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Draft Shadow Cabinet Protocol

1.0 Introduction

- 1.1 This Protocol captures the rights and responsibilities of members of the Shadow Cabinet for Sandwell Metropolitan Borough Council. The Protocol sets out the rights of Shadow Cabinet Members to access information, pose questions in Cabinet, inspect documents, receive briefings from Directors and attend Cabinet meetings. This protocol should be read in conjunction with other elements of the Constitution. Advice on the interpretation and application of this protocol will be given by the Monitoring Officer.
- 1.2 In law, all Councillors are equal and have the responsibilities of trustees. However, legislation and guidance gives certain powers and duties to the different roles which Councillors may hold e.g. Chair of the Council, Leader of the Council, Cabinet Member, Leader of the Opposition, Shadow Cabinet Member and Chair of a Scrutiny Board.
- 1.3 It is the responsibility of all Councillors to ensure that they are aware of their rights and responsibilities. If Councillors are ever in any doubt in terms of the law, Constitution, general propriety, or potential conflicts of interest, they should consult the Monitoring Officer.

2.0 Composition

- 2.1 The Group Leader of the largest opposition group within the Council may choose to form a Shadow Cabinet by their nomination. If so, they will notify the Council and the Monitoring Officer of the names of the members nominated to form a Shadow Cabinet and of any changes in the membership of the Shadow Cabinet which may occur from time to time.

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- 2.2 The Group Leader of the largest opposition group may appoint a Shadow Cabinet Leader, Shadow Cabinet Deputy Leader and other Shadow Cabinet Members. In accordance with the relevant legislation relating to the composition of the Cabinet (Local Government Act, 2000) and the Sandwell Metropolitan Borough Council's Constitution in relation to the composition of the Cabinet (Article 7 Paragraph 7.02), the Shadow Cabinet shall comprise of no more than the number of members permissible for the Cabinet, i.e. no more than 10 Members and may not exceed the number of Members appointed to Cabinet at any given time.
- 2.3 Collectively these opposition councillors will be termed the Shadow Cabinet. A member of the Opposition may be appointed to shadow any one Cabinet Portfolio, but no Cabinet Portfolio shall be shadowed by two or more Opposition members.
- 2.4 The Group Leader of the majority opposition group can allocate portfolio responsibilities between and amongst the Shadow Cabinet and will mirror the portfolios of those of the Cabinet, save that a single Shadow Cabinet member may shadow more than one Cabinet Portfolio.

3.0 Role

- 3.1 The Shadow Cabinet will have collective responsibility for providing an effective challenge to the controlling executive and for constructive scrutiny of the achievement of the Council's corporate and service objectives and priorities, as would be expected from the largest Opposition Group.

4.0 Questions to Cabinet

- 4.1 Members of the Shadow Cabinet have a right to present questions to Cabinet as allowed under the Constitution:
- 4.1.1 If two days' notice in writing has been given to the Monitoring Officer, a Shadow Cabinet Member, may ask the Cabinet Member a question on a matter set out on the Cabinet agenda for that meeting.
- 4.1.2 Every question of which notice has been given under 4.1.1 above shall be put and answered without discussion.

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- 4.1.3 A Shadow Cabinet Member under 4.1.1 asking a question, once their question has been responded to, may ask one relevant supplementary question which must arise directly out of the original question, whether it is answered or not, or arising from the reply. The question must be put as a direct question and not preceded by a statement.
- 4.1.4 If a Shadow Cabinet Member, having submitted written notice of a question, is unable to attend the meeting of Cabinet, a written response shall be provided to the Shadow Cabinet and a copy appended to the minutes of the meeting.

5.0 Content of questions

- 5.1 The Monitoring Officer may reject a Shadow Cabinet Member's request to ask a question if:
 - 5.1.1 it does not comply with any of the requirements of this Protocol;
 - 5.1.2 it is not about a matter which is being considered as an item of business at the meeting;
 - 5.1.3 it is defamatory, frivolous, vexatious, or offensive; and/or
 - 5.1.4 it would require the disclosure of confidential or exempt information or unauthorised/improper disclosure of personal data or personal sensitive data.

6.0 Rights of Shadow Cabinet Members to Private Briefings

- 6.1 Shadow Cabinet Members are entitled to request private briefings from Council Chief Officers on:
 - 6.1.1 proposals to be considered by the Cabinet that have been published;
 - 6.1.2 matters contained within the Cabinet Forward Plan; and
 - 6.1.3 other matters identified by the Shadow Cabinet.
- 6.2 The Shadow Cabinet acknowledges that certain information and details may not be possible to include in any briefing without the approval of the Executive or due to legal and/or the need to maintain confidentiality or confidence. In such circumstances, the Chief Officer shall explain the reasons for not disclosing information.

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6.3 In such cases, the procedures set out under section 33, Part 5 of the Sandwell Metropolitan Borough Council Protocol on Member/Officer Relations will apply.

6.4 Directors can share with Shadow Cabinet Members information relating to policy as well as statistical analysis. For the avoidance of doubt, all briefings shall be factual and non-political in nature and not reveal information and advice that is precluded by statute or other established practices.

6.5 The briefings shall be underpinned, amongst others, by respect, dignity, courtesy, integrity, openness, mutual support and appropriate confidentiality.

7.0 Budget briefing Arrangements

7.1 Council shall make arrangements for the Shadow Cabinet Members to receive briefings on the budget setting process. This support can include but not limited to supporting the opposition group prepare an alternative budget.

8.0 Information on Cabinet Forward Plans and other Plans

8.1 Members of the Shadow Cabinet shall be entitled to receive timely information on the Cabinet Forward Plan as well as Scrutiny Work Programmes.

9.0 Information on delegated decisions

9.1 Shadow Cabinet Members shall be entitled to receive periodically information on the list of delegated executive decisions made by individual Cabinet Members and officers.

10.0 Limitations on access to information

10.1 Subject to Members existing rights of access to information as set out in Section 24-Part 4 Access to Information Rules within the Constitution, the Executive, cognisant of its duty to provide information upon request, has discretion on the nature, form, and content of information which it may or may not share with members of the Shadow Cabinet.

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- 10.2 Any exercise of discretion by the Executive may be subject to the provision of confidentiality undertakings by the Shadow Cabinet as to the access, use or processing of information shared under this Protocol.
- 10.3 Subject to 10.2 above, information shared with the Shadow Cabinet confidentially or in confidence shall not be disclosed by the Shadow Cabinet to any other person(s) within the council or with any external third party. Any requests for disclosure of such information must be referred to the Monitoring Officer for consideration and determination.

11.0 Powers

- 11.1 For the avoidance of doubt, the Shadow Cabinet is not a decision-making body and will not have any Executive or Non-Executive powers. In this respect, council officers cannot be instructed to act on behalf of the Shadow Cabinet or individual members of the Shadow Cabinet in any way.