

ROLES & RESPONSIBILITIES - Gosford and Water Eaton Parish Council

Councillors and officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give advice to Councillors and to the authority, and to carry out the authority's work under the direction and control of the Council and relevant committees.

THE RELATIONSHIP BETWEEN THE CLERK AND THE COUNCIL

- A local Council only functions well through partnership working between the Chairman, the Clerk to the Council and the Councillors. The most effective Councils are those where a climate of mutual respect has been achieved. The relationship between Councillors and officers is an essential ingredient that goes into the successful working of the organisation. This relationship within the authority is characterised by mutual respect, informality and trust. Councillors and officers feel free to speak to one another openly and honestly.
- It is clear from research carried out by both NALC and SLCC that a root cause of any difficulties is often a failure of mutual recognition of role. The Council has in place a member/officer protocol which seeks to set out the respective roles of the Clerk and Councillors in working together for the benefit of the community.
- Certain officers e.g. Town Clerk & Responsible Financial Officer have responsibilities in law over and above their obligations to the Council and to individual Councillors, and Councillors must respect these obligations, and must not obstruct officers in the discharge of these responsibilities.
- The Clerk and other officers of the Council are the employees of the Council corporate. No one Councillor, or group of Councillors may require the Clerk to the Council, or other Officers, to carry out any duty or function within the scope of their employment that does not have the sanction of the full Council acting under a majority decision.
- The Council has power to delegate functions to a Committee or Sub Committee of the Council, or to the Clerk to the Council, or other Officers.
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ROLE OF THE CLERK TO THE COUNCIL

- The current statutory basis for employing a Clerk is Section 112 of the Local Government Act 1972. The Clerk to the Council is 'The Proper Officer' of the Council i.e. the person responsible for formal acts and to whom all correspondence is addressed in the normal course of events, or for the service of legal documents.
- The Clerk is responsible for:
 - the administration of the affairs of the Council
 - advising the Council on policy matters
 - guiding the Chairman on procedural issues

- ensuring that Council decisions after due deliberation are conducted according to the relevant rules, regulations and procedures.
- It is the duty of the Clerk as the Proper Officer to assist Members of the Council on matters of fact and law. Councillors (even where it is contrary to their personal wishes or expectations) should take fully into account the advice and guidance given by the Clerk to the Council on the existence and applicability of the relevant facts or the law. Councillors should then seek means to make their policy decisions taking into account such guidance.
- The Clerk to the Council or designated deputy may take any of the actions necessary to continue the running of the Council, where no decision between alternative courses of action is needed – without waiting for a decision of a Council Meeting. Normally such a decision would be made in consultation with the Chairman and reported to the next Council meeting.
- If a Member resigns his/her seat, the Clerk acts as soon as the written notice reaches the Chairman. This is an automatic administrative function within the responsibilities of the Clerk to the Council as the Proper Officer. Other situations may be covered by the Council having given delegated powers to the Clerk to the Council.
- The Clerk to the Council is in the position of a non-partisan and independent Officer at the same time as being an employee. He or she must carry out the work and lawful instructions of the Council irrespective of any personal opinion or preference.

COUNCILLORS AS INDIVIDUALS

- It is the role of Councillors as individuals to represent their communities and bring their views into the Council's decision-making process. Whilst they can deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances, they will also need to balance different interests and represent their Ward as a whole. They will also need to be available to represent their Council on other bodies.
- Individuals cannot act as a councillor until they have signed a formal declaration of acceptance of office. This must be done in the prescribed form at or before the first meeting attended; unless the Council agrees that it can be done at a subsequent meeting.
- Councillors must also sign an agreement to abide by the code of conduct adopted by their council in which they agree to act openly and honourably in the public interest. They must never use their position to secure advantage for themselves, family or friends, and must not do anything that brings the council into disrepute. Members are under a duty to report any perceived breach of the Code.
- Councillors also have a duty to register specific financial interests within 28 days of election and must declare a personal interest as soon as they are aware that they might benefit, more than most other people in the parish, from the outcome of a discussion on the agenda. Where judgement of the public interest could be prejudiced, then this personal interest

becomes a prejudicial interest and they must leave the meeting room for that agenda item; this must also be minuted.

- Individuals have a duty to act properly as a councillor. In particular they have a responsibility to:
 - attend meetings when summoned to do so; the notice to attend a council meeting is, in law, a summons, because councillors have a duty to attend;
 - prepare for meetings by studying the agenda and making sure they are properly informed about issues to be discussed;
 - take part in meetings and form sound judgements based on what is best for the community – and then to abide by majority decisions;
 - ensure, with other councillors, that the council is properly managed;
 - represent the whole electorate, and not just those who voted for them;
 - listen, and then represent the views of the community when discussing council business and working with outside bodies;
 - maintain proper standards of behaviour as an elected representative.
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THE CHAIRMAN

- The first business of a parish council at the annual council meeting is to elect a Chairman. A council is not properly constituted until it has appointed a chairman and any business carried out before the election of a chairman is void. The successor becomes entitled to act as Chairman, even though he has himself not been elected to the new council. However, anyone elected to the office of Chairman cannot act in that office until the prescribed declaration of acceptance of office has been made.
- The Chairman of a council, if present at meetings, must preside. He generally has both an original and a casting vote unless he has not been elected as a councillor in the new council, when he does not have an original vote. Where there is an equality of votes in the election of a new chairman the presiding chairman has, and must use, a casting vote to break an equality of votes, whether he has an original vote or not.
- In law, the Chairman has few special powers (a casting vote and the right to convene, attend and chair the parish meeting; sign minutes and receive an allowance. He cannot be given delegated authority to act on behalf of the council, and the Chairman has no right in law to give any directions other than those approved by the full Council. In particular, for example, the Chairman of Council has no powers to suspend or dismiss the Officers of the Council.
- The powers and duties of the chairman are generally derived from standing orders and common law. At common law it is the duty of the chairman “to preserve order, and to take care that the proceedings are conducted in a proper manner and the sense of the meeting is properly ascertained”. The Chairman at a meeting has control of its procedure for the purpose of enforcing the law and good order. He must prevent decisions being taken on matters which are not on the agenda.

- Other responsibilities pertaining to meetings said to fall to the Chairman include:
 - Determining that the meeting is properly constituted and quorate;
 - Informing himself as to the business and objects of the meeting;
 - Confining discussion within the scope of the meeting and reasonable time limits;
 - Deciding on the validity of motions and amendments and points of order;
 - Adjourning the meeting (when circumstances justify and bearing in mind that the right to adjourn is vested in the meeting).

THE COUNCIL AS A CORPORATE BODY

- A parish council is a body corporate. It is an incident of corporate status that the corporation, rather than the individuals who comprise it, has legal significance. A member in his individual capacity has no executive powers and can exercise no lawful authority.
- Councils have a legal identity as corporate bodies and are separate and distinct from the persons who, comprise an authority for the time being. As such, they can hold property, employ staff and sue or be sued in their own name. This means that individual councillors are not personally liable for acts done in good faith by the Council. However, Local Authorities derive their powers from statute and do not exist independently of it. This means that, although they may properly lobby for changes in the law, in their day- to-day conduct of affairs they must act within the law as it stands. It also means that councils are subject to the ultra vires doctrine and cannot act beyond the powers bestowed upon them by statute .
- As employers, councils have a duty to ensure the health, safety and welfare at work of all employees. They must also arrange for the proper administration of their financial affairs and appoint a responsible financial officer.

POLITICAL GROUPS

- The operation of political groups is now an integral feature of local government, and such political groups have an important part to play in the development of policy and the political management of the authority. It is in the interests of the authority to support the effective operation of political groups. The Leader of the largest Political Group is known as the Leader of the Council and has overall responsibility, through the formal committee structure, for steering the political and policy direction of the Council.