

# **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 shared senior management team and, subject to the acceptance by both Councils of business cases, intend to create shared teams below this level in the future.

Shared officers will be dividing their time on an equal basis between the two authorities (although peaks of work in one or other Council may result in short term variations from this) and will at all times act in the best interests of both authorities. Underpinning this is an acknowledgment that where a smaller number of senior officers will be serving two organisations, there will be a need to reflect this new set of circumstances in the way in which officers have to operate.

The members of the two 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 both authorities.

Having a protocol of this nature is a requirement of the Section 113 agreement between the two councils. This protocol also addresses a requirement arising from the SNC Annual Audit letter for 2009/10.

## **The role of Members**

The full Council in both authorities is collectively responsible for setting Council policy within the defined policy framework. Both authorities state their intention to remain sovereign bodies under the Section 113 agreement of December 9<sup>th</sup> 2010 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 its agreed policies. Members of the Executive are both collectively and individually accountable for carrying through the Council's policy objectives. SNC has 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 authority 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 portfolio holders have executive authority/responsibilities as members all other members will need to pursue matters with the appropriate portfolio holder or officer through a managed approach. A portfolio holder at CDC may issue instructions to a director or head of service on matters within their own portfolio, and within the CDC scheme of delegation of the relevant constitution, but in doing so must be aware of any possible conflict in policy, or budget, or time available arising from the sharing of that officer between two authorities. At SNC, where portfolio holders are not vested with individual decision taking power, such instructions can only be given by the Cabinet collectively but the same principles and approach will be followed.

A portfolio holder at CDC may not issue instructions below head of service level.

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

### **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 CDC's Executive and SNC's Cabinet.

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. The possibility of conflict between the Councils arising from those policies and instructions should be minimised by identifying from the outset where potential conflict might arise and referring, if necessary, such conflict through the dispute resolution mechanism in the Section 113 agreement.

### **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 or the relevant portfolio holder (at CDC) or Cabinet (at SNC) having considered the recommendations of officers.

The Councils each have an adopted scheme of delegation. These schemes set out what is delegated to which body or officer, either conditionally or unconditionally. The Councils can each 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 two authorities should be harmonised so far as possible. Where differences need to remain there should be a clear business case for this.

It is recognised that there may be rare occasions in a regulatory context where it is not possible to reconcile the interests of both Councils with their respective legal responsibilities. Such conflicts shall be managed by ensuring that relevant officers in each Council are ring fenced from each other to ensure that due regard is taken of each Council's regulatory duties and the need for certain matters to remain confidential to one or other Council.

### **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.

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

If any of these statutory posts consider that there is a conflict of interest within their area of responsibility which is affecting the ability of either, or both, Councils to function effectively the most appropriate statutory officer may take a report to both 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 equally between two authorities 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 each Council steps will be taken to ensure the ring fencing of officers at each Council 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 either or both authorities.
2. refer the issue through the dispute mechanism in the section 113 agreement
3. the most appropriate statutory officer may refer the matter to either or both full Councils for resolution.