

PART 3

The rights and responsibilities of Members

A summary and description of the roles of Members as the Members of the Council, including how the governance framework is designed and maintained and how Members are trained, developed and supported in fulfilling their elected roles.

PART 3 – THE RIGHTS AND RESPONSIBILITIES OF MEMBERS

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Section 1

1 SUMMARY OF MEMBER ROLES

Members have a variety of roles, on the Council and in the community. Consideration of the support that Members require (and information to which they may be entitled) will need to be based on an understanding of these roles. They include, but are not limited to:

- 1.1** Being the ultimate policy-makers for the Council, through agreement annually of the budget and policy framework (rules relating to which can be found in **Part 5**).
- 1.2** Representing their communities and bringing their views into the Council's decision-making process;
- 1.3** Dealing with individual casework, and where appropriate acting as advocates for constituents in resolving particular concerns or grievances;
- 1.4** Balancing different interests identified within their electoral division, and representing the electoral division as a whole;
- 1.5** Being involved in decision-making. This may be as Members of Cabinet, as decision-makers for regulatory functions such as licensing and planning, or so-called "quasi-judicial" functions (for example, where a parent can appeal to the Council against a decision by a maintained school to exclude their child, and a panel of Members is convened to consider that appeal);
- 1.6** Being involved in holding decision-makers to account. This may happen at Council meetings, at meetings of overview and scrutiny committee meetings, and elsewhere;
- 1.7** Being the "corporate parent" for children in care, as part of a shared responsibility held by Members, the Council as a body, council officers and partner agencies;
- 1.8** Supporting the delivery of the work of the Council within the framework set by law and guidance. This is a particular obligation for Members sitting on the Audit Committee or the Standards Committee, but is also a responsibility held collectively by all Members;

Section 2

2 MEMBERS GENERAL RIGHTS TO ACCESS INFORMATION

Members should be provided with adequate information about services or functions upon which they may be called upon to make or scrutinise decisions, or which affect their constituents. In the normal course of events, this information will be made routinely available by officers in the form of reports, departmental plans, updates etc. Members are encouraged to make use of existing sources of information wherever possible.

The rights of Members can be summarised as follows:

- (a) Members generally enjoy the same access rights as members of the public in respect of public papers;
- (b) Members of the appropriate Cabinet, Committee or Sub-Committees will have a good reason for access to all exempt information on the Cabinet, Committee, Sub-Committee agenda under the common law “Need to Know” principles (see below);
- (c) Members of the Overview and Scrutiny Committee will have a prima facie “Need to Know” where the Committee requires access to exempt Cabinet agenda items as part of their scrutiny function provided the subject matter relates to an action or decision that the Member is reviewing or scrutinising as part of the agreed scrutiny work programme;
- (d) All other Members who require access to confidential/exempt Cabinet, Committee or Sub-Committee documentation will need to request disclosure under the Freedom of Information Act 2000 or demonstrate a “Need to Know”.

It is important to note that these rights only apply where Members are clearly carrying out their role as elected representatives. Where any Member has a disclosable pecuniary interest or a personal and prejudicial interest in a matter the Member will only be entitled to the same access as would be the case for a private individual, i.e. to inspect the reports, minutes and background papers relating to the public part of the Cabinet, Committee or Sub-Committee Agenda. In these circumstances, the Member must make it clear that s/he is acting in his/her private capacity and not as a Member of the Council.

2.1 Sources of information rights

Members have a range of rights to access information. These rights can be summarised as follows:

- 2.1.1 The rights held by ordinary members of the public. These are set out in the Part above that relates to public rights to access information. They include the right to make “subject access requests” for personal

information, to submit Freedom of Information Act requests, and to access agendas, reports and minutes of Council meetings;

- 2.1.2 Additional rights held by all Members. This includes:
- 2.1.3 Where the Member in question can demonstrate a “need to know” certain information in order to carry out their duties and responsibilities;
- 2.1.4 Where legislation, or rules in this constitution, confer additional rights on all Members;
- 2.1.5 Further additional rights held by the Members of overview and scrutiny committees.

2.2 Rights held by all Members

Members do not need to make reference to specific rules / sections of legislation in order to make a valid request for information. It is also not necessary for a Member to make a request for a specific document (especially if they would not otherwise know of a specific document’s existence).

Where possible, requests by Members for access to information, or documents, held by the Council should be supported by officers. Conversation about need should understand the objective of Members in seeking information out. This is not to say that certain information should only be provided if the objective of use of that information is considered “valid” – more that, having a sense of Members objectives, officers are more likely to be able to assist in providing them with information that meets their needs.

2.3 Rights held by Members in addition to public rights

Members have a statutory right to inspect any Council document which contains material relating to any business which is to be transacted at a Council, committee or sub-committee meeting, or at a Cabinet meeting.

In respect of Cabinet business, Members have the right to inspect any document which:

- 2.3.1 Is in the possession or under the control of the Cabinet;
- 2.3.2 Contains material relating to any business to be transacted at a public meeting.

Where documents might otherwise be exempt because they relate to:

- 2.3.3 The financial or business affairs of any particular person, including the council – except in relation to terms proposed or to be proposed by or to the council in the course of negotiations for a contract (paragraph 3 of Schedule 12A), or

- 2.3.4 information which reveals that the authority proposes to give under any enactment a notice under or by virtue of which requirements are imposed on a person, or to make an order or direction under any enactment (paragraph 6 of Schedule 12A)

Members may still inspect those documents under this rule. However, there is not an automatic right to inspect any other exempt information, and confidential documents may still not be inspected.

Rights set out here apply irrespective of whether the Member is a Member of the Committee or Sub-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 in Part II (exempt) of the Agenda for meetings. Examples are documents that contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, contract and industrial relations negotiations, advice from Counsel and criminal investigations.

2.4 The “need to know”

If a Member wishes to access “a Council document”, and where there is nothing expressly in legislation which provides for that information to be made available to them, it may still be made available to them if they have a demonstrable need to know.

This right, which was arisen through definition by the courts, is not a right to roam or an ability to go on a “fishing expedition”. The rules applying to the exercise of the right are that:

- 2.4.1 The Member making the request must themselves demonstrate this need. Mere curiosity is not sufficient;
- 2.4.2 The validity of the request should be determined by the relevant officer (on the advice of the Monitoring Officer);
- 2.4.3 The validity of the request will hinge on whether access to relevant documents might reasonably be necessary to enable a Member to properly perform their duties;
- 2.4.4 The meaning of “Council document” is broad, and includes at least any document produced with Council resources, although would exclude any document which forms part of the internal workings of another political Group;
- 2.4.5 Officers will adopt a permissive approach to the provision of this information on the understanding that the Member role is a broad one.

2.5 Further rights held by Members of overview and scrutiny committees

Members who sit on overview and scrutiny committees have further, additional rights of access to information.

Such Members are entitled to a copy of documents which the Cabinet possess, and which contains material relating to executive business (which includes executive decisions made by a Cabinet Member or by an officer under delegated powers).

This is a broad power, which entitles Members to access exempt and confidential information. The only condition is that, in order to be entitled to exempt or confidential information, the Member making that request must be able to demonstrate that the request relates to a decision that the Member is scrutinising or that it relates to an item on the current scrutiny work programme.

Cabinet is obliged to provide a copy of the document no later than 10 clear days after the request is received. If Cabinet determines that the Member is not entitled to a copy of the document (or a part of the document) a written statement will be provided setting out the reasons.

2.6 Obligations held by Members in respect of confidential or exempt information, or information otherwise not intended for publication

Any information, or document, provided to a Member orally, in writing or in any other way, must only be used by the Member for the purpose for which it was provided, ie in connection with the proper performance of the Members duties as a Member of the Council.

Confidential or exempt information provided to Members should not be discussed with, or released to, any other persons. This includes other Members, or any person who the Member in question considers may, in good faith, be entitled to access the information in question. This rule continues to apply even if the Member considers that the information is already partly or entirely in the public domain.

Where a Member considers that confidential or exempt information, or such other information that has otherwise been provided to them in confidence, should be disclosed to another person, because they believe it is reasonable and in the public interest to do so, then they should always consult the Monitoring Officer first and (as set out in the Members Code of Conduct) shall not disclose the information without having regard to any advice given by the Monitoring Officer or an appointed Member of their staff.