

## **PROTOCOL TORFAEN COUNTY BOROUGH COUNCIL**

### **1. INTRODUCTION**

- 1.1 The Local Government Act 2000 set up an Ethical Framework for Local Government introducing a Statutory Code of Conduct for Councillors and requiring the appointment of a Standards Committee to promote and maintain high standards of conduct. The Council and the Council's Political Group Leaders are committed to promoting good standards of behaviour through this protocol.
- 1.2 The Councillors' Code of Conduct applies whenever you act, claim or give the impression you are acting in your official capacity and sets out in general terms aspects of conduct which Councillors must observe in carrying out official duties and which have direct relevance to relations between Councillors and their fellow Councillors and between Councillors and Officers. The Code also applies to you at any time if you conduct yourself in a manner which could reasonably be regarded as bringing your office or your authority into disrepute or if you use or attempt to use your position to gain an advantage for yourself or any other person or if you misuse your authority's resources.
- 1.3 This Protocol sets up a framework for good working relationships between Councillors and between Councillors and Officers as the best means of supporting the work of this Council.
- 1.4 The Protocol seeks to set out not only current practices and conventions but also aims to promote clarity and certainty on dealing with other issues.
- 1.5 The Protocol will also reflect the principles underlying the respective Codes of Conduct which apply to Councillors and Officers so that together they enhance and maintain the integrity of the Council and its public reputation.

### **2. COUNCILLOR/OFFICER RELATIONS**

- 2.1 Both Councillors and Officers serve the public but their roles and responsibilities differ. Councillors represent their constituents and the wider public. Officers are responsible to the Council and must give advice to Councillors and the Council and carry out the Council's work under the direction and control of the Council, the Cabinet and its Committees and sub-Committees.
- 2.2 Councillors and Officers should treat each other with respect at all times.
- 2.3 Councillors can expect from Officers:-
  - Commitment to the Council as a whole and not only to one part

- Respect and courtesy
- The highest standards of integrity
- Timely responses to enquiries and complaints
- Impartial, professional advice
- Regular up to date information that can be considered appropriate and relevant to their needs having regard to any individual responsibilities that they have and positions that they hold
- Awareness of and sensitivity of the political environment
- Appropriate confidentiality
- Support for the role of Councillors within the arrangements made by the Council
- That they will not use their relationship with Councillors to seek to advance their personal interests or to influence decisions improperly
- Compliance with this Protocol at all times

2.4 Officers can expect from Councillors:-

- Respect and courtesy
- The highest standards of integrity
- An understanding of and support for respective roles, work loads and pressures
- Leadership
- Not to be subject to bullying or discrimination or to be put under undue pressure
- That they will not use their relationship with officers to seek to advance their personal interests or those of others or to influence decisions improperly
- Compliance with the Councillors' Code of Conduct
- Compliance with this Protocol at all times

2.5 Both Councillors and Officers should take care not to give the impression that their distinct roles have blurred in any way. Councillors and Officers should therefore exercise caution in forming close, personal relationships with each other as the impression could be given that a particular Councillor or Officer may be able to secure advantageous treatment as a result of such a friendship.

2.6 Any act against an individual Officer may be regarded as a form of bullying, intimidation or harassment if it is intended to influence unfairly that person's actions, thoughts or deeds. Whilst this Protocol cannot give guidance on every situation where such behaviour may occur, the Council is committed to promoting professional and courteous working relationships between individuals.

2.7 All dealings between Councillors and Officers should observe reasonable standards of courtesy and neither party should seek to take advantage of their position.

- 2.8 If there are any occasions where Councillors may have reason to complain about the conduct or performance of an Officer, all such complaints should be made personally, either to the Chief Executive, a member of the Green Team or Strategic Director as appropriate and in the case of the Chief Executive to the Monitoring Officer. It is particularly important that such complaints are made in this way and are not aired in public such as at a meeting of the Council, to other external bodies or members of the public or in the Press.
- 2.9 Similarly, if there is concern by an Officer in relation to a Councillor's conduct, all such concerns should be brought personally by the relevant Strategic Director to the attention of the Chief Executive or in his/her absence to a Member of the Green Team and the Monitoring Officer.
- 2.10 All Councillors have the same right and obligations in their relationship with officers and should be treated equally. However, Members of the Executive and Chairs of Committees have additional responsibilities and their relationship with officers may be different and more frequent and complex from those of members without those responsibilities and this is recognised in the expectations they are entitled to have of officers. Also, where a political group forms an administration either alone or in partnership with another group or groups, it is recognised that the relationship with officers, particularly those at a senior level, will differ from that with opposition groups.

### **3. RIGHTS AND DUTIES OF INDIVIDUAL COUNCILLORS**

- 3.1 All Councillors have the right:-
- To inspect documents in the possession or control of the Council as set out in paragraphs 3.5.6 to 3.5.14 of the Council's Constitution
  - To attend Committee, Sub Committee, Joint Committee, policy seminars and training sessions and such meetings as are necessary for the proper performance of that Councillor's duties
  - To see accounts and make copies before the Annual Audit to inspect specific books, contracts, bills etc.
  - To receive approved allowances
- 3.2 There are also duties on individual Councillors to:-
- Abide by the Councillors Code of Conduct and this Protocol
  - To disclose personal and prejudicial interests as set out in the Code of Conduct
  - To register the receipt of any gifts and hospitality at levels determined by the Council
  - To use all reasonable endeavours to attend meetings of the Council, its Committees, sub-Committees, other events and any outside bodies to which they have been appointed and to give apologies with reason where appropriate on those occasions where the Councillor is unable to attend

- To attend and participate in opportunities for training and development including policy development
- To take into account advice received from officers, especially advice from the Chief Executive, Chief Financial Officer, Monitoring Officer and Chief Legal Officer where they give it under their statutory duties.

#### **4. CONFIDENTIALITY AND THE PRESS**

- 4.1 The rights for Councillors to inspect documents are set out in Part 3 of the Council's Constitution.
- 4.2 Any Council information provided to a Councillor in his/her capacity as a Councillor must only be used by the Councillor in connection with the proper performance of their duties. Confidential information should not be disclosed to the media, discussed or released to any other persons. Councillors should not disclose or use confidential information for the personal advantage of themselves or anyone known to them or to the disadvantage or the discredit of the Council or anyone else.
- 4.3 Officers and Councillors have a responsibility to protect the Council's reputation. Leaking of confidential information including exempt Agenda items and minutes to the media or public criticism of individual Officers by Councillors or of individual Councillors by Officers is unacceptable. There are clear requirements set out both in the Councillors' Code of Conduct and in the Officer Code of Conduct regarding confidentiality.
- 4.4 Duties of confidentiality (under common law) arise when one person (the 'confidant' ) is provided with information by another (the 'confider') either orally or in writing in the expectation that the information will only be used or disclosed in accordance with the wishes of the confider. Examples of this duty are;-
- if the relationship is inherently confidential e.g. lawyer and client
  - If the relationship is personal e.g. between colleagues in circumstances that suggest an expectation of confidentiality
  - If there is risk through identification e.g. whistle blowers
- 4.5 The fact that information is not marked 'confidential' does not necessarily prevent it from being confidential as this may be inferred from the subject matter and the surrounding circumstances. Confidentiality is unlikely to be established where the information is already known to a wide circle or is in the public domain. Wherever possible, officers and councillors should clearly indicate in correspondence or verbally when they expect information to remain confidential to avoid confusion.
- 4.6 Whilst this Protocol is not aimed in any way at restricting a Councillor's freedom of speech or right to contact the media, Councillors must distinguish between acceptable levels of political debate and unacceptable or derogatory personal comments or remarks when they comment on

particular issues. Comments to the Press should not challenge the integrity and good faith of other Councillors or be based on inaccurate information offered without due regard or attempt to establish the facts.

## **5 CORRESPONDENCE AND E MAILS**

- 5.1 All correspondence, including Emails between an individual Councillor and an Officer should not normally be copied (by the Officer) to any other Councillor or other organisation, except to the Executive Member responsible for that area of work where appropriate. Where it is necessary to copy the correspondence to another Councillor this should be made clear to the original Councillor, before any correspondence is sent.
- 5.2 Correspondence including Emails between an individual Councillor and an Officer should not be copied by the Councillor to the media or other organisations. Officers other than the Communications Team should not contact the Press and comply with the requirements of the Officers' Code of Conduct.
- 5.3 Local government should promote openness and transparency so information should not be disseminated secretly. Emails to and from councillors should not be blind copied, without declaring to whom the Email has been copied.
- 5.4 Councillors who do not use the council's IT equipment must nevertheless comply with the Council's ICT security policy, and this Protocol.

## **6. INVOLVEMENT OF WARD COUNCILLORS**

- 6.1 Much of what the Council does requires effective communication between everyone who may be affected. Ward Councillors especially are concerned to know and be involved in matters that affect their Ward. Where Councillors raise specific concerns which may involve ward level issues other than their own, it is established that the Ward Councillor/s is/are to be notified within 10 working days unless there are exceptional circumstances.

## **7. ATTENDANCE BY MEMBERS AT MEETINGS ARRANGED BY OFFICERS**

- 7.1 Councillors are free to request a meeting with Officers to discuss aspects of the Council's business, bearing in mind the reasonable calls of their other duties.
- 7.2 Officers will arrange many meetings with colleagues or third parties to discharge the routine business of the Council or to action its decisions. The convention is that Councillors will not be present at these meetings but will be advised either informally or through reports to Cabinet and Committees of any relevant discussions and/or outcomes. There may be occasions

where a Councillor may be invited to attend a meeting by the appropriate Officer or by a resolution of a Committee.

- 7.3 Councillors may request meetings with Officers and bring third parties to that meeting by agreement with officers.

## **8. BREACHES OF THE PROTOCOL**

- 8.1 Allegations by an Officer of a specific breach of this Protocol by a Councillor should be made to the Chief Executive. It is hoped that any potential problems may be resolved by early discussion between the Councillors involved and the Chief Executive. If this proves impossible the Chief Executive may, in consultation with the Chair of the Ethics and Standards Committee refer the matter to the Ethics and Standards Committee and invite them to reach a view as to whether the Protocol has been breached. The view of the Ethics and Standards Committee will be reported at a Council meeting. The Ethics and Standards Committee will follow the Stage Three of the Procedure attached.

- 8.2 The Chief Executive will decide whether disciplinary procedures are appropriate in the case of alleged breach of this Protocol by Officers.

- 8.3 Allegations by a Councillor of a specific breach of this protocol by another Councillor will be dealt with in accordance with the Procedure attached.

## **9. TRAINING AND BRIEFING**

- 9.1 Joint training and briefings for the operation of this Protocol for Councillors and Officers will be arranged as required and overseen by the Ethics and Standards Committee.

## **10. ADVICE**

- 10.1 The Council's Monitoring Officer and Deputy Monitoring Officer will give advice on the interpretation and operation of this Protocol.

## **11. REVIEW**

- 11.1 The operation of this Protocol will be regularly monitored and reviewed by the Ethics and Standards Committee with particular reference to findings on breaches, and recommendations made to Council for amendment where necessary.

**27 October 2009**

Revised 17 December 2010 Ethics and Standards Sub Committee

# **PROCEDURE FOR DEALING WITH ALLEGATIONS THAT A COUNCILLOR HAS BREACHED THE LOCAL PROTOCOL FOR TORFAEN COUNTY BOROUGH**

## **COUNCIL**

### **1. INTRODUCTION**

- 1.1 The Local Protocol for Torfaen County Borough Council aims to promote good co-operation between Councillors and Officers and exemplary standards of behaviour by Councillors thus allowing the Council to carry out its duties efficiently and professionally.
- 1.2 Legislation sets out a statutory regime whereby complaints for breaches of the Councillors' Code of Conduct are referred to the Public Services Ombudsman for Wales (the Ombudsman).
- 1.3 The Ombudsman has the discretion to decide whether allegations of breaches of the Councillors' Code of Conduct will be investigated. Therefore if there are reasonable grounds which indicate a possible breach of the Code, the matter should be referred to the Ombudsman. This Protocol is designed to deal effectively with those complaints which are not suitable for reference to the Ombudsman or which would benefit from a local determination.
- 1.4 It is important that any allegations made under this protocol are dealt with quickly and effectively.
- 1.5 The purpose of this procedure is to introduce a simple and clear method of dealing with such allegations.

### **2. COMPLAINTS INVOLVING OFFICERS**

- 2.1 The Chief Executive will deal with all complaints by officers against Councillors and complaints by Councillors against officers under this Protocol as set out in paragraphs 8.1 and 8.2 of the Protocol. The Chief Executive retains the discretion to refer the matter to the Ombudsman or with the consent of the Chair, to the Ethics and Standards Committee under Stage Three of the Procedure below.
- 2.2 If any complaint by an officer against a Councillor is referred to the Ethics & Standards Committee (the Committee), the procedure is set out in Stage Three below will be followed.

### **3. COMPLAINTS AGAINST COUNCILLORS BY OTHER COUNCILLORS**

- 3.1 Complaints against Councillors by another Councillor/s will be dealt with under the following three stage procedure (detailed overleaf).

### **4. THE PROCEDURE**

- 4.1. Stage One of the Procedure: Making the complaint
  - (i) Any Councillor who wishes to submit an allegation should send the complaint to the Monitoring Officer. Following receipt of the complaint the Monitoring Officer will advise whether the allegation falls within this Protocol or whether the complainant

should consider referral to the Ombudsman as an allegation of breach of the Councillors' Code of Conduct. The Monitoring Officer may choose not to deal with the allegation at this stage in order to be able to advise the Committee later in the process, in which case the Deputy Monitoring Officer or a Legal Officer will advise the complainant

- (ii) If a local resolution is sought under this Protocol then all parties concerned would need to agree not to refer the matter to the Public Services Ombudsman for Wales. If there is a formal referral to the Ombudsman then legislation and regulations set out how the Ombudsman may investigate that matter and if appropriate refer the result of any investigation to the Ethics & Standards Committee so that the Committee may determine that complaint.
- (iii) If following the first stage the Councillor wishes to proceed with the allegation under this procedure, the matter may be referred either to an informal resolution under Stage Two or to a hearing by the Committee under Stage Three.

#### 4.2 Stage Two of the Procedure: Informal resolution

At Stage Two, the complaint (if both parties agree) will be referred to the current Members Champion Training and Development (or in his/her absence or if he/she is otherwise unable to act) the Presiding Member to contact the Member against whom the complaint is made and, if appropriate, the Leader of the relevant political group, to try and resolve the matter informally.

- (i) The Members Champion Training and Development may decline to undertake Stage Two and with the consent of the Chair of the Committee refer it immediately to Stage Three.
- (ii) If necessary, the Members Champion Training and Development can call on the Monitoring Officer, the Deputy Monitoring Officer or Legal Officer for advice and assistance. On occasions, it may be appropriate for the Monitoring Officer not to be involved in order to be able to advise on the matter at a later stage.

#### 4.3 Stage Three of the Procedure: Hearing before the Ethics and Standards Committee

- (i) If either party remained dissatisfied with Stage 2, then with the consent of the Chair of the Committee, the third stage of the hearing is before the Ethics & Standards Committee. The Councillor making the complaint will be asked to submit the substance of the complaint in writing, and the Councillor who is the subject of that complaint will be asked for a written response. These papers, together with any additional written evidence that is submitted by either side will be distributed to the members of the Committee.
- (ii) Both the Councillor making the complaint and the Councillor complained against have the right to appear before the Committee and to submit evidence from witnesses. Both will have the right to representation or to have a colleague present. The Council will not meet the cost of representations.



- (iii) If either side wishes not to be present or fails to attend, the hearing may be held in their absence.
- (iv) The Committee can come to one of three conclusions, namely:-
  - (a) That there is no basis to the complaint.
  - (b) That there is a basis to the complaint but that no further action is required.
  - (c) That there is a basis to the Complaint and that the Councillor should be censured.

The conclusion by the Committee will be reported to Council. In addition, the Committee can make recommendations to the Council regarding changes to any procedures or taking any further action.

#### 4.4 Council may resolve to:-

- (a) Accept the decision of the Committee or
- (b) Take no further action.

### 5. OTHER MATTERS

- 5.1 (i) Publicity will not be given to the names of the Councillors involved unless it is decided to uphold the complaint and that the Councillor should be censured. The hearing before the Committee will be exempt.
- (ii) Stages Two and Three do not have to be followed sequentially. Although it is possible for a Councillor who remains dissatisfied after the intervention of the Members Champion Training and Development to ask for the matter to be referred to a hearing before the Committee, it is also possible for a matter to proceed directly to the Committee without being first submitted to the Members Champion Training and Development, provided the Chair of the Ethics and Standards Committee agrees.
- (iii) The aim of this Procedure is to try and resolve complaints regarding Councillors quickly and effectively. Nothing in this procedure prevents an officer or Councillor from submitting a complaint to the Ombudsman that a Councillor has breached the Councillors' Code of Conduct at any time before Stages Two (in the case of a Councillor) or Three (in the case of either an officer or a Councillor) of the Procedure is engaged.
- (iv) This Protocol is not designed for use by members of the Public. If there is a complaint by a member of the public against officer conduct or Councillor conduct, then that should follow normal processes, either through a complaint to the Chief Executive or relevant Strategic Director in respect of an officer or to the Monitoring Officer and/or the Ombudsman in respect of a Councillor.