



SHETLAND ISLANDS COUNCIL

CONSTITUTION

PART F - 1

PROTOCOL FOR COUNCILLOR/OFFICER RELATIONS

Document Information			
Document Name/Description		Protocol for Councillor/Officer Relations	
Version Number <i>e.g.</i> V1.1		2.0	
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Final Approval Date		22 March 2017	
Approved by – <i>Council/Committee/Group/Manager</i>		Shetland Islands Council	
Review Frequency		<ul style="list-style-type: none"> • Annually with Code of Corporate Governance • The Council’s Chief Legal Officer/Monitoring Officer has delegated authority to agree updates to any of the constitutional documents where these are required to give effect to legislative requirements, Council decisions or changes in operational procedures, and to note that any such changes will be notified in the document version control and, where considered necessary, by a briefing note to Councillors and/or officers. 	
Date of next planned review start		August 2017	
Summary of changes to document			
Date	Version updated	New version number	Brief description of changes
12/05/2011	0.1	1.0	First adopted
22/03/2017	1.0	2.0	No changes - submitted for endorsement to conclude 2012-2017 term of office.

1 PRINCIPLES

- 1.1 The purpose of this protocol is to provide a guide to good working relationships between Councillors and Officers; to help distinguish their respective roles and to avoid confusion and misunderstanding; and to provide some principles governing conduct. In short it guides Councillors and Officers in their relations with one another in the context of the variety and complexity of the circumstances in which Councillors and Officers find themselves, particularly in a Council where there are no political groups.
- 1.2 The protocol builds on the Councillors' Code of Conduct and the Council's own Code of Conduct for Officers, which are attached at Appendices 1 and 2. The desired outcome is to enhance and maintain the integrity, real and perceived, of the Council through high standards of personal conduct, and the expectation is that Members and Officers will abide by this Protocol just as they are required to abide by the respective codes of conduct which apply to them.
- 1.3 Delivering successfully the functions which the Council is there to provide is a partnership in which Members and Officers play complementary roles.

"Both Councillors and Officers are servants of the public and they are indispensable to one another; but their responsibilities are distinct"
(Former National Code of Local Government Conduct)

The McIntosh Commission stated the distinction as follows:

- The Council determines policy. It is ultimately responsible for ensuring the delivery of services: if the public is not satisfied, it is the Councillors who have to take responsibility and answer criticism. In a nutshell, the Councillors are in charge.
- The Officers manage the organisation which delivers the services. The services require professional management, and the Officers are, or should be, selected for their experience and qualifications to do this. The Councillors are elected to determine policy, not to engage in direct operational management of the services.
- The Officers advise the Council. The Council has a right to expect advice which is candid, expert and impartial. Officers serve the whole Council.

Expectations

1.4 Councillors Expect Officers to:

- carry out their jobs effectively, efficiently and with political neutrality;
- provide authoritative and objective professional advice;
- in a professional capacity to respect and give effect to the Council's strategies, policies and decisions whether or not they agree with them personally; however an Officer has no duty to implement a Council decision if it is manifestly contrary to law;
- respect and support Councillors' roles and rights, workload and pressures;
- ensure the Council acts lawfully;
- maintain confidentiality where the circumstances require it.

1.5 Officers Expect from Councillors -

- corporate political leadership;
- clear and effective decision taking;
- respect for their political neutrality; dignity and courtesy;
- no assumption that officers are personally supportive of any policy or strategy because of their assistance in the formulation of that policy or strategy;
- awareness that officer support cannot extend beyond providing information and advice in relation to matters of Council business;
- awareness of the lines of accountability within departments and not apply pressure on an Officer to act in a manner contrary to or beyond the authority they have been given by their manager;
- not to use their position or relationship with officers to advance their personal interests nor improperly those of others nor to influence decisions improperly;
- understanding of and support for roles, workload and pressures;
- confidentiality where the circumstances require it

1.6 At all times, both Councillors and Officers should seek to avoid personal close familiarity which might compromise a proper professional relationship. Close personal familiarity between individual Councillors and Officers can damage this relationship and prove embarrassing to other Councillors and Officers, and potentially to the Council's reputation.

While personal relationships are a matter for the parties concerned and not for the Council, a Councillor or an Officer must advise the Chief Executive in circumstances where any personal relationship which may exist between the two might be seen as influencing their work or judgment as Councillor or Officer on any particular matter of Council business. In addition the Councillor might require to declare any such relationship by virtue of the Councillors' Code of Conduct.

1.7 It is important that any dealings between Councillors and Officers should observe high standards of courtesy and mutual respect and neither party should seek to take unfair advantage of their position.

Councillors must respect the political neutrality of Officers.

Councillors have a right to criticise reports or the actions taken by Officers, but they must always –

- avoid personal attacks on Officers; and
- ensure that criticism is constructive and well founded.

Members should avoid undermining respect for Officers in any public forum or through the media. This is damaging both to effective working relationships and to the reputation of the Council. In general Officers are unable to "answer back" or defend themselves against criticism in a public forum.

1.8 If a Councillor has a concern about an alleged action or omission on the part of an Officer the Councillor should raise that with the relevant Director in the first instance or the Chief Executive. It is accepted that the concern having been lodged the matter is one which will be investigated and dealt with by the Director or the Chief Executive in accordance with the relevant employment procedures which might include the Council's disciplinary procedures in terms of which the Councillor's role is restricted generally to providing witness evidence. The Councillor will be advised of the outcome of any complaint.

- 1.9 If an officer has a concern regarding an alleged act or omission of a Councillor or about their conduct, the officer is entitled to take one or more of the following actions -
- to raise that matter with their Head of Service/Director who may raise the matter with the Chief Executive. The Chief Executive or Director may raise the matter with the Member concerned and set out his/her view regarding the Councillor's conduct. The Chief Executive may in turn raise the matter with the Leader of the Council.
 - to report the matter to the Monitoring Officer in terms of the Council's Public Interest Disclosure Policy.
 - to make a complaint to the Chief Investigating Officer of the Standards Commission.

If a disclosure or complaint is made in good faith but is not confirmed by subsequent investigation, no action will be taken against the person making it.

2 SUPPORT SERVICES FOR COUNCILLORS

The only basis on which the Council can lawfully provide support services to Councillors is to assist them in discharging their role as Councillor. Such support services (eg stationery, typing, printing, photocopying, IT equipment, transport, etc.) must therefore only be used on and for Council business. They should never be used in connection with party political or campaigning activity or for private purposes. Appropriate uses of, for example, Council IT equipment will be defined in an acceptable use policy which the Councillor will be required to sign.

3 ACCESS TO INFORMATION ETC.

- 3.1 Councillors have an absolute right of access to meetings of the Council; they have a right of access also to meetings of the bodies within the political management framework, in accordance with the detailed provisions contained elsewhere in this Constitution. They have the right of access to documents and information in the possession or control of the Council in so far as such access is necessary for the proper discharge of their duties as a Councillor and in accordance with the law. There are three levels of access as set out below.

3.2 Level 1

A request for information will be dealt with in compliance with the Freedom of Information (Scotland) Act 2002 and the Data Protection Act 1998. Such requests will be met, subject to any legal constraints (which are dealt with below) and subject as set out in paragraphs 3.5 – 3.10.

A Councillor is free to approach any Council Service to provide them with such information explanation and advice (about that Service's functions) as they may reasonably need in order to assist them in discharging their role as Councillor. This can range from a request for general information about some aspect of a Service's activities to a request for specific information on a matter raised with them by a constituent. Other than for information of a routine or minor nature, such approaches should normally be directed to the Director or appropriate Head of Service or Service Manager.

3.3 **Level 2**

In addition to their rights under the Freedom of Information (Scotland) Act 2002 Members also have legal rights partly from statute and partly from common law to inspect Council documents. Members may inspect any Council document which contains material relating to any business which is to be transacted at a meeting of the Council or a body within the political management framework. This right applies irrespective of whether the Councillor is a Member of the body concerned 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 on the agenda for a meeting which may disclose “exempt information” particularly where the business might affect the rights of a member of the public as an individual or the disclosure might breach the Data Protection Act.

3.4 **Level 3**

The common law right of Councillors is based on the principle that any Councillor has a prima facie right to inspect Council documents so far as their access to the documents is reasonably necessary to enable them properly to perform their duties as a Councillor. This is commonly referred to as the “need to know” principle.

This right (which is over and above the rights contained in the Freedom of Information (Scotland) Act 2002 and other statutory rights) depends therefore on the Councillor’s ability to demonstrate the necessary “need to know”. In this respect a Councillor has no right to a “roving commission” to examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the “need to know”, which must be determined, initially, by the particular Director whose Service holds the document. In the event of dispute, the question will be determined by the Chief Executive on advice from the Head of Legal and Administration.

3.5 In order to support as far as possible the principle that all members should have parity of information, a copy of the response will be given to the Leader of the Council, the appropriate Senior Committee Chair, the Chief Executive, appropriate Director and, where a matter affects a particular Ward to the Ward Councillors; unless

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- the information is of a routine or minor nature
- the information is about or affects the personal circumstances of the Councillor seeking the information or his immediate family
- the disclosure of the information to other than the Councillor seeking it would involve the contravention or potential contravention of any law.

On each occasion a copy of a response is provided to other Councillors this will be made clear to the original Councillor, and not by “silent copy”.

3.6 If a Director considers that information requested could only be provided at unreasonable cost, having regard to staffing and other costs, before acceding to the request, he or she will consult the Chief Executive advising the approximate extent of the work/cost of such provision having regard to the Fees Regulations issued under the Freedom of Information (Scotland) Act 2002.

3.7 If an Officer is approached by a Councillor with a request for a report to be compiled, either with a view to that information being presented to the Council or a body which is part of the political management framework, or on an individual basis, the Officer will, before acceding to the request, consult the Chief Executive who may in turn

consult the Leader and/or as necessary the relevant Committee Chair.

- 3.8 It is open to a Councillor to make their request for information by way of a written question in terms of the Council's Standing Orders for Meetings for answer by the appropriate Committee Chair.
- 3.9 While the term "council document" is very broad and may include, for example, any document produced with Council resources or held by the Council, a Councillor will not have a "need to know", and therefore a right to inspect, a document which happens to be held by the Council where it forms part of another Councillor's files relating to that other Councillor's duties as a Councillor.
- 3.10 Any Council information provided to a Councillor which is not otherwise already in the public domain, or which would have been provided by virtue of the Freedom of Information (Scotland) Act 2002 must only be used by the Councillor for the purpose for which it was provided – that is, in connection with the proper performance of the Councillor's duties as a Councillor.

As regards the use of information which is provided on a confidential basis a Councillor must comply with the requirements set out in the Councillors' Code of Conduct.

4 CHAIR/OFFICER RELATIONS

- 4.1 There should be a close working relationship between the Chair of a body which is part of the political management framework and the appropriate Chief Officer(s) and other senior Officers of any Service which reports to that body. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question an Officer's ability to deal impartially with all Councillors on an equitable basis. There are obligations, therefore, in this respect on the part of both Chair and Officer.
- 4.2 The Chair will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting and preparing items of business for it. The principles which apply in this process are as follows –
 - (a) The Chair is entitled to know in advance what items are proposed to be brought before the body they chair. This is part of keeping the Chair informed and up to date to enable them properly to play their role as Chair but also to enable them to play their leadership role vis-a-vis their relationship with other Councillors, officers, the wider community and the media. The Chair is entitled to express views, for example, relating to the timing of a report or its content.
 - (c) The Officer concerned will give due consideration to such views or comments and may adjust timing or content in light of views expressed by the Chair, but is not obliged to do so. Officers must be able (and indeed are under a duty) to provide a report, on any relevant matter which requires a decision, before the relevant body which is part of the political management arrangements and to provide their professional opinion and recommendations. Officers will always be fully responsible for the contents of any report submitted in their name. It is accepted that on occasion an Officer may need to express a professional view on a matter which may not support the view of the Chair or other Councillor(s).
- 4.3 It is entirely appropriate that Chairs should be provided with information and be consulted by officers on a regular basis between meetings of the relevant body on

matters which fall within the terms of reference of the body but which are delegated to the Officer. However, the law only allows for decisions relating to the discharge of any of the Council's functions to be taken by "a Committee, a Sub-Committee or an Officer". The law does not allow for such decisions to be taken by a Chair or any Councillor acting individually. In those circumstances therefore it is the Officer (as required by statute) who takes the decision and it is the Officer who is accountable for it.

The Council or a body which is part of the political management framework may wish to delegate a matter for final determination of detail having agreed the principle of the matter. Where this is used the delegation should be to the Officer. If on any occasion there is felt to be a need to involve the Chair (or any other Councillor(s)) the delegation should be to the Officer in consultation with the Chair (or other appropriate Councillor(s)). However, it should be clear that the decision and the accountability for it lie with the officer. Thus if there is a disagreement in the course of the consultation about the action to be taken, the Officer may refer the matter back to the body for decision.

5 ACTION ON BEHALF OF THE COUNCIL

5.1 Official letters on behalf of the Council will normally be sent out under the name of the appropriate Officer. It may be appropriate in certain circumstances, for example to make representations to a Government Minister on behalf of the Council for a letter to be signed by the Leader or, following consultation with the Leader by the relevant Senior Committee Chair. Letters which create legal obligations or give instructions or formal notices on behalf of the Council will only be sent out under the name of the appropriate Officer.

5.2 Commercial Transactions

The Council is engaged at any one time in a number of commercial transactions which requires professionally skilled negotiation. A Councillor may be involved in a commercial transaction at a meeting of the Council or a body which is part of the political management framework as to whether the Council should enter into any contract or commercial arrangement, where the professional advice will be available to Councillors. Other than as a member of any such body it is inappropriate for a Councillor to purport to engage in any commercial transactions or negotiations on behalf of the Council and they should not under any circumstances engage in any such discussions with any body with whom the Council may be conducting such negotiations.

6 MEDIA RELATIONS

6.1 The principles which govern the Council's good handling of media relations are –

- (a) the principal purpose is to explain or comment on the Council's policies and decisions;
- (b) media relations will relate to functions of the Council or matters of public interest relevant to Shetland
- (c) media relations conducted on behalf of the Council will not be designed to effect support for the personal political views of any individual Councillor nor will they will contain material which is designed to disparage any Councillor on a personal basis

- 6.2 All media releases on behalf of the Council will be prepared and issued by the Chief Executive's Communications Team, but they may contain quotations from a Councillor.

They will be prepared in conjunction with the relevant Director and they must be cleared with the Chief Executive (or his nominee) and normally with the Leader of the Council before being issued, and they may include a statement from the Leader or the relevant Committee Chair.

Media releases of a factual nature providing routine service information will be authorised by Directors and may contain a factual quotation from the appropriate officer.

Copies of all press releases will be circulated to all Councillors and relevant Officers when they are issued.

- 6.3 Any Councillor, independent of the foregoing arrangements, may of course issue their own media statement or respond to any approach from the media which is made to them on an individual basis. It is accepted that in such circumstances the Councillor is speaking on their own behalf, should not purport to speak on behalf of the Council and is personally responsible for content. Accordingly an officer will not be involved in assisting with the preparation or issue of any release.

- 6.4 All enquiries from the Media will be channelled to the Communications Team or other officers designated by the Chief Executive. The preparation and issue of responses to media enquiries will be prepared by the relevant designated officer in conjunction as necessary with the Communications Unit. Except where they relate to enquires of a factual nature or routine service information, they must be cleared with the Chief Executive (or his nominee) and normally with the Leader of the Council before being issued, and they may include a statement from the Leader or the relevant Committee Chair.

- 6.5 Media releases, publications, booklets, or other documents issued by or on behalf of the Council may contain quotations from the Leader or the relevant Chair which are in line with Council policy on the subject of the publication. Where policy has yet to be determined a publication will not carry a quotation from a Councillor which conveys that Councillor's opinion on any matter.

7 The Council as Employer

- 7.1 Officers are employed by the Council as a whole and both they and the Council are governed by contracts of employment and the Council's personnel policies and procedures. The Council has a duty of care towards all of its employees and it is important its HR strategies and policies are applied correctly and consistently.

- 7.2 The management of Council staff is an operational matter which is the responsibility of the Chief Executive and the Corporate Management Team collectively or individually, within the policies and procedures approved by the Council from time to time. The Council has a range of procedures which deal with employment issues including recruitment and retention, grievance and disciplinary procedures, equal opportunities and harassment policies. In some of these Councillors have a defined role to play in terms of which they must act in accordance with these employment related procedures and the law. Beyond that Councillors should not become involved

in matters relating to the employment circumstances of a member of the Council's staff.

- 7.3 Councillors should not be approached by employees on matters relating to their personal circumstances as a member of the Council's staff; should decline to discuss an employment issue if approached; and should not seek to discuss an employment related matter with an employee.

A councillor should not pursue any particular matter on behalf of an employee; to do so may well prejudice any procedures which are already underway and would not be in the Council's or public's interests.

8 COMPLAINTS PROCEDURE

- 8.1 From time to time things may go wrong. When this happens the Council wants to put it right quickly and take action to prevent it happening again.

The Council has a corporate complaints procedure. There are other procedures which apply in certain circumstances. The definition of a complaint covers such as:

- dissatisfaction with the implementation of policies
- delays in responding to service requests
- failure to achieve the prescribed standard of service
- failure to follow a prescribed procedure
- employee behaviour or attitude.

- 8.2 The main benefits of having a corporate system for dealing with complaints are:

- it is better for the public; everyone should know how to complain and the way their complaint will be handled.
- it is fairer; everyone is treated equally and consistently
- it is better for employees; they can be confident about what to do when they get a complaint and how to deal with it
- it helps the Council to improve services; by analysing all the complaints which are considered through the procedure, Councillors and managers can see how to make services better and more responsive
- it enables the Council to respond properly to any investigation by the Ombudsman

- 8.3 Councillors and Officers at all levels should respect the Corporate Complaints Procedures as the vehicle for dealing with complaints. They should understand the Procedure and show their determination to make it work. The Procedure sets out what steps officers should take to investigate complaints and they should do so fairly and consistently.

- 8.4 Complaints by members of the public are often referred through third parties, including Councillors and MP/MSPs. Such complaints will be dealt with in the normal way through the Complaints Procedure. The Councillor's role is to assist a person who has a complaint to access the complaints procedure and if necessary to check progress through the procedure. Councillors should not put pressure on an Officer to reach a particular decision. Officers should be left to make decisions that:

- are objective and can be accounted for; and
- are fair and consistent in their application.

However, where a member of the public has sought the assistance of a Councillor in resolving a complaint the Councillor will, subject to any constraints which may be imposed by Data Protection legislation, be advised of the outcome of the complaint.

9 WARD MEETINGS

If an Officer arranges a meeting regarding a local issue relevant to a particular Ward(s), the Officer will invite all Councillors for the Ward(s) in question.

If a Councillor calls or requests a meeting about a local Ward issue and requests the attendance of an officer, such an officer will only attend where their Director or Head of Service considers it appropriate. The Director may consult the Chief Executive before responding to the request and his/her decision will be final. Attendance of an officer will be conditional (amongst any other considerations) on all Councillors for the Ward having been invited to attend, or they are all agreeable to the meeting taking place.

10 OTHER ISSUES

Any issue of concern which arises at any time and which is not dealt with by this protocol will be discussed with the Chief Executive, who may in turn raise the matter with the Leader of the Council.