

CODE 4 CODE OF CONDUCT FOR EMPLOYEES

The present Code of Conduct for Employees is set out in the Employees' Handbook at paragraph 4.1.¹

¹ Amendment approved 26th July 2012

CODE 5 PROTOCOL FOR MEMBER/OFFICER RELATIONS

1. INTRODUCTION

- 1.1 The purpose of this protocol is to guide Members and officers of the Council in their dealings with one another to ensure the smooth running of the Council.
- 1.2 Given the variety and complexity of such dealings, this protocol is not intended to be (and should not be read as) a rigid set of prescriptive rules to be applied in a legalistic way. Rather it is a workable flexible framework, the main principles of which are:
 - the political neutrality of officers and officer support;
 - mutual respect between Members and officers;
 - Acceptance of the different roles responsibilities and accountabilities of Members and officers;
 - confidentiality.
- 1.3 The guidance set out in this document should be interpreted in the light of those principles.
- 1.4 This protocol is largely a written statement of current practice and convention but seeks to promote greater clarity and certainty. If the advice is followed it should also ensure that Members receive objective and impartial advice and that officers are protected from accusations of bias and any undue influence from Members. The Council will thereby benefit as an organisation in terms of its efficiency and effectiveness.

2. ROLES OF MEMBERS AND OFFICERS

- 2.1 Traditionally, the distinction between roles turns on Members being responsible for determining policy whilst officers are responsible and accountable for implementing policy and managing the organisation. Given these roles, officers are expected to work within and pursue Council policies. Equally, Members are not expected to interfere with executive matters that are the responsibility of officers.
- 2.2 Organisational, political and other changes in local government have combined to make it increasingly difficult to define clearly at all times the respective roles of Members and officers. However, the traditional distinction set out in paragraph 2.1, remains a useful benchmark to guide both Members and officers. The former should guard against becoming involved in operational detail whilst the latter must demonstrate commitment

to and should not go beyond the properly formulated policies of the Council irrespective of any personal views.

- 2.3 Legislation provides that specific named officers will be responsible for the discharge of some functions. These functions are set out in the Scheme of Delegation in Part 3 of this Constitution. Whilst officers can act directly without reference to Members, in many cases action will only be taken following consultation with Members. Similarly, portfolio holders will have powers delegated to them either by the Council or by the Leader or the Cabinet where they would wish to consult with officers before exercising those powers.
- 2.4 Officers are accountable to their Corporate Director² from whom they will normally receive their work through the line management structure. There will be occasions when officers receive instructions from a portfolio holder or requests from a Chairman. Officers will routinely liaise with their line managers on their capacity to undertake such tasks. There may be occasions when the Corporate Management Team member or other senior officer reverts to the Member concerned to discuss the impact of new work on existing priorities.
- 2.5 Finally, it must be remembered that officers within a service are accountable to the Chief Executive, or the relevant Corporate Director. Where officers assist Members they must not, in doing so, go beyond the bounds of whatever authority they have been given.³

3. RELATIONSHIPS BETWEEN MEMBERS AND OFFICERS

- 3.1 Mutual respect between Members and officers is essential to the good running of the Council, particularly, for example, the relationship between portfolio holders and the Corporate Management Team and between a Chairman and officers supporting his/her/his committee/panel. It is important though that such a relationship is open and transparent so that it does not lead to questions about an officer's ability to deal impartially with other Members, including Party Groups. It is equally important that abuse of power or offensive, abusive, intimidating, malicious or otherwise inappropriate behaviour does not taint the relationship.
- 3.2 Decisions on Council business can only be made either by properly constituted Member bodies or by the officers or portfolio holders to whom the decision has been delegated. Outside of the scheme of delegation, chairmen, leaders of political groups,

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³ Amendment approved 26th July 2012

party group meetings etc. cannot lawfully make decisions on behalf of the Council.

- 3.3 Members and officers shall not engage in open criticism of each other (for example, in a public forum). It is unlikely to be conducive to good Member/officer working relations and may be damaging to morale within the Council.
- 3.4 Members and officers may consider that criticism is from time to time justified. However, it is generally neither possible nor appropriate for Members or officers to defend themselves in a public forum.
- 3.5 Members will not comment openly or through the media on the conduct of officers and officers will not comment openly or through the media on the conduct of Members. This is particularly applicable to comment in relation to any pending or ongoing complaint or disciplinary process involving a Member or an officer where such comment may be used in the proceedings and may prejudice their outcome.
- 3.6 Members concern about the actions of officers should be directed to the relevant Director concerned or the Chief Executive.⁴
- 3.7 Officers concern about the actions of Members should be referred to the Council's Monitoring Officer or to the Chief Executive.

4. MEMBER DEALINGS WITH THE COUNCIL

- 4.1 To avoid potentially causing embarrassment to staff, Members dealing with the Council other than in their capacity as a Fenland District Councillor and including as a private individual should normally advise the relevant member of the Corporate Management Team of that fact.
- 4.2 Officers finding themselves in the same situation should similarly advise, as they should when seeking help from a local councillor about an issue not related to their position as an officer of the Council.
- 4.3 The Scheme of Delegation to Officers specifically requires that all applications which are submitted on behalf of a Member of the Council in his/her or her private capacity or by a relative or the partner of a Member will be determined by Planning

⁴ Amendment approved 26th July 2012

Committee Members are asked to draw to the attention of the Chief Planning Officer in writing where this is relevant.⁵

5. ACCESS TO INFORMATION AND TO COUNCIL DOCUMENTS

- 5.1 Members may approach any Council service to provide them with information, explanation or advice (about that service's functions) as they may reasonably need to assist them to discharge their role as an elected Member. This can range from a request for general information about some aspect of the service delivery to a request for specific information on behalf of a constituent. Such approaches should normally be to the relevant member of the Corporate Management Team or through Member Services.⁶
- 5.2 The legal rights of Members to inspect Council documents are covered partly by statute law and partly by common law.
- 5.3 Members have a statutory right to inspect any Council document *which contains material relating to any business which is to be transacted at Council, Committee or Sub-Committee Meeting*. This right applies irrespective of whether the Member is a member of the particular body and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers. This right does not, however, apply to documents relating to certain items which may appear on the "exempt" part of the agenda. The items in question are those which contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, contract and industrial relations negotiations, advice from Counsel and criminal investigations. Without prejudice to its right to apply the statutory provisions, it is this Council's practice to provide such agenda reports to all Members on request.
- 5.4 The common law right of Members is much broader. It is based on the principle that any Member has a prima facie right to inspect Council documents *so far as his/her or her access to the documents is reasonably necessary to enable the member properly to perform his/her or her duties as a member of the Council*. This principle is commonly referred to as the "need to know" principle.
- 5.5 In most circumstances a Member's "need to know" will be presumed. In other circumstances (for example, a Member wishing to inspect documents that contain personal information about third parties) a Member will normally be expected to justify

⁵ Amendment approved 26th July 2012

⁶ Amendment approved 26th July 2012

the request in specific terms. Furthermore there will be a range of documents which, because of their nature, are either not accessible by Members or are accessible only by the political group forming the administration. This is particularly relevant in the case of the Cabinet. For example, draft documents compiled in the context of emerging Council policies and draft reports if disclosed prematurely might be against the Council's and the public interest.

- 5.6 The exercise of this common law right depends, therefore, upon the Member's ability to demonstrate the "need to know". In this respect a Member has no right to a roving commission to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the "need to know". The particular member of the Corporate Management Team will initially determine this. Where a member of the Corporate Management Team is minded to decline to make information available the matter will be dealt with in consultation with the Chief Executive and the Monitoring Officer. In the event of a dispute, the Chief Executive may be asked to review the request for information and the decision taken by the Chief Executive, in consultation with party group leaders, will be final. Members do, of course, have the option to challenge the decision in the courts.
- 5.7 Further and more detailed advice about Members' rights to inspect Council documents may be obtained from the Chief Executive, or the Monitoring Officer.⁷
- 5.8 Finally, any Council information provided to a Member must only be used in connection with the proper performance of the Member's duties as a councillor. This point is emphasised in the Council's, Code of Conduct⁸ for Members which is set out elsewhere in this Part of the Constitution.

6. OFFICERS AND THE CABINET/PORTFOLIO HOLDERS

- 6.1 It is the prerogative of the Cabinet to set its own agenda. However, the Chief Executive and the remainder of the Corporate Management Team are the managers of the services. They are responsible for the efficiency and the effectiveness of those services to meet the policy objectives and targets set by the Council. They are also responsible for providing professional advice and are often required by their own professional institution to ensure they provide impartial and independent advice. The Cabinet should not, therefore, operate

⁷ Amendment approved 26th July 2012

⁸ Amendment approved 26th July 2012

in such a way that prevents or inhibits the professional responsibilities of its officers.

- 6.2 Before presenting reports to Cabinet, Corporate Management Team shall discuss their content with the relevant portfolio holder and, in the case of the more important issues or “delicate” issues, with the Leader also. Members should be given sufficient time for proper consideration of reports.
- 6.3 Cabinet Members should not seek to unduly influence an officer’s professional advice and the final decision on any changes requested by Cabinet Members to a professional officer’s report will rest with the writer of the report.
- 6.4 Where portfolio holders submit reports to Cabinet, officers should be given sufficient time to undertake the necessary research and internal consultation and be given the opportunity to comment on legality, consistency with Council policy and practice and budgetary and other implications.
- 6.5 Where a portfolio holder in line with his/her/hers delegated authority takes a decision, it is the responsibility of the portfolio holder to ensure that the decision is properly recorded. To implement such a decision a portfolio holder may only issue an instruction to a senior officer or an officer so nominated by the relevant member of the Corporate Management Team.
- 6.6 The Cabinet should manage its business in such a way as not to place unsustainable burdens on officer workloads and will discuss resource requirements with relevant officers before making commitments.

7. OFFICERS AND THE OVERVIEW AND SCRUTINY PANEL, REGULATORY COMMITTEES AND STANDARDS COMMITTEE

- 7.1 Paragraphs 6.1, 6.2, 6.3 and 6.6 should also be read with reference to the Overview and Scrutiny Panel, Regulatory Committees and the Standards Committee.
- 7.2 In exercising its powers to call an officer to give evidence to it, the Overview and Scrutiny Panel may only call the Chief Executive or other members of the Corporate Management Team. These officers may be accompanied by another officer or, with the agreement of the Chairman of the panel/review team, may be represented by another officer.

8. OFFICER ADVICE TO PARTY GROUPS

- 8.1 Officers of all grades are politically impartial in relation to Council business. It is particularly important that party groups recognise this, especially when asking for officer input on any matter.
- 8.2 Where a political group believes its discussions would be helped by officer advice the Group Leader (or other nominated member) should advise the Chief Executive of the subject matter and request officer attendance at a set time and date of a future group meeting. The Chief Executive will arrange for the appropriate officer(s) to attend and advise the Group Leader accordingly.
- 8.3 Officer input in these circumstances will not extend beyond providing input and advice on matters of **Council** business. Officers must not be involved in advising on matters of party business. Officers should not, therefore, be present at party group meetings when matters of party business are to be discussed or when other than Fenland staff or Councillors are present.
- 8.4 Party group meetings cannot make decisions on the part of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and neither officers nor Members must interpret or act on them as such.
- 8.5 Information and advice given by officers to party group meetings is not a substitute for, nor does it preclude, the need for all necessary information and advice to be given to any other Member or any other Member body considering the issue in question.
- 8.6 Confidentiality must be maintained. Officers will not relay the content of any such group meeting to other groups, any other Member or any other external party, nor will group members purport decisions made at those meetings to be Council decisions or to have the backing or otherwise of officers.

9. CHAIRMEN'S/MEMBERS' BRIEFINGS

- 9.1 A Chairman who requires a briefing on the published agenda for a meeting should advise the relevant member(s) of Corporate Management Team or the committee officer of such requirement. The Corporate Management Team member(s) shall make appropriate arrangements for all relevant officers to meet and brief the Chairman. It is the Chairman's prerogative to invite any other Member (usually the Vice-Chairman) to be present at the briefing.

- 9.2 Full agenda briefings will not normally be available to other Members but individual Members, or groups of Members, may require information on a specific agenda item. In such cases Members should get in touch with the contact officer on the report or the committee officer who will make arrangements for a briefing by the appropriate officer.

10. **PUBLIC MEETINGS AND CONSULTATIONS**

- 10.1 Whenever the Council organises a public meeting to consider any issue, Group Leaders, relevant Portfolio Holders and the local Member(s) will be invited.
- 10.2 Similarly when the Council organises a public consultation exercise on any issues, Group Leaders, Members of relevant Panels/Committees and appropriate local Members will be informed.

11. **CORRESPONDENCE (including e-mail)**

- 11.1 Correspondence between an individual Member and an officer should not normally be copied by the officer to any other Member. If, in exceptional circumstances, it is necessary to do so this will be made clear to the original Member.
- 11.2 Official letters sent on behalf of the Council will normally bear the name of the officer concerned and not the Member.
- 11.3 Members are provided with their own letterheads but these are mainly for internal use or in replying to minor issues raised by their constituents.
- 11.4 Occasions where letters are justifiably from a Chairman or from a portfolio holder will be relatively rare and will normally be drafted by or in consultation with the relevant member of Corporate Management Team. Where a Member intends to write and send a letter in his/her/her official Fenland District Council capacity Corporate Management Team /Monitoring Officer will be available to advise on matters of fact and law. A copy of the final draft of the letter should be passed to the relevant officer for record purposes.

12. **MEDIA AND PR**

- 12.1 The Council has a protocol on media releases that covers most situations likely to be encountered.
- 12.2 Officers will not, and must not be asked to prepare or issue press releases on behalf of any individual Member or any party group.

13. **COMPLAINTS**

- 13.1 Complaints officers will notify local Members of the receipt of any formal complaint from a constituent or relating to a matter within their ward.⁹

14. **CEREMONIAL EVENTS**

- 14.1 The Chairman of the Council, or in his/her/absence the Vice-Chairman of the Council, and the Chief Executive will be the appropriate persons to lead Council events and to represent the Council by invitation at ceremonial events of other organisations.
- 14.2 Where an event is specifically associated with a Cabinet function the Leader of the Council, the appropriate portfolio holder and a member of Corporate Management Team should be invited as a minimum.
- 14.3 Appropriate Panel/Committee Chairmen, or where they are not available, Vice-Chairmen, together with relevant Corporate Management Team members should be invited to ceremonial events within the scope of their panel/committee.
- 14.4 Local Members should always be informed of, and where possible, invited to ceremonial events taking place related to their wards.
- 14.5 Any Member or officer taking part in a ceremonial event must not seek disproportionate personal publicity. A Member should not use the occasions for party political advantage bearing in mind that the Member is representing the Council as a whole.
- 14.6 For this purpose “ceremonial event” is an event where the Council is seeking to promote its public image outside of the normal operating environment. It includes opening ceremonies, VIP visits, formal presentation of awards both to and by the Council, new service initiatives, for example composting and similar activities. It does not include fact-finding visits or seminars etc. where only the Members directly involved with the particular service may, or may not, attend.

15. **CIVIL EMERGENCIES**

- 15.1 In an emergency, the community will look to the emergency services and the Council for help in coping with the consequences of the emergency, and to restore normality. In

⁹ Amendment approved 26th July 2012

doing so, this Council will essentially undertake its normal activities in abnormal circumstances.

15.2 The Chief Executive, or such other officer nominated by him/her, is responsible for the organisation and co-ordination of the Council's response.

15.3 The circumstances of any emergency may require action to be taken promptly and without delay. It is, therefore, recognised that:

- action may have to be taken by an officer acting on his/her initiative in the circumstances as understood at any given time, which may go beyond that formally authorised by the Council's scheme of delegation;
- expenditure may have to be incurred as a matter of urgency by the officer in charge;
- there may not always be time in dealing with a major emergency to sustain normal channels of communication and administration.

15.4 A major issue in an emergency, however, is the provision of information and the Council's Emergency Plans contain arrangements for dealing with the media and for providing information to enquirers.

15.5 The Chief Executive will ensure that the Cabinet and relevant local Members are kept informed of the action being taken by the Council and that queries from elected Members are answered.

15.6 Members should use available channels of communication to contact the Chief Executive or his nominated representative for information and should not approach operational officers at the scene of the emergency, for example in rest centres, without prior contact with the officer in charge.

16. **NON-ADHERENCE TO THE PROTOCOL**

16.1 Breaches of this protocol by officers should be dealt with under the Council's officer disciplinary procedures.

16.2 Breaches by Members may be referred to the relevant Group Leader or "whip" for the party group to take any action felt to be appropriate. More serious breaches, or breaches by non-party group Members, should be reported to the Chief Executive and

the Monitoring Officer and may be reported to the Council's Conduct Committee.¹⁰

17. ADVICE

- 17.1 Queries from both Members and officers can be referred to the Chief Executive, the Monitoring Officer or the Leader of the Council for advice on the application of this Protocol.

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CODE 6 PROTOCOL ON OPEN GOVERNMENT

1. INTRODUCTION

- 1.1 Fenland District Council is committed to ensuring that local people have information easily available to them and to making its work with and on behalf of local people as transparent and open as possible.
- 1.2 The principles on which this protocol are based are that:
 - the Council will conduct its business with a presumption in favour of openness and transparency and the spirit of the Freedom of Information Act 2000
 - information is made available if possible in response to all reasonable requests
 - information about the Council and its services is easily available to local people
 - personal privacy and confidentiality is fully respected.

THE PROTOCOL

2. ACCESS TO FRONT- LINE COUNCILLORS

- 2.1 The Council publishes and maintains a list of the names, addresses, email address and other available contact details of all councillors together with the wards they represent and their roles within the council.

3. ACCESS TO DECISION MAKING

- 3.1 The Council publishes and maintains a Forward Plan of decisions in accordance with the Access to Information Procedure Rules to inform local people which key decisions it will be taking and when it intends to take them. The forward plan includes details of consultation the council is conducting, or plans to conduct, and how best representations may be made to influence the decisions before they are taken.
- 3.2 The Council publishes and maintains a list of members of the Cabinet, the membership of decision making committees and the staff management structure, including contact details for the people listed.
- 3.3 The Council publishes and maintains a table showing the responsibilities of the Council, the Cabinet and staff
- 3.4 The Council publishes and maintains a schedule of dates on which there will be meetings of the cabinet or decision making committees.
- 3.5 The Council publishes the agenda for all decision making meetings at least 5 clear working days before the meeting, and all the public reports that are known will be considered at the meeting. The published agenda includes a description of any items for which there is no public

access and an explanation of why the item is to be considered in private.

- 3.6 In determining which reports, if any, are not to be published there is always a presumption in favour of openness and where the reason for non-publication relates to only a part of the report, consideration is given to making publicly available the other parts of the report.
- 3.7 Reports are written in plain language to be understandable by local people.
- 3.8 Documents that have been used in writing a report are listed in the report and available for local people to consult once the report has been published.
- 3.9 The Council seeks to hold meetings at times and in locations that are convenient to local people. Where it is known that large numbers of local people wish to attend a meeting consideration is given to holding the meeting at a location with the capacity to accommodate them.
- 3.10 Where a decision is to be taken that is known to particularly affect any community, the Council always seeks the views of that community before the decision is taken.
- 3.11 Before any meeting reaches a decision it takes into account the representations that have been made and there is an opportunity given for an individual or a representative to address the meeting in accordance with the council procedure rules or right to speak at meetings.
- 3.12 Reasons are given for the decisions that are taken.
- 3.13 A list of the decisions taken at any meeting of the Cabinet is published within three working days of a meeting.
- 3.14 Minutes of meetings are published. Where possible a publicly available minute of any item discussed in private is available. Where this is not possible a summary of items discussed in private is published.

4. ACCESS TO OVERVIEW AND SCRUTINY

- 4.1 Overview and Scrutiny Panel meetings are conducted in a way that encourages public participation in their work.
- 4.2 The Council publishes and maintains Overview and Scrutiny Procedure Rules and Budget and Policy Framework Procedure Rules which set out how decisions taken but not yet implemented can be reviewed by Overview and Scrutiny Panel. The Council publishes and maintains a list of members of Overview and Scrutiny Panel together with their

contact details to enable local people to seek to persuade them to review issues.

- 4.3 Paragraphs 3.6 to 3.14 apply to the Overview and Scrutiny Panel except for substituting their role for references to decision making.

5. ACCESS TO INFORMATION

- 5.1 The Council has published a Publication Scheme that aims to let everyone know what information it routinely publishes and to continue to open up the relationship between the Council and the public in accordance with the provisions of the Freedom of Information Act 2000.
- 5.2 All letters from the Council clearly show the name, telephone number and email address of the member of staff who can help with the matter.
- 5.3 Members of staff give their names when answering the telephone, and will give their jobs and contact details if asked except in circumstances where it would be inappropriate.
- 5.4 Unless there are good reasons why it should not be disclosed (see paragraph 5.8), local people are given access to information held by the council within 20 days of asking or paying the fee if there is one, or they are told why it will take longer.
- 5.5 Where there is a charge for providing the information this is kept as low as possible.
- 5.6 Paragraph 5.4 above applies to private individuals seeking information for their personal use and possession and not to individuals or organisations seeking information for commercial purposes.
- 5.7 The access given to the information is, if practicable, a copy of it, either on paper or electronically as preferred by the applicant or the opportunity to inspect a record containing the information.
- 5.8 The Council gives reasonable assistance to anyone who is seeking information.
- 5.9 Information will not be provided if it is
- personal information about someone other than the applicant
 - information supplied to the Council in confidence by someone other than the applicant and there is no legal obligation on the Council to disclose it

- information that the government or the courts have instructed the Council not to make available, or that the law prohibits the council from disclosing
- intended to be made publicly available in the future
- exempt information as defined in the Access to Information Procedure Rules in the Constitution (for example if it is about individual members of staff, or individual tenants of the Council, or it is legal advice that the Council has been given, or it is about court proceedings to which the Council may be a party, or that would prejudice someone's commercial interests)
- information which if disclosed would, or would be likely to, endanger the safety or physical or mental health of any individual
- communications with Her Majesty, other members of the Royal Family or Household or if it relates to the conferring by the Crown of any honour or dignity
- so expensive to produce that it would not be in the wider public interest to provide it
- an unreasonably repeated or vexatious request, and if refused on these grounds the applicant has the right to have that refusal reviewed by the Director or Deputy Chief Executive
- If a request is made for information that has been classed as exempt in the past, that classification is reviewed to ensure that it still applies, and, if not, the information is disclosed
- If a request for information is refused, the applicant is told why and he/she has the right to have that decision reviewed under the Council's comments and complaints system.