee will not normally be copied (by the employee) to another Councillor.

Where the employee feels that this is appropriate, it will be made clear to the original Councillor. Clearly this will not apply to any correspondence which is marked 'Confidential' unless there are justified reasons which will be discussed with the originating Councillor.

- 17.2 A Cabinet Member has no special right of access to copies of correspondence passing between another Councillor and an employee which relates to the Cabinet Member's portfolio.
- 17.3 When writing to a Councillor, or group of Councillors, the correspondence will clearly indicate the names of any others who have been sent the same correspondence, including any who have been copied in for their information. This is in the spirit of openness and to avoid any surprises or later allegations around 'silent copies'.

## **18. When Things Go Wrong: Dispute Resolution**

- 18.1 The Council's experience is that Councillors and Officers work well together. However, it is still necessary to have a clear process to deal with matters when they are not going well.
- 18.2 The key principle for dispute resolution is that both Councillors and officers are committed to informal, non-adversarial solutions. Where a dispute arises, the first step should be for both parties to seek to resolve any differences informally between themselves or, where necessary, with the assistance of a manager.
- 18.3 When an informal resolution is not possible, the processes referred to below will apply.

### **Complaints by Councillors about employees**

- 18.4 All formal complaints should be marked "private and confidential" and made to the individuals referred to in the following paragraphs, who will determine how best to deal with the matter. The recipient of the complaint may consult with others, as considered appropriate, such as the Chief Financial Officer regarding any matters of financial control or fraud or the Director of Law and Governance (as lead officer for Human Resources issues) where procedural advice is necessary.
- A complaint by a Councillor about an employee should be made to the Strategic Director of the service in question.
  - A complaint by a Councillor against a Strategic Director should be made to the Chief Executive.
  - A complaint by a Councillor against the Chief Executive should be made to the Leader of the Council, copied to the Monitoring Officer.

- A complaint by a Councillor against an employee (at any level) **and** the Chief Executive should be made to the Leader of the Council, copied to the Monitoring Officer.
  - A complaint by a Councillor against an employee (at any level) **and** another Councillor should be made to the Monitoring Officer.
  - A complaint by a Councillor about a former employee should be made to the Strategic Director of the former employee's department.
- 18.5 Councillors have a right to know if action has been taken to correct a matter, but they must not either:
- (i) insist, or suggest to insist, that an employee is disciplined; or
  - (ii) influence the level of any disciplinary action which might be taken against an employee.
- 18.6 The matter will be investigated and the Councillor will be informed of its progress and outcome but has no entitlement to detailed information about any disciplinary hearing or its conduct.
- 18.7 The decision to take formal action against an officer and the action taken is the sole responsibility of management. A Councillor's evidence will be considered but the Councillor must:
- (i) respect the confidentiality of the investigation and disciplinary process;
  - (ii) not seek to improperly influence the action taken against an employee;
  - (iii) accept the management decision.
- 18.8 Where a Councillor has had reason to question, criticise or complain about the actions of a particular employee, once the issue has been dealt with through appropriate mechanisms, irrespective of the outcome, professional behaviour is expected from both parties - there must be no grudge to bear on either side. To do so openly or behind the scenes will only fuel continued unrest and is not in the Council's interests. Any such difficulties should be referred by the employee to their Strategic Director, or in the case of a Strategic Director to the Chief Executive, or by the Councillor to their respective party group leader.

### **Complaints by Employees**

- 18.9 Any complaints by an employee about a Councillor or a former Councillor should be discussed confidentially in the first instance with the employee's Strategic or Divisional Director who, in turn, will discuss with the Monitoring Officer the best course of action. However, where a breach of the Councillors' Code of Conduct is alleged, the complaint must be in writing using the form available on the website at the link below and must be sent to the Monitoring Officer, marked "private and confidential":

<http://www.lbbd.gov.uk/CouncilandDemocracy/Complaints/Pages/ComplaintsMembers.aspx>

### **Complaints by Councillors about Councillors**

18.10 A complaint in relation by a Councillor about another Councillor should be made in writing marked “private and confidential” to the Monitoring Officer. If the complaint alleges a breach of the Councillors' Code of Conduct the complainant should use the form available for this purpose on the web link above.

### **19. Breaches of the Protocol**

19.1 Relevant Sections offer advice as to how to deal with any difficulties around or breaches of this Protocol. It is hoped that these routes will successfully and quickly resolve any issues.

19.2 A breach of the Protocol by a Councillor may be reported to the Monitoring Officer, who will decide how the matter should be dealt with. Where a breach of the Protocol constitutes a breach of the Councillors' Code of Conduct, the Monitoring Officer will investigate the matter and, if appropriate, refer the matter to a Standards sub-committee.

19.3 The Monitoring Officer will acknowledge receipt of the complaint within five working days and give an indication of how it is proposed to deal with it.

19.4 In instances of a breach of the Protocol by an employee, the matter will be dealt with through the Council's disciplinary or other relevant employee related procedures.