

Protocol On Members' Rights and Responsibilities

1. Introduction

- (a) This Protocol sets out the rights of individual members of the Council to obtain information, inspect documents and attend meetings. It is not intended to be a comprehensive summary of the legal rights and responsibilities which members have under both statute and common law. This protocol should be read in conjunction with other elements of this Constitution, in particular the Cabinet and Scrutiny Procedure Rules, the Access to Information Procedure Rules and the Protocol on Member/Officer Relations. Standards of Conduct for members are contained in a separate Code of Conduct also set out in this Constitution. Advice on the interpretation of this protocol will be given by the Monitoring Officer.
- (b) In law all Councillors are equal and have the responsibilities of trustees. However legislation, and guidance issued under it, gives certain powers and duties to the different roles which members may play e.g. Chairman of the Council, Leader of the Council, Cabinet member, Chairman of a Scrutiny Committee. The Constitution also sets out rights and obligations on all members either in specific roles or in general. All members are required by law to:
 - (i) comply with the Code of Conduct for Members set out in this Constitution;
 - (ii) comply with the other provisions of the Council's Constitution;
 - (iii) comply with all relevant statutory provisions; and
 - (iv) ensure that any facilities provided by the Council for members' use in undertaking their duties are used strictly for those duties and for no other purpose.
- (c) It is the responsibility of members themselves to ensure that they have proper advice. If members are ever in any doubt in terms of the law, the Constitution, general propriety, conflicts of interest, etc they should consult the Monitoring Officer or an officer(s) nominated by her/him should be consulted. Similarly, they should consult the Chief Finance Officer or an officer(s) nominated by her/him in respect of financial advice.

2. Opposition Leader, Deputy Leader and Shadow Cabinet

The largest political group on the Council which is not the Group(s) from which the Cabinet is drawn will be officially recognised by the Council as the Opposition. The Opposition may appoint a Leader, Deputy Leader and other members (not being more than the number of members in the Council's Cabinet) to shadow the responsibilities of the Leader and Deputy Leader of the Council and the other Cabinet members as set out in Article 6 of this

Constitution. Collectively these Opposition members will be termed the Shadow Cabinet. Only one member of the Opposition may be appointed to shadow any one Cabinet position.

3. Rights of the Shadow Cabinet to Make Opposition Statements at Cabinet Meetings

At meetings of the Cabinet or any committee of the Cabinet or when an individual member of the Cabinet is taking decisions in accordance with the rules set out in the Constitution, Shadow Cabinet Members will have the right to attend and make a formal Opposition statement on a matter under consideration. This right will extend only to the Shadow Cabinet member in relation to the functions of the Cabinet for which s/he is the shadow. The exercise of this right is subject to the prior agreement of the Leader or Deputy Leader of the Council or other Cabinet member who will be presiding at that meeting on the number of items on the agenda for that meeting on which such a statement can be made. Notice by the Shadow Cabinet of the intention to make a statement shall be given by 9 am on the working day before the meeting. Such a statement may be made at any time during the consideration of that item at the meeting and shall not exceed a period of five minutes. However, this will not prevent the person presiding inviting the Shadow Cabinet member to make any additional comment during the consideration of that item of business. If the Shadow Cabinet member is unable to attend, then the right can be exercised by the Leader or Deputy Leader of the Opposition. For the avoidance of doubt the rights in this paragraph are additional to any other rights of members to address the Cabinet as set out in the Constitution.

4. Rights of Shadow Cabinet Members to Private Briefings

The Shadow Cabinet members shall have the right to request private briefings from Officers and in such cases the procedures set out under political activity in the Protocol on Member/Officer Relations will apply. This will not prevent, by mutual agreement, attendance by Shadow Cabinet members at the whole or part of any private briefings arranged for Cabinet and/or Scrutiny members where this would lead to the most efficient and effective use of officers' time.

5. Rights of the Opposition and Other Groups to Put Forward Their Own Budgets

The political groups of the Council, other than the Group(s) which form(s) the Administration, will have the right to put forward their own proposed budgets for consideration at the February Council meeting, subject to a timetable being agreed each year between the political groups to enable any such proposed budgets to be examined in detail by all members and the Section 151 officer, and to allow that officer sufficient time to advise the Council on the budget credibility and legality.

6. Rights of Members to Attend Meetings

- (a) All members have the right to attend full meetings of the full Council and to speak and vote on matters coming before it. Members who are appointed to a particular body may attend, speak and where appropriate vote on matters before that body.
- (b) Any member of a committee or sub-committee, who is unable to attend a meeting of that committee or sub-committee may give notice directly or indirectly to the County Solicitor of her/his resignation from the committee or sub-committee on a temporary basis for the duration of that meeting only. Upon receiving notification of any such temporary resignation, the County Solicitor shall make a temporary appointment to the committee or sub-committee for that meeting only. The member so temporarily appointed shall be drawn from the list of eligible alternative members appointed under Council Procedure Rule 1.1.2(x) and shall have been nominated by the appropriate political group in accordance with Section 16(1) and Section 16(2) of the Local Government & Housing Act 1989 and will have complied with Council Procedure Rule 4. The member so temporarily appointed shall be entitled to attend, speak and vote at the meeting, provided that:
- (i) no member shall be appointed in place of more than one member at any one meeting;
 - (ii) the name of the member so temporarily appointed shall be notified to the committee or sub-committee by the County Solicitor under the item in the agenda dealing with "Apologies for Absence and Temporary Appointments"; and
 - (iii) her/his appointment shall apply for the whole of the meeting in question and shall qualify for the payment of all appropriate expenses, save that if a meeting stands adjourned to a different date, a member may invoke the provisions of this paragraph (b) in respect of the resumed meetings as if it were a new meeting.
- At the end of the meeting the temporary appointment shall cease and the County Solicitor shall reappoint the original member.
- (c) All members have the right to attend, as non-speaking observers, any meeting of the Cabinet or a committee of the Cabinet where decisions are to be taken, or of a Scrutiny Committee (or sub-committee), or of a committee (or sub-committee) of the Council or when an individual Cabinet Members is taking decisions. Members may attend and speak at any meeting to which they have been invited either as part of any rights conferred by this Constitution (including the Councillor Call for Action) or at the invitation of the person presiding at any meeting.

- (d) The rights conferred in (c) above do not apply in relation to any part of a meeting from which the public has been excluded. A member has a right to attend that part of a meeting, as a non-speaking observer, if s/he can demonstrate a 'need to know'. Where a member wishes to attend as s/he believes that there is a 'need to know' in order to properly fulfil her/his duties as a County Councillor then the following procedure should be followed:
1. The request should be made in writing to the Chairman of the committee, giving reasons why it is necessary for the member to attend the meeting in order to fulfil her/his duties as a Councillor.
 2. The Chairman of the committee may decline the request of a member to attend where in her/his view attendance:
 - is not necessary for enabling the member to fulfil her/his duties as a member; and/or
 - should not be allowed for some other good reason(s) (which reason(s) shall be specified in writing to the member).
 3. Where a member is dissatisfied with a determination of the chairman under this procedure, s/he may refer the matter to the Monitoring Officer for determination.
- (e) The Leader of the Council, the Deputy Leader of the Council, the Leader of the Opposition (or their substitutes) and the Chairman of the Council shall be entitled to attend and speak but may not vote at meetings of any Council committee or sub-committee (not being a sub-committee which is dealing with individual cases) of which s/he is not a member.
- (f) Any member may at the invitation of the Cabinet, committee of the Cabinet, individual member of the Cabinet, Scrutiny Committee or committee and sub-committee of the Council, participate in any informal member advisory group(s), established by those individuals or bodies, except that no member of the Cabinet may serve as a member of any advisory group established by a Scrutiny Committee. Any member of a Scrutiny Committee who serves on an advisory group established by the Cabinet, a Committee of the Cabinet or individual member of the Cabinet should not subsequently be involved in any scrutiny of a Cabinet decision which relates directly to the advice given by that advisory group.
- (g) In order to ensure the proper conduct of meetings and that proceedings are not disrupted, any member of a meeting (or a substitute member), who wishes to record, tweet or blog during it, may be asked by the Chairman of the meeting to remove themselves from it and take up a position in the public seating area set aside for such purposes.

7. Rights of Members to Place Items on Agenda

- (a) All members will have the right to propose a motion for consideration at a meeting of the full Council in accordance with the Council Procedure Rules set out in this Constitution.
- (b) In accordance with the Cabinet Procedure Rules, the following will apply to placing member items on the agenda of the Cabinet:-
 - (i) Any member of the Cabinet may request the Proper Officer that an item be placed before the Cabinet. The Proper Officer will arrange for the Cabinet to consider, in the context of the Forward Plan, what arrangements to make for consideration of that item.
 - (ii) Any member of the Council may make a request through a member of the Cabinet that an item be placed before the Cabinet. If the Cabinet Member endorses the request and so notifies the Proper Officer, that Officer will arrange for the Cabinet to consider in the context of the Forward Plan what arrangements to make for consideration of that item. When any such item is considered by the Cabinet the agenda for the meeting will give the name of the Councillor who asked for the item to be considered. The individual member shall be invited to attend and speak at the meeting during consideration by the Cabinet of that item.
- (c) In accordance with the Scrutiny Procedure Rules, the following will apply to placing member items on the agenda of a Scrutiny Committee:
 - (i) Any member of a Scrutiny Committee shall be entitled to give notice to the Proper Officer that s/he wishes an item relevant to the functions of the Committee to be included on the agenda for that Committee. If the Proper Officer receives the request at least 10 working days before a scheduled meeting of that Committee s/he will include it on the agenda for that meeting; otherwise it will be placed on the agenda for the following meeting of that Committee. The individual member shall have a right to speak at the meeting during consideration by the scrutiny committee of that item.
 - (ii) Any member of the Council shall be entitled to give notice, under the Procedure for a Councillor Call for Action set out in Annex 1 to this Protocol, to the Proper Officer that s/he wishes an item concerning her/his Electoral Division and which is relevant to the functions of the committee to be included on the agenda for that committee. If the Proper Officer receives the request at least 15 working days before a scheduled meeting of that committee s/he will include it on the agenda for that meeting; otherwise it will be placed on the agenda for the following meeting of that committee. The member shall have a right to speak at the meeting during consideration by the scrutiny committee of that item.

- (iii) The leader of any political group on the Council may request the Chairman and Deputy Chairman of a Scrutiny Committee to include an item relevant to the functions of the Committee on the agenda of that Committee. If the Chairman and Deputy Chairman so agree, they shall request the Proper Officer to include such item on the agenda of that Committee. If the Proper Officer receives the request at least 10 working days before a scheduled meeting of that Committee s/he will include it on the agenda for that meeting; otherwise it will be placed on the agenda for the following meeting of that Committee.
- (iv) Any 10 members of the Council who are not members of the Scrutiny Committee may give written notice to the Proper Officer that they wish an item to be included on the agenda of the relevant Scrutiny Committee. If the Proper Officer receives the request at least 10 working days before a scheduled meeting of that Committee s/he will include it on the agenda for that meeting; otherwise it will be placed on the agenda for the following meeting of that Committee.
- (d) Any member of the Council may request the Proper Officer to include an item on an agenda for a Council committee or sub-committee provided that:
 - (i) notice of the request is received by the Proper Officer by 2.00 p.m. on the tenth working day before the meeting of a committee or sub-committee;
 - (ii) the subject matter of any such notified item is relevant to the powers/functions of the committee or sub-committee; and
 - (iii) the item will normally be for oral report unless 20 working days' prior notice is given to enable a report to be prepared.

The individual member shall be invited to attend and speak at the meeting during consideration by the committee or sub-committee of that item.

8. Information for Members

(a) Cabinet Forward Plan, Agenda, Reports and Minutes

All members of the Council have the right to receive an electronic copy of:

- (i) the Cabinet Forward Plan each month when it is published;
- (ii) the agenda, reports and minutes of each meeting of the Cabinet or a committee of the Cabinet.

The voting co-opted members of the Education Scrutiny Committee will have the right to receive an electronic copy of:

- (i) the Cabinet Forward Plan each month when it is published;
- (ii) any items on an agenda of the Cabinet or any committee of the Cabinet which concern the discharge of any education functions.

An elected member or a voting co-opted member will normally receive the documents in electronic form unless exceptional circumstances apply or unless he/she is a member of the meeting in question. This will not affect the general rights under the Access to Information Procedure Rules.

(b) **Agenda, Minutes and Reports of Scrutiny Committees**

All members of the relevant Scrutiny Committee will be entitled to receive a hard copy of the agenda, reports and minutes for meetings of the Committee. Any other member may only request the Proper Officer to send her/him agendas, reports or minutes or specified parts of any scrutiny committee documents in paper form in exceptional circumstances. A copy of all scrutiny committee and sub-committee agendas, reports and minutes will be placed in the Members' Resource Centre.

(c) **Agenda, Minutes and Reports of the Council and its Committees**

All members will be entitled to a hardcopy of the agenda, reports and minutes for meetings of the full Council. All members of the relevant committee of the Council will be entitled to a hard copy of the agenda, reports and minutes for meetings of the committee. Any other member may only request the Proper Officer to send her/him agendas, reports or minutes or specified parts of any Council committee or its sub-committees in paper form in exceptional circumstances. A copy of all Council, its committee and sub-committee agendas, reports and minutes will be placed in the Members' Resource Centre.

(d) **Access via the Council's Web Site**

In addition to the specific rights set out in (a), (b) and (c) above, all public papers for any meeting of the Council, committee (or sub-committee) of the Council, Cabinet or Committee of the Cabinet, Scrutiny Committee (or sub-committee) or public papers where any decision is to be made by an individual member of the Cabinet or any key decision to be made by an officer will normally be available on the Council's web-site five clear working days before the meeting for access by members and the public.

The rights of elected members and co-opted members to receive information as set out in paragraphs (a)-(d) above are all subject to the provisions of the Access to Information Procedure Rules in this Constitution.

9. Effective Communication with Members

- (a) The Cabinet will ensure that there are effective communications with all members and that there are robust channels of communication established. The Cabinet should take an inclusive approach to its work and ensure that there is wide consultation with all members both within the formal decision making process and outside it.
- (b) Officers are required to keep members informed, both about the major issues concerning the County Council and other matters which affect the County, and Directors have a responsibility to put in place mechanisms to ensure that this happens and shall report quarterly to the Monitoring Officer on their directorate's compliance with the communication requirements under this Section.¹
- (c) Officers are required to keep members informed and, **where appropriate**, consult them in advance about significant issues, events, agenda items, formal discussions and other aspects of Council business which affect or may affect the areas which a member represents. These instances will include but are not limited to:
- (i) the sale or purchase of any land;
 - (ii) a proposed traffic management scheme or a proposed local planning application;
 - (iii) where legal/administrative action is to be taken on behalf of the Council involving the publication of statutory or other public notices affecting a member's division the member will be advised, where possible, before or, if not before, concurrently with publication;
 - (iv) consultation prior to any decision being made by the Cabinet, committee of the Cabinet, individual Cabinet Member, committee of the Council or officer about the construction of any new road, service area, building or footpath or the postponement or cancellation of such projects or diversion or extinguishment of any public footpath;
 - (v) copies of letters received from other statutory bodies informing the Council of any new scheme of works, e.g. the laying of a new sewer or gas main through the division;
 - (vi) copies of letters or e-mail messages sent by any member of the Cabinet, or an officer in reply to any District Councillor or Town/Parish Councillor on a divisional matter;
 - (vii) consultation about proposed section 106 and other infrastructure agreements and progress reports on implementation of completed agreements, in accordance with guidance issued by the Director for Environment & Economy.

¹ Directors will need to determine what information is appropriate to share with Members but this will not normally include personal data.

- (d) The Director for Children, Education & Families will ensure that members are informed about appropriate and significant matters concerning schools whose catchment areas lie within their divisions.
- (e) Constituency correspondence from or to a Member of Parliament will be copied to a relevant councillor if the Member of Parliament's original letter or e-mail message was copied to that Councillor or if the MP indicates a willingness for it to be copied to a Councillor.
- (f) Where the Cabinet or a committee of the Cabinet, or an individual Cabinet Member, or a committee or sub-committee of the Council is to consider any matter which directly relates to an Electoral Division, the member for that Division will be consulted before any decision is reached. This will also apply to any Scrutiny Committee where it is reviewing a decision or investigating any matter which relates to one Electoral Division. The member's right to comment will include:
 - (i) the submission of written comments to the Proper Officer for report to the decision maker;
 - (ii) attendance at the meeting at which the decision is to be made and the right to speak on it for not more than 5 minutes²;
 - (iii) Where the decision is to be made by an individual member of the Cabinet, the local member will be given every opportunity of meeting with the decision maker prior to the decision being made.

In (ii) above the member will be given advance notice of the meeting and if the member wishes to attend and speak, notice of that intention shall be given to the Proper Officer no later than 9.00 am on the working day before the meeting.
- (g) Members will be invited to attend the opening of a new County Council building or road scheme or other ceremonies or events in their electoral division.

10. Local Meetings

Where the Cabinet, a committee of the Cabinet, an individual Cabinet Member, a committee or sub-committee of the Council or an officer has organised any member meeting to discuss with a local group(s) issues specifically affecting their divisions, the local member(s) will be advised and have the right to attend and speak at such meetings.

² This is not restricted to matters relating only to one Division but also to any matter across a number of Divisions where there are local implications.

11. Rights of members to Access to Documents and Other Information

(a) Material Relating to Key Decisions

In accordance with the Access to Information Procedure Rules, all members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet or a committee of the Cabinet or an individual Cabinet Member which relates to any key decision to be taken as set out in the Forward Plan unless paragraph (i), (ii) or (iii) below applies:

- (i) any private briefing document from an officer to the Cabinet, individual Cabinet Member or a political Group;
- (ii) it contains exempt information falling within paragraphs 1, 2, 3 (if relating to contract terms in the course of negotiation), 4, 5, 7 or 7A-C of the categories of exempt information as defined in the Access to Information Procedure Rules;
- (iii) it contains the advice of a political adviser.

Where a member wishes to inspect any document which contains exempt information falling within (ii) above as s/he believes that there is a "need to know" in order to properly fulfil her/his duties as a County Councillor then the following procedure should be followed:

1. The request should be made in writing to the relevant Chief Officer who has possession of the information, giving reasons why it is necessary for the member to have the information in order to fulfil her/his duties as a Councillor.
2. A Chief Officer may decline the request of a member to produce for inspection a document where in her/his view access to the document:
 - is not necessary for enabling the member to fulfil her/his duties as a member; and/or
 - should not be provided for some other good reason(s) (which reason(s) shall be specified in writing to the member).
3. Where a member is dissatisfied with a determination of a Chief Officer under this procedure s/he may refer the question to the Monitoring Officer.

(b) Material Relating to Executive and Non-Executive Decisions and to Previous Business

All members will be entitled to inspect any document which is in the possession or under the control of the Cabinet or a committee of the Cabinet or an individual Cabinet Member or a committee or sub-committee of the Council and contains material relating to any business to be transacted at a meeting or previously transacted at a meeting

unless either (i), (ii) or (iii) in (a) above applies, in which case the procedures in (a) 1 - 3 above will apply to any requests for access to confidential or exempt information.

(c) **Restriction on Disclosure of Confidential and Exempt Information**

The Code of Conduct set out in this Constitution restricts the disclosure of information by members which they have gained as County Councillors when the information is confidential or exempt or is marked "Not for Publication". Such information should not therefore be made available by the member concerned to the public. When the Proper Officer has restricted circulation of the report it should not be passed on to another member without the Proper Officer's consent (which will be based on a determination of a 'need to know'). Information classed as confidential or exempt may nonetheless become disclosable at a later date. Any questions concerning the application of the restriction will be determined by the Monitoring Officer.

(d) **Dealing with Difficulties**

If members are not receiving, or are having difficulty in obtaining, information which they feel they need or to which they are entitled in order to carry out their duties as a county councillor they should contact the Monitoring Officer, just as officers will seek guidance from her/him.

12. Criminal Records Checks for Councillors

In accordance with the Council's decision on 10 September 2013, all Councillors will be required immediately after their election to undergo a criminal records check through the Disclosure and Barring Service (DBS). No councillor or co-opted member shall be required to undergo checking if s/he has been the subject of a DBS check within the previous twelve months of her/his election or appointment. Where this is the case, that person shall notify the Monitoring Officer of the existence and outcome of such a check immediately after her/his election or co-option.

13. Access to County Council Establishments

- (a) Members should have access to any County Council establishments or premises where this is necessary for them to discharge their responsibilities as County Councillors. However, members should always inform the manager of the establishment or a senior officer responsible for the service before they visit to ensure that it is convenient to do so.
- (b) Members should be sensitive to the fact that some establishments will be home to those who live there and they should therefore seek to ensure that their visit does not adversely affect the running of the establishment or disturb the residents who live there.

- (c) Where members wish to undertake activities in any County Council premises, this should be purely in connection with their duties as County Councillors and not for any other purpose.

14. Use of County Council Equipment and Services

Where facilities, equipment and services are provided to members this is made available on the basis that it is to enable them to carry out their activities as County Councillors and should be used only on that basis. A separate policy (including an Annex for councillors and co-opted members) on the acceptable use of ICT has been agreed by the Council and it is appended to this Protocol.

15. Nature of Rights

The rights of members set out in this Protocol are additional to any other rights conferred by this Constitution or which s/he may have under the law.