

# Proposed

## Protocol on Councillor/Officer Relations

### 1. INTRODUCTION

- 1.1 A positive, trusting and respectful working relationship between Councillors and Officers is essential to the efficient and effective working of the Council. Mutual respect and an understanding of respective roles are essential. Together Councillors and Officers bring the critical skills, knowledge and experience to run an effective public sector organisation able to deliver the Council's corporate and strategic objectives and meet its statutory obligations.
- 1.2 Councillors and Officers have distinct roles and responsibilities. Councillors provide a democratic mandate to the Council and Officers contribute the professional expertise needed to deliver the policy framework agreed by Councillors.
- 1.3 This protocol seeks to define what should be considered a proper working relationship between Councillors and Officers in Thanet and provide a framework within which confidence in the machinery of local government can be maintained. It reflects the principles underlying the Code of Conduct which applies to Councillors and the employment terms and conditions of Officers. The shared objective is to enhance the integrity, real and perceived, of Local Government.
- 1.4 This protocol is part of the Council's ethical framework and should be read in conjunction with the Council's Constitution, the Code of Conduct for Councillors, disciplinary codes which regulate the conduct of Officers and other relevant codes and guidance.
- 1.5 This protocol is intended to guide Councillors and Officers and explain what they can expect of each other. It cannot cover every matter which will arise but it sets standards and an approach which should be used as a guide to dealing with issues as they arise. It also explains what to do when things go wrong.
- 1.6 A Councillor in need of advice about the application of this Protocol should contact the Monitoring Officer, whereas an Officer in need of advice about the application of this Protocol should contact their line manager in the first instance. Councillors and Officers must follow this Protocol at all times.
- 1.7 This Protocol applies to both elected Councillors and Co-opted Councillors. The Code applies at all times when Councillors act in their capacity as Councillors (or claim to act or give the impression of acting in their capacity as a Councillor).
- 1.8 Officers and staff mean all persons employed by the Council: whether full or part time, fixed term contract, agency or consultant.

### 2. THE ROLES OF COUNCILLORS AND OFFICERS

- 2.1 Councillors and Officers are indispensable to one another and a mutual understanding of their respective roles is essential for good local government.

## **COUNCILLORS**

- 2.2 Councillors are democratically accountable to residents of their Wards and serve only so long as their term of office lasts. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.
- 2.3 Councillors have responsibility to determine the policy of the Council, monitor its performance, represent the Council externally and act as advocates on behalf of their constituents.
- 2.4 Councillors give political leadership and direction and seek to further their agreed policies and objectives.
- 2.5 Councillors have five main areas of responsibility:
- To determine Council policy and provide community leadership;
  - To monitor and review council performance in implementing policies and delivering services
  - To represent the council externally; and
  - To act as advocates for their constituents
  - To contribute to planning and regulation- Councillors may be appointed to sit on committees including planning and licensing. In these roles Councillors are required to act independently and should not be subject to any group or party whip.

## **OFFICERS**

- 2.6 Officers are employed by and are accountable to the Council as a whole. Officers work to the instructions of their senior Officers, not individual Councillors or Political Groups.
- 2.7 Officers are responsible for the day to day managerial and operational decisions within their Council. This includes providing services to the local community, directing and overseeing the work of more junior Officers.
- 2.7 Officers advise, inform and support all Councillors and implement the agreed policies of the Council.
- 2.8 Officers manage and provide the Council's services within the framework of responsibilities delegated to them. This includes effective management of employees and operational issues.
- 2.9 Officers have a duty to keep Councillors of all political groups informed about developments of significance in relation to council activities.

### **3. THE RELATIONSHIP BETWEEN COUNCILLORS AND OFFICERS**

- 3.1 Councillors and Officers are indispensable to the working of the Council however, their roles and responsibilities are distinct. Councillor/Officer relationships should be conducted in a positive and constructive way.
- 3.2 In giving advice to Councillors, and in preparing and presenting reports, it is the responsibility of the Officer to express his/her own professional views and recommendations. An Officer may report the views of individual Councillors on an issue, but the recommendations should be the Officer's own. If a Councillor wishes to express a contrary view, they should not pressurise the Officer to make a recommendation contrary to the Officer's professional view, nor criticise an Officer for discharging his or her responsibilities.
- 3.4 Councillors and Officers should always be open about any personal relationship. Personal familiarity between Councillors and Officers can create the suspicion of improper conduct, however unfounded, and can undermine public confidence in the Council. Whilst it is clearly important that there should be a close working relationship between some Officers and Councillors including Cabinet Councillors and chairs of Committees, such relationships should never be allowed to be so close, or appear so close, as to bring into question the Officer's ability to deal impartially with other Councillors. In circumstances where the relationship between a Councillor and an Officer could reasonably be seen to unduly influence the work of either, they should inform the Monitoring Officer.
- 3.5 Councillors and Officers should respect each other's non-working time.
- 3.6 Councillors and Officers must not bully any person.
- 3.7 Councillors should remember that Officers within their Departments are accountable to their Head of Service or Director. Councillors are free to approach any Council Department to provide them with information, explanation or advice. In making such an approach, the request should in most circumstances be made to the Director or Head of Service concerned. There will be occasions when it is appropriate to contact a more junior Officer. This will be appropriate for example when the junior Officer is the only Officer with the relevant expertise or up to date information to address the issue. In such cases and in relation to any written requests for information, it may be appropriate to copy in the relevant Head of Service or Director.

#### **Actions taken under delegated authority:**

- 3.8 Councillors who are Cabinet Members and some Officers may have authority delegated to them to make decisions or to act on the Council's behalf. In such cases the individual concerned must consider whether they have full and sufficient information before taking a decision, and may need to consult others: a Councillor should ensure that they have the advice of the relevant Chief Officer/s, and Officers may need to consult the relevant Cabinet Councillor on the proposed decision. When a decision is taken under delegated powers the person to whom that authority has been delegated is personally responsible and accountable for their actions.
- 3.9 In some cases authority delegated to an Officer is on the basis that it is to be exercised in consultation with the relevant Cabinet Member. Whilst, the

Officer must have due regard to the comments of the Cabinet Member concerned, he/she cannot be instructed on the decision by the Councillor and will remain accountable for the action taken. However, if there is a significant disagreement between the Officer and the Cabinet Member that cannot be resolved through discussion, the matter will normally be referred to the appropriate Councillor-level body for decision.

- 3.10 Chief Officers have delegated responsibility for the general management of their department and the day-to-day delivery of services. They also have powers and duties specifically delegated to them as well as a general delegated authority for executive functions which are not identified in the Council's constitution as being reserved for Councillor-level decisions. Within this framework decisions are frequently delegated below Chief Officer level. While Officers will be sensitive to political guidance on how they exercise their delegated authority and will always consider requests and comments by Councillors, all delegated action must be in accordance with overall Council policies and procedures or Cabinet/Committee decisions but not individual Councillor instructions. Where Cabinet Councillors have authority to take decisions individually under delegated powers, they must be taken formally, based on Officer reports and recorded and published in accordance with Access to Information Procedures.
- 3.11 A Councillor who gives an undertaking or commitment to a third party in excess of their powers or authority may be personally liable in law for any costs or damages incurred by the third party if they act on that undertaking or commitment and it is not subsequently confirmed by the Council. An Officer who similarly wrongly advises or misleads a third party may be subject to the Council's disciplinary procedures.

#### **Statutory Officers:**

- 3.12 The Head of Paid Service, the Monitoring Officer and the Chief Finance (Section 151) Officer 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 their responsibilities under Statutory Officer duties a Councillor or Councillors shall not:
- improperly interfere with or obstruct the Officer in exercising those responsibilities
  - victimise any Officer who is discharging or has discharged their responsibilities of the Statutory Officer

#### **General Principles of Good Conduct:**

- 3.13 Councillors and Officers should adhere to the following:

##### **Councillors should:**

- respect the impartiality of Officers
- act within policies, practices, processes and conventions established by the Council.
- work constructively with Officers acknowledging their separate and distinct roles and responsibilities

- treat Officers fairly with respect, dignity and courtesy
- recognise that Officers are generally managing very high work loads and competing demands
- comply at all times with the Councillors' Code of Conduct, the law, the Constitution, and such other policies, procedures, protocols and conventions agreed by the Council
- act with integrity and respect appropriate confidentiality
- have regard to the seniority of Officers in determining what are reasonable requests, consider the relationship between Councillor and Officer and the potential vulnerability of Officers, particularly at junior levels.
- recognise that Officers work to the instructions of their Senior Officers and not to individual Councillors or political groups
- not subject Officers to intimidation, harassment, or put them under any undue pressure.
- not undermine the role of Officers in carrying out their duties
- not ask Officers to exceed their authority where that authority is given to them in law, by the Council or their managers
- not use their position or relationship with Officers to advance their personal interest or those of others or to influence decisions improperly
- not authorise, initiate or certify any financial transactions or to enter into any contract, agreement or undertaking on behalf of the Council or in their role as a Councillor without proper and lawful authority
- not request an Officer to exercise discretion which involves acting outside the Council's policies and procedures.

**Officers should:**

- implement decisions of the Council and its subordinate bodies which are lawful, which have been properly approved in accordance with the requirements of law and the Council's Constitution and are duly recorded.
- work in partnership with Councillors in an impartial and professional manner
- treat Councillors fairly and with respect and dignity
- respond to requests from Councillors for advice or assistance in a timely fashion
- 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
- respond to enquiries and complaints in accordance with the Council's Standard's protocol
- be alert to issues which are, or which are likely to be, contentious or politically sensitive and be aware of the implications for Councillors, the Media or other sections of the public
- act with honesty, respect, dignity and courtesy at all times
- provide support, learning and development opportunities for Councillors to help them in performing their various roles
- comply at all times with the Officer Code of Conduct and such other policies of procedures approved by the Council
- not seek to use their relationship with Councillors to advance their personal interests or to influence decisions improperly

#### **4. COUNCILLORS AND LEGAL ACTION BY OR AGAINST THE COUNCIL**

- 4.1 There is a range of circumstances where the Council as a corporate body may be involved in legal proceedings. This could be against residents or other individuals, organisations and companies, and across the whole range of service areas including housing, planning, highways, etc. Councillors have a clear role in representing residents and general public interests. In this representative capacity, Councillors will inevitably become involved in issues where the Council is considering, or is in the process of taking legal action, or where the Council is the defendant to legal actions brought by third parties.
- 4.2 Conflicts of interest will almost certainly occur when a Councillor is enquiring on behalf of an individual or body involved in legal action by or against the Council. In such cases, Councillors will be required to balance their representative role with their wider responsibilities in representing the corporate interests of the authority. For this reason, Councillors must be circumspect in any dealing with persons taking action against the Council, or against whom any legal action is being taken. Particularly, Councillors must be extremely cautious about having any dealings with professional representatives, advisers or witnesses in the case. Not only could such intervention prejudice the Council's position but the Councillors could find himself/ herself accused of an offence of Misconduct of Public Office or, Perverting the Course of Justice or an attempt or conspiracy to do so.
- 4.3 It is therefore particularly important that Councillors should be sure not only to avoid any actual impropriety, but at all times avoid any occasion for suspicion or any appearance of improper conduct.
- 4.4 In that regard, Councillors must not:
- attempt in any way to exercise improper influence over the legal process in which the Council is involved;
  - attempt to exert improper influence on Council Officers involved in the legal process or witnesses in the case;
  - attempt to engage the community to exert improper influence on Council Officers involved in the legal process or witnesses in the case.
- 4.5 Whilst Councillors have every right to information on how any such matter is being dealt with and a duty to represent their constituents, Councillors must also realise that the response on behalf of the Council must be limited to comments on process, so as not to prejudice the proceedings.
- 4.6 In respect of any ongoing or contemplated proceedings, all enquiries must be addressed to either the relevant Director or Head of Service. Councillors must not make direct contact with any other Officers involved in the proceedings to discuss or make any enquiries regarding the proceedings.
- 4.7 If a Councillor believes that the Council's actions or intentions are wrong, they should inform the relevant Director or Head of Service. It will then be for the Director to determine what action to take. If the Councillor remains unhappy with the action taken, then they should refer the matter to the Council's Monitoring Officer or to the Chief Executive.

#### **5. COUNCILLOR TO COUNCILLOR EXPECTATIONS**

5.1 Whilst this Protocol is primarily aimed at the interaction between Councillors and Officers, the same principles apply to interactions between Councillors. Therefore Councillors should be entitled to expect from each other:

- respect, dignity and courtesy;
- not to be subjected to bullying or personalised attacks;
- respect for differing political views and values;
- maintenance of confidentiality;
- commitment to high standards of debate; and
- compliance with the Council's Constitution including the Code of Conduct for Members.

## **6. REPORTS**

6.1 Officers' reports should contain clear, evidence-based advice as to why a course of action is being recommended. From time to time corporate advice is given to Officers on report writing and they should take care to follow it. The report should lay out all relevant factors for the decision maker, and examine all alternatives in an even handed way. Officers should take care to include even unpopular options if they feel they are relevant. All reports must contain the relevant reference to equalities considerations so that the decision maker can ensure that these are given the necessary regard when considering the decision.

6.2 The relevant Director will always be fully responsible (and retains ultimate responsibility) for the contents of any report submitted in their name. Any issues arising between a Councillor and a Director in this area should be referred to the Monitoring Officer or Chief Executive for resolution.

6.3 Councillors have the right to criticise reports or the actions taken by Officers, but they should always seek to avoid personal attacks on Officers; and ensure that criticism is constructive and well-founded.

6.4 Councillors have the ability to agree or reject proposals placed before them by Officers, irrespective of the advice or recommendations made by Officers so long as they generally act in good faith and exercise reasonableness in decision-making. This requires them to take into account relevant and dismiss irrelevant matters; and not to come to a conclusion that no reasonable authority would come to. Officers must be able to report to Councillors as they see fit and without any political pressure.

## **7. OFFICER ADVICE TO POLITICAL GROUPS AND OTHER MEETINGS**

7.1. Officers serve the Council as a whole and not exclusively any Political Group, combination of Groups or individual Councillor. Officers must treat Political Groups and individual Councillors in a fair and even-handed manner.

7.2 Political Group meetings perform an important part in the preliminaries to Council decision-making. However, they are not formal decision-making bodies of the Council and are not empowered to make decisions on behalf of

the Council. Conclusions reached at such meetings do not rank as Council decisions.

- 7.3 The presence of an Officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so.
- 7.4 The principles of this section apply to informal meetings of Cabinet and Officer advice to Other Meetings.
- 7.5 There is statutory recognition of Political Groups. It is common practice for such Groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant formal Council body. Officers may on occasion be called upon to support and contribute to such deliberations by Political Groups but must at all times maintain a stance which is politically impartial. The support provided by Officers may range from a briefing meeting with a Chair or Cabinet Portfolio Holder before a meeting, to a presentation to a Political Group meeting.
- 7.6 Any advice given to a Political Group or Councillor will be treated with the strictest of confidence by the Officers concerned and not be accessible to any other Political Group(s). Factual information upon which any advice is based will be available to all Political Groups.
- 7.7 When Officer attendance is requested for Political Group meetings the request must be made through the Chief Executive or appropriate Senior Officer (Head of Service or above) and can only be made in relation to Council business not Party policies or business. At the meeting Officers will:-
- provide relevant information and advice on Council business only and not on matters which are purely of a party political nature and must at all times do so in a way which is politically impartial;
  - normally leave during the deliberations of the Political Group on the issue in order to avoid any appearance of impropriety or misunderstanding;
  - respect the confidentiality of any Political Group discussion at which they are present; Councillors must not do anything which compromises or is likely to compromise Officers' impartiality. This must not prevent an Officer providing feedback to other Senior Officers as appropriate.
- 7.8 The duration of an Officer's attendance at a Political Group meeting will be at the discretion of the Group, but an Officer may leave at any time if they feel it is no longer appropriate to be there.
- 7.9 An Officer accepting an invitation to the meeting of one Political Group must not decline an invitation to advise another Group about the same matter. They must give substantially the same advice to each.
- 7.10 An Officer must be given the opportunity of verifying comments and advice attributed to them in any written record of a Political Group meeting.
- 7.11 Councillors must not refer in public or at meetings of the Council to advice or information given by Officers to a Political Group meeting unless this has been previously agreed by the relevant Officer or Head of Service.



- 7.12 Officers are available to attend meetings called under the arrangements set out in the Constitution and as specified in this Protocol. Other meetings such as area/community forums, public meetings, local meetings, consultations arranged by Councillors are not official business meetings of the Council. Officers will not attend such other meetings unless authorised/agreed by the relevant Senior Officer.

## **8. LOCAL WARD ISSUES**

- 8.1 To enable them to carry out their Ward role effectively, Councillors need to be informed about significant matters affecting their Ward. Senior Officers should ensure that Ward Councillors are kept informed of such matters thus allowing Councillors to contribute to the decision-making process and develop their representative role.
- 8.2 This requirement is particularly important in the following circumstances :
- during the early stages of policy development, wherever practicable;
  - in relation to major or sensitive operational matters;
  - whenever any form of public consultation exercise is undertaken;
  - during an Overview and Scrutiny process.
- 8.3 When a public meeting is organised by Officers to consider a local issue, all Councillors representing the affected Wards should be invited to attend the meeting. Similarly, when Officers undertake any form of consultation on a local issue, the Ward Councillors should be notified at, or wherever possible, before, the start of the exercise.
- 8.4 If Ward Councillors intend to arrange a public meeting on a matter concerning some aspect of the Council's work, they can invite a relevant Officer to attend if they so wish. Provided that the meeting has not been arranged on a party political basis an Officer may attend but is not obliged to do so and the meeting may be held in Council-owned premises.
- 8.5 Officers will not be able to attend such meetings in the run up to Council elections, the pre-election period.
- 8.6 Officers should not attend Ward or Constituency Political Party meetings.
- 8.7 In seeking to deal with residents' queries or concerns, Councillors must not seek to place Officers under undue pressure to deal with their query in a way which circumvents the usual Council procedures. Officers may not be able to carry out the work required by Councillors in the requested timescale and may need to seek instructions from their managers. Corporate Customer response times apply.
- 8.8 If any of the Members of Parliament (MPs) are involved in a local issue, Officers may invite the MP, in addition to the Ward Councillors. If Officers consider this is not appropriate for any reason they may meet the MP separately.

## **8. CORRESPONDENCE INCLUDING EMAILS**

- 9.1 Official correspondence written on behalf of the Council must normally be in the name of the relevant Officer rather than in the name of a Councillor. It may be appropriate in some circumstances, for example representations to a Government Minister, for letters to appear in the name of the appropriate Councillor, for example, the Leader. Letters that, for example, set up meetings, create obligations or give instructions on behalf of the Council should never be sent out in the name of a Councillor.
- 9.2 The Chair may correspond in their own name.
- 9.3 Correspondence which creates legally enforceable obligations or gives instructions on behalf of the Council must never be sent in the name of a Councillor.
- 9.4 Correspondence to individual Councillors from Officers should not be sent or copied to complainants or other third parties if they are marked "confidential". In confidential correspondence the relevant Officer should seek to make clear what is to be treated as being shared with the Councillor in confidence only and why that is so.
- 9.5 Correspondence between an individual Councillor and an Officer should not normally be copied (by the Officer) to any other Councillor. Where exceptionally it is necessary to copy the correspondence to another Councillor, this should be made clear to the original Councillor. In other words, a system of "silent copies" should not be employed. Acknowledging that the "BCC" system of e-mailing is used, it should be made clear at the foot of any e-mails if another councillor has received an email by adding "CC councillor X."

## **10. PRESS AND MEDIA**

- 10.1 The council must comply with the provisions of the Local Government Act 1986 regarding publicity. All media relations work will comply with the national Code of Recommended Practice for Local Government Publicity. The Code is statutory guidance and the council must have regard to it and follow its provisions when making any decision on publicity. The Code provides that all Local Authority Publicity should be based around the following seven principles to ensure that all communications activity:
- Is lawful
  - is cost effective
  - is objective
  - is even-handed
  - is appropriate
  - has regard to equality and diversity
  - is issued with care during periods of heightened sensitivity.
- 10.2 Staff and Councillors must comply with revised rules in respect of publicity during any pre-election period. The LGA's guidance on publicity during this period useful and can be found here:

<https://www.local.gov.uk/publications/short-guide-publicity-during-pre-election-period>

- 10.3 The Council's communications staff will provide support and guidance to Councillors in their dealings with the press and other media. However, press and communications staff cannot be called upon to assist in party political communications.
- 10.4 Councillors have freedom to contact and discuss issues with the media but must have regard to their conduct relating to potential breaches of confidentiality and the need to represent the Council's best interests. It is also important that Councillors stress to reporters, when giving a personal view on an issue, that their views may not reflect Council policy. Councillors who issue press releases or make statements to the press or the general public or part of it without firstly seeking Officer guidance may be personally liable if there are subsequently claims made for defamation, or if another party acts on incorrect information

## **11. COUNCILLORS' ACCESS TO INFORMATION**

- 11.1 Councillors have a statutory right to see documents relating to business to be transacted at a public meeting of the Council, Cabinet, committee or sub-committee. This includes background papers, and applies whether or not the Councillor is a member of that body. But this does not apply to drafts of reports, or to documents which disclose information relating to employees, occupiers of Council property, applicants for grants and other services, the care of children, contract and industrial relations negotiations, advice from counsel, criminal investigations and other exempt and confidential information.
- 11.2 Councillors have a common law right to see Council-held documents where they can demonstrate a need to know. This means it must be reasonably necessary for the Councillor concerned to see the document in order to carry out his or her duties as a Councillor. Mere curiosity or desire is not sufficient - the Councillor has to demonstrate a need to know. The 'need to know' must be decided by a Chief Officer (or Senior Officer with authority to act on their behalf) following advice from the Monitoring Officer. Councillors who wish to request confidential information should normally do so through the appropriate Chief Officer or Senior Manager.

## **12. Breaches of the Protocol**

- 12.1 Councillors or Officers with questions about the implementation or interpretation of this Protocol should seek guidance from the Monitoring Officer.
- 12.2 If Councillors believe that an Officer has breached this Protocol or have concerns about the conduct, behaviour, or performance/capability of an Officer they should raise the matter directly with that Officer's manager or Director; where the Officer concerned is a Director the matter should be raised with the Chief Executive; and when the Officer is the Chief Executive, with the Monitoring Officer.

- 12.3 In all cases, the Officers with whom the concerns have been raised will report back to the Councillor concerned, giving as much information as they can as to the conclusions they have reached.
- 12.4 This procedure is only appropriate where issues arise in the Councillor's capacity as a Member of the Council, rather than as a service user or individual affected by the Council's decision. In such cases their concerns should be dealt with in accordance with the Council's complaints procedure.
- 12.5 If Officers are concerned about the conduct of a Councillor, they should raise the matter with their Manager or Director as appropriate. The Manager will discuss the matter with their Director, who will seek to resolve it to the Officer's satisfaction, in consultation with the Monitoring Officer, where appropriate. The aim of these discussions is to resolve the matter by conciliation, rather than by more formal means. Nevertheless, it must be recognised that Officers, like any members of the public, may make an allegation of a breach of the Code of Conduct for Councillors and can also use the procedures set out in the Council's Bullying and Harassment policy.
- 12.6 Where the concerns are about potential unlawful conduct of an Officer or Councillor, the Whistleblowing Policy or other Council policies may be relevant. For further advice, please contact the Monitoring Officer.