

# **The City of Edinburgh Council**

## **Member-Officer Protocol**

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## **1 Introduction**

- 1.1 This protocol sets out the roles and responsibilities of Elected Members and Council Officers ('Officers') to ensure clarity when carrying out their respective duties.
- 1.2 The protocol seeks to reinforce the principles outlined in the Councillors' Code of Conduct (the 'Code') which apply to Members and Officers. This protocol complements but does not replace any duties set out in the Code, and it must be read in conjunction with the Code
- 1.3 The protocol is designed to help Members and Officers to achieve positive and constructive relations

## **2 General Principles**

- 2.1 These are the general rules which apply to the way Members and Officers should work together:
  - Officers and Members must treat each other with respect and courtesy and they must recognise and appreciate their different roles and responsibilities and the boundaries between them, with neither party seeking to take unfair advantage of their position or influence.
  - Members are entitled to information and assistance that they reasonably require to enable them to carry out their roles as councillors. Officers have a corresponding duty to ensure that this is provided to them.
  - The information and assistance that Officers must reasonably provide depends on the Member's role and responsibilities and on the Council's internal policies and guidelines<sup>1</sup>.
  - Officers and Members must comply with relevant legislation, guidance, Codes of Conduct, Standing Orders and Council policies and procedures in place from time to time, and must use Council resources appropriately and prudently.

## **3 Roles and Responsibilities**

- 3.1 The relationship between Members and Officers will be enhanced by professional relations. However, mutual respect and the belief that Officers are providing objective professional advice to Members must not be compromised.
- 3.2 To project a positive image of the Council and avoid reputational damage, disputes between members and Officers should be acknowledged and resolved in private, rather than in public or through the media, including social media. Disagreements and debate may take place in an appropriate public forum, such as a committee, in line with the requirements set out in paragraph 4.2 of this document. For example, members have the right to publicly disagree with a recommendation in an officer report at a Council meeting.

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<sup>1</sup> City of Edinburgh Council Policy Register (<https://www.edinburgh.gov.uk/directory/10239/policy-register>)

- 3.3 The professional role of Officers and members can be summarised as follows: Officers **recommend** policy, Members **agree** policy, Officers **implement** policy, Members **scrutinise** the implementation.
- 3.4 Both Members and Officers should adhere to the rules and regulations set by Council to manage committee business, for example, Procedural Standing Orders and Committee Terms of Reference and Delegated Functions.

## 4 Role of Members

### 4.1 The role of members includes:

- 4.1.1 providing strategic leadership and oversight. This involves setting strategy, planning, scrutinising and making major, complex decisions;
- 4.1.2 determining policy aims and objectives but not engaging in direct operational management (being the planning, organising and execution involved in day to day activities) of Council services as this is the role of employees;
- 4.1.3 taking decisions not delegated to Officers;
- 4.1.4 reviewing and scrutinising the Council's performance;
- 4.1.5 assisting constituents, as required, in their dealings with the Council;
- 4.1.6 representing and advocating the interests of their wards in Council decision making; and
- 4.1.7 representing the Council in partnership arrangements, civic society and on outside organisations.

### 4.2 Members have a right to comment (including critical comment) on reports or the actions taken by Officers, but they must:

- 4.3.1 avoid personal attacks on Officers
- 4.3.2 ensure that any commentary is proportionate, constructive and well founded.

### 4.3 Must observe policy and procedures<sup>2</sup> with regard to the office accommodation they occupy in the interests of security and the general health, safety and welfare of all occupants.

### 4.4 Members must not:

- 4.4.1 raise any adverse matters related to the performance, conduct or capability of employees or groups of employees in public.
- 4.4.2 put pressure on an Officer with regard to matters which have been delegated for Officer decision under the Scheme of Delegation to Officers or by

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<sup>2</sup> City of Edinburgh Council Policy Register (<https://www.edinburgh.gov.uk/directory/10239/policy-register>)

Committee. They must be aware of the lines of accountability within service areas and must not apply pressure to an Officer to act in a manner which may be contrary to the instructions of his or her line manager.

- 4.4.3 actively seek to operate outside of the formal operating structures that exist in every area of the Council. Executive Directors and Service Directors must be the recognised first contact in their respective service areas (except for routine service requests or in agreement with the relevant Executive Director). If a response or acknowledgement to a service request is not received, this should be raised with the individual in the first instance, before escalation to an Executive Director.
- 4.4.4 seek special treatment for any individual – members must declare any close personal relationships with constituents when dealing with Officers.
- 4.4.5 be involved in individual staffing matters (or become involved in the management of Council staff) unless they are a member of a committee set up for that purpose.

## **5 Role of Officers**

- 5.1 Officers are employed by the Council and are accountable to it as a body. Officers serve the Council as a corporate body rather than any political group, combination of groups or individual member.
- 5.2 Officers have a duty to follow Council policies and to implement the decisions of the Council and its committees. Officers may advise members on matters of policy and may voice concerns and highlight risks in giving that advice.
- 5.3 The role of all Officers in discharging their duties is to:
  - 5.3.1 act in an open, honest and transparent manner and behave in a professional manner in accordance with the Employee Code of Conduct;
  - 5.3.2 implement and/or act in accordance with the policies of the Council;
  - 5.3.3 comply with all relevant legal, regulatory and professional requirements, taking reasonable steps to ensure they are not placed in a position where they are unable to comply, and challenge non-compliance by others raising such matters with the appropriate management;
  - 5.3.4 implement the decisions of Council, committees and sub-committees;
  - 5.3.5 inform members of any decision that they cannot fully implement;
  - 5.3.6 serve all members, not just those of the Administration group(s);
  - 5.3.7 deal with Member enquiries efficiently and effectively;

5.3.8 fulfil any obligations to report information to relevant regulatory authorities;

5.3.9 ensure good governance is followed and risk fully considered and recorded.

- 5.4 Officers must not allow their personal or political opinions to influence or interfere with their work. Officers should not take part, and members should not ask Officers to take part, in any activity which could be seen as influencing support for a political party or view. Officer support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. Employees should not be asked, or be expected, to be present at meetings or parts of meetings when matters concerning party business are being discussed.
- 5.5 Officers must not be involved in advising members on matters of party-political business. All employees must treat all political groups and individual councillors in a fair and even-handed manner and must maintain political neutrality at all times.
- 5.6 Officers must respect the confidentiality of any party group discussions at which they are present. They should not relay the content of any such discussion to another party group or the media. If Officers receive information which, although confidential, they have a duty to disclose elsewhere (e.g. under FOISA legislation), they must indicate to the group that this is the case.
- 5.7 Some Officers are in posts which are “politically restricted” by law. This means that individual postholders are prevented from carrying out any active political role either outside or inside the Council.
- 5.8 Members should raise with the Chief Executive any concerns about the political neutrality of an Officer.
- 5.9 Officers must not raise directly with members any personal matter relating to their jobs or relating to any potential appointment.

### Statutory Officer Roles

- 5.10 Some Officers have specific statutory powers and duties, for example, the Officers designated as Head of Paid Service (Chief Executive), Chief Social Work Officer, the Monitoring Officer and the Section 95 Officer (see Appendix 2 – Statutory Officers). Others, such as the Registrars of Births, Deaths and Marriages and the Council’s Licensing and Standards Officers or Health and Safety at Work Inspectors, work with reference to specific statutory regimes.
- 5.11 The Council has delegated powers to the Chief Executive, Executive Directors and other Officers in order that they can act and take decisions on behalf of the Council in predetermined areas. In taking those decisions, Officers must comply with the Council’s Scheme of Delegation to Officers and relevant governance documents.
- 5.12 The Chief Executive is the statutory Head of Paid Service and is responsible for

managing and securing the professional body of Officers.

- 5.13 Legislation requires that certain functions be exercised by a 'Proper Officer'. The Scheme of Delegation sets out Officers who are designated as Proper Officers in relation to particular functions.
- 5.14 The Monitoring Officer, which is also a statutory role, is responsible for ensuring that agreed procedures are followed and that all applicable statutes and regulations are complied with.

## **6 Support Services to Members and Party Groups**

- 6.1 The Council can only lawfully provide support services – secretarial, administrative, resources, printing, photocopying, transport etc – to members to assist them in discharging their role as members of the Council. These services must only be used for Council business. They must never be used in connection with party political or campaigning activity or for private purposes. Members should never prevail upon the loyalty and enthusiasm of Officers to provide inappropriate support.
- 6.2 The protocols governing the duties of Officers in Members' Services are summarised below:
  - 6.2.1 Officers in Members' Services are Council employees and must comply with the Council's agreed policies and procedures (e.g. Employee Code of Conduct).
  - 6.2.2 They cannot represent or stand in for members at events or decision-making bodies, although they can attend as non-speaking observers.
  - 6.2.3 Each group has dedicated support to direct day to day work. These Officers are appointed by the Democracy, Governance and Resilience Senior Manager who is also responsible for their induction, discipline and any grievances.
  - 6.2.4 They must respect confidentiality regarding the party, group and individual members.
  - 6.2.5 The existence of Officers in Members' Services should not detract from normal Member/Officer relationships.
  - 6.2.6 While councillors may ask employees to provide such support in a particular way, they must nevertheless remember that the employee is accountable to their line manager. Any issues about conflicting priorities, conduct or performance must be referred to the line manager.

## **7 Rights of access to information and documents**

- 7.1 Members need to access information to allow them to discharge their duties as members of the Council. This may range from general information about a Council service to specific information on behalf of a constituent.
- 7.2 Common law and statute provide members with a right to inspect Council documents and information. This is subject to some exemptions and restrictions (see below). This is based on the principle that a member has a right to inspect any Council document that is reasonable and necessary for them to perform their duties as a Council member.
- 7.3 This principle is referred to as the 'need to know' principle and is wider than the access rights set out under Scotland's freedom of information laws. It does not, however, provide Members with an automatic right to examine any documents of the Council. Access to Council documents must align with the 'need to know' principle, and members may need to demonstrate that they have a genuine 'need to know'.
- 7.4 Officers will generally try to provide any information requested by members. However, the extent and manner of access will require to be considered in detail depending upon the information requested.
- 7.5 When responding to requests from members, Officers should always endeavour to respond to requests for information promptly and should, in any event, inform the member if there is likely to be any appreciable delay in dealing with an enquiry or request.
- 7.6 Members should always assume that the information they have been provided with is confidential unless it is clearly reasonable to consider otherwise (e.g. it is already in the public domain) and take appropriate measures to protect that information and use it responsibly, in line with the Council's information governance procedures. In particular, members must only use information for the purpose for which it was provided; undertake not to share that information externally; nor use that information for personal or party-political use. This will also apply in instances where a member may be of the personal view that such information should be publicly available. If a member is in any doubt as to what they can do with any information they should seek guidance from the officer who provided it or another relevant senior officer.
- 7.7 The Chief Executive may choose to instigate any appropriate investigations into actual or alleged breaches of confidence in relation to the release of confidential information.
- 7.8 If an Officer has any concerns regarding the disclosure of information requested by members, they should discuss their concerns promptly with their executive director. The Chief Executive, in consultation with the Monitoring Officer, will decide on any concerns between a member and an executive director regarding access to

information. The Council's Data Protection Officer will be consulted if any matters of dispute concern data protection matters.

- 7.9 The provision of information comes at a cost and members should ensure, where possible, that they are not used by members of the public as a conduit for access to information that is properly available through the Council's established freedom of information and data protection procedures.
- 7.10 Special care needs to be exercised if Officers are involved in providing information and advice to a party group meeting which includes persons who are not members. Such persons will not be bound by the Councillors' Code of Conduct and the provisions concerning the declaration of interests and confidentiality. Officers may not be able to provide the same level of information and advice as they would to a meeting where those in attendance are bound by the provisions of the Code.
- 7.11 Members may need to access personal data about a constituent to help answer a query on behalf that person. In such cases, the member may be asked to provide evidence that they are acting on behalf of that person.
- 7.12 For major events that have a wide-reaching impact on the city, Officers should ensure that all members are kept informed of any politically sensitive issues, as far as possible in advance, before a Council/Committee decision.
- 7.13 If an officer provides information to a community council, it is good practice to share this information with local ward councillors for awareness.

## **8 Local Government (Scotland) Act 1973 exemptions and confidential information**

- 8.1 Under the Local Government (Scotland) Act 1973, members have a statutory right to inspect any council document which contains information relating to any business which is to be transacted at a Council, committee or sub-committee meeting. This right applies irrespective of whether the member is a member of the committee or sub-committee concerned and extends to agendas, reports, background papers and minutes of meetings.
- 8.2 This right does not, however, apply to 'confidential information' and 'exempt information' considered in private at committee or sub-committee meetings. Information classified as 'exempt' does not need to be shared by the Council to third parties or members who are not directly involved in decisions relating to that 'exempt information'. The items in question are those which contain exempt information relating to members, employees, occupiers of council property, applicants for grants and other services, the care of children, contract and industrial relations negotiations, advice from counsel and criminal investigations.
- 8.3 There are also other circumstances which prohibit the disclosure of exempt information. For example, dissemination may contravene data protection legislation or compromise the Council's right to legal professional privilege.



- 8.4 In the case of information that is determined by the Chief Executive or the Council's Monitoring Officer to be legally privileged or highly sensitive or confidential, this will be shared with the Council's political group leaders, upon request. Further dissemination of such material will only be made in agreement with political group leaders, and any independent members.
- 8.5 If any further dissemination is agreed this may be subject to appropriate safeguards being put in place to preserve the confidentiality of the requested information e.g. use of a data room (see below).

## **9 Format of information and use of data rooms**

- 9.1 Officers will generally try to provide information in the format in which it has been requested. However, where information is particularly voluminous, sensitive or confidential, it may be more appropriate to make this information available to members through another method, which may include the use of a Data Room – a secure area where documents can be accessed and reviewed under supervised conditions.
- 9.2 If an executive director considers that information should be made available in this way, it will be referred to the Chief Executive who may, with the agreement of the Monitoring Officer, determine that this is appropriate. Thereafter, the Chief Executive in consultation with Group Leaders and independent members (as appropriate), determine the most appropriate venue and timescale for documents to be made available.
- 9.3 Data Rooms will always be monitored by an appropriate member of staff who will also maintain a record of attendees. Materials in the data room should not be photographed, copied, or removed but members will be able to take notes to assist their considerations.

## **10 Training for Members and Officers**

- 10.1 In order that members are suitably trained in the skills needed for the effective discharge of their duties, training/briefings will be provided for members. Some training may be a requirement before a member can take part in a specialist committee or represent the Council on the Board of Arms-Length Companies. All members are also encouraged to take the opportunity to build upon their existing skills. Members are responsible for ensuring that their knowledge and understanding of relevant matters (including, for example, what constitutes bullying and harassment), is up to date. Members should utilise resources, including the Standards Commission's guidance and advice notes, Council policies and training material.

- 10.2 Guidance on member/Officer relations is an integral component of the Employee Information Handbook which details the Council's key policies. This forms an important part of the induction of new staff.

## **11 Review of the Protocol**

- 11.1 This protocol will be reviewed annually as part of the operational governance suite of documents.

## Appendix 1

### Exempt Information

Type	Exemption	Qualification	Paragraph of Part 1, Schedule 7A
Council employees	Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office holder, former office-holder or applicant to become and office-holder under, the authority.	<i>Information is not exempt by virtue of this paragraph unless it relates to a person of that description in the capacity indicated by the description.</i>	1
Occupiers of Council accommodation	Information relating to any particular occupier or former occupier of, or applicant or, accommodation provided by or at the expense of the authority.	<i>Information is not exempt by virtue of this paragraph unless it relates to a person of that description in the capacity indicated by the description.</i>	2
Applicants for/recipients of Council services	Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority.	<i>Information is not exempt by virtue of this paragraph unless it relates to a person of that description in the capacity indicated by the</i>	3
Applicants for/recipients of financial assistance.	Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the authority.	<i>Information is not exempt by virtue of this paragraph unless it relates to a person of that description in the capacity indicated by the description.</i>	4

Type	Exemption	Qualification	Paragraph of Part 1, Schedule 7A
Social work/children	Information relating to the adoption, care, fostering or education of any particular child or [where any particular child is subject to a compulsory supervision order or interim compulsory supervision order (sections 83 and 86 of the Children's Hearing (Scotland) Act 2011) information relating to the order.		5
Financial/business affairs of any person	Information relating to the financial or business affairs of any particular person (other than the authority).	<i>Information is not exempt under this paragraph it is required to be registered under the Companies Acts, the Friendly Societies Act 1974, the Industrial and Provident Societies Act 1965 and the Buildings Societies Act 1962.</i>	6
Social Work	Information relating to anything done or to be done in respect of any particular person for the purposes of any of the matters referred to in section 27(1) of the Social Work (Scotland) Act 1968 (providing reports on and supervision of certain persons).		7

Type	Exemption	Qualification	Paragraph of Part 1, Schedule 7A
Expenditure under contract	The amount of any expenditure proposed to be incurred by the authority under any particular contract for the acquisition of property or the supply of goods and services.	<i>Information falling within this paragraph is exempt information if and so long as disclosure to the public of the amount there referred to would be likely to give an advantage to a person entering into, or seeking to enter into, a contract with the authority in respect of the property, goods or services, whether the advantage would arise as against the authority or as against such other persons.</i>	8
Negotiations	Any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract for the acquisition or disposal or property of the supply of goods and	<i>Information falling within this paragraph is exempt information if and so long as disclosure to the public of the terms would prejudice the authority in those for any other negotiations covering the property or goods or services.</i>	9
Identity of tenderer	The identity of the authority (as well as of any other person, by virtue of paragraph 6 above) as the person offering any particular tender for a contract for the supply of goods or services.		10
Labour relations	Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relation matter arising between the authority or a Minister of the Crown and employees of, or office-	<i>Information falling within this paragraph is exempt information if and so long as disclosure to the public of the information would prejudice the authority in those or any other consultations or negotiations in connection with a labour relations matter arising as mentioned in that paragraph.</i>	11

Type	Exemption	Qualification	Paragraph of Part 1, Schedule 7A
Legal advice/instructions	<p>Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with:</p> <ul style="list-style-type: none"> <li>(a) any legal proceedings by or against the authority, or</li> <li>(b) the determination of any matter affecting the authority,</li> </ul> <p>(whether, in either case, proceedings</p>		12
Statutory notices	<p>Information which, if disclosed to the public, would reveal that the authority proposes—</p> <ul style="list-style-type: none"> <li>(c) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</li> <li>(d) to make an order or direction under any enactment.</li> </ul>	<p><i>Information falling within this paragraph is exempt information if and so long as disclosure to the public might afford and opportunity to a person affected by the notice, order or direction to defeat the purpose or one of the purposes for the notice, order or direction is to be give or made.</i></p>	13
Crime	Any action to be taken in connection with the prevention, investigation or prosecution of a crime.		14
Protected Informants	The identity of a protected informant.		15

## **Appendix 2 – Statutory Officers**

- **Head of Paid Service** – the Head of Paid Service is a statutory appointment by virtue of Section 4 of the Local Government and Housing Act 1989. It is usually the Chief Executive of a Council.
- **Monitoring Officer** – the Monitoring Officer is a statutory appointment by the Council by virtue of section 5 of the Local Government and Housing Act 1989.
- **Chief Social Work Officer** – the requirement for every local authority to appoint a professionally qualified Chief Social Work Officer (CSWO) is contained within section 3 of the Social Work (Scotland) Act 1968.
- **Proper Officer for Finance Arrangements (Section 95 Officer)** – the Proper Officer for Finance Arrangements is a statutory appointment by virtue of section 95 of the Local Government (Scotland) Act 1973 which requires local authorities to make arrangements for the proper administration of their financial affairs and appoint a Chief Finance Officer (CFO) to have responsibility for those arrangements.
- **Data Protection Officer** – under the General Data Protection Regulation (2016/679 EU) (GDPR), public bodies are required to appoint a Data Protection Officer.
- **Chief Education Officer** – under the Education (Scotland) Act 2016 local authorities are required to appoint a chief education officer to advise the authority on the carrying out of the authority's functions under the Act.
- **Chief Officer of Integration Joint Board** – the Public Bodies (Joint Working) Act 2014 requires integration joint boards to appoint a chief officer. The officer is employed by either the Council or the NHS but is formally seconded to the Board.