

# LONDON BOROUGH OF RICHMOND UPON THAMES

## MEMBERS' PROTOCOL

### GUIDANCE

- a) This Protocol is intended to supplement the new Members' Code of Conduct and to set standards of conduct for all Members.
- b) It is intended that the provisions of this Protocol shall apply to co-opted members and independent members so that there is consistency and promotion of equally high standards in respect of such Members.
- c) The effective implementation of the Protocol by Members will be supervised and monitored by the Standards Committee (and where appropriate by the Monitoring Officer on its behalf) who will also deal with any alleged breach of the Protocol.
- d) This Protocol has been adopted by the Council and is subject to revision and alteration by the Standards Committee from time to time.
- e) Guidance and training will be given to Members on the scope of and compliance with this Protocol through the Standards Committee.
- f) This Protocol should be read in conjunction with the Council's Constitution, the Member Code of Conduct and guidance issued by the Standards Committee (and where appropriate any guidance issued by the Standards Board for England in respect of the Member Code of Conduct).
- g) It should also be considered alongside other Council policies for the time being, such as the Corporate Governance Code of Practice, policies on Equalities issues, policies for the avoidance of fraud and corruption and other corporate policies.

### **A. MEMBER/ OFFICER WORKING RELATIONS**

#### **General Guidance**

- h) This part of the Protocol aims to provide guidance on the complex relations between Members and officers of the Council to ensure the smooth running of the Council, and supplements the separate Member Code of Conduct and the Code of Conduct for Employees of the Council which should be read in conjunction with this document.
- i) Its purpose is to maintain and enhance the integrity (both real and perceived) of local government and the Codes and therefore demands very high

standards of personal conduct. The Council's expectation is that Members and managers will lead by example and that they and also staff at all levels will comply with Council's Constitution, Codes, Protocols, Policies, Financial Regulations, Standing Orders and Departmental Procedures Manuals.

- j) Mutual respect between Members and Officers is essential to good local government and, although indispensable to one another, the responsibilities of Members and Officers are distinct. Members are responsible to the electorate and serve so long as their term of office lasts. Officers are responsible to the Council under contracts of employment. Their job is to advise Members and the Council as a whole and to carry out the Council's work under the direction and control of the Council, its Executive, Committees and Sub-Committees.
- k) Leaders of political groups on the Council, Executive Members and Chairs of Committees will receive priority support from senior officers. Members generally have an entitlement to reasonable research and support (subject to the other provisions of this Protocol and of the Members' Code of Conduct) which should normally be requested at Director or Assistant Director/ Head of Service level and not covertly.
- l) Group meetings of political parties are organised by Members and have no decision-making powers on behalf of the Council. However a majority group in particular will be likely to consider the political direction of the Council and as a result they may request senior officers to develop and pursue their policy initiatives.
- m) Where a Member is provided with information in response to a request it will not normally be appropriate for the relevant Executive Member or Chair to be informed that such an enquiry has been made, and in any event information supplied to leaders of opposition parties shall not be notified in such a way. However if information supplied to a Member (other than to leaders of opposition parties) is of major policy significance, then officers should consider whether or not it is appropriate to so inform. For these purposes an item is of major policy significance if it is relating to:
  - major resource issues (budget-making, capital programme); the purchase, sale or appropriation of land; leases, rents and other related property; personnel issues such as inter-departmental restructuring; negotiations with contractors and developers; and preparations for tendering for services or outsourcing.
- n) Members and Officers should work together in accordance with the Council's Diversity and Equality Policy Statements (Employment and Service Delivery) to ensure that we value and promote diversity and equality.

## **1. ROLES AND RESPONSIBILITIES OF MEMBERS AND OFFICERS**

### **1.1 As a Member, you are responsible for matters as set out in the Council's Constitution:**

- a) all Councillors: the matters summarised in Article 2, and other provisions of the Constitution as appropriate;

- b) Members of Overview & Scrutiny Committees: the matters summarised in Article 6, and other provisions of the Constitution as appropriate;
- c) Executive Members: the matters summarised in Article 7 and Schedule 1 of the Constitution, set out in more detail in Part 3 of it, and other provisions as appropriate;
- d) Regulatory Committee, Standards Committee, Planning Committee, Audit Committee, Statutory Accounts Committee, Appointments Committee, Investment Committee: the matters referred to at Articles 8 and 9 and set out in more detail in Sections 1 and 2 of Part 3 of the Constitution, and other provisions agreed by the Council from time to time as appropriate;
- e) all Members (including co-opted and independent members): conducting themselves in accordance with the Constitution.

**1.2 Officers are responsible for:**

- a) providing professional and technical advice to Members for their policy and decision making functions;
- b) initiating policy proposals and implementing Members' decisions;
- c) the day-to-day effective and efficient management of the Council's services;
- d) taking managerial and operational decisions in accordance with the Council's schemes of delegation;
- e) implementing an agreed programme of public consultations and providing information regarding the Council's services; and
- f) ensuring the Council acts lawfully and with financial propriety.

**2. EXPECTATIONS**

**2.1 As a Member you can expect from officers:**

- a) political neutrality, with a commitment to the Council as a whole and not to any political group;
- b) awareness of and sensitivity to the political environment;
- c) integrity, mutual support and appropriate confidentiality;
- d) professional behaviour and the performance of their duties effectively and efficiently;
- e) the minimizing of potential conflicts of interest arising from the separation of the Executive and Overview and Scrutiny role;

- f) proper support of Members' roles and responsibilities through effective training and development; and
- g) compliance with the Officers' Code of Conduct.

## **2.2 Officers can expect from you as a Member:**

- a) political leadership, direction of policy and the overall allocation of the Council's physical, financial and human resources;
- b) integrity, mutual support and appropriate confidentiality;
- c) respect for their political neutrality and not to be asked to undertake work of a party political nature or to do anything which would put them in difficulty in the event of a change in the political composition of the Council;
- d) awareness that their support cannot extend beyond providing information and advice in relation to matters of Council business nor beyond the bounds of whatever authority they have been given by their senior officer;
- e) no assumption that officers are supportive of any policy or strategy developed because of their assistance in the formulation of that policy or strategy;
- f) recognition of the officer's action under delegated authority and the accountability of the officer for that action;
- g) clarity as to the involvement and role of Members in informal meetings;
- h) that as a Member you will not make use of your position or relationship with officers to advantage or disadvantage your personal interest or those of others or to influence decisions improperly;
- i) monitoring of the performance, development, continuity and overall well-being of the organisation;
- j) the minimizing of potential conflicts of interest arising from the separation of the Executive and Overview and Scrutiny role; and
- j) that as a Member you will at all times comply with the Code of Conduct for Members and with this Protocol.

## **3. LIMITATIONS ON BEHAVIOUR**

### **3.1 As a Member you must:**

- 3.1.1 have regard to any advice, guidance and training on your roles and responsibilities from the Standards Committee and the Monitoring Officer;

3.1.2 with regard to your conduct:

- a) never do anything as a Member which cannot be justified to the public;
- b) avoid at all times any occasion for suspicion and any appearance of improper conduct;
- c) exercise personal responsibility (on receipt of advice from the Monitoring Officer or other appropriate senior officer) in deciding whether you have a personal interest such that you should disclose it and if appropriate not take part in a discussion of, or vote on, the matter in question;
- d) avoid too close a personal relationship with an officer (unless steps have been taken to ensure that this is declared and recorded);
- e) never seek to take unfair advantage of your position or seek to harass or exert undue influence over an officer;
- f) take care in statements made not to use immoderate or insensitive language nor inadvertently to become liable for defamation (although 'qualified privilege' may provide some limited protection in respect of statements at formal meetings) and to obtain legal advice if you are in doubt;
- g) before disclosing confidential information under paragraph 4(a)(iv) of the Members' Code of Conduct, obtain advice from Legal Services on the application of the public interest test.

3.1.3 with regard to your involvement in the employment and appointment of officers (where such involvement is permitted under the Constitution):

- a) not let your political or personal preferences influence your judgement and not to participate where you may have a personal interest;
- b) not canvass the support of colleagues for any candidate and resist any attempt by others to canvass yours;
- c) not provide references in support of applications for employment by the Council or the Council-funded voluntary sector;
- d) not make vexatious or malicious complaints against officers; and
- e) not raise any comments on an officer's performance except with the relevant Assistant Director/ Head of Service, service Director or Chief Executive.

3.1.4 with regard to access to and use of information:

- a) only seek information from officers which relates to the business of the Council and enables you to properly perform your functions as a Member on a need to know basis. Requests for such information will be made at Assistant Director/ Head of Service level or above or via Democratic Services, except in the case of routine information;

- b) establish a proper and specific reason for requesting to inspect confidential information and in the case of uncertainty refer the issue to the Chief Executive; and
- c) only use the information for the purpose for which it was provided.

3.1.5 in relation to meetings:

- a) show respect to officers and not make personal attacks; and
- b) ensure any criticism is constructive and well founded and allow officers to explain what appears to be a performance failure or inconsistency;

3.1.6 with regard to your membership of the Cabinet, Committees and Sub-Committees:

- a) not seek, or accept, leadership/chairmanship/membership of the Cabinet, Committees or Sub-Committees if:
  - (i) it would involve you disclosing an interest so often that your role would be significantly hampered.
  - (ii) it would be likely to weaken public confidence in the duty of the Cabinet, Committees or Sub-Committees to work solely in the general public interest;
- b) have due regard to officers' professional advice in making reports
- c) not require officers to reduce options, withhold information or make recommendations they cannot professionally support;
- d) be accountable for the decision to delegate a function to an officer and the way that the function is being carried out; and
- e) seek, if necessary, professional advice from senior officers, and where appropriate from the Monitoring Officer, to satisfy yourself that you are clear exactly what you can and cannot do.

3.1.7 with regard to their membership of Overview and Scrutiny Committees:

- a) only require the attendance of an officer in accordance with the provisions of the Overview & Scrutiny Procedure Rules;
- b) interview the named officer to establish facts regarding the decision made or policy implemented, not with a view to allocating blame or criticism of conduct; and
- c) ensure that the line of questioning put to the officer does not stray outside the subject area that had previously been indicated.

3.1.8 in relation to planning policy and matters to be considered by the Planning Committee

- a) comply with the Planning and Development Control Protocol set out as Appendix A to this Protocol

3.1.9 when asking officers to advise a political group

- a) not ask for any such advice at group meetings unless (i) an invitation is passed through the Chief Executive and (ii) the meeting is attended only by Members of the authority;
- b) not expect an officer to make any recommendation to a political group unless it is in the interests of the Council as a whole;
- c) only expect an officer attending a group meeting to provide advice on material facts and identification of options and merits for the Council and not with any political implications.

3.2 The Council is aware that situations may arise, particularly after a change in administration (or possibly after a change in Cabinet portfolio holder or Committee Chairmanship), which give the appearance of a Cabinet or other leading Member(s) being at odds with a department and/or its senior staff and the decisions they have been involved in implementing. For example, an Overview and Scrutiny Committee or its Task Group might decide to investigate a policy or project carried out by a Director or senior manager under a previous administration. In doing so it might receive differing views from the Member and Director or senior manager. In putting his/her own view, the Member might be seen as being critical of the Director/senior manager, or vice versa. Alternatively the Committee or Task Group might reach a conclusion that is critical of the policy or project, which could be interpreted as being critical of the Director/senior manager involved.

Any such instances need to be seen in the context of the changed circumstances. They are more likely to result from a new administration's opposition to the policy/project rather than the performance and competence of the staff concerned or of the relationship between the Member(s) and officer(s) involved. It is clearly important that Committees and Task Groups continue to receive the frank and honest views of those involved when they are reviewing such decisions at such times, while focusing attention on the decision or policy concerned. Officers are obliged to act within the policies set by the administration of the day and must be permitted to explain their views in that context.

## **B. GIFTS AND HOSPITALITY**

### **Guidance**

- a) The purpose of this part of the Protocol is to help protect you as a Member and to help you to make decisions on whether or not to accept any gifts or hospitality in light of public perception of that gift and the circumstances surrounding the offer of that gift.

- b) Gifts or hospitality include any opportunity to acquire goods or services at a price or on terms at which they are not readily available to the general public.
- c) Any gift or hospitality should be appropriate in scale and nature to the occasion.
- d) There are no hard and fast rules about the acceptance or refusal of hospitality or tokens of goodwill. For example working lunches may be a proper way of doing business provided they are approved by the Council and that no extravagance is involved. Likewise it may be reasonable for you to represent the Council at a social function or event organised by outside persons or bodies.
- e) Particular care is needed in the area of sponsorship. Contractors or potential contractors or others with potential interests in the Council sponsoring activities attended by Members should be informed that their involvement will not have any bearing on future decisions in respect of the Council's normal tendering or decision-making processes which will be strictly adhered to. When the Council wishes to sponsor an event or service neither you nor a partner, family member or close associate must benefit from such sponsorship. Similarly where the Council through sponsorship, grant aid, finance or other means gives support in the community, you should ensure that no conflict of interest is involved.
- f) As a Member you need to be aware that it is a criminal offence corruptly to receive any gift, loan, fee, reward or advantage for doing or not doing anything or for showing favour or disfavour to any person in your official capacity. It is you in such circumstances to prove that such rewards etc. have not been obtained corruptly rather than the prosecution having to prove that [Prevention of Corruption Acts 1906 and 1916].

**As a Member you must:**

- 1. treat with extreme caution any offer of a gift, favour, or hospitality that is made to you whether as a Member personally or as a representative on outside bodies;
- 2. ensure you avoid the risk of damage to the public confidence in the Council arising from your acceptance of hospitality;
- 3. decline the offer of a gift or hospitality and report it to the Monitoring Officer where there is any suspicion that the offer might be made for an improper motive;
- 4. notify the Monitoring Officer within 28 days of any offer of any gift or hospitality, whether or not they accept that offer, which members of the public with knowledge of the relevant facts might reasonably regard as intended to influence the performance of your duties as a Member;
- 5. in the event of any gift or hospitality over the value of £25 being accepted, declare the gift or hospitality within 28 days in the Council's Public Register of Gifts and Hospitality, held by the Democratic Services Manager.

## C. EXPENSES AND ALLOWANCES

### Guidance

- a) There are rules enabling you to claim expenses and allowances in connection with fulfilling your duties as Members or as members of the Executive, Committees or Sub-Committees.

### As a Member you must:

Scrupulously observe and comply with the rules permitting claims for expenses and allowances relating to the carrying out of your public duties.

## D. INVOLVEMENT IN COMMERCIAL TRANSACTIONS

### Guidance

- a) This part of the Protocol is designed to support you in your work within the community which relates to commercial transactions. It is of particular relevance to Executive Members. It is important that you as a Member have access to the information necessary to enable you to understand the business of the Council and to ensure that it is being conducted in accordance with the policies and budgets of the Council and to the highest standards of propriety.
- b) The Council is engaged at any one time in a large number of commercial transactions, which range from the procurement of goods, services and works; the purchase or sale of land or the disposal or surplus property; the provision of advice and/or grant aid to companies, partnerships or individuals; the negotiation of partnership and joint venture arrangements; and the management of such commercial relationships.
- c) As a Member you may be involved in commercial transactions as to:
  - (i) whether or not to enter into such contracts and arrangements;
  - (ii) exercising your scrutiny functions to ensure that such arrangements are designed and managed to provide the Council with the best possible value for money and comply with the Council's requirements in terms of propriety;
  - (iii) making the public aware of the services which the Council can make available.

### As a Member you must:

1. never undertake commercial negotiations without appropriate officers present;
2. ensure that the financial and probity interests of the Council are protected;
3. ensure that decisions are based on complete and sound information and advice from appropriate professional staff;

4. ensure that decisions are in accordance with the Council's agreed processes and standards;
5. not attend informal meetings between the commercial parties or their agents and Members or officers where you have declarable interests;
6. ensure that the personal integrity of Members and officers is protected;
7. maintain the confidentiality of commercial secrets to ensure the integrity of the competitive procurement process; and
8. when acting individually with authority to bind the Council, ensure that the transaction is lawful and represents value for money through a written report and recommendations from relevant officers.

## **E. PROCESSES RELATING TO QUASI JUDICIAL BODIES**

### **Guidance**

- a) Bodies which have quasi-judicial functions are run on legal principles since they affect individuals' rights or applications of individuals and in effect a "hearing" will take place.
- b) The following bodies are the main ones which have quasi-judicial functions:
  - the Education Appeals Panel,
  - the Licensing Sub-Committee,
  - the Appeals Sub-Committee,
  - the Social Services Appeals Panel,
  - the Planning Committee,
  - employment related appeals:and, when they are considering matters involving the rights and interests of others:
  - the Regulatory Committee,
  - the Standards Sub-Committee, and
  - the Standards Committee.
- c) It is important that the decision-making process, including the events that occur before the decision is made, are open and transparent and that the principles of natural justice are fully observed.

### **As a Member you must:**

1. act impartially, independently and fairly to all parties at all times ensuring that issues are considered on an objective basis according to proper procedures;
2. record any events which may undermine or threaten your impartiality, or could be perceived as doing so;
3. seek advice as appropriate as to the law, procedures to be followed and all information relevant to the decision-making process;

4. where possible verify factual relevant evidence through documents and/or witnesses, relying on your own assessment of the reliability and credibility of the person giving evidence;
5. make available all evidence to each party allowing each party to fully present their case and ask questions as they feel necessary;
6. reach a decision based on the facts and merits;
7. give clear and fair reasons to support your decisions;
8. not take part or vote on an item if you have not familiarised yourself with the report and been present throughout consideration of the item.