

APPENDIX 20

ELECTED MEMBER/OFFICER RELATIONS PROTOCOL

1. INTRODUCTION

- 1.1 The aim of this Protocol is to guide elected Members (often referred to as 'Councillors) and officers of the Council in the conduct of their working relationships in order to ensure that these relationships remain productive and positive
- 1.2 A strong, constructive and trusting relationship between elected Members and officers is essential to the effective and efficient working of the Council as a whole
- 1.3 It is recognised that relationships between elected Members and officers are very varied and can often be complex. Therefore, this Protocol does not seek to be prescriptive and may therefore not cover all situations. However, it is hoped that the framework it provides will serve as a guide to dealing with a wide range of circumstances
- 1.4 This Protocol forms a key part of the Council's approach to corporate governance and its commitment to uphold good standards in public life.

2. INTERPRETATION OF THE PROTOCOL

- 2.1 Elected Members and officers must observe this Protocol at all times
- 2.2 The provisions of this Protocol will be interpreted after having regard to the requirements of the Members' Code of Conduct, the Officers' Code of Conduct, the Council's Constitution, Whistleblowing Policy and the various Human Resources policies, procedures and processes, for example 'Dignity at Work'
- 2.3 Where there is a conflict or discrepancy between this Protocol and the codes and policies referred to above, then those codes and policies shall have precedence. Conventions will also be taken in account in cases of conflict or discrepancy. Any questions over interpretation will be decided by the Monitoring Officer in consultation with the Chief Executive
- 2.4 It is recognised that, in the period preceding any Council election or by-election, specific protocols are in place. These protocols, which are contained within the rules in relation to Purdah will take precedence over this Protocol where there is, again, conflict or a discrepancy. Details on the rules in relation to Purdah are annexed to the Constitution
- 2.5 This Protocol does not change any rights or protection which a person may have in law.

3. THE ROLE OF ELECTED MEMBERS

- 3.1 Elected Members are primarily accountable to the wider electorate who, periodically, determine the people they wish to represent them on the Borough Council of Newcastle-under-Lyme. Therefore, this Protocol recognises that Members of this Council are elected to serve the people of the Borough of Newcastle-under-Lyme
- 3.2 Elected Members, as politicians, may express the values and aspirations of their particular party political groups but they must also recognise that, in their role as elected Members, they have a duty to always act in the public interest
- 3.3 Elected Members may have a number of roles within the Borough Council and need to be alert to the possible conflicts of interest that may arise as they carry out these various roles.
- 3.4 At all times elected Members should be aware that the role(s) they are performing may impact upon the nature of their relationship with officers and the expectations that officers may have of them.
- 3.5 Elected Members are mainly responsible for:
 - a) The political direction and strategic leadership of the Council;
 - b) The determination of policies, plans and strategies;
 - c) Ensuring appropriate actions are taken to give effect to or implement those policies, plans and strategies particularly in service delivery terms;
 - d) Performing the Council's statutory and regulatory functions;
 - e) Monitoring and reviewing, primarily via the Executive and scrutiny functions, the Council's performance in implementing its policies, plans and strategies and in delivering its services;
 - f) Ensuring and promoting effective working with partner organisations;
 - g) Representing the Borough Council on local, regional and national bodies and organisations; and
 - h) Representing the views of their wards, including the various communities and individual constituents living in these wards
- 3.6 Some elected Members will have additional responsibilities relating to their membership(s) of the Executive, Scrutiny Committees or other committees and sub-committees, including regulatory committees. Holding these various roles will undoubtedly involve different relationships with individual officers in areas where the elected Member in question has particular roles and responsibilities
- 3.7 Elected Members who serve on committees and sub-committees collectively have delegated responsibilities. These responsibilities may include deciding

quasi-judicial matters which, by law, are excluded from the remit of the Council's Cabinet

3.8 In turn, officers can expect elected Members:

- a) To act within the policies, practices, processes and conventions established by the Council;
- b) To work constructively in partnership with officers acknowledging their separate and distinct roles and responsibilities;
- c) To understand and support the respective roles and responsibilities of officers and their associated workloads, pressures and reporting lines;
- d) To give political leadership and direction and to seek to further agreed policies and objectives with the understanding that elected Members have the right to take the final decision on issues based on advice;
- e) To treat them fairly and with respect, dignity and courtesy;
- f) To act with integrity, to give support and to respect appropriate confidentiality;
- g) To recognise that officers work to the instructions of their senior officers and not to individual Members or body of members;
- h) To not subject officers to intimidation, harassment, or put them under undue pressure. Elected Members will have regard to the seniority of officers in determining what are reasonable requests, having regard to the relationship between the elected Member and officer, and the potential vulnerability of officers, particularly at junior levels;
- i) To not request officers to exercise discretion which involves acting outside the Council's policies and procedures;
- j) To not authorise, initiate, or certify any financial transactions or enter into any contract, agreement or undertaking on behalf of the Council or in their role as an elected Member without proper and lawful authority;
- k) To not use their position or relationship with officers to advance their personal interest or those of others or to influence decisions improperly; and
- l) To comply at all times with the elected Members Code of Conduct, the law, the Council's Constitution and such other policies, procedures, protocols and conventions agreed to by the Borough Council.

3.9 It is important that elected Members of the Council:

- a) Respect the impartiality of officers and do not undermine the role of officers in carrying out their duties;
- b) Do not ask officers to undertake work, or act in a way which seeks to support or benefit a particular political party or gives rise to an officer being criticised for acting in a party political manner; and

- c) Do not ask officers to exceed their authority where that authority is given to them in law, by the Borough Council or by their managers

3.10 The Head of Paid Service (often referred to as ‘the Chief Executive’); the Monitoring Officer (in the case of Newcastle-under-Lyme Borough Council, the Head of Internal Audit); the Section 151 Officer (the Executive Director (Resources and Support Services)); and other statutory officers have specific responsibilities placed on them by law. These responsibilities go beyond their obligations as employees of the Council. Where an officer is discharging his/her responsibilities as part of any statutory office an elected Member shall not:

- a) Interfere¹ with or obstruct the officer in exercising those responsibilities; and
- b) Victimise any officer who is discharging or has discharged his/her responsibilities of the statutory office in question.

4. THE ROLE OF OFFICERS

4.1 The primary role of Council officers is to advise, inform and support all elected Members and to implement the lawfully agreed policies of the Council

4.2 Officers are responsible for day-to-day managerial and operational decisions within the Council. Elected Members should avoid, where possible, inappropriate involvement² in such matters

4.3 In performing their role, officers will act professionally, impartially and with political neutrality. Whilst officers will consider an elected Member’s view on any particular issue, they should not be influenced or pressured to make comments, or recommendations which are contrary to his/her professional judgement or views

4.4 Officers should:

- a) Implement decisions of the Council and its subordinate bodies which are lawful, and have been properly approved in accordance with the requirements of the law and the Council’s Constitution, and are duly recorded;
- b) Work in partnership with elected Members in an impartial and professional manner;
- c) Assist and advise all parts of the Council. Officers must always act to the best of their abilities in the best interests of the authority as expressed in the Council’s formal decisions;

¹ This is not intended to prevent members questioning officers for the purposes of being able to understand fully an issue, but the level and extent of such questions needs to be reasonable

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- d) Respond to enquiries and complaints in accordance with the Council's agreed standards;
 - e) Be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for elected Members, the media or other sections of the public;
 - f) Act with honesty, respect, dignity and courtesy at all times;
 - g) Provide support and learning and development opportunities for elected Members to help them in performing their various roles;
 - h) Not seek to use their relationship with elected Members to advance their personal interests or to influence decisions improperly; and
 - i) Comply, at all times, with the Council's Officer Code of Conduct, and other such policies or procedures approved by the Council
- 4.5 Officers have the right not to support elected Members in any role other than that of elected Member, and not to engage in actions incompatible with this Protocol. In particular, there is a statutory limitation on officers' involvement in political activities
- 4.6 Some officers may be appointed to local, regional or national bodies because of their particular skills and expertise. They may be appointed specifically to represent the Council or in their professional capacity.

5. THE RELATIONSHIP: GENERAL

- 5.1 Elected Members and officers are, first and foremost, servants of the public. They are indispensable to one another in carrying out this role. However, their responsibilities are distinct. Elected Members are accountable to the public, and their group (where one is formed), whereas officers are accountable to the Council as a whole and for operational purposes to their manager
- 5.2 At the heart of the various Codes, and this Protocol, is the importance of mutual respect. Elected Member/officer relationships are to be conducted in a positive and constructive way. Therefore, it is important that any dealings between elected Members and officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position nor seek to exert undue influence on the other.

6. THE RELATIONSHIP: SCRUTINY COMMITTEES

- 6.1 It is accepted that in carrying out the Council's scrutiny functions, elected Members may require an officer to attend to answer questions or to discuss issues
- 6.2 It is recognised by this Protocol that challenge in a constructive and non-confrontational way is important in ensuring policies and performance are meeting the Borough Council's strategic objectives. Therefore, nothing in this Protocol is intended to stop elected Members from holding officers to account

for decisions made under delegated powers. Nor is it intended to affect the Council's scrutiny functions

- 6.3 When deciding whether to require an officer to attend a meeting, the Scrutiny Committee will consider the seniority of the officer in deciding who it would be appropriate to invite. There is a presumption against inviting officers outside the senior officer range to attend in this capacity. Requests for officer attendance should be made to the appropriate Director concerned. Such requests should indicate in broad terms the areas which elected Members will want to discuss, and should give reasonable notice of the dates when attendance is required
- 6.4 Where an officer attends a Scrutiny Committee meeting, his/her contribution should be confined to matters of fact and explanation. However, an officer may be asked to explain and justify advice which he/she has given prior to a decision having been taken, including decisions taken by him/her under delegated powers
- 6.5 Officers should not be drawn, overtly or covertly, into discussions of a political nature which would be inconsistent with the political neutrality requirement. Any questioning of an officer should not be reasonably interpreted as constituting harassment
- 6.6 In scrutiny proceedings, the capability or competence of officers must not be questioned. A distinction needs to be drawn between reviewing the policies, performance and decisions of the Council or its services and the appraisal of staff performance. The latter is not a function of scrutiny committees
- 6.7 The approach here is consistent with the Scrutiny Procedure Rules as set out in the Council's Constitution
- 6.8 In applying this part of the Protocol, account will be taken of any guidance agreed by scrutiny bodies provided that guidance is consistent with the principles of this Protocol.

7. POLITICAL GROUPS

- 7.1 The Chief Executive, together with Executive Directors and Heads of Service and occasionally other employees (all with the permission of the Chief Executive) may at times request to attend or be invited to attend a political group meeting with a view to briefing and advising on the formulation of policy. This may be on his/her initiative or at the request of a political group. However, the decision on whether he/she should attend is the Chief Executive's, in either case
- 7.2 If the Chief Executive decides that he/she or another officer may attend a political group meeting and it concerns a proposed significant policy change which is about to be presented to a meeting of the Council, Executive group or committee, then he/she must offer the facility to all other political groups within the authority, indicating the area of policy upon which he/she is offering to brief/advise. He/she will inform the leader of the political group with whom he/she is having the meeting that he/she will be offering the facility to the other political groups represented on the Council

- 7.3 Certain points must be clearly understood by all those participating in this process, elected Members and Officers alike. In particular:
- (a) Officer support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if officers are not expected to be present at meeting, or parts of meeting, when matters of party business are to be discussed;
 - (b) 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; and
 - (c) Similarly, where Officers provide information and advice for a political group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the Council, Cabinet or relevant committee when the matter in question is considered
- 7.4 Special care needs to be exercised whenever officers are involved in providing information and advice to a political group meeting which includes persons who are not elected Members of the Council. Such persons will not be bound by the Members Code of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons officers may not be able to provide the same level of information and advice as they would to an elected Members-only meeting
- 7.5 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 discussions to another political group.

8. ACCESS TO PREMISES

- 8.1 Officers have the right to enter the Council's land and premises to carry out their work. Some officers have the legal power to enter property in the ownership of others
- 8.2 Unless authorised to do so as part of an authorised committee site visit, Members are not entitled to inspect land or premises which the Council has the right or duty to inspect. Nor may they enter, or issue orders relating to works being carried out by or on behalf of the Council (for example building sites).

9. USE OF COUNCIL RESOURCES

- 9.1 Elected Members should not ask officers to provide resources or support which they are not permitted to give, for example support or resources:

- a) Which are to be used for business which is solely to do with a political party;
- b) For work in connection with a ward or constituency party political meeting or electioneering;
- c) For work associated with an event attended by an elected Member in a capacity other than as a Member of the Council;
- d) For private personal correspondence;
- e) For work in connection with another body or organisation where an elected Member's involvement is other than as a member of the Council; and
- f) Which constitutes support to an elected Member in his/her capacity as a member of another authority.

10. ACCESS TO INFORMATION

- 10.1 The legal rights of Members to inspect Council documents are covered partly by statute and partly by the common law. The information set out in Appendix 11 (Access to Information Rules) of the Constitution explains the position in detail
- 10.2 Members have all the rights available to members of the public and may request individual copies of any agendas of the Executive and of committees, sub-committees or panels of which they are not members. Additionally, Members' rights to information are subject to legal rules and, if a Member has a legitimate interest in a matter and is able to demonstrate a "need to know", in his or her role as a Borough Councillor, employees should provide the relevant information, including confidential information, to that Member. Approaches for information on this basis should normally be directed to the Director or another senior employee of the Executive Director concerned
- 10.3 Special care needs to be taken when a Member has a significant personal or business relationship with a constituent about whom he or she is seeking information. An appropriate option may be that another Member could act for the constituent.

11. POLITICAL ACTIVITY

- 11.1 Senior employees, except those politically exempted, cannot be local authority councillors or MPs, nor can they 'speak or publish written work for the public at large or to a section of the public with the apparent intention of affecting public support for a political party'
- 11.2 Employees are employed by the Council as a whole. They serve the Council and are responsible to the Chief Executive and their respective Executive Directors, and not to individual Members of the Council, whatever office they might hold

- 11.3 It is obviously important though for there to be regular contact between the Chief Executive, Executive Directors, senior employees and the leaders of political groups on matters affecting the Council, and between Executive Directors, other senior employees, the Leader of the Council and members of the Cabinet and Committee Chairs on matters affecting their respective responsibilities
- 11.4 Council decisions can only be made in accordance with the Constitution and through the formal processes of the Council. Only decisions made at formal meetings or under delegated powers can be acted upon by officers.

12. BREACHES OF THE PROTOCOL

- 12.1 Where an elected Member is dissatisfied with the conduct, behaviour or performance of an officer, the matter should be raised with the appropriate Executive Director or Head of Service. Where the officer concerned is an Executive Director, the matter should be raised with the Chief Executive, and, in the case of a Head of Service, with the appropriate Executive Director. Where the employee concerned is the Chief Executive, the matter should be raised with the Monitoring Officer
- 12.2 On the elected Member's side, where the relationship between elected Members and officers breaks down or becomes strained, every effort should be made to resolve matters informally, through conciliation by an appropriate senior manager or Members. Officers will also have recourse to the grievance procedure or to the Council's Monitoring Officer, as appropriate, in certain circumstances. In the event of a grievance or complaint being upheld, the matter will be referred to the Chief Executive who, having advised the Leader of the Council and the other appropriate Group Leaders, will decide on the course of action to be taken, following consultation with the Council's Standards Committee if appropriate
- 12.3 Breaches of the protocol by an elected Member may also constitute a breach of the Members' Code of Conduct (see Appendix 18 of the Constitution)

13. STATUS OF THIS PROTOCOL

- 13.1 This Protocol was approved by Full Council on 25th February 2015. It now forms part of the Council's Constitution (Appendix 20) and replaces the earlier version. As such, it is binding on all elected Members including co-opted and independent Members, and officers
- 13.2 This Protocol shall apply, as appropriate and necessary, to any person appointed individually or on behalf of a body or organisation to advise support or assist the Authority in its work.