

Birmingham City Council

Report to City Council

17 September 2024



Title:	MEMBER/OFFICER PROTOCOL
Lead Cabinet Portfolio:	Councillor Rob Pocock, Cabinet Member for Transformation, Governance and HR
Relevant Overview and Scrutiny Committee:	Corporate and Finance Overview and Scrutiny Committee
Report Author:	Julia Lynch, Assistant Director Legal Services - Litigation Law & Deputy Monitoring Officer Legal and Governance
Authorised by:	Marie Rosenthal, City Solicitor & Monitoring Officer Legal and Governance
Is this a Key Decision?	No
If this is a Key Decision, is this decision listed on the Forward Plan?	Not Applicable
Reason(s) why not included on the Forward Plan:	If yes, list reason(s). If no, insert 'Not Applicable'.
Is this a Late Report?	No
Reason(s) why Late:	Not Applicable
Is this decision eligible for 'call in?'	No
If not eligible, please provide reason(s):	Not Applicable
Wards:	Not Applicable

Does this report contain exempt or confidential information?

No

Has this decision been included on the Notification of Intention to consider Matters in Private?

No

Reasons why not included on the Notification:

Not Applicable

1 EXECUTIVE SUMMARY

- 1.1 To agree a new Member / Officer protocol to govern relationships between Members and Officers at Birmingham City Council.

2 COMMISSIONERS' REVIEW

- 2.1 Commissioners are strongly supportive of the development of this protocol as a key element of the essential governance changes that are required within Birmingham City Council. It is commendable that this work has been progressed for agreement in this way. However, the proof of this protocol will be in its application and maturation over time. So Commissioners would expect a review of the application of the protocol should be reported to Council via the Standards Committee and Governance Board within a year.

3 RECOMMENDATIONS

- 3.1 That City Council approves the revised Member/Officer Protocol, set out in Appendix 1.

4 KEY INFORMATION

Context

- 4.1 Standards Committee, at its meeting in March 2024, approved a draft Member Officer Protocol. The committee recommended that Full Council adopted the new protocol, subject to any amendments that may be identified as a result of an analysis of the outcomes of the member survey and feedback from member engagement sessions. These amendments have now been made by the Monitoring Officer in consultation with the Chair of the Standards Committee.
- 4.2 A priority was identified in the Independent Review of Governance by the CfGS for the Council to develop a new Member/Officer protocol.
- 4.3 This report proposes the adoption of a new Member/Officer Protocol which reflects the ongoing work on wider culture change in the Council. At the time of writing there are several programmes of work being undertaken across the organisation that connect to this work, all of them seeking to support action to implement the Improvement and Recovery Plan.
- 4.4 Ultimately, the objective of this work must be to put in place a more effective and consistent framework for Member/Officer relations. The development of a protocol is an important point on this journey, but it is not the destination.
- 4.5 The agreement of the framework set out in the Protocol will need to be considered as the foundation for a broader and deeper conversation between Members, and between Members and Officers, about duties, roles and behaviours.

Proposal and Reasons for Recommendations

Research carried out by CfGS and the Council to Support the Drafting of a New Protocol

4.6 CfGS have carried out a review to identify the kinds of measures likely to be able to bring about shifts in attitudes and behaviours, paying particular attention to political relationships. The conclusions, principles and objectives deriving from this review are set out in the next sections. These outcomes have been informed by:

- Engagement with national sector partners.
- Learning from approaches taken by other councils.
- Structured conversations with key Members and Officers

4.7 A Member survey has been undertaken (from 6 March 2024 to 22 March 2024) to enable the Council to better understand Elected Members and their needs. Members were encouraged to be as candid as possible in their responses. The responses have been used to inform the protocol and related activities including Member development.

4.8 Engagement sessions on the proposed protocol have taken place between March and July. Specifically, engagement sessions have been undertaken with the following groups;

- Constitution Review Group
- Corporate Leadership Team
- Portfolio Holder Briefings
- Extended Corporate Leadership Team
- Group Leaders Meeting
- Informal Cabinet
- Executive Management Team
- Audit Committee Members
- Overview and Scrutiny Committee Members
- Standards Committee Members

4.9 These sessions have been either in person or via Microsoft Teams meetings. In addition, the following activities were undertaken to achieve as much engagement with the draft protocol as possible:

- Two Question and Answer sessions were held online, week commencing 10 June, one in the evening and one in the daytime, to allow those members who hadn't been able to engage a further opportunity.

- The draft protocol was circulated by email to all members, inviting final comments, questions and feedback by 19 June.
- Group Leaders were encouraged to share the protocol within group meetings and provide feedback.
- Officers attended the Marketplace at the June full council meeting to allow a further opportunity for members to ask questions and provide feedback on the protocol.

4.10 As part of wider work on organisational culture forming part of the IRP, it is expected that a range of activity will also be carried out with the wider officer group. This may include surveys and engagement work which, depending on timings, will be used to inform the ongoing refinement and amendment to this protocol.

4.11 The protocol will be reviewed by the Standards Committee after adoption by Council; this will enable the Committee to consider the performance of the protocol, compliance with its principles and make any resulting necessary amendments.

The Current Member/Officer Relations Protocol

4.12 The Council's Constitution currently contains a protocol aimed at supporting effective Member/Officer relations.

4.13 However, given the failures identified in the Independent Governance Review, CfGS and the Council have concluded that the current Protocol is self-evidently not meeting its required purpose.

4.14 The current protocol is a discursive exploration of expected behaviours, and given that it sets no specific, consistent expectations of either Member or Officer conduct, does not provide the required framework for the development and maintenance of productive relationships.

4.15 The current protocol makes no reference to the different power dynamics applying to Member/Officer relationship in different circumstances, or the fact that "appropriate" and "inappropriate" conduct and relationships may therefore differ according to those circumstances.

4.16 The current protocol does not take account of wider arrangements in place for decision-making and oversight at the authority.

4.17 On account of these shortcomings, and wider challenges relating to some member-officer relationships, the independent Governance Review carried out in late 2023 by the Centre for Governance and Scrutiny highlighted the need for a new Protocol to be developed as part of the Governance Stabilisation Plan.

4.18 In doing so, the Council and CfGS note that the production of a new Protocol is one element of a wider programme of work with both members and officers to take forward behavioural change. The Council recognises that the Protocol will

not deliver that change on its own, which is why the learning and development activity set out in the “Next Steps” section.

Approaches Taken Elsewhere

- 4.19 Other Councils have taken variable approaches to the development of Member/Officer protocols. For the most part these tend to be quite perfunctory. Protocols might be updated at the same time as the wider constitution, but those updates are not informed by detailed member/officer dialogue, and do not connect to wider learning and development activity. For many Councils, these protocols may be very old – many date back over 15 years and reflect the now non-existent national standards regime.
- 4.20 Where Councils *have* undertaken more meaningful reviews of this material it has generally been in connection with a wider organisational objective – a move by a Council to a new operating model, a significant cultural change programme, or similar. The drafting of protocols themselves have under those circumstances been bookended by significant Member and Officer engagement.

Conclusions on what a Member-Officer Protocol Can (and Cannot) Do

- 4.21 CfGS and the Council have drawn from their research the following central principles, which have been used in the development of the Protocol as currently drafted.
- A protocol cannot bring about behavioural change on its own.
 - A protocol cannot specify, and create rules for, every single Member/Officer interaction, or type of interaction – it can set out general principles and expectations around certain elements of those relationships but can never be exhaustive.
 - A protocol can, and should, act as a basis for further conversation and action on these issues.
 - A protocol can – within certain parameters – be used as a mechanism to judge whether the Member, and Officer, Codes of Conduct have been followed/breached. In short, it needs to have “teeth”.
 - A protocol adopted wholesale from another Authority won’t achieve anything, because the value in producing it lies in the conversations that

underpin that production (and in learning and development work carried out after), rather than the finished document.

Objectives Underpinning the Development of a Member-Officer Protocol

4.22 A protocol should:

- Provide a clear explanation of the respective roles that members and officers perform, with a view to aiding mutual understanding.
- Be explicit about the exact behavioural expectations around Member/Officer relationships, and interactions.
- Be explicit around the interactions expected in respect of key governance activity – decision-making, challenge and oversight, ward work, and other activity where close member-officer liaison is expected.

4.23 Therefore, a protocol needs to do the following:

- Clearly set out Members' and Officers' respective roles – and highlight where those roles intersect.
- Highlight and affirm the core behaviours underpinning relationships – this may initially be through reference to the Nolan Principles, but any new values and behavioural expectations being developed as part of the Council's wider cultural change program will need to be included.
- In doing so, make especially clear that this is about both Member and Officer relationships; it is important to emphasise that the drafting and development of a Member/Officer protocol is not seen as a measure primarily designed to "manage Member behaviours".
- Set out how relationships can be expected to be managed in respect of certain key areas of member-officer interactions –to include:
- Policy development and executive decision-making
- Decision-making and liaison on regulatory matters (e.g. planning and licensing).
- Expected relationships, ways of working and expectations with regard to the operational management of services.

- Highlight wider relationships, and how they intersect with member-officer relationships. Member/Officer relationships do not sit in a vacuum, and it is necessary to recognise the other relationships (and factors inherent to those relationship) that impacts on members-officer relations.
- Provide (fictional) worked examples of the above issues – making some of the potential pressures and conflicts more tangible. (This will be developed for the Member and Officer learning and development and appended to the Protocol before adoption by Council.)
- Connected to the above, provide for its use as a learning and development tool (i.e. the protocol itself should be used as the basis for ongoing learning and development activities) and for use in the induction process for new members and new officers, to ensure that people who are new to the authority are aware of expected behaviours and good and bad practice.
- Provide for ways for non-adherence to the protocol to be investigated, and action taken against potential breaches, in line with the Member and Officer Codes of Conduct.

4.24 As drafted, the Protocol submitted to members for approval at this meeting is intended to reflect these needs.

5 RISK MANAGEMENT

5.1 Effective member/officer relationships are an essential part of effective governance. Adopting a bespoke member officer protocol forms a building block to build effective governance and reduce the risk of poor governance in the Council.

6 IMPACT AND IMPLICATIONS

Finance

6.1 Based on the proposals outlined in this report, there are no additional financial implications. Any necessary training to adhere to member officer protocol is expected to be covered by the council's existing training budget.

Legal

6.2 The Monitoring Officer, in accordance with Local Government and Housing Act 1989, is responsible for matters relating to the conduct of members and officers. The Council has duties under the Localism Act 2011 to promote and maintain

high standards of conduct by members and co-opted members of the authority. This protocol is one part of the Monitoring Officer's and Council's tools to achieve these statutory obligations.

Equalities

- 6.3 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to: eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 6.4 In adopting this new protocol, the Council is seeking to improve the relationship between officers and members, to prevent poor behaviours which will in turn contribute to the Council's duty to eliminate discrimination, harassment and victimisation.

People Services

- 6.5 In consideration of the proposals contained within this report, the delivery of the Learning and Development plan will have a resource requirement. Consideration should be given to how this is delivered in both the immediate and longer term.
- 6.6 Current, generic, resources are available through the People Services provision which may be of benefit and could be aligned to support ongoing development in this area.

7 APPENDICES

- 7.1 Appendix 1 - Member Officer Protocol June 2024

8 BACKGROUND PAPERS

- 8.1 Current Member Officer Protocol
- 8.2 CfGS Governance Review