

Part 9.2: Protocol on Councillors' Rights and Responsibilities

1. Introduction

- (a) This Protocol sets out the rights of individual members of the Council to obtain information, inspect documents and attend meetings. This protocol should be read in conjunction with other elements of the Constitution, **as set out throughout this protocol**. Advice on the interpretation of this protocol will be given by the **Director of Law & Governance and** Monitoring Officer.
- (b) ~~In law all Councillors are equal and have the responsibilities of trustees. However, the~~ Legislation, and guidance issued under it, gives certain powers and duties to the different roles which Councillors may **undertake** play e.g. Chair of the Council, Leader of the Council, Cabinet member, Chair of an **Overview and** Scrutiny Committee.
- (c) It is the responsibility of Councillors themselves to ensure that they are aware of their rights and responsibilities. If Councillors are ever in any doubt in terms of the law, the Constitution, general propriety, **or** conflicts of interest, they should consult the **Director of Law & Governance and** Monitoring Officer. Similarly, they should consult the Chief Finance Officer (**Executive Director of Resources (Section 151 Officer)**) in respect of financial advice.

2. Opposition Leader, Deputy Leader and Shadow Cabinet

The largest political group on the Council which is not the Group(s) from which the Cabinet is drawn will be officially recognised by the Council as the Opposition. The Opposition may appoint a Leader, Deputy Leader and other Councillors (not being more than the number of Councillors in the Council's Cabinet) to shadow the responsibilities of the Leader and Deputy Leader of the Council and the other Cabinet members as set out in the relevant part of this Constitution. Collectively these Opposition Councillors will be termed the Shadow Cabinet. Only one member of the Opposition may be appointed to shadow any one Cabinet position.

3. Rights of the Shadow Cabinet to Make Opposition Statements at Cabinet Meetings

At meetings of the Cabinet or any committee of the Cabinet or when an individual member of the Cabinet is taking decisions **in a meeting or online** in accordance with the rules set out in the Constitution, Shadow Cabinet

Councillors will have the right to attend and make a formal Opposition statement on a matter under consideration. This right will extend only to the Shadow Cabinet member in relation to the functions of the Cabinet for which they are the shadow. Notice by the Shadow Cabinet of the intention to make a statement shall be given by 9 am on the **third** working day before the meeting. Such a statement may be made at any time during the consideration of that item at the meeting and shall not exceed a period of five minutes. However, this will not prevent the person presiding inviting the Shadow Cabinet member to make any additional comment during the consideration of that item of business. If the Shadow Cabinet member is unable to attend, then the right can be exercised by the Leader or Deputy Leader of the Opposition.

4. Rights of Shadow Cabinet Members to Private Briefings

The Shadow Cabinet members shall have the right to request private briefings from Officers and in such cases the procedures set out under political activity in the Protocol on Councillor/Officer Relations will apply.

5. Rights of the Opposition and Other Groups to Put Forward Their Own Budgets

The political groups of the Council, other than the Group(s) in power from which the Cabinet is drawn, will have the right to put forward their own proposed budgets for consideration at the relevant Council meeting (normally the February one).

6. Rights of Councillors to Attend Meetings

- (a) All Councillors have the right to attend meetings of the ~~Full~~ Council and to speak and vote on matters coming before it. Councillors who are appointed to a particular body (such as a committee or sub-committee) may attend, speak and where appropriate vote on matters before that body.
- (b) Any member of a committee or sub-committee, who is unable to attend a meeting of that committee or sub-committee may give notice directly or indirectly to the Director of Law & Governance **and Monitoring Officer** of their ~~resignation~~ **absence** from the committee or sub-committee ~~on a temporary basis for the duration of that meeting only and~~ **the name of any member substituting for them at that meeting in accordance with Council Procedure Rule 4.** ~~Upon receiving notification of any such temporary resignation, the Director of Law & Governance and Monitoring Officer shall make a temporary appointment to the committee or sub-committee for that meeting only.~~
- (c) All Councillors have the right to attend, as non-speaking observers, any meeting of the Cabinet or a committee of the Cabinet where decisions are to be taken, or of an **Overview and Scrutiny** Committee (or sub-

committee), or of a committee (or sub-committee) of the Council or when an individual Cabinet member is taking decisions **in a meeting or online**. Councillors may attend and speak at any meeting to which they have been invited either as part of any rights conferred by this Constitution (including the Councillor Call for Action in Part 9.3, which enables Councillors to require matters relating to the area they represent to be considered by the relevant **Overview and Scrutiny Committee**) or at the invitation of the person presiding at any meeting.

- (d) The rights conferred in (c) above do not apply in relation to any part of a meeting from which the public has been excluded. A Councillor has a right to attend that part of a meeting, as a non-speaking observer, if they can demonstrate a 'need to know'. Where a Councillor wishes to attend as they believe that there is a 'need to know' in order to properly fulfil their duties as a Councillor then the following procedure should be followed:

1. The request should be made in writing to the ~~Chair~~ **Director of Law & Governance and Monitoring Officer** ~~of the committee~~, giving reasons why it is necessary for the Councillor to attend the meeting in order to fulfil their duties as a Councillor.
2. The **Director of Law & Governance and Monitoring Officer in consultation with the** Chair of the committee may decline the request of a Councillor to attend where in their view attendance:
 - is not necessary for enabling the Councillor to fulfil their duties as a Councillor; and/or
 - should not be allowed for some other good reason(s) (which reason(s) shall be specified in writing to the Councillor).
3. Where a Councillor is dissatisfied with a determination of the **Director of Law & Governance and Monitoring Officer** ~~chair~~ under this procedure, they may refer the matter to the **Chief Executive** ~~Monitoring Officer~~ for determination.

- (e) The Leader of the Council, the Deputy Leader of the Council, the Leader of the Opposition (or their substitutes) and the Chair of the Council shall be entitled to attend and speak but may not vote at meetings of any Council committee or sub-committee (not being a sub-committee which is dealing with individual cases) of which they are not a member.

Any Councillor may at the invitation of the Cabinet, committee of the Cabinet, individual member of the Cabinet, **Overview and Scrutiny Committee** or committee and sub-committee of the Council, participate in any informal Councillor advisory group(s), established by those individuals or bodies, except that no member of the Cabinet may serve as a member of any advisory group established by an **Overview and Scrutiny Committee**.

7. Rights of Councillors to Place Items on Agenda

- (a) All Councillors will have the right to propose a motion for consideration at a meeting of the ~~Full~~ Council.
- (b) In accordance with the Cabinet Procedure Rules, the following will apply to placing Councillor items on the agenda of the Cabinet:-
 - (i) Any member of the Cabinet may request the Proper Officer that an item be placed before the Cabinet. The Proper Officer will arrange for the Cabinet to consider, in the context of the Forward Plan, what arrangements to make for consideration of that item.
 - (ii) Any Councillor may make a request through a member of the Cabinet that an item be placed before the Cabinet. If the Cabinet member endorses the request and so notifies the Proper Officer, that Officer will arrange for the Cabinet to consider in the context of the Forward Plan what arrangements to make for consideration of that item. When any such item is considered by the Cabinet the agenda for the meeting will give the name of the Councillor who asked for the item to be considered. The individual Councillor shall be invited to attend and speak at the meeting during consideration by the Cabinet of that item. If a Councillor believes that a matter should be placed before Cabinet but has been unable to ~~get~~ **obtain** the necessary Cabinet Member endorsement, they should notify the **Director of Law & Governance and** Monitoring Officer.
- (c) In accordance with the **Overview and** Scrutiny Procedure Rules, the following will apply to placing Councillor items on the agenda of an **Overview and** Scrutiny Committee:
 - (i) Any member of an **Overview and** Scrutiny Committee shall be entitled to give notice to the Proper Officer that they wish an item relevant to the functions of the committee to be included on the agenda for that committee. The Proper Officer will then inform the Chair of the committee. If the Proper Officer receives the request at least 10 working days before a scheduled meeting of that committee they will include it on the agenda for that meeting; otherwise it will be placed on the agenda for the following meeting of that committee. The individual member shall have a right to speak at the meeting during consideration by the **Overview and** Scrutiny Committee of that item.
 - (ii) Any Councillor shall be entitled to give notice, under the Procedure for a Councillor Call for Action set out in Part 9.3, to the Proper Officer that they wish an item concerning their Electoral Division and which is relevant to the functions of the committee to be included on the agenda for that committee. If the Proper Officer receives the request at least 15 working days before a scheduled meeting of that committee they will include it on the agenda for that meeting; otherwise it will be placed on the agenda for the following meeting of that committee. The Councillor shall have a

right to speak at the meeting during consideration by the **Overview and Scrutiny Committee** of that item.

- (iii) The leader of any political group on the Council may request the Chair and Deputy Chair of an **Overview and Scrutiny Committee** to include an item relevant to the functions of the committee on the agenda of that committee. If the Chair and Deputy Chair so agree, they shall request the Proper Officer to include such item on the agenda of that committee. If the Proper Officer receives the request at least 10 working days before a scheduled meeting of that committee they will include it on the agenda for that meeting; otherwise it will be placed on the agenda for the following meeting of that committee.
- (iv) Any 10 members of the Council who are not members of the relevant **Overview and Scrutiny Committee** may give written notice to the Proper Officer that they wish an item to be included on the agenda of the relevant Scrutiny Committee. If the Proper Officer receives the request at least 10 working days before a scheduled meeting of that committee and the Chair of the committee agrees, they will include it on the agenda for that meeting; otherwise (subject to the agreement of the Chair of the committee) it will be placed on the agenda for the following meeting of that committee. Any disputes over the refusal of the Chair of the committee to include items shall be referred to the **Director of Law & Governance and Monitoring Officer**.
- (d) Any Councillor may request the Proper Officer to include an item on an agenda for a Council committee or sub-committee (other than an **Overview and Scrutiny Committee** – provisions for which are set out above) provided that the Chair of the committee agrees and:
 - (i) notice of the request is received by the Proper Officer by 5.00 p.m. on the tenth working day before the meeting of a committee or sub-committee;
 - (ii) the subject matter of any such notified item is relevant to the powers/functions of the committee or sub-committee; and
 - (iii) the item will normally be for oral report unless 20 working days' prior notice is given to enable a report to be prepared.

The individual Councillor shall be invited to attend and speak at the meeting during consideration by the committee or sub-committee of that item. Any disputes over the refusal of the Chair of the committee to include items shall be referred to the **Director of Law & Governance and Monitoring Officer**.

8. Information for Councillors

- (a) **Cabinet Forward Plan, Agenda, Reports and Minutes**

All Councillors have the right to receive an electronic copy (~~or hard copy on request~~) of:

- (i) the Cabinet Forward Plan each month when it is published;
- (ii) the agenda, reports and minutes of each meeting of the Cabinet or a committee of the Cabinet.

The voting co-opted members (for definition see Part 6.2 para 3) of the People Overview and Scrutiny Committee will have the right to receive an electronic copy (~~or hard copy on request~~) of:

- (i) the Cabinet Forward Plan each month when it is published;
- (ii) any items on an agenda of the Cabinet or any committee of the Cabinet which concern the discharge of any education functions.

(b) **Agenda, Minutes and Reports of the Council and its committees (including Overview and Scrutiny Committees)**

All Councillors will be entitled to an electronic copy (or hard copy on request) of the agenda, reports and minutes for meetings of the ~~Full~~ Council. All members of the relevant committee (or sub-committee) of the Council will be entitled to an electronic copy (or hard copy on request) of the agenda, reports and minutes for meetings of the committee if they so wish.

9. Effective Communication with Councillors

- (a) The Cabinet will ensure that there are effective communications with all Councillors and ensure that there is wide consultation with all Councillors both within the formal decision-making process and outside it.
- (b) Officers are required to keep Councillors informed, both about the major issues concerning the County Council and other matters which affect the County, and Directors have a responsibility to put in place mechanisms to ensure that this happens.
- (c) Officers are required to keep Councillors informed and consult them in advance about significant issues which affect or may affect the areas which a Councillor represents including:
 - (i) the sale or purchase of any land;
 - (ii) a proposed traffic management scheme or a proposed local planning application;
 - (iii) where legal/administrative action is to be taken on behalf of the Council involving the publication of statutory or other public notices;
 - (iv) consultation prior to any decision being made about the construction of any new road, service area, building or footpath or

- the postponement or cancellation of such projects or diversion or extinguishment of any public footpath;
- (v) copies of letters or e-mails received from other statutory bodies informing the Council of any new scheme of works, e.g. the laying of a new sewer or gas main through the division;
 - (vi) copies of letters or e-mail messages sent by any member of the Cabinet, or an officer in reply to any District Councillor or Town/Parish Councillor on a divisional matter;
 - (vii) consultation about proposed section 106 and other infrastructure agreements and progress reports on implementation of completed agreements, in accordance with guidance issued by the relevant Director.
- (d) The Director for Children's ~~Services, Education & Families~~ **Services** will ensure that Councillors are informed about significant matters **they are aware of** concerning schools whose catchment areas lie within their divisions.
 - (e) Constituency correspondence from or to a Member of Parliament will be copied to a relevant Councillor if the MP indicates a willingness for it to be copied to a Councillor.
 - (f) Where the Cabinet or a committee of the Cabinet, or an individual Cabinet Councillor, or a committee or sub-committee of the Council is to consider any matter which directly relates to an Electoral Division, the Councillor for that Division will be consulted before any decision is reached. This will also apply to any **Overview and** Scrutiny Committee where it is reviewing a decision or investigating any matter which relates to one Electoral Division. The Councillor's right to comment will include:
 - (i) the submission of written comments to the Proper Officer for report to the decision maker;
 - (ii) attendance at the meeting at which the decision is to be made and the right to speak on it for not more than five minutes;
 - (iii) Where the decision is to be made by an individual member of the Cabinet, the local Councillor will be given every opportunity of meeting with the decision maker prior to the decision being made.
 - (g) Councillors will be invited to attend the opening of a new County Council building or road scheme or other ceremonies or events in their electoral division.

10. Local Meetings

Where the Cabinet, a committee of the Cabinet, an individual Cabinet Member, a committee or sub-committee of the Council or an officer has organised any meeting to discuss with a local group(s) issues specifically affecting their divisions, the local Councillor(s) will be advised and have the right to attend and speak at such meetings.

11. Rights of Councillors to Access to Documents and Other Information

(a) Material Relating to Key Decisions

In accordance with the Access to Information Procedure Rules, all Councillors will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet or a committee of the Cabinet or an individual Cabinet Member which relates to any key decision to be taken as set out in the Forward Plan unless paragraph (i), (ii) or (iii) below applies:

- (i) it is a private briefing document from an officer to the Cabinet, individual Cabinet Member or a political Group;
- (ii) it contains exempt information falling within paragraphs 1, 2, 3 (if relating to contract terms in the course of negotiation), 4, 5, **6 or 7, 7A or 7B** ~~or 7A-C~~ of the categories of exempt information as defined in the Access to Information Procedure Rules;
- (iii) it contains the advice of a political adviser.

Where a Councillor wishes to inspect any document, which contains exempt information falling within (ii) above as they believe that there is a "need to know" in order to properly fulfil their duties as a County Councillor then the following procedure should be followed:

1. The request should be made in writing to the ~~relevant~~ **Director of Law & Governance and Monitoring Officer, confirming which** Chief Officer ~~who~~ has possession of the information, giving reasons why it is necessary for the Councillor to have the information in order to fulfil their duties as a Councillor.
2. **The Director of Law & Governance and Monitoring** ~~Chief~~ Officer may decline the request of a Councillor to produce for inspection a document where in their view access to the document:
 - is not necessary for enabling the Councillor to fulfil their duties as a Councillor; and/or
 - should not be provided for some other good reason(s) (which reason(s) shall be specified in writing to the Councillor).
3. Where a Councillor is dissatisfied with a determination of **the Director of Law & Governance and Monitoring** ~~a Chief Officer~~ under this procedure they may refer the question to the **Chief Executive** ~~Monitoring Officer~~.

(b) **Material Relating to Executive and Non-Executive Decisions and to Previous Business**

All Councillors will be entitled to inspect any document which is in the possession or under the control of the Cabinet or a committee of the Cabinet or an individual Cabinet Member or a committee or subcommittee of the Council and contains material relating to any business to be transacted at a meeting or previously transacted at a meeting unless either (i), (ii) or (iii) in (a) above applies, in which case the procedures in (a) 1 - 3 above will apply to any requests for access to confidential or exempt information.

(c) **Restriction on Disclosure of Confidential and Exempt Information**

The **Members'** Code of Conduct set out in this Constitution (**at Part 9.1, para 6.4**) restricts the disclosure of information by Councillors which they have gained as County Councillors when the information is confidential or exempt or is marked "Not for Publication". Such information should not therefore be made available by the Councillor concerned to the public. When the Proper Officer has restricted circulation of the report it should not be passed on to another Councillor without the Proper Officer's consent (which will be based on a determination of a 'need to know').

12. Criminal Records Checks for Councillors

In accordance with the Council's decision on 10 September 2013, all Councillors will be required immediately after their election to undergo a criminal records check through the Disclosure and Barring Service (DBS), **in accordance with the Council's protocol**. ~~No Councillor or co-opted Councillor shall be required to undergo checking if they have been the subject of a DBS check within the previous twelve months of their election or appointment.~~

13. Access to County Council Establishments

- (a) Councillors should have access to any County Council establishments or premises where this is necessary for them to discharge their responsibilities as County Councillors. However, Councillors should always inform the **Director and either the** manager of the establishment or a senior officer responsible for the service before they visit to ensure that it is convenient to do so.
- (b) Councillors should **where appropriate and in accordance with the separate protocol (name to be added) (e.g. where there is direct contact with vulnerable children and/or vulnerable adults) have a current DBS check.**

- (c) ~~(b)~~ **Councillors should be aware and** sensitive to the fact that some establishments will be home to those who live there, and they should therefore seek to ensure that their visit does not adversely affect the running of the establishment or disturb the residents who live there. **The smooth operation of the establishment should be the primary concern.**
- (d) ~~(c)~~ Where Councillors wish to undertake activities in any County Council premises, this should be ~~purely~~ **primarily** in connection with their duties as County Councillors and not **usually** for any other purpose. **Limited personal use (including in connection with activities outside their role as a County Councillor, but not political activities) of Council e-mail, internet and electronic devices is permitted, provided in the view of the Director of Law & Governance and Monitoring Officer, it is not excessive and does not interfere with Council functions and the role of County Councillors. In using Council email, internet and electronic devices, Councillors must at all times comply with the Council's Data Protection Policy and requirements in relation to data security.**

14. Use of County Council Equipment and Services

Where facilities, equipment and services are provided to councillors this is made available on the basis that it is to enable them to carry out their activities as County Councillors and should be used only on that basis. ~~A separate policy (including an Annex for Councillors and co-opted Councillors) on the acceptable use of ICT has been agreed by the Council and it is appended to this Protocol)~~

15. Nature of Rights

The rights of Councillors set out in this Protocol are additional to any other rights conferred by this Constitution or which they may have under the law.