



# **Brixham Town Council**

## **Member Officer Protocol**

**Adopted: November 2019**

## **INTRODUCTION**

This protocol supports and adds detail to both the Members' and Officers' Codes of Conduct.

It is based on a model drawn up by the Association of Council Secretaries and Solicitors and tailored to suit this Council.

Councillors are democratically accountable and have political affiliations. Officers must serve the whole Council objectively. Together they should balance a complex range of obligations and competing interests. For this to be effective, Councillors and Officers must have mutual trust and respect for each other's requirements and duties. There is also a need for a transparent consistency in everyday working relations.

## **PRINCIPLES**

- 1.1 Members and officers must at all times observe this protocol.
- 1.2 The protocol has been approved by the Council and will be monitored along with the Codes which it supports.
- 1.3 The protocol seeks to maintain and enhance the integrity (real and perceived) of local government which demands the highest of personal conduct.
- 1.4 Members and officers must always respect the roles and duties of each other. They must show respect in all their dealings by observing reasonable standards of courtesy, and by not seeking to take unfair advantage by virtue of their position.
- 1.5 Whilst members and officers are indispensable to one another, their responsibilities are distinct. Members are accountable to the electorate and serve only as long as their term of office lasts. Officers are accountable to the Council as a whole. Their job is to give advice to members (individually and collectively) and to carry out the Council's work under the direction of the Council.
- 1.6 The Council has adopted codes of conduct for both members and officers. Both represent best practice. The Members' Code follows the national code which in turn is based on the general principles governing members' conduct enshrined in law. These principles underpin this protocol. Until such time as a national code appears, officers are bound by the Council's own code of conduct for staff.

## **THE ROLES OF MEMBERS**

- 2.1 Members have a number of roles and need to be alert to the potential for conflicts of interest which may arise between the roles. Where such conflicts are likely, members may wish to seek the advice of senior colleagues, the Town Clerk and/or Torbay Council's Monitoring Officer.
- 2.2 Collectively, members are the ultimate policymakers determining the core values of the Council and approving the authority's policy framework, strategic plans and budget.
- 2.3 Members represent the community, act as community leaders and promote the social, economic and environmental well-being of the community often in partnership with other agencies
- 2.4 Every elected-member represents the interests of, and is an advocate for his/her ward and individual constituents. He/she represents the Council in the ward, responds to the concerns of constituents, meets with partner agencies, and often serves on local bodies.

- 2.5 Some members have roles relating to their position as members of committees and sub-committees of the Council.
- 2.6 Members who serve on committees and sub-committees collectively have delegated responsibilities.
- 2.7 Some members may be appointed to represent the Council on local, regional or national bodies.
- 2.8 As politicians, members may express the values and aspirations of the party political groups to which they belong, recognising that in their role as members they have a duty always to act in the public interest.
- 2.9 Members are not authorised to instruct officers other than:
  - a. Through the formal decision-making process
  - b. To request the provision of consumable resources provided by the Council for members' use
  - c. Individual Members are not authorised to initiate or certify financial transactions, or to enter into a contract on behalf of the Council. Authorised signatories however may sign cheques.
- 2.10 Members must avoid taking actions which are unlawful, financially improper or likely to amount to maladministration. Members have an obligation under their code of conduct to have regard when reaching decisions, to any advice provided by officers.
- 2.11 Members must respect the impartiality of officers and do nothing to compromise it, e.g. by insisting that an officer change his/her professional advice.
- 2.12 Members have a duty under their code of conduct to promote equality by not discriminating unlawfully against any person and to treat others with respect.
- 2.13 Under the code, a member must not, when acting as a member or in any other capacity bring the Council or his/her position as a member into disrepute, or use his/her position as a member improperly to gain an advantage or disadvantage for his/herself or any other position.

## **THE ROLES OF OFFICERS**

- 3.1 Officers are responsible for giving advice to members to enable them to fulfil their roles. In doing so, officers will take into account all available relevant factors.
- 3.2 Under the direction and control of the Council, officers, led by the Town Clerk, manage and provide the Council's services within the framework of responsibilities delegated to them. This includes the effective management of employees and operational issues.
- 3.3 Officers have a duty to implement decisions of the Council, committees and sub-committees which are lawful, and which have been properly approved in accordance with the requirements of the law and the Council's constitution, and are duly minuted.
- 3.4 Officers have a contractual and legal duty to be impartial. They must not allow their professional judgement and advice to be influenced by their own personal views.
- 3.5 Officers must assist and advise all parts of the Council. They must always act to the best of their abilities in the best interests of the authority as expressed in the Council's formal decisions.
- 3.6 Officers must be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for members, the media or other sections of the public.
- 3.7 Officers have the right not to support members in any role other than that of members, and not to engage in actions incompatible with this protocol. In particular, there is a statutory limitation on officers' involvement in political activities.

## **THE RELATIONSHIP BETWEEN MEMBERS AND OFFICERS: GENERAL**

- 4.1 The conduct of members and officers should be such as to instil mutual confidence and trust.
- 4.2 The key elements of this relationship are recognition of and a respect for each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately.
- 4.3 Informal and collaborative two-way contact between members and officers is encouraged. But personal familiarity can damage the relationship, as might a family or business connection.
- 4.4 It is not enough to avoid impropriety. Members and officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be perceived. Specifically, a member should not sit on a body or participate in any decision which directly affects the officer on a personal basis.
- 4.5 Officers serve the Council as a whole. They have a duty to implement the properly authorised decisions of the Council.
- 4.6 Officers work to the instructions of their senior officers, not individual members. It follows that, whilst such officers will always seek to assist a member, they must not be asked to exceed the bounds of authority they have been given by their managers. Except when the purpose of an enquiry is purely to seek factual information, members should normally direct their requests and concerns to the Town Clerk, at least in the first instance.
- 4.7 Officers will do their best to give timely responses to members' enquiries. However, officers should not have unreasonable requests placed on them. Their work priorities are set and managed by the Town Clerk. Members should avoid disrupting officers' work by imposing their own priorities.
- 4.8 Members will endeavour to give timely responses to enquiries from officers.
- 4.9 An officer shall not discuss with a member personal matters concerning him/herself or another individual employee. This does not prevent an officer raising on a personal basis, and in his/her own time, a matter with his/her ward (division) member.
- 4.10 Members and officers should respect other's free (i.e. non-Council) time.

## **THE COUNCIL AS AN EMPLOYER**

- 5.1 Officers are employed by the Council as a whole.
- 5.2 Members' roles are limited to:
  - a. the appointment of specified posts
  - b. determining human resources policies and conditions of employment
  - c. hearing and determining appeals.
- 5.3 If participating in the appointment of officers, members should:
  - a. remember that the sole criterion is merit
  - b. never canvass support for a particular candidate
  - c. not take part where one of the candidates is a close friend or relative
  - d. not be influenced by personal preferences
  - e. not favour a candidate by giving him/her information not available to the other candidates.

## **THE CHAIRPERSON AND OFFICERS**

- 6.1 Officers will respect the position of Chairperson and provide appropriate support.

## **MEMBERS OF OTHER COMMITTEES OR SUB-COMMITTEES AND OFFICERS**

- 7.1 The appropriate senior officers will offer to arrange informal meetings with chairpersons, vice chairpersons, and spokespersons of committees and sub-committees if required.
- 7.2 The Town Clerk has the right to present reports and give advice to committees and sub-committees.
- 7.3 Members of a committee or sub-committee shall take decisions within the remit of that committee or sub-committee and will not otherwise instruct officers to act.
- 7.4 At some committee or sub-committee meetings, a resolution may be passed which authorises a named officer to take action between meetings in consultation with the chairperson. In these circumstances it is the officer, not the chairperson, who takes the action and is responsible for it. A chairperson has no legal power to take decisions on behalf of a committee or sub-committee; neither should he/she apply inappropriate pressure on the officer.

## **PARTY GROUPS AND OFFICERS**

- 8.1 The Town Clerk may properly be asked to contribute to deliberations of matters concerning Council business by party groups.
- 8.2 The Town Clerk has the right to refuse such requests but will not attend a meeting of a party group where some of those attending are not members of the Council.
- 8.3 Officer support will not extend beyond providing factual information or professional advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business, and therefore should not be expected to be present at meetings or parts of meetings when such matters are to be discussed.
- 8.4 Party group meetings are not empowered to make decisions on behalf of the Council, and conclusions reached at such meetings do not rank as formal decisions. The presence of an officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so.
- 8.5 Where officers provide factual information and advice to a party group in relation to a matter of Council business, this is not a substitute for providing all necessary information and advice when the matter in question is formally considered by the relevant part of the Council.
- 8.6 It must not be assumed that an officer is supportive of a particular policy or view considered at a party group meeting simply because he/she has attended or provided information to the meeting.
- 8.7 Officers will respect the confidentiality of any party group discussions at which they are present and, unless requested to do so by that party group, will not relay the content of such discussions to another party group or to any other members.
- 8.8 In their dealings with party groups, officers must treat each group in a fair and even-handed manner.
- 8.9 Members must not do anything which compromises or is likely to compromise officers' impartiality.
- 8.10 The duration of an officer's attendance at a party group meeting will be at the discretion of the group, but an officer may leave at any time if he/she feels it is no longer appropriate to be there.
- 8.11 The Town Clerk accepting an invitation to the meeting of one party group shall not decline an invitation to advise another group about the same matters. He/she must give substantially the same advice to each.

- 8.12 An officer should be given the opportunity of verifying comments and advice attributed to him/her in any written record of a party group meeting.
- 8.13 No member will refer in public or at meetings of the Council to advice or information given by officers to a party group meeting.
- 8.14 At party group meetings where some of those present are not members of the Council, care must be taken not to divulge confidential information relating to Council business. Persons who are not members are not bound by the members' code of conduct. They do not have the same rights to Council information as members.

## **LOCAL MEMBERS AND OFFICERS**

- 9.1 To enable them to carry out their ward role effectively, members need to be fully informed about matters affecting their ward. The Town Clerk must ensure that all relevant staff are aware of the requirement to keep local members informed, thus allowing members to contribute to the decision-making process and develop their representative role.
- 9.2 This requirement is particularly important:
- a. during the formative stages of policy development, where practicable
  - b. in relation to significant or sensitive operational matters
  - c. whenever any form of public consultation exercise is undertaken and may affect a single ward. Where they have a wider impact, a number of local members will need to be kept informed.
- 9.3 Whenever a public meeting is organised by the Council to consider a local issue, all the members representing the wards affected should be invited to attend the meeting as a matter of course.
- 9.4 If a local member intends to arrange a public meeting on a matter concerning some aspect of the Council's work, he/she should inform the Town Clerk. Provided the meeting has not been arranged on a party political basis:
- a. An officer may attend but is not obliged to do so, and the meeting may be held in Council-owned premises.
  - b. No such meetings should be arranged or held in the immediate run-up to Council elections.
  - c. Whilst support for members' ward work is legitimate, staff should not be asked to accompany members to ward surgeries.
- 9.5 In seeking to deal with constituents' queries or concerns, members should not seek to jump the queue but should respect the Council's procedures. Officers have many pressures on their time. They may not be able to carry out the work required by members in the requested timetable and may need to seek instructions from their managers.

## **MEMBERS' ACCESS TO DOCUMENTS AND INFORMATION**

- 10.1 Members may request the Town Clerk to provide them with such information, explanation and advice as they may reasonably need to assist them to discharge their roles as members. This may range from general information about some aspect of the Council's services to specific information on behalf of a constituent. Where information is requested on behalf of a third party, it will only be provided if:
- a. It is in the public domain, and
  - b. It is not barred by the Data Protection Act from being given.
- 10.2 Every member of a committee or sub-committee has a right to inspect documents about the business of that committee or sub-committee.

- 10.3 A member who is not a member of a specific committee or sub-committee, may have access to any document of that specific part of the Council provided:
- a. he/she can demonstrate a reasonable need to see the documents in order to carry out his/her roles as a member (the “need to know” principle), and
  - b. the documents do not contain “confidential” or “exempt” information as defined by the law.
- 10.4 Disputes as to the validity of a member’s request to see a document on a need to know basis will be determined by the Town Clerk. Officers should seek his/her advice if in any doubt about the reasonableness of a member’s request.
- 10.5 A member should obtain advice from the Town Clerk in circumstances where he/she wishes to have access to documents or information:
- a. where to do so is likely to be in breach of the Data Protection Act, or
  - b. where the subject matter is one in which he/she has an interest as defined in the members’ code of conduct.
- 10.6 Information given to a member must only be used for the purpose for which it was requested.
- 10.7 Members and officers must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so.
- 10.8 When requested to do so, officers will keep confidential from other members advice requested by a member.
- 10.9 Members and officers must not prevent another person from gaining access to information to which that person is entitled by law.

## **MEDIA RELATIONS**

- 11.1 All formal relations with the media must be conducted in accordance with any Council agreed procedures and the law on local authority publicity.
- 11.2 Press releases or statements made by officers must promote or give information on Council policy or services. They will be factual and consistent with Council policy. They cannot be used to promote a party group.
- 11.3 Officers will keep relevant members informed of media interest in the Council’s activities, especially regarding strategic or contentious matters.
- 11.4 Before responding to enquiries from the media, officers will ensure they are authorised to do so.
- 11.5 If a member is contacted by, or contacts, the media on an issue, he/she should:
- a. indicate in what capacity he/she is speaking (e.g. as ward member, in a personal capacity, on behalf of the Council, or on behalf of a party group)
  - b. be sure of what he/she wants to say or not to say
  - c. if necessary, and always when he/she would like a press release to be issued, seek assistance from the Town Clerk, except in relation to a statement which is party political in nature
  - d. consider the likely consequences for the Council of his/her statement (e.g. commitment to a particular course of action, image, allegations of jumping to conclusions)
  - e. never give a commitment in relation to matter which may be subject to claims from third parties and/or are likely to be an insurance matter
  - f. consider whether to consult other relevant members
  - g. take particular care in what he/she says in the run-up to local or national elections to avoid giving the impression of electioneering, unless he/she has been contacted as an election candidate or political party activist.

## **CORRESPONDENCE**

- 12.1 Correspondence between an individual member and an officer should not be copied to another member unless the author expressly intends and states that this is the case or consents. Where correspondence is copied, this should always be made explicit, i.e. there should be no “blind” copies.
- 12.2 Official letters written on behalf of the Council should normally be in the name of the relevant officer.
- 12.3 The Chairperson may initiate correspondence in his/her own name.
- 12.4 Letters which create legally enforceable obligations or which give instructions on behalf of the Council should never be sent in the name of a member.
- 12.5 When writing in an individual capacity as a ward member, a member must make clear that fact.

## **ACCESS TO PREMISES**

- 13.1 Officers have the right to enter Council land and premises to carry out their work.
- 13.2 Members have a right of access to Council land and premises to fulfil their duties.
- 13.3 When making visits as individual members, members should:
  - a. whenever practicable, notify and make advance arrangements with the appropriate manager or officer in charge
  - b. comply with health and safety, security and other workplace rules
  - c. not interfere with the services or activities being provided at the time of the visit
  - d. if outside his/her own ward notify the ward member(s) beforehand
  - e. take special care at schools and establishments serving vulnerable sections of society to avoid giving any impression of improper or inappropriate behaviour.

## **USE OF COUNCIL RESOURCES**

- 14.1 The Council provides all members with services such as typing, printing and photocopying, and goods such as stationery and computer equipment, to assist them in discharging their roles as members of the Council. These goods and services are paid for from the public purse. They should not be used for private purposes or in connection with party political or campaigning activities.
- 14.2 Members should ensure they understand and comply with the Council’s own rules about the use of such resources, particularly:
  - a. where facilities are provided in members’ homes at the Council’s expense
  - b. in relation to any locally agreed arrangements e.g. payment for private photocopying
  - c. regarding ICT security
- 14.3 Members should not put pressure on staff to provide resources or support which officers are not permitted to give. Examples are:
  - a. business which is solely to do with a political party
  - b. work in connection with a ward or constituency party political meeting
  - c. electioneering
  - d. work associated with an event attended by a member in a capacity other than as a member of the Council
  - e. private personal correspondence
  - f. work in connection with another body or organisation where a member’s involvement is other than as a member of the Council
  - g. support to a member in his/her capacity as a Councillor of another local authority.

## **INTERPRETATION, COMPLAINTS AND ALLEGATIONS OF BREACHES**

- 15.1 Members or officers with questions about the implementation or interpretation of any part of this protocol should seek guidance of the Town Clerk.
- 15.2 A member who is unhappy about the actions taken by, or conduct of, an officer should
  - a. avoid personal attacks on, or abuse of, the officer at all times
  - b. ensure that any criticism is well founded and constructive
  - c. never make a criticism in public
  - d. take up the concern with the officer or his/her line manager privately.
- 15.3 If direct discussion with the officer is inappropriate (e.g. because of the seriousness of the concern) or fails to resolve the matter, the member should raise the issue with the Town Clerk.
- 15.4 A serious breach of this protocol by an officer may lead to an investigation under the Council's disciplinary procedure.
- 15.5 An officer who believes a member may have acted other than in accordance with this protocol should raise his concern with the Town Clerk. He / she will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than informally referring the matter to the leader of the relevant party group. More serious complaints may involve alleged breaches of the members' code of conduct.
- 15.6 Officers should refer to the Grievance Policy for complaints against Officers.