

# A PROTOCOL FOR MEMBER/OFFICER RELATIONS

## 1. Introduction

Hyndburn Borough Council recognises that the relationship between members and officers is of vital importance to its work on behalf of the people of the Borough. The Council believes this Protocol demonstrates its commitment to act with integrity and helps both members and officers in carrying out their different, but interrelated, duties.

## 2. Basic Principles

**Members and officers must treat each other with courtesy and respect at all times.**

The relationship between members and officers should be a professional one and close personal familiarity between members and officers should be avoided, as it prejudices the impartiality of decision making and can be embarrassing to other members and officers.

*For example, officers should not accept gifts or hospitality from members.*

*Similarly, officers should not undertake work for members in a personal or private capacity.*

**Neither members nor officers must try to take advantage of their position and their behaviour towards each other should never be bullying or threatening.**

Members must be aware of their position of influence and must not seek to abuse this, particularly with junior employees.

*For example, the role of officers is to implement Council policy. Members must never seek to persuade or bully officers to "bend the rules" in favour of them or anybody they are representing.*

**Whether or not officers are in politically restricted posts, they must maintain political impartiality and seek to serve the needs of the Council as a whole.**

In particular, officers must treat members with courtesy and respect regardless of the member's political affiliation. Both members and officers must recognise the fundamental need for officers to be politically neutral in their work and both must ensure that officers are not placed in a situation where they are drawn into political disputes, either between different political groups or within a political group.

**Members and officers must comply with the Council's Equal Opportunities Policy at all times in their dealings with each other.**

The working relationship between members and officers must not be influenced by gender, sexual orientation, marital status, race, nationality, colour, religion, age or disability.

*For example, members and officers must not make sexual or racial remarks to each other, even if the remarks are meant as a "joke". Such behaviour can cause upset and offence and may leave the Council open to legal action, including claims of unfair dismissal and discrimination.*

**Members must be aware of their role as employer of the Council's staff and must respect the Council's disciplinary procedures and the Council's management structure.**

If a member has a concern or complaint about an officer they must raise it privately with the officer's line manager or the appropriate chief officer. The concern or complaint should not be raised directly with the officer concerned. In particular, no member has any right to appoint, dismiss or discipline officers other than through membership of an appropriate panel or committee established under the Council's recruitment or disciplinary procedures and members must not become involved in individual staffing matters except at the request of the Chief Executive.

Additionally, officers are responsible to the Council as their employer and that responsibility is implemented through the management structure. Officers are accountable to their chief officers, and whilst officers must always seek to assist members, they must not in doing so, exceed any authority they have been delegated by their chief officer.

Members must never threaten any officer's employment, even if this is meant as a "joke". Any remarks of this nature are likely to constitute constructive dismissal of the officer concerned and may leave the Council open to a claim of unfair dismissal, for which substantial compensation may be payable.

Also, members must never ask / instruct officers to keep information or discussions confidential from their line manager, unless the information or discussion relates to alleged misconduct by the line manager (in which case the information should be passed to the monitoring officer).

Neither members nor officers must lobby any other members or officers in support of any employment decision affecting an individual employee or applicant for employment

### **3. Relationship Between Officers And The Executive**

It is important that there is a close working relationship between the executive and chief officers. However, officers must ensure that such relationships never become so close, or appear so close, as to prejudice the officer's ability to deal impartially with other members and other party groups.

The member who is to chair a cabinet meeting (plus any other members of the executive they specify) is entitled to receive a briefing on any reports officers propose to submit to the meeting. This briefing should be held at a time convenient to the members concerned and prior to the publication of the agenda and reports. The member who is to chair the meeting may direct that any item of business within the competence of the executive is included on the agenda for the meeting.

Members of the executive are entitled to try to persuade officers to change the draft recommendations in reports to cabinet. However, chief officers are responsible for the content of reports submitted in their names. In the event of disagreement, the officer in whose name the report is submitted should make whatever recommendation they consider appropriate in their professional judgement and, if the leader so directs, the report should also contain a separate leader's recommendation.

Members of the executive can expect chief officers to assist them in preparing member reports to cabinet. However, officers must not be asked to prepare material of a party political nature or which prejudices their political neutrality. If a chief officer disagrees with the recommendations in a member report the report should contain the member's recommendations and a separate chief officer's recommendation. Alternatively, the chief officer may submit his / her own recommendations to the meeting in the exercise of his / her professional judgement.

Requests for briefings by members other than the chair of the meeting should be dealt with after the publication of the agenda.

#### **4. Relationship Between Officers and Committee Chairs**

The remarks in paragraph 3 apply equally to the relationship between officers and committee chairs.

#### **5. Officers at Committee/Cabinet Meetings**

Officers attending cabinet meetings will be able to speak at the invitation of the chair of the meeting (except the head of paid service, monitoring officer and chief finance officer, whose rights to address meetings of the executive are set out in the Council's Executive Procedure Rules).

Members have a right to have the way they have voted on an issue recorded in the minutes of a meeting. An officer request that the minutes record the officer's advice on any matter where that advice has not been accepted shall also be complied with.

Officers giving advice to committee / cabinet meetings are constrained in their ability to respond to any behaviour by members amounting to a personal attack or unnecessarily persistent questioning and members must not engage in such conduct. Similarly, officers are under a duty to give appropriate advice to members, even where they suspect it might be unpalatable. Officers must not be placed in a position where they are tempted to suppress their professional advice for fear of a member's response. Accordingly, if any member is unhappy with the advice received from an officer they should not persist in raising the matter at the meeting but should register their concern and intention to raise the issue with the appropriate chief officer or the Chief Executive at a later time.

The chair of the meeting must ensure an officer is not subjected to undue criticism whilst giving advice to elected members and must intervene to prevent such a situation from continuing. If a situation of this sort occurs, the chair should report the matter to the Chief Executive following the meeting, so the matter can then be referred to and dealt with by leader of the relevant political group. A written response should be made to the officer concerned, indicating the outcome of any referral.

A similar situation arises where an officer is not present at a particular meeting and the officer is specifically named during the debate. Members must ensure that the officer is not named to his detriment when the press or public are present and he / she is not in a position to refute any allegation or defend himself / herself.

#### **6. Officers and Scrutiny Committee**

Officers must comply with all lawful requests for factual information from overview and scrutiny committees within any reasonable timescale laid down by the committee, even if the information may be embarrassing to the leader and cabinet. Officers should seek advice from Legal Services if they are uncertain about the committee's right to any particular information requested.

Overview and scrutiny committees must respect the political neutrality of officers and should not expect them to comment upon political matters, e.g. officers should not be asked to express an opinion about the wisdom or merits of decisions made by the leader and cabinet. In respect of items before overview and scrutiny committee, officers can, however, be asked to explain:

- what the Council policy is;
- the justification and objectives of that policy as the executive sees it;
- the extent to which those objectives may have been met;
- how administrative factors may have affected the choice of policy measures and the manner of their implementation

Officers can additionally be asked to explain and justify:

- the advice they have given to the executive prior to decisions being taken
- decisions the officer him / herself has taken under delegated powers.

When interviewing officers, overview and scrutiny committees should pay particular attention to the advice in section 5 of this Protocol.

## **7. Officer Advice To Members**

Officer advice to members must reflect the "Basic Principles" set out in section 2 of this Protocol e.g. it must be politically neutral, must be given courteously and must accord with the Council's equal opportunities policy.

Officers and members must not engage in "off the record" discussions. Officers cannot give "off the record" advice to members, nor must members ever ask them to do so. Officers must always retain a written record of any advice they have given members and verbal advice must always be followed up with a letter to the member confirming the advice that has been given.

## **8. Officer Advice to Party Groups**

It is common practice for party groups to consider and discuss matters of Council business before they are considered at committee or cabinet. Officers may properly be called upon to support party group discussions, provided the appropriate chief officer agrees. The officer support may involve briefing a chair or spokesperson prior to a committee / cabinet meeting or a presentation to a party group meeting. Such support is available to all party groups.

However, members and officers must abide by the following guidelines:

- (a) the officer support 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 and officers must not be present at meetings, or parts of meetings, when matters of party business are discussed.
- (b) party group meetings cannot make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and officers must not interpret or act upon them as such;
- (c) although officers may have provided information and advice to a party 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 relevant committee / cabinet meeting when the matter in question is considered.
- (d) Officers must exercise special care if they are involved in providing information and advice to a party group meeting which includes persons who are not members of the Council. Such persons will not be bound by the statutory code of conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and officers should consider carefully whether they are able to provide the same level of information and advice as they would to a members only meeting.
- (e) Officers must respect the confidentiality of any party group discussions at which they are present and they should not relay the content of any such discussion to another party group.

Any particular cases of difficulty or uncertainty arising in respect of officer advice to party groups should be raised with the chief executive, who will discuss them with the relevant group leader(s).

## 9. **Members' Access To Information And To Council Documents**

Members are free to ask any Council Section to provide them with such information and advice about the Section's work as they may reasonably need to assist them in discharging their role as members of the Council. This can range from a request for general information about some aspect of a Section's activities to a request for specific information on behalf of a constituent. Such requests should normally be directed to the chief officer or another senior officer of the Section concerned.

Briefly, members are entitled to:

- inspect any document containing material relating to any business to be dealt with at a meeting of a committee of full council (see (a) below);
- inspect any document provided they can establish a sufficient "need to know" (see (b) below);
- inspect documents before the leader and cabinet, with members of scrutiny committees having additional rights (see (b) below);

Further guidance is contained in the Access To Information Procedure Rules in the Council's written constitution.

(a) Members have a statutory right to inspect any Council document that contains material relating to any business that is to be transacted at a Council or committee meeting. This right:

- applies irrespective of whether the member is a member of that committee
- extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers
- does not apply to documents which contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, contract and industrial relations negotiations, advice from Counsel and criminal investigations.

(b) In addition, members have the right to inspect Council documents if this is reasonably necessary to enable the member properly to perform his/her duties as a member of the Council. This is commonly known as the "need to know" principle. The following rules apply to the "need to know":

- members must demonstrate that they have the necessary "need to know". Mere curiosity is not sufficient.
- The "need to know" must initially be determined by the chief officer whose Section holds the document in question (with advice from the Executive Director (Legal and Democratic Services) if required). In the event of dispute, the question will be decided by the relevant committee or the cabinet (depending on the body in connection with whose functions the document is held).
- In some circumstances (eg, a committee member wishing to inspect documents relating to the functions of that committee) a member's "need to know" will normally be presumed. In other circumstances (eg, a member wishing to inspect documents which contain personal information about third parties), a member will normally be expected to justify the request in specific terms.
- The term "Council document" is very broad and includes any document produced with Council resources. However, a member of one party will not have a "need to know", and

therefore a right to inspect, a document which forms part of the internal workings of another group.

- Members have no right of access to information held by the Council under an obligation of confidentiality or if its release would be an offence under the Data Protection Act.
- (c) All members are entitled to inspect documents in the possession or control of the leader and cabinet which relate to business to be dealt with at a cabinet meeting, although this excludes exempt information. In addition, members of overview and scrutiny committees are entitled to copies of such documents, including those containing exempt information if it relates to issues the scrutiny committee are reviewing / scrutinising or which they intend to review or scrutinise.

Any Council information given to a member must only be used for the purpose for which it was provided and must be used by the member in connection with the proper performance of the member's duties as a member of the Council.

Members must not knowingly seek information which is not publicly available and:

- which they do not have a need to know to perform their duties
- in which they are professionally interested
- in which they have a disclosable pecuniary interest or a personal interest

An officer who receives a request for information which is not publicly available and in which it seems that the member may have an interest should refer the request to their Service Head or Chief Officer for them to discuss with the member concerned.

Officers should respond promptly to requests for information. Usually, the information should be provided within 5 working days of the member's request. If this is not possible, the member must receive a written reply not later than 5 working days after his / her request, explaining why a full reply cannot be provided within the usual time period, together with an estimate of when a fully reply will be given, unless other arrangements have been agreed with the member. A decision to refuse a member access to requested information must be reviewed by the Chief Executive at the member's request.

## **10. Involvement Of Ward Councillors**

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. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the ward members should be notified at the outset of the exercise.

## **11. Access to Officers**

Members may consult with any officer during the Council's normal working hours and all members shall be provided with the direct line telephone numbers of all employees. Cabinet members, the chairs and deputy chairs of committees and political group leaders shall be provided, in confidence, with the home telephone numbers of chief officers for emergency use.

Officers shall respond promptly to a request from a member for a meeting and will arrange for a meeting be held within three working days if reasonably practicable. If the officer cannot attend a meeting within this timescale they should arrange for another officer to attend in their place.

## **12. Use of Council Facilities**

Members have the right to use Council facilities such as stationery, reprographics, secretarial services and telecommunications equipment, in the performance of their duties as a councillor, but for no other purpose whatsoever.

The above also applies to Council equipment which members are allowed to take home e.g mobile phones. Members are responsible for the safekeeping of such equipment and must ensure that others do not gain access to it or use it for any improper purpose.

## **13. Media Relations**

Chief officers shall assist members in explaining proposals and policies to journalists but not in promoting individual councillors or their political views. Officers should ensure that they comply with the Code of Practice on Local Authority Publicity at all times.

Special care must be taken in the period before an election and officers should seek advice from the Chief Executive or the Executive Director (Legal and Democratic Services) before dealing with the media at this time.

## **14. Members as Representatives on Outside Bodies**

Members are entitled to all reasonable assistance from officers to support them in their membership of outside bodies to which they have been appointed by the Council. Such assistance will include the provision of information about the body prior to appointment and the availability of a named contact officer for each body for briefing purposes and to assist the member to report back to the Council on the activities of that body.

## **15. Failure to Comply with this Protocol**

Any member or officer who knows or suspects that an officer has failed to comply with the provisions of this Protocol shall bring the matter to the attention of the Chief Executive or follow the Council's whistleblowing policy and procedure. Any action to investigate the alleged breach of this Protocol shall be conducted in accordance with the Council's disciplinary procedure.

Any member or officer who knows or suspects that a member has failed to comply with the provisions of this Protocol shall follow the Council's whistleblowing policy and procedure or bring the matter to the attention of the Chief Executive who shall raise the matter with the member concerned and take whatever further action which may seem appropriate. A breach of the terms of this Protocol may result in the member concerned being referred to the Council's Standards Committee.

## **16. Review**

This code shall be reviewed as and when necessary.