



AINTREE VILLAGE PARISH COUNCIL

Member/Officer Protocol

20th January 2020
Minutes 7023

Aintree Village Parish Council **Report on Member/Officer Protocol**

1.0 Purpose of report

1.1 The purpose of this report is for Members to consider and agree the Member/Officer Protocol below.

2.0 Introduction and Principles

2.1 The purpose of this Protocol is to guide Members and Officers of the Council in their relations with one another in such a way as to ensure the smooth running of the Council and to satisfy the ethical standards required.

2.2 Given the variety and complexity of such relations this Protocol does not seek to be either prescriptive or comprehensive. It simply offers guidance on some of the issues which most commonly arise. It is hoped, however, that the approach which it adopts to these issues will serve as a guide to dealing with other circumstances.

2.3 This Protocol is to a large extent a written statement of current practice and convention. It seeks to promote greater clarity and certainty. If the Protocol is followed, it should ensure that Members receive objective and impartial advice and that Officers are protected from accusations of bias and any undue influence from Members.

2.4 This Protocol is consistent with the Members' Code of Conduct. Consequently, a breach of the provisions of this Protocol may also constitute a breach of these Codes.

2.5 This Protocol should be read in conjunction with the Codes of Conduct, and any guidance issued by the Monitoring Officer of Sefton Council.

3.0 Limitations of Members' Authority

3.1. The authority of Members is collective and, as individuals, they have no authority to issue specific directions to any employee, or make criticism directly. Members must not formally inspect any Council property without authority or issue orders or correspondence.

3.2. The long standing requirements on Members, as employers, were re-affirmed in law by an Employment Appeals Tribunal, *Moore v Bude & Stratton Town Council*. This confirmed that the Town Council collectively was the employer that the unofficial actions of an individual Member could destroy the entire basis of the employer/employee relationship and that employees were entitled to a "reasonably congenial working relationship".

4.0 THE RELATIONSHIP: GENERAL POINTS

- 4.1 Whilst both Members and Officers are servants of the public and they are indispensable to one another the responsibilities are distinct. Members are responsible to the electorate and serve only so long as their term of office lasts. Members are responsible for setting policy. Officers are responsible to the Council. Their job is to give advice to Members and the Council, and to carry out the Council's work under the direction and control of the Council and its various bodies.
- 4.2 At the heart of the Codes and this Protocol, is the importance of mutual respect. Member/Officer relationships are to be conducted in a positive and constructive way. Therefore, it is important that any dealings between Members and Officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party.
- 4.3 Members must respect the impartiality and integrity of all the Council's Officers. Similarly, all Officers must respect the role of Members as elected representatives.
- 4.4. Inappropriate relationships can be inferred from the language/style used from both verbal and written communication. To protect both Members and Officers, Officers should address Members at all formal meetings as, Councillor X and Mr or Madam Chair. Save where circumstances clearly indicate that a level of informality is appropriate. Similarly, when addressing Officers at formal meetings of the Council, Members should address Officers by their post title.
- 4.5 A Member should not raise matters relating to the conduct or capability of an Officer in a manner that is incompatible with the objectives of this Protocol. This is a longstanding tradition in public service. An Officer has no means of responding to criticisms in public. If a Member feels he/she has not been treated with proper respect, courtesy or has any concern about the conduct or capability of an Officer, he/she should raise the matter with the Clerk. Any action taken against an Officer in respect of a complaint, will be dealt with in accordance with the provisions of the Employee Handbook, which is currently being developed.
- 4.6 An Officer should not raise matters with a Member relating to the conduct or capability of another Officer in a manner that is incompatible with the overall objectives of this Protocol.
- 4.7 Where an officer feels that he/she has not been properly treated with respect and courtesy by a Member, he/she should raise the matter with the Clerk. In these circumstances the Clerk will take appropriate action either by approaching the individual Member or by referring the matter to the Monitoring Officer in accordance with the Code of Conduct.

5.0 ROLES OF MEMBERS AND OFFICERS

5.1 The current statutory basis for employing a Clerk is Section 112 of the Local Government Act 1972. The Clerk to the Council is 'The Proper Officer' of the Council i.e. the person responsible for formal acts and to whom all correspondence is addressed in the normal course of events, or for the service of legal documents. The Clerk is responsible for:-

- the administration of the affairs of the Council
- advising the Council on policy matters
- guiding the Chairman on procedural issues
- ensuring that Council decisions after due deliberation are conducted according to the relevant rules, regulations and procedures.

5.2 It is the duty of the Clerk as the Proper Officer to assist Members of the Council on matters of fact and law. Councillors (even where it is contrary to their personal wishes or expectations) should take fully into account the advice and guidance given by the Clerk to the Council on the existence and applicability of the relevant facts or the law. Councillors should then seek means to make their policy decisions taking into account such guidance.

5.3 The Responsible Finance Officer (S151 Officer) has statutory duties in relation to the financial administration and stewardship of the Authority. This statutory responsibility cannot be overridden. The statutory duties arise from:-

- Section 151 of the Local Government Act 1972
- The Local Government Finance Act 1988
- The Local Government and Housing Act 1989
- Audit Commission Act 1998
- The current Accounts and Audit Regulations

The Responsible Financial Officer is responsible for:-

- The proper administration of the Authority's financial affairs
- Setting and monitoring compliance with financial management standards
- Advising on the corporate financial position and on the key financial controls necessary to secure sound financial management
- Providing financial information
- Preparing the revenue budget and capital programme
- Treasury management

5.4 Members have four main roles:-

- Determining the policy of the Council
- Monitoring and reviewing the performance of the Council in implementing that policy and delivering services
- Representing the Council externally, where appointed

- Acting as advocates on behalf of their constituents and the wider community

6.0 THE COUNCIL DECISION MAKING PROCESS

6.1 Day to day decision making remains the responsibility of the Clerk as delegated by the Council.

6.2 Members must always remember that decisions and policies, once determined by the Council are binding.

7.0 THE RELATIONSHIP: GENERAL POINTS

7.1 Officers are responsible for day-to-day managerial and operational decisions within the Council and will provide support to all Members in their various roles.

7.2 In giving such advice to Members and in preparing and presenting reports, it is the responsibility of the Officer to express his/her own professional views and make recommendations. Members should not seek to pressure the Officer to make a recommendation contrary to the Officer's professional view because of their wish to express a contrary view.

7.3 The Clerk has certain statutory roles which need to be understood and respected by all Members. Members must respect these statutory obligations, must not obstruct the Clerk in the discharge of his/her responsibilities and must not victimise him/her for discharging his/her responsibilities.

7.4 The following key principles reflect the way in which Officers generally relate to Members:-

- All Officers are employed by, and accountable to the Council as a corporate body
- Support from Officers is needed for all of the authority's functions
- Day to day managerial and operational decisions remain the responsibility of the Clerk and other Officers and
- All Officers will be provided with training and development to help them support the various Member roles effectively.

7.5. Finally, it must be remembered that Officers within the Council are accountable to their line manager and ultimately the Clerk and whilst Officers should always seek to assist a Member, they must not, in so doing, go beyond the bounds of whatever authority they have been given by their line manager or the Clerk.

8.0 PREPARATION OF COUNCIL AGENDAS, MINUTES AND REPORTS AND CONDUCT OF MEETINGS

8.1. The Clerk, or other appointed Officer, is responsible under statute for preparing the Agendas for all meetings of the Council, Committees, Sub Committees and Working Parties and for circulation of them to meet statutory requirements.

8.2 The Clerk, or other appointed Officer, is responsible for the content of all Minutes and for circulation of them to meet statutory requirements.

8.3. An Officer will be present at all meetings involving Members of the Council and will advise on any questions relating to Standing Orders, Financial Regulations, legal requirements or committee procedures and will produce formal minutes of the meeting.

8.4 All Committee reports will contain a Recommendation where appropriate, which formally sets out the best advice from the Officer concerned, although the decision to accept this or not rests with the Members. Members should raise issues with that Officer prior to the meeting if at all possible.

8.5 All Members shall seek the advice of the Clerk where they consider there is doubt about the legality for a decision or where they consider a decision might be contrary to pre-determined policies of the Council.

8.6 Members and Officers should be mutually supportive in order to minimise any potential embarrassment to the Council. Criticism of officers should be dealt with in private and, by the same token, Officers will never be publicly critical of the Council or its policies.

9.0 THE RELATIONSHIP: OFFICER SUPPORT: MEMBER AND PARTY GROUPS

9.1 It must be recognised by all Officers and Members that in discharging their duties and responsibilities they serve the Council as a whole.

9.2 The only basis on which the Council can lawfully provide support services (e.g. stationery, typing, printing, photo-copying, transport etc.) to Members is to assist them in discharging their role as Members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity.

10.0 MEMBERS' ACCESS TO INFORMATION AND TO COUNCIL DOCUMENTS

10.1 Members have the right to ask for information pursuant to their legal rights to information. This right extends to such information, explanation and advice as they may reasonably need in order to assist them in discharging their role as a Member of the Council. This can range from a request for general information about some aspect of an activity to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Clerk or in the case of financial information to the Responsible Finance Officer.

10.2 As regards the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law.

- 10.3 Members have a statutory right to inspect any Council document which contains material relating to any business which is to be transacted by the Council. The right applies irrespective of whether the Member is a member of the meeting concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers.
- 10.4 The common law rights of Members remain intact and are much broader and are based on the principle that any Member has a prima facie right to inspect Council documents so far as his/her access to the document is reasonably necessary to enable the Member properly to perform his/her duties as a Member of the Council. This principle is commonly referred to as the 'need to know' principle.
- 10.5 The exercise of this common law right in regard to sensitive information depends therefore, upon an individual Member being able to demonstrate that he/she has 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 initially be determined by the Clerk.
- 10.6 In some circumstances (e.g. a meeting of the Council or its bodies and a Member wishing to inspect documents relating to the business of that meeting) a Member's 'need to know' will normally be presumed. In other circumstances (e.g., a Member wishing to inspect documents which contain personal information about third parties) the Member will normally be expected to justify the request in specific terms.
- 10.7 Further and more detailed advice regarding Members rights to inspect Council documents may be obtained from the Clerk.
- 10.8 Finally, any Council information provided to a Member must only be used by Members for the purpose for which it was provided, i.e. in connection with the proper performance of the Member's duties as a Member of the Council. Therefore, for example, early drafts of Committee reports/briefing papers are not suitable for public disclosure and should not be used other than for the purpose for which they were supplied.

11.0 10 CORRESPONDENCE

- 11.1 Correspondence between an individual Member and an Officer should not normally be copied (by the Officer) to any other Member. Where exceptionally it is necessary to copy the correspondence to another Member, this should be made clear to the original Member. In other words, a system of 'blind or silent copies' should not be employed.

11.2 Official letters on behalf of the Council should be sent in the name of the appropriate Officer, rather than in the name of a Member. Letters which, for example, create legal obligations or give instructions on behalf of the Council should never be sent out in the name of a Member.

12.0 PUBLICITY AND PRESS RELEASES

12.1 Local councils are accountable to their electorate. In recent years, all local councils have increasingly used publicity to keep the public informed and to encourage public participation. Every Council needs to tell the public about the services it provides.

12.2 Publicity is, however, a sensitive matter in any political environment because of the impact it can have. Expenditure on publicity can be significant. It is essential, therefore, to ensure that decisions on publicity are properly made in accordance with clear principles of good practice.

12.3 All press releases will be made by the Clerk. If in doubt, Members should initially seek advice from the Clerk. Particular care should be paid to any such publicity used by the Council around the time of an election. Particular advice will be given on this by the Clerk.

13.0 MEMBERS IN THEIR COMMUNITYT ROLE AND OFFICERS

13.1 In all circumstances, the role of Officers at such meetings is to provide information on the topic under consideration and any decision making process which might be relevant, but not to offer or share judgements. Officers will seek to assist in the effective engagement of the community but will be mindful at all times of the integrity of the formal decision making process.

13.2 Members attending local consultation meetings, which may on occasion give rise to heated debate, should be mindful of the restrictions on the responses available to Officers and both Officers and Members should act at all times in accordance with their respective Codes of Conduct.

14.0 CONCLUSION

14.1 Mutual understanding and openness on these sort of sensitive issues and basic respect are the greatest safeguard of the integrity of the Council, its Members and Officers.

14.2 Questions of interpretation of this Protocol should be discussed with the Clerk.

14.3 Copies of the Protocol will be issued to all Members, upon election, and all staff.