

ADVICE NOTE FOR COUNCILLORS ON DISTINGUISHING BETWEEN THEIR STRATEGIC ROLE AND ANY OPERATIONAL WORK

1. Introduction

- 1.1 This Advice Note, issued by the Standards Commission for Scotland (Standards Commission), aims to provide assistance to councillors to help them in distinguishing between strategic and operational management.
- 1.2 The Advice Note suggests issues councillors should consider in order for them to ensure they undertake their scrutiny role effectively while still complying with the provisions regarding relationships with employees and decision-making in the Councillors' Code of Conduct (the Code).
- 1.3 Councillors have a personal responsibility to observe and comply with the rules in the Code. This Advice Note is intended to assist them in interpreting the provisions in the Code in order to do so and should, therefore, be read in conjunction with the Code of Conduct.
- 1.4 Audit Scotland's *How Councils Work* series and, in particular, their 2016 Report '*Roles and working relationships in councils - Are you still getting it right?*' make suggestions to help councillors drive improvement in respect of governance arrangements and to manage productive relationships with officers. Councillors are, therefore, also encouraged to refer to their work in this regard.
- 1.5 Councillors are required to provide strategic leadership and management. This involves setting strategy, planning, scrutinising and making major, complex decisions that concern the Council as a whole. Councillors are not, however, responsible for operational management, which is the planning, organising and execution involved in day to day activities. This is role of officers.
- 1.6 This Advice Note aims to help councillors distinguish between strategic and operational management so that they do not become inappropriately involved in the officers' role.
- 1.7 It is recognised, however, that councillors are also required to be involved in certain operational matters when:
 - Undertaking advocacy work (lobbying or campaigning);
 - Representing constituents (case work); and
 - Taking decisions on quasi-judicial or regulatory applications (in role on any regulatory, appeals and appointment committees).

This Advice Note also aims, therefore, to provide advice about how to balance these more operational aspects of a councillors' role with their strategic role. It also provides advice about

how to avoid conflicts when undertaking the decision-making role on any regulatory, appeals and appointment committees.

2. Relevant Provisions in the Councillors' Code of Conduct

- 2.1 The Code contains provisions relating to the differences between the responsibilities of elected members and Council employees. Specific applicable paragraphs in the Code include:

Relationships with Employees (including those employed by contractors providing services to the Council)

- 3.3 *You must respect all Council employees and the role they play, and treat them with courtesy at all times. It is expected that employees will show the same consideration in return.*
- 3.4 *Whilst both you and Council employees are servants of the public, you have separate responsibilities: you are responsible to the electorate but the employee is responsible to the Council as his or her employer. You must respect the different roles that you and an employee play. Your role is to determine policy and to participate in decisions on matters placed before you, not to engage in direct operational management of the Council's services; that is the responsibility of the Council's employees. It is also the responsibility of the Chief Executive and senior employees to help ensure that the policies of the Council are implemented.*
- 3.5 *You must follow the Protocol for Relations between Councillors and Employees attached at Annex C of the Code of Conduct. A breach of the Protocol will be considered as a breach of this Code.*

Annex C

- 2 *Councillors and employees should work in an atmosphere of mutual trust and respect, with neither party seeking to take unfair advantage of their position.*
- 4 *Within a Council, councillors have a number of different roles, all of which call for separate consideration. Some councillors are chairs of committees, most belong to political groups, and all have a local ward to represent.*
- 16 *All councillors represent part of the area of the Council. Within each Council's rules about consultation and councillor involvement, employees must treat all councillors fairly and openly in their role as local representatives. When performing their local representative role, councillors will be seen by the public as representing the Council and should act in accordance with the principles of the Code of Conduct for Councillors and this protocol.*

3. Strategic and Operational Management

- 3.1 The work of a Council is a team effort, in which the role and work of councillors is balanced with, and complemented by, the role and work of officers. As a councillor, your role is to determine policy and to participate in decisions on matters placed before you. It is not to engage in direct operational management of the Council's services. Your role is to:
- provide strategic leadership; to ensure financial stewardship is achieved through the efficient, economic and effective use of resources; and

- hold the Chief Executive and senior management team to account by scrutinising the implementation of policies, procedure and expenditure.

Your scrutiny role should be undertaken with a view to making recommendations for improvement and should not be used to direct or instruct officers to change specific operational decisions. You may also be involved in determining the steps needed to deal with changes which are likely to impact on the strategic aims and objectives of the Council. Your duty is also to help ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control.

- 3.2 The Local Government (Scotland) Act 1973 requires the Council to maintain a list specifying those powers which are exercisable by officers, and stating the title of the officer who exercises that power. Your Council will, therefore, have a Scheme of Delegation or Scheme of Administration intended to facilitate the efficient conduct of its business by clearly setting out the nature and extent of the powers delegated to officers by the Council. The powers delegated to officers will normally only be subject to material change by an action of the Council in accordance with its Standing Orders. A list of statutory officers can be found in the first of Audit Scotland's '*How Councils Work*' series at www.audit-scotland.gov.uk/our-work/how-councils-work.
- 3.3 You should ensure you are familiar with your Council's Scheme of Delegation or Scheme of Administration. You should ensure you are aware of what decisions are to be taken by officers and the level at which they are made. You should note that they will also be many operational decisions routinely and appropriately taken by officers that will not necessarily be listed in such a scheme.
- 3.4 If a decision involves purely operational or administrative issues, with any expenditure being within existing budgets, it will usually be made by an officer without reference to elected members. It should be noted that some decisions may have both operational and strategic elements and, as such, decisions may be taken by officers following consultation with certain Members (such as the Leader or Deputy Leader, Committee Chairs, Vice Chairs or Ward Members) in order to have appropriate engagement and steer from elected members. Determining and issuing a response on behalf of the Council to a press enquiry will usually also be a matter for officers.
- 3.5 You may be obliged as a councillor, however, to make decisions on some individual planning and regulatory matters. You may also make decisions on matters of an operational nature, being individual applications, if you sit on other committees such as regulatory, appeals and appointment committees (see paragraphs 4.1 and 4.11). Before you accept such a role you should make sure you are clear as to what it will involve and that you understand how to identify, and appropriately manage, any conflicts of interest.
- 3.6 You also have a role in representing the electorate at a ward level. In doing so, you may be expected to undertake some case work on behalf of individual constituents and also to campaign on local issues (see paragraphs 4.13 to 4.21 below).
- 3.7 These concurrent obligations can sometimes make it difficult for elected members to distinguish between operational and strategic matters and to understand the extent to which they should get involved in certain issues and decisions, which can lead to difficulties as outlined below.

4. Matters to consider

- 4.1 You are expected to undertake some case work on behalf of individual constituents and also to campaign on local issues. [This can result, however, in you having a conflict of interest when it comes to decision-making, particularly in regulatory or quasi-judicial situations.] If you choose to be an advocate for or against a particular cause you will forfeit your right to be a decision-maker in regulatory or quasi-judicial decisions regarding that cause.

- 4.2 Becoming inappropriately involved in operational management and / or operational decision-making will be a breach of the Councillor's Code of Conduct. It can also damage your relationship with officers and have a detrimental effect on how they perform their duties. Some examples of how a councillor might become inappropriately involved in an operational matter can be found at Annex B. You should remember that you have, or may be perceived as being in, a position of power over an officer. This means that they may feel pressured into taking a particular action or decision or to focus on the matter you are concerned with over other work, even if they have tasks that should be completed as a higher priority.
- 4.3 A failure to appropriately distinguish between strategic and operational matters will be a contravention of the Councillors' Code of Conduct. Some examples are provided at Annex A, and include cases where a councillor became too involved in a complex social care case; where a councillor failed to declare his involvement with a lobbying group when making a planning decision; and where a councillor failed to distinguish between his role as potential objector to a planning application and his role as a councillor.
- 4.4 You should consider whether any matter you are getting involved in or have asked to be involved in is strategic or operational in nature. You should bear in mind that you have a duty to act in the public interest and undertake a scrutiny role to ensure your Council uses its resources prudently and in accordance with law. Robust challenge and involvement from elected members in driving improvement of council performance at a corporate level, linked to the Council's priorities, is a key element of a commitment to delivering Best Value, as set out in the Local Government in Scotland Act 2003. This statutory duty applies to every elected councillor as well as to officers. In undertaking your scrutiny role, you are obliged to make sure service user and community views are taken into account and that the Council responds to these.
- 4.5 You should bear in mind, however, that you are a member of the Council. You have a duty to act in the interests of the Council as a whole and are representing it at all times, regardless of whether you are in the administration or not. [Although you also need to be aware of any separate responsibilities you may have as a member of an external organisation such as any charity, Health & Social Care Integration Joint Board, Arms' Length External Organisation or Regional Transport Partnership to which you have been nominated or appointed by your Council – see paragraph 5.1 for where to find more guidance on this topic]. It is understood that Councils operate in an often highly politicised environment, which can lead to tensions. However, you should be conscious of considering the overall interests of the Council even when advocating a particular political point or agenda.
- 4.6 You have a right to receive good quality information from officers on which to base your decisions and undertake your scrutiny role. This information should be proportionate, balanced, comprehensive and understandable. If you do not consider you are receiving the information you require to assure yourself that you are in a position to make informed decisions, you should raise the issue with an appropriate officer (such as the relevant Head of Service). The Improvement Service's Elected Member Induction Notebook on Standards, Ethics and Information Handling contains guidance on the type of information you are entitled to receive. Information on where to find the Notebook is provided at Section 6 of this Advice Note.
- 4.7 In dealing with officers and members of the public you should always consider both what you are expressing and the way you are expressing it. You should also consider how your conduct could be perceived. You should be able to undertake a scrutiny role, represent the public and any constituents, or make a political point in a constructive, respectful, courteous and appropriate manner without resorting to personal attacks, being offensive, abusive and / or unduly disruptive.
- 4.8 You should bear in mind that any issues relating to behaviour, performance or conduct of an officer should be raised privately with the appropriate senior manager. You should not become involved in any issues relating to individual officers' pay or terms and conditions of employment,

unless you are serving on a committee delegated to deal with such a tasks. Similarly, the recruitment of staff is an operational matter and should be left to officers, unless you serve on a committee that deals with the appointment of senior officers.

4.9 You must consider:

- Whether you are acting in accordance with the provisions in the Councillors' Code;
- Whether you are asking an officer to do something which could compromise them or prevent them from undertaking their duties properly and appropriately, including being unable to complete other tasks;
- Whether you are asking an officer to act against instructions of management;
- Whether you are bringing any undue influence to bear on an officer to take a certain action, particularly if it is contrary to the law or the Council's policies and procedures (bearing in mind that you may well be perceived by officers as being in a position of power);
- The nature of the officer's role and their seniority;
- Whether your actions could impact on the mutual bond of trust between councillor / members and officers; Whether you are asking an officer to do something which compromises them or could compromise them (including exposing them to disciplinary measures);
- Whether your actions result in an officer feeling pressured or threatened or adversely impact on his or her health; and
- That while you are entitled to freedom of expression under Article 10 of the European Convention on Human Rights, the right is not absolute and would not cover gratuitous, offensive or abusive personal attacks on officers or harassing, bullying or threatening officers in the course of their employment.

4.10 You should note that even if your conduct may not amount to a breach of the Code of Conduct there could well be other consequences, for example, exposing the Council to judicial review or to a grievance from an officer.

4.11 If you sit on any regulatory, appeal or appointment committee you should make sure you are familiar with the committee's standing orders / procedures and the extent of their delegated powers. You should also familiarise yourself with your Council's call-in processes, if such procedures are in place.

4.12 If you are asked to become involved in an operational matter, you need to be clear about whether you are simply being asked to assist a constituent or constituents in how to access the appropriate service or officer or whether you are advocating for or against a cause.

Assisting constituents

4.13 If, at a ward level, you are asked to provide a constituent with assistance, you should ensure you manage their expectations in terms of the extent to which you can help. For example, you should advise a constituent who has sought help with a case that while you can seek information on their behalf, you cannot overturn a decision and that they will need to follow the appropriate procedures for doing so. You should also advise the constituent that you cannot seek legal advice from the Council on their behalf or pass on any legal advice provided to the Council or by a Council officer.

4.14 You should not pursue any casework that is likely to come before you at a quasi-judicial or regulatory committee as doing so could preclude you from taking part in the discussion and voting. Again, you should explain why you cannot do so to any constituent who has asked for assistance. If you choose to pursue such casework, you should follow the guidance at paragraphs 4.22 to 4.24 below on advocating for or against a cause.

- 4.15 In order to avoid becoming inappropriately involved in operational matters and to prevent any conflicts arising, you should consider exactly what you are being asked or are offering to do on behalf of a constituent. There should be no difficulty if you have managed your constituent's expectations appropriately and are simply:
- Advising officers of representations received;
 - Helping constituents make their views known to the relevant and appropriate officer;
 - Seeking factual information on progress on behalf of a constituent; and / or
 - Advising a constituent about whom they should contact and the correct procedure to follow.
- 4.16 You should use your Council's case management system (or any equivalent agreed internal procedure), where appropriate, to record details of enquiries you make on behalf of constituents and also to keep track of any response and progress made towards resolving their query or concern. This will ensure that such an enquiry is dealt with by the appropriate officer. You should record or keep a note of any advice you give to a constituent. Some Councils have agreed procedures or protocols for the communication between councillors and officers. You should ensure that if such a protocol exists, you are familiar with it.
- 4.17 If you are unable or it is not appropriate to use the case management system (or any equivalent agreed internal procedure), you should ensure any enquiry is directed towards an appropriate officer, which will normally be an officer at a senior level who can then delegate the work as appropriate. You should bear in mind that officers are accountable to their own line managers and, even if you think you have identified an officer who you think is best placed to answer your query, you will not have knowledge of their workload and / or whether they have been asked to prioritise any other tasks.
- 4.18 If you have been asked by a constituent to help with concerns they have about a Council service or decision and / or you have identified a mistake or problem, you can ask officers to review what has happened and, what is being done to resolve the issue and to prevent it from happening again. You should ensure the constituent is aware, however, that councillor enquiries are not a substitute for any formal complaint process. You should also make your constituents aware that if decisions have been made in accordance with Council policy, it may not be appropriate for them to be reviewed.
- 4.19 You should decline to get involved if you are approached by any officer who is also a constituent in respect of any matters relating to their employment with the Council. You should advise the officer concerned to contact their line manager, trade union or follow the appropriate internal procedures for raising any such issues.
- 4.20 While you may have some experience in a particular field, you should never assume or should be wary of assuming that you have more knowledge than officers who receive specific training and who should have a good, and up to date, awareness of the Council's policies and procedures relating to the tasks they are performing.
- 4.21 If you consider an officer is not providing you with information you have a right to access or is not recognising that you have a legitimate advocacy role on behalf of constituents, you should raise your concerns with the appropriate senior manager.
- 4.22 If you are concerned that a constituent is making or has made a fraudulent claim, you may be obliged to report the matter. You should, therefore, ensure that your constituents are aware that not all information they provide to you can be kept confidential. More information and guidance on confidential information and data protection can be found in the Improvement Service's Elected Member Induction Notebook on Standards, Ethics and Information Handling.

Advocating for or against a cause / taking decisions on quasi-judicial or regulatory applications

- 4.23 If you are approached, you can listen to views expressed but you must make it clear that you cannot lend support for or make a decision on a regulatory or quasi-judicial matter until the appropriate meeting, when you have heard all the evidence. If you decide to advocate for or against a particular cause, you will forfeit your right to be a decision-maker in regulatory or quasi-judicial decisions regarding that cause.
- 4.24 Where you wish to make representations on behalf of constituents or other parties, you may do so (in accordance with paragraph 7.15 of the Councillors' Code, as reproduced below), providing you do so in terms of the Council's procedures; you declare your interest in the matter; and, having made any representations, you retire fully from the meeting room (it is not sufficient to retire to a public gallery situated within the meeting room).

Representations on behalf of constituents or other parties

- 7.15 *If as part of the decision-making process you wish to make representations on behalf of constituents or other parties you may do so providing:-*
- i) you do so in terms of procedures agreed by the Council which afford equal opportunity to any parties wishing to make representations to do so,*
 - (ii) you declare your interest in the matter; and*
 - (iii) after making those representations you then retire from the meeting room.*

- 4.25 If you are making representations and, for example, you wish to support your constituents' views regarding a planning application, you should make this position clear as soon as possible to the chair of the committee and officers. Your declaration of interest should be recorded in the minutes of the meeting.

5. Further Sources of Information

- 5.1 The Standards Commission has published guidance and advice notes on how to interpret, and act in accordance with, the provisions in the Councillors' Code of Conduct, including those relating to relationships with employees. This guidance can be found on the Standards Commission's website at: www.standardscommissionscotland.org.uk/guidance/guidance-notes. The Standards Commission has also published guidance for councillors on arms' length external organisations, which seeks to assist councillors in recognising and dealing with potential conflicts of interest to minimise risks to governance and accountability arrangements. This advice can be found at: <http://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.
- 5.2 The Standards Commission also publishes written decisions of Hearings held on its website, which can be found at: www.standardscommissionscotland.org.uk/cases/case-list.
- 5.3 The Improvement Service's Induction material includes guidance on Standards, Ethics and Information Handling; Corporate Governance; The Roles and Responsibilities of the Elected Member at Council Level; and The Roles and Responsibilities of the Elected Member at Ward Level. These can be found at: www.improvementservice.org.uk/elected-member-induction-materials.html.
- 5.4 The Accounts Commission's 2010 'Report on Roles and working relationships - are you getting it right?' and their 2016 Report 'Roles and working relationships in councils - Are you still getting it right?' highlight the complex and demanding role that councillors have in representing their constituents, providing strategic direction for the council, and scrutinising policy decisions and service performance. The Reports make recommendations to support councillors in their role in

order to help the drive for improvement in respect of governance arrangements. These Reports can be found at: www.audit-scotland.gov.uk/our-work/how-councils-work.

- 5.5 If you have any queries or concerns about how to interpret or act in accordance with the provisions in the Councillors' Code of Conduct, you should seek assistance from your Council's Monitoring Officer. Further information can also be obtained from the Standards Commission using the contact details outlined below.

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Data control and version information				
Date	Action by	Version Updated	Current version	Brief Description
07/02/2018	LJ	N/A	V0.1	Draft Advice Note finalised and issued for consultation.
02/05/2018	LJ	V0.1	V1.0	Final Advice Note issued and published.
28/06/2018	LJ	V1.0	V1.1	Addition of Annex B
24/07/2018	LJ	V1.1	V1.2	Addition of further examples to Annex B

ANNEX A: HEARING EXAMPLES

A councillor became involved in a social care case on behalf of a constituent during which time he had made suggestions and judgements about matters such as where his constituent should be housed, contact between the constituent and her children, and the rehabilitation of one child, which he was not qualified to do.

The Hearing Panel found that the councillor was not simply articulating his constituent's concerns but was instead inappropriately trying to use his role to engage in, and exert influence over, direct operational management.

While the Hearing Panel acknowledged the councillor had a responsibility to represent his constituent, it considered in so doing, he had lost sight of his other responsibilities as a councillor and his obligation under the Code to respect the different roles of councillors and officers. The councillor pursued the interests of his constituent without any objective consideration of the children's interests or the paramount duty the Council had to ensure their safety and welfare.

The Hearing Panel noted that the councillor had an expectation that actions should be taken in response to his engagement. The Hearing Panel considered that while his involvement may not have had any effect on the outcome of decisions, this had clearly been his intention.

The councillor failed to accept that he had an inherent influence in his role as an elected member. The Hearing Panel considered it was disingenuous to suggest it was open to officers to simply ignore his enquiries and requirements. The Hearing Panel further considered that the inappropriate level of involvement, enquiries and correspondence from the Respondent could have had an adverse impact on resources, given that officers felt obliged to respond.

The Hearing Panel concluded that the councillor's involvement in direct operational management and questioning of the professional judgement of officers amounted to a contravention of paragraph 3.4 of the Councillors' Code of Conduct. The councillor was suspended from all meetings of the Council for six months.

Before being elected, a councillor had been a spokesperson for a lobbying group who were opposed to a refurbishment of a school on its existing site. The councillor stood down from the position after the election but had continued to receive and send emails to members of the group, which included two of his close relatives. The councillor had, however, failed to declare his involvement as a non-financial interest and had failed to declare the non-financial interests of his sister and father-in-law, as close relatives, at meetings where a planning application in respect of the school was considered.

The Hearing Panel noted that the councillor's pre-election position as spokesperson for the group; his post-election public support for a new build site and his opposition to the refurbishment of the existing school; and the fact that he had continued to exchange emails about the matter meant that his involvement with the group had continued after his election as a councillor. The Hearing Panel concluded that, essentially, the councillor could be perceived as advocating for a cause. He should have declared his involvement and that of his relatives as non-financial interests, refrained from taking part in the planning decision and withdrawn from the room. The Hearing Panel found that the councillor had breached paragraphs 5.7, 5.12, 5.13 and 7.12 of the Councillors' Code of Conduct. The councillor was suspended from a planning committee of the Council for two months.

A councillor became involved in a dispute with his neighbour over the erection of a garden structure, which the councillor felt overshadowed his own garden. The councillor contacted key senior officers involved with Planning, requesting information or actions that would not be available to an ordinary member of the public. On one occasion, the councillor attempted to call-in his neighbour's planning application.

The Hearing Panel found that the councillor had used his position as a councillor to seek information not normally available to members of the public from senior officers of the Council, and attempted to exert influence in asking that the matter be dealt with urgently.

The Hearing Panel noted that although there was no evidence that the councillor attempted to put pressure on officers to reach a particular outcome in respect of the planning application, nor that his actions had any bearing on the decision that was ultimately made, officers may have felt under pressure to comply with such a request.

The Hearing Panel determined that the councillor's actions in requesting information not normally available to members of the public, in asking officers to deal with the matter urgently, and in failing to distinguish between himself as a potential objector and his role as a councillor when attempting to call-in the application, amounted to attempts to seek preferential treatment, and constituted a breach the Councillors' Code of Conduct. The councillor was censured.

ANNEX B: EXAMPLES OF WHEN A COUNCILLOR BECOMES INAPPROPRIATELY INVOLVED IN AN OPERATIONAL MATTER

Specific examples of areas where councillors may inappropriately seek to get involved in operational matters include where a councillor:

- Demands that the contents of a report or its recommendations are changed.
- Insists that Council policy is varied to benefit an individual constituent.
- Demands to sign-off a press release on behalf of the Council, as opposed to accepting he or she is simply being consulted on it
- Tries to direct or alter the evaluation of a tender, grant application, or any other evaluation (for example, the scoring for which school is first on the list for replacement).
- Becomes involved in an individual staffing matter (except when serving on a Committee tasked to deal with such matters, such as a Personnel Appeals Committee).
- Insists on attending an operational meeting with an outside body, or an internal officer working group where elected members are not normally present.
- Seeks access to confidential internal audit reports, including doing so in advance of related disciplinary proceedings.
- Seeks to negotiate directly with trade unions and, in doing so, undermines agreed collective bargaining and the officers involved.
- Seeks to alter and approve an operational plan.