

SECTION 21

12. PROTOCOL FOR MEMBERS IN THEIR DEALINGS WITH PARTIES SEEKING OR ENGAGED IN CONTRACTS WITH THE COUNCIL

1. INTRODUCTION

- 1.1 This Protocol has been developed to assist Members by identifying some of the existing provisions in Codes of Conduct, Guidance and Procedure Rules most relevant to dealings with existing or would be contractors for easy access when advice on individual circumstances is needed. It also extends to include advice on meetings or discussions with external bodies, and in particular private companies, which might at some stage be seeking to benefit from an association with the Council and/or its partner organisations.
- 1.2 It is recognised that Members may be contacted by a range of public, private and voluntary organisations for various reasons and in various ways. Occasionally this will be to acquaint a Member with an event that is planned for the Member's particular ward. However, more often than not the contact will be in the hope that the Member will support a proposal in one way or another.
- 1.3 The Code of Conduct for Members sets out general principles which Members must have regard to in the roles they fulfil. The Planning Code of Conduct builds upon the Members' Code of Conduct and members should refer to that document on what to do if they are lobbied by a planning applicant or objector.
- 1.4 This Protocol covers any situation where a person or business may be seeking a contract, or may already be in a contract, with the Council. For example
- A company might approach a councillor offering to sell land or buildings to the Council at a "good price". A software company might send a promotional email to a councillor explaining how its products could save the Council money
 - A company which is not fulfilling its contractual obligations complain to a Cabinet member that it is being "unfairly treated"

2. CODE OF CONDUCT

- 2.1 The Members' Code of Conduct includes the following provisions which are particularly relevant in relation to Members in their dealings with (would be) contractors and other third parties.
- 2.2 Paragraph 4 of the Members' Code requires that Members must carry out their duties and responsibilities with due regard to the principle of equality of opportunity for all people regardless of their gender, race, disability, sexual orientation, age or religion.
- 2.3 Paragraph 7 of the Members' Code provides that Members must not use their position improperly to confer on or secure for themselves an advantage nor

seek to avoid a disadvantage. Likewise, they should not do these things in respect of other people.

- 2.4 Part 3 of the Members' Code contains detailed provisions concerning the disclosure of personal interests and where Members believe these provisions may be relevant they should seek advice from the Monitoring Officer or Deputy Monitoring Officer at the earliest opportunity. These provisions are particularly important in dealings with contractors, people or companies seeking business with the Council or third parties with whom the Member has a close personal association.
- 2.5 Paragraph 8 of the Members' Code requires that when reaching decisions Members must do so on the basis of the merits of the circumstances involved and in the public interest having regard to relevant advice provided by officers.
- 2.6 Paragraphs 9, 17 and 18 of the Members' Code contain provisions concerning accepting from anyone gifts or hospitality. Where a Member is in any doubt as to the application of these provisions, advice should be obtained from the Monitoring Officer or Deputy Monitoring Officer at the earliest opportunity.
- 2.7 The above provisions are merely a summary of some of the contents of the Members' Code of Conduct, the full details of which appear elsewhere in this Constitution.

3. **PROCEDURE RULES**

- 3.1 The Council's Financial Procedure Rules make reference to the Council's responsibility to achieve the most favourable terms possible from suppliers and requires procurement rules and procedures to be set up for that purpose.
- 3.2 The Contract Procedure Rules have been adopted by the Council based upon a number of basic principles and emphasise that purchasing and disposal procedures must:-
 - Seek value for money and achieve the aims of the Council's procurement strategy such as social value, carbon reduction etc
 - Show no undue or improper favour to any contractor, nor discriminate against any contractor.
 - Ensure that all procurement is in accordance with the highest standards of propriety and proper practice (including respecting the confidentiality of commercial information).
 - Do nothing that contravenes domestic law
 - Ensure that adequate contract files are kept.
- 3.3. One of the overriding principles that must be complied with is that neither officers nor members should show any undue or improper favour to any contractor.

4. ROLES AND RESPONSIBILITIES OF MEMBERS

- 4.1 The Council has adopted role descriptions for the various roles that Members undertake such as Leader of the Council, Cabinet Member, Committee Chair and ordinary Member. These are all available on the Council's Infonet.
- 4.2 The roles and responsibilities envisage Members, particularly at Cabinet level, having significant input into the development of policy in relation to the Authority's functions.
- 4.3 In the formulation of policy, Members will often rely on developmental work undertaken by Officers and in such circumstances there will often be a necessary overlap in this area. Equally, in their ward role, members may wish to advocate on behalf of businesses or residents in their area and may, for example, seek progress reports or request greater urgency be shown. However, care should be taken to ensure that members do not become embroiled in operational matters.
- 4.4 In fulfilling their respective roles, Cabinet Members and Officers will frequently find it convenient to be present in discussions with private companies and other external bodies in the development of options for service provision. There may be occasions when non-Cabinet Members are present at such meetings and this Protocol also covers such situations.
- 4.5 Such discussions with private companies and other external bodies will often be held for explanatory reasons to assist in undertaking an options appraisal exercise or in an attempt to understand and gain knowledge of the market ahead of a procurement exercise. Accordingly, great caution is needed in all such discussions to ensure that there can be no perception that an expectation is created that the discussions were anything more than exploratory in nature.
- 4.6 Accordingly a few simple precautions should always be put in place to avoid any ambiguity on the part of the private company or any perception by others who get to hear of the discussions that they were for irregular purposes. Such precautions will include:-
- Serious consideration should be given to the appropriateness of Members attending the meeting of that company or its representatives at all;
 - the risks involved should be assessed and the potential benefits/disadvantages identified, e.g. where there is a major contract to be awarded it may not be appropriate to meet;
 - The Council must comply both with statutory requirements in relation to procurement as well as its Contract Procedure Rules;
 - It is important that no discussions or meetings prejudice the ability of the Council to demonstrate equal treatment and transparency. Officers should always provide objective advice to Members in such circumstances. If there are any doubts, advice should be sought from the Head of Paid Service, S.151 Officer and/or Monitoring Officer; and
 - An audit trail must be kept as to why the decision was taken for Members to

attend the meetings of that company or its representatives.

4.7 If it is considered appropriate for the discussions to proceed with Members, further precautions should be put in place:-

- A written invitation to the company in question setting out the purpose of the proposed discussions.
- Where the invitation is from a private company, the purpose of the discussions should be ascertained and contained in a letter accepting the invitation.
- Appropriate Officers should always be present to advise Members.
- A record must be made of the discussion and where possible agreed by the attendees. This record can take many forms such as notes or a recording of a meeting (though this should only happen with the explicit agreement of all persons in the meeting). The record must set out any conclusions arrived at. It should always be borne in mind that such notes could be the subject of a Freedom of Information Act request and the extent to which any commercially sensitive information needs to be discussed should be assessed and agreed in advance with the contractor.
- It must be made clear to the company that similar discussions may be held with any other interested party.
- Where the matter to be discussed is likely to lead to a procurement exercise, either because of the Procurement Rules, Contract Procedure Rules or best practice, it must be made clear that all interested tenderers will need to be financially vetted and comply with all other pre-tender requirements. This will probably be required even in circumstances where procurement is not at issue if it is likely to lead to a contractual arrangement if discussions are successful.
- Care must be taken to ensure that no company is given any advantage over others as a consequence of the discussions.
- Unless there is a good reason for doing so, which can be objectively justified, discussions must take place in the Council's offices.
- The Council should meet all costs associated with a visit to a contractor or to a development site or developer.

4.8 If Members are in any doubt about the provisions of this Protocol they should seek advice from either the Monitoring Officer or the Deputy Monitoring Officer as the impact of their actions could potentially have serious consequences for themselves and the Council.