

## **Part 5.4 Member Officer Relations Protocol**

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## **1. INTRODUCTION**

1.1 This Protocol aims to:

- clearly describe the respective roles of elected Members and Council staff (Officers).
- help all those concerned to understand the relationship between Members and Officers.
- offer a guidance framework on the issues which most commonly arise.
- Ensure high standards of conduct is maintained, the Council is not brought into disrepute and Council business is transacted in a transparent, effective and efficient manner.

1.2 This Protocol is to a large extent a written statement of current practice and convention and forms part of the Ethical Framework adopted by the Council as part of the Constitution. It seeks to reflect the principles underlying the respective Codes of Conduct that apply to Members and Officers and to which it is inextricably linked. The shared object of these documents is to enhance and maintain the integrity (real and perceived) of local government and thus the Codes demand very high standards of personal conduct. Accordingly this Protocol should be read in association with the Council's Constitution and, in particular, the Members' and Officers' Codes of Conduct.

1.3 The Protocol seeks to promote greater clarity and certainty as to working relationships between Members and Officers. If the Protocol is followed it should ensure that Members receive objective and impartial advice and that Officers are not subject to accusations of bias and any undue influence from Members. Monitoring compliance with this Protocol is the responsibility of the Standards Committee and the Monitoring Officer. Questions of interpretation of this Protocol will be determined by the Monitoring Officer.

## **2. THE ROLES OF MEMBERS AND OFFICERS**

2.1 The respective roles of Members and Officers can be summarised as follows:-

Members and Officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Members 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 give professional advice to Members and to the Council as a whole, and to carry out the Council's work 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.

Mutual respect between Members and Officers is essential to good local government.

## 2.2 **Members' Role**

Members have four main areas of responsibility:

- determining the budget and policy framework of the Council and giving it political leadership,
- monitoring and reviewing the performance of the Council in implementing that policy and delivering services, including ensuring best value use of Council resources.
- representing the Council externally, and
- acting as advocates on behalf of their constituents.

It is not the role of Members to involve themselves in the day to day management of the Authority's services.

## 2.3 **Officers' Role**

The Role of Officers is to:-

- manage the organisation
- initiate policy proposals which accord with the overall framework set by Members
- manage the implementation of policy
- give professional advice in the course of policy development
- take action under delegated powers
- ensure the Council acts lawfully and with financial propriety

## 3. **EXPECTATIONS**

### 3.1 **Members can expect from Officers:**

- (a) A commitment to the Council as a whole, and not to any political group.
- (b) A working partnership.
- (c) An understanding of and support for respective roles, workloads and pressures.
- (d) Timely response to enquiries and complaints.
- (e) Professional advice, not influenced by political views or preference, which does not compromise the political neutrality of Officers.
- (f) Regular, up to date information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions that they hold.
- (g) Awareness of and sensitivity to the political environment.
- (h) Respect, dignity and courtesy.
- (i) High quality training and development in order to carry out their role effectively.
- (j) Integrity, mutual support and appropriate confidentiality.
- (k) Not to have personal issues raised with them by Officers outside the agreed procedures.
- (l) That Officers will not use their relationship with Members to advance their personal interests or to influence decisions improperly.
- (m) That officers will at all times comply with the relevant Codes of Conduct.

- (n) Support for the role of Members as the local representatives of the Authority, within any scheme of support for Members which may be approved by the Authority.

### **3.2 Officers can expect from Members.**

- (a) A working partnership.
- (b) An understanding of and support for respective roles, workloads and pressures.
- (c) Political leadership and direction.
- (d) Respect, dignity and courtesy.
- (e) Integrity, mutual support and appropriate confidentiality.
- (f) Not to be subject to bullying or to be put under undue pressure. Members should have regard to the seniority of officers in determining what are reasonable requests, having regard to the power relationship between Members and Officers, and the potential vulnerability of Officers, particularly at junior levels.
- (g) That Members will not use their position or relationship with Officers to advance their personal interests or those of others or to influence decisions improperly.
- (h) That Members will at all times comply with the relevant Code of Conduct.
- (i) Members' attendance and commitment to training and development offered by officers, including attendance at mandatory training events.

3.3 The distinct roles of Members and Officers necessarily impose limitations upon behaviour. These are referred to and explained below.

## **4. PERSONAL RELATIONSHIPS**

- 4.1 Mutual respect between Members and Officers is essential to good local government. Close personal familiarity in public between individual Members and Officers can damage this relationship and should be avoided as it can prove embarrassing to other Members and Officers.
- 4.2 However, the Council recognises that there may be close social or personal relationships between Members and Officers that have commenced before, or after, a Member is elected to the Council or before, or after, a person becomes employed by the Council. In a large organisation this may be inevitable. In order to maintain the integrity of the individuals concerned and the Council, such relationships should never be hidden. To do so can lead to suspicion and mistrust.
- 4.3 Accordingly, the Member must declare, in writing, to the Monitoring Officer and his/her Leader/Party Whip any relationship with an Officer which might be seen as influencing his/her work as a Member and the Officer must notify their Director in writing. This includes any family relationships.
- 4.4 The Group Leaders and Directors will endeavour to ensure that neither the Member nor the Officer are placed in a position where such relationship between the two will be seen to conflict with the provisions of this Protocol.

## **5. CONTACT BETWEEN MEMBERS AND OFFICERS**

- 5.1 Contact between Members and Officers should normally be at a Senior Officer level since junior officers might feel unduly pressurised to comply with requests from Members and this might disrupt work programmes already agreed with their managers. For the purposes of this Protocol 'Senior Officer' means Chief Executive, Executive Directors, Directors and Heads of Service.
- 5.2 Members have the right to contact directly a Senior Officer when they feel it necessary to do so. Equally, when it comes to routine matters, such as giving apologies for absence from meetings, it is quite in order for Members to contact more junior staff directly. Particular members may have contact with more junior staff due to their role, for instance members of Overview and Scrutiny Committee may contact the statutory scrutiny officer and other staff involved in scrutiny support and chairs of committees may have contact with subject specialists as part of their role. Any other matters should be referred to Senior Officers including any occasion when a Member feels that the action being taken is wrong or is not being pursued with sufficient vigour.
- 5.3 Members are elected to represent the interests of their constituents, but they should not seek special treatment for any individual or group. This includes seeking support or action outside of the agreed systems. Part of a Member's role is to assist constituents to use the Council's systems to report concerns and Members are given training and support to enable them to direct residents and service users to the right system. When dealing with Officers, Members must declare any family, business or other close relationships they have with the constituents concerned.
- 5.4 The role of Officers is to give advice and information to Members and to implement the policies determined by the Council. In giving such advice to Members, and in preparing and presenting reports, it is the responsibility of the Officer to express his/her own professional views and recommendations. Whilst an Officer may report the views of individual Members on an issue, if the Member wishes to express a contrary view s/he should not seek to pressure the Officer to make a recommendation contrary to the Officer's professional view.
- 5.5 Certain officers e.g. Head of Paid Service, Monitoring Officer, Chief Finance Officer (Section 151 Officer) and the Statutory Chief Officers have responsibilities in law over and above their obligations to implement decisions of the Council and Members must respect these obligations, must not obstruct Officers in the discharge of these responsibilities, and must not victimise Officers for discharging them.
- 5.6 Members should not bring or attempt to bring undue influence to bear on an Officer to take any action that is:
- against an adopted policy or procedure
  - a breach of the Code of Conduct for Officers
  - in conflict with the Council's Procedural Rules or Financial Regulations
  - capable of being interpreted as intimidation or bullying.
- 5.7 Officers have a duty to report any attempt to exert undue pressure or influence to their Director who in turn will refer the matter to the Chief Executive.

5.8 A note will be taken of all meetings dealing with matters of significance between Members and Officers, setting out where appropriate, (1) advice given by officers, (2) decisions taken by officers, and (3) actions arising from the meeting. If a decision is required at a Member level, this must be dealt with in accordance with constitutional procedures. This note will be kept by the Officer on the appropriate case system as a record of the discussion and will be shared within 10 working days or longer period as agreed.

## **6. LEAD MEMBERS/CHAIRS AND SENIOR OFFICERS**

- 6.1 It is clearly important that there should be a close working relationship between a Lead Member or Chair of a Committee/Sub-Committee and the Director and other senior officers of any Department which falls within the Lead Member's portfolio or report to that Committee/Sub-Committee. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officers' ability to deal impartially with other Members. Officers must ensure their political neutrality is not compromised.
- 6.2 While a Lead Member, Chair of a Committee/Sub-Committee will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations a Director will be under a duty to submit a report on a particular matter. Similarly, the named author will always be fully responsible for the contents of any report submitted by their Department.
- 6.3 This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report or other officer providing advice on the report. Any issues arising between a Lead Member/Chair and a Director in this area should be referred to the Chief Executive for resolution in consultation with the Leader of the Council.
- 6.4 In addition to the Chair's briefing before any Council/Committee/ Sub-Committee meeting, minority group representatives will also be afforded the opportunity of a briefing through their appropriate spokespersons.
- 6.5 In relation to action between meetings, it is important to remember that, under the executive arrangements adopted by the Council, decisions (relating to the discharge of any of the Council's functions) are taken by the Cabinet, Full Council, a Committee, a Sub-Committee or an Officer under delegated authority. There is no provision for such decisions to be taken by a Chair, a Lead Member or indeed by any other single Member with the exception of decisions being taken by the Leader under urgency procedures.
- 6.6 At Cabinet/Committee/Sub-Committee meetings, a resolution may be passed, which authorises named Officers to take action between meetings in consultation with the Chair or a named Lead Member. It must be recognised that it is the Officer, rather than the Chair/Lead Member, who takes the action and it is the Officer who is accountable for it.
- 6.7 Finally, it must be remembered that Officers within a Department are accountable to their Director and that whilst Officers should always seek to assist a Chair (or

indeed any Member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Director. Members should not put staff in a position where there would be conflict between themselves and their line manager, or other Senior Officer.

## **7. RELATIONSHIP BETWEEN OFFICERS AND THE EXECUTIVE**

- 7.1 As individual Members, all Councillors have the same rights and obligations in their relationship with Officers and should be treated equally. This principle is particularly important in the context of overview and scrutiny and non-executive functions. However, where a political group forms an administration, either alone or in partnership with another group or groups, it is recognised that the relationship between Officers, particularly those at a senior level in the organisation, and the administration will differ from that of other elected members.
- 7.2 Non-executive members should not be treated more favourably or have more access to information due to being a member of the political party which has formed an administration.

## **8. POLITICAL GROUPS**

- 8.1 It must be recognised by all Officers and Members that in discharging their duties and responsibilities Officers serve the Council as a whole and not exclusively any political group, combination of groups or any individual Member of the Council. Special rules apply to Political Group Assistants and those postholders have been made aware of them through separate guidance.
- 8.2 There is statutory recognition for party political 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 political groups but must at all times maintain political neutrality. All Officers must, in their dealings with political groups and individual Members, treat them in a fair and even-handed manner.
- 8.3 The support provided by Officers can take many forms, ranging from a briefing meeting with the Leader of the Council, a Lead Member/Chair/ Spokesperson prior to a Council, Cabinet, Committee or Sub-Committee meeting to a presentation to a political group meeting. Whilst in practice such Officer support is likely to be in most demand from whichever political group is in control of the Council at the time, such assistance is available to all political groups.
- 8.4 Certain points, however, must be clearly understood by all those participating in this type of process. In particular:
- (a) Requests for Officers to attend any political group meeting must be made through the appropriate Director. The Director will advise the Chief Executive of any requests made.
  - (b) Unless otherwise agreed in advance with the Chief Executive, Officers will not attend political group meetings that include persons who are not Members of the Council. However, where the Chief Executive has authorised such

attendance special care needs to be exercised by Officers involved in providing information and advice to such political group meetings. Persons who are not elected Members will not be bound by the Code of Conduct and for this reason Officers may not be able to provide the same level of information and advice as they would to a Member only meeting.

- (c) Officer support (whether in the form of a written report or otherwise) must not extend beyond providing information and advice in relation to matters of Council business. Officer support will be limited to a statement of material facts and identification of options and the merits and demerits of such options for the Council. Reports or other support will not deal with any political implications of the matter or any option, and Officers will not make any recommendations to a political group. Officers (with the exception of Political Group Officers) are not expected to be present at meetings or part of meetings when matters of party business are to be discussed.
- (d) Political group meetings, whilst they form part of the preliminaries to Council decision making are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such.
- (e) It must not be assumed by any political group or Member 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.
- (f) Any request for advice, together with the advice given to a political group or Member will be treated with strict confidentiality by the Officers concerned and will not be accessible to any other political group. It is acknowledged, however, that factual information upon which any advice is based will, if requested, be available to all political groups.
- (g) Officers must respect the confidentiality of any political group discussions at which they are present in the sense that they should not relay the content of any such discussion to another political group or Member thereof. However, Members should be aware that this would not prevent Officers from disclosing such information to other Officers of the Council so far as is necessary to perform their duties or otherwise to comply with the law.
- (h) Where Officers provide information and advice to a political group meeting in relation to a matter of Council business, it should be understood that the Officers have a duty to provide all necessary information and advice to the Cabinet or relevant Committee/Sub-Committee when the matter in question is considered.

8.5 Any particular cases of difficulty or uncertainty in this area of Officer advice to political groups must be raised with the Chief Executive who will discuss them with the relevant Group Leader(s).

## **9. CONDUCT AT MEETINGS AND SOCIAL EVENTS**

9.1 Officers and Members should address each other formally at meetings of the Council, Cabinet, Committees, Sub-Committees and other formal meetings which



both attend. On such formal occasions Officers should refer to Members by the office they hold:

- Leader, or
- Chair, or
- Vice-Chair, or
- Councillor

and, where they are aware of it, respect an individual Member's preference for a particular type of formal address.

- 9.3 Members should avoid excessive informality at formal meetings and other official civic events and refer to Officers either by their job title or by their surname and the title Mr, Mrs, Miss or Ms, as appropriate. This is particularly important in public meetings, including webcast meetings, to ensure that the public understand the distinct roles and responsibilities of Members and Officers.
- 9.4 At formal meetings and official civic events Members and Officers should dress and behave in a manner in keeping with the occasion and their position. This requires them to listen to proceedings and show respect and courtesy to all those present (including members of the public).
- 9.5 The same degree of formality is not necessary at any informal meetings or social events that Members and Officers may attend. Nonetheless, by virtue of their role with the Council if Members and Officers are attending an event they should avoid close personal familiarity or any action which would embarrass others or damage their relationship with other Officers or Members.

## **10. CONSTRUCTIVE CRITICISM/COMPLAINTS**

- 10.1 It is important that in any dealings between Members and Officers they should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position.
- 10.2 Members and Officers should not criticise or undermine respect for the other at meetings of the Council or in any public forum. This would damage effective working relationships and the public image of the Council.
- 10.3 Members should not raise matters relating to the conduct or capability of an individual Council Officer or of Officers collectively at meetings held in public. Members should not criticise individual officers in correspondence with the public. This is a long-standing tradition in public service as Officers have no means of responding to criticisms like this in public.
- 10.4 If Members feel that they have not been treated with proper respect, courtesy or have any concern about the conduct or capability of an Officer or group of Officers they should raise the matter with the Director of the Department in question.
- 10.5 If the Member is not satisfied that action has been taken within a reasonable period by the Director they should raise the matter with the Chief Executive who will look into the matter afresh.

- 10.6 Where an Officer feels that they have not been properly treated with respect and courtesy or is concerned about any action or statement relating to her/himself or a colleague by a Member they should raise the matter with their line manager, or other Senior Officer as appropriate.

## **11. CORRESPONDENCE BETWEEN MEMBERS AND OFFICERS**

- 11.1 Correspondence between an individual Member and an Officer on a matter relating to a single constituent should not normally be copied (by the Officer) to any other Member. Where, exceptionally, it is necessary to copy the correspondence to another Member, this should be made clear to the original Member. In other words, a system of “silent or blind copies” should not be employed. Where the Member/Officer has legitimately copied in others it is in order for the Member/Officer replying to copy in those individuals with the response.
- 11.3 In some cases issues are raised by, or with, individual Members relating to a matter of general interest in a Council Ward or individual Parish. Recognising that it is in the best interests of the Council to ensure that all Members are properly informed of general issues in their Ward or Parish, copies of correspondence will normally be sent to all Members for the particular area unless the Member specifically requests that correspondence is not copied to other Members or, there is another reason, why this is not appropriate. Where correspondence is copied to other Members this will be made clear to the original Member.
- 11.4 Officer letters on behalf of the Council should normally be sent out in the name of the appropriate Officer, rather than in the name of a Member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to be signed by a Member, but this should be the exception rather than the norm. Letters which, for example, create obligations or give instructions on behalf of the Council should never be sent out in the name of a Member.

## **12. LOCAL ISSUES**

- 12.1 Whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be informed or involved, as appropriate, not later than at the outset of the exercise. Similarly whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Ward or Wards affected should, as a matter of course, be invited to attend the meeting.

## **13. CEREMONIAL EVENTS**

- 13.1 The Mayor, or in his/her absence the Deputy Mayor, will be the appropriate person to lead Council ceremonial events which are of particular significance and to represent the Council at ceremonial events of other organisations.
- 13.2 Subject to the above paragraph, Lead Members, Chairs of Committees or Vice-Chairs in that order of preference are the appropriate representatives for ceremonial events within the scope of their portfolios/Committee’s terms of reference. Where neither the Lead Member/Chair nor Vice-Chair of a Committee are available then any other Member may be nominated by the appropriate Lead Member/Chair.

- 13.3 Local Members should always be informed of, and, where possible, invited to ceremonial events taking place within their own Wards, as should the Chair of the relevant Parish Council as appropriate.
- 13.4 Any Member taking part in a ceremonial event must not seek disproportionate personal publicity nor use the occasion for party political advantage bearing in mind that the Member is representing the Council as a whole.

#### **14. RECRUITMENT, APPOINTMENT AND OTHER STAFFING MATTERS**

- 14.1 A Member will not seek support for any prospective employee of the Council nor provide references in support of applications for employment by the Council.
- 14.2 Anyone who may be involved in the selection or appointment process for a post with the Council shall immediately declare any relationship to a candidate as soon as it becomes known to him/her to the Director responsible for Human Resources who shall record the declaration and determine whether or not the Member may take any further part in the selection/appointment process for that post.
- 14.3 If a Member is called upon to take part in selecting and appointing an Officer, with the exception of the appointment of assistants to political groups, any appointment decision must be solely basis on merit and which candidate would best serve the whole Council. A Member should not let his/her political preferences influence their judgement.
- 14.4. With the exception of those Members formally involved in appointment and dismissal decisions for specific Senior Officers, Members should not seek to influence decisions relating to redundancy, disciplinary, redeployment or promotion of individual Officers.
- 14.5 If, in the course of performing their duties, Members are concerned about or receive allegations of misconduct or capability by an Officer these should be referred with any supporting information to the appropriate Head of Service. If the complaint relates to a Senior Officer then it should be referred to the relevant Director or the Chief Executive.
- 14.7 Officers are entitled to reasonable privacy and respect for their private lives and Members should not seek or request personal information about individual Officers. Such a request could be seen as threatening particularly by junior Officers. Similarly Members should not seek to contact Officers outside of working hours or at home unless by prior agreement with the relevant Officer or under an existing provision or arrangement related to the Officer's employment with the Council. If a Member has reasonable grounds for believing matters related to an Officer's personal life have a bearing on their employment with the Council then the Member should report these concerns to the relevant Director. Similarly Officers must show similar respect for the private lives of Members.

#### **15. EQUALITY**

- 15.1 The Council has legal obligations in relation to compliance with the Equality Act 2010 as an employer, service provider and public body. Members and officers are required to comply with these legal obligations and to adhere to Council policies and procedures. If members or officers believe they have been subjected to unlawful

discrimination or treated in a manner that contravenes the Council's policies and procedures, this should be reported to the Monitoring Officer.

## **16. PUBLIC RELATIONS AND PRESS RELEASES**

- 16.1 The Council's Corporate Communications Officers serve the Council as a whole and must operate within the limits of the Local Government Act 1986 which prohibits the Council from publishing material which appears to be designed to affect public support for a political party.
- 16.2 Council press releases are drafted by Officers and will often contain quotations from the Leader and/or Deputy Leader of the Council, a Lead Member, the Chair and Vice-Chair of the Committee or Sub-Committee whose service is involved and from the Mayor or Deputy Mayor about ceremonial events. Such press releases are issued on behalf of the Council and it would not, therefore, be appropriate when repeating quotations from Members to indicate their party political affiliation.
- 16.3 Further guidance on the legal constraints placed on the Council is contained in the Code of Recommended Practice on Local Authority Publicity 2011. Whilst the Code applies at all times, there is specific guidance during periods of heightened sensitivity before elections and referendums.

## **17. MEMBERS' ACCESS TO INFORMATION AND COUNCIL DOCUMENTS**

- 17.1 The following paragraphs identify the rights of Members and the procedures that they must comply with when applying for access to Cabinet/Committee/ Sub-Committee reports and other documents/information.
- 17.2 It is important to note that access rights apply to enable Members to carry out their role as elected representatives. Where a Member has a pecuniary or other personal interest in a matter the Member will only be entitled to the same access as would be the case for a private individual. In these circumstances, the Member must make it clear that s/he is acting in his/her private capacity and not as a Member of the Council.

### **Confidential/Exempt Information**

- 17.3 Members of the Council have additional rights over and above those of the public in order for the Member to fulfil their role. This includes access to internal and confidential/exempt information in specific situations.

Confidential information is:-

- (i) Information furnished to the Council by a Government Department on terms which forbid the disclosure of the information to the public, and
- (ii) Information which may not be disclosed by or under any enactment or by a Court Order.

Exempt information is information to which the public may be excluded but do not have to be. The categories of exempt information are set out in Schedule 12A to

the Local Government Act 1972 and are set out in Part 4.2 of the Constitution (Access to Information Procedure Rules).

### **Requests by Members – Procedures**

- 17.4 The following procedure should be used when requesting documentation/information which is not available in the public domain and is required in order to for a Member to fulfil their responsibility as a Member of the Council.
- (i) the Director or Head of Service of the Department concerned should be approached.
  - (ii) If access is denied or the Director/Head of Service is in doubt, the matter must be referred to the Monitoring Officer.
- 17.5 Any requests for information made by Political Group Officers on behalf of Members of their Group should be treated in exactly the same way as if those Members had made the request themselves. The Political Group Officers, when making such requests should clearly indicate on which Member's behalf they are acting.
- 17.6 Requests for information not readily accessible will not be acceded to where the cost is unreasonably high or would unreasonably disrupt the work of the Council. If required to establish a legal right to information, the Member may be asked to complete a request for information form setting out why the information is required. This form is available from Democratic Services.

### **Access to Cabinet/Committee/Sub-Committee Papers (including Background Papers) – Forthcoming Meetings**

- 17.7 The rights of Members can be summarised as follows:-
- (i) Same access rights as members of the public in respect of Part I reports. These rights are set out in Part 4.2 – Access to Information Procedure Rules.
  - (ii) All Members have a statutory right of access to exempt information if its falls under Paragraph 3, except to the extent that the information relates to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract, and Paragraph 6 of Schedule 12A of the Local Government Act 1972.
  - (iii) Members of the Overview & Scrutiny Committee have a statutory right of access to documents in certain circumstances. This right is set out in Part 4.2 Access to Information Procedure Rules.
  - (iv) All Members have a right to access information if they can demonstrate a “Need to Know” as set out below.

## **Access to Other Documents/Information – “The Need to Know”**

17.8 Under common law, Members are entitled to see such documents as are reasonably necessary to enable them to carry out their duties. This is in addition to the statutory rights to information set out above. In order to exercise this right, the Member must demonstrate a need to know, a mere curiosity or wish to see information is not sufficient. Access to information will be denied where the Member is considered to be “fishing” for information or seeks access for an ulterior/improper purpose (e.g. for a private purpose).

17.9 Case law has determined the following principles:

- The common law right arises from a councillor’s common law duty to keep themselves informed of all matters necessary to enable him properly to discharge their duty as a councillor. This is limited to access to such documents as might reasonably be necessary to enable them to properly perform their duties.
- There must be a link to the Member’s role on the Council as opposed to an indirect motive or purposes, such as a desire to assist a member of the public wishing to challenge a Council decision.
- Being strongly opposed to a decision to defend an action does not establish a need to see information submitted for the purpose of legal advice.
- The need to know may permit access to historic confidential documents related to the past affairs of a committee if this is relevant to the current functions and potential future decisions of the committee.
- Information may be redacted to remove irrelevant information, including information that may amount of gossip or rumour and which may, if disclosed, lead to legal action being taken against the Council, including defamation action. This can include redaction of personal data when this information is not necessary in order to comply with the need to know request.
- Members have no automatic right to access documents of a committee to which he / she is not a member, but could establish that information was needed to enable proper discharge of duties on another committee.
- A need to know does not extend to a need to attend an internal or operational meetings. Members should, in general, not involve themselves in operational matters, including staffing matters.
- A duty of confidentiality applies to information provided under the need to know and a Member would be in serious breach of the Code of Conduct if they were responsible for inappropriate disclosure of information in breach of this duty. This duty is of paramount importance when the information contains personal data about individuals, including staff, residents and service users.
- A need to know cannot be allowed or refused for party political reasons.

## **Use of Council Information – Confidentiality**

17.10 Members and Officers have duties to maintain confidentiality in certain circumstances. Officers are bound by their contracts of employment and Code of Conduct. Members are bound by their Code of Conduct and disclosure of confidential information could lead to action being taken in accordance with that Code. Disclosure of confidential information can lead to serious action being taken against the Council and in the case of personal information, can negatively impact on the individual whose information has been disclosed.

## **18. WHEN THINGS GO WRONG**

### **18.1 Procedure for Officers**

From time to time the relationship between Members and Officers may break down or become strained. Whilst it will always be preferable to resolve matters informally, through conciliation by an appropriate senior Officer (including the Monitoring Officer) the Member or his or her group leader, Officers have the same rights as the public to raise complaints under the Code of Conduct for Members. If it preferable if this is utilised after seeking to resolve matters via the informal process.

### **18.2 Procedure for Members**

In the event that a Member is dissatisfied with the conduct, behaviour or performance of an Officer, the matter should be raised with the appropriate manager. Where the Officer concerned is a Senior Officer, the matter should be raised with the appropriate Director or with the Chief Executive. Where the employee concerned is the Chief Executive, the matter should be raised with the Monitoring Officer. A Member can utilise the procedures in the Whistleblowing Code set out at Part 5.5. of the Constitution in certain prescribed circumstances.