

# 5C - PROTOCOL ON MEMBER / OFFICER RELATIONS

## 1. Introduction and Principles

- 1.1 Mutual trust and respect between members and officers is at the heart of good governance. They are essential if the partnership necessary for the effective running of a local authority is to succeed. The purpose of this Protocol is to guide Members and Officers of Breckland Council (hereinafter called "the Council") in their relations with one another in such a way as to ensure the achievement of that objective.
- 1.2 Given the variety and complexity of such relations, this Protocol does not seek to be either prescriptive or exhaustive. It simply offers guidance on some of the issues which most commonly arise. It is hoped, however, that the approach which it adopts to these issues will serve as a guide to dealing with other circumstances.
- 1.3 This Protocol is to a large extent a written statement of current practice and convention. It seeks to promote greater clarity and certainty. If the Protocol is followed it should ensure that Members receive objective and impartial advice and that Officers are protected from accusations of bias and any undue influence from Members.
- 1.4 It also seeks to reflect the principles underlying the respective Codes of Conduct which apply to Members and Officers. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government and the Codes, therefore, demand very high standards of personal conduct.
- 1.5 This Protocol is a local extension of the Members' and Employees' Codes of Conduct. Consequently, a breach of the provisions of this Protocol may also constitute a breach of those Codes.
- 1.6 This Protocol should be read in conjunction with the Members' and Employees' Codes of Local Government Conduct, the Council's Constitution and any guidance issued by the Standards Committee and/or Monitoring Officer.

## 2. Allegations of Member or Officer Misconduct: Responses by Members or Officers as appropriate

- 2.1 In a situation where a Member identifies that an Officer may have committed a breach of the Council's disciplinary rules and procedures, he shall draw the issue to the attention of the Chief Executive (Head of Paid Service) who, following consultation with the Head of Human Resources, will ensure that the appropriate action is taken.
- 2.2 In respect of a situation where there is an alleged breach of the Council's Code of Conduct by a Member, the Code places an obligation on other Members to draw such breaches to the attention of the Standards Board for England (paragraph 7). Members are, however, also requested to advise the Monitoring Officer in writing that they have taken this action.

- 2.3 An Officer who believes a Member has breached the Members' Code of Conduct should:
- a. not offer any opinion or judgement upon that conduct to the Member;
  - b. advise the Monitoring Officer in writing immediately of the circumstances, facts, his belief and the rationale behind it, including supplying all and any documentation; and
  - c. not comment further on the issue to any other Officer or Member without the prior consent of the Monitoring Officer.

These provisions are to protect both the Member and Officer, avoid Officers from becoming unduly involved in allegations of Member misconduct at an inappropriate level and to ensure that any investigation that may need to be carried out by the Monitoring Officer or other agency is not in any way fettered or damaged.

### **3. The Relationship: General Points**

- 3.1 Both Councillors and Officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. 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, the Executive, their committees and sub-committees.
- 3.2 At the heart of the Code, and this Protocol, is the importance of mutual respect. Member / Officer relationships are to be conducted in a positive and constructive way. Therefore, it is important that any dealings between Members and Officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party.
- 3.3 Inappropriate relationships can be inferred from language / style. To protect both Members and Officers, at full Council and other public meetings Officers should address Members as "Councillor XX / Mr or Madam Chairman". In other circumstances, e.g. a one to one between an Operations Manager and their corresponding Executive Member, a level of informality may be appropriate.
- 3.4 A Member should not raise matters relating to the conduct or capability of an Officer in a manner that is incompatible with the objectives of this Protocol. This is a long-standing tradition in public service. An Officer has no means of responding to such criticisms in public. If a Member feels he has not been treated with proper respect, courtesy or has any concern about the conduct or capability of an Officer, and fails to resolve it through direct discussion with the Officer, he should raise the matter with the respective Service Manager, who will then look into the facts and report back to the Member. If the Member continues to feel concern, then he should report the facts to the Strategic Director who heads the Portfolio concerned, or if, after doing so, is still dissatisfied, should raise the issue with the Chief Executive who will look into the matter afresh. Any action taken against an Officer in respect of a complaint will be in accordance with the provisions of the Council's Disciplinary Rules and Procedures.
- 3.5 An Officer should not raise with a Member matters relating to the conduct or capability of another Officer or to the internal management of a Service Area or Portfolio in a manner that is incompatible with the overall objectives of this Protocol.

- 3.6 Where an Officer feels that he has not been properly treated with respect and courtesy by a Member, he should raise the matter with his Service Manager, Strategic Director or the Chief Executive as appropriate, especially if they do not feel able to discuss it directly with the Member concerned. In these circumstances the Service Manager, Strategic Director or Chief Executive will take appropriate action either by approaching the individual Member and/or group leader or by referring the matter to the Monitoring Officer in the context of the Standards Committee considering the complaint.

#### **4. The Relationship: Officer Support to Members: General Points**

- 4.1 Officers are responsible for day-to-day managerial and operational decisions within the authority and will provide support to both the Executive and all Councillors in their several areas.
- 4.2 Certain statutory officers – the Chief Executive, the Monitoring Officer and the Section 151 Officer – have specific roles. These are addressed in the Constitution. Their roles need to be understood and respected by all Members.
- 4.3 The following key principles reflect the way in which the officer corps generally relates to Members:
- ◆ all officers are employed by, and accountable to, the authority as a whole;
  - ◆ support from officers is needed for all the authority's functions including Full Council, Overview and Scrutiny, the Executive, individual Members representing their communities, etc;
  - ◆ day-to-day managerial and operational decisions should remain the responsibility of the Chief Executive and other officers;
  - ◆ the authority will seek to avoid potential conflicts of interest for officers arising from the separation of the Executive and Overview and Scrutiny role; and
  - ◆ all officers will be provided with training and development to help them support the various Member roles effectively and to understand the political structure.
- 4.4 On occasion, a decision may be reached which authorises named Officers to take action between meetings following consultation with a Member or Members. It must be recognised that it is the Officer, rather than the Member or Members, who takes the action and it is the Officer who is accountable for it.
- 4.5 Finally, it must be remembered that Officers within a Service Area or Portfolio are accountable to their Service Manager and Strategic Director and that whilst Officers should always seek to assist a Member, they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Service Manager or Strategic Director.
- 4.6 If the time a Member spends in the office is disproportionate to the benefit of his attendance, the Chief Executive should draw this to the attention of the Leader of the Group in question.

#### **5. The Relationship: Officer Support: Members and Party Groups**

- 5.1 It must be recognised by all Officers and Members that in discharging their duties and responsibilities, Officers serve the Council as a whole and not any political group, combination of groups or any individual Member of the Council.

- 5.2 There is now statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to support and contribute to such deliberations by party groups but must at all times maintain political neutrality. All Officers must, in their dealings with political groups and individual Members, treat them in a fair and even-handed manner. (NB. This would not apply to assistants to political groups appointed in accordance with the Council's Standing Orders. At the time of adoption of this protocol, no such appointments had been made.)
- 5.3 The support provided by Officers can take many forms. Whilst in practice such Officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups
- 5.4 Certain points must, however, be clearly understood by all those participating in this type of process, Members and Officers alike. In particular:
- 5.4.1 Officer support must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if Officers are not present at meetings or parts of meetings, when matters of party business are to be discussed;
- 5.4.2 political group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such; and
- 5.4.3 similarly, where Officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant Committee or Sub-Committee when the matter in question is considered.
- 5.5 Officers should not attend or provide information and advice to a party group meeting which includes persons who are not Members of the Council and who are not bound by the National Code of Local Government Conduct (in particular, the provisions concerning the declaration of interests and confidentiality).
- 5.6 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group.
- 5.7 Whilst any Member may ask a relevant Head of Service, Strategic Director or the Chief Executive for written factual information about a Portfolio or service, such requests must be reasonable and not seek information relating, for instance, to case work of a similar nature. Requests will be met subject to any overriding legal considerations (which will be determined by the Monitoring Officer), or if the recipient of any request considers the cost of providing the information requested or the nature of the request to be unreasonable. If a Member requesting such information is dissatisfied by such a response, he should raise the matter in the first place with the relevant Strategic Director and if still dissatisfied should raise the matter with the Chief Executive who will discuss the issue with the relevant Group Leader(s).

- 5.8 In relation to budget proposals:
- a. the Administration shall be entitled to confidential discussions with Officers regarding options and proposals. These will remain confidential until determined by the Administration or until published in advance of Committee / Council meetings, whichever is the earlier; and
  - b. the opposition groups shall also be entitled to confidential discussions with Officers to enable them to formulate alternative budget proposals. These will remain confidential until determined by the respective opposition groups or until published in advance of Committee / Council meetings, whichever is the earlier.
- 5.9 As part of the Budget process, Officers may be called upon to give advice on budgetary proposals, wherever they may emanate from (once political confidentiality has been lifted). This is in addition to the "normal" rights that any Member has to seek advice "in confidence" from Officers. In addition, Officers may feel it appropriate to offer advice to individuals, groups or all Members. In doing so, they should be aware of the need to remain impartial. It is appropriate and indeed, in certain circumstances, necessary that as a matter of professional judgement, if a proposed course of action is imprudent, that Officers should advise the Members of the Authority that this is so. It would, however, be for the Officer to decide how and when to do so. This is without prejudice to issues of legality and financial administration which are covered by specific duties placed on the Section 151 Officer and Monitoring Officer.
- 5.10 The overriding obligation will be to ensure that the integrity of the administration of public affairs is maintained. The prime responsibility of Officers in the matter of any challengeable decision arises in advising Members of the Council before decisions are reached. It is incumbent, in these circumstances, for Councillors to be fully advised on the legal and financial consequences of any proposed course of action.
- 5.11 It must not be assumed by any party group or Member that any Officer is supportive of any policy or strategy developed because of that Officer's assistance in the formulation of that policy or strategy.
- 5.12 Any particular cases of difficulty or uncertainty in this area of Officer advice to party groups should be raised with the Chief Executive who will discuss them with the relevant group leader(s).

## **6. The Relationship: Officer Support: The Executive**

- 6.1 It is clearly important that there should be a close working relationship between Executive Members and the Officers who support and/or interact with them. However, such relationships 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.
- 6.2 Whilst Executive Members will routinely be consulted as part of the process of drawing up proposals for consideration or the agenda for a forthcoming meeting, it must be recognised that in some situations an Officer will be under a professional duty to submit a report. Similarly, a Head of Service or other senior Officer will always be fully responsible for the contents of any report submitted in his name. This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report. This is to be distinguished from a situation where there is a value judgement to be made. Any issues arising between an Executive Member and a Head of Service in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.

- 6.3 The Executive and its members have wide ranging leadership roles. They will:
- ◆ lead the community planning process and the search for Best Value, with input and advice from the Overview and Scrutiny Commission, area committees and any other persons as appropriate;
  - ◆ lead the preparation of the local authority's policies and budget;
  - ◆ take in-year decisions on resources and priorities, together with other stakeholders and partners in the local community, to deliver and implement the budget and policies decided by the Full Council; and
  - ◆ be the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.
- 6.4 Where functions which are the responsibility of the Executive are delegated to Officers or other structures outside the Executive, the Executive will nevertheless remain accountable to the Council, through the Overview and Scrutiny Commission, for the discharge of those functions. That is to say, the Executive will be held to account for both its decision to delegate a function and the way that the function is being carried out.
- 6.5 Under Executive Arrangements, individual Members of the Executive may formally take decisions. The Executive and Cabinet members must satisfy themselves that they are clear what exactly they can and cannot do.
- 6.6 The Council has put in place mechanisms / protocols which ensure that (as with the Council and its Committees and Sub-Committees, and the Executive and its Committees) an individual Executive Member seeks advice from relevant Officers before taking a decision within his delegated authority. This includes taking legal advice, financial advice and professional officer advice (particularly about contractual matters) as well as consulting the Monitoring Officer where there is doubt about vires.
- 6.7 Decisions taken by individual Members of the Executive give rise to legal and financial obligations in the same way as decisions taken collectively. Therefore, Members of the Executive should always be aware of legal and financial liabilities (consulting the Monitoring Officer and Section 151 Officer as appropriate) which will arise from their decisions. To ensure effective leadership for the local authority and the communities it serves, there are arrangements to ensure co-ordination of and sharing responsibility for Executive decisions including those made by individuals.
- 6.8 Officers will continue to work for and serve the local authority as a whole. Nevertheless, as the majority of functions will be the responsibility of the Executive, it is likely that in practice many Officers will be working to the Executive for most of their time. The Executive must respect the political neutrality of the Officers. Officers must ensure that, even when they are predominantly supporting the Executive, that their political neutrality is not compromised.
- 6.9 Support for the Executive presents the potential for tension between Chief Officers and Members with portfolios. All Members and Officers need to be constantly aware of the possibility of such tensions arising and both Officers and Members need to work together to avoid such tensions and conflicts existing or being perceived.

## 7. The Relationship: Officer Support: Overview and Scrutiny

7.1 Overview and Scrutiny is an important constituent part of effective democracy and the Council's constitutional arrangements. Officers have lead and significant roles in making it effective. However, it is not Overview and Scrutiny's role to act as a disciplinary tribunal in relation to the actions of Members or Officers. Neither is it the role of Officers to become involved in what would amount to disciplinary investigations on a Panel's behalf. This is the Chief Executive's function alone in relation to staff, the Monitoring Officer's and the Standards Committee as regards the conduct of Members. This means:

- ◆ Overview and Scrutiny's questioning should *not* be directed to the conduct of individuals, not in the sense of establishing the facts about what occurred in the making of decisions or implementing of Council policies, but with the implication of allocating criticism or blame;
- ◆ in these circumstances, it is for the Chief Executive to institute a formal enquiry, and Overview and Scrutiny may ask (but not require) him to do so.

7.2 Overview and Scrutiny should not act as a "court of appeal" against decisions or to pursue complaints by individuals (Councillors, Officers or members of the public) as other procedures exist for this. These are internal, e.g. the Corporate Complaints Procedure, and external / statutory, e.g. Local Government Ombudsman or appeal to the Courts. That said,

- ◆ Overview and Scrutiny may investigate the manner in which decisions are made but should not pass judgements on the merits of a decision in individual cases;
- ◆ It may comment, however, on the merits of a particular policy affecting individuals.

7.3 It would be unfair to invite someone to appear before a Panel without telling them in general terms what they will be asked, or not giving them adequate time to prepare. Overview and Scrutiny ought to provide written questions ("Indicative Topics") beforehand, so that the answers can form the basis of the questioning and discussion. In addition, speakers ought to be told the general line that further questioning is likely to take. Questioning should not stray outside the subject area that the Panel had previously indicated.

7.4 Overview and Scrutiny are, however, entitled to the following:

- a. the level and extent of questioning, and the depth to which Overview and Scrutiny Members may probe Officers is dependent upon the seniority of the Officers present – accordingly when calling Officers to give evidence, Members may wish to consider the level and nature of the Officer they wish to have before them in the light of the line of questioning they wish to follow;
- b. Officers may be asked to give a professional opinion, and Officers may be asked to give options. Officers may not confine themselves solely to justifying either the position of or the advice that they gave to the Executive, although in giving options, it is to be expected that they will explain the rationale for the advice that they gave and if the advice given to the Executive reflects, in their professional opinion, the best option, to justify that;
- c. it is appropriate for Members of Overview and Scrutiny to ask Officers to explain and justify advice given to Members, whether on the Executive or otherwise, prior to decisions being taken, and to justify decisions Officers have taken under delegated powers;

## 7.5 Officers are expected:

- a. to maintain political impartiality at all times when commenting on the Cabinet's / Council's policies and actions;
- b. to be prepared to explain and justify advice given to Members, including members of the Executive and the Council prior to decisions being taken and to justify decisions they themselves have taken under the Scheme of Delegation;
- c. to ensure that an Officer of sufficient seniority appears before the relevant meeting in the light of the indicative topics supplied by Overview and Scrutiny in advance;
- d. where requested to provide information to Scrutiny, e.g. on alternative courses of action, to provide that information in as comprehensive and timely a fashion as if the request had come from the Executive.
- e. to respond to questions from Members in an open, constructive and helpful manner;
- f. not to mislead or be economical with the truth.

## 8. Support Services to Members and Party Groups

- 8.1 The only basis on which the Council can lawfully provide support services (e.g., stationery, typing, printing, photo-copying, transport etc) to Members is to assist them in discharging their role as Members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes.

## 9. Members' Access to Information and to Council Documents

- 9.1 Members have the ability to ask for information pursuant to their legal rights to information. This right extends to such information, explanation and advice as they may reasonably need in order to assist them in discharging their role as a Member of the Council. This can range from a request for general information about some aspect of the Council's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Head of Service or another senior Officer of the Portfolio concerned. In cases of doubt, Members should approach the Monitoring Officer for assistance.
- 9.2 As regards the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law.
- 9.3 Members will find set out in Appendix B guidance on their rights to obtain information. The law in this area is complex; legislation including the Access to Information provisions of the Local Government Act 1972, the Data Protection Act 1998 as well as the Local Government Act 2000, have all had an impact. However, the Freedom of Information Act 2000 has an even greater impact, potentially providing Members with a single route through which to obtain information in support of their work, whatever their role within the authority. The guidance note set out in Appendix B maps the hierarchy of rights of Members to information, but should be read in combination with the contents of the Constitution, most particularly the authority's statutory obligations on Access to Information and its relationship with the decision-making process.

- 9.4 In relation to business of the Executive, by virtue of Regulation 17 of the Local Authorities (Executive Arrangements) (Access to Information) (Amendment) (England) Regulations 2006:
- i. where there is a meeting (e.g. Cabinet) and there is a document which is in the possession / under the control of the Executive relating to the business to be conducted at that meeting, that document shall be available for inspection;
  - ii. where the decision is made at a private meeting by a Cabinet Member or is a Key Decision delegated to an Officer, the document shall be available either after the meeting closes or when the decision is made;
  - iii. there are exceptions for exempt and confidential material and any document that contains advice provided by a political adviser or assistant.
- 9.5 Finally, any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, i.e. in connection with the proper performance of his duties as a Member of the Council. Therefore, for example, early drafts of Committee reports / briefing papers are not suitable for public disclosure and should not be used other than for the purpose for which they were supplied. This point is emphasised in paragraph 3 of the Code of Local Government Conduct:

*“A Member:*

- a. must not disclose information given to him in confidence by anyone without the consent of a person authorised to give it, or unless he is required by law to do so; and*
- b. must not prevent another person from gaining access to information to which that person is entitled by law.”*

## **10. Correspondence and Advice**

- 10.1 Members seeking advice from officers shall be entitled to assume that such advice is given under the “Chatham House Rule” in terms of disclosure to other Members, unless otherwise agreed with the officer(s) concerned. This rule, which is used widely as an aid to free discussion, says: “When a meeting or part thereof is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed”.
- 10.2 Correspondence between an individual Member and an Officer should not normally be copied (by the Officer) to any other Member. In other words, a system of “hidden copies” should not be employed.
- 10.3 Official letters on behalf of the Council should normally be sent in the name of the appropriate Officer, rather than in the name of a Member. It may be appropriate in certain limited circumstances (e.g. representations to a Government Minister) for a letter to appear in the name of a Cabinet Member or the Leader or the Leaders of all political groups represented on the Council by agreement, but this should be the exception rather than the norm. Letters which, for example, create legal obligations or give instructions on behalf of the Council should never be sent out in the name of a Member, Executive or otherwise.
- 10.4 Correspondence received by Member Services from the public with a request that it is either copied to Members and/or forwarded to Members will, subject to any over-riding legal considerations, be forwarded / copied.

## **11. Publicity and Press Releases**

- 11.1 Local authorities are accountable to their electorate. Accountability requires local understanding. This will be promoted by the Authority, explaining its objectives and policies to the electors and rate-payers. In recent years, all local authorities have increasingly used publicity to keep the public informed and to encourage public participation. Every Council needs to tell the public about the services it provides. Increasingly, local authorities see this task as an essential part of providing services. Good, effective publicity aimed to improve public awareness of a Council's activities is, in the words of the Government, to be welcomed.
- 11.2 Publicity is, however, a sensitive matter in any political environment because of the impact it can have. Expenditure on publicity can be significant. It is essential, therefore, to ensure that local authority decisions on publicity are properly made in accordance with clear principles of good practice. The Government has issued a Code of Recommended Practice on Local Authority Publicity. It is appended to this Officer / Member Protocol (Appendix A). The purpose of the Code is to set out such principles. The Code affects the conventions that should apply to all publicity at public expense and which traditionally have applied in both central and local government. The Code is issued under the provisions of the Local Government Act 1986 as amended by the Local Government Act 1988 which provides for the Secretary of State to issue Codes of Recommended Practice as regards the content, style, distribution and cost of local authority publicity, and such other matters as he thinks appropriate. That section requires that all local authorities shall have regard to the provisions of any such Code in coming to any decision on publicity.
- 11.3 Officers and Members of the Council will, therefore, in making decisions on publicity, take account of the provisions of this Code. If in doubt, Officers and/or Members should initially seek advice from the Head of Marketing and Communications who will refer the matter to the Monitoring Officer, if necessary / appropriate. Particular care should be paid to any publicity used by the Council around the time of an election. Particular advice will be given on this by the Monitoring Officer as appropriate.
- 11.4 Publicity should also accord with Breckland Council's Communications Strategy, as set out in the Council's website, [www.breckland.gov.uk](http://www.breckland.gov.uk)

## **12. Involvement of Ward Councillors**

- 12.1 Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Ward or Wards affected should, as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be notified at the outset of the exercise. More generally, Officers should consider whether other policy or briefing papers, or other topics being discussed with an Executive Member, should be discussed with relevant Ward Members. Officers should seek the views of the appropriate Executive Member(s) as to with whom and when this might be done.

## **13. Conclusion**

- 13.1 Mutual trust, openness, fairness and honesty are the greatest safeguard of the integrity of the Council, its Members and Officers and this Protocol is designed to
- establish some ground rules
  - define roles
  - secure compliance with the law, codes of conduct and the Council's own practices
  - lay down procedures for dealing with concerns by members and officers.

13.2 The Protocol is a central element of the Council's corporate governance and should be recognised as a commitment to upholding standards of conduct in public life and a demonstration to the public that the Council is serious about protecting and enhancing its integrity and reputation.

**14. Officer / Member Protocol: Observation and Interpretation**

14.1 This Protocol was drafted by the Democratic Services Manager and this version was approved by the Council as part of the Constitution on 30<sup>th</sup> March 2006.

14.2 Copies of the Protocol will be issued to all existing Members and staff, and new Members on election, as part of the Constitution.

14.3 The Protocol must be observed at all times.

14.4 The definition of "Members" covers both elected and co-opted Members of the Council.

14.5 Questions of interpretation of this Protocol will be determined by the Monitoring Officer.

14.6 The Protocol is subject to annual review by the Standards Committee.

## Appendix A

### Code of Recommended Practice on Local Authority Publicity

#### Subject Matter

1. Local authorities have a variety of statutory powers which enable them to produce publicity and circulate it widely, or to assist others to do so. Those commonly used include the powers in sections 111, 142, 144 and 145 of the Local Government Act 1972, sections 69, 88 and 90 of the Local Government (Scotland) Act 1973 and sections 15 and 16 of the Local Government and Planning (Scotland) Act 1982; but there are several others.
2. Some of these powers relate directly to the publishing authority's functions. Others give a more general discretion to publicise matters which go beyond an authority's primary responsibilities. For example, section 142(1A) of the 1972 Act and 88(1) of the 1973 Act authorise local authorities to arrange for the publication within their area of information as to the services available in the area provided by them or by other local authorities; and Section 54 of the Public Health (Control of Disease) Act 1984 empowers local authorities to arrange for the publication within their area of information on questions relating to health or disease.
3. This discretion provides an important degree of flexibility, but also heightens the need for a responsible approach to expenditure decisions.
4. In considering the subject areas in which publicity is to be issued, the following matters will be important:
  - i. the publicity should be relevant to the functions of the authority.
  - ii. it should not duplicate unnecessarily publicity produced by central government, another local authority or another public authority.

#### Costs

5. Local authorities are accountable to the public for the efficiency and effectiveness of their expenditure, in the first instance through the audit arrangements.
6. For publicity, as for all other expenditure, the aim should therefore be to achieve the greatest possible cost-effectiveness.
7. To achieve this, there may well be cases where the benefit of higher expenditure to gain better presentation or improve other aspects of publicity will justify the extra cost.
8. Local authorities should therefore always have in mind the extent to which expert advice is needed for publicity.
9. In some cases publicity may justify its cost by virtue of savings which it achieves. More commonly it will be necessary to take a view of the importance of the unquantifiable benefits as compared with other uses to which the resources could be put.
10. In deciding whether the nature and scale of proposed publicity, and consequently its cost, are justified, the following matters will be relevant:
  - i. whether the publicity is statutorily required or is discretionary.
  - ii. where it is statutorily required, the purpose to be served by the publicity.
  - iii. whether the expenditure envisaged is in keeping with the purpose and expected effect of the publicity.

## **Content and Style**

11. Local authorities produce a variety of publicity material. It ranges from factual information about the services provided by the authority, designed to inform clients or attract new ones, to material necessary to the administration of the authority, such as staff recruitment advertising. There will also be publicity to explain or justify the council's policies either in general, as in the annual report, or on specific topics, for example as background to consultation on the line chosen for a new road.
12. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on facts or explanation or both.
13. Where publicity is used to comment on, or respond to, the policies and proposals of central government, other local authorities or other public authorities, the comment or response should be objective, balanced, informative, and accurate. It should aim to set out the reasons for the council's views, and should not be a prejudiced, unreasoning or political attack on the policies or proposals in question or on those putting them forward. Slogans alone will not be an adequate means of justifying or explaining the authority's views or their policy decisions.
14. Publicity relating to the provision of a service should concentrate on providing factual information about the service.
15. In some cases promotional publicity may be appropriate – for example about the local authority's sports and leisure facilities or about tourist attractions.
16. Publicity touching on issues that are controversial, or on which there are arguments for and against the views or policies of the council, is unavoidable, particularly given the importance of wide consultation whenever material issues arise. Such publicity should be handled with particular care. Issues must be presented clearly, fairly and as simply as possible, although councils should not over-simplify facts, issues or arguments. Again, it is unlikely that slogans alone will achieve the necessary degree of balance, or capture the complexities of opposing political arguments.
17. Publicity should not attack, nor appear to undermine, generally accepted moral standards
18. Publicity campaigns by local authorities are appropriate in some circumstances: for example, as part of consultation processes where local views are being sought, or to promote the effective and efficient use of local services and facilities, or to attract tourists or investment. Publicity campaigns may also be an appropriate means of influencing public behaviour or attitudes on such matters as health, safety, crime prevention or equal opportunities.
19. Legitimate concern is, however, caused by the use of public resources for some forms of campaigns, which are designed to have a persuasive effect. Publicity campaigns can provide an appropriate means of ensuring that the local community is properly informed about a matter relating to a function of the local authority and about the authority's policies in relation to that function and the reasons for them. But local authorities, like other public authorities, should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy.

## **Dissemination**

20. The main purposes of local authority publicity are to increase public awareness of the services provided by the authority and the functions it performs; to allow local people to have a real and informed say about issues that affect them; to explain to electors and ratepayers the reasons for particular policies and priorities; and in general to

improve local accountability.

21. Information and publicity produced by the council should be made available to all those who want or need it. Local authorities should not discriminate in favour of, or against, persons or groups in the compilation and distribution of material for reasons not connected with the efficiency and effectiveness of issuing the publicity.
22. Where material is distributed on matters closely affecting vulnerable sections of the community – for example, the elderly – particular care should be taken to ensure that it is unambiguous, readily intelligible, and unlikely to cause needless concern to those reading, seeing or listening to it.
23. Local authority newspapers, leaflets, other publicity distributed unsolicited from house to house and information on websites are able to reach far wider audiences than publicity available on application to the council. Councils should give particular consideration to the use of electronic and other new media communication systems. However, councils should ensure that they do not rely solely on such mechanisms and that they do not exclude those without access or easy access to such systems.
24. Such publicity should be targeted as appropriate for its purposes, taking particular care with material touching on politically controversial issues.
25. Local authority newspapers or information bulletins are a special case. They are often a cost-effective means of disseminating information, or facilitating consultation and can provide a means for local people to participate in debate on decisions the council is to take. The advantage of using websites and other information technology for consultations should also be considered. Inevitably such publications will touch on controversial issues and where they do they should treat such issues in an objective and informative way, bearing in mind the principles set out in paragraphs 11-19 of the Code.
26. Where it is important for information to reach a particular target audience, consideration should be given to using the communications networks of other bodies, for example those of voluntary organisations, and making use of electronic communication systems.

## **Advertising**

27. Advertising, especially on billboards or on television and radio, is a highly intrusive medium. It can also be expensive. It may however provide a cost-effective, efficient means of conveying public information to the widest possible audience. Advertising on local radio networks has, for example, been used as a relatively inexpensive means of telling potential clients about local authority services. Advertising can also be the most cost-effective means of publicising a local authority's activities on promoting the social, economic and environmental well-being of the area.
28. The primary criterion for decisions on whether to use advertising should be cost-effectiveness.
29. Advertisements are not normally likely to be appropriate as a means of explaining policy or commenting on proposals, since an advertisement by its nature summarises information, compresses issues and arguments, and markets views and opinions.
30. Advertising in media which cover an area significantly wider than that of the authority is not likely to be an appropriate means of conveying information about a local authority's policies as opposed to attracting people to the authority's area or to use its facilities.
31. The attribution of advertising material leaflets and other forms of publicity that reach the public unsolicited should be clearly set out.

32. It is not acceptable, in terms of public accountability, to use the purchase of advertising space as a disguised means of subsidy to a voluntary, industrial or commercial organisation.
33. Such support should be given openly through the normal grant arrangements. However, the conditions attached to a grant may require the provision of publicity, including publicity for the work of the authority.
34. Any decision to take advertising space in a publication produced by a voluntary, industrial or commercial organisation should be made only on the grounds that it provides an effective and efficient means of securing the desired publicity.
35. Local authorities should never use advertising as a means of giving financial support to any publication associated with a political party.

### **Recruitment Advertising**

36. Local authorities have respected in their staff employment policies the tradition of a politically impartial public service. Their recruitment publicity should reflect this tradition, and the fact that local authority employees are expected to serve the authority as a whole, whatever its composition from time to time.
37. The content of recruitment publicity and the media chosen for advertising job vacancies should be in keeping with the objective of maintaining the politically independent status of local authority staff.
38. Advertisements for staff should not be placed in party political publications.

### **Publicity about Individual Members of an Authority**

39. Publicity about individual councillors may include the contact details, the positions they hold in the Council (for example, member of the Executive or Chair of Overview and Scrutiny Commission), and their responsibilities. Publicity may also include information about individual councillors' proposals, decisions and recommendations only where this is relevant to their position and responsibilities within the Council.

All such publicity should be objective and explanatory, and whilst it may acknowledge the part played by individual councillors as holders of particular positions in the Council, personalisation of issues or personal image making should be avoided.

40. Publicity should not be, or liable to misrepresentation as being, party political. Whilst it may be appropriate to describe policies put forward by an individual councillor which are relevant to his position and responsibilities within the Council, and to put forward his justification in defence of them, this should not be done in party political terms, using political slogans, expressly advocating policies of those of a particular political party or directly attacking policies and opinions of other parties, groups or individuals.

### **Elections, referendums and petitions**

41. The period between the notice of an election and the election itself should preclude proactive publicity in all its forms of candidates and other politicians involved directly in the election. Publicity should not deal with controversial issues or report views, proposals or recommendations in such a way that identifies them with individual members or groups of members. However, it is acceptable for the authority to respond in appropriate circumstances to events and legitimate service enquiries provided that their answers are factual and not party political. Members holding key political or civic positions should be able to comment in an emergency or where there is a genuine need for a member level response to an important event outside the

authority's control. Proactive events arranged in this period should not involve members likely to be standing for election.

42. The Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000 (which apply under the Local Government Act 2000 to county councils, district councils and London borough councils) prohibit an authority from incurring any expenditure to:
  - ◆ Publish material which appears designed to influence local people in deciding whether or not to sign a petition requesting a referendum on proposals for an elected mayor;
  - ◆ Assist anyone else in publishing such material; or
  - ◆ Influence or assist others to influence local people in deciding whether or not to sign a petition.
43. Publicity in these circumstances should, therefore, be restricted to the publication of factual details which are presented fairly about the petition proposition and to explaining the council's existing arrangements. Local authorities should not mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view in relation to petitions generally or on a specific proposal.
44. County councils, district councils and London borough councils should ensure that any publicity about a referendum under Part II of the Local Government Act 2000 (the 2000 Act) either prior to or during the referendum period is factually accurate and objective. The referendum period means the period beginning with the date on which proposals under Part II of the 2000 Act are sent to the Secretary of State and ending with the date of the referendum. The publicity should not be capable of being perceived as seeking to influence public support for, or opposition to, the referendum proposals and should not associate support for, or opposition to, the proposals with any individual or group. Local authorities must conform to any specific restrictions on publicity activities which are required by Regulations under section 45 of the 2000 Act.

#### **Assistance to others for publicity**

45. The principles set out above apply to decisions on publicity issued by local authorities.

They should also be taken into account by local authorities in decisions on assistance to others to issue publicity. In all such decisions local authorities should, to the extent appropriate:

  - i. incorporate the relevant principles of the Code in published guidance for applicants for grants;
  - ii. make the observance of that guidance a condition of the grant or other assistance;
  - iii. undertake monitoring to ensure that the guidance is observed.
46. It is appropriate for local authorities to help charities and voluntary organisations by arranging for pamphlets or other material produced and paid for by the organisation to be available for collection by the public in public libraries and other suitable locations. Such material should not offend against any legal provision, (authorities may be able to draw on their powers of well-being in section 2 of the Local Government Act 2000) but (subject to this) any such facility should be made available on a fair and equal basis.

**Appendix B**  
**COUNCILLORS' ACCESS TO INFORMATION**  
**– A HIERARCHY OF RIGHTS**

**Introduction**

1. The rights of access to information by Councillors is a complex mix of legislation available to Councillors and the public alike, legislation specific to local government and “common law rights” given to Councillors by the Courts. This Guidance endeavours to provide some guidelines for Members through this “maze”. Members may also seek advice “in confidence” from the Monitoring Officer.
2. For general rights of access available to the public, please see the Article on Citizens’ Rights as set out in the Council’s Constitution.

**What is the Hierarchy of Rights?**

3. The law relevant to access to information by Councillors includes the following:
  - (1) **The Freedom of Information Act 2000.** This makes non-personal information freely available to all, with only limited exceptions.
  - (2) **The Data Protection Act 1998.** This relates to personal information, and generally makes this non-disclosable except in certain circumstances.
  - (3) Local Government Legislation
    - (a) **Access to Information provisions of the Local Govt Act 1972.** This gives the public access to Committee Minutes and Agenda, and to background material relevant to those documents.
    - (b)
      - (i) Other legislation (Local Government (Executive Arrangements) (Access to Information) (Amendment) (England) Regulations 2006) ensures that Members are entitled to material relevant to public / private meetings of the Leader and Cabinet (and decision making by individual portfolio holders).
      - (ii) However, these rights do not apply to draft documents, to the advice of a political advisor or to most exempt/confidential information (unless such information is needed for the work of the Overview and Scrutiny Commission).
    - (c) “Common Law Rights” (derived from Court judgements) give Members the right to inspect Council documents insofar as this is reasonably necessary to enable a Member to perform his duties as a Councillor – this is known as the “need to know” basis.
    - (d) However, Members do not have any right to “a roving commission” through Council documents – mere curiosity is not sufficient.

## Navigating the Hierarchy of Rights

### Freedom of Information Act 2000

4. (1) (a) In broad terms, if the information being sought by a Member is non-personal, then the Freedom of Information Act 2000 allows access to most Council documentation.<sup>1</sup>
- (b) The first port of call for information under the Freedom of Information Act is the Council's Publication Scheme. This is located most conveniently on the Council's website, [www.breckland.gov.uk](http://www.breckland.gov.uk) (and is also available in major libraries in the District), and sets out most of the Council's published material. This information can be accessed and used without any further reference to the Council. The remainder of this note assumes that the information being sought by a Councillor is **not** available under the Publication Scheme.
- (2) The Freedom of Information Act would allow access to information about the construction of a new leisure facility (which is likely to be non-personal information) - but note the possible "block" to obtaining this information (see paragraphs 4(c) and (d) below) but could not be used to gain access to information about a named individual's record of housing waiting list applications – this latter is covered by the Data Protection Act 1998 (see Section 6 below).
- (3) In certain circumstances, access to documentation via the Freedom of Information Act can be "blocked", although most of the "blocks" are subject to a "public interest test". So, for example:-
  - (a) Releasing commercially sensitive information to a member of the public is not likely to be in the public interest.
  - (b) Whereas (subject to the usual rules of confidentiality), it is likely to be in the public interest to release such information to a Councillor.
- (4) Examples of blocks ("exemptions") under the Freedom of Information Act are:
  - (a) Work in progress (draft reports, for example) need not be disclosed.
  - (b) Information subject to a data-sharing protocol (e.g. between all member organisations of the Crime and Disorder Partnership) should not be released until all organisations have each agreed to disclosure. This is to ensure that crime & disorder and fraud investigations are not prejudiced.
  - (c) Commercially sensitive information.
  - (d) Where, in the opinion of the Monitoring Officer, disclosure of information would or would likely to inhibit the free and frank provision of advice, the free and frank exchange of views for the purposes of deliberation, or would otherwise prejudice or would be likely otherwise to prejudice the effective conduct of public affairs. This exemption is also subject to the public interest test.

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<sup>1</sup> *Strictly speaking, if there are rights of access to information under other legislation, then the Freedom of Information Act 2000 does not apply. However, for the purposes of simplicity and to develop common access to information procedures for both Councillors and the public alike, this note assumes that Freedom of Information Act-like principles apply to Councillors as well as to members of the public. In this way, we can start with wide, general powers of access only narrow down into more specific powers when strictly necessary.*

- (5) If the rights outlined above are not sufficient to provide a Councillor with the information he needs, then it is necessary to navigate further down this hierarchy.

### **Data Protection Act 1998**

5. (1) If the information sought by a Councillor relates to an identified living individual, then the Data Protection Act applies.
- (2) There are 2 classes of Data Protection – “normal” personal information and “sensitive personal information”. Sensitive personal information includes:-
- (a) Racial or Ethnic Origin
  - (b) Religious beliefs
  - (c) Trade Union membership
  - (d) Physical or Mental health
  - (e) Actual or alleged criminal offences and criminal records
  - (f) Sexual life
  - (g) Political opinions.
- (3) Where “normal” personal information is involved, unless additional consent has been granted by the individual concerned, information about an individual can only be used for the purposes for which that information was obtained.
- (4) (a) The Council has a duty to ensure that personal information disclosed to Members using the above procedures is used strictly for the purposes for which it is disclosed and that Members will keep the information secure and confidential (and then disposed of in a similarly careful manner).
- (b) Councillors must observe the Code of Conduct and all the provisions of the Constitution. Officers will automatically assume that Councillors will treat personal information in accordance with the Council’s current data protection policy. Also Councillors may wish to refer to their personal copies of “Data Protection – A Councillor’s Guide”, issued in Summer 2005.
- (5) (a) Where “sensitive” personal information is involved (see paragraph 5(2) above) then more rigorous procedures are necessary:-
- (i) Either explicit consent of the person concerned must be obtained; or
  - (ii) If this is not practicable, Members must complete a form under the Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002.
- (b) Paragraphs 4(4), 5(3) and (4) above, of course, apply to “sensitive” personal information as they do to “normal” personal information.
- (6) If the rights outlined above are not sufficient to provide a Councillor with the information he needs, then it is necessary to navigate further down this hierarchy.

**Access to Information Provisions of the Local Government Act 1972 / Local Authorities (Executive Arrangements)(Access to Information) (Amendment) (England) Regulations 2006**

6. (1) In effect, the rights available to Councillors through the Freedom of Information Act and the Data Protection Act will begin to override both older legislation such as the Local Government Act 1972 and also older common law rights.<sup>2</sup>
- (2) (a) Where a Councillor cannot obtain the disclosure of information under the Freedom of Information Act (because, say, commercial confidentiality is too sensitive to permit it, or because of implications for fraud investigations) or the Data Protection Act (because a Councillor cannot establish a need to know the information, or because a Councillor wants to use the information in a context different from that for which the information was gathered) then the information may still become available to Members at a later date via Committee Agenda, and the right to see background material associated with such an agenda.
- (b) Once a matter has reached the stage where it is before a Committee / Cabinet, then members of that Committee / Cabinet would have a “need to know” all relevant information; and other Councillors would be able to use the usual Access to Information provisions.
- (3) (a) Councillors also have additional rights of access to material in the possession/control of the Leader and Cabinet (rather than Council officers) relating to public/private meetings of the Cabinet or to any decision taken by an individual portfolio holder.
- (b) However, the above rights **do not apply** to draft documents, to the advice of a political advisor or to most categories exempt/confidential information (unless the Overview and Scrutiny Commission require such exempt / confidential information as part of actions / decisions it is scrutinising).

**General**

7. (1) Material from Legal Services (where Legal Services is providing legal advice to one of its in-house clients at the Council) may be non-disclosable due to legal professional privilege.
- (2) Information supplied under the Data Protection Act 1998 must not be used or disclosed for political purposes.
- (3) (a) Requests for Information under the control of Officers should normally be made to the relevant Head of Service.
- (b) Requests for information under the control of the Leader and Cabinet should normally be made to the Leader and/or the relevant Portfolio Holder.
- (4) (a) Councillors must not put undue pressure on Officers to release information to which the Councillor is not entitled to have access.
- (b) Should a Head of Service need advice as to whether information can be released to a Councillor he should contact the Monitoring Officer..

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But see Footnote 1

- (c) The additional access to information rights given to Councillors are to allow them to do their jobs as Councillors. Confidential or exempt information should only be used in appropriate circumstances, in accordance with the proper performance of their duties as Councillors. Information should only be passed between Councillors if both Councillors can demonstrate a “need to know”.
- (5) (a) Any complaints by a Councillor about the non-disclosure of information should be made in writing to the Monitoring Officer whose decision shall be final as far as the Council is concerned.
- (b) However, if the Councillor remains dissatisfied, the Councillor may be able (under FOI) to refer the matter to the Information Commissioner.