



Three Counties Training



SUSSEX & SURREY ASSOCIATIONS OF LOCAL COUNCILS AFFILIATED TO THE NATIONAL ASSOCIATION OF LOCAL COUNCILS

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POSITION, STATUS AND ROLE OF THE CLERK

1. A local Council works as a result of the interactions between three personal components; the Chairman (or Town Mayor), the Clerk, the Councillors. Each component as a separate role: the most effective councils are those where these separate roles interact harmoniously. Although there are other reasons why some councils are afflicted by internal disputes which prevent clear cut decisions or effective action, a major cause of such problems is that one of the three parts does not appreciate the proper role of one of the others and attempts to undertake part of that role. NALCs experience suggests that a significant cause of angry internal quarrelling (often leading to resignations by councillors or disciplinary action against Clerks) is a failure to understand the position and status of the Clerk.
2. This guidance attempts to set the Clerk's position in proper perspective to help avoid unnecessary disputes and help councils to benefit from a more efficient transaction of business. If any readers of this note say to themselves "We need to be like that" NALC hopes that the three parts of that Council will consider collectively what changes might be appropriate.
3. (a) The Clerk is the employee of the Council. The Council is a body corporate so that in the last legal resort a majority of the councillors acting correctly at a duly convened meeting can require the Clerk to carry out any lawful instruction within the scope of a Clerk's employment. Although it is often the usual and acceptable practice that the Chairman gives the necessary directions to a Clerk the Chairman has no right by law to give any binding instructions other than those agreed by the Council, and in particular has no power to suspend or dismiss the Clerk.

(b) The Clerk is often the only employee: in that case he will be the "proper officer" of the Council (Section 270 of the Local Government Act 1972): the person responsible for formal acts. Where the Council has more than one employee the Clerk will be the "proper officer" except in those cases where for a particular reason another employee has been made a "proper officer" for an activity or function.

(c) The Clerk, as an employee, is covered by all the legislation relating to employments and the "Council" is in no special position as compared with other employers. In legal terminology (which can sometimes sound old-fashioned) a Clerk is the "servant of the Council" but this carried no implication of servility or any legal relationship other than employer and employee.

POSITION OF THE CLERK

4. The post of Clerk can be seen as analogous to that of the Chief Executive in a County or District Council. A local authority operation consists of policy-making and decisions and administration. The chief executive is head of the administration and therefore responsible for the whole of that side of the work. Allowing for the differences in scale of the Clerk of a local Council is also responsible for the administration of the Council and, bearing in mind that the Clerk is almost always sole employee or sole employee at officer level, has in his sphere more overall responsibility than a District or County Chief Executive. The Clerk's role is not that of a secretarial employee or typist but that of a hands-on administrator (who has often to include the secretarial/typist function).
5. Neither councillors nor Chairman should take any responsibility for administrative, managerial or supervisory tasks; they are to be discharged by the Clerk. Sometimes members try to take over the role of the Clerk, for example, opening of the post, the Chairman drafting the minutes or councillors writing Council letters on the justification that the Clerk cannot be left to do it. If the justification is correct the Council has not appointed a suitable person: if the justification is a cover for councillors to "do it their way" it should be rejected as a wrong attitude.

STATUS AND ROLE OF CLERKS

6. Since the Clerk is responsible for administration he has the practical function of advising the Council, guiding the Chairman on procedural issues and ensuring Council business is conducted according to the relevant rules of law and procedure. More especially, where a Clerk has undertaken one of the available training courses or has sought advice about a subject from a qualified source or is quoting from a standard text book, councillors (even if it be inconvenient or contrary to their expectations) should accept the guidance as to the existence and applicability of relevant facts or law and content themselves with making policy decisions using such guidance. It is always right to record the advice of the Clerk if it has not been followed.
7. As the Clerk is the employee of the Council it is proper for the Clerk to take any of these actions which are necessary to continue the running of the Council, where no decision between alternative courses of action is needed, *without reference to a Council meeting*. (For example if a member resigns his seat this happens as soon as the written notice reached the Chairman: the Council is required by section 87 of the Act of 1972 to give public notice as soon as practicable thereafter. The Clerk does not need to get approval of a meeting for posting the notice because this is an automatic administrative consequent. Of course the Clerk will report to the Council that he has posted the notice).
8. The Clerk is in the dual position of "independent" administrator but also of employee. He has to carry through adequately decisions of the Council properly arrived at even though they are decisions which the Clerk would not have made. Councils, like any deliberative body, benefit from suggestions and the Clerk is particularly well placed because of the information regularly available to suggest lines of action: yet the Clerk must be careful to see these as suggestions which the Council *may* reject while the councillors *must* see them as helpful, not an interference in their affairs.

GENERAL

9. As in all public life, the conduct of local Council affairs cannot be reduced to a precise set of rules: the component parts of any activity have to accept that the other parts have a proper role and *must be allowed to get on with it* Issues of dispute must be argued without malice and with deference to the view of the person who has principal responsibility. Without the very best of reasons a member will not challenge a Chairman's interpretation of procedures nor a Chairman reject the Clerk's guidance on a legal point nor the Clerk try to argue the members into changing their minds.
10. "A Council is only as good as its Clerk"
"A Council is only as good as its councillors"
"A Council is only good if well led by its Chairman"

All of these are true: the only good Council is the one which accommodates all three sayings at once. A truly good Council is an active, effective, resourceful Council quietly administered by the Clerk whilst the members press on with local public issues.

CONFLICTING SITUATIONS

11. It appears that although isolated cases arise from time to time, the major bulk of problems occur in the first year after the election of a new Council where the membership consists in the main of entirely new councillors who are new to local government, and a new Chairman is taking up the office for the first time.
12. The most important thing to recognise is that for local government at work effectively at this, for that matter any level, there has to be a partnership between a Chairman and the Clerk. This relationship is crucial and both parties need to understand the other's role. The Chairman needs to remember that his role and powers are constrained by Standing Orders and by the fact that it is the Council and not he who is the Clerk's employers.
13. The Clerk also has to remember that the Council employs them and they owe their allegiance to each and every member collectively. The Chairman is, of course, the leader and spokesman for the Council but he cannot go beyond what he knows the Council will support in carrying out his functions.
14. It is important that both Chairman and Clerk appreciate fully at an early stage each other's functions. Some guidelines should always be in place before either party start to perform.
15. On the Clerk's side it is absolutely essential that he should have a Contract of Employment including a Job Specification, and this alone will avoid many misunderstandings.

16. On the Chairman's side it is highly desirable that he should study the excellent booklet issues by NALC – "Local Councils Explained", before his first meeting.
17. Advice to those experiencing difficulty should be sought at the earliest stage before the relationship becomes soured and Clerks must be ready to accept changes in practice and all lawful requests. They must, however, resist any request to do anything unlawful.
18. All Clerks should seek to improve their knowledge by training whether on the Clerks Training Course leading to a qualification or at least on the more local courses which are run by various bodies. Clerks should also encourage members and especially potential Chairmen to attend conferences and courses where they will gain the benefit of any interchange of views, even if it is only to find that their Clerk is not so different from most others!

JOB DESCRIPTION – CLERK TO THE COUNCIL

OVERALL RESPONSIBILITIES

The Clerk to the Council will be the Proper Officer of the Council and as such is under a statutory duty to carry out all functions, and in particular to serve or issue all the notifications required by law of a local authority's Proper Officer. The Clerk will be totally responsible for ensuring that the instructions of the Council in connection with its function as a Local Authority are carried out. The Clerk is expected to advise the Council on, and assist in the formation of, overall policies to be followed in respect of the Authority's activities and in particular to produce all the information required for making effective decisions and to implement constructively all decisions. The person appointed will be accountable to the Council for the effective management of all its resources and will report to them as and when required. The Clerk will be responsible for all the financial records of the Council and the careful administration of its finances.

SPECIFIC RESPONSIBILITIES

1. To ensure that legal, statutory and other provisions governing or affecting the running of the Council are observed.
2. To monitor and balance the Council's accounts and prepare records for audit purposes, and VAT
3. To ensure that the Council's obligations to insure are properly met.
4. To prepare, in consultation with appropriate members, agendas for meetings of the Council and its committees; to attend such meetings and prepare minutes for approval.
5. To receive correspondence and documents on behalf of the Council and to deal with the correspondence or documents or bring such items to the attention of the Council. To issue correspondence as a result of the instructions of, or the known policy of, the Council.
6. To receive and report on invoices for goods and services to be paid for by the Council and to ensure such accounts are met. To issue invoices on behalf of the Council for goods and services to ensure payment is received.
7. To study reports and other data on activities of the Council and on matters bearing on those activities. Where appropriate, to discuss such matters with administrators and specialists in particular fields.
8. To draw up both on his own initiative and as a result of suggestions by Councillors proposals for consideration by the Council and to advise on practicability and the likely effects of specific courses of action.
9. To supervise any other members of staff in keeping with policies of the Council and to undertake all necessary activities in connection with the management of the salaries, conditions of employment and work of other staff.
10. To monitor the implemented policies of the Council to ensure they are achieving the desired result and where appropriate suggest modifications.
11. To act as a representative of the Council as required.

12. To issue notices and prepare agendas and minutes for the parish meeting; to attend the assemblies of the parish meeting and to implement the decisions made at the assemblies of the parish meeting and to implement the decisions made at the assemblies.
13. To attend all meetings of the Council and all meetings of its committees.
14. To prepare, in consultation with the Chairman, press releases about the activities of, or decisions of, the Council.
15. To attend training courses on the work and role of the Clerk as required by the Council.
16. To attend the Conferences of the Association of Local Councils, Society of Local Council Clerks and other relevant bodies, as representative of the Council as required.