

RUTLAND COUNTY COUNCIL DISTRICT COUNCIL CONSTITUTION

PART 5 - CODES AND PROTOCOLS

PROTOCOL ON MEMBER/OFFICER RELATIONS

1) WORKING TOGETHER – MEMBER AND OFFICER CODE

- a) The Council aims to improve the quality of life for the people of Rutland by performing an effective representative role and providing quality services in an open, honest, transparent and responsive environment.
- b) It is essential to have a good working relationship between Members and Officers in order to achieve this. Understanding, trust and co-operation is the foundation of effective local government. The following provides a reminder of some of the more important rules and good practices which should be followed and attempts to clarify some matters which are often misunderstood.

2) THE RELATIONSHIP BETWEEN MEMBERS AND OFFICERS

- a) The changing role of local government implies major changes both in Member role priorities and the choice of arena and settings in which Members operate. Any or all of these new role opportunities could be a source of fulfilment, or frustration, for Members individually or collectively. Add these to the traditional tensions which have existed between Members and Officers because of their differing roles, and it is easy to see that the working environment could easily lead to problems. There is nothing wrong with there being problems – the problems could almost be designed into the structure; what is wrong is if the problems are not faced because they will then never be resolved. As local government changes these problems have a tendency to grow rather than lessen.
- b) The changing role for elected Members demands different ways of working that are different from the familiar settings of the conventional committee and may require different rules of operation to Member and Officer working.

3) The sources of tensions between Members and Officers can be extensive. A Local Government Management Board report commented that the difficult circumstances for regulating Member-Officer relations include:

- a) unstable and fragmented hung councils
- b) divided/factionalised majority groups
- c) recent change of party control in an authority characterised by inter-party conflict
- d) a recent history of 'bad news' (particularly 'bad news' attributed to professional/managerial affairs)

Conversely, the most promising circumstances for regulating Member-Officer relations effectively include:

- e) stability of and continuity in party control

- f) continuity in Member-Officer relationship (particularly at Leader/Chief Executive and also at Chief Officer and Chairmen level)
- g) a recent history of 'good news' (for which Members can reasonably claim credit)
- 4) The differing responsibilities of problems are built into this system because Members and Officers perform different roles and because they are drawn from different backgrounds.

| <u>Member</u> | <u>Officer</u> |
|------------------------------------|-------------------------------|
| Specialist interest/political | Non political |
| Lay | Professional |
| Often part time | Usually full time |
| Recruited outside the organisation | Recruited by the organisation |
| Elected | Appointed |
| Representative | Non-representative |
| Allowances | Salaried |

- 5) The Member is often perceived as being drawn from outside the organisation, yet in charge of it, directing it and at times changing it. The Officer is often seen as part of the organisation, appointed to it in order to carry out its main business.
- 6) Members and Officers expect different roles from each other. Members can expect Officers to provide a professional and politically unbiased viewpoint on the services for which they are responsible. Members can also expect Officers to draw to their attention such things as any problems, new initiatives, impact of changes in legislation, suggestions for making service delivery improvements, or any budgetary considerations in relation to the services for which they are responsible. Members can also expect Officers to devise ways of providing services within the policies and priorities approved by Members.
- 7) Officers can expect Members to formulate policies and priorities to deliver the services, both statutory and discretionary, which the Council decides to provide. Members will be expected to provide a strong leadership for the Council to follow and not to depart from previously approved policies unless there are extenuating circumstances or unless the policy is in need of amendment as a result of historical, social, environmental or economic changes in the factors governing the original policy. Both Members and Officers should expect a mutual reliance based on trust of each other to perform their respective roles to the maximum benefit of the community.
- 8) Against the different backgrounds of Members and Officers, conflict could almost be seen as being inevitable. Members and Officers could have difficulty understanding each other, finding a common language, and appreciating each other's points of view. The most important response to these tensions is to keep open and extend channels of communications. Requisite forms of communication are unlikely to be possible in the formal arena of decision making meetings. It requires more informal settings that complement or supplement the formal structures and processes.

- 9) The relationship between the Leader and the Chief Executive is a crucial determinant of member-Officer relations, particularly when both have a high degree of power and influence within their respective spheres. Strong leadership and majority group/management team coherence maximise the probability that inappropriate member/Officer behaviour will be identified and dealt with. Conversely in situations of weak leadership and uncoordinated majority group/management teams it is more likely that practice will vary and inappropriate behaviour will be less likely to become widely known and regulated.
- 10) Protocols or conventions can be used to good effect to ensure that Members and Officers behave appropriately towards one another, especially in more formal settings. Informality of relationships can be a two edged sword. It may be fine if relations are already operating on an open and trusting basis, but it can become a problem if such conditions are absent because of the extended opportunities for political and Officer manipulation and because the roles are less clear. Member/Officer relationships are known to be at their worst when members or Officers personalise a relationship. That is, when one sees the others' policies or actions as being deliberately designed to provoke or undermine their own position. In this respect, Member/Officer relations work best where there is an informal but nonetheless professional relationship between Member and Officer, where both expect the other to be on different sides at times, and expect them to defend different issues – this is a healthy sign of trust and respect. Conversely, Member/Officer relationships are known to be at their best when both understand and accept each other's respective roles and responsibilities and both Members and Officers are committed to pursuing the same aims and ideals in delivering services.

11) PRINCIPLES UNDERLYING MEMBER/OFFICER RELATIONS

- a) Members and Officers act in partnership to deliver a range of services to the citizens of Rutland.
- b) Members and Officers are required to act at all times within the law and to maintain high standards of ethics and probity.
- c) Officers serve the whole of the Council and all its Members as a single corporate body.
- d) Officers give advice to the best of their ability to all Members equally and without bias.
- e) Elected Members recognise that Officers have a duty and right to provide professional advice in all aspects of the Council's work and have the right to have that advice recorded so that Members are fully aware of the advice and the implications of any subsequent decisions.
- f) Officers' advice is the principal means by which Members can satisfy themselves that their decisions are lawful and meet relevant standards in relation to codes of conduct and ethics.

- g) Officers recognise that Members have a duty to reach a final decision based on all relevant factors of which Officer advice plays a part. Where Members do not reach decisions in accordance with Officers' advice it is recognised that Members will provide relevant and lawful reasons for the decision which is taken.
- h) Officers, Members, Chairmen of Committees, Sub-Committees, Scrutiny Committees, Sub-Committees and the Cabinet are all playing their part in working to serve the best interests of the Council and the citizens of Rutland.

12) CODE OF CONDUCT FOR MEMBER/OFFICER RELATIONSHIPS

- a) An understanding of the different role, and the importance of a good relationship between Officers and Members is vital. A willingness to ensure and develop that understanding together with mutual respect between Officers and Members are the foundation of an effective local authority. This protocol seeks to reflect the principles underlying the respective Codes of Conduct which apply to Members and Officers. The shared object of these codes is the enhancement and maintenance of the integrity of local government and accordingly they demand very high standards of personal conduct. This point has been given added weight by a decision of the Employment Appeals Tribunal to the effect that a Council can be vicariously liable for the actions of its individual Members and that the actions of a Member can amount to a breach by the Council of the implied contractual obligation to provide a reasonable congenial working environment.
- b) It is not easy to codify an effective relationship, but the following are key rules for Members and Officers (i.e. All employees of the Council) to remember and comply with:
 - i) Every appointment of paid local authority employment must be on merit. The only exception to this is in respect of political assistants appointed under Section 9 of the Local Government and Housing Act of 1989. No such posts exist in Rutland at the moment and if any were created there would need to be compliance with very strict statutory procedures and guidelines.
 - ii) The obligation to appoint Officers on merit includes consideration of the terms of appointment, any promotion in employment, and should be applied to any disciplinary action.
 - iii) Senior Officers cannot be local authority Members 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". Such Officers are nevertheless able to engage in such activity to "such extent as is necessary for the proper performance of their duties" (Section 1-3 Local Government and Housing Act 1989 and Local Government Officers – Political Restrictions Regulations 1990).
 - (iv) Officers must be politically neutral. They are employed by the Council, not by Committees, Scrutiny Committees, the Cabinet, Chairmen,

Designated Members or other individual Members and are subject to the Council's employment procedures.

- Chief Officers and JNC Officers, in line with their national conditions of service, must not be forced to advise any political group of the Council or a political group meeting. National conditions (Clause 37) provide exemption for circumstances where Chief Officers consider it would be in the Council's corporate interest to give advice or attend meetings. However, even in such circumstances there must be clear and open safeguards to ensure that the Chief Officer is, and is seen to be, politically neutral.
 - This means in practice that Chief and Senior Officers may advise political groups on issues affecting the Council, but should do so on an even handed basis. For example, if Officers advise one member or group of members on a particular issue, for example the budget, they should also be available to other members or groups of members for the same purpose. The perception of exclusivity must be avoided.
 - A similar condition applies to all non-JNC Officers under their national conditions of service i.e. Paragraph 17 (c) of the Purple Book, but without the exception specifically provided in the national conditions of service for Chief Officers and JNC Officers. However, there may be circumstances where a Chief Officer considers that it is in the Council's corporate interest for a more junior Officer to either advise or attend meetings of members or political groups. Such circumstances are rare and require very clear and open safeguards to ensure the political neutrality of the Officer in question.
 - To enable Chief Officers to use their discretion in the interest of the Council, it is very important that Members do not in any way put pressure on the Chief Officer.
 - Any reports concerning potential decision making to a political party or Members' group should be written as if the reports were being prepared for the relevant committee i.e. they should be balanced and contain all the relevant advice. This reflects the reality that consideration of issues in a Members' group or party political group often represents an early stage in the Council's decision making process. At present, the Council has no recognised party political groups, but it is equally important that individual members and/or groups of members are treated as if they were a 'political group'.
- v) Members may require an Officer to provide advice or a briefing note on any issue to enable them to perform their Member duties, either as a member of the authority or as a ward representative. A key indicator as to whether such support breaches the Member and Officer Code is whether the Officer concerned would have difficulty in being open about the work in question to senior management.

- vi) Members and employees must understand that Council decisions can only be made by the Council, Committees, Sub-Committees, the Cabinet and in some instances Scrutiny Committees or Chief Officers acting under delegated authority. Decisions taken by informal meetings or individual members do not constitute Council decisions. Members and employees must accordingly ensure that representations to the Council at any stage in the formal decision making process with regard to any matter should be made to the appropriate decision making body.

It is particularly important that Members understand this when performing their representative role as ward Member.

- vii) It is important that full and effective use is made of regular contact on matters affecting the Council between Chief Officers, other Senior Officers and leading members and on matters affecting committees between Chief Officers, other Senior Officers and Committee, Scrutiny Committees or Cabinet Chairmen.
- viii) Reports to decision-making bodies should be written by the Chief Officer or other authorised Officers. However, in exceptional circumstances a report may be presented by Chairmen or a Member with a specialist interest or knowledge.

It is likely that sensitive reports would be discussed with the chairman or lead member at one of the regular meetings held with the Chief Officer, and although the member may make suggestions to the Chief Officer as to the content of the report, it must be recognised that the report is the Officer's and even if the member is unhappy with its contents, it should not be amended by the member except with the express approval of the Chief Officer.

If the Chief Officer's report is not regarded as appropriate by the Member then exceptionally the Chairman or Lead Member should write their own report in addition to the report submitted by the Chief Officer. In this instance the Chairman or Lead Member should, under no circumstances, use undue pressure to persuade the Chief Officer to withdraw the original report.

- ix) Mutual respect between Officers and Members is essential to good local government. Some employees are required to give advice to Members as part of their job but close personal familiarity between employees and individual Members can damage the relationship and prove embarrassing to other Officers and should therefore be avoided. It may impair others' perception of the objectivity and independence of the Officer and can lead to loss of confidence.

Breach of this rule can easily undermine the Council's decision making process. A breach can render the Officer concerned in contravention of national conditions of service, and the Member concerned in breach of a Code of Conduct affecting a Member which may amount to maladministration.

Key indicators of a damaging relationship include:

- Where it could be regarded as influencing the Member/Officer in their respective roles.
 - Where the Member/Officer may feel the need to conceal the relationship or have any difficulty in being open about the relationship to the Council management or the Public.
 - Where a Member of the Public might reasonably consider the relationship to influence either the Member or Officer concerned in their respective roles.
 - Where the relationship is such as to give cause for concern in so far as it may impact on the proper administration of the Council.
 - Where a Member and Officer do form some type of emotional or personal relationship they must consider whether it amounts to a breach of this role. Advice may be sought from a relevant Chief Officer, Monitoring Officer, Chief Executive or even from a union. A Member can take advice in confidence from another Senior Member, or from a relevant Senior Officer such as the Chief Executive, Monitoring Officer or Head of Legal Services.
- x) Confidentiality is often vitally important and must be respected by Members and Officers at **all times**:
- The decision as to whether any matter is confidential is a corporate matter, and not for any individual Member or Officer to decide without corporate authority. For example, if a letter were marked confidential it would not be for any individual Officer to decide that it is in the Council's interest to pass the letter on to the press, unless an authorised committee or Officer decides otherwise.
 - To enable the decision making process to be effective, it is extremely important that Officers and Members respect the confidentiality of committee reports that are heard in private, when the press and public have been excluded from the meeting.
 - Breach of confidentiality may have serious implications for the Council. For example, prospective commercially sensitive contract information, terms being negotiated under a development agreement, a contract for the supply or sale of goods or services, or matters relating to the Council's position in legal proceedings.
 - A breach may also result in serious implications for the individual Member/Officer who leaks the information, as there may be maladministration which could result in the Members/Officers being publicly named. Breach of the Data Protection Act may amount to a criminal offence.

- The Council might also face an action for redress from a Member, former member or potential member of staff if employment matters are not dealt with as a result of a breach in relation to approved procedures or legislation.
- c) It is important that all dealings between Members and Officers should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position. Effective conduct of Council business demands that there be mutual respect, trust and courtesy in all meetings and contacts, both formal and informal, between Members and Officers. This plays an important part in the Council's reputation.
 - d) If a Member considers that he has not been treated with proper respect or courtesy and cannot resolve it through direct discussion with the individual, then he may raise it with the Officer's line manager, Head of Service or Director. If the issue concerns a matter affecting the Head of Service or a Director, then it should be discussed with the Chief Executive. If the matter affects the Chief Executive, then it should be discussed with the Leader of the Council. A complaint about an Officer may result in disciplinary action in accordance with the locally agreed procedures for all Council employees. An Officer who is aggrieved by treatment by a Member may pursue a complaint in accordance with the following paragraphs.
 - e) Policy Statement – Rutland County Council believes that all of its employees are entitled to be treated with due courtesy, consideration, respect and sensitivity in their dealings with Members. Members will follow the same standard of conduct in their dealings with employees as the Council expects of those employees.
 - f) In order to ensure that this policy is observed employees must feel able to raise complaints and know that the Council will act appropriately.
 - g) Without prejudice to any legal rights which they may have, employees will be entitled to complain about the manner in which they have been treated by a Member.
 - h) Without prejudice to the entitlement of an employee to complain about any aspect of treatment by a Member, it is envisaged that the type of treatment which would be the subject of a complaint would be of a kind that would be appropriate for consideration under the Council's grievance procedure or harassment, discrimination and bullying at work procedure if the Member had been an employee.
 - i) The Harassment, Discrimination and Bullying at Work Policy and Procedure contains the following definitions:
 - "Harassment" includes any unwanted verbal or physical abuse and/or advances and/or behaviour which an employee finds offensive and which causes them to feel threatened, humiliated, patronised, distressed or harassed. Such action may also be considered harassment if it impairs an individual's job performance, undermines his job security or creates a threatening or intimidating environment. Harassment may be

deliberate or unconscious, an isolated incident or repeated action. It will not necessarily be a defence that such incidents or action consist of words or behaviour which might be claimed to be 'commonplace'.

- "Discrimination" is where any employee is treated less favourably than any other employee on grounds of racial origin, sex, age, disability, marital status, religious beliefs or sexual orientation.
- "Bullying" is the persistent and deliberate misuse of power or position to intimidate, humiliate or undermine.

j) Examples of inappropriate treatment could be:

- Physical assault or violence or the threat of violence;
- Discourteous, rude or aggressive behaviour (including shouting, swearing, public reprimands, persistent criticism);
- Offensive remarks concerning sex, race, disability, religion, colour, ethnic origin or sexual orientation;
- Threats, especially of disciplinary action, other than to refer to a senior Officer;
- Applying undue pressure to do something which the Officer (especially if a junior Officer) is not empowered to do or to undertake work outside normal duties or hours;
- Impugning political neutrality;
- Persisting in requesting particular action after being told why it may not be done;
- Persisting in requiring access to information after being told why there is no entitlement.

k) This procedure applies to complaints against individual Members. It does not apply to decisions properly taken by the Council or any of its Committees, Sub-Committees, Scrutiny Committees or the Cabinet. However, it does apply to complaints relating to the conduct of individual Members during such meetings.

l) Informal procedure – A complainant should, where it is reasonable to do so, first discuss the complaint with the Member concerned in the hope of resolving the matter informally to the satisfaction of the complainant.

m) If the complainant feels unable to approach the Member on a one to one basis, the complainant may seek the assistance of the relevant Head of Service or Director or the Personnel and Training Manager who will facilitate a discussion.

n) Formal procedure, stage one – In the event of the informal procedure being unsuccessful or where it is unreasonable to expect the complainant to use the informal procedure the complainant will put the complaint in writing to the Chief Executive setting out clearly the nature of the complaint.

o) The Chief Executive will discuss the complaint with the Member in an effort to resolve the matter.

- p) Should this prove unsuccessful the Chief Executive will then advise the Leader of the appropriate political group (if any) of the complaint and the action taken. The Group Leader will consider the matter, in accordance with any relevant procedures of the group and will advise the Chief Executive of the outcome of that consideration. If there are no political groups, then the Chief Executive will advise the Chairman of the Council who will take any measures he considers appropriate.
- q) At all stages the complainant shall be kept informed of actions and outcomes by whichever senior Officer is involved directly at the particular stage.
- r) Formal procedure, stage two – If the complainant is dissatisfied with the outcome under the above paragraphs, he may invoke the further formal procedures for dealing with a complaint alleging improper or inappropriate conduct by an elected Member by writing to the Monitoring Officer.

In circumstances where the Head of Service, Director or Personnel Manager consider the alleged conduct of the Member to be sufficiently serious (for example, physical assault) they may refer the matter to the Chief Executive who may decide to recommend the complainant to move to the formal procedure, stage two, straight away.

5) POLICY AND MEMBERS' SUPPORT OFFICERS

Some Officers inevitably work more closely and regularly with Members than others. The fact that such Officers will often have a close working relationship with Members, especially leading members, is a feature of local government administration which must be, and seen to be kept, carefully managed. It is essential to establish guidelines to prevent any misunderstandings. The following principle should be maintained:

- a) An established reporting arrangement between the Officer and the immediate line manager.
- b) Priorities and workload of the Officer to be agreed by the manager after taking into account the member's requirements.
- c) Support to be available to all Members of the Council.
- d) Support to relate to council functions and not an individual Member's or party political purposes.

There will be many grey areas in the application of the above guidelines. In practice, for example, committee chairmen and designated members will receive support and advice regarding initiatives being worked upon for an ultimate endorsement by the Council, Cabinet or a Committee. This is a conventional practice and also extends to preparing material for submission or delivery in the name of, or association with, the Council to government or external bodies. Work is routinely undertaken for Members in relation to their duties as ward Members. Research and drafting of responses to constituents is commonly acceptable, but again Officers must not be drawn into special

interest or political party activity relating to ward political organisation and work. Officers engaged on such work, however, must be very careful to avoid the preparation of political material.

Officers experiencing difficulty or doubt in this area of work should consult their senior manager and/or seek advice from the Personnel Section or Legal Services. Cases of particular difficulty or irreconcilable differences should be referred to the Chief Officer or the Chief Executive.

6) TACKLING PROBLEMS

If a problem or uncertainty does arise it is important that the matter is discussed. A problem experienced by a junior Officer should be shared with senior management. Any breach of this Code or protocol other than as provided in paragraphs 4.5 to 4.18 shall be reported to the Monitoring Officer. The Monitoring Officer will then determine whether it is also appropriate to advise the Chief Executive and the Chief Finance Officer. The matter will then be considered in consultation with the Chairman and Vice-Chairman of the Council or Leader and Deputy Leader where appropriate. Advice on law administration issues can be obtained from the Head of Legal Services if necessary.

7) MEMBERS AND THE MEDIA

- a) As an elected Member there will be many times when you will wish to contact the Media and when the Media will wish to contact you in connection with the performance of your duties. The issues may involve ward issues or they may involve issues of a corporate nature, especially if you are a Committee or Scrutiny Committee chairman/vice-chairman, Leader or Deputy Leader of the Council, Member of the Cabinet or a lead member within the authority.
- b) The following guidance is given to assist you in your dealings with the Media.
- c) The County of Rutland is covered by the following media forms:
 - i) Local newspapers Rutland Times and Rutland Mercury {weekly} and the Leicester Mercury {daily}.
 - ii) Local radio stations Rutland Radio, BBC Radio Leicester and Leicester Sound.
 - iii) TV BBC East Midlands TV and Central TV.
- d) The Council employs a Communications Officer to liaise with the Press, issue press releases and advises the Council on media relations.
- e) In general, most enquiries are directed to the Communications Officer, who then collates information, arranges interviews and responds to the enquiry.
- f) However, some Journalists will contact Members directly on controversial issues or stories that relate particularly to a ward.

- g) Many Journalists will try and get Members to comment on a story and give quotes immediately claiming that they have tight deadlines. In most circumstances this does not cause difficulties but if you do not feel that you have the full facts you should not feel obliged to respond immediately.
- h) You should also consider whether you are speaking to the Media in a personal capacity as an individual member of the public, as a Member of the Council or as a Member holding another position of authority within the authority e.g. a Chairman, Vice-Chairman, Leader or Deputy Leader. It is always advisable to indicate in what capacity you are making a statement.
- i) If you do not feel comfortable making an immediate response, it is suggested that you:
 - i) ask if you can phone the journalist back;
 - ii) take their name, number and newspaper/broadcasting company;
 - ii) check when their final deadline is;
 - iii) call the press officer to check whether the Council has already responded to this enquiry;
 - iv) contact the relevant member or officer to find out more information;
 - v) make a note of the key points you want to get across;
 - vi) call the journalist back and stick to your main points, repeating them if necessary rather than being drawn into making off the cuff comments.
- j) All publications giving advice on media relations state that there is no such thing as an off the record comment.
- k) Further advice can be obtained from the Communications Officer.