

City of Edinburgh Council

Member-Officer Protocol

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1 Introduction and Principles

- 1.1 This protocol sets out the roles and responsibilities of Elected Members ('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 laid out in the Code.
- 1.3 The Code states that Members and Officers "should work in an atmosphere of mutual trust and respect, with neither party seeking to take unfair advantage of their position."
- 1.4 The Code highlights that both Members and Officers serve the public but have separate responsibilities. Members are responsible to the electorate and the employee responsible to the Council as his or her employer.
- 1.5 Council refers to the City of Edinburgh Council as constituted under the Local Government, etc (Scotland) Act 1994.

2 Role of Members

- 2.1 The role of Members includes:
 - 2.1.1 providing strategic leadership;
 - 2.1.2 determining policy aims and objectives but not engaging in direct operational management of Council services;
 - 2.1.3 taking decisions not delegated to Officers;
 - 2.1.4 reviewing and scrutinising the Council's performance;
 - 2.1.5 assisting constituents, as required, in their dealings with the Council;
 - 2.1.6 representing and advocating the interests of their wards in Council decision making; and
 - 2.1.7 representing the Council in partnership arrangements, civic society and on outside organisations.

Conveners

- 2.2 Members who are conveners/vice conveners of committees will have increased contact with senior Officers. It is important that this is a close working relationship, but it should not be so close that Members or Officers are unable to deal with one another impartially.
- 2.3 The convener of a committee will be consulted on the agenda and often on the reports of the committee they chair. The Officer whose name the report has been submitted under is fully responsible for the contents of that report. Officers should listen to the views of conveners, but ultimately Officers retain final responsibility for a report's contents.

- 2.4 Officers have the right to submit reports to committees/sub-committees on areas within their service.
- 2.5 When Members of a Committee meet with senior Officers for an agenda planning meeting ('APM') or pre-meeting the following points should be noted:
 - 2.5.1 the meeting may consider reports in their draft form;
 - 2.5.2 the meeting is not empowered to make decisions on behalf of the Council; and
 - 2.5.3 the provision of information and advice at such a meeting does not act as a substitute for the provision of all necessary information and advice to the Committee, for example within a report, when the matter in question is considered formally by Members.

3 Role of Officers

- 3.1 The Chief Executive is the statutory Head of Paid Service and is responsible for managing and securing the professional body of Officers.
- 3.2 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.
- 3.3 Officers are employed by the Council and are accountable to it. Officers serve the Council as a corporate body rather than any political group, combination of groups or individual member.
- 3.4 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 in giving that advice. However, it is for Members to determine the Council's policies and Officers to act on those policies.
- 3.5 It is the duty of the Chief Executive and other senior Officers to ensure that the policies of the Council are implemented.
- 3.6 The role of all Officers in discharging their duties is to:
 - 3.6.1 act in an open, honest and transparent manner;
 - 3.6.2 implement and/or act in accordance with the policies of the Council;
 - 3.6.3 implement the decisions of Council, committees and sub-committees;
 - 3.6.4 inform Members of any decision that they cannot fully implement;
 - 3.6.5 behave in a professional manner in accordance with the Council's values;
 - 3.6.6 serve all Members, not just those of the Administration group(s);
 - 3.6.7 deal with Member enquiries efficiently and effectively;

- 3.6.8 strive continually to comply with the Council's policies, performance management and scrutiny processes;
 - 3.6.9 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 with the appropriate management;
 - 3.6.10 fulfil any obligations to report information to relevant regulatory authorities;
 - 3.6.11 ensure good governance is followed and risk taken fully account of, and
 - 3.6.12 support Members in their role ensuring all the required information is disclosed to Council, committee and Members to allow them to carry out their duties and make informed decisions.
- 3.7 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). 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.
- 3.8 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.
- 3.9 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.

4 Relationship between Members and Officers

- 4.1 It is important that any dealings between Members and Officers, both written and oral, should observe professional standards of courtesy.
- 4.2 The relationship between Members and Officers will be enhanced by friendly relations. However, mutual respect and the belief that Officers are providing objective professional advice to Members must not be compromised. Members and Officers should be cautious in developing close friendships.
- 4.3 To avoid reputational damage to the Council, disagreements between Members and Officers should be acknowledged and resolved in private, rather than in public or through the media.
- 4.4 The Code prohibits Members raising matters related to the conduct or capability of employees in public. 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 contrary to the instructions of his or her line manager.

- 4.5 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. Officer support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business.
- 4.6 Officers must not be involved in advising Members on matters of party political business.
- 4.7 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), Officers must indicate that this is the case.
- 4.8 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.
- 4.9 Members should raise with the Chief Executive any concerns about the political neutrality of an Officer.
- 4.10 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.
- 4.11 Both Members and Officers have access to information which has not yet been made public and is still confidential. It is a betrayal of trust to breach such confidences. Confidential information must never be disclosed or used for personal or political advantage or to the disadvantage or the discredit of the Council or anyone else. The Chief Executive will instigate any appropriate investigations into actual or alleged breaches of confidence in relation to the release of confidential information.
- 4.12 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 (in particular, 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.
- 4.13 Officers should ensure that they provide the necessary respect and courtesy due to Members in their various roles. Equally, Members should ensure that they provide the necessary respect and courtesy due to Officers in their roles.
- 4.14 Members should not put pressure on an Officer with regard to matters which have been delegated for Officer decision under the Scheme of Delegation to Officers. Officers should be left to make decisions that:
- 4.14.1 are objective and can be accounted for; and

- 4.14.2 are fair and consistent in their application.
- 4.15 Members should not bring influence to bear on any Officer to take any action which is contrary to law or against the Council's approved procedures, including but not limited to the following procedures:
- 4.15.1 a breach of Human Resources procedures;
- 4.15.2 conflict with standing orders; or
- 4.15.3 conflicts with planning procedures and policies.
- 4.16 Members should respect the formal operating structures that exist in every area of the Council. Executive directors and heads of service must be the recognised first contact in their respective service areas.
- 4.17 Officers within a Service are accountable to their executive director and head of service. Heads of service and other Officers should not be expected to provide advice which may provoke conflict with their executive director.
- 4.18 Members must declare any close personal relationships with constituents when dealing with Officers. Although Members are elected to represent the interests of their constituents, they should not seek special treatment for any individual.

5 Access to Information and Documents

- 5.1 Members have a right to access information to allow them to discharge their duties. The key principle is **in favour of disclosure** and in accordance with the following legal provisions.
- 5.2 **The Local Government (Scotland) Act 1973**
- 5.3 Elected members have statutory rights of inspection of various documents related to business to be transacted by the Council, unless the documents disclose certain types of "Exempt Information".
- 5.4 In terms of section 50F (1) of the Local Government (Scotland) Act 1973 (the "1973 Act") as inserted by the Local Government (Access to Information) Act 1985 (the "1985 Act"), any document which is in the possession or under the control of a local authority and contains material which relates to any business to be transacted by the authority is to be open to inspection by any member of the authority. In addition, any document which is used in proceedings at a meeting of the authority or of a committee or sub-committee of the authority whether it is statutory or non-statutory should also be open to inspection by any member of the authority.
- 5.5 These statutory rights of inspection are qualified by section 50F(2) which states that if it appears to the Proper Officer that a document discloses "Exempt Information" then the statutory rights do not apply.
- 5.6 Schedule 7A of the 1973 Act outlines descriptions of the kind of information which is to be

considered exempt from the statutory rights of inspection. A list of categories of Exempt Information is contained at Appendix 1 to this Protocol.

- 5.7 Section 50F (2) of the 1973 Act provides that some information held to be exempt under the Act is still accessible to all elected members of that authority. These include the financial or business affairs of any particular person; local authority expenditure on contracts for the acquisition of property and for the supply of goods and services; the identity of the local authority as a person offering a tender for a contract for the supply of goods and services; labour relations and the identity of a protected informant.
- 5.8 **Effect of being classified as Exempt Information**
- 5.9 Certain committee reports are classed as 'B-Agenda' reports because they contain Exempt Information. This is where the 'Proper Officer' considers that the reports are likely to be taken in private. The 'B' report should then have 'not for publication' and the exemption under Schedule 7A of the 1973 Act marked on it. The decision on whether the public should be excluded from a meeting of the Council is taken by a resolution of the Council or committee. This resolution should identify the proceedings to which it applies and state the exemption under the 1973 Act.
- 5.10 The effect of information being classified as Exempt Information is that it need not be disclosed by the Council to third parties or elected members who are not directly involved in decisions relating to that Exempt Information. It does not necessarily follow, however, that the Council is prohibited from disclosing the information to third parties or elected members simply because it is Exempt Information.
- 5.11 There are some circumstances where the Council may be prohibited from disclosure of Exempt Information for another reason – for example, because of the Council's obligations under the Data Protection Act 1998 ("DPA").
- 5.12 There are also some circumstances where, although legally permissible, it would be inadvisable for the Council to disseminate the information wider than absolutely necessary because of certain other risk factors, for example, when such dissemination may constitute a waiver to the Council's right to legal professional privilege.
- 5.13 In the case of information that is determined by the Chief Executive and/or Monitoring Officer to be legally privileged, this will be shared, on request, with the Council's Leadership Panel or equivalent with membership comprising political group leaders.
- 5.14 In the case of information that is exempt, but not determined by the Chief Executive and/or Monitoring Officer to be legally privileged, political group leaders and any independent elected members will be entitled to have that information shared with them, on request. Where any political group leader feels that the information is politically important enough that it should be shared with his/her group, then he/she will be entitled to do so after having first discussed the matter with the Monitoring Officer and relevant executive director or Chief Executive and put appropriate safeguards, if any, in place to preserve the confidentiality of this information.

5.15 **Freedom of Information (Scotland) Act 2002**

5.16 Elected members have the same of rights to access information in accordance with the provisions of this Act as members of the public. Members should request information they do not have ready access to from the Chief Executive or relevant executive director via the procedures outlined in paragraph 5.18 of this Protocol.

5.17 **Process of Requesting Exempt or Other Information**

5.18 Members should request information they do not have ready access to from the Chief Executive or relevant executive director. If information is required within a particularly short timescale, or in advance of a particular deadline (e.g. in time to prepare for a committee meeting) this should be stated within the request so that officers can respond appropriately. Officers will be mindful that the key principle in relation to these requests is in favour of disclosure, subject to statutory responsibilities. If, for any reason, information cannot be provided as requested this should be explained clearly and timeously, to the Member. If an officer has 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 determine on any concerns between a Member and an executive director regarding access to information.

5.19 **Data Rooms**

5.20 As described above, legislation provides elected members with certain rights to information where the information is necessary to carry out Council duties. In exceptional circumstances, when that information is particularly voluminous or sensitive, the Proper Officer may, with the agreement of the Monitoring Officer, determine that the information is best made available via a Data Room. If the executive Director believes that information should be made available within a Data Room, they should refer the matter to the Proper Officer for decision.

5.21 The Proper Officer will thereafter, in consultation with Group Leaders and independent elected members as appropriate, determine the most appropriate venue and timeframe for the materials to be made available. It is recognised that, when Data Rooms are used, sufficient access must be provided to ensure that all elected members and other relevant committee members are afforded the opportunity to review the information. Consideration must be made both in terms of the size of the room available and the times at which it can be accessed. Data Rooms will be monitored at all times 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 councillors are able to take notes to assist their considerations.

6 The Council as Employer

6.1 Officers are employed by the Council and are governed by contracts of employment and Council policies and procedures. The Council has a duty of care towards all of its employees and this protocol reflects existing OD strategies and policies.

- 6.2 In making employment decisions, the key principles for elected Members to follow are:
- 6.2.1 Members should not gain financially or personally, nor should their family or friends;
 - 6.2.2 Members have a duty to declare any private interest, and to protect the public interest;
 - 6.2.3 Members should have no involvement in employment or recruitment cases in which they have a personal interest of this kind;
 - 6.2.4 Members must, when making public appointments or recommending people for rewards or benefits, make choices on merit, using objective criteria;
 - 6.2.5 Members must not solicit a job with the Council for any person (but may give them a written testimonial); and
 - 6.2.6 If Members canvass support for a candidate for a job with the Council this will disqualify the candidate from that job.
- 6.3 Members are not the employer. The Council is an equal opportunities employer and Members should be guided by this principle in all contact with staff. Members should note that any individual who commits an act of discrimination can be personally liable.
- 6.4 Members should not be involved in individual staffing matters unless they are a member of a Committee set up for that purpose. Committee Terms of Reference and Delegated Functions provide for Committees of Panels of Members for Chief Officer appointments and for disciplinary and grievance processes relating to the Chief Executive, executive directors and chief officers. Appeals committees exist which hear appeals lodged by employees against grievance outcomes and certain disciplinary decisions.
- 6.5 Apart from as set out at 6.4, Members must not become involved in the management of Council staff. All other disciplinary, capability or grievance processes must be dealt with by Officers. Members must not engage in activities which might undermine management or compliance with Council procedures, or try to influence recruitment processes.
- 6.6 Members will frequently come into contact with representatives of the recognised Trades Unions at formal settings. The remit of these groups is often to:
- 6.6.1 provide a channel for consultation between the Council and the Trade Unions;
 - 6.6.2 discuss significant changes to the Council affecting the welfare or conditions of employment of its employees; and
 - 6.6.3 consider any employment matter referred to them by the staff side or the Council.
- 6.7 These groups do not have a remit to become involved in matters affecting an individual employee's terms, conditions or pay and Members must observe this remit in their contacts with Trades Union officials.
- 6.8 Members must, at all times, adopt a professional approach in any informal dealings with

the Trades Unions and in particular should:

6.8.1 avoid making unreasonable commitments;

6.8.2 take a balanced view of information provided by Trades Unions along with that of Officers; and

6.8.3 not allow undue influence to be placed upon them.

6.9 Officers must not raise directly with Members any personal matter relating to their jobs, or relating to any potential appointment.

7 Monitoring the Performance of Officers

7.1 Members set the parameters for Council work and officers carry out the implementation.

7.2 Members have a right to criticise reports or the actions taken by Officers, but they should always:-

7.2.1 avoid personal attacks on Officers; and

7.2.2 ensure that criticism is constructive and well founded.

7.3 Complaints about Officers or Council services should be made to the relevant executive director or to the Chief Executive.

7.4 The Head of Legal and Risk is the Council's Monitoring Officer and is specifically responsible for reporting any proposal, decision or omission by the Council or its Officers which causes or is likely to cause:

7.4.1 A contravention of any legislation or rule of law or of any code of practice made or approved by any legislation; or

7.4.2 Maladministration or injustice which could be investigated by the Scottish Public Services Ombudsman.

8 Support Services to Members and Party Groups

8.1 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 improper support.

8.2 The protocols governing the duties of Officers in Members' Services are summarised below:

8.2.1 Officers in Members' Services are Council employees and must comply with the Council's agreed policies and procedures (e.g. Employee Code of Conduct);

- 8.2.2 they cannot represent or stand in for Members at events or decision-making bodies, although they can attend as non-speaking observers;
 - 8.2.3 each group has dedicated support to direct day to day work. These officers are appointed by the Governance and Democratic Services Manager who is also responsible for their induction, discipline and any grievances;
 - 8.2.4 they must respect confidentiality regarding the party, group and individual Members; and
 - 8.2.5 the existence of Officers in Members' Services should not detract from normal Member/Officer relationships.
- 8.3 Members should observe policy and procedures with regard to the office accommodation they occupy in the interests of security and the general health, safety and welfare of all occupants.

9 Training for Members and Officers

- 9.1 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 covering topics such as induction for new Members, managing information and presentation and relevant technical skills. 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.
- 9.2 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.

10 Review of the Protocol

- 10.1 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, 1973 Act
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 description.)</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, 1973 Act
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, 1973 Act
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 services.	<i>Information falling with 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-holders under, the authority.	<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, 1973 Act
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"> (a) any legal proceedings by or against the authority, or (b) the determination of any matter affecting the authority, <p>(whether, in either case, proceedings have been commenced or are in contemplation).</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"> (c) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (d) to make an order or direction under any enactment. 	<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	<p>Any action to be taken in connection with the prevention, investigation or prosecution of a crime.</p>		14
Protected Informants	<p>The identity of a protected informant.</p>		15