

## **Appendix 3**

### **PART 8.7 CODE OF CONDUCT FOR MEMBER/OFFICER RELATIONS**

#### **1. Introduction**

- (a) An effective and productive working relationship between Members and officers is critical to the successful operation of the Council's business. This code deals with the Member/officer interface in general terms and then refers to the working relationship between Members and Chief Officers, senior officers and other officers who formally advise the Council.
- (b) Excellent working relationships between Members and officers are required both to deliver high quality services to local people and to maintain public confidence in the machinery of local government in Brighton & Hove.
- (c) For the purposes of this Code, Chief Officer means the Chief Executive, the Executive Directors of Finance and Resources, Health and Adult Social Care; , Families, Children and Learning; Economy, Environment and Culture, and Neighbourhoods, Communities and Housing as well as the Monitoring Officer and Executive Lead for Strategy, Governance and Law.
- (d) For the purposes of this Code, Deputy Chief Officer means Officers who report to Chief Officers other than clerical staff.

#### **2. Values**

The manner in which members and officers interact should at all times be consistent with the council's organisational values, which are as follows:

- **Respect:** Embrace diversity with kindness and consideration and recognise the value of everyone. (See also paragraph 3 below)
- **Collaboration:** Work together and contribute to the creation of helpful and successful teams and partnerships across the council and beyond
- **Efficiency:** Work in a way that makes the best and most sustainable use of our resources, always looking at alternative ways of getting stuff done and asking, 'How can I improve that?'
- **Openness:** Share and communicate with honesty about our service and self, whenever appropriate. Accept where we have to change in order to improve

- ***Creativity***: Have ideas that challenge the ‘tried and tested’, use evidence of what works, listen to feedback and come up with different solutions
- ***Customer Focus***: Adopt our ‘Customer Promise’ to colleagues, partners, members and customers. We will be easy to reach, be clear and treat you with respect, listen and act to get things done

### 3. **Mutual Respect and Courtesy**

- (a) Respect is one of the Council’s organisational values. For the effective conduct of the Council’s business there must be mutual respect and courtesy in all meetings and contacts, both formal and informal, between Members and officers. The basic tenets of common courtesy apply in both formal and informal settings. This plays an important part in safeguarding the Council’s reputation and the regard in which it is held by members of the public.
- (b) It is important that both Members and officers remember their respective obligations to enhance the Council’s reputation and do what they can to avoid criticism of Members or officers in public. The quality of the interface between the two is vital in ensuring that the highest ethical standards permeate the Council in both its private and public dealings.
- (c) Members should be aware that officers are constrained in the response they may make to public comment from Members and should not abuse officers in public or through the press nor seek to undermine their position by abuse, rudeness or ridicule. This in no way reduces Members’ proper right and duty to criticise the reports, actions and work of a department or section of the Council where they believe such criticism is merited. If Members believe they have reason to criticise the work of an individual junior officer, the proper approach should be through the senior manager of the section or Chief Officer of the relevant department. Equally where officers feel they have good cause to criticise a Member, an approach by the relevant Chief Officer to that Member’s party whip, group leader or convenor is a sensible first step.

### 4. **Roles and Responsibilities**

- (a) All Members have responsibilities towards the Council, effectively as trustees. No decisions on behalf of the Council can be taken by individual Members in law, but because the Council is organised into political groups certain Members will exert more influence and direction than others, namely the leadership of the largest group and opposition groups. Committee/Sub-Committee Chairs will also exert influence and may provide guidance within the area covered by their Committees/Sub-Committees. The role of Committee/Sub-Committee Chairs is recognised in law for procedural purposes, for

example chairing meetings or exercising a casting vote. Whilst chairs of committees liaise regularly with senior officers on significant matters and may be able to influence Officer decisions by expressing their views, by law they cannot make individual decisions on behalf of the Council. There is therefore no “chair’s decision” as such except on procedural matters regarding the Committee or Sub-Committee they chair.

- (b) Members are responsible to the electorate and may serve until their term of office expires or until it is ended before that, for whatsoever reason. Officers are employed by, and are responsible to, the Council. 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 Committees and Sub-Committees and the management of the Chief Executive and the relevant Chief Officers.
- (c) Officers are employed to advise the Council and to implement its decisions. Officer advice must be full and impartial and should include all relevant options. It must not seek to second-guess the decisions of Members, for example by excluding presumed unpalatable options, and must be clear and professional at all times. Members should respect officers’ political neutrality at all times. But Members are entitled to reject officer advice and to give effect to their lawful policies even if these are clearly at variance with the views of officers. It is by this means that the largest group(s) are able to implement the policies for which they regard themselves as responsible to the electorate and the opposition groups are able to challenge them and put forward their own policies.

## **5. Political Activity**

- (a) Senior officers, except those specially exempted, cannot be local authority Members or MPs, nor can they “speak or publish written work for the public at large or to a section of the public with the apparent intention of affecting public support for a political party”. Such officers are nevertheless able to engage in such activity to “such extent as is necessary for the proper performance of their duties”. (Sections 1-2 of the Local Government and Housing Act 1989 and Local Government Officers (Political Restrictions) Regulations 1990.
- (b) Officers are employed by the Council not by Committees/Sub-Committees or individual Members and are subject to the application of the Council’s employment policies and procedures including the Council’s Code of Conduct for Officers.
- (c) National conditions of service provide that officers cannot be required to advise any political group of the Council, either as to the

work of the group or as to the work of the Council. Neither can they be required to attend any meetings of any political group. Nonetheless it is common practice for party groups to give preliminary consideration to matters of Council business and officers may properly be called upon to support and contribute to such deliberations.

- (d) Normally, only the Chief Officer will be expected to attend meetings, write reports or carry out other work relating to Council business (including technical assistance in drafting Notices of Motion) for a party political group. Subject to the Chief Officer's discretion, other senior officers may be invited to attend meetings, provide information, write reports and draft Notices of Motion, or carry out other work relating to Council business for party political groups. However, neither the Chief Officer nor any other officer can be instructed to do so nor can they be instructed to carry out any party political work. This provision covers meetings of or reports to a party political group or meetings designated for one party only. It is, of course, open to any Committee or any Sub-Committee to require reports from Chief Officers on matters within their terms of reference.
- (e) Officers must respect the confidentiality of any party group discussions at which they are present and should not relay the contents of any such discussions to another party group.
- (f) The Council recognises the need for regular liaison on matters affecting the Council between senior officers and the leadership of political groups, and on matters affecting committee functions, between senior officers and Committee/Sub-Committee Chairs and party spokespersons. This is vital to the workings of the Council, especially during times where there is no overall political control. The Chief Executive convenes and chairs meetings of the Leaders Group regularly to discuss matters of common interest.

## **6. Contact between Members and Officers**

- (a) Regular contact between Members and senior officers is necessary to ensure the efficient working of the Council. In this context, it is the responsibility of Chief Officers to identify within each department the senior officers who should have regular contact with Members and this will depend upon the nature of the service they provide and the nature of the Member contact envisaged. However, Members should always bring major concerns about issues affecting a department directly to the attention of the Chief Officer concerned.
- (b) Serious problems can arise if Members bypass appropriate lines of communication to Chief Officers and their senior officers and, for example, deal with more junior members of staff to seek views on

policy issues, non-routine business, or attempt to give instructions to staff. This has the effect of depriving Members of the formal, informed and accountable advice they have a right to expect from Chief Officers. It may also serve to undermine the formal accountability of staff to their line manager.

- (c) However, there are circumstances when Members may need direct contact with relatively junior staff, for example, with junior officers in a Housing District Offices when dealing with constituency casework presented by tenants and the contact is for the purpose of seeking factual information. Approaches by Members to junior officers are proper when casework is detailed and ongoing or matters are routine but, wherever possible, Members should keep Chief Officers informed by copying them (at least initially) into correspondence, e-mails etc., and routing general enquiries through them.

## **7. Information for Members**

- (a) It is important that officers keep Members informed both about the major issues concerning the Council and, more specifically, about issues and events affecting the wards which Members represent. Ward Members should be informed about proposals which affect their area whether this concerns the declaration of a surplus property, a new traffic management scheme or a local planning application. Ward Members should also be invited to attend the opening of new Council buildings or road schemes or other similar ceremonies within their wards. It should also be borne in mind that Members who are not Members of a particular Committee/Sub-Committee may be able to attend and speak at meetings of Committees/Sub-Committees with the agreement of the Chair or person presiding at the meeting.
- (b) The [Council has put in place a raft of policies and guidance to ensure that its information is processed securely and in such a way as to ensure that personal data is safeguarded in accordance with the General Data Protection Regulation and associated legislation. The unauthorised disclosure by Members of Council information of a confidential nature by Members](#), which they have gained as Members, ~~when the information is confidential,~~ is likely to be a serious breach of the Members' Code of Conduct (see part 8.1 of The Constitution). Members will have signed a declaration of their intention to abide by the Code of Conduct when they took office. Confidential information should not, therefore, be made available by the Member concerned to the press or public nor should it be passed onto another Member who cannot demonstrate a similar "need to know." There is separate more detailed guidance to Members and Officers regarding confidential information which can be accessed from the Wave.

## 8. Access to Information

- (a) In accordance with the corporate value of openness, the default position of the council on access to information, as regards Members, Officers and, indeed, the public at large, is one of openness and transparency. The other, complementary side to this coin is that information that is genuinely confidential must stay confidential.
- (b) Members have wide-ranging legal rights of access to documents in the possession or under the control of the Council [where they require that information to discharge their role](#) and officers should implement requests for information from Members who need that information for the fulfilment of their duties as a Member.
- (c) Normally, officers will accept that Members do not ask for information without good reason and will not question the Member's "need to know". But in the words of relevant legal case law, a Member has no right to a "roving commission" and "mere curiosity or desire" is not sufficient. Nor, of course, can the Member exercise the right for some improper motive, e.g. to assist someone in litigation with the Council, its staff, suppliers or service users.
- (d) In rare cases therefore a Chief Officer may apply the "need to know" test. The Member will need to show why the information is necessary to fulfil their Council duties. Further guidance on the "need to know" issues is set out in the appendix to this code. Where an officer considers that a Member has not established a "need to know" in support of a request for access to information and refuses to provide the information requested, the officer shall state the reasons for doing so. Where the Member is dissatisfied with the outcome the matter shall be referred to the Monitoring Officer for a decision.
- (e) A Member asking for complex or bulky information should be flexible in his or her demands if compiling and reproducing the documentation [is likely to](#) results in significant cost to a department. The Member will normally be able to view relevant material and to copy individual documents and retain them but may not make use of such information for an improper purpose or one unrelated to the Member's duties.
- (f) Specific guidance on a Member's rights of access to confidential Committee and Sub-committee reports is to be found at paragraph 10 of the Appendix to this code.



- (g) Members are reminded of their duty not to disclose confidential information which they have gained access to as Members (referred to above in paragraph 7(b) this Code). To do so is not only a breach of this code but is also very likely to be a serious breach of the Code of Conduct for Members. If any Member believes that he or she may have justification for disclosing confidential information, he or she must first seek advice from an appropriate officer such as the Monitoring Officer, Chief Finance Officer or Chief Executive.

## **9. Preparation of Officer Reports for Committees/Sub-Committees**

- (a) Officer reports to Committees and Sub-Committees should be written by the Chief Officer or other officer authorised by him or her. All sensitive officer reports shall be discussed with the relevant Committee/Sub-Committee Chair at one of the regular meetings held with the Chief Officer.
- (b) However, the draft officer report belongs to the officer concerned and even if the Chair or another Committee/Sub-Committee Member in exceptional circumstances is unhappy with its contents, it should not be amended by them save with the express approval of the Chief Officer. It is for the Chief Officer to determine when a draft officer report should be amended in the light of Members' views, taking advice from the Chief Executive, Monitoring Officer or Chief Finance Officer as appropriate.

## **10. Correspondence by letter and email**

- (a) Frequently Members and officers correspond and, where the correspondance does not include any personal data and is not considered to include information of a confidential nature then it may be copied to a restricted pool of people where there is a reasonable basis for doing so, this it is appropriate to regard the correspondence as non-confidential, it may be copied by either the sender or the recipient to others, subject to the provisions of paragraphs 9(b) to (d) below. It is self-evident that all -and to the requirement that correspondence should be courteous and that wide circulation of a communication ~~it~~ should not be employed as a means of administering a public rebuke to a Council officer.
- (b) Officers should not copy correspondence with a Member of one party to a Member of another party without consent. This does not prevent officers or Members copying correspondence to each other about casework across ward or interest group boundaries. Nor does it preclude a Chief Officer from advising a Committee/Sub-Committee Chair in general terms of an issue raised with the Chief Officer in correspondence, or otherwise, with a Member.

- (c) Members and officers must ~~in any case act at all times in a way which is compliant with the General Data Protection Regulation, the Data Protection Act 2018 and with associated legislation. This entails ensuring that all personal data which is processed by councillors, either in their own capacity as data controllers or on the Council's behalf, is processed subject to relevant limitations and safeguards. Members and officers must also act at all times in accordance with the Council's information governance and security policies and procedures, which are available on the Wave, including the IT acceptable use policy. Guidance on confidentiality is available to all Members.~~ treat as confidential any personal information protected from disclosure by the Data Protection Act 1998 unless the disclosure is permitted under the Act or by other legislation.
- (e) Members should bear in mind that if they disclose any information which should have been regarded as confidential (including but not only information in reports which is marked exempt or confidential), or if they process personal data other than in accordance with the law, then their conduct may amount to a breach of the Code of Conduct for Members, as mentioned at paragraph 8(g) above, as well as having serious repercussions (both reputational and financial) for the Council. If in doubt regarding whether correspondence contains confidential information, then this is very likely to be a serious breach of the Code of Conduct for Members, as mentioned at paragraph 8(g) above. If in doubt as to the status of the correspondence, the Member should check with the officer concerned before taking any steps to distribute it more widely.
- (f) Members and officers should be aware that their communications with each other on council business are liable to be disclosed where an applicant seeks to exercise their information rights pursuant to the Data Protection Act or the Freedom of Information Act 2000, this unless the communications are covered by legal professional privilege or are otherwise exempt from disclosure. Members and officers are in anyh case asked to be mindful that their communications may find their way into the public domain, and to consider at an early stage whether it is possible to minimise the extent of any personal data they include in their communications, both with each other and generally. , unless such communications are covered by legal professional privilege or otherwise exempt under the provisions of the Freedom of Information Act 2000, may be liable to be disclosed to anyone making a request for information under the Act. Members and officers should only include in emails, for example, material that they would be comfortable to be associated with if it found its way into the public domain.

## 11. Undue Pressure



- (a) Members need to be aware that it is easy for officers, particularly junior members of staff, to be overawed and feel at a disadvantage in their dealings with Members. Such feelings can be intensified where Members hold official and/or political office. Therefore, the usual point of contact for Members should be the relevant Chief Officer or Deputy Chief Officer.
- (b) A Member should not request an officer to do anything that she or he is not empowered to do, nor to cease any action which the officer is properly taking or proposes to take, nor to undertake work outside normal duties or outside normal hours, nor to provide information to which the Member is not entitled. Advice on the appropriateness of such requests is available from either the Chief Officer or the Monitoring Officer.
- (c) Similarly, an officer must neither seek to use undue influence on an individual Member to make a decision in their favour nor to raise personal matters to do with their job, nor make claims or allegations about other officers. The Council has formal procedures for consultation, grievance and discipline.

## **12. Familiarity**

- (a) Close personal familiarity between individual Members and officers can damage the principle of mutual respect. It could also, intentionally or accidentally, lead to the passing of confidential information or information which should not properly be passed between them, e.g. personal details. Such familiarity can also cause embarrassment to other Members and/or other officers and even give rise to suspicions of favouritism.
- (b) For the above reasons, it is evident that close personal familiarity should be avoided, and in any event must be declared both by the Member and the officer. Such declarations should be made by the officer to the officer's Chief Officer and by Members to the Chief Executive or Monitoring Officer.

## **13. Officers and Health Overview and Scrutiny**

- (a) In the exercise of its powers to scrutinise health arrangements in the area of the authority, including those partnership arrangements in relation to health and social care to which the authority is itself a party, the Health Overview and Scrutiny Committee may require officers to engage with it to supply information, answer questions or discuss issues. It should consider the seniority of officers approached in order to ensure that more junior officers are not put under undue pressure.
- (b) The Health Overview and Scrutiny Committee should always bear in mind that officers' evidence should, as far as possible, be

confined to questions of fact and explanation relating to policies and decisions.

- (c) As far as possible, officers should avoid being drawn into discussion of the merits of alternative policies where this is politically contentious. Any comment by officers on the Council's policies and decision makers' actions should always be consistent with the requirement for officers to be politically impartial.

#### **14. Redress and Breach of this Code**

- (a) If a Member has a complaint about a junior or senior officer, it should be raised with the relevant Chief Officer. If the complaint concerns a Chief Officer it should be raised with the Chief Executive as Head of Paid Service. A complaint about the Chief Executive should be raised with the Leader, who will consider whether the issue can be dealt with as part of routine liaison, supervision and appraisal, or should be referred for formal action in accordance with Council procedures and the statutory provisions governing disciplinary action against Local Authority Chief Executives. This does not however preclude a Member from making public, at a Council meeting or in another appropriate way, a concern about the manner in which a Council department has acted, or dealt with a constituent, or a service has performed generally. Nor does it prevent Members at meetings of Committees or Sub-Committees being critical of officer advice or action or of the quality of reports before them. But the manner of such criticism should have regard to the guidance in respect of mutual respect and courtesy at paragraph 2 of this Code.
- (b) If a Member considers that he or she has not been treated with proper respect or courtesy by an officer or that an officer is otherwise in breach of this Code, the Member may raise it with the officer's line manager or Chief Officer without delay if the Member fails to resolve it through direct discussions with the officer. A Member may raise the issue with the Chief Executive, after discussion with the relevant Chief Officer. If the issue still remains unresolved, appropriate disciplinary action may be taken against the officer.
- (c) If an officer has similar concerns about a Member, the officer should raise the matter with his or her line manager or Chief Officer as appropriate without delay, especially if the officer does not feel able to discuss it with the Member concerned. In such circumstances the Chief Officer will take such action as is appropriate either by approaching the individual Member and/or party group leader. The Chief Officer will inform the Chief Executive and the Monitoring Officer if the party group leader or a Committee/Sub-committee Chair becomes involved, or in any other case where that is appropriate.

- (d) If an officer is concerned that another officer is in breach of this Code, or if a Member is concerned that another Member is in breach of this Code, he or she should raise the issue directly with either their line manager or Chief Officer or with their party group leader. Similar redress may be sought as in the previous paragraph.

## **15. Conclusion**

- (a) Mutual understanding, openness and basic respect are the greatest safeguards of the integrity and reputation of the Council, its Members and officers.
- (b) If Members or officers have any concerns about the content of this Code, or wish any interpretation or advice upon its contents, they should contact in the first instance the Monitoring Officer or the Chief Executive.

## **APPENDIX - Access to Information – the “need to know”**

1. The courts have given guidance on the circumstances in which a Member seeking information from an officer can be presumed to have a “need to know”.
2. Members are presumed to have a good reason for access to all written material relating to a function controlled by a Committee on which they serve. Also, a Member of a Committee would have a good reason for access to papers relating to the business of a Sub-Committee of that Committee.
3. A Member with a legitimate concern in a matter in which she or he is representing a constituent or other person or organisation may be able to demonstrate a “need to know” in relation to papers relevant to that matter, even if the Member concerned is not on the relevant Committee/Sub-Committee.
4. However, even where a Member is a Member of a Committee/Sub-Committee and wishes to see papers relating to the work of that Committee or a Sub-Committee of it, there will not be an automatic right of access to papers if the Member’s interest springs from something other than the wish to pursue rights as a Member of that Committee/Sub-Committee.
5. Party leaders may be able to demonstrate a “need to know” in respect of written material relating to all Committees/Sub-Committees.
6. Notwithstanding that the information requested may come within the above categories, an officer may refuse a request to provide the information if she or he has cause to think that the information may have been requested for an improper purpose or is otherwise unreasonable or is of a personally sensitive nature.
7. In this context, the courts have been critical of a request by a Member for details of many contracts, and have ruled that a request for details of a Chief Officer’s attendance at the office amounted to harassment.
8. An officer in judging whether a Member requesting information has a right to it is entitled to know the reasons for wanting it, and in the absence of cogent reasons is entitled to refuse. Where an officer considers that a Member has not established a “need to know” in support of a request for access to information and refuses to provide the information requested, the officer shall state reasons for doing so.
9. Members are entitled to have enough information to be able to perform their functions properly and the Courts will protect this position. Members should however bear in mind that unreasonable requests or pressure for information may amount to a breach of the Code of Conduct for Members.

## 10. **Access to Confidential Committee and Sub-Committee Reports**

10.1 Members' rights of access to Committee and Sub-Committee reports are set out in paragraph 17 of the Access to Information Procedure Rules. Without prejudice to any rights that Members may have under those rules, this guidance or the law, the following practice and procedure should apply.

- (a) The Council's approach regarding access to Committee or Sub-Committee reports will be guided by the general principles of openness and transparency.
- (b) In the practical application of the principles, the Council will have regard to any legal duty of confidentiality and the need to be able to run its business as a responsible authority.
- (c) As far as possible, and to the extent that it is consistent with legal duties and good practice, the Council will endeavour to put as many of the reports as possible in the public part or, where this is not appropriate, to have an item in the open part that gives the public an indication of the nature of the issue.
- (d) As general rule all Group Leaders will be provided with copies of any part II reports to Committee or Sub-Committee meetings and there will be a presumption in favour Group Leaders having access to part II reports.
- (e) In some cases, the matter under consideration may be such that it is necessary to limit the distribution of reports to Committee Members only or to restrict the copying, distribution, or retention of the reports by Members or Officers.
- (f) In exceptional cases, if the Chief Executive and the Monitoring Officer are of the opinion that significant legal, financial or commercial reasons exist, then the distribution of the reports may be restricted to the person/s making the decision. In coming to such a decision, the Chief Executive and the Monitoring Officer will have regard to the following:
  - Whether the distribution of confidential papers to persons outside the decision-makers would be likely to constitute a breach of any legal duty to which the Council is subject , whether such duty arises from legislation, court order, contractual duty or other express or implied legal obligation;
  - Whether the disclosure of the information would be likely expose the Council to financial loss;

- whether the disclosure of the information would be likely to have a detrimental effect on any commercial negotiations;
  - whether the report includes sensitive personal information the disclosure of which would expose the council to legal or reputational damage;
  - whether the report contains matters relating to labour relations or negotiations with trade unions and the disclosure of such information would be likely to compromise those negotiations.
- (g) steps taken to limit distribution or restrict the manner of use shall be proportionate to the perceived risk. Depending on the Chief Executive and the Monitoring Officer's assessment, any such measures may include, but are not limited to:
- Circulating the report to the decision makers only;
  - Collecting the reports at the conclusion of the meeting;
  - Making arrangements for relevant Members to read the report at a pre-arranged venue and not take the report away;
  - Restricting any copying of the report.
  - Marking reports
- (h) Where a restriction or limitation on distribution is imposed under the above provisions, the Chief Executive or the Monitoring Officer shall inform the Group Leaders.
- (i) The procedure to restrict circulation of reports or the manner of use shall be applied only in exceptional circumstances and the presumption remains that Group Leaders would be entitled see part II reports.
- (j) The above procedures are without prejudice to any right that Members may have to access information and documents under the common law principle of "need to know."