

Sutton Council Member Use of Council Resources Protocol

1. Introduction

- 1.1. This Protocol is intended to supplement the existing [Member Code of Conduct](#) and [Protocols on Councillors' Access to Information and on Member/Officer Relations](#). It provides additional guidance to Members and Officers around what is meant by the following paragraph in the Constitution, Section 5 Members Code of Conduct: Paragraph 14, which states that Members must:

"Ensure, when using or authorising the use by others of the resources of the Authority:

(A) that [they] act in accordance with the Authority's reasonable requirements;

(B) that such resources are not used improperly for political purposes (including party political purposes); and

(C) that [they] have regard to the [Local Authority Code of Publicity \(2011\)](#) made under the Local Government Act 1986."

- 1.2. This protocol provides advice as to what constitutes "reasonable requirements" and what constitutes "improper" and proper use of council resources by elected Members. Advice has previously been provided on the application of the Local Authority Code of Publicity, particularly during election periods and 'purdah'.
- 1.3. It remains Members' personal and individual responsibility to comply with the provisions of the Code of Conduct and to consider whether their planned use of Council resources is a legitimate use of public money. If Members are unsure about anything covered in this protocol they should seek advice from the Monitoring Officer or Committee Services. Failure to follow this Protocol is likely to be considered a breach of the Code of Conduct.

2. Members' use of resources: General provisions

- 2.1. To enable councillors to carry out their duties the council provides a range of resources such as:
- Council email address and access to council IT system eg the intranet

- Members Enquiries facility to enable members to raise questions on behalf of their constituents
 - Printing and computer facilities at Civic Offices
 - Stationery/Business Cards
 - Printer Cartridges
 - Meeting rooms for internal meetings or private meetings with constituents
- 2.2. These resources are available for reasonable council business only and should relate to your role as a councillor. This means your role as a ward councillor, as a member or Chair of any Council committees, or as a member of any outside body to which you have been nominated as a Council representative. They are not available to support you in your private role as a member of any other organisation eg as a school governor or trustee of a voluntary sector organisation which is not a Council appointment.
- 2.3. Council resources, including information about Council policies and activities, are also available only to the degree necessary for Members to carry out the duties that can reasonably be expected of and from Members as public representatives. In other words Council resources - including officer time - cannot be used to an unreasonable extent by any single member of the Council, and cannot be used to support party or other political campaigns which Members may be involved in, in their personal capacities or out of personal or political interest. As set out in the [Councillors' Access to Information protocol](#), information, particularly confidential or sensitive information, is only available to Members when they have established a 'need to know' to enable them to carry out their public duties.
- 2.4. When using Council resources in any capacity as elected representatives of the London Borough of Sutton, members should always be aware that you may be viewed as representing or acting on behalf of the Council. You should consider how your actions or statements may be perceived by residents and others, who may not differentiate between the different roles that elected members may play in the Council and in their political or campaigning capacity. It is never acceptable to use Council resources - including the Council email system - for:
- The ridiculing of others based on race, religion, gender, sexual orientation, age or disability;

- Jokes or quips (whether in the form of words or images) based on race, religion, gender, sexual orientation, age or disability;
- Publication of material that is defamatory or libellous;
- Publication of material which is sexually orientated or has sexually explicit content (whether in the form of words or images);
- Publication of material that contains foul or obscene language;
- Publication of material which contravenes the Council's Equalities and Harassment Policies;
- Illegal or malicious use, including downloading or transmitting copyright material;
- The access, storing or transferring of pornographic or obscene material.

2.5. Members have significant protections for freedom of political expression under Article 10 of the European Convention on Human Rights, which gives you more leeway to express views in ways which in normal speech may be considered extreme or offensive. However, there are limits to this, particularly if referring to officers, third parties or members of the public. Statements which are untrue can be made in good faith (ie if the Member believed them to be true when he or she made them), but if Members have been advised of the facts and continue to repeat an untruth, they are at risk of losing their Article 10 rights and may be exposing themselves to individual legal action by any third parties involved. The Council would in these circumstances be unable to use its resources to protect or defend an elected Member.

3. Members' use of resources: political groups

- 3.1. The role of political parties and groups is recognised as vitally important to local democracy and to enabling the business of the Council to be carried out effectively. Accordingly, some council resources are available to political groups where that enables the business of the Council to be carried out, but care needs to be taken not to cross the line into party political or partisan campaigning activity. The same principle applies to Members who are not registered as part of any party political group but nonetheless carry out political or otherwise partisan campaigning activities.
- 3.2. Acceptable use of Council resources by political groups or their group officers would include:

- Emails between members of that political group or with members of another political group (or any Independent member) to discuss Council business
 - Use of council meeting rooms for political group meetings attended wholly or mainly by councillors to enable Council business to be carried out (non-councillors can be invited but the meeting must remain private)
 - Use of council printers / photocopiers for Group meeting papers.
- 3.3. Unacceptable use of Council resources by a political groups or their group officers or members would include:
- Mass email or hard copy mailings to the public on behalf of a political group or party or by an Independent member making political points
 - Use of council meeting rooms for public or wider political party meetings
 - Use of council meeting rooms, even for private group meetings, during pre-election periods known as purdah
 - Use of council printers / photocopiers for political party or campaigning leaflets, letters or mailings.

4. Members' use of resources: personal use

- 4.1. There is a cost attached to providing Members with any piece of equipment or other resource and that cost can only be justified on the grounds that the equipment or resource is used for Council business. This is why the use of Council stationery, rooms, telephones and mobile telephones, photocopying and postage is only for when Members are undertaking Council business.
- 4.2. With regard to the internet and email however, a small amount of personal use may be acceptable as there is no additional cost to the Council. Any personal use by Members of either of these resources must comply with the general provisions above and any specific guidance in relation to the use of the internet / e-mail (see below).
- 4.3. So for example the internet could legitimately be used occasionally to purchase holidays, goods and services or general "surfing" for non council-related purposes provided the use is not excessive. And the Council's email system could for example be legitimately used to send a small number of personal emails to friends or family. These should be identified by the word "personal" in the email subject heading and when

sending a personal email, the electronic signature on the bottom of the email should also be removed.

- 4.4. Personal use does not extend to the family of a Member and it is the responsibility of each Member to ensure family members do not use Council resources.

5. Members' use of resources: publicity

- 5.1. The Local Authority Code of Publicity means councils cannot publish material which appears to be designed to affect public support for a political party. It is not acceptable to use council resources for party political purposes. Use of these resources should relate to holding ward surgeries, dealing with correspondence from constituents, or meetings between group members as set out above. When using Council resources members should consider the Local Authority Code of Publicity and the Code of Conduct.
- 5.2. The use of Council resources by a councillor for purely political purposes including designing or distributing political party material for publicity purposes and in support of any political party or other political activity, elections and campaigning is likely to amount to a breach of the Code of Conduct.
- 5.3. The Council's communications function exists to provide the public with information about the Council's plans, policies and decisions. This is an important means by which local people can find out about how the Council is spending taxpayers' money in order to hold members to account for this at election time. Since the policy direction is set by the Administration it is a legitimate use of Council resources to quote Committee Chairs in explaining their reasons for proposing a particular policy or plan. Once policies are adopted by the Council or a Council committee they become Council policy and not the prerogative of any political party, and officers are therefore able to explain and implement them.
- 5.4. However, any quotations attributed to elected Members are carefully assessed to ensure they are not conferring advantage or disadvantage for a political party or seeking to influence public opinion in favour of any political party. Where Committee Chairs come from another political party they may also be quoted: statements are given on behalf

of the office, not usually the individual. There are exceptions to this: occasionally it may be appropriate for the Council to release a personal statement from an individual member where it affects the Council overall.

- 5.5. Special rules apply during the run-up to elections, whether these are local government elections or not, and during the period known as 'purdah'. Guidance is provided to remind members and officers of purdah restrictions each year and can be found on the intranet [here](#).

6. Members' use of resources: information security

- 6.1. The Council, including Members, particularly in their ward representative role, are trusted with handling sensitive and personal information from a range of citizens, staff, partners and suppliers. We all have a responsibility to keep this safe. If we do not, people and services could be put at risk.
- 6.2. The Council has recently updated its [information security policies](#) around using systems and data and information classification and marking. These are available on the intranet and apply to Members as well as council staff. In brief all Members must comply with the following policies and procedures:
- the Council's Information Classification and Marking Policy - this explains how you must classify and mark information to which you have access
 - the Council's procedures for data protection, including reporting information security breaches
 - the Council's records management policies and procedures
 - the Council's [policies on the use of social media](#) (see below)
 - all relevant information sharing agreements when handling data that belongs to a third party organisation (eg government departments, police, NHS partners etc) - this is less likely to be relevant to Members but the principle applies that unless specifically authorised you should not share data or information that is the property of a third party who would have a legitimate expectation that it will be kept confidential
- 6.3. In addition you must never attempt to circumvent the security arrangements that have been made to protect the Council's information. Members are advised that the Council does keep a record

of the use of the communications tools and services that it provides to ensure compliance with this policy and other legal or regulatory requirements. This includes a record of the websites you visit (or attempt to visit) which can be provided to the Monitoring Officer if inappropriate use is suspected.

- 6.4. However, there are strict rules governing access to information (eg emails or files) in any Member's or officer's account or device, which require a written request to ICT approved by an Executive Head or Director. Examples of the few instances where this would be authorised would be where there was considered to have been a breach of legal or statutory requirements or when such information has been requested by an agency involved in the detection of crime. ICT will only process properly authorised requests, which are strictly limited to the minimum required for the specific purpose requested, and will keep a record of these.

7. **Members' use of resources: freedom of information (FOI) and data protection**

- 7.1. The [FOI Act](#) applies to public authorities and not elected members. However there is still the potential for members' communication to be caught within the scope of FOI. A couple of examples are:
- Where members are acting on behalf of the Council in their capacity as a Committee member.
 - Where members are in dialogue with Council officers - as the record is held by the Council, the communication is subject to FOI if requested.
- 7.2. E-mails exchanged for personal reasons (whether using Council issued equipment or the member's personal equipment) with other Councillors will **not** fall within the scope of FOI. Neither will e-mails shared with another member about a constituent or any other member, or emails purely about internal Group matters.
- 7.3. However a cautionary note for those members who sit on Council Committees, including Chairs. Communication (regardless of which equipment is used or whether using a personal or council email address) between Committee Members, between a Chair and their Committee members or between Chairs of different Committees about

Committee/ other Council matters will likely be subject to FOI as it is information about Council business.

- 7.4. Councillors are reminded that they should **not** be using personal email addresses for Council business as it increases the risk that confidentiality may be breached as the Council cannot guarantee the security of external systems. In such circumstances the members themselves will be responsible and liable for any data breach and the Council will be unable to protect them. Breaches of data protection carry the threat of serious penalties.

8. Members' use of resources: social media

- 8.1. The Council's social media policy, available on the intranet, also applies to Members when they are acting as a Councillor in their official capacity. This will not generally apply to political blogs or Twitter accounts, where Members have rights to freedom of political expression, or personal blogs or Twitter accounts where Members are not acting in their official or public capacity. However if Members use information to which they could only have got access through being a councillor, for example, then this may blur the lines; it is always a matter of judgement.
- 8.2. When acting in your official capacity as a Councillor and posting content on social media or other external websites or online forums (eg comments, status updates, photos, links, videos etc), you must:
- be aware that you are personally responsible for all content that you publish online
 - never post sensitive or personal information which may put individuals or the Council at risk
 - never share sensitive or personal information on a public forum or other online service that has not been assured by the Council
 - make sure you have permission to publish content that may be protected by copyright, fair use or financial disclosure laws
 - behave appropriately and professionally, with the understanding that you may be perceived as representing the Council when using your Councillor persona. While Members have different roles - ward representative, political representative and Council representative - and your rights to freedom of political speech provide strong protections, it is important to clarify in which capacity you may be commenting, as the

public may not always perceive the difference between these roles.

9. Members' use of resources: officers

- 9.1. Officers of the Council provide support to councillors and are therefore part of the Council's resources. It is the statutory responsibility of the Head of Paid Service to ensure there are sufficient officers employed and correctly organised to serve the whole Council and meet its requirements. The role of officers is to give advice and information to councillors and to implement the policies determined by the Council. Although councillors and officers work in a collaborative way it is not appropriate for councillors to task or allocate work to officers. In Sutton's context as a Committee system council this rule is even more important as there is no individual executive decision-making power for Committee Chairs: member decisions for implementation can only be made by Committees.
- 9.2. It is the responsibility of chief officers and deputy chief officers to manage resources under their control, including staff resources, and to take operational decisions to ensure the policies set by councillors are implemented. Officers take a steer from Committee Chairs and members of the Leader's Strategy Team on early or draft policy proposals since that provides guidance as to the likely decision by the relevant Committee. This enables preparatory work to be done and the business of the Council to be carried out efficiently, but it can be no more than a steer and is not a formal decision of the Council which authorises expenditure of council resources.
- 9.3. In public, for example in committee meetings, officers can only provide explanations on professional or technical matters. They can provide background advice on policy, but the elected administration (majority Group) of the Council proposes the Council's policy framework, based on their manifesto commitments. Due to their majority on the council these policies are likely to be agreed in Committees or at Full Council meetings, unless the Opposition can convince the Administration to adopt any amendments.
- 9.4. Accordingly it is for members of the Administration, in particular Committee Chairs, to explain and defend their reasons for putting forward these policies: officers can be called upon to provide advice but their position of political neutrality must not be compromised by either

the Administration or Opposition by being asked to comment on the merits or otherwise of a proposed policy, other than to give their professional judgement or opinion.

- 9.5. Officers are open to criticism by Members but it is in the public interest that they are not subject to unwarranted comments that may undermine public confidence in the council. Public servants can be more strongly criticised than private individuals because they should be subject to scrutiny. However, they cannot be exposed to as much public or personal criticism as elected politicians because officers have not voluntarily entered the political arena and because they are not able to defend themselves in public against personal criticism. Criticisms of the conduct or capability of any officers should be reported to the Head of Paid Service for investigation and action as appropriate.

This version: October 2016