

Allerdale Borough Council

Standards Committee – 10 September 2019

**Protocol for Member/Officer Relations**

---

<b>The Reason for the Decision</b>	To consider and recommend for approval a draft Member/Officer Relations Protocol as part of an overall review of standards arrangements and Code of Conduct
<b>Recommendations</b>	<ol style="list-style-type: none"><li>1. That members consider the draft Protocol for Member/Officer Relations and provide any comments/further amendments as they see necessary and;</li><li>2. Recommend to Council that the Protocol is adopted.</li></ol>
<b>Financial / Resource Implications</b>	There are no financial or resource implications arising from this report
<b>Legal / Governance Implications</b>	There are no legal or governance implications arising from this report.
<b>Community Safety Implications</b>	There are no community safety implications arising from this report
<b>Health and Safety and Risk Management Implications</b>	There no health and safety implications arising from this report. Failure to have up to date codes and protocols could lead to inappropriate conduct which could in turn undermine council decision making with the potential for legal challenge and reputational damage
<b>Equality Duty considered / Impact Assessment completed</b>	The Equality Duty has been considered
<b>Wards Affected</b>	All
<b>The contribution this decision would make to the Council's priorities</b>	The Constitution, which includes the codes of practice and protocols, support all of the Council's objectives as they provide the governance and standards framework for all decisions, strategic and operational.

<b>Is this a Key Decision</b>	No		
<b>Portfolio Holder</b>	Councillor John Cook, PH Governance and Regulatory Services		
<b>Lead Officer</b>	Gayle Roach, Democratic and Support Services Manager <a href="mailto:gayle.roach@allerdale.gov.uk">gayle.roach@allerdale.gov.uk</a>		
<b>Report Implications</b>			
Community Safety	N	Financial	N
Legal	Y	Partnership	Y
Social Inclusion	N	Asset Management	N
Equality Duty	N	Health and Safety	N
Employment (internal)	Y	Employment	N
		(external to the Council)	

**Background Papers** - Officer Scheme of Delegation; Section 10 of Allerdale Borough Council's Constitution

## 1.0 Introduction

### Background

- 1.1 The purpose of this protocol is to provide a guide to good working relationships between Members and Officers, defining their respective roles and outlining the principles that underpin their relationship. It also builds on the Council's good governance arrangements providing an appropriate governance framework for conduct and all Council decision making.
- 1.2 There is no statutory requirement for the Council to have such a protocol, however, it is considered good practice to do so. Such a protocol is beneficial as it sets out the respective expectations of Members and Officers. Whilst experienced Councillors and Officers may understand and appreciate the different roles that they have, newly elected Members and recently appointed employees may find it helpful to have the roles explained. Understanding what is, and is not, expected of each other can assist in maintaining and improving excellent Member/Officer working relationships.
- 1.3 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. As employees of the Council, the Chief Executive, Corporate Director, Heads of Service and other senior managers have overriding responsibility to the Council as a whole and not to any party political group. 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, its Executive, Committees and Sub-Committees.

- 1.4 It is some time since an Allerdale Protocol on Member/Officer Relations was reviewed and adopted therefore this draft document looks to address this and will bring the Constitution up to date to reflect the current practice of the Council. The Protocol once adopted will form part of the Councils Constitution.
- 1.5 The proposed draft Member/Officer Protocol can be found at Appendix A.

## **2.0 The Role of Members**

- 2.1 Members have a number of roles and need to be alert to the potential for conflicts of interest that may arise between the roles. Where such conflicts are likely, Members may wish to seek the advice of the Monitoring Officer, the relevant senior Officer(s), and/or senior colleagues.
- 2.2 Members provide the political direction and leadership of the Council and help develop and review policy and strategy.
- 2.3 Members contribute to the decisions taken in full Council and in various bodies on which they serve, as well as committees, outside bodies and organisations to which they are nominated by the Council.
- 2.4 Members are involved in quasi-judicial work through their membership of regulatory committees.
- 2.5 Members represent the community, act as community leaders, and promote the social, economic and environmental well-being of the community, often in partnership with other agencies.
- 2.6 As politicians, Members may express the values and aspirations of the party political groups to which they belong, recognising that in their role as Members they have a duty always to act in the public interest.
- 2.7 Members are not authorised to instruct Officers other than:
  - a) through the formal decision-making process;
  - b) to request the provision of consumable resources provided by the Council for Members' use;
  - c) where staff have been specifically allocated to give support to a Member or group of Members.

## **3.0 The Role of Officers**

- 3.1 The primary role of Officers is to advise and support all Members to enable them to fulfil their roles and to implement the lawfully agreed policies of the Council.

- 3.2 Officers are responsible for day-to-day managerial and operational decisions within the Council.
- 3.3 Officers have a duty to implement decisions of the Council, the Executive, Committees and Sub-Committees which are lawful, and which have been properly approved in accordance with the requirements of the law and the Council's Constitution.
- 3.4 Officers are free to take decisions within their area of responsibility which have been delegated to them but recognise that, where functions have not been delegated to Officers, it is the right of Members to take the final decisions in the light of their advice.
- 3.5 Officers have a contractual and legal duty to be impartial. They must not allow their professional judgement and advice to be influenced by their own personal views. The advice provided by Officers and the actions they take should be politically neutral.
- 3.6 Officers have the right not to support Members in any role other than that of Member, and not to engage in actions incompatible with this Protocol. In particular, there is a statutory limitation on Officers' involvement in political activities. Some Officers are in posts which are 'politically restricted' by law. This means that individual post holders are prevented from carrying out any active political role either outside or inside the Council.

### **Statutory Officers**

- 3.7 The Council appoints three Statutory Chief Officers; the Chief Executive is the designated Head of Paid Service; the Head of Governance and Regulatory Services is the Monitoring Officer and the Head of Financial Services is appointed Chief Finance Officer, also known as the S151 Officer.
- 3.8 These roles are addressed in the Constitution and are set out below. Their roles need to be understood and respected by all Members.

#### 3.8.1 Specific delegations to the Chief Executive and Head of Paid Service

1. To exercise the functions of the Head of Paid Service and in this role:-
  - (a) to exercise overall responsibility for corporate management and operational issues (including overall management responsibility for all staff);
  - (b) to give professional advice to all parties in the Council decision making process;
  - (c) to ensure that the Council has a system of record keeping for all Key Decisions; and
  - (d) to ensure that the Council achieves and delivers its objectives; and
  - (e) to represent the Authority on partnerships and external bodies (as required by statute or by the Authority).

2. To co-ordinate, direct and monitor the Council's initiatives to achieve value for money in the delivery of its functions.
3. To be responsible for performance review issues.
4. To lead the Corporate and Senior Management Teams.
5. To undertake responsibility for the Strategy, Policy and Performance Team.
6. After consultation with the Leader of the Council, to authorise action and incur expenditure, where urgent action is needed to enable the Council to fulfil its functions subject to reporting thereon to the Council Meeting.
7. To consider and report on any report of the Local Government Ombudsman and to decide on and implement the action to be taken.
8. To undertake all activities in connection with the Council's Human Resources or civic/ceremonial function.
9.
  - (a) To determine all staff matters in accordance with the Officer Employment Rules and relevant Council policies. This includes determining matters relating to structure (additions, reductions and other changes to the establishment), appointment, dismissal or discipline of staff, except in relation to those posts which are Chief Officers and Deputy Chief Officers under the relevant legislation.
  - (b) Where the decision of the Head of Paid Service taken under (a) above requires consideration of the financial/budgetary implications and a decision in that respect only, then the matter will be referred to the Executive, provided that the remit of the Executive shall be limited to decisions on financial matters only.
  - (c) The Head of Paid Service may delegate the discharge of this function to another Officer.
10. To establish and maintain working relationships with employees and Trade Unions.
11. The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer.

### 3.8.2 Specific delegations to the Monitoring Officer and Head of Governance and Regulatory Services

1. To act as the Council's Monitoring Officer under Section 5 of the Local Government and Housing Act 1989.
2. Functions of the Monitoring Officer:
  - (a) Maintaining the Constitution. The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, officers and public.
  - (b) Ensuring lawfulness and fairness of decision making. After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to Council or to the Executive in relation to an Executive function if he or she considers that any proposal, decision or

omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

- (c) Supporting the Standards Committee. The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee and take such action as is delegated to him/her under the Council's Standards Arrangements.
  - (d) Proper officer for access to information. The Monitoring Officer will ensure that Executive decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.
  - (e) Advising whether Executive decisions are within the Budget and Policy Framework. The Monitoring Officer will advise whether decision of the Executive are in accordance with the Budget and Policy Framework.
  - (f) Providing advice. The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework issues to all councillors.
  - (g) Restrictions on posts. The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.
3. All proper officer functions not allocated to other officers. Solicitor to the Council.
  4. Authority to affix the Common Seal of the Council.
  5. To execute any appropriate legal documents and to issue licences and to take all necessary action relating thereto arising out of the exercise of any function or the performance of any powers delegated to the Borough Council.
  6. To take action for the recovery of compensation for damage to any property belonging to the Council.
  7. To institute proceedings for any offence (except where specifically delegated to a Committee or other officer) and to authorise officers to appear in proceedings under Section 223 of the Local Government Act 1972.
  8. To institute, defend, participate or settle any legal proceedings in any case where such action is necessary to give effect to decisions of the Council, or in any case where the Monitoring Officer considers that such action is necessary to protect the Council's interests including the instruction of Counsel and the giving of undertakings on behalf of the Council, where the interests of the Council (whether on its own behalf

or on behalf of any authority for which the Council is an agent) are involved.

### 3.8.3 Specific delegations to the S151 Officer and Head of Financial Services

1.
  - (a) Ensuring lawfulness and financial prudence of decision making. After consulting with the Head of Paid Service and the Monitoring Officer, the Section 151 Officer will report to the Council or to the Executive in relation to an Executive function and the Council's external auditor if he or she considers that any proposal, decision or course of action, will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully, or the Council has insufficient resources to meet its spending.
  - (b) Administration of financial affairs. The Section 151 Officer will have responsibility for the administration of the financial affairs of the Council.
  - (c) Contributing to corporate management. The Section 151 Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice for the strategic planning and policy making process to ensure efficient and effective use of resources.
  - (d) Providing advice. The Section 151 Officer will provide advice on the scope of the powers and authority to take decisions, maladministration, financial impropriety, probity and budget and Policy Framework issues to all councillors and will support and advise councillors and officers in their respective roles. Advice will also be provided on treasury and cash flow management, pensions, trust funds, safe custody of assets, including risk management and insurance.
  - (e) Give financial information. The Section 151 Officer will provide financial information to the media, members of the public and the community. Also financial management information to officers and councillors.
  - (f) Accounts. The Section 151 Officer will prepare statutory and other accounts, associated grant claims and supporting records.
2. Delegated powers conferred on the Section 151 Officer under the Council's Financial Regulations.
3. To be the officer with responsibility for the proper administration of the Council's financial affairs under Section 151 of the Local Government Act 1972.

4. To facilitate and manage the co-ordination of medium term financial planning, annual budget planning, budget monitoring and the preparation of statutory and other accounts, associated grant claims and supporting records.
5. To operate all the statutory requirements relating to payroll matters.
6. To undertake all treasury management activity in accordance with the annual treasury management policy statement and other management policies as determined by the Council.
7. To deal with the Council's insurances in consultation with the Monitoring Officer in respect of any legal matter arising therefrom and in consultation with the relevant officer in respect of specific claims.
8. To write off debts due to the Council.
9. The Section 151 Officer cannot be the Monitoring Officer.

3.9 All Officers are responsible to the Chief Executive as Head of Paid Service, and not to individual Members of the Council whatever office they might hold.

3.10 The Chief Executive, Corporate Director and Heads of Service will need to work closely with the Executive if there is to be effective policy development and Executive decision-making. This relationship has to function without compromising the ultimate responsibilities of staff to the Council as a whole.

#### **4.0 Finance/resource implications**

4.1 There are no financial or resource implications to this report.

#### **5.0 Legal Implications and risks**

5.1 There is no statutory requirement for Councils to adopt a Protocol on Member Officer Relations but it is good practice to do so.

5.2 The link created between a newly adopted Protocol, and other Codes and Protocols, will help to ensure that the Constitution remains legally up to date.

5.3 Failure to have up to date codes and protocols could lead to inappropriate conduct which could in turn undermine council decision making with the potential for legal challenge and reputational damage.

5.4 Breaches of the Member/Officer Protocol can be used as evidence in a disciplinary hearing for Officers or an investigation under the Code of Conduct for members.

#### **6.0 Recommendations**

- 6.1 That members consider the draft Protocol for Member/Officer Relations and provide any comments/further amendments as they see necessary and;
- 6.2 Recommend to Council that the Protocol is adopted

**Sharon Sewell**  
**Head of Governance and Regulatory Services**