

ANGUS COUNCIL

24 JUNE 2021

**GUIDANCE TO MEMBERS ON DISTINGUISHING BETWEEN STRATEGIC AND OPERATIONAL
REPORT BY DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES**

ABSTRACT

The purpose of this report is to provide guidance to councillors on distinguishing between their strategic role and any operational work, based on the guidance available at a national level and also to clarify the ways in which elected members can raise concerns about operational changes, particularly changes that are likely to affect large numbers of people.

1. RECOMMENDATION

It is recommended that the Council discuss and note the detail in this report.

2. ALIGNMENT TO THE COUNCIL PLAN**3. BACKGROUND**

3.1 Reference is made to Report No 308/20 which was submitted to the Scrutiny and Audit Committee In December 2020. <https://www.angus.gov.uk/sites/default/files/2020-11/308.pdf> This was a Report on the Scrutiny Review of Parking Charges Action Plan Update. One of the recommendations within the Action Plan was that, "There is scope for further discussion to clarify what is operational (officer preserve) and what is strategic (elected member preserve). Guidance should be developed to clarify the extent to which elected members can raise concerns about operational changes, particularly changes that are likely to affect large numbers of people".

3.2 Guidance is provided at a national level from various sources on the roles of elected members within Councils.

It was considered as part of the Accounts Commission's (AC) 2010 report on *How councils work. Roles and working relationships: are you getting it right? (HCW)* which set out the importance of good governance in councils. The Commission's follow on report on "**Roles and Working Relationships in Council's – Are You still Getting it Right**", (**AC Further Report**) https://www.audit-scotland.gov.uk/uploads/docs/report/2016/hcw_roles_followup_0.pdf provides further assistance to members. A key aspect of the report considered the role of elected members with an overall aim of driving improvement in respect of governance arrangements and managing productive relationships with officers.

The messages highlighted in the **AC Further Report** still centre on the main themes of the original (**HCW**) report. These are

- clear roles and responsibilities and arrangements for governance that are up to date
- effective working relationships, with councillors and officers demonstrating appropriate behaviours
- councillors having the skills and tools to carry out their complex and evolving role.

The **AC Further Report** also refers to the seven core principles in the CIPFA/ SOLACE Delivering Good Governance in Local Government Framework, (updated in 2016). These are as detailed below. The Framework is intended to assist authorities individually in reviewing and accounting for their own approach to governance. It also applies to the annual governance statement which the Council prepares.

Core Principle 1: Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law

Core Principle 2: Ensuring openness and comprehensive stakeholder engagement

Core Principle 3: Defining outcomes in terms of sustainable economic, social and environmental benefits

Core Principle 4: Determining the interventions necessary to optimise the achievement of the intended outcomes

Core Principle 5: Developing the Authority's capacity, including the capability of its leadership and the individuals within it

Core Principle 6: Managing risks and performance through robust internal control and strong public financial management

Core Principle 7: Implementing good practices in transparency, reporting, and audit to deliver effective accountability

The **AC Further Report** acknowledges that the councillor role, while rewarding, can be challenging and stressful. Councillors play an increasingly important role in enabling communities to meet their aspirations. But at a time of financial constraint, they must also take difficult service decisions that may impact on the communities they serve.

The **AC Further Report** also makes the following points

- It is important that councillors actively support and contribute to the effective governance of the council itself. For example, taking fair and objective decisions and providing constructive scrutiny. The Accounts Commission's Best Value work has shown how difficult it is for councils to make progress where councillors do not support or may even obstruct their council's governance processes.
- Councillors are required to observe the Councillors Code of Conduct. This sets out core requirements around the role of councillors and their conduct, for example around declaring interests and taking decisions.
- The full council (comprising all councillors) is the governing body of the council that determines policy. It is ultimately responsible for ensuring the quality of service delivery.
- Councillors are elected to determine policy, not to engage in the direct operational management of services – this is the responsibility of council officers.
- These distinctions are often easier to state than to carry out consistently into practice. For example the distinction between policy development and management is notoriously difficult to draw up at the margin.

The Standards Commission for Scotland have also issued a guidance note, Advice Note For Councillors On Distinguishing Between Their Strategic Role And Any Operational Work <https://www.standardscommissionscotland.org.uk/uploads/files/1590593229200527AdviceNoteCouncillorsDistinguishBetweenStrategicRoleOperationalWorkv2.pdf> (**SC Advice Note**). This aims to provide assistance to councillors to help them in distinguishing between strategic and operational management and formed part of the training provided by the Director of Legal and Democratic Services to members on the Councillors Code of Conduct in August 2019.

The **SC Advice Note** states that 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 planning, organising and execution involved in day to day activities. This is the role of officers.

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.

As members will be aware any such involvement requires compliance with the legal requirements in terms of obtaining relevant consent to share personal data. Full guidance was issued to members on this by the Director of Legal and Democratic Services in November 2020.

Councillors 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. 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.

The guide also provides that

- Your role as a councillor 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;
- Your role is to 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; and
- 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.

The Councillor's Code of Conduct, (**the Code**) itself also contains provisions relating to the differences between the responsibilities of elected members and Council employees.

1. Relationships with Employees (paragraphs 3.3 – 3.4 of **the Code**)

- i. 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 in line with the Employee Code of Conduct.
- ii. 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.

2. Protocol for Relations between Councillors and Employees attached at Annex C of **the Code**. There is an obligation on elected members to adhere to the terms of this protocol. The following detail is relevant in terms of the role of elected members.

- i. Councillors and employees should work in an atmosphere of mutual trust and respect, with neither party seeking to take unfair advantage of their position.
- ii. 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.
- iii. 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.

The concurrent obligations which elected members have can sometimes make it difficult to distinguish between operational and strategic matters and to understand the extent to which they should get involved in certain issues and decisions.

That being said, there is nothing to prevent an elected member raising concerns about the impact of operational changes. This can be particularly relevant where such changes are likely to affect large numbers of people and can be extremely helpful to the Council. Such changes

themselves may in fact be as a result of a strategic policy agreed at Council or Committee. Members can raise issues in the following ways

3. If it is an operational matter raised by a particular constituent, an elected member can, (with the express permission of the constituent where required), pass on the details of any issue raised to the relevant council officer or pass on the contact details of the Council Service to the constituent.
 - a. If it is a more general operational matter affecting a large number of people, the elected member may raise this direct with the relevant Director, Depute Chief Executive or Chief Executive

What an elected member must avoid doing, however, is to engage in direct operational management of matters. Becoming inappropriately involved in operational management and or operational decision-making may be a breach of the Councillor's Code of Conduct. It can also damage the relationship between elected members and officers and have a detrimental effect on how officers perform their duties.

The SC Advice Note provides some examples of how a councillor might become inappropriately involved in an operational matter. These 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.

Training was held for some elected members on 31 May 2021. This will be extended to other elected members very soon.

7. FINANCIAL IMPLICATIONS

- 7.1 There are no direct financial implications in terms of this report.

REPORT AUTHOR: Jackie Buchanan – Director of Legal and Democratic Services
EMAIL DETAILS: legdem@angus.gov.uk