

**Maldon District Council Protocol for Member/Officer Relations**

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### 1. Introduction

- 1.1 What does the Protocol do?
- 1.2 Together, Members and officers combine the essential skills, experience and knowledge to manage an effective public sector organisation. Members provide a democratic mandate to the Council whereas officers contribute the professional and technical expertise and experience to deliver the relevant services underpinned by the policy framework agreed by Council.
- 1.3 Whilst collaborative working is the accepted norm for member and officer relations at Maldon District Council, it is important to recognise and take account of their different roles. This is important for day-to-day interaction between Members and officers and for the public perception of the Council; by ensuring transparency between the political role of members and the professional, impartial role of officers.
- 1.4 The Protocol's purpose is to provide guidance on member-officer relations and to address some key areas of interaction. Members and officers may seek advice from the Monitoring Officer on any matter not covered by this Protocol. The Protocol should be read alongside other documents relevant to the interaction between Members and officers. For further details of these documents, please go to Page 12 of this document.
- 1.5 Who does it apply to?
- 1.6 The Protocol is adopted by full Council and applies to all elected and co-opted members and all officers employed or engaged by the Council. This includes consultants, contractors or agency staff who work for the Council.

**2. Principles of Member-Officer Relations**

- 2.1 Member-officer relations are based on the following principles:
- 2.2 Mutual trust and respect
- 2.3 A common purpose; providing the best possible services to the residents and other stakeholders of the Maldon District;
- 2.4 A commitment to non-adversarial resolution of disputes.
- 2.5 Mutual trust and respect is based upon an understanding of the distinct contribution Members and officers make and respect for the boundaries between those roles. A key principle for officers is their political impartiality; they serve the whole Council and not particular groups or members. This is particularly important for senior officers, who hold politically restricted posts and are prevented in law from engaging in political activities
- 2.6 Further, some officers hold posts with mandatory statutory responsibilities including the Head of Paid Service (Chief Executive), the Monitoring Officer, and the Chief Finance Officer (S 151), Members must respect these duties and that they may be required to give advice or make decisions which members may not agree with or support.
- 2.7 The remainder of this Protocol will address specific areas of member-officer interaction

**3. Quick Guide to Member and Officer Roles**

| <b>Members</b>                                       | <b>Officers</b>   |
|--|---|
| Democratically elected accountable to the electorate | Employees accountable to the Council  |
| Community leader for their ward                      | Serve the whole council.  |
| Add a political dimension                            | Impartial   |
| Set policy and strategy                              | Ensure operational delivery and provide advice                                      |
| Bound by a statutory Code of Conduct                 | Bound by their contract of employment and the current Code of Conduct for officers. |
| Involved in senior appointments only.                | Day to day management of staff  |

**4. Working Arrangements**

- 4.1 Members and officers work together on a regular basis in meetings, committees and less formal settings. It is inevitable that relationships will form and to ensure the principles of member-officer relations are upheld, the following guidance applies.
- 4.2 A good working relationship between the Members and Officers is essential for the Council to be fully effective in its operations. With this in mind it is important that both Members and Officers work together in a positive manner and Officers shall, where possible assist Members in the carrying out of their roles. It is important that a two-way flow of communication between Members and Officers can operate in a climate of openness and with each other having the confidence to express views. Communication should be positive and productive, with proper feedback on any actions agreed

### 4.3 Forms of Address and Conduct

#### 4.3.1 Formal Meetings

In formal Council, Committee or sub-committee meetings:

- Members and officers will dress appropriately.
- Members should normally be referred to by their office: e.g., Leader, Chair or Councillor and, otherwise, normal courtesies shall be observed.
- Relations can be friendly and cordial but not over familiar, as the public or other members and officers could perceive this as inappropriate or favouritism.
- Criticism should be constructive and not personal, particularly with regard to the actions of junior officers.
- Officers will not allow themselves to be drawn into a party political debate.

#### 4.3.2 Informal Meetings and Settings

This guidance also applies to informal meetings but with more latitude for forms of dress and address. However, both members and officers should ensure that their interaction does not embarrass others, suggest favouritism or personal dislike or otherwise damage working relationships.

### 4.4 Appointment or Dismissal of Officers

4.4.1 Members will take no part in the appointment or dismissal of, or disciplinary action against Officers below Director (but excluding Head of Paid Service, Monitoring Officer and Section 151 (S151) Officer (Finance)), nor should they seek to influence in any way the appointment or dismissal of a particular person to a post, or the conduct of any disciplinary action.

4.4.2 Members must not take part in the appointment or dismissal of Directors and above (including Head of Paid Service, Monitoring Officer and S151 Officer (Finance)) if they are in any way related to or associated with the person concerned.

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**5. Personal Relationships**

5.1 If a friendship or closer relationship (including relatives) exists or forms between a member and an officer, this needs to be addressed openly. Friendship is likely to be something closer than an acquaintance or work colleague and include some social interaction. In such situations:

Members should notify their Group Leader and should seek advice from the Monitoring Officer.

Officers must raise the matter with their Head of Service or Director to discuss appropriate action.

**6. Political Groups and Individual Members**

6.1 Political Groups and Officers

A service or facility made available to one political group shall be made available to all groups and the Officer providing that service will provide it equally and impartially. Such services may include briefings prior to meetings and/or discussions with a group on a particular topic. Where this type of arrangement occurs the following principles shall be observed by Members and Officers:

- Officer support extends only to the provision of information and advice on Council business. It does not include advice on party or personal matters.
- Only members and officers will attend political group briefings. Officers may refuse to brief meetings attended by a non-member (except for other council officers), as they are not bound by the Code of Conduct's obligations of

confidentiality and also, other than the above, officers must not attend political party meetings, as this may jeopardise their impartiality.

- Any advice given to one party group at such meetings shall be available to the other groups, prior to or at formal decision making meetings.
- the confidentiality of party group meetings should be respected;
- decisions taken at party group meetings are not formal decisions of the Council and should not be treated as such by Officers;

information and advice given to party groups in no way dispenses with the need to provide all necessary information and advice to the relevant decision-making body of the Council.

For clarity, any briefings or meetings are restricted to the political groups within the Council and do not include any meeting arranged by a political party itself.

6.2 Where Officers have particular difficulties involving advice to party groups these should be raised with the Head of Paid Service or appropriate Director.

### 6.2 Individual Members and the Use of Council Resources

6.2.1 The Council provides members with a range of resources to support their work as community leaders and in their appointed offices. The Committee Services and Corporate Teams provide all members with support. All other Council officers will assist members as and when required. Members are also provided with IT and other equipment.

6.2.3 The following will apply to the use of these resources:

- Members must comply with the Council's protocols for the use of IT and other equipment.

- Correspondence or other communications about Council business, including constituency matters, must be on Council letter headed paper or Council email.
- Officer support or other resources cannot be used for party political work.
- Officers will respect the confidentiality of members' correspondence and not disclose it to any other member without authorisation.
- Members must not use Council resources to improperly benefit themselves or for the improper benefit or detriment of another person.
- Members should be aware that all correspondence may be disclosed as part of a Freedom of Information Act or Subject Access Request.
- Members should not use their Council emails when dealing with a personal matter e.g. planning application, council tax enquiry, enforcement matter. In these instances, Members should use a personal email address and advise the recipient that this is a personal matter. Members should be aware that the requirements of the code of conduct may still apply to these interactions with the Council.

6.2.4 Corporate standards for responding to members' correspondence are dealt with in Section 9

### 7. **The Management of Officers**

- 7.1 Although officers will support, advise and respond to members' requests, the law is clear that only other officers can manage officers. This means that:
- Day to day management of officers is the responsibility of managers and ultimately the Chief Executive.
  - Officers will comply with all reasonable requests from members but members cannot instruct officers to do any piece of work or take any course of action.

- Members should not require an Officer to do something he/she is not authorised to do or which is against his/her professional judgement.
- A Member cannot require an Officer to do something which is outside his/her normal duties or working hours.
- Officers will not seek any member's support in any employment or other dispute or a Council appointment or promotion.
- Members are legally responsible for the appointment of statutory posts of Head of Paid Service, Monitoring Officer and S151 Officer.
- Members approve appointment of Directors as set out in the Council Constitution. Officers are responsible for recruitment of all other officers.
- Members' role in any formal action against an officer or grievance involving an officer is limited to reporting an officer's actions to their manager and/or as a witness (except for certain statutory posts).

When discussing or making decisions about employment relations matters, members must remember that they represent the Council as an employer and are not a representative of the employees.

### 8. **Access to information**

8.1 To carry out their duties effectively, members must have broad access to Council information. The following principles apply here:

- Members' enquiries will be dealt with promptly and effectively and within corporate time scales (see Members' Enquiries below).
- Members' access to information will be compliant with their statutory and common law rights (see Appendix A for details)
- Officers will not withhold information from a member who is entitled to receive it.

- Where confidential, personal or otherwise sensitive information is provided to a member, they will not disclose it to any other person, without authorisation.
- Members' enquiries which are in fact constituent complaints will be handled under the Council's Corporate Complaints Procedure.
- Members' enquiries should be addressed to the relevant Head of Service or above.
- Any disputes relating to access to information will be referred to the Monitoring Officer for determination.

### 9. **Members' Enquiries**

- Members' enquiries should be made via Freshservice. They may also be made in person or by telephone, although it may be difficult to establish an audit trail in case of dissatisfaction.
- A substantive response to a member enquiry should be sent within 10 calendar days of receipt.
- If it is not possible to respond within 10 calendar days, officers must explain in writing:
  - the reason for the delay,
  - what action is being taken to pursue the enquiry and
  - a deadline in which a substantive response will be sent.
- Directors are responsible for ensuring that member enquiries are dealt with promptly and accurately in his or her Directorate.
- Where an enquiry imposes a disproportionate burden on officers' work, this should be explained and discussed with the member concerned and senior management to agree an alternative deadline and/or response.

- The members' enquiry procedure supplements and does not replace members' statutory and common law rights to information.
- Co-opted and independent members' rights of access to information will be limited to those areas that fall within the remit of the body to which they are appointed and their statutory rights.

Further information on access to information is available at Appendix A.

## **10. Media Relations and Publicity**

10.1. The Council's Press Team lead on all media and publicity events. The following principles are relevant to member-officer relations and the media:

- members and officers will comply with the Council's Policy when speaking for or on behalf of the Council.
- Members are free to speak to the media on any matter on behalf of a political party but should make this clear in any statement made.
- Officers must also act in accordance with the Employees' Code of Conduct when speaking about the Council in public.

## **11. When Things go Wrong: Dispute resolution**

11.1 The Council's internal procedure for the resolution of disputes between Members and Officers is appended to this Protocol. In the case of Officers, subsequent action may be required under the Council's disciplinary or capability procedures. In the case of Members, the Monitoring Officer will be involved in relation to any Code of Conduct implications.

11.2 Both Members and officers are committed to informal, non-adversarial solutions to resolve disputes. Where a dispute arises, the first step should be for both

parties to seek to resolve any differences informally between themselves or, where necessary, with the assistance of a manager.

11.2 When an informal resolution is not possible, the following processes will apply.

#### Formal complaints about officers

11.3 Members should make any formal complaints about officers to their Director or the Chief Executive, copied to the Monitoring Officer. The matter will be investigated and the member will be informed of its progress and outcome.

11.4 In appropriate cases, breaches of this Protocol may also constitute offences under the Employees' Code of Conduct and in such cases, disciplinary action may be taken.

11.5 Members must remember that the decision to take formal action against an officer and the action taken is the sole responsibility of management. A Member's evidence will be considered but Members must:

- respect the confidentiality of the investigation and disciplinary process;
- not seek to improperly influence the action taken against an employee;
- accept the management decision.

#### 11.6 Formal complaints about Members

An officer's complaint about a Member should be reported to the Chief Executive and copied to the Monitoring Officer and the officer's Head of Service. The Monitoring Officer will, where necessary, investigate the complaint and report the outcome to the officer and Member. In appropriate cases, the Monitoring Officer will notify the relevant political group leader of the complaint and his findings.

#### 11.7 Interaction with the Members' Code of Conduct and the Whistleblowing Policy

##### Whistleblowing Policy

A complaint against a Member may disclose evidence of a breach of the Code of Conduct. The Protocol's aim is, in part, to provide guidance and resolve disputes informally and thereby prevent Code of Conduct complaints. However, an officer's use of the dispute resolution procedure in this Protocol does not prohibit

them from making a complaint under the Code of Conduct about the same matter.

11.8 Equally, officers and Members are not prevented by this Protocol from using the Council’s Whistleblowing Procedure, particularly for matters involving potential fraud, deception or other criminality.

**12. Monitoring and review**

12.1 The Protocol will be monitored and reviewed by the Council’s Performance Governance and Audit Committee on a three yearly basis.

Further Sources of Information

| Topic                                  | Source  |
|--|---|
| Employment and appointment of officers | Employment Procedure Rules  |
| Member conduct                         | The Code of Conduct   |
| Officer conduct                        | Code of Conduct for Officers  |
| Media and Publicity                    | <a href="#">Code of Recommended Practice on Local Authority Publicity</a> |
| Complaints                             | Corporate Complaints homepage   |
| Whistleblowing                         | Whistleblowing Policy and anti-fraud                                      |
| Members’ Access to Information         | Appendix A.<br>Access to Information Procedure Rules                      |

Freedom of Information and Data  
Protection

Council's Freedom of Information homepage  
Council's Data Protection homepage  
[www.ico.gov.uk](http://www.ico.gov.uk) (external)

The electronic version of this Protocol contains, where possible, hyperlinks to the relevant documents.

MEMBER OFFICER PROTOCOL –

APPENDIX A: MEMBERS’ RIGHTS OF ACCESS TO COUNCIL INFORMATION

This is a summary of the legal rights of access to Council information available to Councillors. These are in addition to the Council’s policy on responding to members’ enquiries: To make a complex area simpler to understand, this guidance is a summary document and not a complete statement of the law. If in doubt, members are recommended to seek further advice from the Monitoring Officer. In short, a member’s rights of access to information depend on their role within the Council. The key rights of access to council information are summarised in the table below and refers to the relevant section below.

| Person seeking access                               | Right of access  |
|---|--|
| Public and Press                                    | Access to all Council reports, agendas and minutes, except those reports which are exempt from public access<br>Access to Notices of Executive decisions<br>Rights under Freedom of Information Act 2000, Environmental Information Regulations 2004 and Data Protection Act 1998. |
| Independent Person<br>(ethical standards functions) | Public and press rights:<br>Reports for local determination hearings under the Code of Conduct (including exempt information).   |
| All elected members                                 | Public and press rights plus:<br>“Need to know”<br>Right to inspect “business to be transacted” by the Council   |
| Scrutiny committee members                          | All the rights above and additional rights in relation to matters under scrutiny.  |

1. Common law – the “need to know”
  - 1.1. The primary rights are in common law, i.e., case law built up over the years. Members have rights of access to information so far as access is reasonably necessary for them to perform their duties. The case law says this is not a “roving commission” to access any documents and the member needs to prove they have a right to know. A committee member generally has a need to know about matters in relation to that committee or its sub-committee. This right is not limited to formal committee papers.
  - 1.2. Refusals can take into account the effects on disclosure on third parties and the need to know must be in “good faith”.
  - 1.3. It should be noted that this is a right of access to the member only and for carrying out their official duties. It does not allow a member to further disclose the information and indeed the unauthorised disclosure of confidential information is a breach of the Code of Conduct.
2. Members’ statutory rights of access
  - 2.1. Access to Council and Committee documents – Local Government Act 1972

#### Public Access

- 2.2. Members have generally the same rights of access as members of the public in respect of the formal council meetings.
- 2.3. The default position is that there is access to all agendas, reports and minutes of council, committee and scrutiny meetings. Schedule 12A of the LGA 1972, however, sets out a list of categories of information which may be excluded from public access before the meeting and by a vote of the committee itself at the

meeting. Schedule 12A also includes some categories of information which must not be disclosed to the public. The categories within Schedule 12A are set out at the end of this document.

2.4. It should also be noted that the application of an exemption is now subject to a public interest test. The Council will now have to show that the public interest is against public access.

### Additional Rights of Members

2.4.1. Members have additional rights of access to the public. The additional rights are to inspect any document in the possession or under the control of the Council and containing material relating to any business to be transacted at a council, committee or sub-committee meeting.

2.4.2. It is important to note that the right is limited in the following ways;

- It is a right to inspect not receive a copy.
- It applies to access before a public meeting, or to access after a private meeting or where an executive decision has been made by an individual member or officer in accordance with executive arrangements
- It only applies to documents held at that time.

2.4.3. Most importantly, if the report is designated as containing exempt information, the right to inspect at 2.1.4 does not apply. However, this restriction does not apply to:

- Paragraph 3 – information about the financial or business affairs of any person (including the Council) where the information is not about terms proposed during contract negotiations.
- Paragraph 6 – proposals to issue statutory notices, directions or other orders.

### Members of Overview and Scrutiny Committee

Members of the Overview and Scrutiny Committee have additional rights. Scrutiny members are entitled to a copy of any document which is in the possession or under the control of the authority, and that contains material relating to one of the following:

- Any business transacted at a private or public meeting of a decision-making body of that authority.
- Any key decision made by an officer of the authority in accordance with their delegated authority.

No Scrutiny member is entitled to:

- A copy of such document or part of a document as contains exempt or confidential information under Schedule 12A, unless that information is relevant to an action or decision that they are reviewing or scrutinising, or which is relevant to any review contained in any programme of work of the committee or one of its sub-committees.
- A copy of a document or part of a document containing advice provided by a political adviser or assistant.

Scrutiny's right is a broader entitlement to copies of documents but is still limited when exempt information is being considered.

### **3.** Freedom of information and other statutory rights.

- 3.1. The Freedom of Information Act 2000 gives anyone the right to request information held by the Council. The Council is under a duty to confirm or deny that it holds the information and, if it does, to supply the information. The Council has 20 working days to supply the information, although in certain cases, this time limit can be extended. This right of access is subject a number of exempt

categories of information. Fees are payable for requests that take over 18 ½ hours to provide a response.

- 3.2. Environmental information is available under the Environmental Information Regulations 2005, again with 20 working days for straightforward requests, although a fee may be charged immediately for all responses.
- 3.3. The Data Protection Act 1998 gives members rights of access to personal information about themselves held by the Council. It also provides for members to seek personal information about constituents they are representing within specified limits. There may still be restrictions on accessing personal information about people members are not representing.
- 3.4. Members should make a request for information using Freshservice.

#### 4. THE CODE OF CONDUCT

- 4.1. Members have wide rights of access to information held by the Council but this does not mean that they may share all this information with other people or the public. Much of the information disclosed under the “need to know” or the additional rights of access to Council and Council documents will include access to confidential information, either about individuals, the Council or other persons/organisations.
- 4.2. The Code of Conduct requires councillors to comply with the Access to Information Rules and the law in respect of the disclosure of confidential information,
- 4.3. Members are strongly advised to seek legal advice before considering the disclosure of information given to them in confidential or otherwise restricted circumstances.

| SCHEDULE 12A OF THE LOCAL GOVERNMENT ACT 1972 – SUMMARY   |  |
|---|--|
| 1.  | Information relating to any individual.  |
| 2.  | Information which is likely to reveal the identity of an individual.   |
| 3.  | Information relating to the financial or business affairs of any particular person (including the authority holding that information).   |
| 4.  | Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.        |
| 5.  | Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.  |
| 6.  | Information which reveals that the authority proposes— <ul style="list-style-type: none"> <li>• to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</li> <li>• to make an order or direction under any enactment.</li> </ul> |
| 7.  | Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.  |
| Exempt Information in Local Determination Hearings of the Council’s Audit and Governance Committee Only |  |
| 7A.   | Information which is subject to any obligation of confidentiality.   |
| 7B.   | Information which relates in any way to matters concerning national security.  |
| 7C.   | The deliberations of a standards committee or a subcommittee   |

**Qualifications**

All information within paragraphs 1-7C is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information (the “public interest test”).

Information within paragraph 3 is not exempt information if it is required to be registered under-

- (a) the Companies Act 1985;
- (b) the Friendly Societies Act 1974;
- (c) the Friendly Societies Act 1992;
- (d) the Industrial and Provident Societies Acts 1965 to 1978; (e) the Building Societies Act 1986; or (f) the Charities Act 1993.

## **Procedure for resolution of disputes**

### Introduction

- 1.1 Like all effective partnerships, Member / Officer relations are based on the following principles:
- Mutual trust and respect of the different roles of Members and Officers.
  - A common purpose; providing the best possible service to the residents and other stakeholders of the Maldon District.
  - A commitment to non-adversarial resolution of disputes.
- 1.2 This procedure has been developed as a quick and largely informal way of resolving disputes or conflict between officers and members. This procedure does not preclude the existing rights of the parties to initiate the Council's grievance or disciplinary procedures. It aims to foster mutual respect and courtesy and to develop good working relationships between officers and members. It will be conducted in private and will examine issues in a developmental way without attributing blame

It is suggested that when looking to resolve concerns both formally and informally email correspondence should be kept to a minimum and face to face meetings to discuss concerns should be the preferred option. Similarly, both parties should aim to be positive in seeking a solution to the problem being raised and to ensure clarity on the actions to be taken forward following any discussions that take place. Whilst aiming to resolve an issue informally great care should be taken to use constructive language and avoid terminology such as "investigation" or "accusation".

Both councillors and officers shall have regard to the existing codes of conduct as setting clear ground rules on behaviour.

This procedure should be seen as additional to rather than as a substitute for the Council's existing grievance or disciplinary procedures. Any party may wish to be accompanied during part or the whole of the process.

## 2. Members' disputes with Officers

- 2.1 The key principle for dispute resolution is that both Members and Officers are committed to informal, non-adversarial solutions. Where a dispute arises, the first step should be for both parties to seek to resolve any differences informally between themselves or, where necessary, with the assistance of a Director and the Leader of the Council / Opposition Leader.

2.2 Generally if a Member has a concern they should raise this with the Officer concerned and that Officer should provide a response within seven days. If the concern is expressed via email the Officer shall contact the Member within three working days. If this is not possible, the Member should be kept informed of when they can expect a response.

2.3 If concerns remain after the initial approach, any outstanding concerns should be addressed to the Leader of the Council who, for the purposes of clarity, will seek feedback on the issue of concern from the Head of Paid Service

### 3. Members' complaints about Officers

3.1 Members must make any formal complaints about Officers to the Leader who will inform the Head of Paid Service. The matter will be investigated, and the Officer will be informed of the outcome. The Head of Paid Service will inform the Leader who will then advise the relevant Member. In appropriate cases, disciplinary action may be taken.

### 4. Officers' disputes with Members

4.1 The same aim to seek out informal constructive solutions to concerns should be applied to complaints from Officers to Members.

4.2 Where a concern arises, the first step should be for both parties to seek to resolve any differences informally between themselves or with the assistance of the relevant Director and the Leader of the Council/Opposition Leader.

4.3 The Officer concerned should make their concerns known to their Director who should work with them to liaise with the Member to seek an informal discussion to arrive at a solution. The Leader must always be kept informed, so that he/she is fully aware of the concerns and can work with the Member to get a clear view of the circumstances from their perspective and provide any necessary support.

### 5. Officers' complaints about Members

5.1 If it is not possible to resolve the concern informally, the Officer(s) must make a formal complaint about a Member to the Standards Committee via the Monitoring Officer. The Council's Code of Conduct Process will then determine what happens to the complaint