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To: County Council – 23 May 2013

Subject: Convention on Member:Officer Relations

Classification: Unrestricted

Summary

This report seeks the County Council's approval for the proposed Convention on Member:Officer Relations appended to this report.

FOR DECISION

(1) During 2009/10, the Council's Standards Committee authorised a revised Convention on Member:Officer Relations. The purpose of the Convention was to guide Members and Officers in their relations with one another in such a way as to ensure the smooth running of the Council.

(2) Following the County Council Elections on 2 May 2013, it was considered appropriate to update and refresh the Convention, which is attached at **Appendix A** for the County Council's consideration and endorsement for inclusion in the Constitution.

Recommendation

The County Council is asked to consider and endorse the proposed Convention on Member:Officer relations appended to this report for inclusion in the Constitution.

Background Documents:

Reports to the Standards Committee 2009/10

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CONVENTION ON MEMBER:OFFICER RELATIONS

(As approved by the County Council on 23 May 2013)

Member:Officer Relations

1. Introduction and Principles

1.1 The purpose of this note 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 Given the variety and complexity of such relations, this note does not seek to be either prescriptive or comprehensive. Instead, it offers guidance on some of the issues that most commonly arise. If the advice 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.

1.3 This note seeks to reflect the principles underlying the respective Codes of Conduct that apply to Members and Officers. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government and the Codes, therefore, demand very high standards of personal conduct.

1.4 This note does not form part of the Members' or Officers' Codes of Conduct. Consequently, action or behaviour that is not in accord with this advice will not of itself constitute a breach of those Codes but may be evidence of a breach.

1.5 This note should be read in conjunction with the Members' and Officers' Codes of Conduct, the Council's Constitution and any other guidance issued by the Standards Committee and/or Monitoring Officer.

2. The Relationship: General Points

2.1 Both Members and Officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Members are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to all organs and Members of the Council. Their job is to give advice to Members and the Council, and to carry out the Council's work under the direction and control of the Council, the Cabinet and any committee or sub committee of either Cabinet or the Council.

2.2 At the heart of the Members' and Officers' Codes of Conduct and this note, is the importance of mutual respect. Member/Officer relationships are to be conducted in a positive and constructive way. Therefore, it is important that any dealings between Members and Officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party.

2.3. Inappropriate relationships can be inferred from language and style. To protect both Members and Officers, people should be given their appropriate formal title where circumstances clearly indicate that a level of formality is appropriate, e.g. in meetings that are open to the public.

2.4 A Member should not raise matters relating to the conduct or capability of an Officer except through the Council's agreed procedures for such matters. This is a long standing tradition in public service. An Officer has no means of responding to such criticisms in

public. If a Member feels that they have not been treated with proper respect, courtesy or has any concern about the conduct or capability of an Officer, and fails to resolve it through direct discussion with the Officer in private, they should raise the matter with the respective Head of Service. The Head of Service will then look into the facts and report back to the Member. If the Member continues to feel concern, then they should report the facts to the relevant Corporate Director, or if, after doing so, is still dissatisfied, should raise the issue with the Head of Paid Service, who will look into the matter afresh. Any action taken against an Officer in respect of a complaint will be in accordance with the provisions of the Council's Disciplinary Rules and Procedures.

2.5 An Officer below the level of Corporate Director should not raise with a Member matters relating to the conduct or capability of another Officer or to the internal management of a Unit/Directorate.

2.6 Where an Officer feels that they have not been properly treated with respect and courtesy by a Member, they should raise the matter with their Head of Service, Corporate Director or the Head of Paid Service (as appropriate), especially if they do not feel able to discuss it directly with the Member concerned. In these circumstances, the Head of Service, Corporate Director or Head of Paid Service will take appropriate action either by approaching the individual Member and/or group leader or by referring the matter to the Monitoring Officer in the context of the Standards Committee's role in dealing with complaints that a Member has breached the Code of Conduct.

2.7 Some examples of inappropriate conduct are set out in **Appendix A**. Members and Officers must at all times comply with and seek to fulfil the Council's Equality and Diversity Policy.

3. The Relationship: Officer Support to Members - General Points

3.1 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.

3.2 Certain statutory Officers – the Head of Paid Service, the Monitoring Officer and the Director of Finance – have specific roles. These are addressed in the Constitution. Their roles need to be understood and respected by all Members.

3.3 The following key principles reflect the way in which the Officer corps generally relates to Members:

- All Officers are employed by, and accountable to, the authority as a whole;
- Support from Officers is needed for all the authority's functions, including Full Council, the Cabinet, Cabinet Committees, the Scrutiny Committee, other Committees, individual Members representing their communities, etc;
- Day-to-day managerial and operational decisions remain the responsibility of the Corporate Directors and other Officers;

3.4 Members should seek to avoid potential conflicts of interest for Officers arising from the separation of the Cabinet and Scrutiny roles, e.g. they should not seek disclosure of advice or discussions that have taken place between Members and Officers in the preparation of reports, papers, advice or recommendations to either the Cabinet or Members undertaking overview and scrutiny roles. In addition, the Code of Conduct for Members states that Members must not do anything that compromises, or is likely to compromise, the impartiality or integrity of those who work for, or on behalf of, the Council.

3.5 Officers enjoy extensive delegated powers from the Leader through Cabinet Members (as well as from the Council in respect of its directly exercisable functions). In some cases these powers are exercised after consultation with Cabinet Members. It must be recognised that in these circumstances, while ultimate accountability rests with the Leader, it is the Officer who takes the decision and who is accountable.

3.6 Finally, it must be remembered that Officers within a Unit or Directorate are accountable to their Head of Service and Corporate Director and that whilst Officers should always seek to assist a Member, they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Head of Service or Corporate Director.

4. The Relationship: Officer Support: Members and Party Groups

4.1 It must be recognised by all Officers and Members that in discharging their duties and responsibilities, Officers serve the Council as a whole and not any political group, combination of groups or any individual Member of the Council.

4.2 There is statutory recognition for political groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision-making body. Officers may properly be called upon by political groups to support and contribute to such deliberations but must at all times maintain political neutrality. All Officers must, in their dealings with political groups and individual Members, treat them in a fair and even-handed manner.

4.3 The support provided by Officers can take many forms. Whilst in practice such Officer support is likely to be in most demand from whichever political group is for the time being in control of the Council, such support is available to all political groups.

4.4 Certain points must, however, be clearly understood by all those participating in this type of process, Members and Officers alike. In particular:

- Officer support must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of political group or political party business. The observance of this distinction will be assisted if Officers are not present at meetings or parts of meetings, when such matters are to be discussed;
- Political group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such; and
- Similarly, where Officers (other than political group staff officers) provide information and advice to a political group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant Cabinet, Cabinet Member, Committee or Sub-Committee when the matter in question is considered.

4.5 Special care needs to be exercised whenever Officers are involved in providing information and advice to a political group meeting which includes persons who are not Members of the Council. Such persons are not bound by the Codes of Member and Officer Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and Officers should not normally attend and/or give advice to such meetings.

4.6 Officers must respect the confidentiality of any political group discussions at which they are present in the sense that they should not relay the content of any such discussion to another political group.

4.7 In relation to budget proposals:

- The Leader and Cabinet are entitled to confidential discussions with Officers regarding options and proposals. These will remain confidential until determined by the Executive or until published in advance of Cabinet/Committee/Council meetings, whichever is the earlier; and
- Political groups other than the majority group are also entitled to confidential discussions with Officers to enable them to formulate alternative budget proposals. These will remain confidential until determined by the respective political groups or until published in advance of Cabinet/Committee/ Council meetings, whichever is the earlier. Officers giving such advice must not be named in public.

4.8 It must not be assumed by any political group or Member that any Officer is supportive of any policy or strategy developed because of that Officer's assistance in the formulation of that policy or strategy.

4.9 Any particular cases of difficulty or uncertainty in this area of Officer advice to party groups should be raised with the Head of Paid Service who will discuss them with the relevant Group Leader(s).

5. The Relationship: Officer Support: The Executive

5.1 It is important that there should be a close working relationship between the Leader, Cabinet and Deputy Cabinet Members and the Officers who support and/or interact with them. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officer's ability to deal impartially with Cabinet Committees, the Scrutiny Committee and other Members and other political groups.

5.2 Officers will continue to work for and serve the Council as a whole. Nevertheless, as the majority of functions will be the responsibility of the Executive, it is likely that in practice many Officers will be working to the Cabinet for most of their time. Cabinet Members must nevertheless respect the political neutrality of the Officers. Equally officers must ensure, even when they are predominantly supporting the Cabinet, that their political neutrality is not compromised.

5.3 Advice from Officers on matters that are the responsibility of the Executive is given to both Cabinet and non-Cabinet Members in a variety of ways:

- Reports to Cabinet are normally submitted jointly by Cabinet Members and Directors.
- Reports recommending decisions to individual Cabinet Members are normally in the name of the Officer only, although Cabinet Members will routinely be consulted as part of the process of drawing up such reports.
- Officers must give written and oral information and advice to the Cabinet Committees, the Scrutiny Committee or other committees when necessary or requested.
- In some situations an Officer will be under a professional duty to submit a report.

5.4 Directors and other senior Officers are responsible for the contents of any report submitted in their name or jointly with a Cabinet Member, except where it is clear that the advice or opinion stated is that of the Cabinet Member. Any issues arising between a Cabinet or Deputy Cabinet Member and a Head of Service in this area should be referred to the Head of Paid Service/relevant Corporate Director for resolution in conjunction with the Leader of the Council.

5.5 Where functions that are the responsibility of the Leader are delegated through Cabinet Members to Officers or other structures outside the Cabinet, the Leader will

nevertheless remain accountable to the Council for the discharge of those functions. That is to say, the Executive will be held to account for both its decision to delegate a function and the way that the function is carried out, although the specific decision is the responsibility of the Officer or other delegated body.

5.6 Cabinet Members must satisfy themselves that they are clear what exactly they can and cannot do when taking decisions as individual Members of the Cabinet. They must seek advice from relevant Officers before taking a decision within their delegated authority. This includes taking legal advice, financial advice and professional Officer advice (particularly about contractual matters) as well as consulting the Monitoring Officer where there is doubt about vires.

5.7 Decisions taken by individual Cabinet Members give rise to legal and financial obligations in the same way as decisions taken collectively. Therefore, Cabinet Members should always be aware of legal and financial liabilities (consulting the Monitoring Officer and Director of Finance as appropriate) which will arise from their decisions.

5.8 In organising support for the Cabinet, there is a potential for tension between Chief Officers and Cabinet Members with portfolios. All Members and Officers need to be constantly aware of the possibility of such tensions arising and both Officers and Members need to work together to avoid such tensions and conflicts existing or being perceived.

6. The Scrutiny Committee

6.1 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

6.2 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.

7. Support to Council Committees

7.1 The Council discharges a range of functions through directly appointed committees. While the political groups operate within these committees, they should wherever possible conduct their business on a non-political basis. Officers need to work closely with the chairmen of such committees to plan their agendas and meeting arrangements, but all advice and information must be offered impartially to all Members of the committee and any other Member who has a right to know or attend the committee meeting.

8. Support services to Members and Party Groups

8.1 Members must not use Council premises or facilities (including support staff, IT equipment, photocopiers, fax machines, cars, stationery and other office supplies and catering) for purposes not connected with their duties as a councillor. Such facilities may be

used for communication with constituents on matters affecting the Council's functions and services or matters of general interest to local government and for the work of the political groups in relation to the transaction of business within the Council. These facilities must not be used for electoral or other party political purposes not directly connected to the Council's business, except where agreed arrangements exist for such facilities to be made available at a charge.

8.2 Members may not use the Council's IT systems unless they have signed the standard agreement accepting the conditions under which the systems are made available to Officers. Members must at all times comply with the terms of that agreement.

9. Members' Access to Information and to Council Documents

9.1 Members have a right to see (and be given a copy of) such documents and other information as is reasonably necessary to enable them to carry out their duties as councillors on a "need to know" basis, so long as they have no improper nor extraneous purpose in view. This includes all documents available to the public as "background documents" and all documents setting out information that is disclosable to the public under the Freedom of Information Act.

9.2 It is ultimately for the Council to determine what is reasonably necessary for a Member to know but normally Corporate Directors will make the judgment, in consultation, if necessary, with the Monitoring Officer.

Need to Know

9.3 This will be generously interpreted as applying to all documents and information to which there is no "confidential" connotation, subject only to Corporate Directors retaining a discretion to decline to make available voluminous documentation or diffuse information, or copies of documents, where the cost of doing so is reasonably high.

9.4 Documents or information which is regarded as "confidential" will normally be made available, on a confidential basis, only to:

- Cabinet Members
- Members of the Scrutiny Committee in connection with a matter that is to be scrutinised
- The Chairman and political group spokesmen on the Scrutiny Committee in considering whether a matter should be scrutinised
- Members of a Committee or Sub-Committee whose terms of reference include matters to which the information relates

Advice on requests from other Members should be referred to the Monitoring Officer.

9.5 There is no generic definition of "confidential" and Corporate Directors will exercise their judgment. It would include, for example, most information relating to named individuals, including information which is held for a specified purpose under the Data Protection Act not relevant to the exercise of the Member's duties. It will also include most information relating to the terms of contracts yet to be concluded. It is a narrower category than documents that are exempt from disclosure to the public under the Access to Information and Freedom of Information legislation (and different from the "confidential" classification under that legislation).

Confidentiality

9.6 Members shall not disclose any documents or information made available to them on a confidential basis or any information of a personal nature that is protected under the Data Protection Act. Nor should they disclose any information contained in Cabinet, Committee or other reports or documents classified as exempt or confidential under the Access to Information legislation or decisions taken in Council, Cabinet or Committee while the public is excluded from the meeting under that legislation, unless they have ascertained from the relevant Officer that confidentiality no longer applies.

Documents Affected

9.7 Members' rights of access apply to documents sent to the Council or prepared for it by Officers or consultants. They do not apply to:

- Draft documents of a factual or research nature where the Corporate Director is not satisfied as to their accuracy or completeness.
- Documents prepared for discussion between Cabinet or Deputy Cabinet Members and Officers prior to the initiation of formal decision making processes under the Procedure Rules in the Council's Constitution
- Working documents discussing policy or budget options or internal management arrangements, where the Corporate Director has not reached a view as to the advice to be offered to Members.
- Draft reports prior to their despatch to Council, Cabinet or a Committee.

9.8 Officers may consult Chairmen, Vice-Chairmen and group spokesmen on draft committee reports as part of the agenda planning process and may also consult them on working documents if they wish.

9.9 Documents prepared at the request of one political group will not be made available to other political groups without the first group's consent. Nor will such documents be used in the preparation of committee reports without the group's consent.

10. Correspondence and Advice

10.1 Members seeking advice from Officers should say clearly if they wish the advice to be confidential and not disclosed to other Members. If such a request is made, the Officer is entitled to refuse to provide the advice if to do would breach their duty to other Members.

10.2 Correspondence between a Member and an Officer should not normally be copied (by the Officer) to any other Member without the first Member's consent. In particular, a system of "blind copies" should not be employed.

10.3 Official external communications on behalf of the Council may be sent in the name of the Leader or Cabinet Member where they have been directly involved in the issues or circumstances make this appropriate (e.g. representations to a Government Minister or personal correspondence). All other official external communications must be sent in the name of an Officer, including those which create legal obligations or give instructions to act or commit expenditure on behalf of the Council.

10.4 Paragraph 10.3 does not in any way seek to discourage Members from signing correspondence with constituents or other persons on a personal basis but they should be careful to distinguish between their own views and the official policy or decision of the Council.

11. Publicity and Press Releases

11.1 Official press statements relating to the functions and business of the Council may be issued by the Director of Communications & Engagement on the authority of the Chairman of the Council on matters pertaining to their office and on all other matters on the authority of the Leader, relevant Cabinet Member or the Chairman of the relevant Committee.

11.2 The day to day handling of media enquiries is the responsibility of the Director of Communications & Engagement.

11.3 The Director of Communications & Engagement may authorise the issue of a press release relating to matters of routine and which are not controversial.

11.4 Cabinet Members or Chairmen of relevant Committees will be consulted on relevant draft press statements before they are published. After publication, copies will be made available to all Members of the Council.

11.5 In issuing any press release, the Director of Communications & Engagement will have regard to the Code of Practice on Local Authority Publicity.

11.6 The Leader, Cabinet Members and Chairmen of Committees may represent the Council in press, radio and television interviews on matters relevant to their office; otherwise they or any other Members of the Council may respond to requests for press, radio and television interviews, but these will be given in a personal capacity and on the personal responsibility of the Member concerned.

11.7 The media will be directed to the Leader or relevant Cabinet Member for any request relating to policy matters.

11.8 Officers may deal with any request for information or questions asked by the press, television or radio and may accept invitations to broadcast or appear on television in order to give the facts of the situation or provide background information on the Council's policies.

12. Official openings and ceremonies

12.1 All proposals for opening ceremonies and similar ceremonial events will be agreed by Officers with the relevant Cabinet Member in consultation with the Director of Communications & Engagement.

12.2 The Chairman of the Council will be consulted in all cases about whether the event is one which either the Chairman or Vice-Chairman of the County Council should officiate or represent the Council and issue invitations.

12.3 The relevant Cabinet Member, in consultation (if agreed as appropriate) with the Council Chairman or Vice-Chairman, will agree the invitation list taking account of the type and nature of the event. The relevant local County Councillors, Member of Parliament, MEP, Borough/District and Town/Parish Councillors will be invited to attend.

12.4 If neither the Chairman nor Vice-Chairman of the Council is to issue invitations and officiate, then the relevant Cabinet Member or a Deputy Cabinet Member may do so.

13. Involvement of Local Members

13.1 Officers must ensure that all Members of the Council are kept informed of issues, events, decisions and prospective decisions which will affect the Council, their own divisions and relevant information about non-KCC issues related to their service areas.

- Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the divisions affected should, as a matter of course, be invited to attend the meeting
- Whenever the Council undertakes any form of consultative exercise on a local issue, the local Members should be notified at the outset of the exercise and informed of the outcome
- Inquiries from local Members will be followed up and responded to quickly and positively
- Background briefings for Members on local issues will be prepared, if requested
- Officer support will, where appropriate, be provided in arranging and attending appropriate local meetings where a Member intends to discuss KCC business
- Local Member views must be sought and included in all reports to Cabinet, Cabinet Members and Council Committees on any matter that appears to specifically affect their division. Any objection by a local Member to a proposed course of action shall be the subject of consultation with the relevant Cabinet Member.
- Members of the public appealing against, or dissatisfied with, an Officer decision must always be informed of their ability to seek the help and advice of their local Member

Petitions

13.2 Members who are asked to present or receive a petition to, or on behalf of, the Council, whether as a Cabinet Member, Committee Chairman or Local Member, should consult the Head of Democratic Services on the appropriate method of so doing.

Local Issues at Committee Meetings

13.3 Members not serving on a Committee do not have the right to place an item of local concern on the agenda for a meeting; instead, they should seek the consent of the Chairman of the Committee if they wish a particular item to be discussed at a Committee meeting.

13.4 Any Member of the Council may attend any meeting of a Committee, including those parts of the meeting from which the public and press are excluded. They do not have a right to vote or move a motion or amendment, but may speak with the consent of the Chairman (that consent should be sought before the meeting and should not normally be withheld).

14. Access to Council Premises

14.1 Members are welcome to visit any premises owned and used for delivery of Council services and should agree arrangements for the visit with the local manager. If Members wish to visit premises outside their division as a part of their KCC duties, they should also inform the Member for that division and the relevant Cabinet Member. Members may not visit premises for purposes unrelated to their duties as a Member of the Council. They must comply with any health and safety or other workplace rules and regulations and not interfere with the provision of services to the public. Members have no rights to enter premises owned by KCC but let to or legally occupied by other persons nor any premises not owned by KCC.

Examples of Inappropriate Behaviour

(Taken from ACAS Web-Site)

What are bullying and harassment?

1. These terms are used interchangeably by most people, and many definitions include bullying as a form of harassment.

2. **Harassment, in general terms is:**

“Unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.”

3. Harassment can also have a specific meaning under certain laws (for instance if harassment is related to sex, race or disability, it may be unlawful discrimination).

4. **Bullying may be characterised as:**

“Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.”

5. Bullying or harassment may be by an individual against an individual (perhaps by someone in a position of authority such as a member, manager or supervisor) or involve groups of people. It may be obvious or it may be insidious. Whatever form it takes, it is unwarranted and unwelcome to the individual.

6. Examples of bullying/harassing behaviour include:

- spreading malicious rumours, or insulting someone by word or behaviour (particularly on racial, sexual or disability grounds)
- copying memos that are critical about someone to others who do not need to know
- ridiculing or demeaning someone — picking on them or setting them up to fail
- exclusion or victimisation
- unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances — touching, standing too close, the display of offensive materials
- making threats or comments about job security without foundation
- deliberately undermining a competent worker by overloading and constant criticism
- preventing individuals progressing by intentionally blocking promotion or training opportunities.

7. Bullying and harassment are not necessarily face to face. They may also occur in written communications, electronic e-mail, phone, and automatic supervision methods such as computer recording of downtime from work or the number of calls handled if these are not applied to all workers.

8. Bullying and harassment make someone feel anxious and humiliated. Feelings of anger and frustration at being unable to cope may be triggered. Some people may try to retaliate in some way. Others may become frightened and demotivated. Stress, loss of self-confidence and self-esteem caused by harassment or bullying can lead to job insecurity, illness, absence from work, and even resignation. Almost always job performance is affected and relations in the workplace suffer.