

Agenda Item A6

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

ADMINISTRATION COMMITTEE – 10 JANUARY 2023

FULL COUNCIL – 1 FEBRUARY 2023

PROTOCOL ON COUNCILLOR/OFFICER RELATIONS

REPORT OF THE CHIEF SOLICITOR & MONITORING OFFICER

SUMMARY

The Committee is invited to consider, and recommend full Council to adopt, a revised Protocol on Councillor/Officer Relations.

FOR DECISION

1 Background

- 1.1 The Council is required by legislation to have a Protocol on Councillor/Officer Relations as part of its Constitution. The current version can be found [here on the Council website](#).
- 1.2 In its Interim Review of Governance in 2021 the Centre for Governance & Scrutiny (CfGS) made reference to Councillor/Officer relations. Its comments on this have been extracted from the overall report and are attached at Appendix A. At its meeting in October 2021 the Administration Committee considered the report and an action plan in response to the Interim Review which included an action to review the Protocol.
- 1.3 A review of the existing Protocol has been undertaken by officers, factoring-in the issues raised by the CfGS and anecdotally by officers over the last year or so. Before making any amendments to the content of the Protocol, it was first reformatted with sub-headings and redrafted into plain English here and there to make it easier to read.

2 Proposed Changes

- 2.1 The Ethics Panel were consulted on proposed changes to the Protocol. The Panel agreed with the former Chief Executive's suggestion to include specific reference to the Protocol in relevant Council contracts as those employed by contractors make up a significant portion of those working on the frontline on the Council's behalf. The Panel also agreed that senior officers should consider how to raise awareness of the Protocol amongst staff.
- 2.2 The Council's Executive Management Team (EMT) have also commented on the proposed revisions and wanted to ensure that the Protocol was balanced in terms of the respective responsibilities of councillors and officers to contribute to an effective working relationship.

- 2.3 The Chief Whips have also been consulted on the proposed changes.
- 2.4 Any proposed substantive changes are shown in red in the revised version of the Protocol at Appendix B.

3 **Other Steps**

- 3.1 Once adopted steps should also be taken to draw councillors and officers' attention to the revised Protocol.

4. **Recommendation**

- 4.1 The Administration Committee RECOMMENDS that the Council adopts the revised Protocol on Councillor/Officer Relations as set out in Appendix B.

FOR DECISION

Elizabeth Campbell
Chair of the Administration Committee

Background papers used in the preparation of this report: None other than previously published reports.

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CfGS Interim Review comments (Spring 2021) relating to Councillor/Officer relations

1. Member/officer relationships appear to be more healthy and open compared to the situation in 2017 and previously, where an overly formal and deferential atmosphere made the provision of candid and frank advice difficult. There are still instances of Member-officer interactions which fall short of what the Council should expect, and the potential for executive member overreach into operational matters.
2. Concerning their relationships with councillors, some officers:
 - by and large interact with councillors to provide them with information;
 - are generally dissatisfied with the transactional nature of this relationship, because they often consider that councillors' requests are broadly framed, making it difficult to respond appropriately. Officers want to develop better relationships with councillors to ensure that they can better meet councillors' needs, which we think demonstrates a significant degree of sophistication and a substantial shift in mindset from that which prevailed in 2017;
 - feel that councillors could do more to understand the constraints and pressures under which they (officers) operate;
 - highlighted the continued presence of councillor behaviours which they considered inappropriate, although officers generally noted that councillor/officer relationships had significantly improved in recent years.
3. Concerning their relationships with officers, some councillors:
 - Feel that officers are not always sufficiently accessible, and experience difficulties knowing "who to speak to". Some councillors feel that they are at a disadvantage compared to Leadership Team members when it comes to officer access;
 - Feel 'squeezed out' of the decision-making process by officers, who they consider sometimes take more of a lead on decision-making than they ought to. This may be exacerbated by the fact that the differing relationships between individual Leadership Team members and the senior officers supporting them results in significant differences in informal decision-making practices between portfolio areas;
 - Feel that some officers need more political acuity in how they engage with councillors

[Please note: Proposed and additions and deletions (deletions) are shown below in red]

Part Two – Councillors

Section Four – Protocol on Councillor/Officer Relations

I. THE ROLES OF COUNCILLORS AND OFFICERS

Councillors and officers have different roles and accountabilities.

- I.01 **Councillors and officers work together in the public interest, to serve the local community and to address local priorities.** Councillors are answerable to the electorate and serve until their term of office expires. Officers are employed by, and are responsible to, the Council as a whole. They are not **responsible answerable** to any one political party or any individual Councillor ~~or co-opted member~~. Officers are subject to the Council's employment procedures and management disciplines. Their job is to advise Councillors and the Council, and to carry out the Council's work under the direction of Council decision-making bodies, the overall management of the Chief Executive and the specific management direction of their relevant Executive Director or Director.

The Seven Principles of Public Life

- I.02 **Both Councillors and officers must observe the 'Seven Principles of Public Life' which outline the ethical standards to which those working in the public sector are expected to adhere (see Appendix A). Additionally both Councillor and Officers are expected to have regard to the Council's 'Values and Behaviours', set out in full elsewhere in the Council's Constitution.**

Councillor and Officer Responsibilities

- I.03 Councillors are responsible for:

- (a) providing a focus for community leadership in local wards and acting as advocates on behalf of constituents;
- (b) giving the authority political leadership and deciding on overall Council policy;
- (c) making decisions within overall Council policy;
- (d) the scrutiny of Council policy and services; and
- (e) representing the area and the Council externally.

- I.04 Council officers are responsible for:

- (a) providing professional advice and relevant information (objectively and impartially) to elected members when they are formulating policy and taking decisions or scrutinising the decisions and actions of others;
- (b) implementing decisions made by Councillors/committees; and
- (c) taking managerial and operational decisions in accordance with the Council's schemes of delegation.

Expectations and Officer Impartiality

I.05 Councillors can expect from officers:

- a commitment to the Council as a whole and not to any single part of it nor to any political group;
- respect, courtesy and the highest standards of professional and personal integrity;
- timely and informative responses to enquiries and complaints; and
- appropriate confidentiality and discretion.

I.06 Officers can expect from Councillors:

- respect, courtesy and the highest standards of ethics and integrity;
- effective leadership; and
- not to abuse their authority.

I.07 Officers have a duty to present impartial information and to keep Councillors of all political groups fully informed about developments of significance in relation to Council activities. Care must be taken by both officers and Councillors to ensure that officers' political impartiality is not compromised. Members of the Leadership Team must take special care to avoid and to be seen to avoid placing pressure on officers to act other than in an impartial way. This is particularly important given their additional responsibilities and decision-making powers.

Appointments and Staffing Matters

I.08 Appointments at executive director, director and chief officer level are made by a councillor-level selection committee or panel **as set out elsewhere in the Council Constitution**. All other appointments are made at officer level.

I.09 Staffing matters (including discipline; training; setting and monitoring targets; **and recruitment, other than for Chief Officer posts**) are dealt with **exclusively** by the relevant managers. ~~although the relevant Lead Members will agree targets and performance-related pay in the case of the Executive Directors.~~

I.10 As indicated in the Scheme of Delegation to Officers (at Part 7 of this Constitution), the **Director**/Head of Communications, Executive Directors and Directors may provide the press with factual information, but comment will only be provided by these officers with the prior consent of the relevant Lead Member or the relevant committee chair, subject to the powers delegated to the **Director**/Head of Communications.

Informal Meetings and Officer Advice to Party Groups

I.11 The political parties represented on the Council hold regular group meetings. Officers do not usually advise these meetings but may be invited to give information. All invitations should be cleared by the Chief Executive.

I.12 The Chief Executive and other Executive Directors attend informal meetings with the Leadership Team. At such meetings preliminary consideration may be given to forthcoming policy issues but no Key Decisions will – or can by law - be taken.

I.13 Officer advice and analysis will be made available to minority parties – for example, in relation to their preparation of an alternative budget prior to the annual meeting of the Council that sets the annual budget and Council tax.

- 1.14 Officers will give advice and information to any Councillor or group of Councillors whether from the Leadership Team or Scrutiny.

Lead Member Briefings

- 1.15 Lead Members, **whether individually or as a group**, may meet informally and in private with officers, to receive briefings, **to give a steer on emerging policy and forthcoming decisions and** to ensure that the work necessary for making key decisions is progressing and will be completed on time. They may also consider the implications and consequences of such decisions, make plans to obtain the views of service users, residents and communities, and assess the legal, financial and equity considerations involved in the decision.
- 1.16 When this work is complete, meetings of the Leadership Team that make key decisions must be conducted in public **as set out below in section 2** (subject to the rules allowing resolution to exclude the public for any particular item on the grounds set out in the Local Government Act 1972).

2. THE FORMAL DECISION-MAKING PROCESS

- 2.01 Decisions such as the setting of the Council tax can only be made by full Council; other formal bodies within the Constitution, including single Lead Members or Chief Officers acting under delegated authority (who may in turn authorise other officers as appropriate **as set out in a departmental scheme of authorisation**).
- 2.02 Decisions by party political groups are not Council decisions and should not be presented as such to the public and press. Representations to a political group by interested parties on any matter for Council decision are not representations made to the Council.
- 2.03 In the event of challenge, attention may focus on whether the decision-making body, or individual, was authorised to make that decision. On the Council side, the Constitution therefore indicates:
- which decisions are reserved to the full Council;
 - which decisions may be made by each of the committees answerable to the Council; and
 - which decisions may be made by the officers under powers delegated to them by those committees.

On the Executive side, the Leader determines:

- which decisions shall be reserved to the full Leadership Team;
- which decisions may be made individually by Lead Members (who may if they wish refer any such decisions to the full Leadership Team); and
- which executive decisions may be made by the officers under powers delegated to them.

3. SCRUTINY

- 3.01 Scrutiny **or select** committees have the power to require Lead Members and officers to appear before them and answer questions. So far as Lead Members are concerned, scrutiny committees should, wherever possible, require attendance only at meetings that

appear in the Council diary. Officers and Lead Members are required to 'give an account' to relevant scrutiny committees of their decisions, advice and actions. ~~Executive Directors, Directors or Heads of Service will attend Scrutiny or Select Committee meetings but may ask more junior officers to accompany them should normally only require officers above a certain grade at head of service level or above to attend to ensure that more junior officers are not put under undue pressure. Accordingly, the Council's scrutiny committees will in normal circumstances only be able to require the attendance of executive directors and directors. However, to facilitate proper conduct of business, executive directors and/or directors may arrange, as necessary, for other staff to attend meetings to assist.~~

- 3.02 The Council has determined that there should be no formal separation of officer support between the executive and scrutiny functions. The Chief Executive has overall responsibility for ensuring that staffing support is adequate overall. To assist this, the Chief Executive and the ~~Director of Governance and Co-Ordination~~ **Head of Governance & Mayoralty** will be responsible for ensuring that proper officer support is provided for scrutiny.

4. REPORTS TO THE LEADERSHIP TEAM, COMMITTEES AND OTHER COUNCIL BODIES

- 4.01 Reports to the Leadership Team are usually prepared by officers (operating under the management of the relevant Executive Director). Each report will contain their advice and, if they are for executive decision making, they will be signed off by the relevant Leadership Team Member prior to consideration at the formal meeting.

- 4.02 Reports to other Council bodies, bar some scrutiny committee reports, are prepared by officers and contain advice to Councillors. If Councillors decide not to follow that advice, the correct course is for them to do so in a formal meeting and for the meeting to decide upon an alternative course of action. Officers must give full and impartial advice and ~~should not exclude options if these are valid alternatives on the assumption that they may be unacceptable to one political group~~ should include the full range of options, not solely those that officers or the Leadership of the Council might consider to be the best or most viable options.

- 4.03 Group leaders, Leadership Team Members and chairs of committees (including scrutiny bodies) may receive draft versions of reports to give preliminary consideration to the issues. There is nothing improper in reports being subsequently amended by an officer if preliminary consideration discloses that key issues have not been adequately explained or that relevant options have not been properly addressed.

- 4.04 Councillors cannot instruct, an officer not to present a report if the officer considers it proper to do so. If the report is not regarded as appropriate by the relevant Councillor body, the remedy is for that body to not agree its recommendations.

- 4.05 Reports of scrutiny panels are usually drafted by officers depending on the arrangements in place but they remain the reports of the relevant panel. In this instance it is acceptable for members of the panel to ask for draft reports to be amended.

5. WORKING RELATIONSHIPS *(n.b. this section has been re-ordered to set out the way things should work first)*

- 5.01 **Councillors and officers work together in the public interest and for the communities they serve, and** regular contact between Councillors and officers is necessary to ensure the efficient working of the Council. Councillors and officers should have regard to and respect for their different roles. The level at which contact occurs will vary depending

upon the nature of the service and the reason for the contact. In general, contact will be at senior officer level but Councillors may, for example, need direct contact with relatively junior staff when dealing with constituency casework **or ward initiatives**. Councillors should always bring concerns about issues affecting a department, **or the service they receive as a councillor**, directly to the attention of the relevant Executive Director or Director and not to more junior staff.

- 5.02 Approaches by Councillors to junior officers are proper when casework is detailed and ongoing or matters are routine, but Councillors should keep the relevant Executive Director or Director informed by copying them into correspondence, e-mails, etc., and routing general enquiries through them. Councillors should not seek views on policy issues or non-routine business from more junior members of staff. Councillors must not give instructions to junior staff as this may undermine the formal accountability of staff to their line manager and compromise the political impartiality of the officer concerned. Junior staff are advised to respond promptly and courteously to Councillors' requests for information or routine enquiries, but to refer any concerns or wider policy matters to an Executive Director or Director.
- 5.03 There must be mutual respect between Councillors and officers. Officers cannot respond to public comment from Councillors. This means that Councillors must take care **about to avoid** public comment about individual officers and not seek to undermine their position, **professionalism or reputation** by personal criticism, rudeness, abuse or ridicule. This does not prevent Councillors from **criticising taking issue with** the reports, actions and work of a department or section of the Council, where they believe such criticism is merited or from expressing concern about the manner in which a Council department has acted, or dealt with a constituent, or a service has performed generally. But the manner of such criticism should have regard to this guidance. When officers are called to give evidence to or appear before scrutiny committees, Councillors must treat those officers courteously.
- 5.04 If a Councillor has a complaint about a junior officer, it should be raised **in a timely way** with the appropriate Executive Director or Director. If the complaint concerns a Director or Executive Director, it should be raised with the relevant Executive Director or Chief Executive as Head of the Paid Service. A complaint about the Chief Executive should be raised with the Leader, who will consider how it should be dealt with.
- 5.05 Councillors will also have contact with junior officers when visiting Council offices. Relevant Chief Officers should be advised in advance of Councillor visits to front-line services, unless the visits are of a statutory inspection nature in which case other procedures may apply. Special circumstances may also warrant unannounced visits.
- 5.06 Councillors need to take particular care if their paid employment brings them into contact with officers of the Council. Councillors must not abuse their position as an elected representative to obtain information they require in their professional capacity which would not otherwise be available to them. The Councillors' Code of Conduct provides that they must ~~not~~ use their position as a Member **in the public interest and not for personal advantage or disadvantage**. It may be difficult for officers to distinguish between the professional role of the Councillor concerned and their role as an elected representative. Such situations should be avoided wherever possible.
- 5.07 **Officers are bound by the Officers' Code of Conduct which requires them to maintain political neutrality and be impartial so as to act without political bias in their work whether or not they are in politically restricted posts.** Officers must not seek to avoid staff consultative, dispute processes or other procedures by lobbying Councillors on matters which directly concern them as employees. If Councillors believe they have been

approached by a member of staff in this way they should let the Monitoring Officer know immediately.

5.08 Officers, who are local residents, have the same rights as any other local resident, for example, to seek support from their ward councillor, to make representations about proposed decisions or complaints or to pursue legal action against the Council. They should be clear however about the capacity in which they are acting and should be careful not to confuse their role as an officer with action they take as a resident.

5.09 If an officer believes that a Councillor may be in breach of the Councillors' Code of Conduct, they should inform their manager as soon as possible. That manager will then consider ~~decide~~ whether to seek advice from the Monitoring Officer.

6. CLOSE PERSONAL RELATIONSHIPS

6.01 Both Councillors and officers should take care not to give the impression that their distinct roles have become blurred in some way. Maintaining confidence in the separation of these roles necessarily imposes limitations on behaviour. Close personal relationships between Councillors and officers can confuse their separate roles and get in the way of the proper discharge of the authority's functions, not least in creating the perception in others that a particular Councillor or officer may secure advantageous treatment.

7 ACCESS TO CONFIDENTIAL INFORMATION

7.01 Where confidential information is provided, it must not be divulged until it has been made public. As provided for in the Councillors' Code of Conduct, Councillors' conduct will in particular address the statutory principles of the code of conduct by, amongst other requirements, ". . . respecting the confidentiality of information . . . by not disclosing confidential information to third parties unless required by law or where there is a clear and overriding public interest in doing so."

8. THE PRE-ELECTION PERIOD

8.01 Councillors and officers should be guided on protocol during the pre-election period before an election by specific advice issued by the Monitoring Officer, on the announcement of any election, by-election or other relevant vote such as a referendum.

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.