

## 5.4 Member – Officer Protocol

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The purpose of this Protocol is to guide Members and officers of the East Midlands Combined County Authority (EMCCA) in their relations with one another.

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## Introduction

1. This Protocol applies to Combined County Authority Members and Non-Constituent, Associate and Co-opted Members<sup>1</sup> as well as those on any working group or committee created by the Combined County Authority or the Mayor (together referred to, for the purposes of this Protocol, as “Members”).
  2. It also applies to officers of the Combined County Authority.
  3. The Protocol is not prescriptive, and it may not cover all situations. However, it does provide guidance on some of the issues that most commonly arise. The approach to these issues will serve as a guide to dealing with other issues.
  4. The Protocol is a written statement of current practice and convention. It seeks to promote greater clarity and certainty.
  5. It also seeks to reflect the principles underlying the respective rules of conduct that apply to Members and officers. Its purpose, therefore, is to enhance and maintain the integrity (real and perceived) of local government.
  6. Members and officers are servants of the public and they depend on each other in carrying out the work of the Combined County Authority. Members who are elected are responsible to the electorate. All Members serve only so long as their term of office or co-option lasts, while officers are accountable to the Combined County Authority as their employer. Their job is to give advice to the Combined County Authority, as well as to individual Members, and to carry out the Combined County Authority’s work under the direction and control of the Combined County Authority and the Mayor.
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7. Mutual respect between Members and officers is essential to good local government. However, close personal familiarity between individual Members and officers can damage this relationship and prove embarrassing to other Members and officers.
8. The relationship has to function without compromising the ultimate responsibilities of officers to the Combined County Authority as a whole, and with due regard to such technical, financial, professional and legal advice that officers can legitimately provide to Members. The Protocol seeks to set a framework that assists the working relationships between Members and officers

## Roles Of Members

9. Members undertake many different roles. Broadly these include:
  - expressing political values and supporting the policies of the party or group to which they belong (if any) – see further the section entitled “Political Activity” at paragraph 46 onwards,
  - representing their area and advocating for the citizens who live in the area,
  - participation in active partnerships with other organisations as community leaders,
  - contributing to the decision-making by the Combined County Authority, or any joint committees, outside bodies and partnership organisations to which the Member has been appointed,
  - developing and reviewing policy and strategy, and
  - monitoring and reviewing policy implementation and service quality

## Roles Of Officers

10. Briefly, officers have the following main roles:
    - ensuring that the Combined County Authority always acts in a lawful manner,
    - implementing agreed policy,
    - managing and providing the services for which the Combined County Authority has given them responsibility and being accountable for the efficiency and effectiveness of those services,
    - providing advice to the Combined County Authority and to individual Members in respect of the services provided (see further the section entitled “Provision of Advice and Information to Members” from paragraph 21 onwards below and the section entitled “Confidentiality” from paragraph 35 onwards), and
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- initiating policy proposals.

## **Respect and Courtesy**

11. For the effective conduct of the Combined County Authority business there must be mutual respect, trust and courtesy in all meetings and contacts, both formal and informal, between Members and officers. This plays a very important part in the Combined County Authority's reputation and how it is seen in public. It is very important that both Members and officers remember their respective obligations to enhance the EMCCA's reputation and to do what they can to avoid criticism of other Members, or other officers, in public places.

## ***Undue Pressure***

12. It is important in any dealings between Members and officers that neither should seek to take unfair advantage of their position.
13. In their dealings with officers (especially junior officers) Members need to be aware that it is easy for them to be overawed and feel at a disadvantage. Such feelings can be intensified where Members hold senior and/or political office. Certain statutory officers – the Head of Paid Service, the Section 73 Chief Finance Officer and the Monitoring Officer - have specific roles which Members must understand and respect. Members should have particular regard to any advice given by them.
14. A Member should not apply undue pressure on an officer either to do anything that they are not empowered to do or to undertake work outside normal duties or outside normal hours. Particular care needs to be taken in connection with the use of Combined County Authority property and services.
15. Similarly, an officer must neither seek to use undue influence on an individual Member to decide in their favour, nor raise personal matters to do with their job, nor make claims or allegations about other officers.

## ***Familiarity***

16. 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, such as personal details.
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17. Such familiarity could also cause embarrassment to other Members and/or other officers and even give rise to suspicions of favouritism.
18. For these reasons close personal familiarity must be avoided, and Members and officers should address each other formally in public (whether in person or in writing).

### ***Breach of Protocol***

19. If a Member considers that they have not been treated with proper respect or courtesy, they may raise the issue with the officer's line manager. If direct discussion with the manager does not resolve the complaint it should be referred to the Head of Service or Director responsible for the officer concerned. Breach of the Protocol may give rise to disciplinary proceedings against an officer if the circumstances warrant it.
20. If an officer considers that a Member has contravened the Protocol, they should consult their line manager who will, if necessary, involve the Head of Service or Director. In certain circumstances breach of the Protocol may also constitute a breach of the Members' Code of Conduct. If the breach is sufficiently serious this may warrant a formal reference to the Monitoring Officer as a complaint. Many complaints will be capable of informal resolution. The Monitoring Officer or the Head of Paid Service will assist in this process if necessary. Nothing in this Protocol shall prevent an officer expressing a relevant concern under the Combined County Authority's Whistleblowing Policy.*(add link once policy is approved)*

## **Provision of Advice and Information to Members**

21. Members are free to approach officers of the Combined County Authority to provide them with such information and advice as they may reasonably need in order to assist them in discharging their role as Member. This can range from a request for general information about some aspect of Combined County Authority 's activities to a request for specific advice on a matter.

### ***Information***

22. Officers should always endeavour to respond to requests for information promptly and should in any event inform the Member if there is likely to be any appreciable delay in dealing with an enquiry.
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23. The legal rights of Members to inspect Combined County Authority documents are covered partly by statute and partly by common law. The Access to Information Rules in Part 4 of the Constitution explain the position with regard to access to papers relating to the business of the Combined County Authority.
24. The exercise of the common law right depends upon a Member's ability to demonstrate a "need to know". In this respect a Member has no right to "a roving commission" to examine any documents of the Combined County Authority. Mere curiosity is not sufficient.
25. The information sought by a Member should only be provided by officers as long as it is within the limits of the resources available. For their part, Members should seek to act reasonably in the number and content of the requests they make.
26. It is important for officers to keep Members informed both about the major issues concerning the Combined County Authority and, more specifically, about issues and events affecting the area that they represent. Members should be informed about proposals that affect their area and should also be invited to attend Combined County Authority initiated events within their area.
27. Members may be entitled under the Freedom of Information (FOI) Act 2000 to receive information which falls outside their common law rights based on the "need to know". Officers are encouraged to supply documents to Members without the need for a formal FOI request if it is apparent from the Member's enquiry that any individual would be entitled to receive such documentation. The Combined County Authority's Data Protection Officer will be able to advise in consultation, if necessary, with the Monitoring Officer on whether any request would fall within the Freedom of Information Act 2000.

### *Advice*

28. Officers are responsible for the provision of professional expertise to the Combined County Authority and Members are entitled to ask relevant questions and seek advice on available courses of action as they discharge their role as a Member. The response of an officer to a Member would not usually be shared with other Members without specific agreement, however Members should remember that the officer's primary duty is to the Combined County Authority as a whole and officers will therefore share their advice if they consider it appropriate to do so.
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29. Sometimes officers will need to advise Members that a certain course of action cannot be carried out. Members sometimes assume that this is a case of officers deliberately obstructing the wishes of politicians. In fact, this is never the case. Officers are employed to give unbiased professional advice even if it is not what Members want to hear. They do this as much for the protection of Members as for any other reason. However, the mark of an effective officer is that if they do have to give negative advice, this will be accompanied by suggestions as to how Members might achieve some or all of their objectives in other ways. Such officers are invaluable to the Combined County Authority.

### ***Members with Special Responsibilities***

30. Combined County Authority Members and other Members who hold additional responsibilities (such as the Mayor, Committee Chairs and those with a portfolio of responsibility) will receive additional information from senior officers to help them discharge their responsibilities. This is likely to take the form of briefings on service issues, proposals and policy development. The frequency of briefings will depend on the issues concerned and the requirements of the Member involved, and the content of the informal briefing will remain confidential between the officers and Member concerned.
31. Senior officers will always be fully responsible for the contents of any report submitted in their name and reports will be amended only where the amendment reflects the professional judgement of the author of the report.
32. Members who have additional responsibilities are likely to work more closely with officers but must still respect the impartiality of officers. Officers and Members who work closely together must ensure that they do not publicly give the appearance of personal familiarity.

### ***Members of Constituent Councils with Special Responsibilities***

33. Officers of the Combined County Authority may also be asked to provide information and advice to appropriate Members of Constituent Councils, such as those Members with special responsibility for a portfolio or in relation to a specific project. This is likely to take the form of briefings and the frequency of briefings will depend on the issues concerned and the requirements of the Member involved. If the Combined County Authority has assigned a portfolio lead for the subject matter, that Member should be made aware of the information provided.

### ***The Mayor's Political Adviser***

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34. The Mayor is able to appoint one political adviser<sup>5</sup>. However, the nature of this role is different to that of other officers of the Combined County Authority – see further below re political restrictions.

## Confidentiality

35. Members are entitled to access information to enable them to discharge their responsibilities. The Access to Information Rules in Part 4 of the Constitution, set out the basis on which information can be accessed by Members and the public generally, but do not affect any other rights to information arising under standing orders or by law. They also set out the difference between confidential information<sup>6</sup> and exempt information<sup>7</sup>.

36. Members must ensure that they comply with data protection arrangements and not disclose information given to them in confidence by anyone, or information acquired which they believe, or ought reasonably to be aware, is of a confidential nature, except where:-

- they have the consent of a person authorised to give it,
- they are required by law to do so,
- the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person, or
- the disclosure is –
  - reasonable and in the public interest, and
  - made in good faith and in compliance with the reasonable requirements of the authority.

37. Committee reports which are in the private part of an agenda are to be treated as exempt information unless the relevant committee resolves not to exclude press and public. Members are reminded that the author of the report makes the initial decision as to whether or not the papers are to be treated as exempt from public disclosure. The decision as to whether they remain exempt is for the committee.

38. Information and correspondence about an individual's private or business affairs will normally be classed as exempt or confidential.

39. Officers should make it clear to Members if they are giving them confidential or exempt information. If a Member is not sure whether information is confidential or exempt from

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disclosure, they should ask the relevant officer, and not disclose the information in the meantime.

40. Any Combined County Authority information provided to a Member must only be used by the Member in connection with the proper performance of the Member's duties.
41. If a Member receives exempt or confidential information and considers it should be disclosed to another person because it is reasonable and in the public interest to do so, then they must first consult with the Monitoring Officer and shall not disclose the information without having regard to any advice given by that officer.

## **Provision of Support Services to Members**

42. The only basis on which the Combined County Authority can lawfully provide support services (for example stationery, word processing, printing, photocopying, transport, etc) to Members is to assist them in discharging their role as Members of the Combined County Authority. Such support services must therefore only be used on Combined County Authority business. They should never be used in connection with party political or campaigning activity or for private purposes.

## ***Correspondence***

43. Official letters on behalf of the Combined County Authority should be sent in the name of the appropriate officer, rather than in the name of a Member. There are circumstances where a letter sent in the name of a Member is perfectly appropriate, for example, in response to a letter of enquiry or complaint sent direct to that Member. Letters which, for example, create obligations or give instructions on behalf of the Combined County Authority should never be sent out in the name of a Member.

## ***Media***

44. Communication with the media can be an important part of a Member's workload. In general, Members provide comment and views while officers provide factual information. If a Member is unsure about the circumstances of a particular issue, they should contact the appropriate Director or Head of Service concerned.

## **The Combined Authority's Role as Employer**

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45. In their dealings with officers, Members should recognise and have regard to the Combined County Authority's role as employer. Members should be aware that officers could rely on inappropriate behaviour of a Member in an employment case against the Combined County Authority.

## Political Activity

46. There are a number of constraints that apply to an officer who occupies a post that is designated as "politically restricted" under the terms of the Local Government and Housing Act 1989 . However, there are variations in the extent of restrictions applied - for example, the Mayor's political adviser is an employee in a politically restricted post but has freedom to become involved with political issues relevant to the Mayor.
47. In summary, politically restricted officers may be prevented from:
- being a Member of Parliament, European Parliament or local authority,
  - acting as an election agent or sub-agent for a candidate for election as a member of any of those bodies,
  - being an officer of a political party or any branch of a political party or a member of any committee or sub-committee of such a party or branch, if their duties would be likely to require them to:-
    - participate in the general management of the party or branch; or
    - act on behalf of the party or branch in dealings with persons other than members of the party;
  - canvassing on behalf of a political party or a candidate for election to any of those bodies,
  - speaking to the public with the apparent intent of affecting public support for a political party, and
  - publishing any written or artistic work of which they are the author (or one of the authors) or acting in an editorial capacity in relation to such works, or to cause, authorise or permit any other person to publish such work or collection - if the work appears to be intended to affect public support for a political party.
48. It is common for party groups to give preliminary consideration to matters of Combined County Authority business in advance of such matters being considered by the relevant decision-making body. Officers may properly be called upon to support and contribute to such deliberations by party groups provided they maintain a stance which is politically
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impartial. Support may include a range of activities including briefings for Members relating to their roles, for example chairperson or spokesperson. Officers should be required to give information and advice to political groups on Combined County Authority business only and not on matters which are purely of a party-political nature. Such advice should be available to all party groups and not solely to the majority group. It is important that the political neutrality of officers is preserved, and that group confidentiality is maintained by officers.

49. Usually, the only officers involved in attending group meetings will be the Chief Executive, Directors or Heads of Service and they will generally leave the meeting after making their presentation and answering questions.
50. Officers are employed by the Combined County Authority as a whole. They serve the Combined County Authority and are responsible to the Chief Executive and their respective Directors and Heads of Service, and not to individual Members, whatever office they might hold.
51. Both Members and officers are subject to their own Codes of Conduct which can be found in Part 5 of the Constitution. This Protocol provides guidance on working relationships between Members and officers. It is essential that both are familiar with the detailed obligations in their respective Codes of Conduct which will prevail in the event of any conflict between the Codes and this Protocol.

## **Sanctions**

52. Complaints about any breach of this Protocol by a Member may be referred to the Monitoring Officer. It should be noted that certain breaches may also amount to breaches of the Members' Code of Conduct.
53. Complaints about any breach of this Protocol by an officer may be referred to the Chief Executive or the Monitoring Officer.

## **Conclusion**

54. It is hoped that, by following good practice and securing sensible and practical working relationships between members and officers, the EMCCA and Mayor will enhance the delivery of high value quality services to the people of the area. Mutual understanding,
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openness and respect are the greatest safeguard of the integrity of the EMCCA, its Members and officers.

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