

Draft Member Officer Protocol

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1. Introduction

1.1 Mutual trust and respect between councillors and officers (staff) are essential to ensure good governance and the effective running of Ferndown Town Council (Council). This Protocol is written as it is considered good practice for a Council to have a Member/Officer Protocol to inform Members and Officers of what they might reasonably expect of each other.

1.2 This Protocol, drawn from a national model, therefore covers:

- the respective roles and responsibilities of the Members and Officers;
- relationships between Members and Officers;
- where/who Members and Officers should go to if they have concerns;
- who is responsible for making decisions.

1.3 In the context of this Protocol the term Officer means every paid employee of the Council and term Member means elected councillors.

2. Background

2.1 This protocol is intended to assist Members and Officers in approaching some of the sensitive circumstances which arise in a challenging working environment.

2.2 The reputation and integrity of the Council is significantly influenced by the effectiveness of Members and Officers working together to support each other's roles.

2.3 The aim is effective and professional working relationships characterised by mutual trust, respect and courtesy. Close personal familiarity should be avoided.

3. Members and Officers

3.1 The following views might be held by Members:

- uncertainty as to who may be contacted about a particular matter, and when,
- uncertainty as to progress on issues referred,
- acknowledgements of issues raised, and obtaining information (any Member should not be given preferential treatment over others - there is an equal 'need to know' and all Members should be treated equally),
- clarity on the Officer/Member relationship required.

3.2 Members can expect:

- a commitment from officers to Council as a whole, and not to any individual councillor, group of councillor's 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 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;
- 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, and
- that Officers will not use their contact with Members to advance their personal interests or to influence decisions improperly.

3.3 The following views might be held by Officers:

- undue pressure by some Members to be given preferential treatment for issues they have raised,
- unfair and unwarranted criticism of Officers, particularly at a level where an Officer may be overawed or at a disadvantage,
- uncertainty as to the role of Members,
- some uncertainty as to whether Officers or Members should respond to constituents on Council business,
- uncertainty as to involvement of Officers, at request of Members, at meetings organised by outside agencies or general public.

3.4 Officers can expect:

- 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 Members will not use their position or relationship with Officers to advance their personal interests or those of others or to influence decisions improperly, and
- that Members will at all times comply with Council's adopted Code of Conduct.

3.5 Given the variety and complexity of Member/Officer relations, any Protocol cannot seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise. All successful organisations need to be flexible to suit circumstances but at the same time, to ensure the Protocol does not become a worthless document, it should be recognised that the guidelines should, as far as possible, be uniformly followed.

3.6 It is also important to note that this Protocol sits together with a number of other Council procedures and that there may be some overlap between the Protocol and those procedures, for example:

- Standing Orders
- Scheme of Delegation
- Grievance Procedure
- Complaints Procedure
- Code of Conduct
- Dignity at Work, Bullying, and Harassment Policy
- Members register of interests.

3.7 The Council has statutory duties with regard to equality issues to positively promote equality. Members and officers shall not by their behaviour or speech be discriminatory with regard to a person's ethnicity, gender, disability religious or sexual orientation. Such principles shall apply to the implementation of all personnel policies, recruitment and promotion as they apply to day-to-day operations.

3.8 Members should not raise matters relating to the conduct or capability of officers either individually or collectively at meetings, whether held publicly or not. If a member feels they have not been treated with proper respect, courtesy or have any concern about the conduct or capability of an officer they should raise the matter with the Town Clerk or in the case of the Town Clerk with the Chairman of Personnel Committee.

3.9 Members should not require officers to change their professional advice nor take any action which the officer considers unlawful or illegal or which would amount to maladministration or breach of a statutory Code of Conduct.

3.10 Members should consult with the Town Clerk about legality, maladministration, financial impropriety and probity or where they have any doubts as to whether the particular decisions were, or are likely to be, contrary to the policy framework or budget.

3.11 In seeking advice and support, Members should have due regard to the seniority of the officer with whom they are dealing and the fact that officers owe duties to the Council and not to any individual Councillor. For this reason Councillors should not give direct instructions to officers unless authorised so to do by the Town Council. If so authorised, instructions shall be given to the Town Clerk rather than a more junior officer.

3.12 Any Member shall not question the officer in such a manner whereby the nature and frequency of the questions or tone or language used could be considered by a reasonable person to be harassment, discriminatory or otherwise unacceptable, nor deal with matters which are of a possible disciplinary/capability nature.

3.13 Members shall, at all times, respect the political impartiality of officers and must not expect officers to give a political view.

4. Access to Officers

4.1 The Town Clerk has an 'open door' policy and will aim to respond to any 'face to face' enquiries as they arise unless other priorities or meetings take precedent. Members are encouraged to make use of Council's e-mail facility.

4.2 Officers should seek to meet the following performance targets for response to Member enquiries:

- straightforward enquiries - within 24 hours (provided a weekend or bank holiday does not intervene),
- more complicated enquiries - within 5 working days,
- difficult enquiries involving research - within 10 working days.

4.3 Whenever possible, Members will seek to respond to Officers' enquiries and requests within one week from receipt of the enquiry/request.

4.4 Members should not expect action to be taken by Officers where such action would lie outside resolutions, approved budgets or priorities.

5. Access to information and Council documents

5.1 Members are entitled to such information as they may reasonably need to assist them in discharging their role as Members of the Council.

5.2 As regards the legal right of Members to inspect Council documents, this is covered partly by statute and partly by common law:

- statutory right (as contained in the Access to Information Act 1985),
- Common law right - on a 'need to know' basis, and
- National Code of Local Government Conduct (note paragraph 26 - confidential and private information).

5.3 It is important to emphasise that where there is an equal 'need to know' all Members must be treated equally, and Officers must not give some Members preferential treatment.

5.4 Unless there is an equal 'need to know', information disclosed by an Officer to a Member, should not be copied to another Member, unless it is made clear to that Member that the information is to be copied.

5.5 Where a constituent has been in contact with a Member and is seeking a written response, if the matter is dealing with a service, policy or budgetary issues, then it would be advisable if the reply was agreed with the Town Clerk.

5.6 Any Council information provided to a Member must only be used by the Member 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.

6. Undue Pressure

6.1 In dealing with Officers (especially those at a more junior level), Members need to be aware that it is possible for those Officers to be overawed and feel at a disadvantage. Whilst constructive criticism is acceptable, the manner in which it is delivered should be carefully considered.

6.2 It is important to bear in mind that in severe cases of harassment by a Member, if the Officer resigns as a consequence, there is potential for a successful unfair dismissal claim on the grounds that the implied terms of the employee's Contract of Employment have been breached due to failure to maintain mutual trust and confidence and the provision of a reasonable working environment (Moore v Bude Stratton Town Council (2000) - Employment Appeals Tribunal Case).

6.3 A Member should not apply undue pressure on an employee, either to do anything that he/she is not empowered to do or to undertake work outside normal duties or budgets. Particular care needs to be taken in connection with the use of the Council's property, resources and services.

6.4 An Officer must not seek to use undue influence on a Member and in this regard, it is desirable that close personal friendships with Members are not formed. Any Officer who is personally connected to any Member should notify the Town Clerk in writing.

6.5 Where an Officer has a complaint about a Member then that Officer should initially raise their concerns informally with the Town Clerk. If the Officer feels that these discussions do not resolve the issue, then the formal Council Grievance Procedure should be followed. In the unlikely event that the matter is not satisfactorily resolved in this way, then the matter could be referred by the Officer for consideration by the Personnel Committee.

7. Officer /Mayor Relationships

7.1 It is clearly important that there should be a close working relationship between the Mayor and the Town Clerk and other Officers. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officers' ability to deal impartially with other Members, individuals or organisations.

7.2 Whilst the Mayor will routinely be consulted as part of the process of drawing up the Agenda for a forthcoming meeting, it must be recognised that in some circumstances the proper conduct of business may require a particular matter to be included on an Agenda. The Town Clerk will always be fully responsible for the contents of any report submitted in his/her name. There may also be circumstances in which the Town Clerk will be under a duty to submit a Report.

7.3 In relation to action under any delegated power, it is important to remember that the law only allows for decisions (relating to the discharge of any of the Council's functions) to be taken by the Council, a Committee or a designated Officer with delegated powers. The law does not allow for any such decision to be taken by the Mayor or a Committee Chairman alone, or indeed by any other single Member. On some occasions when the authority to make a decision is delegated to an Officer, it is

on the basis that the Officer will exercise that authority in consultation with nominated Members. The decision, however, is that of the Officer to whom the power is delegated.

7.4 It must be remembered that Officers are accountable to the Town Clerk, and that whilst Officers should always seek to assist Members, they must not, in so doing, go beyond the bounds of whatever authority they have been given by the Town Clerk. It should also be noted that the Town Clerk has a statutory responsibility for ensuring the proper organisation and management of the Council's staff and has therefore an overall responsibility for the direction and management of all Officers.

8. Political Activity

8.1 The only basis on which the Council can lawfully provide support services (e.g., stationery, typing, printing, etc) to Members is to assist them in discharging their role as Members of the Council. They should never be used in connection with any political activity.

8.2 Officers must not be involved in attending any meetings called by residents' associations or political parties without the express consent of the Council.

8.3 Members should refrain from inviting Officers to attend meetings which have political overtones or could be seen as such.

9. Press releases and correspondence (including emails)

9.1 Press releases must operate within the limits of the Local Government Act 1986 which prohibits the Council from publishing material which appears to be designed to affect public support for a political party.

9.2 All correspondence written on behalf of the Council must be written on the relevant headed paper.

9.3 When Councillors are writing they must make it clear they are writing as a Member of the Town Council and not on behalf of the Town Council.

9.4 All correspondence should be open to the inspection of the public once it has been laid before the Council and in accordance with the Council's adopted policies. This does not apply to correspondence written in connection with legal proceedings, contractual matters or any other matter where papers can remain "exempt" within the meaning of Schedule 12A to the Local Government Act 1972, as amended or if it is in conflict with the data protection legislation.

10. Complaints, monitoring and breaches of the Protocol

10.1 From time to time the relationship between Members and Officers may break down or become strained. Recognising that this Protocol is a guideline document, it may be that breaches will not always involve a sanction against the Member or Officer concerned. It is always preferable to resolve matters informally, through conciliation by an appropriate third party. However, regular or more serious breaches may involve disciplinary action against the Officer through the Council's Disciplinary Procedure or

against the Member through the Council. Any breaches of the Protocol will also be reported for information to the Personnel Committee.

10.2 DCs Monitoring Officer may be able to offer a mediation/conciliation role, or it may be necessary to seek independent advice. For example, the Society of Local Council Clerks may be able to provide an independent person. The Chairman 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.

10.3 Subject to point 9.1 above, if a Member believes that he/she had not been treated with proper courtesy, that there has been any other breach of the Protocol by an Officer or has a concern about the conduct or capability of an employee, he/she should raise the matter with the Town Clerk. If he/she is not satisfied with the action that has been taken in response to this, he/she may raise the matter with the Chairman of the Personnel Committee who will look into the matter afresh.

10.4 Subject to point 9.1 above, if an Officer feels that he/she has not been treated with respect or is concerned about any action or statement relating to him/herself or a colleague by a Member, or conduct of a Member, he/she should raise the matter with the Town Clerk. The Town Clerk will seek to resolve it to the employee's satisfaction and where appropriate, will discuss the matter with the Chairman of the Personnel Committee.

10.5 The Town Council will review the content and operation of this Protocol from time to time. Any suggestions from Members and officers for revisions and refinements should be passed to the Town Clerk who will bring them forward to the Finance and General-Purpose Committee at the appropriate time.