

Section 37

Protocol for Member-Officer Relations

1. Introduction

- 1.1 The Council is determined to provide excellent local government for the people of Cannock Chase. It has produced this Protocol for Member/Officer relations in order to promote the highest standards in public life and encourage harmonious working relationships.
- 1.2 Partnership, based on mutual trust and respect between politicians and paid officers, is essential in achieving good local government. However, this partnership will not be effective unless there is a clear understanding by all of the roles and obligations of Members and the separate roles and duties of Officers. This Protocol sets out these roles, obligations, and duties and also the ground rules for all to observe. The standards in the Protocol apply equally to elected Members, voting and non-voting co-opted Members and to Officers where there is a joint responsibility.
- 1.3 This Protocol is based upon legislation, Council policies and documents deriving from legislation as well as guidance from a variety of sources, primarily:
 - The Local Government Act 2000.
 - The Council's Constitution.
 - The Members' Code of Conduct.
 - Guidance from the Office of the Deputy Prime Minister.
 - Guidance from the Standards Board for England.
- 1.4 The Protocol is designed to supplement and offer local interpretation of these documents. The Protocol does not form part of the Statutory Code of Conduct for Members (Members' Code of Conduct). Breaches of this Protocol may not always be a breach of the Members' Code of Conduct although, depending on the circumstances, it may be.
- 1.5 The Protocol refers extensively to relationships between Members and Officers and other employees directly in the service of the Council. The principles of the Protocol also apply to Members' dealings with other people not directly employed by the Council but who are in an employment-based relationship with the Authority (such as consultants or agency staff employed on a longer-term basis by the Council).

- 1.6 The principles underlying this Protocol are as follows:
- 1.6.1 there shall be mutual courtesy and respect between Members and Officers with regard to their respective roles.
 - 1.6.2 Members and Officers shall each carry out their respective duties in the best interests of the Council.
 - 1.6.3 this Protocol applies to all dealings between Members and Officers and not only during formal meetings.

2. General Obligations of Members

- 2.1 Members must observe the Members' Code of Conduct whenever they are conducting the business of the Council, conducting the business of their office or representing the Council. Members and voting co-opted Members are bound in law by the Members' Code of Conduct, but non-voting co-opted Members are also expected to comply with the provisions of the Members' Code of Conduct.
- 2.2 The Members' Code of Conduct creates certain general obligations that Members must observe, and which have a bearing upon Member/Officer relations. The Code of Conduct is set out in Part 5, Section 34 of the Constitution.
- 2.3 Officers provide support for Members only in their role as Council Members. Members should not ask them to assist with personal, business or party political matters and Officers should refer inappropriate requests for assistance to their Head of Service.
- 2.4 Members have a duty to act reasonably and when taking part in the Council's decision-making processes, must:
- 2.4.1 take into consideration everything they regard as relevant, or which they are advised is relevant.
 - 2.4.2 disregard anything which they consider is not relevant, or which they are advised is not relevant.
 - 2.4.3 follow the correct procedures, and
 - 2.4.4 comply with the principles for decision-making set out in Section 10 of this Constitution.
- 2.5 Members, who control the Council's assets and finances, are in a position of trust and therefore have a fiduciary duty to act in the interests of all the people of Cannock Chase, not only those in the Wards they represent.
- 2.6 In law, someone with a fiduciary duty is someone who occupies a position of such power and confidence over the property of another that the law requires them to act solely in the interest of the person they represent. This is in contrast to an ordinary business relationship, in which each party is free to seek purely personal benefits from their transactions with the other. So, for example, a guardian, a trustee, or an executor are all people with fiduciary duties.

3. Relationship Between Members and Officers

- 3.1 The relationship between Members and Officers should be characterised by mutual respect which is essential to good local government.
- 3.2 Any close personal or family relationships (e.g., parent/child; spouse/partner) between Officers and Members should be disclosed to the Managing Director who will then decide how far this needs to be disclosed to others. Members must also declare to their Group Leader any such relationship with an Officer that might be seen as influencing their work as a Member.
- 3.3 Members should avoid sitting on a Council body (other than full Council) or assuming a Cabinet Portfolio which has responsibility for any employee to whom they are married, a partner or otherwise closely related, where this could be construed as exercising improper influence over the working of the Council. All such relationships should be declared in a register for this purpose maintained by the Managing Director.
- 3.4 Generally, guidance states that a close relationship between a Member and a Senior Officer of second tier (Head of Service) and above (and in some cases, other senior staff) is incompatible with the high standards of public life and should be avoided or discouraged. The Council supports and seeks to promote this stance. The relationship may put the Member, or the Officer, in a position to exercise improper influence over the workings of the Council. Even if there is no actual impropriety, the situation may give rise to suspicion and the public may perceive that the opportunity for improper influence exists. In these situations, a Member would need to consider whether it was appropriate to remain in office whilst the Officer remained employed by the Council, and vice-versa. Should such a situation arise, the circumstances of each case will be considered individually by the Managing Director and the appropriate Group Leader.
- 3.5 Close personal familiarity between individual Members and Officers can damage professional relationships and prove embarrassing to other Members and Officers. Situations should be avoided that could give rise to suspicion and any appearance of improper conduct.
- 3.6 Officers and Members should address each other formally at meetings of full Council, Cabinet, Committees, Sub-Committees, Panels and other formal meetings that Officers attend that are open to the public. Officers should refer to Members by the office they hold: Leader, Chair, Vice-Chair or Councillor. Members should avoid excessive informality and should refer to Officers either by their title or by their full name.
- 3.7 Officers should dress formally when attending official Council meetings.
- 3.8 The same degree of formality is not necessary at private meetings of the Council or any social events that Members attend with Officers. Nevertheless, Members and Officers attending an event by virtue of their role with the Council should avoid close personal familiarity or any action which would embarrass others or damage their relationship with employees or Members.

4. The Role of Members

4.1 Members:

- 4.1.1 develop and set policies that will then be implemented by Officers.
- 4.1.2 monitor how those policies are being implemented.
- 4.1.3 represent the views of their communities and ward constituents and deal with individual casework.
- 4.1.4 represent the interests and views of the wider community within the District.
- 4.1.5 recognise the statutory roles of the Managing Director as Head of Paid Service, the 'Section 151' Officer and the Monitoring Officer and the significance attached to their advice.
- 4.1.6 consult with the communities they represent on the development of policy, particularly the Local Strategic Partnership Plan, the Corporate Performance Plan, Community Safety Plan, Best Value Reviews and other local initiatives.
- 4.1.7 consult with the Monitoring Officer and the 'Section 151' Officer about the lawfulness of any decision, maladministration, financial impropriety and probity or, where they have any doubt, about whether a particular decision is, or is likely to be, contrary to the policy framework, or contrary to, or not wholly in accordance with the budget.
- 4.1.8 respect Officers' political impartiality.
- 4.1.9 promote the highest standards of conduct and ethics.

4.2 Members must not insist that any Officer takes any action or not take any action:

- 4.2.1 that the Officer considers unlawful or illegal.
- 4.2.2 is in direct contradiction of any code or guidance.
- 4.2.3 is outside the delegated powers available to that Officer.
- 4.2.4 is contrary to the Council's budget or policy framework, or
- 4.2.5 would be likely to amount to maladministration.

5. The Role of Officers

5.1 Officers:

- 5.1.1 implement the policies set by the Council
- 5.1.2 will ask for guidance, where appropriate, on the implementation of the policies set by the Council if they are unclear about any aspect of those policies.

- 5.1.3 give such professional advice to Members as may be required, recognising that legal access to information may vary depending on the role of the Member, e.g., a Ward Member, Cabinet Member, Scrutiny Member or Member of a regulatory committee or sub-committee.
 - 5.1.4 carry out their delegated functions to the best of their ability and in the interests of the Council.
 - 5.1.5 must remember that they are employed by Cannock Chase Council as a whole and not by any particular part of the Council.
 - 5.1.6 are under a duty to help all Councillors/Co-opted Members and all parts of the Council equally.
 - 5.1.7 must take all relevant matters into account when formulating advice to Members.
 - 5.1.8 must report to the Managing Director or the Monitoring Officer or the 'Section 151' Officer any doubt or information they may have that a course of action or proposed course of action may be unlawful, illegal or otherwise in breach of the provisions of paragraph 5.3.2 below.
- 5.2 The Managing Director has a specific responsibility for briefing Members of Cabinet on all matters to ensure the effective functioning of the Council's Executive.
- 5.3 Officers must not:
- 5.3.1 set policy other than for the smooth running of office procedures and processes and as may have been delegated under the Council's Constitution and Scheme of Delegations.
 - 5.3.2 take any action, or not take any action, which would be unlawful or illegal, is in direct contradiction of any code or guidance, contrary to the Council's budget or policy framework, or which would be likely to amount to maladministration.

6. Relationship Between the Chair of the Council / Cabinet Members and Officers

The Chair and Cabinet Members shall be bound by the same provisions set out in paragraph 4 regardless of the capacity in which they are acting.

7. Relationship Between the Chair and Members of Scrutiny Committees and Officers

- 7.1 The Chair and Members of the Council's Scrutiny Committees and related bodies:
- 7.1.1 shall seek the advice of the Monitoring Officer where they consider there is doubt about the vires for a decision or, where they consider a decision of the Cabinet might be contrary to the budget and policy framework, the Monitoring Officer or Section 151 Officer as appropriate.

- 7.1.2 when considering calling Officers to provide information to the Committee, shall not, without the consent of the relevant Chief Officer, request the attendance of a junior Officer. This is to ensure that junior Officers are not put under undue pressure.
 - 7.1.3 when asking Officers to provide information to the Committee, shall confine questions, so far as possible, to questions of fact and explanation relating to policies and decisions. Officers may be asked to give a professional opinion but must not be requested to give a political view.
 - 7.1.4 where they consider it appropriate, may ask Officers to explain and justify advice given to the Cabinet prior to decisions being taken and justify decisions they themselves have taken under the Council's Scheme of Delegations.
 - 7.1.5 shall not question Officers in such a way as to be in breach of the Council's policy on harassment nor deal with matters which are of a disciplinary nature.
 - 7.1.6 shall at all times respect the political impartiality of Officers.
- 7.2 Officers shall:
- 7.2.1 maintain political impartiality at all times when commenting on the Cabinet's/Council's policies and procedures.
 - 7.2.2 be prepared to explain and justify advice given to Members of the Cabinet and the Council prior to decisions being taken and justify decisions they themselves have taken under the Council's Constitution and Scheme of Delegations.
- 7.3 Chief Officers will ensure that an Officer of sufficient seniority appears before the relevant Committee.

8. Relationship Between the Chair of Other Committees and Officers

- 8.1 This shall apply to all the Council's Committees, including Planning Control Committee, Licensing and Public Protection Committee, Standards Committee and other Panels and Bodies.
- 8.2 The Chair and Members of those Committees and bodies shall:
 - 8.1.1 be bound by the same provisions as set out in paragraph 4.2 when sitting as a Committee/Council body, and
 - 8.1.2 give Officers the opportunity to present any report and give any advice they wish to present or give.

9. Officer Relationships With Party Groups

- 9.1 When dealing with the various party groups:
 - 9.1.1 factual information will, if requested, be available to all political groups.

- 9.1.2 confidential requests for information to be provided to a political group or Member will be treated with the strictest 'confidence' by the Officers concerned and will not be accessible to any other political group.
 - 9.1.3 Officers shall exercise care when giving briefings or commenting on the policies and actions of the Cabinet or any of the Council's Committees and shall maintain political impartiality at all times.
- 9.2 When acting in party groups and dealing with Officers, Members shall:
- 9.2.1 recognise that attendance at Party Group meetings by Officers is not compulsory, but Chief Officers may properly be called upon to provide technical and/or professional impartial advice in support of deliberations by Party Groups either by attendance or by preparing documentation for discussion by the Group, subject to the availability of resources. All such requests for attendance should be made to the Managing Director.
 - 9.2.2 recognise that Party Groups are not empowered to make decisions on behalf of the Council and that any conclusions reached by such groups will be actioned by Officers.
 - 9.2.3 ensure they do not do anything that may compromise Officer impartiality.
 - 9.2.4 ensure that confidential matters are not divulged to anyone who is not entitled to receive such information.
- 9.3 All Groups are entitled to develop policies and plans and can expect Officers to provide information on a confidential basis to their Group, provided this is readily accessible, does not entail significant additional work and does not entail the release of information which is confidential or exempt or where to provide that information would be in breach of the law.

10. Members in Their Ward Role

10.1 When acting in their Ward role, Members:

- 10.1.1 need to be mindful of their competing roles, i.e., acting for the Council in the wider community and acting for constituents, and the possible conflicts of interest that can arise and the pressure this can bring on Officer time.
- 10.1.2 recognise an Officer's right to suggest that senior Officers, the Cabinet, Council, or a Committee need to authorise additional work requested by the individual Members.

11. Complaints About Officers

11.1 Members have the right to criticise reports, or the actions taken by Officers, but they should always:

- 11.1.1 avoid personal attacks on individual Officers.
- 11.1.2 ensure that criticism is constructive and well founded.

- 11.2 Members should avoid undermining respect for Officers at meetings, or in any public forum. This would be damaging, both to effective working relationships and to the public image of the Council. It would also undermine the mutual trust and courtesy that is an essential element of a well-run authority.
- 11.3 Complaints about Officers should be made to the relevant Head of Service where Members feel the fault with the service lies. Within three days, the Head of Service will:
- 11.3.1 acknowledge the complaint, and
 - 11.3.2 say if they intend to take action, or
 - 11.3.3 say how long they need to investigate.
- 11.4 A complaint relating to a Head of Service should be made to their line manager who will deal with it in accordance with the provisions set out in paragraph 11.3.
- 11.5 Members have a right to know if action has been taken to correct the matter, but they must neither:
- 11.5.1 influence the consideration of whether any level of disciplinary action should be taken against an Officer, nor
 - 11.5.2 insist (nor be seen to insist) that any such action be taken.
- 11.6 Specific statutory provisions exist in respect of any disciplinary action which may be contemplated against the Head of Paid Service, Chief Finance Officer, or the Monitoring Officer.
- 11.7 Members have a right to be told the outcome of any disciplinary case but have no entitlement to detailed information about the hearing or its conduct.
- 11.8 If a Member is not satisfied that action has been taken to deal with the complaint it may be referred to the Managing Director by the Member concerned.

12. Member Access to Documents and Information

- 12.1 The Council will at all times comply with the provisions of the Data Protection Act and the Freedom of Information Act. Members should seek the advice of the Data Protection Officer in relation to matters concerning these Acts.
- 12.2 Save as provided below, every member of the Cabinet, Scrutiny Committees or such other Committee or Sub-Committee of the Council has a right to inspect documents about the business of that Committee, Sub-Committee or the Cabinet, as set out in the Access to Information Procedure Rules included within the Council's Constitution.
- 12.3 All Members can expect to have answers to the queries they raise on behalf of their constituents where the relevant authority exists or about the policies and practices of the Council within the corporate time standards.

- 12.4 A Member who is not a member of a specific Committee, Sub-Committee or the Cabinet may have access to any documents of that part of the Council if:
- 12.4.1 They reasonably need to see the documents to perform their duties; in some circumstances they will need to satisfy the Council's Monitoring Officer of that need, and
 - 12.4.2 the documents or papers do not contain 'confidential' or 'exempt' information.
- 12.5 All requests for advice and information that cross directorate boundaries or involve multi-directorate activities should be directed through the Managing Director.
- 12.6 Heads of Service must decide how to meet requests and must be able to determine what resources, including which employees, are to be made available. This extends to deciding which Officers should answer questions, particularly in open meetings.
- 12.7 However, when a Member asks for information or advice the reply must not be copied to, or subsequently made available to, other Members without the permission of the requesting Member. Where information or advice is given in writing to a number of Members the document should make clear who has received it. In other words, a system of 'silent copies' should not be used.
- 12.8 Members are expected to give reasonable notice of requests for information and to have regard to the cost of producing any new detailed information.
- 12.9 A Member who may have a personal or prejudicial interest in a matter should seek advice from the Monitoring Officer in circumstances where they wish to inspect any document or have access to any information about a matter.

13. Press Releases and Conferences

13.1 All Council press releases:

- 13.1.1 shall be issued through the Council's Communications Team unless an alternative process has been approved by Council or a Committee with the relevant delegated powers.
- 13.1.2 shall be concerned with policy and service delivery.
- 13.1.3 shall not contain anything of a party-political nature. In this respect, regard must be given to the relevant legislation governing publicity issued by local authorities, especially around election time.
- 13.1.4 shall, where they include a quote from a Member of the Council, be submitted to that Member for clearance before being issues, and
- 13.1.5 shall be circulated to all Members for information.

13.2 Press conferences at which the Cabinet will brief press representatives on current issues and/or the Forward Plan (as published) will be arranged as Cabinet deems appropriate, by the Council's Communications Team. Senior Officers may attend press conferences to provide such technical and/or professional information as is appropriate.

13.3 Cabinet press conferences attended by Officers may also be attended by any Member of the Council but only as an observer, i.e., they may not take an active part. Cabinet press briefings where no Officer is in attendance are not open to other Members of the Council unless they are specifically invited to attend.

14. Correspondence

14.1 All correspondence written on behalf of the Council must be written on the relevant headed paper or if electronic, should be clearly identifiable as a communication from the Council. When Members are writing in their capacity as a Member, they must make it clear whether they are writing on behalf of the Council or as the Ward Member.

14.2 Unless provided by law, correspondence between individual Members and Officers should be treated as confidential unless the Member and Officer indicates otherwise.

14.3 All correspondence should normally be open to the inspection of the public in accordance with the Council's adopted policies. This does not apply to correspondence written in connection with legal proceedings, contractual matters or any other matter where papers can remain 'exempt' within the meaning of Schedule 12A to the Local Government Act 1972, as amended, or if this would be in conflict with the data protection legislation.

15. Breach of the Protocol By A Member

15.1 Members are required to report any matter that they believe may be a breach of this Protocol to the Managing Director or Monitoring Officer.

15.2 The Managing Director or Monitoring Officer may advise that the matter should be referred to the Standards Board for England if there is evidence that the breach also amounts to a breach of the Members' Code of Conduct.

15.3 Where there has been an alleged breach of this Protocol which does not amount to a breach of the Members' Code of Conduct and is therefore not a matter for the Standards Board including an alleged breach by a non-voting co-opted Member:

15.3.1 The Managing Director or the Monitoring Officer may refer the complaint to the Standards Committee to be considered further, or

15.3.2 The Managing Director, in conjunction with the Monitoring Officer, may refer the complaint to the relevant Group Leader where appropriate.

16. Breach of the Protocol By An Officer

16.1 Complaints of an alleged breach should be raised with the Managing Director. The provisions of paragraph 11 of this Protocol will apply.

17. Further Advice

17.1 Advice on the application of this Protocol should be sought from either the Managing Director or the Monitoring Officer.