

The Respective Roles of Members and Officers and Dealing with Conflicts of Interest

Introduction

Cherwell District Council (CDC) and South Northamptonshire Council (SNC) have created a number of shared posts and teams and intend to create further shared posts and teams in the future. Council owned/influenced companies/organisations (Council Entities) have also been created and it is intended to create more in the future.

Shared officers will divide their time on an equal basis between the authorities or on such other basis as is agreed via the approved business case for the relevant service (although peaks of work in one or more councils may result in short term variations from this) and will at all times act in the best interests of both the authorities. Nominated officers may also spend their time serving Council Entities as set out in their letter of nomination from the councils. Underpinning this is an acknowledgment that where a smaller number of senior officers will be serving multiple organisations, there will be a need to reflect this new set of circumstances in the way in which officers have to operate.

Members of the authorities need to be sensitive to this change with regard to the respective roles of officers and members. In particular all members and officers need to be aware of the action to be taken when there is an actual or potential conflict of interest in acting for more than one organisation.

The role of Members

At each authority full Council is collectively responsible for setting Council policy within the defined policy framework. The intention of the authorities is to remain sovereign bodies under the Section 113 agreement, but in setting their own Council policy they will have regard to the views and policies of the other authority and will endeavour to avoid adopting any policy which explicitly and overtly contradicts the policy of the other authority.

CDC has established an Executive to bring forward the delivery of their agreed policies. Members of the Executive are both collectively and individually accountable for carrying through the Council's policy objectives. SNC has also established a Cabinet to bring forward the delivery of its agreed policies and members of the Cabinet are collectively (but not individually) accountable for carrying through the Council's policy objectives.

At neither of the authorities are members directly involved in the day to day provision of services to the public but members of the Executive/Cabinet will have a close involvement with officers in dealing with the effectiveness of service provision. It is recognised that on occasion this may result in the need for immediate contact with officers but where practicable such contact will be on a managed basis. In order to make best use of officer and member time, there will be mutually managed

contact between Executive/Cabinet members and officers on service provision where members pursue matters on behalf of their constituents.

As only Executive/Cabinet lead members/portfolio holders have executive authority/responsibilities as members all other members will need to pursue matters with the appropriate lead member/portfolio holder or officer through a managed approach. A portfolio holder at CDC may take certain decisions on matters within their own portfolio, and within the scheme of delegation of the relevant constitution, but in doing so must be aware of any possible conflict in policy or budget. At SNC, where portfolio holders are not vested with individual decision taking power, such decisions can only be taken by the Cabinet collectively but the same principles and approach will be followed.

No member (portfolio holder or otherwise) should become involved in the day to day management or operation of a service area, which shall be the responsibility of the head of service.

Members may also be appointed as Non-Executive Directors/ Trustees of Council Entities.

The role of Officers

Officers are equally accountable to the Council and the Executive/Cabinet. All shared officers are equally accountable to both Councils and to the Executive and Cabinet as appropriate.

Officers are professional advisers on policy and carry out the instructions of the Council and the Executive/Cabinet as well as exercising powers that are delegated to them and taking operational decisions within their areas of responsibility.

Officers may also be appointed as Directors/ Trustees of Council Entities.

The possibility of conflict between organisations should be minimised by identifying from the outset where potential conflict might arise, operating the ethical walls policy appended and referring, if necessary, such conflict through the dispute resolution mechanism in the Section 113 agreement/ shareholder agreement/ Memorandum of Understanding.

The role of Directors/Trustees

Both members and officers may be Officers may also be nominated and appointed as Directors/ Trustees of Council Entities. This will involve members and officers serving together as board members equally in terms of voting rights and responsibilities. Councillors who are Non-Executive Directors will by their nature have different and often higher levels of involvement with the organisation to which they are appointed than members would normally would have. However, day to day management of operations and staff shall remain the responsibility of the managing director of the Council Entity and board collectively.

How these roles work in practice

Decisions on matters relating to each Council's policy framework are taken by members at meetings of full Council, usually after having considered the recommendations of the Executive/Cabinet or appropriate Committee which in turn considers the recommendations of the officers.

Decisions on policy matters within the relevant Council's policy framework are taken by the Executive/ at CDC and Cabinet at SNC having considered the recommendations of officers.

Decisions on policy matters by Council Entities are taken by the board.

The Councils have an adopted scheme of delegation .This scheme sets out what is delegated to which body or officer, either conditionally or unconditionally. The Councils can review their scheme of delegation at any time to ensure decisions are being taken at the appropriate level. The process of delegation ensures that members are not overloaded with relatively less important matters and can concentrate on important policy issues and the effectiveness of service provision and continuous improvement in service. Members who are not portfolio holders have an important role in representing the views of their constituents and ensuring through scrutiny that the Council's policies and plans are effectively delivered. Some members (portfolio holders and otherwise) have roles on regulatory committees dealing with matters such as planning and licensing. To minimise the possibility of any conflict of interest, or defect in process, the schemes of delegations of the authorities should be harmonised so far as possible. Where differences need to remain there should be a clear business case for this.

Council Entities have adopted articles or a constitution and these documents set out what is delegated to which body or employee, either conditionally or unconditionally. They can be reviewed at any time to ensure decisions are being taken at the appropriate level.

It is recognised that there may be rare occasions where it is not possible to reconcile the interests of two or more organisations with their respective legal responsibilities. Such conflicts shall be managed by ensuring that relevant officers and members in each organisation are ring fenced from each other through the creation of ethical walls in accordance with the appended procedure to ensure that due regard is taken of each organisation and the need for certain matters to remain confidential to one or other organisation.

Statutory requirements

The Councils derive their powers from statute. Some of these are mandatory (i.e the Councils must do them) and some are discretionary (i.e the Councils may carry them out if they wish). In all cases members and officers of both authorities may only operate within the law.

Councils must have a Head of Paid Service, a Monitoring Officer and a Section 151 Officer. These officers are part of the senior management team and have an obligation to act in the best interests of their appointing authority/authorities.

If any of these statutory posts in a shared role consider that there is a conflict of interest within their area of responsibility which is affecting the ability of either Council to function effectively the most appropriate statutory officer may take a report to the appropriate full Councils setting out the conflict of interest and proposals for resolution.

Summary

Members are responsible for setting Council policy.

Officers are responsible for advising members on the setting of Council policy and for ensuring such policy is implemented.

The scheme of delegation determines which body or person deals with particular matters, and at which level decisions are taken.

The day to day management and operation of services is the responsibility of officers.

Where officers are dividing their time between two or more organisations members need to have regard to less time being available for their authority alone and the need to manage contact with officers to ensure the optimum use of both member and officer time.

If conflicts arise in relation to the respective regulatory duties of any of the organisations steps will be taken to ensure the ring fencing of officers and the confidentiality of information as necessary.

Otherwise, where there is actual or potential conflict there are three routes depending on the nature of the conflict,

1. agree to pay for appropriate external support to advise one or more authorities.
2. refer the issue through the dispute mechanism in the section 113 agreement, shareholder agreement or memorandum of understanding.
3. the most appropriate statutory officer may refer the matter to either or both full Councils for resolution.