



# **THE NEWCASTLE CHARTER**

## **Part 5.4A - Protocol - Member/Officer Relations**

## **Notes:-**

**This constitutes a local protocol breach of which will constitute a breach of paragraph 6 of the Code of Conduct for Members and Voting Co-optees at Part 5.2A.**

It also has to be read in conjunction with

- the Code of Conduct for Employees (Part 5.2C of the Newcastle Charter).

## **Authorisation**

The Protocol was approved by City Council on 28 May 2003. Minor changes were made in 2008 to reflect the revised Members' Code of Conduct.

Further changes have been made in 2012 to reflect the new Members' Code of Conduct.

## **PROTOCOL - MEMBER/OFFICER RELATIONS**

**The purpose of this Protocol is to provide a guide to good working relationships between Members and Officers. It does not aim to be comprehensive, but is intended to offer guidance on issues which often arise.**

**The provisions of this Protocol apply to all Members which includes both Councillors and voting and non-voting co-optees.**

### **1. Members and Officers**

1.1 Mutual respect and courtesy between Officers and Members is essential to good local government.

1.2 Members and Officers need to be clear about their respective roles in the authority and about less clear cut areas. This can only be achieved if there is mutual understanding and good communications.

1.3 The working relationship between an Officer and a Member should not be so close as to bring into question the Officer's ability to deal impartially and fairly with other Members.

1.4 Neither Members nor Officers should try to take unfair advantage of their position.

1.5 Members must not pressurise an Officer to change his or her professional opinion.

Members should not attempt to edit or override any content of a report or other document which Directors and Heads of Service feel it is important to put before the Council or its committees or sub-committees. All Directors and Heads of Service must be able to retain a right to report without undue influence direct to the Council and all Committees where they consider it necessary. The Chief Executive, the Head of Strategic Property and Asset Management, the Assistant Director Legal Services and the Director of Resources also retain a right to report direct to the Council and all Committees where they consider it necessary.

1.6 Members must not put pressure on, or seek to intimidate, Officers.

1.7 In accordance with the Code of Conduct for Members, Members must not bully any person.

1.8 Members must not put an Officer in a position where there would be a conflict between that Officer and his or her Line Manager. Members should not give direct instructions to Junior Officers but should communicate with Senior Officers.

1.9 Members must not do anything which may cause the Council to breach any

of the equality enactments (as defined in section 33 of the Equality Act 2006).

- 1.10 Members should recognise that Officers are required to be politically neutral and serve all Members equally.
  - 1.11 Members should be aware that Officers owe a duty to the whole Council. Members must ensure that Officers are not put in a position that prejudices their overall duty.
  - 1.12 Members are required to take the advice of Officers into account.
  - 1.13 Officers should understand that the key roles of Members are to define the values of the Council and to decide policy priorities.
  - 1.14 Officers are to follow the Council's policies.
  - 1.15 Members and Officers together must establish the best way to put the values of the Council into practice and to implement policy.
  - 1.16 Officers have to advise Members from time to time that a certain course of action cannot be carried out. Members sometimes assume that this is a case of Officers deliberately obstructing the wishes of politicians. In fact this is hardly ever the case. Officers are employed to give unbiased professional advice even if it is not what Members want to hear. They do this as much for the protection of Members as for any other reason. However, the mark of an effective Officer is that if they do have to give negative advice, this will be accompanied by suggestions as to how Members might achieve some or all of their objectives in other ways. Such Officers are invaluable to any Council.
  - 1.17 In certain extreme situations those Officers who have specific legal responsibilities may have to intervene in ways which Members may not be happy about (see Section 7.2).
2. **Officer conduct or issues of capability**
- 2.1 Members should not raise issues about the conduct or capability of an Officer (or Officers) in public as Officers cannot respond in public.
  - 2.2 If a Member has a concern about the conduct or capability of an Officer, he or she should raise the matter privately with the appropriate Director or Head of Service. Any concern about a Director should be raised privately with the Chief Executive. Any concern about the Chief Executive should be raised privately with the Assistant Director Legal Services as Monitoring Officer.
3. **The Council's Role as Employer**
- 3.1 In their dealings with Officers, Members should recognise and have regard to the Council's role as employer. Members should be aware that Officers could rely on inappropriate behaviour of a Member in an employment case against the Council.
  - 3.2 A Member should not act as the "friend" of an individual in a staffing matter.

3.3 Members should avoid being involved in and lobbying over staffing matters.

3.4 Members will be aware that Standing Order 41(b) of the Newcastle Charter provides:-

*"A member of the Council shall not solicit for any person any appointment under the Council, but this shall not prevent a member from giving a written testimonial of a candidate's ability, experience, or character for submission to the Council with an application for appointment".*

3.5 Members will be aware that Standing Order 42 of the Newcastle Charter includes the following provision as to disclosing any relationship with a candidate for an appointment with the Council:

*"(a)...Every member and senior officer of the Council shall disclose to the Service Manager Democratic Services any relationship known to him/her to exist between himself/herself and any person whom he or she knows is a candidate for an appointment under the Council. The Service Manager Democratic Services shall keep a register of such disclosures*

*(c) For the purpose of the Standing Order "senior officer" means any officer under the Council so designated by the Council, and persons shall be deemed to be related if they are husband and wife or if either of them or the spouse of either of them is the son or daughter or grandson or granddaughter or brother or sister or nephew or niece of the other, or of the spouse of the other."*

#### 4. **Members involvement in staff appointments**

4.1 Part 4G of the Newcastle Charter includes the following provision:-

##### **"D OTHER APPOINTMENTS**

*(a) Officers below deputy chief officer.  
Appointment of officers below deputy chief officer (other than assistants to political groups) is the responsibility of the head of paid service or his/her nominee, and may not be made by councillors.*

*(b) Assistants to political groups.  
Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group."*

The appointment of Officers below Deputy Chief Officer (other than assistants to political groups) is therefore the responsibility of the Chief Executive as Head of Paid Service or his/her nominee and may not be made by Members.

Members may therefore be involved in appointing senior posts (employed on JNC or Chief Officers terms or equivalent) operating at Head of Service level and reporting directly to the Chief Executive or a Director. Members are referred to the list of such posts where Members may be involved in

recruitment and selection in the Newcastle Charter. (That list is reviewed on a rolling basis).

**5. Officers and Political Groups**

- 5.1 Members cannot insist that Officers go to meetings of political groups.
- 5.2 If Officers give advice to political groups, this will be limited to Council business only, and not party or group business. Any such advice will be available to each political group.
- 5.3 Officers must respect the confidentiality of any political group discussions
- 5.4 If the political group meeting includes non-Councillors, Members should be aware that Officers may not be able to provide the information and advice they would to a meeting of Councillors. (Those non-Councillors will not be bound by the Code of Conduct for Members, and Officers may therefore need to withhold confidential information).
- 5.5 Officers in Legal Services and Democratic Services are available to give Members confidential advice on constitutional or procedural matters about the proceedings of Council and other committees, including commenting on motions and notice of amendments and advice on declaration of interests. However, any such advice is without prejudice to the responsibility of the Lord Mayor or Chair of the meeting to give rulings on questions of order.

**6. Confidentiality**

- 6.1 In accordance with the Code of Conduct for Members, a Member must not disclose information given to him/her in confidence, or information which he/she believes or ought reasonably to be aware is of a confidential nature, unless -
- (i) he/she has the consent of a person authorised to give it;
  - (ii) he/she is required by law to do so;
  - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or
  - (iv) the disclosure is reasonable and in the public interest and made in good faith.
- 6.2 Confidential Committee papers (pink papers) are to be treated as confidential information unless the relevant Committee resolves not to exclude press and public. Members are reminded that the author of the report makes the initial decision as to whether or not the papers are to be treated as confidential. The decision as to whether they remain confidential is for the Committee. Other information may be confidential because to disclose it would be against the Council's or the public interest. Information may also be confidential because of the circumstances in which it was obtained.
- 6.3 Information and correspondence about an individual's private or business affairs will normally be confidential.
- 6.4 The Code of Conduct for Members and Voting co-optees on the use of Council equipment includes the following provision:-

*"Members have the same responsibilities as Council employees for confidentiality and security of citizen personal data held by the Council.*

*The council is potentially liable for any breach of the data protection principles by members whilst acting in their official capacity.*

*Members are personally liable for all other breaches and a number of Councillors have been prosecuted for:*

- *misuse of personal data obtained in their official capacity.*
- *deliberate/accidental disclosure to a third party without the consent of the data subject.*
- *deliberately obtaining citizen personal data for political use.*

*Members are covered by the council notification when they access/process council-held personal data for official purposes.*

*Individual members keeping records of surgery appointments, dealing with citizen complaints, etc., are data controllers in their own right. The Council will secure registration of Members as data controllers with the Information Commission for which an annual fee is paid.*

*Members exempt from notification must nevertheless comply with all other provisions of the Act.*

*When campaigning for election or otherwise acting on behalf of a political party, members should be covered by the party's notification."*

The annual fee referred to above is paid by the Council. Such registrations must be kept up to date so any change in Members' record keeping should be notified to the Service Manager Democratic Services in order that the appropriate adjustments might be made.

- 6.5 Officers should make it clear to Members if they are giving them confidential information. If a Member is not sure whether information is confidential, he or she should ask the relevant Officer, but treat the information as confidential in the meantime.
- 6.6 Any Council information provided to a Member must only be used by the Member in connection with the proper performance of the Member's duties as a Member of the Council.
- 6.7 If a Member receives confidential information and considers it should be disclosed to another person because it is reasonable and in the public interest to do so then he or she must first consult with the Assistant Director Legal Services as Monitoring Officer and shall not disclose the information without having regard to any advice given by that officer.
- 7. Consultation with Monitoring Officer/Chief Finance Officer**
- 7.1 If there are any issues of legality, maladministration, financial impropriety or probity, or if Members are in any doubt as to whether decisions are or likely to be contrary to the Council's policy, budget or the law, Members are required to consult with the Assistant Director Legal Services as Monitoring

Officer or the Director of Resources as Chief Finance Officer as appropriate.

8. **Officer Relationship with Leader and Cabinet Members, Senior Members of the Opposition Group, and Chairs of Scrutiny committees and non-Executive Committees**

8.1 The working relationship between Senior Officers and the Leader/Cabinet Members/Senior Members of the Opposition Group/Chairs of Scrutiny committees and non-Executive Committees will necessarily be a close one. However, the relationship must not be so close as to compromise an Officer's duties to all Members or to bring into question the Officer's impartiality.

8.2 Good communications will be achieved through regular meetings and briefing arrangements between Senior Officers and these Members.

9. **Ward Members and Officers**

9.1 Officers will support Ward Members in the performance of their community leadership/representative role.

9.2 The Protocols on the Exercise of Officer Delegations in the Newcastle Charter (Part 3) include the following provisions:-

*"14. Delegated Officers should proceed on the basis that they should consult with Cabinet members/chairs and ward members unless they have good reasons for not doing so ie they are satisfied that the decision (a) involves purely administrative or operational issues with no significant direct impact on local services or residents, with any expenditure being within existing budgets or (b) otherwise has no implications about which the Cabinet member/chair or any ward member is likely to be concerned. If Delegated Officers decide not to consult, they should record their reasons on the record of the decision. Even if a Delegated Officer decides not to consult, because for instance the decision will have no significant impact on local services or residents, s/he should ensure ward members are at least notified of any changes which will affect local services or residents.*

*If during consultation there is any significant member disagreement with the proposed decision, the Delegated Officer should generally seek the view of a more senior Delegated Officer or the relevant Cabinet Member before deciding on the issue.*

*15. Where ward members are consulted individually, all the members in the ward should be consulted unless the ward members have jointly indicated that it is not necessary to do so. If a decision affecting a ward has wider implications for the city, the relevant Cabinet member/chair should also be consulted.*

*16. Directorates should establish procedures to manage the consultation process in an effective manner and try to avoid ad*

*hoc consultation exercises. Examples might be regular bulletins. Directorates should also consider the possibility of consultation taking place through Ward Committees. Any consultation with members should be carried out, or at least recorded, in writing and in a way which ensures the relevant members clearly understand what they are being consulted about.”*

10. **Officer Relationship with Members of Scrutiny Committees**
- 10.1 Scrutiny committees should seek the advice of the Assistant Director Legal Services as Monitoring Officer or the Director of Resources as Chief Finance Officer as appropriate if there are any doubts as to whether decisions are or likely to be contrary to the Council's policy, budget or the law.
- 10.2 Members are referred to the detailed rules set out in the Scrutiny Committee Procedure Rules in Part 4E of the Newcastle Charter.
- 10.3 Key issues are:-
  - 10.3.1 Scrutiny committees should not request the attendance of a Junior Officer to give evidence but should direct requests to the relevant Director or Head of Service.
  - 10.3.2 When Officers are asked to give evidence before a scrutiny committee, questions should be confined as far as possible to questions of fact and explanation of a professional opinion relating to policies and decisions. Officers are to respond to Members' questions in an open, constructive and helpful manner. Officers must not mislead or be economical with the truth. Members must treat Officers with respect and must not question Officers in a hostile manner.
  - 10.3.3 Where it considers it appropriate, the scrutiny committee may ask Directors or Heads of Service to explain advice they have given to Members and explain any decision(s) they may have taken under delegated powers. Any private or confidential matter must be dealt with in a private or confidential manner.
- 10.4 Officers may be expected to support Cabinet Members who attend scrutiny committee.
- 10.5 Officers are required to assist the scrutiny committees in the delivery of their roles. The Chair and Members of the Committee, as with all Councillors undertaking scrutiny, will however have to be aware of the resource consequences of any proposals. In some cases requests for research in pursuit of scrutiny may have to be refused on grounds of expense or time.
- 10.6 Each scrutiny committee will have a Principal Officer Advisor and a designated Democratic Services Officer to support its operations. Other Officers should also assist the work of the Committee in order that they can fulfil their role and responsibilities.
11. **Officer relationship with Members of quasi-judicial committees**

Members will be aware of the special rules about quasi judicial committees which are dealt with in separate protocols. Members are therefore referred to the Code of Practice – Planning Matters in Part 5.4C, the Regulatory and Appeals Protocol in Part 5.4D and the Licensing Protocol for Licensing Committee in Part 5.4E.

12. **Member access to documents and information**

Members will be aware that the relevant rules are set out in the Access to Information Procedure Rules in Part 4B of the Newcastle Charter.

13. **Officer relationship with the Lord Mayor and Sheriff**

13.1 Officers should give honest and impartial advice to the Lord Mayor and the Sheriff and make all relevant details available to them, particularly in relation to, and in order to assist with the fulfilment of their responsibilities to uphold and promote the purposes of the Constitution; to interpret the Constitution when necessary and to preside over meetings of the Council.

13.2 All officers of the Council should, so far as it is reasonably practicable to do so, seek to support the Lord Mayor and the Sheriff with the promotion of public involvement in Council activities and civic and ceremonial events, but should always bear in mind that they must remain impartial at all times, and that, first and foremost, they are accountable to the whole Council.

14. **Correspondence**

14.1 Official letters on behalf of the Council should normally be sent out in the name of the relevant Officer, Cabinet Member, or the Lord Mayor and Sheriff, rather than in the name of a Member. In certain circumstances it may be appropriate for a letter to go out in the name of the Member, for example, making representations to an MP.

14.2 If a Member writes to an MP making representations, that Member should make it clear in the letter whether he or she is expressing the views of the Council or the views of the relevant political group, or their personal views.

14.3 An Officer should not normally copy correspondence between an Officer and a Member to another Member. If it is necessary to copy correspondence (other than correspondence which a Member has said is confidential) to another Member, the Officer should tell the original Member. A system of silent or "blind" copies is not acceptable.

14.4 If an Officer has to reproduce a conversation with a Member in correspondence, then that correspondence should be copied to the relevant Member.

15. **Contracts**

15.1 Subject to 15.2, Members are reminded that they have no authority to enter into contracts, or grant permissions, on behalf of the Council.

15.2 The Leader has delegated power to make executive decisions to any individual member of the Cabinet.

16. **Membership of Outside Bodies**

Members are reminded that any invitations to join an outside body as a representative of the Council must be approved by Cabinet or the appropriate Committee.

17. **Council Property**

17.1 Members do not have a general right to visit Council premises or land not open to the public. However, depending on his or her role, a Member may be entitled to visit those premises or lands for specific purposes, for example, scrutiny.

17.2 If Members do visit a Council property, they must make themselves known to the person in charge on arrival, and carry or wear their Council ID throughout the visit.

18. **Ceremonial and Civic Events**

Ceremonial and Civic Events are organised by the Lord Mayor's Office, attendance being by invitation. It is up to the individual concerned to decide whether or not to attend depending on the circumstances.

19. **Public Meetings**

19.1 Members may wish Officers to attend public meetings to give them support. This is acceptable subject to the following conditions -

- (i) Officers cannot be involved in a political debate.
- (ii) Officers will not normally attend in the period before elections. (See also section 21 which deals with business during election period).
- (iii) The Officer's attendance must first be approved by the appropriate Director or Head of Service.

19.2 It is the duty of the Member presiding at the public meeting to protect any persons (including Officers) who attend that meeting from aggressive or hostile action by others at the meeting.

19.3 The Member presiding at the public meeting also has a duty to deal with any discriminatory behaviour, harassment or bullying by persons present at the meeting (including other Members, Officers and members of the public).

20. **PR Issues**

20.1 The guiding principles about the publication of publicity material and the issuing of press releases by Officers are found in the Local Government Act 1986 and the revised Code of Recommended Practice on Local Authority Publicity. This prohibits Councils from publishing any material which seems designed to affect public support for a political party.

20.2 Publicity should not be party political.

- 20.3 Official news releases and official press statements should only be sent out through the Press Office in the Communications and Marketing Unit.
- 20.4 Any interviews to be given by a Member (where he or she is to appear as a Council spokesperson) should be managed by the Press Office in the Communications and Marketing Unit.
21. **Business During Election Period**
- 21.1 Members are reminded that special rules apply to local authority publicity during an election period. The rules are contained in the Code of Recommended Practice on Local Authority Publicity ("the Code").
- 21.2 The key provisions of the Code relate to the period between the Notice of an Election and the election itself, the Code requiring that proactive publicity of candidates and others directly involved in the election should be avoided. Publicity should not deal with controversial issues or report views, proposals or recommendations in such a way as to identify them with individual Members or groups of Members. The Code recognises, however, that the work of the Council must continue during the election period, and that it is acceptable for the Council to respond to issues as they arise, provided that the publicity is balanced and not construed as party political. In exceptional circumstances, Members holding key positions and who are seeking re-election should be able to make public comments provided that any such comments are associated with their special responsibilities. Such comments must not be used or perceived to be used as part of their candidature. For this reason, the Code stresses that proactive events arranged during the election period should not involve Members seeking re-election.
- 21.3 Members are reminded that it has been the Council's policy to enforce the Code from the last working day before the publication of the Notice of Election.
- 21.4 From the last working day before the publication of the Notice of Election, any meetings which might be regarded as contentious should be avoided. Meetings operating to fixed cycles can continue and Members standing for re-election are free to attend provided that they are not perceived as using such meetings as an opportunity to advance their own campaign. Otherwise, there is a risk that in the event of any complaints being received and upheld, the costs of that particular meeting could be regarded as counting against the candidate's election expenses.
- 21.5 On the same basis, no publicity material containing photographs of or personal information relating to a Councillor seeking re-election should be issued after the last working day before the publication of the Notice of Election. Photographs of Councillors seeking re-election should also not be displayed on, for example, community notice boards during the election period to avoid any accusation of the Council supporting an individual member's campaign.
22. **Sanctions**
- 22.1 A breach of this protocol by a Member will amount to a breach of the Code of Conduct for Members (Part 5.2A) and lead to complaints to the Assistant

Director Legal Services as Monitoring Officer in accordance with the protocol for complaints (Part 5.4G of the Newcastle Charter).

- 22.2 Complaints about any breach of this protocol by an Officer may be referred to the relevant Chief Officer, the Chief Executive or the Assistant Director Legal Services as Monitoring Officer.