

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

STANDARDS COMMITTEE

7TH SEPTEMBER 2009

1. PROTOCOL FOR MEMBER/EMPLOYEE RELATIONS

Joint report of the Chief Fire Officer and Monitoring Officer

RECOMMENDED

THAT the Committee approve the Protocol for Member/Employee Relations which is attached as Appendix 1 to this report.

2. PURPOSE OF REPORT

This report is submitted to establish a formal protocol for Member/Employee relations in order to support the further development of corporate governance standards within the Authority and to ensure that there is clear guidance relating to areas such as behaviour, access to information, support given to Members, press releases.

3. BACKGROUND

- 3.1 At its meeting on the 8th June 2009, the Audit Committee received a report which detailed the self assessment carried out by officers to meet the requirements of the CIPFA/SOLACE guidance in respect of corporate governance.
- 3.2 As part of the self assessment exercise, a gap analysis was carried out and it was identified that there was no formal protocol in existence which covered Member/Employee relations.
- 3.3 Consequently, utilising the Member/Employee relations protocol used by Sandwell Metropolitan Borough Council, the document was revised and updated to make it relevant to West Midlands Fire and Rescue Service and is attached as Appendix 1 to this report.
- 3.4 By the approval and implementation of this document, two of the Action Plan items arising from the self assessment exercise, both relating to Member/Officer relations, will be addressed.

4. **EQUALITY IMPACT ASSESSMENT**

In preparing this report an initial Equality Impact Assessment is required and has been carried out. The initial Equality Impact Assessment did not raise issues which required a full Equality Impact Assessment to be completed.

5. **LEGAL IMPLICATIONS**

The preparation and publication of an annual governance statement in accordance with the 'Delivering Good Governance in Local Government Framework' is necessary to meet the statutory requirements set out in Regulation 4(2) of the Accounts and Audit (Amendment) (England) Regulations 2006. Good governance underpins good service delivery.

6. **FINANCIAL IMPLICATIONS**

There are no direct financial implications arising from this report.

BACKGROUND PAPERS

Report to the Audit Committee – 8th June 2009 – item 7
Delivering Good Governance in Local Government – Framework –
CIPFA/SOLACE

VIJ RANDENIYA
CHIEF FIRE OFFICER

N. SHARMA
MONITORING OFFICER

West Midlands Fire and Rescue Authority

Protocol for Member/Employee Relations

1. Introduction

- 1.1 The purpose of this Protocol is to guide Members and Employees in their relations with one another in such a way as to ensure the smooth running of the Authority.
- 1.2 Given the variety and complexity of such relations, this Protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise. It is hoped, however, that the approach which it adopts to these issues will serve as a guide to dealing with other circumstances.
- 1.3 This Protocol is to a large extent a written statement of current practice and convention. It seeks to promote greater clarity and certainty. If the Protocol is followed it should ensure that Members receive objective and impartial advice and that Employees are protected from accusations of bias and any undue influence from Members.
- 1.4 It also seeks to reflect the principles underlying the respective Codes of Conduct which apply to Members (available on the Authority's website) and Employees (Standing Order 2/12). The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government and the Codes, therefore, demand high standards of personal conduct.
- 1.5 Members and Employees of the Authority are servants of the public. They are indispensable to one another. Mutual respect between Members and Employees is essential for good local government. Close personal familiarity between individual Members and employees can damage this relationship and prove embarrassing to other Members and Employees.

- 1.6 It is important that any dealings between Members and Employees should observe standards of courtesy and that neither party should seek to take unfair advantage of their position.
- 1.7 A Member should not raise matters directly relating to the conduct or capability of an Employee at meetings held in public. This is not intended to prevent a Member from expressing criticism of a particular service. Such criticism should not, however, be expressed in such a way as to be a direct personal criticism of an individual Employee. This is a longstanding tradition in public service. An Employee has no means of responding to such criticisms in public. If a Member feels s/he has not been treated with proper respect or courtesy or has any concern about the conduct or capability of an Employee, and fails to resolve it through direct discussion with the Employee, s/he should raise the matter with the relevant Director. The Director will then look into the facts and report back promptly to the Member. If the Member continues to feel concern, or does not receive a prompt response, s/he should then report the facts to the Chief Fire Officer who will look into the matter afresh. In the event that the Member's concern relates to a Director, s/he should raise his/her concern with the Chief Fire Officer. Any action taken against an Employee in respect of a complaint, will be in accordance with the provisions of the Authority's disciplinary process.
- 1.8 Where an Employee feels that s/he has not been properly treated with respect and courtesy s/he should raise the matter with his/her Director, especially if s/he does not feel able to discuss it directly with the Member concerned. In these circumstances the Director will take appropriate action by approaching the individual Member and/or the appropriate group leader.

2. **Complaints Against Employees Received by Members**

- 2.1 There is the potential for complaints or allegations to be made against Employees in a variety of situations. Such complaints and allegations can be extremely damaging to the Authority and to the Employees involved.
- 2.2 They can easily be made, particularly in respect of Employees carrying out their duties, on behalf of the Authority, to make sure that public funds are being managed responsibly and/or that legal requirements are being complied with. They can, however, be very difficult to correct in the wider public arena. If not managed

correctly, they can leave the Authority open to legal challenge as well as causing considerable adverse impact on staff morale and effectiveness and great personal distress to the individuals involved and their families. Ill-founded and malicious allegations can tarnish Employees' careers and their livelihoods and also impact on the reputation and credibility of the Authority. At the same time, it should be recognised that complaints and allegations must be handled on their individual merits, in accordance with a recognised process that is transparent, prompt and as far as possible reaches unequivocal conclusions.

- 2.3 Where a Member receives an oral complaint about an Employee of the Authority s/he should inform the complainant that the complaint should be made in writing to the Member concerned and/or to the Chief Fire Officer. In the event that it is not practicable for the complainant to put his/her complaint in writing, the Member may do so him/herself.
- 2.4 Where a Member receives a complaint about an Employee of the Authority in accordance with paragraph 2.3 above, s/he should immediately pass on the complaint, in confidence, to the Chief Fire Officer.
- 2.5 Where a complaint is made directly about an Employee of the Authority at a meeting attended by Members of the Authority and members of the public and/or other organisations, Members present should adopt the following procedure:-
 - a. Immediately acknowledge the complaint verbally;
 - b. Inform the complainant that any complaint should be made in writing to the Chief Fire Officer (preferably within 24 hours) but, if this is not possible, the complainant should make an appointment with the Chief Fire Officer to discuss the issue further;
 - c. In the event that the complainant is acting as a member of the management of an organisation represented at the meeting, this should be made clear to the Chief Fire Officer or the Monitoring Officer if appropriate.

3. **Complaints Against Members Received by Employees**

- 3.1 Occasionally Employees may receive complaints or allegations against a Member. As with complaints against Employees these can be extremely damaging to the Authority and to the Member involved and leave the Authority open to legal challenge. Members are in the public spotlight and can attract a great deal of interest and public scrutiny of their personal and public lives. Ill-founded and malicious allegations can tarnish the Member's reputation and the credibility of the Authority. Complaints and allegations must be handled on their individual merits, in accordance with a recognised process that is transparent, prompt and as far as possible reaches unequivocal conclusions.
- 3.2 Where an Employee receives a complaint about a Member of the Authority s/he should raise it with the Chief Fire Officer who will discuss it with the Monitoring Officer.
- 3.3 Where a complaint is made directly about a Member of the Authority at a meeting attended by Employees of the Authority and members of the public and/or other organisations, the most senior Employee present should:-
- a. Immediately acknowledge the complaint verbally;
 - b. Inform the complainant that any complaint should be made to the Chief Fire Officer (preferably within 24 hours) but that, if this is not possible, the complainant should make an appointment with the Chief Fire Officer (or the Monitoring Officer) to discuss the issue further;
 - c. In the event that the complainant is acting as a member of the management of an organisation represented at the meeting, this should be made clear to the Chief Fire Officer or the Monitoring Officer if appropriate.
- 3.4 Complaints that relate to a potential breach of Code of Conduct for Members should be made in writing to the Monitoring Officer who acts on behalf of the Standards Committee. Advice on such issues can be obtained from the Monitoring Officer before a complaint is formally submitted.

4. Employee Advice to Members and Party Groups

- 4.1 It must be recognised by all Employees and Members that in discharging their duties and responsibilities, Employees serve the Authority as a whole and not exclusively any party group, combination of groups or any individual Member of the Authority.
- 4.2 It is now common practice for party groups to give preliminary consideration to matters of Authority business in advance of such matters being considered by the relevant Authority decision-making body. Employees may properly be called upon to support and contribute to such deliberations by party groups and to assist independent Members but must at all times maintain political neutrality. All Employees must, in their dealings with party groups and individual Members, treat them in a fair and even-handed manner.
- 4.3 The support provided by Employees can take many forms, ranging from a briefing meeting with a Member of the Authority to a Committee or other meeting e.g. full party group meeting to a presentation to a Committee or full Authority meeting. Where an employee advises a political group on a particular matter, he or she should be able to advise other political groups in the same matter. Employees can provide advice on professional, procedural and policy development matters but their duties are to the Authority as a whole and they must carry out their duties with political neutrality.
- 4.4 Certain points must be clearly understood by all those participating in this type of process, Members and Employees alike. In particular:
 - 4.4.1 Employee support must not extend beyond providing information and advice in relation to matters of Authority business. Employees must not be involved in advising on matters of party business. The observance of this distinction will be assisted if Employees are not expected to be present at meetings or parts of meetings, when matters of party business are to be discussed;
 - 4.4.2 Party group meetings, whilst they form part of the preliminaries to Authority decision-making, are not empowered to make decisions on behalf of the Authority. Conclusions reached at such meetings do not therefore rank as Authority decisions and it is essential that they are not interpreted or acted upon as such;

- 4.4.3 Similarly, where Employees provide information and advice to a party group meeting in relation to a matter of Authority business, this cannot act as a substitute for providing all necessary information and advice to the relevant Committee or full Authority when the matter in question is considered;
- 4.4.4 Subject to paragraph 4.5 below, where Employees provide information and advice to a party group meeting, they must provide all relevant information, whether or not that information supports the line of argument or option preferred by the Employees and/or any other political group.
- 4.5 Special care needs to be exercised whenever Employees are involved in providing information and advice to a party group meeting which includes persons who are not Members of the Authority. Such persons are not bound by the Code of Conduct for Members (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons Employees may not be able to provide the same level of information and advice as they would to a Member-only meeting.
- 4.6 Employees must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group.
- 4.7 Whilst any Member may ask a relevant Director for written factual information about a service, such requests must be reasonable. Requests will be met subject to any overriding legal considerations (which will be determined by the Authority's Monitoring Officer) or if the recipient of any request considers the cost of providing the information requested or the nature of the request to be unreasonable. If that is the case, s/he will raise the matter with the Director who will discuss the issue with the Chief Fire Officer.
- 4.8 Where a Member requests factual information from an Employee as set out in paragraph 4.7 above, that information will also be supplied to any other Member if requested.
- 4.9 Where a Member requests policy advice, that advice will not be supplied to any other Member without the consent of the requesting member.

4.10 In relation to budget proposals:

- a. The Controlling Group shall be entitled to confidential discussions with Employees regarding options and proposals. These will remain confidential until determined by the Authority or until published in advance of Committee, Executive, Authority or other meetings, whichever is the earlier; and
- b. The opposition groups shall also be entitled to confidential discussions with Employees to enable them to formulate alternative budget proposals. These will remain confidential until determined by the respective opposition groups or until published in advance of Committee, Authority, Executive or other meetings, whichever is the earlier.

4.11 It must not be assumed by any party group or Member that any Employee is supportive of any policy or strategy developed because of that Employee's assistance in the formulation of that policy or strategy.

4.12 Any particular cases of difficulty or uncertainty in this area of Employee advice to Members should be raised with the Chief Fire Officer who will discuss them with the relevant Group Leaders.

5. Support Services to Members and Party Groups

5.1 The only basis on which the Authority can lawfully provide support services (e.g. office accommodation, stationery, typing, printing, photo-copying, transport, etc.) to Members is to assist them in discharging their role as Members of the Authority. Such support services must therefore only be used on Authority business. They should not be used in connection with party political (unless legally permissible and authorised by the Authority) or campaigning activity or for private purposes. In the event that any items, such as telephones, fax machines or computers, provided for Members are used by them other than for Authority business, the cost of such use (provided that it can be separately identified) must be met by the Member concerned.

6. Members' Access to Information and to Council Documents

- 6.1 Members are free to ask for information in accordance with paragraph 4.7. This right extends to such information, explanation and advice as they may reasonably need in order to assist them in discharging their roles as Members of the Authority. This can range from a request for general information about some aspect of the Authority's activities to a request for specific information on behalf of a constituent. Such approaches should normally be made to the Director of the Department concerned. In cases of doubt, Members should approach the Clerk of the Authority for assistance.
- 6.2 As regards the legal rights of Members to inspect Fire Service documents, these are covered partly by statute and partly by the common law.
- 6.3 Members have a statutory right to inspect any document which contains material relating to any business which is to be transacted at an Authority, Executive Committee or other official meeting. This right applies irrespective of whether the Member is a Member of the Committee 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 which may appear as a confidential (Pink) item on the agenda for a meeting. The items in question are those which contain exempt information relating to employees, occupiers of Fire Service property, contract and industrial relations negotiations, advice from Counsel and criminal investigations.
- 6.4 The common law right of Members is much broader and is based on the principle that any Member has a prima facie right to inspect Fire Service documents so far as his/her access to the document is reasonably necessary to enable the Member properly to perform his/her duties as a Member of the Authority. This principle is commonly referred to as the "need to know" principle.
- 6.5 The exercise of this common law right depends, therefore, upon an individual Member being able to demonstrate that s/he has the necessary "need to know". In this respect a Member has no right to "a roving commission" to go and examine documents of the Authority. Mere curiosity is not sufficient. The crucial question is the determination of the "need to know". This question must

initially be determined by the particular Director whose Department holds the document in question. In the event of dispute, the question falls to be determined by the Chief Fire Officer. In the event that the Member is dissatisfied with the decision of the Chief Fire Officer, s/he may refer the matter to the Monitoring Officer for consideration.

- 6.6 In some circumstances (e.g. a Committee Member wishing to inspect a document relating to the business of that Committee) a Member's "need to know" will normally be presumed. In other circumstances (e.g. a Member wishing to inspect documents which contain personal information about third parties) the Member will normally be expected to justify the request in specific terms. Furthermore, there will be a range of documents which, because of their nature, are either not accessible to Members or are accessible only to the Controlling Group. An example of this latter category would be draft documents compiled in the context of emerging Authority policies and draft reports, the disclosure of which prematurely might be against the Authority's and the public interest.
- 6.7 Whilst the term "Fire Service document" is very broad and includes, for example, any document produced with Fire Service resources, it is accepted by convention that a Member of one party group will not have a "need to know", and therefore, a right to inspect, a document which forms part of the internal workings of another party group.
- 6.8 Further and more detailed advice regarding Members' rights to inspect Fire Service documents may be obtained from the Clerk to the Authority. In particular, the Data Protection Act 1998 and the Freedom of Information Act 2000 have had a significant impact in this area.
- 6.9 The Code of Conduct for Members contains the following terms:
- "You must not:
- a. Disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:

- (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) 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
 - (iv) the disclosure is:
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
- b. Prevent another person from gaining access to information to which that person is entitled by law.”

7. Employee/Chairman/Vice-Chairman/Lead Member Relations

- 7.1 It is clearly important that there should be a close working relationship between the above Members and the Employees who are involved in providing the service for which that Member is responsible. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Employee’s ability to deal impartially with other Members and other party groups.
- 7.2 Whilst the Lead Member will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations an Employee will be under a professional duty to submit a report. Similarly, the Chief Fire Officer or other officers of the Authority, e.g. Clerk/Treasurer will always be fully responsible for the contents of any report submitted in his/her name. This means that any such report will be amended only where the amendment reflects the professional judgment of the author of the report. This is to be distinguished from a situation where there is a value judgement to be made. Any issues arising between a Member and Director in this area should be referred to the Chief Fire Officer for resolution in conjunction with the Chairman.

- 7.3 At some meetings, a resolution may be passed, which authorises named Employees to take action between meetings in consultation with the Chairman and Vice-Chairman. It must be recognised that it is the Employee, rather than the Chairman, Vice-Chairman, who takes the action in such circumstances and it is the Employee who is accountable for it.
- 7.4 Finally, it must be remembered that Employees within a Department are accountable to their Director and that, whilst Employees should always seek to assist they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Director.

8. **Correspondence**

- 8.1 Subject to paragraph 4.8, correspondence between an individual Member and an Employee should not normally be copied (by the Employee) to any other Member. Where exceptionally it is necessary to copy the correspondence to another Member, this should be made clear to the original Member. In other words, a system of “silent copies” should not be employed.
- 8.2 Official letters on behalf of the Authority should normally be sent in the name of the appropriate Employee, rather than in the name of a Member. It may be appropriate in certain circumstances (e.g. letters to employees and representations to a Government Minister) for a letter to appear in the name of a Member, but this should be the exception rather than the norm. Letters which, for example, create obligations or give instructions on behalf of the Authority should never be sent out in the name of a Member.

9. **Involvement of District Councillors**

- 9.1 Whenever a public meeting is organised by the Authority to consider a local issue, all the Members representing the District or Districts affected should, as a matter of course, be invited to attend the meeting. Similarly, whenever the Authority undertakes any form of consultative exercise on a local issue, the District Members should be notified at the outset of the exercise.

10. **Press Releases**

- 10.1 From time to time Employees and/or Members may wish to make press releases in relation to the activities of the Authority. Press releases are an important method of keeping in touch with the public and informing them of the work of the Authority. They can range from those which seek comments from members of the public to those which publicise forthcoming activities.
- 10.2 Great care has to be taken that the releases on behalf of the Authority are politically balanced, factually correct, informative and maintain generally accepted moral standards. They cannot be prejudicial or unreasoned and cannot form the basis of political promotion or attacks on individuals or organisations.
- 10.3 The nature of local government is such that there will be a multitude of opinions on any given subject and some will be more controversial than others. Care must be taken, when explaining the Authority's position, that it is not used to persuade public opinion. This could be unlawful in certain circumstances.
- 10.4 The Media Relations Officer, or if it is required, the on duty Press Officer will handle any press release or media queries.
- 10.5 Employees, who wish to issue a press release in their capacity as Trade Union officials, will not be bound by the requirements of paragraph 10.4 of this Protocol, provided that the press release makes it clear that they are speaking in that capacity.
- 10.6 Elected Members perform many roles, e.g. Ward Members, Committee Members, Chairs of Committees or Lead Members. Whilst the role and the capacity in which the Member is acting at any one time will be clear to the Member, it can be difficult for members of the public to differentiate between these roles.
- 10.7 If a Member wishes to issue a statement through the Authority s/he will need to consider how the information may be interpreted by members of the public, e.g. will the public understand that s/he is speaking as a Member of the Authority and not as a Member of the Council they are representing on the Authority.

- 10.8 Members, who wish to release statements about the work of the Authority and who may be perceived by the public as speaking on behalf of the Authority, should discuss the matter with the Chief Fire Officer.
- 10.9 When statements are issued by Elected Members of the Authority it has to be remembered that they may be viewed by the public as being endorsed by the Authority and not just as the opinions of the individual Member. Statements made on behalf of the Authority have to comply with detailed rules about their content.

For this reason the Media Relations Officer is under a duty to inform the Chief Fire Officer if they are of the opinion that the proposed release may breach the publicity rules. If the matter cannot be resolved between the Chief Fire Officer and the Elected Member, the Chief Fire Officer will seek advice from the Monitoring Officer who will discuss the matter with the Member concerned.

11. **Conclusion**

- 11.1 Mutual understanding, openness on these sorts of sensitive issues and basic respect represent an important safeguard of the integrity of the Authority, its Members and Employees.