

# Council Assembly

Wednesday May 20 2009  
7.00 pm  
Town Hall, Peckham Road, London SE5 8UB

## Supplemental Agenda

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Date: May 11 2009

<b>Item No.</b> 6.1	<b>Classification:</b> Open	<b>Date:</b> May 20 2009	<b>Meeting Name:</b> Council Assembly
<b>Report title:</b>		Review of Member and Officer Protocol	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Strategic Director of Legal & Democratic Services	

### **RECOMMENDATION**

1. That Council Assembly agree the attached Member and Officer Protocol.

### **BACKGROUND INFORMATION**

2. The Member and Officer Protocol was introduced in May 2004. As part of the constitutional review the protocol has been revised.
3. The Protocol has been considered by Chief Officers, as it relates to the conduct of officers. In addition the revision of the protocol has been considered by the Standards Committee.
4. The revised Member and Officer Protocol is recommended by the Constitutional Steering Panel.

### **KEY ISSUES FOR CONSIDERATION**

5. The changes in the new Protocol included:
  - clarification of who the Protocol applies to (non-voting members are covered by the protocol);
  - clarifying the guidance on member-officer relations, and greater clarity for Members about appropriate lines of contact with Officers;
  - consider new ways of working and relocation to Tooley Street;
  - expanding the section on IT services for Members;
  - reordering some of the sections of the Protocol.
6. Sections on postage, correspondence emails and involvement in events have been moved to the communications protocol.
7. A marked up version of the new protocol is attached as appendix 1.

### **Resource implications**

8. The proposed changes in members support do have resource implications however it is expected that these will be contained within existing budgets.

### **Legal implications**

9. There are no specific legal implications relating to this report. Any issues relating to constitutional changes will be addressed as part of the constitutional review process.

## Community Impact Statement

10. This report has no immediate impact on the community. The proposed protocol should enhance community engagement through clarity of roles.

## REASON FOR URGENCY

11. This review forms part of the constitution review process which will be considered by the annual meeting on May 20 2009. In order to allow the constitution to be updated in a timely and coherent way council is asked to consider adopting the protocol at its annual meeting. Consideration of the protocol will enable the revised document to be published with the other constitutional changes thus allowing any cross referencing issues to be fully identified. Any delay in considering the protocol would mean the updated protocol was not available to members and officers at a time when working arrangements are undergoing significant changes. The date of the next council assembly is pending confirmation by the annual meeting but is not expected to be until July 2009.

## REASON FOR LATENESS

12. Following consideration by the constitutional steering panel on May 5, officers needed to make a number of adjustments to this and a related item on the agenda. Unfortunately these changes could not be completed in time for the agenda despatch.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
None		

## APPENDICES

No.	Item
1.	Member and Officer Protocol

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Legal & Democratic Services	
<b>Report Authors</b>	Norman Coombe, Principal Lawyer, Governance Team	
<b>Version</b>	Final	
<b>Dated</b>	May 11 2009	
<b>Key Decision?</b>	No	
<b>Consultation with other officers / directorates / executive member</b>		
Officer Title	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Legal & Democratic Services	N/a	Incorporated
Chief Finance Officer	No	No
<b>Executive Member</b>	No	No
<b>Date final report sent to Constitutional Support Services</b>		May 11, 2009

## MEMBER AND OFFICER PROTOCOL

### Role and purpose

1. 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 other provisions of the council's own adopted constitution and especially the rules of procedure;
  - the disciplinary codes which regulate the conduct of officers, details of which can be found on the source at: <http://thesource/SectionLandingPage.asp?id=2089>.
2. 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.
3. This protocol also 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. With regard to associates from partnership organisations, where their organisation has no code of conduct, it is expected they will abide by the principles of Southwark's code and this protocol.
4. Members appointed to outside bodies or partnership organisation representative of Southwark Council need to be aware that the member code of conduct will apply to these appointments. However, members are advised to be aware that other conduct arrangements of the outside body are likely to exist. In those circumstances, members should comply with both sets of conduct arrangements, unless the Southwark Code of Conduct conflicts with the lawful obligations of the outside body.

### Review

5. The standards committee and the monitoring officer 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 monitoring officer will assess the corporate awareness of the protocol annually and report to standards committee.~~

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### Definition of the role of officers and members

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

#### Members

7. 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

8. Officers are responsible to the council. Their job is to give **full and impartial** 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
Director of legal and democratic services	Monitoring officer	Head of legal services
Finance director	Chief financial officer	Chief executive

### Member officer relations

9. One of the key issues addressed by the member and 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.

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### Obtaining or granting favours

10. 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

11. Issues relating to the appointment, management and dismissal of most officers ~~below the grade of deputy chief officer~~ are reserved by law to the chief executive and officers appointed by her. Member involvement in employment issues generally, including where they relate to senior officers is set out in the Local Authorities (Standing Orders) (England) Regulations 2001 and within the council's constitution.
12. 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

13. 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

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

### Bullying

15. Members and officers must not bully any person. Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person whom the member or officer has some actual or perceived influence over

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16. 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.
17. 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

- ~~18. It must be remembered that officers within a department are accountable to their chief officer. Chief Officers through their senior management are responsible for the allocation of work to, and the prioritising of work by, their staff. 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.~~
19. Members should direct enquiries to 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.
20. Officers should not leave confidential or sensitive paper visible on their workstation or in other areas and should lock them away if they have to leave that area for any reason.
21. Where members and officers share an office building particular care needs to be taken to maintain appropriate lines of contact. Members and officers are reminded that within an open plan environment office certain standards are expected to be maintained. In particular meetings should not be held at workstations, members and officers should use the meeting facilities provided and sensitive or confidential issues should not be discussed in the open plan environment. Further details of the standards can be found on the intranet.
22. 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 of management.

### Visits to offices by members

23. 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

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disrupt organisations unreasonably. If the visit is of a statutory inspection nature other procedures apply.

24. Making an agreed time to meet with an officer is a better way of working than arriving at an officer's desk. Managers will have agreed work priorities with staff.
25. Members are advised that they carry some personal responsibilities to ensure health and safety standards are maintained at all times while on council premises and also for their private guests. Members are advised that their private guests also have personal responsibilities regarding health and safety.

### Reports

26. 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, exclude irrelevant considerations and examine all alternatives in an even handed 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.
27. 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.
28. 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.
29. 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.
30. 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. It is however both legal and good practice for executive members individually and as a whole, and chairs of committees to be briefed by officers in advance of meetings and also to meet to plan agendas for meetings.



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### Officer advice to party groups

31. 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.
32. Officers may properly be called upon to support and contribute to 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.
33. Attendance at group meetings should normally be restricted to chief officers ~~or divisional service managers 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.~~ If other officers are required this should be organised by the chief officer.
34. These briefings are confidential, to allow the free expression of views, and officers must maintain confidentiality. However, any written report supplied to party political group must be accessible to members of other parties.

### Support services for members

35. 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.
36. Council resources such as stationery and photocopying may only be used when a member is carrying out 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~~ or when they are directly required for any office to which the member has been elected or appointed by the Council.
37. 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.

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38. 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.
39. 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.
40. Use of the council chamber for party political purposes will only rarely be permissible and applications will be referred to the monitoring officer.

### Postage

*[Note: This section has been moved to the revised communications protocol]*

~~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 monitoring officer.~~

~~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 monitoring officer 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.~~

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### Correspondence

*[Note: This section has been moved to the revised communications protocol]*

~~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.~~

### Emails

*[Note: This section has been moved to the revised communications protocol]*

~~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 is not permitted in the spoken or paper environment is also not permitted in an email message.~~
- ~~• 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.~~

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- ~~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.~~

### Member development program

41. The council through organisation and development runs a member development scheme which is coordinated through the organisational development unit. 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.
42. Further advice on support for members can be obtained from democratic services or member services.

### Use of Information Technology

43. Where a member is using or accessing the council's resources, s/he must act in accordance with the council's requirements and ensure such resources are not used for any unauthorised or political purpose. This includes Information Technology (IT) resources; the term 'IT', means computers and any systems used to create, store or exchange information electronically. Similarly 'computer' means an electronic device used for storing and processing information, such as desktop and notebook computers (laptops) and hand held devices (such as BlackBerrys).
44. Members must not use any computer equipment and systems to conduct any business activity other than for their role as a councillor.

### Using and Caring for Equipment:

45. Members have a personal responsibility for any IT equipment supplied to them by the council and should take all reasonable steps to ensure that this equipment is kept safe and in good working order. They should inform the provider of their household insurance that they have this personal responsibility. Members should note the council's insurance does not allow claims of below £1,000. Members should also report any loss/theft to member services in order to secure replacement equipment.
46. Members must not attach any other hardware or communication equipment to the computer supplied by the council without prior authorisation from the Council. A restricted level of personal use of the equipment is permitted provided it does not constitute misuse as detailed in the communications protocol.

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47. IT equipment supplied to Members remains the property of the council and must be returned if when their period of office ends.

### Political assistants

48. 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.
49. 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. ~~{Footnote: 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.}~~

### Members' access to information and council documents and data information

50. 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.
51. 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 monitoring officer.
52. 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 monitoring officer).

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53. 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, although in these cases there may be legal reasons restricting the information that can be produced. 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.
54. 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~~ can be found on the Source. Assistance with compliance is coordinated 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.

### Confidentiality

55. Sometimes information will be supplied in confidence and paragraph 4 of the Southwark 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.
56. 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.
57. 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 are available on the council's website.

### Freedom of Information Act 2000

58. 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.
59. 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 will be dealt with within the statutory time limit of 20 working days.
60. 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

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member, officers must inform the member that the request is being treated as a Freedom of Information request and that a response will be provided within 20 working days.

### Operation of the overview & scrutiny committee and its sub-committees

61. 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 subcommittees so request. The council may consider that chief officers and other senior managers as described in the delegation scheme (contained in the departmental schemes of management) and not more junior staff are the appropriate officers to attend scrutiny meetings and answer questions.
62. 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.
63. 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.
64. 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.

### Ceremonial events

65. 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.

### Other events

*[Note: This section has been moved to the revised communications protocol]*

~~Events which involve government ministers or other political figures should usually be led by the leader or executive member with the Mayor informed or~~

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~~invited to lead as appropriate. Ward councillors and leaders of all the political parties should be invited where possible and appropriate.~~

### **Involvement of ward councillors**

*[Note: This section has been moved to the revised communications protocol]*

~~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.~~

### **When things go wrong:**

#### **Procedure for officers**

66. 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~~ [Managing@Southwark](#)), the protections laid down in the officer employment procedure rules (contained in 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~~ [Managing@Southwark](#)). 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**

67. Where a member is dissatisfied with the conduct, ~~behaviour or performance~~ of an officer and ~~feels that the officer response is unsatisfactory~~ they have been unable to resolve the issue, they should refer the matter either to the officer's ~~head of service divisional service manager or senior~~ relevant chief officer, who will nominate an appropriate manager to carry out any investigation required. The manager should then make a preliminary investigation and consider whether the council's disciplinary and capability procedure is appropriate, and then follow the appropriate procedure. The manager should then report back to the member concerned that the appropriate procedures have been followed.

68. 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



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- 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.
69. 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.
70. If the member remains dissatisfied with the response of the chief executive s/he 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.

### Standards committee

71. 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 for England in the first instance.~~

<b>Item No.</b> 6.2	<b>Classification:</b> Open	<b>Date:</b> May 20 2009	<b>Meeting Name:</b> Council Assembly
<b>Report title:</b>		Review of Communication Protocol	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Strategic Director of Legal and Democratic Services	

### RECOMMENDATION

1. That Council Assembly agree the attached communication protocol at Appendix A.

### BACKGROUND INFORMATION

2. The communication protocol was introduced in May 2004. This present review of the communication protocol is part of the overall review of the constitution carried out annually.
3. The Standards Committee have considered this revision of the communications protocol.
4. The revised communications protocol has been considered by Constitutional Steering Panel and the Standards Committee and their comments have been taken into account .

### KEY ISSUES FOR CONSIDERATION

5. The suggested changes, which are underlined in the protocol, have resulted from queries that have arisen during the course of the year. Some parts of the member and officer protocol have been transferred [paragraphs 35 to 38 and 41 to 43].
6. Council will note that a new paragraph 8 has been inserted which replaces paragraph 63 of the member officer protocol setting out the rules for inviting ward councillors to events. Paragraph 9 extends the rules on official visits by government and shadow ministers. It outlines the arrangements to be made where the minister requires assistance or access to any of the council's services or facilities. This has been included to ensure that the purpose of all visits is identified in advance and that appropriate support is provided on the day.
7. Promotional publicity is dealt with at paragraph 13 of the protocol. It explains how promotional publicity can be used by the council under the legislation and that it must be objective and factual.
8. Council will note further that a new paragraph 15 has been inserted to deal with the publicity of matters going before the executive, council assembly or committees of the council. The standard requirement is that all matters are publicised five clear days before the meeting unless they have been adjudged exempt. Where the press becomes interested in a matter that is to be the subject of a decision by the council a press release may be issued by the relevant chief officer and executive member explaining the reasons behind the

recommendations. Any press release must be factual and objective.

If any misinformation has been given about the council's policies or objectives then the head of communications is authorised to take corrective measures as necessary.

9. The role and responsibilities of the mayor are set out at paragraph 32. This has been inserted to set out the functions of the mayor in promoting the council generally and representing the council in civic and ceremonial occasions.
10. The amendment in paragraph 34 has been added to allow the chair of audit and governance to comment on matters falling within the remit of that committee.
11. The amendments in paragraphs 39 and 40 dealing with mailshots are an attempt to remove the current ambiguity about the use of council resources. The revised provisions make clear how officers in member services will approach requests of this type from members.

### **Community Impact Statement**

12. Good relationships between members and officers are very important in aiding the decision-making process and helping to boost public confidence in the Council. A protocol that defines each party's responsibilities creates certainty, which in turn leads to better decision-making and a more satisfied customer.

### **Legal Implications**

13. The legal implications are included in the report.

### **Resource Implications**

14. Any resource implications will be contained within existing budgets.

### **REASON FOR URGENCY**

15. This review forms part of the constitution review process which will be considered by the annual meeting on May 20 2009. In order to allow the constitution to be updated in a timely and coherent way council is asked to consider adopting the protocol at its annual meeting. Consideration of the protocol will enable the revised document to be published with the other constitutional changes thus allowing any cross referencing issues to be fully identified. Any delay in considering the protocol would mean the updated protocol was not available to members and officers at a time when working arrangements are undergoing significant changes. The date of the next council assembly is pending confirmation by the annual meeting but is not expected to be until July 2009.

### **REASON FOR LATENESS**

16. Following consideration by the constitutional steering panel on May 5, officers needed to make a number of adjustments to this and a related item on the agenda. Unfortunately these changes could not be completed in time for the agenda despatch.

**BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
The Constitution.	Constitutional Team, Town Hall, Peckham Road, SE5 8UB	Lesley John 020-7525-7228

**APPENDICES**

<b>No.</b>	<b>Item</b>
A.	Communication Protocol

**AUDIT TRAIL**

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Legal and Democratic Services	
<b>Report Author</b>	Norman Coombe, Principal lawyer	
<b>Version</b>	Final	
<b>Dated</b>	May 11 2009	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Legal and Democratic Services	Yes	Yes
Chief Finance Officer	No	No
<b>Executive Member</b>	N/a	N/a
<b>Date final report sent to Constitutional Support Services</b>	May 11 2009	

## APPENDIX A

### COMMUNICATION PROTOCOL

#### Scope of the protocol

1. This protocol applies to all publicity issued or produced and paid for out of the Council's resources.
2. The protocol also applies to any other material issued by organisations that are either wholly or partly separate from the Council but which use Council's grants or other funding from the Council to produce the publicity.

#### The Legal Framework

3. When publishing any material at any time, a local authority must comply with the provisions of the Local Government Act 1986 (Act) and the Code of Recommended Practice on Local Authority Publicity 1988 which was revised in April 2001. Section 2 of the Act states as follows:
  - (1) A local authority shall not publish (or assist others to publish) any material, which in whole or in part is designed to affect public support for a political party
  - (2) In determining whether material falls within the prohibition regard shall be had to the content style of the material, the time and other circumstances of the publication and the likely effect on those to whom it is directed and in particular the following matters: -
    - a. Whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the views of one political party and not of another;
    - b. Where the material is part of a campaign, the effect that the campaign appears to be designed to achieve.
4. The key points to note from the above section and the Code are as follows:
  - Any material which in whole or in part appears to be designed to affect public support for a political party is prohibited.
  - Any publicity describing Council policies and aims should be as objective as possible, concentrating on facts or explanations or both.
  - Where publicity is used to comment on, or respond to the policies and proposals of central government, or other local Councils, the comments or response should be objective, balanced, informative and accurate.
  - Publicity must be objective, explanatory and avoid personalisation of the issues or inappropriate personal image making. A press release should not be used to explain party political differences.

- When deciding whether publicity may fall foul of the Act and the Code, the Council should consider:
    - The content and style of the materials
    - The timing and circumstances of the materials
    - The likely effect on those to whom it is addressed
    - Whether it refers to a political party or politician
    - Whether it advocates a particular view that can be easily identified with a political party and
    - If it is part of a campaign, the effect that campaign is designed to achieve.
5. Section 6 of the Act defines publicity as “any communication in whatever form, addressed to the public at large or to a section of the public”.

### **Publicity of Individual Councillors**

6. Publicity about Councillors may include their contact details, their political affiliation, the position they hold within the Council and their responsibilities.
7. Publicity may include information about individual Councillors’ proposals, decisions and recommendations where this is relevant to their position and responsibilities within the Council. **Publicity of individual Councillors should avoid personalisation of issues or personal image making.**

### **Ward Member of the Council**

~~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.~~

**Comment [NC1]:** Moved from Member and Officer Protocol

8. Ward councillors will be invited to attend public meetings and events organised by the council to consider a local issue and will also be kept informed of consultative exercises on local issues. Some events will involve some members in formal roles, i.e., take part in photo opportunities, make presentations or officially address an audience and members will be advised of what those formal roles are and who is involved in those at the time of invitation.

### **Official visits by Government and Shadow Ministers**

9. It is open to government and shadow ministers to visit the borough at any time. However should the minister require assistance or access to any of the council's

services or facilities, the visit will need to be arranged through official channels of the council. This will ensure that appropriate support is provided on the day.

10. To this end all such requests from government and shadow ministers must be referred to the head of communications who will promptly notify the chief executive of the request.
11. The head of communications will liaise with their counterpart at the relevant government department to ascertain the purpose of the visit. The head of communications in consultation with the chief executive and monitoring officer will authorise the visit if satisfied that the visit would assist the council in promoting one or more of its policies and or objectives or would be purely for fact finding.
12. Events which involve government ministers or other political figures and shadow ministers 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.

#### **Visits by Local and other Members of Parliament (MPs)**

13. There may be instances where local and other MPs who are not Ministers will have a special interest in attending an event that is taking place in the borough. In this instance the MP in question may either be formally invited or merely informed about the event. Where the MP has not been specifically invited to attend, he or she should not expect to be treated as an "official" invitee.

#### **Promotional publicity**

14. Local authorities are authorised under the Local Government Act 1972 to publicise information as to the services provided by them or other local authorities in their area. Publicity can also be used to explain or justify the council's policies either in general, such as in the annual report, or on specific topics, for example as a background to consultation. However, any such publicity must be objective and factual.

#### **Publicity of matters going before the executive, council assembly or any committee of the council.**

15. All matters going before the executive, council assembly or committees for decision are publicised five clear days before the meeting unless the report contains exempt information (i.e. information that has been judged by the proper officer as confidential). Some matters will obviously generate more press interest than others. Where the press is interested in a matter that is to be the subject of a decision by the council, the head of communications in conjunction with the relevant chief officer and executive member may issue a press release explaining the reasons behind the recommendations. Any such press release must be factual and objective. Members may be asked by the media to comment on this press release but should remember that whilst criticism of ideas and opinion is part of the democratic process, a member must comply with the code of conduct.

16. Where there has been misinformation about any of the council's policies or objectives the head of communication is authorised to take any appropriate corrective measures.

### **Scrutiny**

17. Publicity about scrutiny will concentrate on factual information about which scrutiny exercises the council is conducting, who is involved, the process they will follow and the decisions they take. Where scrutiny suggests a course of action that differs to or challenges one agreed by the executive or any other council decision making body, this would be made clear in publicity together with the process for resolving the difference.

### **Enquiries from the press**

- ~~18. All enquiries from the press should be referred to the communications team before any comment is given. It is the responsibility of the communication unit to prepare the response in conjunction with the relevant service area or the relevant executive member.~~

### **Press Release**

18. All press releases from the council must be agreed and signed off by the communication unit and issued either electronically or on council headed paper.

~~Press releases will not contain quotes from members other than those set out in this protocol as designated spokespersons. The press releases will explain the council's decisions and issues faced by the council in a factual way. Press releases issued after a council meeting will only relate to matters discussed at the meeting. Releases issued before a meeting should be based only on factual information.~~

### **~~Obligations on officers in relation to documents being prepared for public consumption~~**

~~During the period between the notice of elections and the elections themselves, no council officer may attribute quotes to any councillor in news releases or the council's publications or leaflets except in the exceptional circumstances set out in the code of practice. No officer may attribute views, proposals and recommendations to any particular member or group. No council officer may issue publicity on any controversial issues unless it can be handled in a way that avoids a personal or party political dimension.~~

### **Publicity during elections**

19. The Code states that councillors and candidates in an election should not be provided with any form of publicity during the period between the notice of an election and the election itself.
20. Councillors in key positions should only comment on behalf of the council in an emergency.
21. Any publicity about events or services must be factual and not party political.



22. Any publicity should not deal with controversial issues or report views, proposals or recommendations in such a way that it identifies them with individual councillors or groups of councillors or political parties.
23. The council should not produce publicity designed to influence the views of local people on petitions, referendums or specific proposals.
24. Councillors, MPs and candidates in the election may attend the public parts of council premises, even if they intend to use it as a photo opportunity, so long as any such attendance is not organised or funded from council resources and council equipment and employees are not involved.

#### **The role of the communications unit**

25. The communications unit works on behalf of the council and not for any political party. The purpose of its work is to provide high quality information about the council, its policies and its services and to maintain public confidence and where appropriate to protect and to promote the council's reputation. It aims to encourage ~~public participation and the creation of local partnerships~~ better relationships with the local Community. It is important to remember that all publicity and press releases are directed through the communications unit so these goals can be achieved.
26. The head of communications can advise members on how to deal with press enquiries, and how to arrange publicity for events, which can be properly publicised. Members should seek advice before releasing information to the press, which they have obtained in their role as members. They have a remit to discover and make public inefficiency and poor public service: however they should be careful where a matter they wish to make public relates to identifiable officers, and seek advice from the head of communications or the monitoring officer.
27. Publicity and information will cover areas such as why the council makes the decisions it does, and why other proposals are rejected. The communications unit will feature the decisions of the council – i.e. those decisions made by the council assembly, executive, scrutiny, planning or licensing committees or community councils, or those actions which have been taken within the broad policy framework already set by the council, subject to any call in arrangements.

#### **Obligations on officers in relation to documents being prepared for public consumption**

28. Council staff and resources must not be used to arrange proactive events, such as photocalls, if they would provide politicians with a platform to communicate with the public that would not otherwise be available to them. ~~However, there is no reason why councillors, MPs and candidates in the election should be refused access to the public parts of council premises, even if they intend to use it as a photo opportunity, so long as it is not organised or funded from council resources and council equipment and employees are not involved~~
29. When considering whether a communication or publicity is safe to be put out officers should ask themselves whether the communication or publicity is objective,

balanced, informative and accurate. If the answer is an unequivocal yes then the communication or publicity is safe to be put out.

30. Where officers are uncertain as to whether a communication or publicity is appropriate they should seek advice from the communications unit and the monitoring officer.
31. If something cannot go out as a member has suggested then officers can explain why and offer an alternative form of words. Again the communications unit or the monitoring officer can offer you guidance on what would be appropriate.

### **The role of the mayor & deputy mayor**

32. The mayor is the first citizen of the borough and as such is apolitical. He or she is responsible for promoting the council as a whole and representing the council in civic and ceremonial events.
33. The mayor is also responsible for chairing meetings of the council and interpreting the constitution as necessary. Where the mayor is unable to act or the office is vacant, the deputy mayor will discharge all of the mayor's duties except that the deputy may not chair meetings of the council unless specifically appointed to do so.

### **Key spokespeople**

34. The role of the spokesperson is to present facts about council decisions, the context in which they were taken, actions, and issues faced by the council. Members who are key council spokespeople are the leader and deputy leader and executive members within their portfolio, the chair of overview and scrutiny committee, planning chair, licensing chair, chair of the relevant community council, standards chair and chair of the audit and governance committee. They will be quoted or featured in publicity where it relates to their areas of responsibility within the council.

### **Correspondence**

**Comment [NC2]:** Moved from Member and Officer Protocol

35. 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.
36. 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.
37. 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.

## Postage

**Comment [NC3]:** Moved from Member and Officer Protocol

38. 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 monitoring officer. A facility exists to send out pre-paid reply envelopes with correspondence.

~~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.~~

39. The use of council resources in the preparation and postage of the following kinds of post are not permitted:

- Private mail including correspondence for other bodies
- Mailshots
- Letters sending out information (concerning planning application, refuse collection, etc) which is the responsibility of officers
- Letters which criticise other groups and their members or praise the writer or their political group.  
For the avoidance of doubt, correspondence to residents about the location of surgeries by members who do not have a fixed location for their surgery shall not constitute a mailshot

40. The question of what is a mailshot has proved problematic. Members are entitled to use council resources to respond to requests that their constituents have raised with them for action and explain what action has been taken, but not generally to publicise their work in the ward. Requests to send out large numbers of letters will have to show what demand is being responded to, and that the letter is a proportionate response to that demand. In any event, member services do not have the resources to send out more than one batch of such letters a month for any member. Members are reminded that this is a finite resource, and member services may need to limit the use of this if excessive costs are incurred.

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

## Emails

**Comment [NC4]:** Moved from Member and Officer Protocol

42. Email and Internet access facilities are provided to members to support work on Council related activities. 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 is not permitted in the spoken or paper environment is also not permitted in an email message.
  - 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.~~
43. As a general rule, emails cannot be used for party political purposes but:
- Emails organising 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.
44. Members should remember that emails may be subject to disclosure if a request is made under the Freedom of Information Act 2000.
45. Any use of IT resources, including email and the Internet, that contravenes any legislation (such as the Data Protection Act 1998; the Computer Misuse Act 1990; and the Copyrights, Designs and Patents Act 1988 (amended 2002); or breaches the general obligations of the Member Code of Conduct; or breaches Council policies on information security is considered to be unacceptable. Members are responsible for the content of any email sent from your username and in certain circumstances the Council may also be found liable for the content of such email.
46. Emails and other personal information should be retained only for the minimum period necessary, in accordance with the Data Protection Act 1998. Further details on the Data Protection Act in term of Members' business use can be obtained from Legal Services.
47. It is important that Members manage the information that they store to ensure its availability, confidentiality and integrity. Therefore Members should regularly review all Council information (including files and email messages) they hold and delete all redundant or irrelevant data.
48. Where a telephone number has been issued to a member or group of members it is expected that this number will be publicised except on political publicity material.

Last Updated:  
May 2009

<b>COUNCIL ASSEMBLY AGENDA DISTRIBUTION LIST (OPEN) (FULL LIST) MUNICIPAL YEAR 2009-10</b>			
<b>NOTE:</b> Original held by Constitutional Team; all amendments/queries to Lesley John Tel: 020 7525 7228			
<b>ONE COPY TO ALL UNLESS OTHERWISE STATED</b>	Copies	To	Copies
<b>Councillors (All)</b>	1 each	<b>Officers</b>	<b>2</b>
<b>Political Assistants</b>		Ian Millichap	1
John Bibby, Labour Group Political Assistant	1	Sonia Sutton	1
Liberal Democrat Political Assistant	1	<b>Constitutional Team</b>	<b>40</b>
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Richard Rawes	1	Miss Sylvia Morris, NAHT	1
Romi Bowen	1	Irene Bishop, SHA	1
Duncan Whitfield	1	Mick Young TGWU	1
Stephen McDonald	1	<b>Local M.P.</b>	<b>1</b>
Susannah White	1	Simon Hughes M.P.	
		<b>Others</b>	<b>2</b>
		Shahida Nasim, Audit Commission, Room 32, 2 <sup>nd</sup> Floor, Central House, Town Hall Complex	1
		Mr. Mark Roelofsen	1
		<b>Total:</b>	<b>133</b>