

REPORT OF STANDARDS COMMITTEE

(Meeting held on 24 September 2010)

1. LOCAL CODE FOR MEMBER/OFFICER RELATIONS (REPORT C) (MINUTE 83)

The Committee has considered a revised Local Code for Member / Officer Relations, which had been updated to take account of outdated references to the statutory Code of Conduct, and to make it more user - friendly. The only changes of substance are shown in italic print.

A number of minor amendments were suggested by the Committee and these are incorporated in the proposed new Code, which is attached at Appendix 1.

The Committee noted that the Government had announced its intention to abolish the Standards regime. More information was likely to be received later in the year, but it was understood this could include the loss of the Code of Conduct, Standards for England (the Standards Board) and the statutory powers of Standards Committees. It was thought likely that some form of local body to oversee ethical matters would still be needed. There would still be a requirement to declare pecuniary interests, but it was thought likely the new arrangements would give more power to the Ombudsman. The Committee and the Council will continue to receive regular updates as necessary. In the meantime the existing framework will continue to be in force.

RECOMMENDED:

That the revised Local Code for Member / Officer Relations, as attached at Appendix 1, be approved.

**Cllr J A G Hutchins
VICE - CHAIRMAN**

LOCAL CODE FOR MEMBER/OFFICER RELATIONS

1. PURPOSE OF CODE

- 1.1 The purpose of this Local Code is to guide members and employees of the Council in their relations with each other, to:

ensure the smooth running of the Council;

help members receive objective and impartial advice, and

protect employees from accusations of bias and undue influence from members.

2. WHAT THE CODE CONTAINS

2.1 Employees

The contents of this Code are relevant to all employees, not just those who have a close regular working relationship with members. In particular it contains information that may be helpful to employees who:

Are concerned about a member's conduct;

Have a close* personal relationship with a member [**see footnote*];

Provide help or support to members in a variety of fields, such as:

- Dealing with requests for information;
- Preparing reports for member consideration (especially where a member or Cabinet/Committee has requested the report);
- Advising a political group within the Council;
- Administrative assistance (eg typing, stationery, IT support);
- Undertaking consultations and writing correspondence;
- Helping with arrangements for ceremonial events;

Manage employees in any of these situations.

2.2 Members

The Code is especially relevant to members who have a close working relationship with employees, such as Cabinet members and Chairmen. However, much of it is relevant to **all** members, especially where they:

Are concerned about an employee's conduct or capability;

Have a close* personal relationship with an employee [**see footnote*], or are related to an applicant for a job with the Council;

Want to know what they should expect when they ask employees for help on matters such as:

- support services (eg typing, IT support);

access to information, especially where it is confidential or time-consuming to produce;
advice or assistance for the benefit of a political group;
communication and consultation arrangements for issues affecting their ward;
representation at ceremonial events.

3. CONCERNS ABOUT CONDUCT

3.1 A member who is concerned about the conduct or capability of an employee should:

Consider if it would be appropriate to raise the matter with the employee directly, (taking into account the nature and seriousness of the conduct and the seniority of the employee); or

Raise the matter with the employee's Head of Service, who will look into the matter and report back to the member;

If concerns continue, report them to the Chief Executive who will look into the matter afresh;

Never raise the matter in public - employees have no means of responding to criticisms in public.

3.2 An employee who is concerned about the conduct of a member may raise the matter with:

the member concerned, or
his/her own line Manager (who will normally refer the matter to the Head of Service), or
his/her Head of Service, or
the Chief Executive

as he/she considers appropriate.

3.2.1 The Head of Service or Chief Executive should consider what action is appropriate, if necessary after consulting the Monitoring Officer. This may include approaching the member and/or Group Leader.

3.2.2 Members are obliged to abide by a statutory Code of Conduct (set out in full in Chapter 32 of the Constitution) when acting in their official capacity. An employee who considers a member has broken the members' Code of Conduct can make a formal complaint. Guidance on the formal complaints system is available on the Council's website under Council and Democracy/Complaints/Complaints against a Councillor. Advice can also be sought from the Monitoring Officer.

4. JOB APPLICANT AND MEMBER RELATED

4.1 If an applicant for a job with the Council is related to a member, both the applicant and the member must disclose the relationship.

4.2 The member must not request the application to be treated favourably, and the applicant must not ask for support from the member.

4.3 Detailed provisions are set out in the Council's Standing Orders for General Procedures newforest.gov.uk/media/adobe/4/3/chapter27.pdf

5. CLOSE PERSONAL RELATIONSHIP BETWEEN EMPLOYEE AND MEMBER

5.1 If there is a close* personal or close* social relationship between an employee and a member (whether it started before, or after, the member was elected or the employee appointed), it should never be hidden [*see footnote*].

5.2 The member should disclose it to his/her Group Leader and the Monitoring Officer.

5.3 The employee should disclose it to his/her Head of Service.

5.4 It will then be entered into the appropriate registers of interests.

5.5 Group Leaders and senior officers will do what they reasonably can to ensure neither the member nor the officer is placed in a position where their relationship might be seen to conflict with their duty to serve the public interest objectively.

6. WORKING RELATIONSHIPS

6.1 Close working relationships between employees and Cabinet members, Chairmen and Group Leaders are important. However, employees also have a duty to assist "back benchers", and their relationships with senior members should not seem to call their ability to do this into question.

6.2 Employees should not go beyond the bounds of whatever authority their manager has given them when dealing with members. Members should not put employees in a position that could conflict with this.

6.3 Responsibility for content of reports

6.3.1 If, following consultation with a Cabinet member or Chairman, an employee prepares a report in the employee's name, the employee is responsible for its contents and these should reflect his or her professional judgement. Any issues between the member and the employee about the contents of a report should be referred to the Chief Executive, who will consult the Leader or Chairman as appropriate.

6.3.2 If a report is issued in the name of an individual member, or the Cabinet, it should make clear that the views expressed are those of the member/Cabinet.

6.4 Accountability for decisions

- 6.4.1 Members cannot take decisions except where expressly authorised by law or the Council's scheme of delegations. Where a member takes such a decision, he/she is personally accountable for it.
- 6.4.2 Where an officer is authorised (either by the scheme of delegations or by a formal meeting) to take a decision in consultation with a member, it is the officer who takes and is accountable for the decision.

6.5 Employees and Member Political Groups

- 6.5.1 Employees may be asked to support and contribute to discussions by party groups. The following rules must be followed:
- (a) Employees must always maintain political neutrality.
 - (b) Employees must treat all political groups fairly – support is available to all party groups.
 - (c) Requests for employees to attend party group meetings must be made through their Head of Service, who will advise the Chief Executive of requests made.
 - (d) Where there is a Chairman's briefing by employees before a meeting, minority Group spokesmen will also have the opportunity of a briefing.
 - (e) Employee support is limited to providing information and advice about Council business. Employees should not be present for any part of a meeting where purely party business is to be discussed.
 - (f) Conclusions reached at party meetings must not be interpreted or acted on as Council decisions.
 - (g) Factual information on which advice may be based is available on request to all political groups. However, employees must treat as confidential requests for advice from political groups, the advice given, and the content of discussions.
 - (h) Members must not assume an employee who helps formulate a policy supports that policy.
 - (i) Advice to a political group is not a substitute for providing all the necessary information and advice to a formal meeting when the matter is considered by the Council.
 - (j) Employees will not attend party group meetings that include people who are not Council members unless agreed in advance with the Chief Executive. Non-Councillors are not bound by the rules that members have to follow (such as maintaining confidentiality), so if, exceptionally, attendance is agreed, employees must be especially careful what they say,

and may not be able to provide information and advice to the same level as they would if non-members were not present.

- (k) Difficulties or uncertainties should be raised with the Chief Executive, who will discuss them with the relevant Group Leader.

6.6 Advice of Statutory Officers

6.6.1 When reaching decisions members are obliged to have regard to any relevant advice provided by the Chief Finance Officer or the Monitoring Officer.

6.6.2 Members will do nothing to compromise the statutory responsibilities of these officers. Both officers will ensure any advice or instruction they give is impartial.

7. COUNCIL SUPPORT SERVICES – USE BY MEMBERS

7.1 Support services (e.g stationery, printing, transport, ICT assistance) are provided to help members discharge their role as Councillors. They cannot lawfully be used for private, party political, or campaigning purposes.

7.2 Members should only use the post distribution service for circulating literature relating to Council business. This can include Group correspondence that directly relates to Council business.

7.3 Members should not go into or use any office or sources of information without an officer in attendance, apart from accommodation and services specifically dedicated to members.

8. CORPORATE COMMUNICATIONS AND NEWS RELEASES

8.1 The Code of Recommended Practice on Local Authority Publicity broadly prohibits the Council from publishing material that appears designed to affect public support for a political party.

8.2 News releases, which may contain quotations from members (such as Cabinet members or Chairmen) are issued on behalf of the Council and it is not appropriate for quotations to indicate a member's party political affiliation.

9. MEMBERS' RIGHT TO INFORMATION

General

9.1 Members are only entitled to information for use other than on Council business where the information is available to the general public. This applies especially to information required for private or party political reasons, or where the member has a personal interest in the matter.

9.2 Members requesting information for purely personal reasons should make this clear.

- 9.3 ***Under freedom of information (Fol) legislation, anyone may make a formal request for information held by the Council. Fol requests must be made in writing (including e-mail) stating clearly what information is required. The Council has 20 days to respond.***
- 9.4 Members should normally request information for use on Council business from a senior officer in the Service area concerned. In cases of doubt about whether the information can be released, the appropriate Head of Service or the Monitoring Officer should be asked for assistance.
- 9.5 ***If responding to a member's request for information would involve significant resources, the Head of Service will consider whether he/she thinks the request is unreasonable in terms of the resources required to meet it. If appropriate he/she will consult the Chief Executive.***

Confidential Information – definition

- 9.6 Confidential information means any information which is not available to the public.
- 9.7 Agenda and reports intended for Council meetings, or for Portfolio Holder decision, may be amended or withdrawn until they are published in the ordinary course of the Council's business, and are therefore confidential until that time.
- 9.8 Information relating to employees should always be regarded as confidential.

Confidential information - availability to members

- 9.9 Councillors have both **statutory** and **common law** rights to confidential information as follows.
- 9.10 Councillors do **not** have a **statutory** right to see documents or background papers relating to private session items on agenda for meetings of Committees etc unless they are a member of the Committee.
- 9.11 Members of Review Panels have a **statutory** right to exempt or confidential information in the possession or control of the Executive which contains material relating to:
- Business transacted at a meeting of a decision making body, or
 - A Portfolio Holder decision, or
 - A key decision made by an officer
- if the information is relevant to an action or decision the Panel is reviewing, or to a review contained in the Panel's work programme.
- 9.12 The **common law** right is that any member has a prima facie right to inspect Council documents provided access is reasonably necessary to enable the member properly to perform his/her duties as a member (a "need to know").

- 9.13 Members have no right to a roving commission to examine Council documents. They must be able to demonstrate that they have a need to know the information requested. Mere curiosity is not enough.
- 9.14 A member of one party group does not have a need to know information which forms part of the internal workings of another party group.
- 9.15 Whether a member has a need to know will be decided by the Head of the Service that holds the information. The Monitoring Officer may be asked for advice. If there is a dispute, the Standards Committee will decide the matter.

Confidential information – use by members

- 9.16 Unauthorised disclosure of confidential information by a member may result in a complaint which, if upheld, may lead to sanctions being imposed on the member.
- 9.17 ***Data Protection legislation broadly provides that information about people can only be used for the purposes for which it was obtained. Members must comply with the data protection principles which bind the entire Council: forestnet2/index.cfm?articleid=987***
- 9.18 Any confidential information a member obtains can only be used for the proper performance of his/her duties.
- 9.19 Where confidential information is provided to a member, it should not be discussed with, or given to, anyone else (including other members) without the permission of the person providing it. In particular, it must not be used for the personal advantage of the member or anyone known to him/her, or to the disadvantage or discredit of the Council or anyone else.

10. CORRESPONDENCE

- 10.1 Officers should not normally copy correspondence between themselves and a member about a single constituent to another member, but if this is necessary, the original member should be told. “Blind” copies should not be sent.
- 10.2 Where an issue relates to a matter of interest in a Ward or Parish, all Councillors for the particular area should be copied in, and any member who raised the issue told this has been done, unless:

The member who raised the issue specifically requests this is not done; or

There is a political reason why it is not appropriate; or

It is not appropriate for another reason, (for example, a ward member has a personal and prejudicial interest in the matter).

- 10.3 Official Council correspondence should normally be sent out in the name of the appropriate officer. However, there are exceptional circumstances where it may be appropriate for a member to sign a letter (for example, representations to Government).
- 10.4 ***Except where a Portfolio Holder is acting under powers specifically delegated to him or her***, letters which create obligations or give instructions should never be sent in the name of a member.

11. COUNCIL CONSULTATIONS AND WARD MEMBERS

- 11.1 Where the Council undertakes any form of consultation on a local issue, the ward member(s) should be informed and involved from the start. If the consultation entails the Council organising a public meeting, members representing all affected wards should be invited.

12. CEREMONIAL EVENTS

- 12.1 The Chairman (or in his/her absence, the Vice-Chairman) should lead the Council's ceremonial events and represent the Council at the ceremonial events of others, where the events are significant and not specifically associated with the Cabinet or a Committee or Panel.
- 12.2 Portfolio Holders (or another Cabinet member or member nominated by the Portfolio Holder) should represent the Council at ceremonial events within the scope of their Portfolios.
- 12.3 Local members, and County and Parish Councillors should be informed and, where possible, invited to ceremonial events, in their own Ward/Division/Parish.
- 12.4 A member taking part in a ceremonial event should bear in mind that he/she is representing the Council as a whole, and must not seek disproportionate personal publicity or use the occasion for party political advantage.

**footnote*

Standards for England have advised, in the context of the term "close associate", that the term means more than mere acquaintanceship and suggests it is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when dealing with a matter that affects them, because of the connection. If in doubt, guidance should be sought from the Monitoring Officer.