

Slough Borough Council

Report To:	Council
Date:	25 January 2024
Subject:	Changes to the Council's Constitution - Member Officer Relations Protocol and Contract Procedure Rules
Chief Officer:	Stephen Taylor, Monitoring Officer
Contact Officer:	Sarah Wilson, Assistant Director – Legal and Governance
Ward(s):	All
Exempt:	NO
Appendices:	Appendix A – Draft Member Officer Relations Protocol Appendix B - Revised contract procedure rules

1. Summary and Recommendations

- 1.1 This report sets out proposed amendments to Part 5.4 Member Officer Relations Code to an updated Member Officer Relations Protocol. The proposed amendments were considered by the Member Panel on the Constitution at its meeting of 6 December 2023, by Cabinet members and by members of the Standards Committee at an informal meeting in January 2024.
- 1.2 The report also sets out changes to the council's constitution related to contract procedure rules. The changes are considered to be minor housekeeping changes.

Recommendations:

Council is recommended to:

1. Approve the proposed new Part 5.4 - Member Officer Relations Protocol as set out in Appendix A for inclusion in the constitution to take effect from the day after this meeting.
2. Approve the amendments to Part 4.6.1 Contract Procedure Rules as set out in Appendix B to take effect from the day after this meeting.

Reason:

The Council is required to prepare and keep up to date a constitution under the Local Government Act 2000. This requires that individual parts of the Constitution are subject to regular review to ensure they remain in accordance with the law and best practice.

The Local Government Association (LGA) has issued guidance on member officer relations confirming that each are indispensable to one another and mutual respect between both is essential for good local government. The Protocol provides a framework setting out the distinct roles and responsibilities of members and officers and the process for managing any conflict. It also sets out the rights of elected members to access confidential information in order to fulfil their roles.

The Contract Procedure Rules are contained in the procedure rules part of the Constitution and set out the thresholds that apply for delegated decision-making.

Commissioner Review

The updated protocol was presented to the Commissioner led Improvement and Recovery Board in November 2023. All three commissioners commended the updated draft and wider work to support members in their roles. The commissioners particularly supported the updated access to information guidance.

2. Report

Member Officer Relations Protocol

2.1 The LGA guidance on member officer relations contains the following basic principles:

- a. Members and officers are indispensable to one another and mutual respect between both is essential for good local government.
- b. Members provide a democratic mandate, whereas officers contribute the professional expertise needed.
- c. Officers have a duty to give unbiased professional advice even if it is not what members want to hear.
- d. Close personal familiarity should be avoided – “be friendly, but don’t be friends”.
- e. Members identify their priorities, assisted by officers.
- f. Officers provide clear advice and offer alternative courses of action where they exist.
- g. Members and officers communicate clearly and openly, avoiding ambiguity and the risk of misunderstanding.
- h. Officers should be impartial, professional, authoritative, respectful, sensitive, positive, communicative, discreet, reliable and friendly.

2.2 The current Member Officer Relations Code is in general fit for purpose, however there are a few parts that are out of date or not compliant with current law. It has been reviewed against the draft Best Value guidance and recent guidance from the Centre for Governance and Scrutiny (CfGS). The most significant changes have been made to the access to information guidance, which has been re-written to contain a set of principles. It is anticipated that this will promote transparency and access to information to allow members to fulfil their roles whilst also maintaining confidentiality for personal and sensitive information.

2.3 The protocol has been reviewed by the Member Panel on the Constitution, members of Cabinet and members of the Standards Committee.

2.4 The following changes have been made in the new draft protocol:

- (a) Highlighted the importance of high standards of conduct and that contact should mainly be with Senior Officers (defined as heads of service or above).

- (b) Added in explicit reference to Members' role in ensuring best value use of Council resources.
- (c) Amended the rules on relationship with Cabinet and other members and emphasised that non-executive members should not receive preferential treatment or access to information due to being a member of the political group which has formed the administration.
- (d) Added in new Equalities section to reflect the duties under the Equality Act 2010.
- (e) Updated guidance on access to information, including principles to inform whether a member has a "need to know" information. This is intended to put in place a framework to strike the right balance between the need for members to access information to support them in their roles and the need for officers to maintain confidentiality when dealing with individual case work.
- (f) Simplified guidance on a member's involvement in recruitment, appointment and other staffing matters. A member may be involved in a recruitment process, either as part of the formal selection panel or part of an informal meet and greet event. The draft protocol makes it clear that any appointment decision must be solely based on merit and that political preferences should not influence that judgement. For other staffing matters, the updated draft makes clear that outside of formal panels, members should not seek to influence staffing decisions.
- (g) Removal of paragraph on use of Council resources by political groups and individual members for the purpose of issuing Group or personal press releases or publicity relating to the business of the Council.

2.5 There was discussion and debate about certain changes and it is recommended that these are not adopted:

(a) Retention of the reference to Officers' job being to carry out work under the direction and control of the Council, the Cabinet, and relevant committees. This has been replaced by reference to acting under the overall direction of the Council and Cabinet and in accordance with approved policies and strategies and the terms of the schemes of delegation. Reference to direction and control could lead to officers not fully complying with their obligations to act in accordance with their professional duties and to be accountable for decisions made in accordance with delegated authority.

(b) Request for specific timescales for responses to enquiries. As the nature of the enquiry will differ, this better sits in internal procedures on the purpose of member casework.

(c) Use of the term "conjunction" instead of "in consultation". The protocol sets out an expectation that specific members are consulted before action is taken. The term consultation is used to confirm the delegated decision-maker is the officer and this individual is accountable for the decision, but that to decide whether and how to exercise this delegation, there should be consultation with named individuals in advance. The Local Government Act 1972 and associated legislation in relation to executive functions do not permit joint officer member decision-making. The Constitution sets out guidance to officers on when to exercise delegation, including in Article 13 and Part 3.6 Scheme of Delegation to Officers.

(d) Use of Council resources for political group publicity. With the exception of the two political assistants employed to provide political support to the two main political groups, Council resources, including staff, cannot be used for the purpose research or publication of material designed in whole or in part to affect public support for a political party. The Local Government Act 1986, Local Government and Housing Act

1989 and Local Government Officers (Political Restrictions) Regulations 1990 set out the restrictions and this is supplemented by the Code of Recommended Practice on Local Authority Publicity, which is issued under s.4 of the 1986 Act.

(e) Determination of access to information requests based on “need to know”. The current Code refers to referral to the Audit and Corporate Governance Committee, although there are no records to indicate that such a referral has ever been made. The redrafted protocol refers to the second stage being to the Monitoring Officer on the basis this is a legal test. The Monitoring Officer should only refuse the request if there is no lawful basis for it. The Standards Committee has overall responsibility for monitoring compliance with the Code and could request a report from the Monitoring Officer on any refusal decisions.

Revision of the constitution – contract procedure rules

2.6 The Council’s current contract procedure rules are contained in the Financial Procedure Rules in Part 4.6.1 of the constitution. Some minor housekeeping updates have been made to the rules to ensure that they remain fit for purpose. Updates include:

- Revised public procurement thresholds that apply from 1 January 2024 (cover sheet).
- Clarification on applying UK thresholds in relevant contract bands (authorisation table).
- Clarification on the position of the council’s Information Governance board providing input where procurements have information governance implications (authorisation table)
- Clarification on the position relating to Partnership arrangements between NHS bodies and the Council under section 75 of the National Health Services Act 2006 not being subject to these Contract Procedure Rules (paragraph 1.14)

2.7 Once agreed, the revised rules will be communicated to staff and included in briefings and training sessions to staff.

2.8 Members should be aware that a major revision of the contract procedure rules is being undertaken in response to the Procurement Act 2023. The Act aims to create simpler, more flexible and effective procurement, and also improve transparency and visibility of procurement activity. The changes will be implemented by October 2024, and revised contract procedure rules will be presented to Council by July 2024.

2.9 The Council has formed a Procurement Act Working group, with the London Boroughs of Harrow, Hounslow and Barnet, to share resources, best practice and learning in relation to the Act and are also liaising more widely with colleagues in the London and Berkshire Procurement Networks to ensure there is a shared understanding of the implications of the act.

Options considered

The current Code is generally fit for purpose and the Council could choose not to update it or to amend it in a different way. This is not recommended as it is good practice to regularly review parts of the Constitution and to update it to take account of changes in law, learning and best practice.

The adoption of the revisions to the Council's Constitution recommended in this report are recommended as they are designed to improve the governance of the organisation and will in particular ensure efficiency in terms of the Council's procurement processes.

3. Implications of the Recommendation

3.1 Financial implications

3.1.1 There are no financial implications directly resulting from the recommendations of this report.

3.2 Legal implications

3.2.1 It is recommended best practice to have constitutional rules setting out how the relationship between members and officers should be governed to support the respective codes of conduct. The draft best value guidance refers to members and senior officers maintaining constructive relationships as a sign of well-functioning leadership and that effective procedures in place to ensure members and officers at all levels comply with the Nolan Principles and relevant codes of conduct is evidence of well-functioning governance.

3.2.2 The CfGS has recently issued guidance on Access to Information for elected members, emphasising two main aims: firstly to assist non Cabinet members to understand what their rights are and what the expectations should be on how those rights are satisfied and secondly, to support officers to understand how they can best support members, and work together to develop a culture of positive information use that supports and promotes the fundamental principles of local democracy. The guidance emphasises members' responsibility in relation to data protection and confidentiality when receiving information which is not publicly available. In relation to the "need to know" principle, the guidance states that members should be able to clearly articulate how their role requires that they have information and the assumption that Monitoring Officers, in making a determination on the matter, should adopt a permissive approach which recognises members' democratic role within the limits of legislation and the Council's obligations to others as regard confidentiality.

3.2.2 The Council is required to prepare and keep up to date a constitution under the Local Government Act 2000. The Contract Procedure Rules are contained in the procedure rules part of the Constitution.

3.3 Risk management implications

3.3.1 The risk of poor member officer relations could lead to poor decision-making and can be evidence of poor leadership, governance and culture.

3.3.2 There is a risk of failure to make proper decisions at appropriate levels should the contract procedure rules not be updated and be fit for purpose.

3.4 Environmental implications

3.4.1 There are no identified environmental implications.

3.5 Equality implications

3.5.1 Effective member officer relations will support the Council to comply with its statutory duties, including its duties under the Equality Act 2010. A new section has been added to the protocol to refer to the duties under this Act.

3.5.2 The Best Value Statutory Guidance states that authorities should avoid “gold plating” the Equality Act 2010 and should not impose contractual requirements on private and voluntary sector contractors over and above the obligations in the Act. This includes seeking to remove unnecessary paperwork and obstacles to contract compliance thereby making it easier for small and medium firms and the voluntary sector to apply and bid for contracts, and lowering costs to taxpayers.

4. Background Papers

None