

NEWTON ABBOT TOWN COUNCIL



Member-Officer Protocol

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1. INTRODUCTION AND PURPOSE

The purpose of this Protocol is to guide councillors and officers of the council in their relations with one another. The Protocol's intention is to build and maintain good working relationships between councillors and officers as they work together.

This Protocol also seeks to reflect the principles underlying the Code of Conduct which applies to councillors and the employment terms and conditions of officers. The shared objective is to enhance and maintain the integrity (real and perceived) of local government.

The following extract from the Local Government Association guidance on the 2020 Model councillor Code of Conduct states that:

“Both councillors and officers are servants of the public and are indispensable to one another. Together, they bring the critical skills, experience and knowledge required to manage an effective local authority.

At the heart of this relationship, is the importance of mutual respect. Councillor-officer relationships should be conducted in a positive and constructive way. Therefore, it is important that any dealings between councillors and officers should observe reasonable standards of courtesy, should show mutual appreciation of the importance of their respective roles and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party.

Councillors provide a democratic mandate to the local authority and are responsible to the electorate whom they represent. They set their local authority's policy framework, ensure that services and policies are delivered and scrutinise local authority services.

The Mayor, Deputy Mayor, Chairs and Vice Chairs of committees have additional responsibilities. These responsibilities will result in increased expectations and relationships with officers that are more complex. Such councillors must still respect the impartiality of officers and must not ask them to undertake work of a party-political nature or compromise their position with other councillors or other officers.

Officers provide the professional advice and managerial expertise and information needed for decision making by councillors and to deliver the policy framework agreed

by councillors. They are responsible for implementing decisions of councillors and the day-to-day administration of the local authority.

The roles are very different but need to work in a complementary way.

It is important for both sides to respect these differences and ensure that they work in harmony. Getting that relationship right is an important skill. That is why the code requires councillors to respect an officer's impartiality and professional expertise. In turn officers should respect a councillor's democratic mandate as the people accountable to the public for the work of the local authority. It is also important for a

local authority to have a councillor-officer protocol which sets out how this relationship works and what both councillors and officers can expect in terms of mutual respect and good working relationships.”

This Protocol covers:

- The respective roles and responsibilities of the councillors and the officers;
- Relationships between councillors and officers;
- Where/who a councillor or an officer should go to if they have concerns;
- Who is responsible for making decisions.

2. BACKGROUND

This Protocol is intended to assist councillors and officers, in approaching some of the sensitive circumstances which arise in a challenging working environment.

The reputation and integrity of the council is significantly influenced by the effectiveness of councillors and the officer working together to support each other's roles.

The aim is effective and professional working relationships characterised by mutual trust, respect and courtesy. Overly close personal familiarity between councillors and officers is not recommended as it has the potential to damage this relationship.

3. ROLES OF COUNCILLORS AND OFFICERS

The respective roles of councillors and officers can be summarised as follows:

- Councillors and officers serve the public and they are indispensable to one another, but their responsibilities are distinct.
- Councillors are responsible to the electorate and serve only for their term of office.
- Officers are responsible to the council as a whole, not to any individual. Their job is to give advice to councillors and to the council, and to carry out the council's work under the direction and control of the council and relevant committees.

Councillors have four main areas of responsibility:

- To determine council policy and provide community leadership; **Collectively, members are the ultimate policymakers determining the core values of the Council and approving the authority's policy framework, strategic plans and budget.**
- To monitor and review council performance in implementing policies and delivering services;
- To represent the council externally; and
- To act as advocates for their constituents.

All councillors have the same rights and obligations in their relationship with the officer, regardless of their status and should be treated equally.

4. THE ROLES OF MEMBERS

Councillors should not involve themselves in the day to day running of the council. This is the officer's responsibility, and the officer will be acting on instructions from the council or its committees, within an agreed job description.

In line with the councillors' Code of Conduct, a councillor must treat others with respect, must not bully or harass people and must not do anything which compromises, or is likely to compromise, the impartiality of those who work for, or on behalf of, the council.

Officers can expect councillors:

- to give strategic leadership and direction and to seek to further their agreed policies and objectives with the understanding that councillors have the right to take the final decision on issues based on advice.
- to act within the policies, practices, processes and conventions established by the council.
- to work constructively in partnership with officers acknowledging their separate and distinct roles and responsibilities.
- to understand and support the respective roles and responsibilities of officers and their associated workloads, pressures and reporting lines.
- to treat them fairly and with respect, dignity and courtesy.
- to act with integrity, to give support and to respect appropriate confidentiality.
- to recognise that officers do not work under the instruction of individual councillors or groups.
- not to subject them to bullying, intimidation, harassment, or put them under undue pressure.
- to treat all officers, partners (those external people with whom the council works) and members of the public equally, and not discriminate based on any characteristic such as age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.
- not to request officers to exercise discretion which involves acting outside the council's policies and procedures.
- not to authorise, initiate, or certify any financial transactions or to enter into any contract, agreement or undertaking on behalf of the council or in their role as a councillor without proper and lawful authority.
- not to use their position or relationship with officers to advance their personal interest or those of others or to influence decisions improperly.
- to comply at all times with the councillors' Code of Conduct, the law, and such other policies, procedures, protocols and conventions agreed by the council.
- respect the impartiality of officers and do not undermine their role in carrying out their duties.

- do not ask officers to undertake work, or act in a way, which seeks to support or benefit a particular political party or gives rise to an officer being criticised for operating in a party-political manner.
- do not ask officers to exceed their authority where that authority is given.

Chairs and vice-chairs of council and committees

The Mayor, Deputy Mayor has additional responsibilities as delegated by the council. These responsibilities mean that they may have a closer working relationship with employees than other councillors do. However, they must still respect the impartiality of officers and must not ask them to undertake work or anything else which would prejudice their impartiality.

5. THE ROLES OF OFFICERS

The primary role of officers is to advise, inform and support all members and to implement the agreed policies of the council.

Officers are responsible for day-to-day managerial and operational decisions within the council, including directing and overseeing the work of any more junior officers. Councillors should avoid inappropriate involvement in such matters.

In performing their role officers will act professionally, impartially and with neutrality. Whilst officers will respect a councillor's view on an issue, the officer should not be influenced or pressured to make comments, or recommendations which are contrary to their professional judgement or views.

Officers' must:

- implement decisions of the council and its committees which are lawful, which have been properly approved in accordance with the requirements of the law and are duly recorded. This includes respecting the decisions made, regardless of any different advice given to the council or whether the decision differs from the officer's view.
- work in partnership with councillors in an impartial and professional manner.
- treat councillors fairly and with respect, dignity and courtesy.
- treat all councillors, partners and members of the public equally, and not discriminate based on any characteristic such as age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.
- assist and advise all parts of the council. Officers must always act to the best of their abilities in the best interests of the authority as expressed in the council's formal decisions.
- respond to enquiries and complaints in accordance with the council's complaints procedure.
- be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for councillors, the media or other sections of the public.

- act with honesty, respect, dignity and courtesy at all times.
- provide support and learning and development opportunities for councillors to help them in performing their various roles in line with the council's training and development policy.
- not seek to use their relationship with councillors to advance their personal interests or to influence decisions improperly.
- to act within the policies, practices, processes and conventions established by the council.

In giving advice to Councillors, and in preparing and presenting reports, it is the responsibility of the officer to express their own professional views and recommendations. An officer may report the views of individual Councillors on an issue, but the recommendation should be the officer's own. If a Councillor wishes to express a contrary view, they should not pressurise the officer to make a recommendation contrary to the officer's professional view, nor victimise an officer for discharging their responsibilities.

6. THE RELATIONSHIP BETWEEN MEMBERS AND OFFICERS

Councillors and officers are indispensable to one another. However, their responsibilities are distinct. Councillors are accountable to the public, whereas officers are accountable to the council as a whole.

At the heart of this Protocol is the importance of mutual respect and also of civility. Councillor/officer relationships are to be conducted in a positive and constructive way. Therefore, it is important that any dealings between Councillors and officers should

- observe standards of courtesy and that neither party should seek to take unfair advantage of their position nor seek to exert undue influence on the other party.
- Individual Councillors should not actively seek to undermine majority decisions of the corporate body, as this could then bring them into conflict with officers who have been charged with promoting and implementing the council's collectively determined course of action.
- Councillors should not raise matters relating to the conduct or capability of an officer, or of officers collectively, in a manner that is incompatible with this Protocol at meetings held in public or on social media. This is a long-standing tradition in public service. An officer has no means of responding to criticisms like this in public.
- Officers work to the instructions of their senior officers, not individual members. It follows that, whilst such officers will always seek to assist a member, they must not be asked to exceed the bounds of authority they have been given by their managers. Except when the purpose of an enquiry is purely to seek factual information, members should normally direct their requests and concerns to the Town Clerk, at least in the first instance.
- Officers will do their best to give timely responses to members' enquiries. However, officers should not have unreasonable requests placed on them. Their work priorities are set and managed by the Town Clerk. Members should avoid disrupting officers' work by imposing their own priorities.

- Members will endeavour to give timely responses to enquiries from officers.
- An officer shall not discuss with a member personal matters concerning him/herself or another individual employee. This does not prevent an officer raising on a personal basis, and in their own time, a matter with his/her ward (division) member.
- Members and officers should respect other's free (i.e. non-Council) time.

7. THE COUNCIL AS AN EMPLOYER

- Officers are employed by the Council as a whole.
- Members' roles are limited to:
 - the appointment of specified posts
 - determining human resources policies and conditions of employment
 - hearing and determining appeals.
- If participating in the appointment of officers, members should:
 - remember that the sole criterion is merit
 - never canvass support for a particular candidate
 - not take part where one of the candidates is a close friend or relative
 - not be influenced by personal preferences i.e. not favour a candidate by giving them information not available to the other candidates.

Expectations

All Councillors can expect:

- A commitment from officers to the council as a whole, and not to any individual councillor, group of councillors or political group;
- A working partnership;
- Officers to understand and support respective roles, workloads and pressures;
- A timely response from officers to enquiries and complaints;
- Officer's professional and impartial advice, not influenced by political views or personal preferences;
- Timely, up to date, information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities or positions that they hold;
- Officers to be aware of and sensitive to the public and political environment locally;
- Respect, courtesy, integrity and appropriate confidentiality from officers and other councillors;
- Training and development opportunities to help them carry out their role effectively;
- Not to have personal issues raised with them by officers outside the council's agreed procedures;
- That officers will not use their contact with councillors to advance their personal interests or to influence decisions improperly. Officers can expect from councillors:

- A working partnership;
 - An understanding of, and support for, respective roles, workloads and pressures;
 - Leadership and direction;
 - Respect, courtesy, integrity and appropriate confidentiality;
 - Not to be bullied or to be put under undue pressure;
 - That councillors will not use their position or relationship with officers to advance their personal interests or those of others or to influence decisions improperly;
 - That councillors will at all times comply with the council's adopted Code of Conduct.

Some general principles

Close personal relationships between councillors and officers can confuse their separate roles and get in the way of the proper conduct of council business, not least by creating a perception in others that a particular councillor or officer is getting preferential treatment.

Special relationships with particular individuals are not recommended as it can create suspicion that an employee favours that councillor above others.

The Proper Officer is the head of paid services and has a line-management responsibility to all other staff. Communications should be made directly with the Proper Officer, unless it is agreed by the Proper Officer that such communications may take place directly with other officers over a particular matter. Councillors should not give instructions directly to the Proper Officer's staff without the express approval of the Proper Officer.

8. COUNCILLORS' ACCESS TO INFORMATION AND TO COUNCIL DOCUMENTS

Councillors are free to approach officers to provide them with such information, explanation and advice as they may reasonably need in order to assist them in discharging their role as members of the council. This can range from a request for general information about some aspect of the council's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Officer.

The legal rights of councillors to inspect council documents are covered partly by statute and partly by the common law.

The common law right of councillors is based on the principle that any member has a prima facie right to inspect council documents so far as their access to the documents is reasonably necessary to enable the member properly to perform their duties as a member of the council. This principle is commonly referred to as the "**need to know**" principle.

The exercise of this common law right depends therefore upon the councillor's ability to demonstrate that they have the necessary "need to know". In this respect a member

has no right to “a roving commission” to go and examine documents of the council. Mere curiosity is not sufficient. The crucial question is the determination of the “need to know”. This question must be determined by the officer.

In some circumstances (e.g. a committee member wishing to inspect documents relating to the functions of that committee) a councillor’s “need to know” will normally be presumed. In other circumstances (e.g. a councillor wishing to inspect documents which contain personal information about third parties) a councillor will normally be expected to justify the request in specific terms. Any council information provided to a councillor must only be used by the councillor for the purpose for which it was provided i.e. in connection with the proper performance of the councillor’s duties as a member of the council.

For completeness, councillors do, of course, have the same right as any other member of the public to make requests for information under the Freedom of Information Act 2000.

9. MEMBERS OF OTHER COMMITTEES OR SUB-COMMITTEES AND OFFICERS

- The appropriate senior officers will offer to arrange informal meetings with chairpersons, vice chairpersons, and spokespersons of committees and sub-committees if required.
- The Town Clerk has the right to present reports and give advice to committees and sub-committees.
- Members of a committee or sub-committee shall take decisions within the remit of that committee or sub-committee and will not otherwise instruct officers to act.
- At some committee or sub-committee meetings, a resolution may be passed which authorises a named officer to take action between meetings in consultation with the chairperson. In these circumstances it is the officer, not the chairperson, who takes the action and is responsible for it. A chairperson has no legal power to take decisions on behalf of a committee or sub-committee; neither should they apply inappropriate pressure on the officer.

10. PARTY GROUPS AND OFFICERS

- The Town Clerk may properly be asked to contribute to deliberations of matters concerning Council business by party groups.
- The Town Clerk has the right to refuse such requests but will not attend a meeting of a party group where some of those attending are not members of the Council.
- Officer support will not extend beyond providing factual information or professional advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business, and therefore should not be expected to be present at meetings or parts of meetings when such matters are to be discussed.
- Party group meetings are not empowered to make decisions on behalf of the Council, and conclusions reached at such meetings do not rank as formal

decisions. The presence of an officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so.

- Where officers provide factual information and advice to a party group in relation to a matter of Council business, this is not a substitute for providing all necessary information and advice when the matter in question is formally considered by the relevant part of the Council.
- It must not be assumed that an officer is supportive of a particular policy or view considered at a party group meeting simply because he/she has attended or provided information to the meeting.
- Officers will respect the confidentiality of any party group discussions at which they are present and, unless requested to do so by that party group, will not relay the content of such discussions to another party group or to any other members.
- In their dealings with party groups, officers must treat each group in a fair and even-handed manner.
- Members must not do anything which compromises or is likely to compromise officers' impartiality.
- The duration of an officer's attendance at a party group meeting will be at the discretion of the group, but an officer may leave at any time if he/she feels it is no longer appropriate to be there.
- The Town Clerk accepting an invitation to the meeting of one party group shall not decline an invitation to advise another group about the same matters. He/she must give substantially the same advice to each.
- An officer should be given the opportunity of verifying comments and advice attributed to him/her in any written record of a party group meeting.
- No member will refer in public or at meetings of the Council to advice or information given by officers to a party group meeting.
- At party group meetings where some of those present are not members of the Council, care must be taken not to divulge confidential information relating to Council business. Persons who are not members are not bound by the members' code of conduct. They do not have the same rights to Council information as members.

11. LOCAL MEMBERS AND OFFICERS

- To enable them to carry out their ward role effectively, members need to be fully informed about matters affecting their ward. The Town Clerk must ensure that all relevant staff are aware of the requirement to keep local members informed, thus allowing members to contribute to the decision-making process and develop their representative role.
- This requirement is particularly important:
 - a) during the formative stages of policy development, where practicable
 - b) in relation to significant or sensitive operational matters
 - c) whenever any form of public consultation exercise is undertaken and may affect a single ward. Where they have a wider impact, a number of local members will need to be kept informed.

- Whenever a public meeting is organised by the Council to consider a local Issue, all the members representing the wards affected should be invited to attend the meeting as a matter of course.
- If a local member intends to arrange a public meeting on a matter concerning some aspect of the Council's work, he/she should inform the Town Clerk. Provided the meeting has not been arranged on a party political basis:
 - a) An officer may attend but is not obliged to do so, and the meeting may be held in Council-owned premises.
 - b) No such meetings should be arranged or held in the immediate run-up to Council elections.
 - c) Whilst support for members' ward work is legitimate, staff should not be asked to accompany members to ward surgeries.
- In seeking to deal with constituents' queries or concerns, members should not seek to jump the queue but should respect the Council's procedures. Officers have many pressures on their time. They may not be able to carry out the work required by members in the requested timetable and may need to seek instructions from their managers.

12. MEDIA RELATIONS

- All formal relations with the media must be conducted in accordance with any Council agreed procedures and the law on local authority publicity.
- Press releases or statements made by officers must promote or give information on Council policy or services. They will be factual and consistent with Council policy. They cannot be used to promote a party group.
- Officers will keep relevant members informed of media interest in the Council's activities, especially regarding strategic or contentious matters.
- Before responding to enquiries from the media, officers will ensure they are authorised to do so.
- If a member is contacted by, or contacts, the media on an issue, he/she should:
 - d) indicate in what capacity he/she is speaking (e.g. as ward member, in a personal capacity, on behalf of the Council, or on behalf of a party group)
 - e) be sure of what he/she wants to say or not to say.
 - f) If the Council uses the services of a Media Consultant all press releases should be provided by the Media Consultant and approved by the Town Clerk or Deputy Town Clerk prior to issue.
 - g) consider the likely consequences for the Council of his/her statement (e.g. commitment to a particular course of action, image, allegations of jumping to conclusions).
 - h) never give a commitment in relation to a matter which may be subject to claims from third parties and/or are likely to be an insurance matter
 - i) consider whether to consult other relevant members.
 - j) take particular care in what he/she says in the run-up to local or national elections to avoid giving the impression of electioneering, unless he/she has been contacted as an election candidate or political party activists.

The council must comply with the provisions of the Local Government Act 1986 (“the Act”) regarding publicity.

All media relations work will comply with the national Code of Practice 10 for Local Government Publicity. The Code is statutory guidance and the council must have regard to it and follow its provisions when making any decision on publicity.

The LGA has produced useful guidance on the Publicity Code - <https://www.local.gov.uk/publications/short-guide-publicity-during-pre-election-period>

For more detailed information and guidance regarding the role of councillors in connection with the use of social media, reference should be made to the council’s Social Media Policy.

13. CORRESPONDENCE

- Correspondence between an individual member and an officer should not be copied to another member unless the author expressly intends and states that this is the case or consents. Where correspondence is copied, this should always be made explicit, i.e. there should be no “blind” copies. Where exceptionally it is necessary to copy the correspondence to another councillor, this should be made clear to the original councillor. In other words, a system of “silent copies” should not be employed. Acknowledging that the “BCC” system of e-mailing is used, it should be made clear at the foot of any e-mails if another councillor has received an e-mail by adding “CC councillor X.”
- Official letters written on behalf of the Council should normally be in the name of the relevant officer, rather than under the name of a councillor. Letters or emails which, for example, create obligations or give instructions on behalf of the council should never be sent out in the name of a councillor.
- The Chairperson may initiate correspondence in his/her own name.
- Letters which create legally enforceable obligations or which give instructions on behalf of the Council should never be sent in the name of a member.
- When writing in an individual capacity as a ward member, a member must make clear that fact.

14. ACCESS TO PREMISES

- Officers have the right to enter Council land and premises to carry out their work.
- Members have a right of access to Council land and premises to fulfil their duties.
- When making visits as individual members, members should:
 - k) whenever practicable, notify and make advance arrangements with the appropriate manager or officer in charge
 - l) comply with health and safety, security and other workplace rules.
 - m) not interfere with the services or activities being provided at the time of the visit.
 - n) if outside his/her own ward notify the ward member(s) beforehand.

- o) take special care at schools and establishments serving vulnerable sections of society to avoid giving any impression of improper or inappropriate behaviour.

15. USE OF COUNCIL RESOURCES

- The Council can provide members with services such as typing, printing and photocopying, and goods such as stationery to assist them in discharging their roles as members of the Council. These goods and services are paid for from the public purse. They should not be used for private purposes or in connection with party political or campaigning activities.
- Members should ensure they understand and comply with the Council's own rules about the use of such resources, particularly:
 - p) where facilities are provided in members' homes at the Council's expense
 - q) in relation to any locally agreed arrangements e.g. payment for private photocopying
 - r) regarding ICT security
- Members should not put pressure on staff to provide resources or support which officers are not permitted to give.

Examples are:

- s) business which is solely to do with a political party
- t) work in connection with a ward or constituency party political meeting
- u) electioneering
- v) work associated with an event attended by a member in a capacity other than as a member of the Council
- w) private personal correspondence
- x) work in connection with another body or organisation where a member's involvement is other than as a member of the Council
- y) support to a member in his/her capacity as a Councillor of another local authority.

16. INTERPRETATION, COMPLAINTS AND ALLEGATIONS OF BREACHES

Procedure for officers:

From time to time the relationship between councillors and the officer (or other employees) may break down or become strained. Whilst it is always preferable to resolve matters informally, it is important that the council adopts a formal grievance protocol or procedure.

The principal council's monitoring officer may be able to offer a mediation/conciliation role, or it may be necessary to seek independent advice. The chair of the council should not attempt to deal with grievances or work-related performance or line management issues on their own. The council should delegate authority to a small group of councillors to deal with all personnel matters.

The law requires all employers to have disciplinary and grievance procedures. Adopting a grievance procedure enables individual employees to raise concerns, problems or complaints about their employment in an open and fair way. Where the matter relates to a formal written complaint alleging a breach of the councillors' Code of Conduct the matter must be referred to the principal council's monitoring officer in the first instance in line with the Localism Act 2011. The council may however try to resolve any concerns raised informally before they become a formal written allegation.

Procedure for councillors:

If a Councillor is dissatisfied with the conduct, behaviour or performance of the officer or another employee, the matter should be reported to the chair and then raised with the officer in the first instance. If the matter cannot be resolved.

- If direct discussion with the officer is inappropriate (e.g. because of the seriousness of the concern) or fails to resolve the matter, the member should raise the issue with the Town Clerk.
- A serious breach of this protocol by an officer may lead to an investigation under the Council's disciplinary procedure.
- An officer who believes a member may have acted other than in accordance with this protocol should raise his concern with the Town Clerk. He / she will consider how the complaint or allegation should be dealt with. More serious complaints may involve alleged breaches of the members' code of conduct.
- Officers should refer to the Grievance Policy for complaints against Officers.

Members or officers with questions about the implementation or interpretation of any part of this protocol should seek guidance of the Town Clerk.