

3.3 The Respective Roles of Members and Officers and Dealing with Conflicts of Interest/Ethical Walls Policy

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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

October 2016

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 Assistant Director.

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.

Appendix

Ethical Walls Procedure

This procedure is designed to be read alongside the protocol on the Respective Roles of Members and Officers and Dealing with Conflicts of Interest.

It is recognised that there may be rare occasions most commonly in a regulatory context or where a council owned/ influenced company/organisation context (Council Entity) has been established where it is not possible to reconcile the interests of the two Councils or those between the council(s) and a Council Entity with their respective legal responsibilities.

Such conflicts shall be managed by ensuring that relevant officers working for each side are ring fenced from each other to ensure that due regard is taken of the respective and conflicting duties and interests and the need for certain matters to remain confidential to the individual Council or Council Entity. This procedure sets out how this will operate in practice.

Background

An Ethical wall, cone of silence, screen or firewall is a business term describing an information barrier within an organisation that is erected in order to prevent exchanges or communication that could lead to conflicts of interest and/or the disclosure of information which is confidential to one Council or the other or to a Council Entity. For example an ethical wall may be erected to separate and isolate people who make investments from those who are privy to confidential information that could influence the investment decisions, in newspapers between journalists and advertising executives to protect editorial independence and in law firms where different solicitors are acting for different clients on the same issue.

For the vast majority of members and officers there will be no conflict of interest in working for, being appointed to or advising more than one Council or Council Entity, in fact most officers and members will not experience this during their time in local government. However, a small number of officers and members mainly those holding Executive, senior management, statutory, legal, financial, regulatory and planning posts may face situations where they become aware of conflict or potential conflict between the councils or between one or both of the Councils and a Council Entity. There is a need for officers and members in these posts to maintain vigilance in identifying these situations where conflict could arise. Whilst there is no definitive list of these situations, these might include where one authority is consulting the other with regard to planning policy, planning applications, boundary changes, electoral areas or other situations where there is either an implied or express duty to consult and/or co-operate. Similar situations apply with regard to legal matters where the Councils are on either side of a dispute and the consideration of

homelessness applications to one Council where there may be a local connection identified with one of the others. Similar situations apply to the Council(s) and Council Entities where an officer or member may be a Director or trustee or where an officer or member who is a Director may be dealing with other officers or members in their capacity as Directors or trustees of another Council Entity.

In all cases officers and members should always err on the side of caution and seek advice as it is much better to deal with and plan for potential conflicts, as when actual conflicts are identified it may be that too many officers and members are already acting for one side or the other and/or the erection of the Ethical Wall may be too late. The creation of an Ethical Wall does require a level of maturity and respect from those on either side of it. For instance it is not uncommon for a manager to be on one side and a direct report on the other.

If there is a conflict or significant risk of a conflict, between the councils, or between the Council(s) and a Council Entity the officer or member must not act for both, except where the councils or the council(s) and the Council Entity are expressly pursuing the same common objective. In all cases of conflict or potential conflict a decision should be sought immediately from the Monitoring Officer. The Monitoring Officer in deciding whether there is a conflict or whether the officer or member can act for multiple organisations, will ensure that the overriding consideration is the best interests of the individual organisation, and in particular, whether the benefits of the officer or member acting for all them outweighs the risk.

If the Monitoring Officer feel that there is a risk of conflict or that the interest of the organisations are not best served by an officer or member acting for both they will invoke this procedure.

Procedure

When a conflict or potential conflict is identified an officer or member should alert the Monitoring Officer or one of his deputies.

The Monitoring Officer will provide advice to the officer on whether there is a conflict and in all cases alert all Leadership team members. The Monitoring Officer will maintain an audit trail of his actions and any advice given, including a list of active Ethical Walls.

In the case that a conflict or potential conflict is identified the Monitoring Officer (in consultation with the relevant members/ Directors / Assistant Directors) will draw up a list of the officers who will be representing the interests of each party.

The Monitoring Officer will alert those on the list, Leadership Team, relevant lead members and any external parties to the discussion, that an Ethical Wall has been put in place and who they should deal with.

Once the Ethical Wall has been erected, officers on either side of the wall should treat and behave towards the other Council or Council Entity and the officers representing it with full

regard to the issue in question as if they were an external organisation. That is information supplied by the other party should be thoroughly and critically examined and not taken on trust or face value, and information which is confidential to the interests of the organisation they represent must not be disclosed to the other party.

Whilst this relationship should be respectful and business like, it should be based on auditable correspondence as opposed to verbal communications as such documents could later be relied upon in legal action.

It should be agreed where files and electronic correspondence should be held and neither party should access information held by the other. Appropriate access restrictions will be established by ICT Services for information held electronically.

Officers should only advise members and officers on their side of the wall. Reports to committees must be in the name of and signed off by officers on the correct side of the wall and officers should not be present at meetings at any time when they are dealing with the issue on the other side of the wall.

The Ethical Wall should only be used for the issue in question and does not extend to any other areas of work.

When the issue in question has been successfully concluded the Monitoring Officer(s) should be notified and they will close the issue on the list of active Ethical Walls if they deem it appropriate.

In the case of an Ethical Wall between the Councils, the list will contain a minimum of two named officers on either side, one of which will be the Monitoring Officer, a Deputy Monitoring Officer or a legal officer. The Head of Paid Service (or in her absence or case of conflict her deputy) will not normally be assigned to either side of the wall and will not become involved in the issue. This enables the Head of Paid Service to arbitrate on any issue including human resources implications which may arise in the operation of this procedure. For employees in shared teams the identity of their employing Council will not necessarily dictate the side of the Wall to which they are allocated.

Statutory Officers and Section 113 Agreement Dispute Resolution Procedure

All Councils must have a Head of Paid Service, a Monitoring Officer and a Section 151 Officer. These officers are part of the management teams and have a legal obligation to act in the best interests of the authorities which appointed them.

It is imperative that the statutory officer system is robust and resilient therefore statutory officers should ensure that they appoint deputy statutory officers who may act for the other council(s) in case they are conflicted. To account for this and also to ensure there is sufficient statutory officer resilience; the recommendation is that each statutory officer appoints at least one, but preferably two deputies.

If any of these statutory posts consider that there is a conflict of interest within their area of responsibility, which has not been resolved through invoking this procedure and which is affecting the ability of any of the individual Councils to function effectively the most appropriate statutory officer(s) may take a report to the full Councils setting out the conflict of interest and proposals for resolution and invoke the Section 113 Agreement dispute resolution procedure between the Councils or the relevant shareholder agreement/Memorandum of Understanding Dispute resolution procedure for Council Entities if necessary.