

Name of meeting: Standards Committee

Date: Thursday 12 February 2015

Title of report: Councillors and Officers in Kirklees – A Protocol for Working Effectively

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| Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards? | Not applicable |
| Is it in the Council's Forward Plan? | No |
| Is it eligible for "call in" by Scrutiny? | No |
| Date signed off by <u>Director</u> & name | |
| Is it signed off by the Director of Resources? | David Smith – Yes 3 February 2015 |
| Is it signed off by the Assistant Director – Legal, Governance and Monitoring? | Julie Muscroft – Yes 3 February 2015 |
| Cabinet member portfolio | Not applicable |

Electoral [wards](#) affected: All

Ward councillors consulted:

Public or private: Public

1. Purpose of report

To provide an opportunity for Standards Committee to consider the new Officer / Councillor Protocols in advance of their consideration by Corporate Governance and Audit Committee and thereafter Council.

2. Key points

The Members Commission is a cross party working group of councillors whose specific purpose is to look at the changing role of the councillor in the context of the challenges facing the Council and local people as we move towards New Council. Its work is an acknowledgement of the importance of ensuring that the cultural change programme currently taking place within and across the Council extends to our councillors.

Membership is as follows:

Labour Group: Cllrs E Firth, Lowe and Calvert (previously Cllr Harris)

Conservative Group: Cllr Palfreeman

Liberal Democrat Group: Cllr Ridgway

Green and Valleys Independent Group: Cllr Cooper

The Commission sees effective and productive officer / councillor relations as a key priority in terms of its work programme. There is a shared acknowledgement that the move to New Council requires a reconsideration and refresh of current constitutional arrangements in this area (copy of the current Protocol attached at Appendix A)

This has resulted in the development of a new Officer/Councillor Protocol. This has been the subject of dialogue with Political Groups, Director Group, Management Board, Council Management Group, the Chief Executive and Leading Members.

Whilst the protocol sets out “rules” for this important relationship the main focus has been on shared expectations and behaviours - this is what we need to get right. These will form the basis of the support and development programme that would be put in place to facilitate roll out across the organisation and provide a framework for developing a shared understanding with regards to officer/councillor relations as we move towards New Council.

Similarly, members of the Commission are keen to ensure that a significant part is played by councillors and political groups in embedding the protocols which will (for example) form part of the information provided to all candidates standing for election. The Commission feels that this provides important context as to the expectations placed on councillors in their dealings with officers should they be successfully elected. It is for this reason that it will also form part of new councillor induction.

A copy of the Protocols is attached to this report at Appendix B. It is proposed that this replaces the version which can be currently found in Part 5 of the Council's Constitution.

3. Implications for the Council

Article 9 of the Constitution states that The Standards Committee will be responsible for:

- *Promoting and maintaining high standards of conduct by Councillors (and Co-opted Members)*
- *Recommending to the Council, if appropriate, the adoption of protocols relating to Member conduct supplementary to the Member Code of Conduct and to determine procedures for dealing with allegations of breaches of such protocols.*

With this in mind it is important that Standards Committee considers the revised Protocol in advance of Corporate Governance and Audit Committee and thereafter Council.

4. Consultees and their opinions

The following have been consulted during the course of developing the protocols which have subsequently been signed off by the Members Commission, the Chief Executive and Leading Members:

The Members Commission – April 2014 – October 2014

Director Group – May 2014

Management Board – May 2014

Council Management Group – June 2014

Political Groups – September – October 2014

The Chief Executive and Leading Members – January 2015

Ruth Redfern, Director of Communities, Transformation and Change

David Smith, Director of Resources

Julie Muscroft, Assistant Director of Legal, Governance and Monitoring

5. Next steps

Following consideration by Standards Committee the Protocols will be referred to Corporate Governance and Audit Committee on 27 February and thereafter Council on 11 March 2015.

6. Officer recommendations and reasons

That Standards Committee consider the revised Officer / Councillor Protocol at Appendix B to this report and thereafter refer for consideration by Corporate Governance and Audit Committee on 27 February 2015.

7. Cabinet portfolio holder recommendation

Not applicable

8. Contact officer and relevant papers

Report produced on behalf of the Members Commission by

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9. Assistant director responsible

Julie Muscroft, Assistant Director of Legal, Governance and Monitoring

Protocol on Member / Officer Relations

1. Both Members and Officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Members 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 Members and the Council, and to carry out the Council's work under the direction and control of the Council, the Cabinet and their Committees and Sub-Committees. Officers are employed by the Council, not by individual Members.
2. Mutual respect between Councillors and Officers is essential to good local government. Any dealings between them should observe reasonable standards of courtesy and neither party should seek to take advantage of their position.
3. It is important to get this right and there are some simple things which can make it easier to establish a relationship which works. There needs to be clarity about how the respective Member and Officer roles are carried out. This can only be achieved if there is also mutual understanding and good communication.
4. Officers need to understand the political process and the pressures it creates. Members can help by explaining the pressures in particular circumstances. Members on the other hand need to understand that Officers are public servants who have their own codes of conduct and professional standards and obligations, but who also share a commitment to working for the local community. Most problems between Members and Officers arise not from disagreements about policy or practice, but from a failure to understand the pressures each other face when trying to implement policy.
5. Members should remember that Officers cannot respond to personal criticism in the same way that politicians can, and temper their remarks accordingly. They should also be particularly careful about contact with less senior staff and avoid "throwing their weight around" or using any form of oppressive or bullying behaviour. The Council's harassment policy would allow Officers to report any such behaviour and have the matter formally investigated. If a Member wishes to complain about the conduct of an Officer, the issue should be raised with the Head of Service, or, if appropriate, the relevant member of the Executive Management Group or the Chief Executive.
6. Members should define the organisation's core values and, assisted by Officers, should identify priorities. Officers should provide clear advice and offer alternative options. Members and Officers should work in partnership to turn the core values and priorities into practical policies for implementation.
7. Members are entitled to expect that Officers will give them advice and assistance within their knowledge and expertise in carrying out their Council duties. They can also expect a timely response to any reasonable requests for advice, within the Council's normal standards. However, although Officers should do their best to help Members to achieve their aims, they have to advise Members from time to time that a certain course of action cannot be carried out. Members should not assume that this is deliberate obstruction.

Officers have a duty to give unbiased professional advice even if it is not what members want to hear. They do this as much for the protection of Members as for any other reason.

Councillors and Officers in Kirklees – A Protocol for Working Effectively

1. Expectations

Councillors and Officers should expect each other to....

- Comply with ethical standards and probity requirements
- Be part of an effective working partnership
- Contribute to safeguarding the reputation of the council
- Be friendly (but not friends)
- Respond in a timely way to enquiries and complaints
- Be reliable
- Understand and advise on the needs of local communities
- Ensure the council acts lawfully and its reputation is safeguarded
- Fully consider professional advice as part of decision making
- Ensure the allocation of physical, financial and human resources
- Avoid personal criticism
- Be respectful (but not deferential)
- Be professional (but not jargonistic)
- Trust and respect each other's expertise, knowledge and skills
- Listen and understand each other
- Understand the strategic and long term direction of the council
- Inform and manage citizens expectations
- Build community capacity and unlock social productivity
- Understand and explain difficult decisions
- Provide advice, information and guidance

Councillors should expect officers to...

- Be impartial and apolitical (but be sensitive to the politics)
- Implement policy and ensure operational delivery
- Be responsible for day to day management
- Have respect for the role of councillor and the political process
- Be aware Councillors wear different hats and fulfil different roles at different times
- Appreciate the pressures that councillors face in carrying out their duties

Officers should expect Councillors to...

- Add a political dimension
- Make policy and determine the core values of the council
- Be accountable to the electorate and act in the public interest
- Be a community leader for the ward they represent
- Understand and represent the interests of the wider community and the whole council as well as those of their ward
- Avoid becoming involved in day to day management issues
- Make difficult/unpopular decisions for the common good of the district
- Lobby on national/local policy issues on behalf of the district/region

2. The Kirklees Context

Kirklees has a long track record of its councillors and officers working together effectively. This is evidenced by the outcomes we achieve. The relationship between the two develops and changes over time and it is therefore important to revisit and review how such a relationship should work. Only then can we ensure it remains fresh, vibrant and healthy.

This document seeks to build on sound foundations by capturing in one place the characteristics, roles and expectations that are at the heart of that special and crucial relationship. It is a product of councillors and officers working together and is an important building block as the council evolves. It is a part of the work of the Members Commission, a cross party working group, whose principal focus is to look at the changing role of the councillor as we move towards the New Council.

Our councillor / officer relationships should continue to be defined and shaped by our culture and evolve in a way that ensures we are best placed to collectively meet challenges and deliver positive change.

This protocol seeks to set out the parameters of the relationship in Kirklees in order to ensure we can do just that. For the most part it is a statement of current practice. It is not intended to be just a set of rules nor is it a complete guide to the complex landscape in which councillors and officers operate and interact. It is not a substitute for developing effective working relationships built on trust but should be a source of advice and context in developing such relationships. This protocol provides a framework for interaction, acknowledging that the officer / councillor relationship is a delicate one. It is a relationship that is at the heart of what the council does and as such needs to be continually nurtured and developed.

This protocol should be read alongside other key documents such as the Councillors Code of Conduct, the Code of Conduct for Staff and other relevant protocols as set out in Part 5 of the Council's Constitution.

3. Different Roles / Complementary Relationships

Officers and councillors carry out a wide variety of roles. In undertaking their roles all councillors are expected to do so in accordance with the Principles of Public Life:

- *Selflessness* – councillors should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- *Integrity* – councillors should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
- *Objectivity* – in carrying out public business (including making appointments, awarding contracts or recommending individuals for rewards and benefits) councillors should make choices on merit.
- *Accountability* – councillors are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

- *Openness* – councillors should be as open as possible about all decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- *Honesty* – councillors have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts in a way that protects the public interest.
- *Leadership* – councillors should promote and support these principles by leadership and example.

The conduct of officers is governed by the Employees' Code of Local Government Conduct, the Employee Handbook and the relevant protocols as set out in Part 5 of the Council's Constitution.

The nature of both officer and councillor roles and the consequent relationships are increasingly complex and changing in a dynamic local government environment. The Widdicombe Committee description of those roles and relationships remains relevant:

“Local Government has derived strength over the years from a complementary relationship between part-time councillors drawn from and representative of the general public, and full time officers with professional expertise. We accept that this cannot be a rigid or static model. Some councillors will need to devote considerable time to council business, and there has sometimes been too great a stress on officer professionalism. Councillors moreover have the right to ensure that some of their decisions for which they are statutorily responsible and accountable are implemented by officers. Nevertheless, a merging of roles is not desirable. Councillors should leave the day to day implementation of council policies, including staff management, as far as possible to officers and officers should demonstrate that they are sensitive to the political aspirations underlying those policies”.

Whilst on a number of levels there is a distinct separation between the two roles, the relationship is most effective when it operates in partnership. In order for such a relationship to work well it is important for each to have an awareness of the distinct boundaries and expectations that each can legitimately have of the other. These (whilst not necessarily exhaustive) are summarised below:

Whilst there is a separation between the two roles it is important to ensure that both are maximised to best effect as both bring skills, knowledge and experience which contributes to a joint leadership approach. Both are indispensable to, and dependent of, one another.

Subsequent sections of the protocol seek to look in more detail at specific contexts, roles and relationships between officers and councillors, acknowledging that these are diverse, complex and changing.

4. Executive Councillors and Officers – Decision Making

4.1 Kirklees operates a strong leader model of executive governance. As such, Cabinet will take decisions in accordance with the Constitution (see Article 7). Senior officers will be responsible for instructing and deploying staff to implement those decisions.

- 4.2 Implicit within these arrangements is a need for a close working relationship between the members of Cabinet and senior officers. Such relationships should never become, or appear to become, so close as to bring into question the officer's ability to deal impartially with other councillors and political groups. Cabinet must respect the political neutrality of the officers. Officers must ensure that their political neutrality is not compromised.
- 4.3 When producing reports the Director / Senior Officer will always be fully responsible for the contents of any report submitted in his / her 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 the Cabinet / a Cabinet Member and a senior officer should be referred to the Chief Executive for resolution.
- 4.4 Before taking any formal decisions the Cabinet will seek appropriate professional advice (including the Monitoring Officer and Director of Resources in particular) and will not direct officers in the framing of recommendations. Where Cabinet recommendations differ from those of officers, this should be made explicit in the submitted report.
- 4.5 Where officers are taking decisions under their delegated powers they should consider informing the relevant Cabinet Member of their intentions in advance. This is particularly important where such a decision falls within the requirements of the Access to information Regulations 2012, as amended in August 2014, where there is a requirement for the decision to be recorded, and in all instances where the Officer decision constitutes a Key Decision. Such decisions will be publicly accessible.

5. Overview and Scrutiny Councillors and Officers

- 5.1 Kirklees currently has an overarching Overview and Scrutiny Management Committee underpinned by four discrete Panels, each with a Lead Member. For full details see Article 6 of the Constitution. In a council with Executive arrangements Overview and Scrutiny plays an important role in scrutinising Cabinet business and the decisions that it takes. It also plays an important role in overseeing policy implementation and service performance.
- 5.2 As part of conducting its business the Committee and / or its Panels will require officers to attend scrutiny meetings. All requests should be made to the relevant Director or Assistant Director in the first instance.
- 5.3 In giving evidence to the Committee or its Panels officers must not be asked to express political views.
- 5.4 Officers should respect scrutiny members in the way they respond to their questions.

- 5.5 Scrutiny members should not question officers in a way which could be interpreted as harassment or bullying. Neither should they ask about matters of a disciplinary nature.
- 5.6 Scrutiny proceedings must not be used to question the capability or competence of officers. Scrutiny members need to make a distinction between scrutinising the policies and performance of the council and its services, and appraising the personal performance of staff. The latter is not a scrutiny function.
- 5.7 When Officers are asked to provide information by Scrutiny Committee / Panels they should do so in accordance with the provisions of Section 24 of the Access to Information Procedure Rules.

6. Party Groups and Officers

- 6.1 Political groups have, and will continue to be, an important part of the political and informal governance landscape. In light of this it is possible that officers may be asked to attend a party group meeting whether of the controlling group or an opposition group.
- 6.2 Any such request should be made or referred to the Chief Executive and / or the relevant Director. If agreed it will be on the basis that similar arrangements will be made for other groups should they request it. Officer attendance at political group meetings is voluntary.
- 6.3 An officer accepting an invitation to the meeting of one party group shall not decline an invitation to advise another group about the same matter. He / she must provide consistent information to each group.
- 6.4 Officer involvement should be limited to the provision of factual information or professional advice in relation to matters of council business. Officers should not advise on matters of party business and should leave the meeting before the group discuss and / or decide their political course of action.
- 6.5 Officers should not be put in a position where they feel their political impartiality or integrity are put at risk and may leave the meeting if they believe this is the case.
- 6.6 Special care should be taken where officers are involved in providing information and advice to a party group meeting where that includes persons who are not members of the council. Due to issues of confidentiality officers may not be able to provide the same level of information and advice.
- 6.7 Officers must respect the confidentiality of any group discussions at which they are present and will not relay the content of such discussions to another party group or to any other councillors. This shall not prevent an officer providing feedback to other senior officers on a need to know basis.

7. Ward Councillors and Officers

- 7.1 All of the 23 electoral wards in Kirklees are represented by three councillors. It is they who provide the bedrock of representative democracy and as such it is important that they are supported effectively to carry out their community leadership role. With this in mind, communication is a very important factor for officers to bear in mind. Councillors need to be fully informed about matters affecting their ward.
- 7.2 Directors and Assistant Directors must ensure that all relevant staff are aware of the requirement to keep local councillors informed. This will allow councillors to perform their local leadership role. This requirement is particularly important:
- (1) During the formative stages of policy development, where practicable and through Policy Committee where appropriate.
 - (2) In relation to significant or sensitive operational matters
 - (3) Whenever any form of public consultation exercise is undertaken, and
 - (4) During a scrutiny episode
- 7.3 Issues may affect a single ward. Where they have a wider impact, a number of local councillors will need to be kept informed.
- 7.4 Where a public meeting is organised by the council to consider a local issue, all councillors representing the wards affected should be invited to the meeting as a matter of course.
- 7.5 In your capacity as an Officer you must not attend ward or constituency political party meetings.
- 7.6 In seeking to deal with constituents' queries or concerns councillors should be mindful of the pressures on officer time. They may not be able to carry out the work required by councillors in the requested timescale. On some occasions it may not be possible to do what the councillor wants. It is important that councillors are realistic when managing the expectations of their constituents in terms of what officers and the council are able to do. Officers have a responsibility to ensure councillors are clear as to what is possible, and more importantly, what is not and communicate that. Officers should be aware that a timely response is required but timescales will vary from service to service depending on what the enquiry is and how complex it is to answer.

8. Councillors' Access to Documents and Information

(To be read in conjunction with the Access to Information Procedure Rules in the Council's Constitution)

- 8.1 It is important that officers keep councillors routinely informed about the major issues concerning the council. Similarly, councillors should be informed about proposals that affect their ward before they are announced publicly.
- 8.2 Where an issue affecting a particular ward is to be discussed by the Cabinet, a committee, sub-committee or panel on which the local councillor does not serve the councillor will be invited to attend and may speak on it if he or she wishes to do so.

- 8.3 Councillors may request senior officers to provide them with such information, explanation and advice as they may reasonably need to assist them to discharge their roles as councillors. This may range from general information about Council services to specific information on behalf of a constituent. Where information is requested on behalf of a third party, it will only be provided if:
- It is in the public domain, and
 - It is not barred by legislation from being given
 - It does not compromise personal confidentiality
- 8.4 Every member of the Cabinet, Overview and Scrutiny Committee / Panels, and / or any other committee or sub-committee has a right to inspect documents about the business of that Cabinet, Overview and Scrutiny Committee / Panels, and / or any other committee or sub-committee.
- 8.5 A councillor who is not a member of the Cabinet, Overview and Scrutiny Committee / Panels, and / or any other committee or sub-committee may have access to any document published by that specific part of the Council provided:
- He / she can demonstrate a reasonable need to see the documents in order to carry out his / her role as a councillor (the “need to know” principle), and
 - The documents do not contain “confidential” or “exempt” information as defined by law.
- 8.6 Should disputes occur with regards to the validity of a councillor’s request to see a document on a need to know basis, these will be determined by the Monitoring Officer.
- 8.7 A councillor should obtain advice from the Monitoring Officer in circumstances where he / she wishes to have access to documents or information:
- Where to do so is likely to be in breach of the Data Protection Act, or
 - Where the subject matter is one in which he / she has a personal or “other” interest as defined in the Members’ Code of Conduct.
- 8.8 Information given to a councillor must only be used for the purpose for which it was requested.

9. Communication and Social Contact Between Officers and Councillors

- 9.1 Officers must recognise that it is their duty to keep members of all political groups (not just members of the majority party) fully informed about developments of significance in relation to the Council’s activities.

- 9.2 Regular contact between councillors and senior officers is necessary to ensure the efficient working of the Council. In this context, it is the responsibility of Directors / Assistant Directors to identify the senior officers who should have regular contact with councillors and to inform them of that. This will depend upon the nature of the service they provide and the nature of the councillor contact envisaged. As part of any contact and relationship bullying and harassment should not take place.
- 9.3 Councillors should ensure contact is through the members of staff identified by the Director / Assistant Director and should always bring major concerns about issues directly to the attention of the relevant Director or Assistant Director concerned. Such concerns should, where possible, be evidenced based. Serious problems can arise if councillors by-pass appropriate lines of communication to Directors / Assistant Directors and their senior colleagues and, for example, deal with more junior members of staff, or more than one member of staff, to seek views on policy issues, non-routine business, or attempt to give instructions to staff. This has the effect of depriving councillors of the formal, informed and accountable advice they have a right to expect from Directors / Assistant Directors and which they have a duty to consider. It may also serve to undermine the formal accountability of staff to their line manager.
- 9.4 Social contact between senior officers and councillors is only beneficial in a public setting and a work-related context. For example the management team may wish to invite appropriate councillors to an office Christmas lunch. However a professional relationship must be maintained at all times.

10. Councillors and Council Resources

(To be read in conjunction with the Members' Allowances Scheme, Pre-election Guidance and the Support for Councillors document produced by Governance and Democratic Services)

- 10.1 The Council provides councillors with a range of support services (computers, IT facilities, stationery, printing, photocopying etc). Such services should only be used to assist them in discharging their roles as members of the Council. They should not be used in connection with party political or campaigning activities. Personal use of technology is permitted:
- Subject to the terms of the Council's Use of Electronic Communications Policy and Information Security Policy
 - Where councillors who have mobile technology have agreed for the appropriate deduction to be made from their allowance.
- 10.2 Councillors should not approach or pressure officers to carry out duties or provide resources which they are not permitted to give. Examples include:
- Business which is solely to do with a political party;
 - Work in connection with a ward or constituency party political meeting;

- Electioneering
- Work associated with an event attended by a councillor in a capacity other than as a Member of the Council;
- Private personal correspondence;
- Work in connection with another body or organisation where a councillor's involvement is other than as a Member of the Council; and
- Support to a councillor in his / her capacity as a councillor of another local authority.

10.3 It is important that councillors are equipped with the skills and knowledge to carry out their roles effectively. Officers have a role to play in ensuring that councillors are kept up to date. Councillors have a responsibility to read appropriate documentation and attend training as relevant to their role.

11. Courtesy, Complaints and Breaches of the Protocol

11.1 Contact between councillors and officers should always be courteous both in public and in private. If an individual councillor has a complaint about a junior officer, it should be raised with the appropriate Director / Assistant Director. This does not however preclude a councillor from making public, at a meeting or in another appropriate way, a concern about the manner in which the Service has acted. Nor does it prevent councillors at formal meetings being critical of officer advice or action or of the quality of reports before them.

11.2 Councillor behaviour needs to be equally respectful. Bullying, harassment or hectoring of officers is entirely unacceptable and should be referred by the relevant Director / Assistant Director to the relevant Group Leader and Group Business Manager for consideration and resolution in the first instance. If satisfactory resolution cannot be reached the matter will be referred to the Monitoring Officer who will then liaise with the relevant Group Business Manager. Where resolution still cannot be reached the Monitoring Officer will progress through the formal Standards route.

11.3 If a councillor feels that an officer has acted contrary to the spirit of this protocol they should raise it with the relevant Assistant Director who will consider how the issue should be dealt with. Where this relates to an Assistant Director this should be raised with the relevant Director. Where this relates to a Director this should be raised with the Chief Executive. A breach of this protocol by an officer may lead to an investigation under the Council's Disciplinary Policy and Procedure.

Produced on Behalf of the Members Commission
 By Carl Whistlecraft
 Head of Governance and Democratic Services
 February 2015