

Hastings Borough Council

**Protocol for Relationships Between
Members and Officers**

Hastings Borough Council Protocol for Relationships between Members and Officers

“Every local authority should have its own written statement or protocol governing relations between members and officers”. (Third report of the Committee on Standards in Public Life – the Nolan Committee)

Introduction and Principles

- 1.1 The purpose of this Protocol is to guide Members and Officers in their relations with one another in such a way as to ensure the smooth running of the Council.
- 1.2 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.

Definitions

1. Unless the context indicates otherwise, references to the term **Council** include the Executive, overview and scrutiny committees, and other committees and sub-committees.
2. For the purposes of this protocol, the term **Executive** refers to the Leader and Cabinet.
3. Unless the context indicates otherwise, the terms **member and members** include non-elected (i.e. co-opted) members as well as elected councillors.
4. **Officers and staff** means all persons employed by the Council.
5. **Senior officer** means the Directors, Assistant Directors and Senior Managers, except where otherwise stated.
6. **Designated Finance Officer** means the officer exercising the duties prescribed by law for the financial administration of the Council.
7. **Monitoring Officer** means as described under S5 Local Government and Housing Act 1989.

Principles

8. Members and officers must at all times observe the protocol.
9. The protocol seeks to maintain and enhance the integrity (real and perceived) of local government which demands the highest standards of personal conduct.
10. Members and officers must always respect the roles and duties of each other. They must show respect in all their dealings by observing reasonable standards of courtesy, and by not seeking to take unfair advantage by virtue of their position.
11. Whilst members and officers are indispensable to one another, their responsibilities are distinct. Members are accountable to the electorate and serve only as long as their term of office lasts. Officers are accountable to the Council as a whole. Their job is to give advice to members (individually and collectively) and to carry out the Council's work under the direction of the Council.

12. The Council adopted a new code of conduct for members in June 2012. The Code of Conduct is based on the Nolan principles. These principles underpin this protocol. The Code of Conduct is to be found at Part 5 of the Council's Constitution with this protocol.
13. Until such time as a new national code appears, officers are bound by the Council's own code of conduct for staff and, in some cases, by the codes of their professional associations. The Council's code of conduct is available on the Intranet under Personnel, Policies and Procedures Index.
14. Breaches of this protocol by a member may result in a complaint to the Standards Committee whether or not it appears the members' code has also been breached. Breaches by an officer may lead to disciplinary action.

The Role of Members

15. Members have a number of roles and need to be alert to the potential for conflicts of interest which may arise between the roles. Where such conflicts are likely, members may wish to seek the advice of the Monitoring Officer/Chief Legal Officer.
16. Collectively, members are the ultimate policy-makers determining the core values of the Council and approving the authority's policy framework, strategic plans and budget.
17. Members are elected to represent their constituents. They represent the community, act as community leaders and promote the social, economic and environmental well-being of the community often in partnership with other agencies.
18. Every elected-member represents the interests of, and is an advocate for, his/her ward and individual constituents. He/she represents the Council in the ward, responds to the concerns of constituents, meets with partner agencies, and often serves on local bodies.
19. Some members have roles relating to their position as members of the Executive, overview and scrutiny committees or other committees and sub-committees of the Council.
20. Members serving on overview and scrutiny committees monitor the effectiveness of the Council's policies and services, develop policy proposals and examine community issues. They may also monitor other public sector service provision eg local health service relevant to the borough.
21. Members who serve on other committees and sub-committees collectively have delegated responsibilities, e.g. deciding quasi-judicial matters which by law are excluded from the remit of the Executive.
22. Some members may be appointed to represent the Council on local, regional or national bodies.
23. As politicians, members may express the values and aspirations of the party groups to which they belong, recognising that in their role as members they have a duty always to act in the public interest.
24. Members are not authorised to instruct officers other than:
 - through the formal decision-making process
 - to request the provision of consumable resources provided by the Council for members' use

- where staff have been specifically allocated to give support to a member or group of members. eg members secretary or overview and scrutiny review team
25. Members are not authorised to initiate or certify financial transactions, or to enter into a contract on behalf of the Council.
 26. Members must avoid taking actions which are unlawful, financially improper or likely to amount to maladministration. Members have an obligation under their code of conduct to have regard, when reaching decisions, to any advice provided by the Monitoring Officer/Chief Legal Officer or the Chief Finance Officer, or their nominees.
 27. Members must respect the impartiality of officers and do nothing to compromise it, e.g. by insisting that an officer change his/her professional advice or by seeking to involve an officer in the pursuit of a personal or political dispute with others.

The Role of Officers

28. Officers are responsible for giving advice to members to enable them to fulfil their roles. In doing so, officers will take into account all available relevant factors.
29. Under the direction and control of the Council (including, as appropriate, the executive, committees and sub-committees), officers manage and provide the Council's services within the framework of responsibilities delegated to them. This includes the effective management of employees and operational issues.
30. Officers have a duty to implement decisions of the Council, the executive, committees and sub-committees which are lawful, and which have been properly approved in accordance with the requirements of the law and the Council's constitution, and duly minuted.
31. Officers have a contractual and legal duty to be impartial. They must not allow their professional judgement and advice to be influenced by their own personal views.
32. Officers must assist and advise all parts of the Council. They must always act to the best of their abilities in the best interests of the authority as expressed in the Council's formal decisions.
33. Officers must be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for members, the media or other sections of the public.
34. Officers have the right not to support members in any role other than that of member, and not to engage in actions incompatible with this protocol. In particular, there is a statutory limitation for certain officers concerning involvement in political activities.

The Relationship: General Points

35. Officers are responsible for day-to-day managerial and operational decisions within the authority and provide support to the Leader, Cabinet, Committee Members and all Members in their respective roles.
36. Certain Statutory Officers – the Head of Paid Service, the Monitoring Officer and the Section 151 Officer (currently the Assistant Director of Financial Services and Revenues) – have specific roles. These are addressed in the Constitution. Their roles need to be understood and respected by Members.

37. Informal and collaborative two-way contact between members and officers is encouraged, but personal familiarity can damage the relationship, as might a family or business connection.
38. Members and officers should inform the Monitoring Officer of any relationship which might be seen as unduly influencing their work in their respective roles.
39. It is not enough to avoid actual impropriety. Members and officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be perceived. Specifically, a member should not sit on a body or participate in any decision which directly affects the officer on a personal basis.
40. Officers have a duty to implement the properly authorised decisions of the Council.
41. 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. For minor or routine matters members should deal with the officer concerned and not automatically elevate the matter to Assistant Director or Director level. Members should use the reporting tools provided e.g. My Hastings On-line account in the first instance
42. Members have been supplied with contact details of the relevant service managers to whom enquiries can be made. Members should only escalate issues to Directors or Assistant Directors if an issue is no longer minor or routine or if an issue is not resolved satisfactorily at the first point of contact.
43. Members should keep correspondence and telephone conversations confined between themselves and the responsible officer without copying it to Senior Managers and other members. Members should also not 'copy' members of the public as this can make a proper reply difficult for officers. Members should keep correspondence factual and not express an opinion until such time as the matter has been investigated.
44. Assistant Directors are responsible for all aspects of the budgets and work of the areas they are managing. Matters of service performance should initially always be directed to them. They have the responsibility to resolve most major issues and should know when a performance issue is sufficiently important to refer it to a Director (and in some cases for discussion with political leadership).

Directors should be involved if:-

- i) There is a problem of service failure (not individual complaints)
 - ii) A problem is of a scale that presents a risk to the Council achieving its objectives, has severe reputational risk implications, public safety concerns, and/or a major impact on the budget or carries a high political significance.
 - iii) If a corporate response is required which is beyond individual middle managers to agree.
45. Members views are representative of their constituents unless there is clear evidence to the contrary. The views of officers are based on professional judgements derived from experience and academic qualification. On occasions differences between these two approaches will arise. Where there is no lawful reason for the members request not to be actioned, but an objection from an officer on professional grounds there is a need to resolve

these differences without a significant amount of time being taken up while achieving both analysis and consistency on one side and being responsive with community on the other.

46. It is proposed that where a member and the senior manager of a service cannot reach agreement the matter is considered by the appropriate Assistant Director and the Portfolio Holder at a regular one to one meeting or other suitable (reasonably prompt) time with the aim to resolve the issue. If Assistant Director and Lead Member cannot reach agreement the matter is to be referred to the regular meeting of the Leader, Deputy Leader and Directors.
47. Officers will do their best to give timely responses to members' enquiries and will endeavour to observe the standards stated in the Council's Contact Charter ie 5 working days. However, officers should not have unreasonable requests placed on them. Their work priorities are set and managed by senior managers. Overall priorities are agreed between the Leader, Lead members, and the Directors on the basis of policies, strategies and plans agreed by the full Council or Cabinet in accordance with the Constitution. Members should avoid disrupting officers' work by imposing their own priorities ie 5 working days.
48. Members will endeavour to give timely responses to enquiries from officers.
49. Members and officers should respect each others free (i.e. non-Council) time.

The Council as Employer

50. Officers are employed by the Council as a whole.
51. Members' roles are limited to:
 - the appointment of the head of paid service and directors
 - determining human resources policies and conditions of employment, and
 - hearing and determining appeals of the head of paid service and directors and the disciplinary hearings of statutory officers.
52. In light of the nature of the members' role, an officer should not discuss with a member personal employment matters concerning him/herself or another individual employee. The Council has established procedures should the personal matter be in the nature of a grievance (see Grievance Policy and Procedure). This does not, of course, prevent an officer raising on a personal basis, and in his/her own time, a matter with his/her ward member.
53. Members shall not act outside these roles.
54. 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, and
 - not favour a candidate by giving him/her information not available to the other candidates.

55. A member should not sit on an appeal hearing if the appellant is a friend, a relative, or an officer with whom the member has had a close working relationship.

Mayor and Officers

56. Officers will respect the position of Mayor and provide appropriate support.

Executive Members and Officers

57. Executive members will take decisions in accordance with the constitution and will not otherwise direct staff. Senior officers will be responsible for instructing staff to implement the executive's decisions.
58. Senior officers and executive members shall agree mutually convenient methods of regular contact. The Directors shall meet regularly with the Leader and Deputy Leader and Shadow Leader and Deputy Shadow Leader. Before taking any formal decisions, the executive will seek appropriate professional advice.
59. Performance management arrangements for all directors will be exercised by the Leader and Deputy Leader.
60. The Leader will be responsible for reconciling any differences between directors, should they arise.
61. Before any formal decisions with a financial implication are taken by the Executive, the Finance Officer and the senior officer(s) for the service(s) concerned must be consulted. This is to ensure that those officers who are budget holders:
- are aware of the proposed decision
 - have the opportunity to offer advice, and
 - are subsequently able properly to authorise the financial transactions needed to implement decisions.
62. Officers taking decisions under their delegated powers must consider the advisability of informing the relevant Lead member/s of their intentions in advance when the matter to which the decision relates to is likely to be sensitive or contentious, or has wider policy implications.
63. In relation to executive decision-making, at present the Council does not operate individual executive member decision-making and so delegation will be to a senior officer in consultation with the Leader or Lead Member and sometimes with the leader of the opposition group or groups.

Overview and Scrutiny Members and Officers

64. Members of the Scrutiny Committee, when questioning Members and Officers should:
- Direct their question to the merits of the decision under review
 - Ascertain the factual and other information on which the decision was based
 - Confirm the compliance of the decision making process with the Council's principles of decision making
 - Test what alternatives have been considered and the reasons for their rejection.

65. They should not:
- Question the conduct of Individual Members or Officers
 - Seek for Officers to disclose the contents of confidential discussions, papers or advice
 - Criticise an Officer by name
 - Seek to instigate or become in any way involved in disciplinary or grievance procedures in relation to the actions of Members or Officers
 - Act as a “court of appeal” against specific decisions relating to individuals or pursue complaints by individuals (Members, Officers or members of the Public) where other procedures exist for this.
66. It is recognised that officers required to appear before an overview and scrutiny committee may often be those who have advised the Executive or another part of the Council on the matter under investigation. In these circumstances, an officer may have a conflict of interest. Both members and officers need to consider the severity of the conflict. In case of such conflict, provision may be made for managing the conflict eg by means of advice from an outside source.
67. In giving evidence, officers must not be asked to give political views.
68. In exercising the right to call-in a decision of the Executive, overview and scrutiny members must seek senior officer advice if they consider the decision is contrary to the Council’s approved plans, policies or frameworks, or is unlawful.

Members of Other Committees or Sub-Committees and Officers

69. The appropriate senior officers will offer to arrange regular informal meetings with chairs, vice-chairs, and spokesperson of committees and sub-committees.
70. Senior officers (including the Monitoring Officer and the designated Finance Officer) have the right to present reports and give advice to committees and sub-committees.
71. 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.
72. At some committee or sub-committee meetings, a resolution may be passed which authorises the Directors or their nominee to take action between meetings in consultation with the chair. In these circumstances, it is the officer, not the member, who takes the action and is responsible for it. A member has no legal power to take decisions on behalf of a committee or sub-committee, neither should he/she apply inappropriate pressure on the officer. It may be that in such circumstances it would be appropriate to take the matter back to committee for decision, though this will not always be possible due to urgency.

Party Groups and Officers

73. Senior officers may properly be asked to contribute to deliberations of matters concerning Council business by party groups.

74. Officers have the right to refuse such requests, and will normally not attend a meeting of a party group where some of those attending are not members of the Council.
75. 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.
76. 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.
77. 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 the necessary information and advice when the matter in question is formally considered by the relevant part of the Council.
78. 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.
79. 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. This shall not prevent an officer providing feedback to other senior officers on a need-to-know basis.
80. In their dealings with party groups, officers must treat each group in a fair and even-handed manner.
81. Members must not do anything which comprises or is likely to compromise officers' impartiality.
82. The duration of an officer's attendance at party group meetings 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.
83. An officer accepting an invitation to the meeting of one party group shall not decline an invitation to advise another group about the same matter. He/she must give substantially the same advice to each.
84. 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.
85. No member will refer in public or at meetings of the Council to advice or information given by officers to a party group meeting.
86. At party group meetings where some of those present are not members of the Council, care must be taken by members and officers 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.
87. Any particular cases of difficulty or uncertainty in relation to this part of the protocol should be raised with one of the Directors and the relevant party group leader.

Local Members and Officers

88. To enable them to carry out their ward role effectively, members need to be fully informed about matters affecting their ward. Senior officers 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.
89. 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
 - d. during an overview and scrutiny investigation.
90. Issues may affect a single ward. Where they have a wider impact, a number of local members will need to be kept informed.
91. 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.
92. 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 relevant senior officer. Provided the meeting has not been arranged on a party political basis:
 - an officer may attend but is not obliged to do so, and
 - the meeting may be held in Council-owned premises, subject to availability.
93. No such meetings should be arranged or held in the immediate run-up to Council elections i.e. from the time when notice of election is published.
94. Whilst support for members' ward work is legitimate, an officer should never, in his/her capacity as officer, be invited to or to accompany a member to a ward surgery or a ward or constituency political party meeting.
95. It is acknowledged that some Council staff (e.g. those providing dedicated support to executive members) may receive and handle messages for members on topics unrelated to the Council. Whilst these will often concern diary management, care should be taken to avoid Council resources being used for private or party political purposes.
96. 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 timescale, and may need to seek instructions from their managers.

Members' Access to Documents and Information

97. This part of the protocol should be read in conjunction with the Access to Information Rules in the Council's constitution. Members of the Council have the same rights as any other member of the public to information under the Freedom of Information Act 2000 and are subject to the same requirements and exemptions.

98. As Councillors, Members may request senior officers to provide them with such information, explanation and advice as they may reasonably need to assist them to discharge their roles as members. This is generally known as the “need to know” principle. This may range from general information about some aspect of the Council’s services to specific information on behalf of a constituent. It is not, however, a licence to a “roving commission to go and examine the books or documents of a corporation”. Where information is requested on behalf of a third party, it will only be provided if:
- it is in the public domain, and
 - it is not barred by the Data Protection Act from being given.
99. Every member of the Executive, an overview and scrutiny committee, and/or any other committee or sub-committee has a right to inspect documents about the business of that overview and scrutiny committee, other committee or sub-committee or the Executive.
100. A member who is not a member of a specific overview and scrutiny committee, other committee or sub-committee, or the Executive may have access to any document about the business of those committees, except certain categories of exempt or Part II information.
101. Disputes as to the validity of a member’s request to see a document on a need to know basis will be determined by the Monitoring Officer/ Chief Legal Officer. Officers should seek his/her advice if in any doubt about the reasonableness of a member’s request.
102. A member should obtain advice from the Monitoring Officer/Chief Legal Officer in circumstances where he/she wishes to have access to documents or information:
- where to do so is likely to be in breach of the Data Protection Act, or
 - where the subject matter is one in which he/she has a personal or prejudicial interest as defined in the members’ code of conduct.
103. Information given to a member must only be used for the purpose for which it was requested.
104. It is an accepted convention that a member of one party group will not have a need to know and therefore a right to inspect a document which forms part of the internal workings of another party group.
105. Members and officers must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so. This does not, however, in general prevent an officer disclosing such information to his or her line manager.
106. When requested to do so, officers will keep confidential from other members, advice requested by a member.
107. Members and officers must not prevent another person from gaining access to information to which that person is entitled by law.

Media Relations

108. All officer communications with the press must be made through the Marketing and Major Projects Manager or his/her nominee.

109. 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.
110. Officers will keep relevant members and the Marketing and Major Projects manager informed of media interest in the Council's activities, especially regarding strategic or contentious matters.
111. If a member is contacted by, or contacts, the media on an issue, he/she should:
 - indicate in what capacity he/she is speaking (e.g. as ward member, in a personal capacity, as an Executive member, on behalf of the Council, or on behalf of a party group)
 - always, when he/she would like a press release to be issued, seek assistance from the Council's Marketing and Major Projects Manager or his/her nominee and/or relevant senior officer, except in relation to a statement which is party political in nature.
 - 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)
 - never give a commitment in relation to matters which may be subject to claims from third parties and/or are likely to be an insurance matter
 - consider whether to consult other relevant members.

Correspondence

112. Correspondence (letters, emails etc) 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. Correspondence between an officer and a member should not be copied to a member of the public except with the express consent of the author or in circumstances where the author understood that it was intended to provide copies to others.
113. Official letters written on behalf of the Council should normally be in the name of the relevant officer. It may be appropriate in some circumstances (e.g. representations to a Government Minister) for letters to appear in the name of an Executive member or the chair of a Council committee.
114. The Mayor may initiate correspondence in his/her own name.
115. 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.
116. When writing in an individual capacity as a ward member, a member must make clear that fact.
117. Members and officers are asked to give due consideration to the tone of their correspondence.

Access to Premises

118. Officers have the right to enter Council land and premises to carry out their work. Some officers have the legal power to enter property in the ownership of others.

119. Members have a reasonable right of access to Council land and premises to fulfil their duties.
120. When making visits as individual members, members should:
 - whenever practicable, notify and make advance arrangements with the appropriate manager or officer in charge
 - comply with health and safety, security and other workplace rules
 - not interfere with the services or activities being provided at the time of the visit.

Use of Council Resources

121. The Council provides all members with services such as printing and photocopying, and goods such as stationery and computer equipment, 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.
122. Members should ensure they understand and comply with the Council's own rules about the use of such resources, particularly:
 - where facilities are provided in members' homes at the Council's expense
 - in relation to any locally-agreed arrangements e.g. payment for private photocopying; and
 - regarding ICT security.
123. Members should not put pressure on staff to provide resources or support which officers are not permitted to give. Examples are:
 - business which is solely to do with a political party
 - work in connection with a ward or constituency party group meeting
 - electioneering
 - work associated with an event attended by a member in a capacity other than as a member of the Council
 - private personal correspondence
 - work in connection with another body or organisation where a member's involvement is other than as a member of the Council; and
 - support to a member in his/her capacity as a councillor of another local authority.

Interpretation, Complaints and Allegations of Breaches

124. This part of the protocol should be read in conjunction with any "whistle-blowing" policy the Council may have.
125. Members or officers with questions about the implementation or interpretation of any part of this protocol should seek the guidance of the Monitoring Officer.
126. A member who is unhappy about the actions taken by, or conduct of, an officer should:

- avoid personal attacks on, or abuse of, the officer at all times
 - ensure that any criticism is well founded and constructive
 - never make a criticism in public, and
 - take up the concern with the officer privately.
127. It is not appropriate for a member to continue to pursue a matter with the officer concerned, to avoid any cause for complaint of harassment or bullying of the officer concerned (see Council's Harassment Policy). It is inappropriate for a member to impugn an officer's impartiality or integrity by addressing this repeatedly to the officer concerned, without raising it with a more senior officer.
128. If direct discussion with the officer is inappropriate (e.g. because of the seriousness of the concern or because the officer is a junior member of staff) or fails to resolve the matter, the member should raise the issue with the officer's manager or the relevant senior officer.
129. A serious breach of this protocol by an officer may lead to an investigation under the Council's disciplinary procedure.
130. Members should consult with the relevant senior officer or manager to seek an explanation before raising any question of failure by a particular part of the Council or group of officers in public. Officers do not have the same freedom to respond in a public meeting as members.
131. An officer who believes a member may have acted other than in accordance with this protocol should raise his/her concern with the Monitoring Officer. He/she will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than informally referring the matter to the leader of the relevant party group. More serious complaints may result in reference to the Council's Committee with responsibility for member standards.
132. Whilst there are formal procedures in place for disputes between officers and members it is hoped that attempts would be made to resolve all disputes amicably on an informal basis.