



MEMBER AND OFFICER PROTOCOL

1. **Role and purpose**

The purpose of this protocol is to set down principles and procedures, which have been jointly agreed by officers and members to guide their joint working in the public interest. The protocol supplements and interprets, but does not supplant:

- statutory provisions, the member code of conduct and other codes and guidance;
- the provisions of the council's own adopted constitution and especially the rules of procedure;
- the disciplinary codes which regulate the conduct of officers.

It contains interpretation and guidance on some of the issues which commonly arise. It cannot cover every matter which will arise in council life but it reflects an approach and sets standards which will serve as a guide to dealing with other issues. It is intended to guide new members and officers and explain to them what they can expect of each other. It also explains what to do when things go wrong.

This protocol applies to voting non-elected members of committees and also to consultants and agency staff working for the council, to whom a copy should be supplied.

2. **Review**

The standards committee and the borough solicitor will jointly keep the protocol under review and make recommendations for changes as appropriate. Review will take place in time for an updated version to be circulated annually after constitutional council with the new constitution, to all members and officers.

The borough solicitor will assess the corporate awareness of the protocol annually and report to standards committee.

3. **Definition of the role of officers and members**

Both councillors and officers are servants of the public and they are indispensable to one another but their responsibilities are distinct.

Members

Councillors are responsible to the electorate and serve only so long as their term of office lasts. All councillors have responsibilities to determine the policy of the council, monitor its performance, represent the council externally and act as advocates on behalf of their constituents. Executive members, chair and vice-chairs of scrutiny and other committees may also have additional responsibilities. However, all councillors have the same rights and obligations in their relationship with officers and should be treated equally.

Officers

Officers are responsible to the council. Their job is to give advice to councillors and the council, and to carry out the council's work under the direction and control of the council, its executive, committees and sub-committees. Within these guidelines all officers should endeavour to give every assistance to members carrying out their various roles. Officers have a duty to keep members of all political groups fully informed about developments of significance in relation to council activities.

Roles of statutory officers

The duties of both the monitoring officer and chief financial officer (apart from the administration of the financial affairs of the council) must be carried out personally, but can be carried out by a deputy nominated by them in cases of absence or illness and, in the case of the monitoring officer, the deputy may also carry out functions prescribed by statute and regulations.

Post	Designation	Deputy
Chief executive	Head of paid service	N/A
Borough solicitor	Monitoring officer	Acting Head of Legal Services
Director of finance	Chief financial officer	Chief executive

4. **Member development program**

The council runs a member-development scheme which is co-ordinated through legal and democratic services. However the scheme reflects the obligation on all parts of the council to ensure that all members are able to achieve their full potential in the position to which they have been elected. When this is achieved it benefits the council as a whole and the people of the borough but it also improves the mutual understanding of members and officers.

5. **Member-officer relations**

One of the key issues addressed by the member/officer protocol is the question of member/officer relations. Mutual trust and respect should be the key aim of both members and officers, as it is essential for good local government.

Obtaining or granting favours

The member code of conduct emphasises the need for members to avoid behaviour which could be viewed as conferring an advantage or disadvantage on an officer. Members should not seek personal favours from officers. Officers should not be tempted to give favours to please a councillor. An example of favour seeking would be asking whether a councillor's parking ticket could be withdrawn or whether an application for a service could be expedited. Similarly officers should not seek to circumvent agreed staff consultative procedures by lobbying councillors on matters which directly concern them as employees.

Member Involvement in officer issues

Issues relating to the appointment, management and dismissal of officers below the grade of deputy chief officer are reserved by law to the Chief Executive and officers appointed by him. Member involvement in employment issues generally, including where they relate to senior officers are set out in the Local Authorities (Standing Orders) (England) Regulations 2001 and within the Council's Standing Orders.

Where an employee is also a constituent it may be proper for the member to make written/oral representations to the relevant chief officer, or disciplinary hearing, but the member should not take a proactive part representing or in any other way advocating on behalf of any such employee in any disciplinary procedures brought by the Council against the employee.

Personal familiarity

Personal familiarity between members and officers can undermine public confidence in the council. It is acknowledged that some close relationships will inevitably develop, particularly when officers and executive members or chairs of committees work closely together. It is important that close relationships between members and officers are openly declared and should never be allowed to become so close, or appear to be so close as to bring into question the officer's ability to deal impartially with other members and other party groups, nor to undermine public trust and confidence in the council. Where possible members and officers who have close personal relationships should try to avoid coming into contact on projects and in the day-to-day business of the council.

Courtesy

Members and officers should be courteous to each other at all times even if they disagree strongly with each others' views.

Bullying

Bad relations between members and officers can be equally destructive to good governance. Members may from time to time become frustrated by what they regard as unacceptable or incompetent officer behaviour. It is self-evident that sometimes these feelings may be entirely justified although sometimes there may be a legitimate reason why member expectations cannot

be met, e.g. because of a council policy or a legal requirement such as confidentiality.

However, members should take up their concerns through the dispute procedure described in this document, rather than through public criticism. They should bear in mind that officers are instructed not to “answer back” in public. Attacking an officer’s conduct in public can in severe cases constitute bullying, and the Standards Board has already suspended one councillor for such behaviour. Similarly, undue pressure brought by either officers or members in private can be construed as bullying.

Lines of contact between members and officers

It must be remembered that officers within a department are accountable to their chief officer. Members should direct enquiries to junior staff through senior management, or if the matter is routine at least keep a senior manager informed by copying the manager in on correspondence or emails. Officers should always seek to assist members but in so doing they must not go beyond the bounds of whatever authority they have been given by their chief officer under the delegation scheme.

In relation to visits to front-line services by members, members should consider advising relevant chief officers in advance of such visits. In the case of unannounced visits to front-line services, members should take care not to disrupt organisations unreasonably. If the visit is of a statutory inspection nature other procedures apply.

6. Reports

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 evenhanded way. Officers should take care to include even unpopular options if they feel they are relevant. They should bear in mind that if they have not done so and the decision is later challenged or proved to be the wrong decision they may find themselves personally and professionally liable.

Members can refuse to agree recommendations and table amendments to any recommendations. The member should be clear about the reasons for making alternative recommendations, and any amendments or recommendations proposed at a meeting should have a clear and rational basis, which is accessible to the public.

With executive reports the report writer should consult with the relevant executive member(s). That member is able to write his or her report in addition to the report submitted by the chief officer.

Where there is disagreement about the right course of action, it is always best practice for this to be open with both opinions available for discussion. Sometimes, in the course of preparing reports, these disagreements can be reconciled. However, it is always poor practice to bring pressure to bear on officers unwilling to amend their professional judgement, and in some cases this could be construed as bullying.

In relation to action between meetings, it is important to remember that the law only allows for decisions (relating to the discharge of any of the council's functions) to be taken by the executive, an executive member, a committee, a sub-committee or an officer.

7. **Officer advice to party groups**

There is now statutory recognition for party groups and it is common for such groups to give preliminary consideration to matters of council business in advance of such matters being considered by the relevant decision making body. The opposition groups may seek support to enable them to function as an effective opposition on the bodies on which they sit.

Officers may properly be called upon to support and contribute to such deliberations by party groups, provided they maintain a stance which is politically impartial. Officers should be required to give information and advice to political groups on matters relating to the **council's functions only** and not on matters which are primarily issues of party politics or political strategy. It is important that the political neutrality of officers is preserved. When engaging council officers at group meetings, party members should seek to avoid involving them in any political debate. With the exception of political assistants, officers should not attend, or be invited to attend, any political group meeting which includes non-council members.

Attendance at group meetings should normally be restricted to chief officers or heads of service who could be expected to have an understanding of both service and political perspectives. If other officers are asked to attend group meetings they should be invited to attend with their chief officer or head of service.

These briefings are confidential, to allow the free expression of views, and officers must be careful to maintain confidentiality. However, any written report supplied to party political group must be accessible to members of other parties.

8. **Support services for members**

The role of officers is to assist members in discharging their role as members of the council for council business and in their role as advocates for local communities. Officers should not be used in connection with party political campaigning or for private purposes, and this includes the support offered by political assistants.

Council resources (e.g. stationery and photocopying) may only be used for council business or where such use may be seen as calculated to facilitate or is conducive or incidental to the discharge of the functions of the authority or of the office to which the member has been elected or appointed.

Support to members is a resource, which is subject to the same budget pressures as any other. Given its importance to how effective members can be, it is essential that its allocation is agreed to be fair and in proportion to the duties of all groups of members.

Direct support and administrative help is provided by member services. Information technology support and training responsibilities are shared between a number of sections but are organised through the member services' manager. From time to time the manager or the member development and e-governance officer will issue training and guidelines on the proper and effective use of council supplied I.T. resources. Requests for further assistance or clarification should be referred in the first instance to them.

Use of council resources includes the use of council owned facilities. Outside of council meetings, political groups represented on the Council, may use town hall meeting rooms for private meetings of their group which will include ordinary group meetings and training sessions. Non- town function halls can be hired under the council's normal conditions of charging for other types of meetings.

Use of the council chamber for party political purposes will only rarely be permissible and applications will be referred to the borough solicitor.

9. **Postage**

Preparation and postage of correspondence are a significant part of the support given to members. The content and purpose of letters, leaflets, and other correspondence must relate to the member's role in the authority. The members' services manager will arrange for monitoring arrangements to be put in place, and refer doubtful cases to the borough solicitor.

While this is not an exhaustive list, the use of council resources in the preparation and postage of the following kinds of post are not likely to be appropriate:

- Mailshots to all inhabitants of a ward;
- Letters sending out information (about timing of planning applications, refuse collections etc), which it is the task of officers to publicise, but requests will be considered on a case-by-case basis; or
- Letters which criticise other groups and their members or praise the writer or their political group.

Where members are uncertain as to whether a communication or publicity is appropriate they should seek advice from the head of communications and the borough solicitor in those cases.

Nothing in this protocol prevents the chief executive from approving the issuing of constituency wide mailshots, informing constituents who their ward councillors are, how they can contact them and other general information on the member, for the purposes of raising the profile of ward councillors generally.

10. **Correspondence**

In general correspondence from one member should not be copied to, or discussed with, another member without the member's consent subject to any rights of access arising from the Freedom of Information Act 2000 and The Data Protection Act 1998. If a member has sought advice from an officer and

included a circulation list at the bottom of the letter, it can be assumed that the officer's response can be circulated to those people on the circulation list for the original letter, even if that list includes other members.

This does not prevent officers copying letters to each other about casework across ward or interest boundaries in order to respond to a member inquiry. Points of general interest to all members may be converted into general advice, and circulated (within the limitations set down in the Data Protection Act). A chief officer is also able to advise a relevant executive member in general terms of an issue raised with the chief officer in correspondence, or otherwise, by another member.

Official letters from the council should normally be sent out in the name of the appropriate officer rather than a member. It may be appropriate for members to write in certain circumstances (e.g. representations to a government minister), however, this would be the exception rather than the norm. Letters which create obligations or give instructions should not be sent out in the name of a member.

11. Emails

The Standards set out for officers in the use of emails apply equally to Members. The key standards are that:

- Any behaviour or comment that are not permitted in the spoken or paper environment is also not permitted in an email messages.
- Email messages should be inoffensive and should not be construed to harass.
- Emails must not incite racial hatred or be pornographic in nature either in the body of the text or as an attachment.
- Chain emails should not be forwarded on.
- A restricted level of personal use of the email account is permitted provided they are sent outside working hours, does not interfere with work commitments and does not constitute misuse as detailed above.

As a general rule, emails cannot be used for party political purposes But:

- Emails organizing the political group in relation to Council business are allowed.
- The use of the email address in a party political leaflet to advertise a ward surgery or as a means of allowing residents to contact their ward members on non-party political matters is allowed.
- Emails to newspapers as a means of commenting on Council business from the political group's perspective are allowed.

12. Political assistants

The Local Government and Housing Act 1989 gives councils a power to appoint political assistants to qualifying political groups. Southwark Council currently employs political assistants to the two largest groups. Political assistants are council officers who are employed to assist members of a political group, "in the discharge of any of their functions as members of a relevant authority." Unlike other officer appointments, the political affiliations and preferences of the political group for whom the assistant is hired can be

taken into account in the selection process. They provide a useful means of broadening the base of advice to members.

The Act also restricts the work that political assistants can do. A political assistant's role is to provide assistance to members in carrying out their duties as members of the authority, and not in any additional political, or other, activity. For example, political assistants are not employed to work on election campaigns. Political assistants hold politically restricted posts under the Local Government and Housing Act 1989, and therefore also face restrictions on their personal political activity.¹

13. Members' access to information and council documents and data information

Members often require access to information to carry out their work in decision making, scrutiny, and representing their constituents. Officers should always process such requests promptly. They are required to ensure that the information required can be released. In some cases they will need to consult their managers or third parties who may hold the information, which may cause some delay.

The process for obtaining information is set out in the access to information rules in the council's constitution. Advice on the legal framework can be obtained from the borough solicitor.

The common law right of members is based on the principle that any member has a prima facie right to inspect council documents so far as his/her access to the documents is reasonably necessary to enable the member properly to perform their duties as a member of the council. This principle is commonly referred to as the "need to know" principle and it is well established that a member has no right to "a roving commission" to go and examine documents of the council. The crucial question is the determination of the "need to know" and this question must initially be determined by the particular chief officer whose department holds the document in question (with advice from the borough solicitor).

In some circumstances (e.g. an executive or scrutiny committee/sub-committee member wishing to inspect documents relating to the functions of their portfolio/committee/sub-committee) a member's "need to know" will normally be presumed, and also where the member is representing a constituent within his ward. In other circumstances (e.g. 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, possibly in writing.

Guidance on holding and processing data to comply with the Data Protection Act is issued by the corporate records manager, who acts as the council's data protection officer. Assistance with compliance is co-ordinated by member support services, but members should be aware that they are personally responsible under the Act, and should take care to follow any guidance issued.

¹ The ODPM's December 2005 recommendations relating to Political Assistants indicate that the government is not intending to make any further changes to the rules relating to political assistants.

14. Confidentiality

Sometimes information will be supplied in confidence and paragraphs 6(1) of the Soutwark Council code of conduct for members makes it clear that such information should not be disclosed without the consent of a person authorized to give it, or unless he or she is required by law to do so.

Recent case law confirms that a member may benefit from the public interest defence in some specific circumstances. However, those circumstances are rare and any member considering leaking confidential information should take legal advice immediately where their actions may impact on individuals.

Members are also reminded that there is an agreed process for applying for the release of information contained in the Freedom of Information Act 2000. Further details of this is available on the Council's website

15. **Freedom of Information Act 2000**

Under the Freedom of Information Act (FOI), councillors like other members of the public have a general right, subject to any applicable exemption, of access to information. Requests under the Freedom of Information Act must be in writing and contain sufficient information to enable the document to be identified. There is a requirement under the Act that for the information to be disclosed within 20 working days.

There is no requirement under the Act for the member to specify whether or not the information is requested under the Freedom of Information Act. Officers should therefore in all cases ascertain from the member whether or not the information is sought under the Freedom of Information Act and if so to advise the member that the request would be dealt with within the statutory time limit of 20 working days.

Where the request is for access to documents that are unrelated to any council meeting or where the member requesting the information is not the ward member, Officers must inform the member that the request is being treated as a Freedom of Information request and that a response would be provided within 20 working days.

16. **Operation of the overview & scrutiny committee and its sub-committees**

The overview & scrutiny committee and its sub-committees may require officers and members to attend and provide any information required to answer questions. It is the duty of any officer or member to attend and answer questions (other than those which he or she would be entitled to refuse to answer in a court of law) if the overview & scrutiny committee and its sub-committees so request. The council may consider that chief officers and other senior managers as described in the delegation scheme (contained in the business managers handbook) and not more junior staff are the appropriate officers to attend scrutiny meetings and answer questions.

Members of the overview & scrutiny committee or one of its sub-committees should explain the role and operation of the committee/sub-committee, particularly in relation to future policy development, before asking questions of witnesses. Members should adopt an inquisitorial (information seeking) approach to questioning rather than a confrontational one. They may be firm

and assertive, but adopting a facilitative and exploratory way of working should generate an atmosphere in which members and officers can explore issues openly and honestly. Under no circumstance should members adopt a rude or aggressive style.

Officers should provide all relevant information in their possession, and they should use their best efforts to make sure that they possess all relevant information. They should never seek to conceal or 'improve' inconvenient facts, and more senior officers, or other members should never attempt to persuade them to do so.

Reports of scrutiny committees, while drafted by officers, are the reports of the committees themselves and there is nothing improper in members of those committees asking for draft reports to be amended.

17. Ceremonial events

Civic ceremonial events will normally be led by the Mayor or the Deputy Mayor with the leaders of all political groups and other local members informed or invited as appropriate.

18. Other events

Events which involve government ministers or other political figures should usually be led by the leader or executive member with the Mayor informed or invited to lead as appropriate. Ward councillors and leaders of all the political parties should be invited where possible and appropriate.

19. Involvement of ward councillors

Ward councillors should be kept informed and consulted on relevant matters affecting their ward, i.e. on planning, licensing and other relevant matters (unless the ward councillor will be involved in making a decision at their community council). In the case of public meetings in a particular locality, all ward councillors will normally be invited to attend and should normally be consulted on any form of consultative exercise on local issues.

20. When things go wrong:

Procedure for officers

It is always preferable to resolve matters informally, through an appropriate senior manager. Officers however do have recourse to the staff complaints procedure (which is contained in the business managers handbook), the protections laid down in the officer employment procedure rules (contained in the part 4 of the constitution) or to the council's monitoring officer. In some cases they may wish to utilise the council's whistleblowing procedure (again contained in the business managers handbook). In the event of a complaint being upheld, the matter will be referred to the chief executive. A local solution may be found after discussion with the leader of the council and the leader and/or whip of the group concerned. Referral of the matter to the Standards Board, should be considered, particularly in serious cases, and the advice of the monitoring officer should be sought.

Procedure for councillors

Where a councillor is dissatisfied with the conduct, behaviour or performance of an officer, and feels that the officer response is unsatisfactory, they should refer the matter to the officer's head of service or senior manager. The manager should then make a preliminary investigation and consider whether the council's disciplinary and capability procedure is appropriate, and report back to the member concerned.

Where the complaint relates to a chief officer or monitoring officer, the complaint may be referred to the chief executive for an informal review, conciliation and resolution where possible. **If the matter is not resolved at this preliminary** stage or in cases of serious complaints, the Chief Executive, taking appropriate advice will consider whether any formal process under the Council's employment procedures and as set out in the Council Procedure Rules, is appropriate.

Where a complaint relates to the Chief Executive both the member concerned and the Chief Executive should consider whether a meeting may resolve the situation and whether that could be facilitated by the Whip or Leader of the relevant political group, if any, attending. The Chief Executive will provide the member with a written response to their complaint.

If the member remains dissatisfied with the response of the Chief Executive they will notify the monitoring officer and the head of human resources in writing and they will prepare a report for consideration by the Leader of the Council. The Leader of the Council, taking advice as appropriate, will have regard as to whether a formal process, as set out in the Local Authorities (Standing Orders)(England) 2001 is appropriate

21. Standards committee

The function of the standards committee is set out in the council's constitution. It has a role in offering guidance on the content and working of this protocol, although it will not arbitrate, except in considering cases relating to potential breaches of the members code of conduct. Such cases would have been referred to the Standards Board in the first instance.