

LEGAL: Roles within the Council

The Council

The council is a single corporate body for which decisions are taken democratically. Local Councils were brought about by the Local Government Act 1894 whereby legislation introduced elected councils at a district and parish level.

A Local Council's most important role is to represent to views and needs of the community; they provide local services and enhance quality of life and community well being.

Local councils can provide and maintain a variety of local services from allotments to youth provision. A Local Council is not 'duty-bound' to provide services and facilities but it does have the 'power' to arising from the statutory power to raise and spend a precept¹.

Parish councils have the power to tax their residents via the 'precept'. Presently, there is no limit to the amount that can be raised; however a council can only spend money on things it is authorised, via legislation, to carry out. Some councils can be awarded an additional all consuming power that is the 'General Power of Competence'. The General Power of Competence (GPC) was introduced by the Localism Act 2011 and took effect in February 2012. In simple terms, it gives councils the power to do anything an individual can do provided it is not prohibited by other legislation.

Local Councils have few statutory duties, one of which is to hold an Annual Meeting and at least three other meetings in the year², for which the general public have a right to attend. Another is to appoint a person responsible for their financial affairs³ and to prepare yearly accounts which are externally audited⁴.

The Clerk

The Clerk is the proper office of the council, employed by the Council (under section 112 (1) of the Local Government Act 1972) and is responsible for implementing the decisions of the council. The Clerk can be responsible for research, organising and maintaining the council's administrative systems, policies and records, and for giving advice as well as managing the press, organising events and being the first point of contact for the local community.

The Clerk has statutory responsibilities which include:

- Signing and issuing the agenda and summons for council meetings in accordance with statutory regulations⁵
- Convening a meeting of the council if a casual vacancy of the chair occurs⁶
- Receiving and holding copies of by-laws made by other local authorities⁷
- Receiving and retaining documents and notices⁸

The Clerk draws up and signs agendas for ordinary meetings of the council and its annual meeting and is responsible for the production of the minutes, although this can be delegated to another.

The Clerk works closely with the Chair to ensure that meetings run smoothly and decisions are lawfully taken.

¹ Local Government Finance Act 1992, 41 (1)

² Local Government Act 1972, sch 12, para 8(1)

³ Accounts & Audit Regulations 2011/817

⁴ Accounts & Audit Regulations 2011/817

⁵ Local Government Act 1972, sch12, para 10(2)(b)

⁶ Local Government Act 1972, s88

⁷ Local Government Act 1972, s236(9)

⁸ Local Government Act 1972, s225

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The Clerk will often have direct and regular contact with individual Councillors, however, it is the corporate body of the Council that is the employer for the purposes of employment legislation.

The Chair

The role of the Chair is to manage the meetings of the council and to represent the council at civic events. With that brings with it the responsibility for fostering constructive relationships between councillors. The Chair is an equal to other Councillors, other than the statutory provision that the Chair can have a casting vote (second vote) if there is a tied vote⁹.

The Chair is elected by the members of the Council at the Annual Council Meeting and serves for 1 year¹⁰. The Chair's main role is to run Council meetings, they can suggest the content and design of the agenda, but as legal signatory, the Clerk has the final say.

The Chair is responsible for ensuring that effective and lawful decisions are taken at meetings of the Council and, assisted by the Clerk, guides activities by managing the meetings of the Council. A council is not lawfully constituted with a Chair¹¹.

The Chair is responsible for involving all Councillors in discussion and ensuring that Councillors keep to the point. A good chair will summarise the debate and facilitate the making of clear 'Resolutions' as well as being responsible for keeping discussions moving so that the meeting is not too long.

A Councillor

Parish or Town Councillors are elected by the electors of the Parish every four years¹². A Councillor may also be returned by bye-election, co-option, appointment by the district council or by return after a successful election petition. All Councillors are required to complete a Declaration of Acceptance of Office¹³ and to provide a written undertaking that they accept the Council's Code of Conduct, prior to taking office. A Councillor is subject to statutory rules¹⁴ about how they conduct themselves as a representative of the council, transparency with regards financial and personal interests¹⁵ and to upholding the seven principles of public life¹⁶.

Individual Councillors work together to serve the community and to help the Council to make decisions on behalf of the local community. Councillors contribute to the work of the council by suggesting ideas, engaging in constructive debate and by responding to the needs and views of the community representing their constituents. Councillors comment on proposals to ensure the best outcome and vote to enable the Council to make decisions. Councillors must accept the decisions of the Council as a whole even if they do not agree with it¹⁷. In such circumstances a Councillor may ask for a vote against a Resolution to be recorded¹⁸.

⁹ Local Government Act 1972, s39 (2)

¹⁰ Local Government Act 1972, s15 (1)

¹¹ Localism Act 2011, s28 (13)

¹² Local Government Act 1972, s16 (2)

¹³ Local Government Act 1972, s83 (4)

¹⁴ Localism Act 2011, ss27-34

¹⁵ Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012/1464

¹⁶ Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership

¹⁷ Local Government Act 1972, sch 12, s39 (1)

¹⁸ Local Government Act 1972, sch 12, s13 (2)

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Responsible Financial Officer (RFO)

Local Councils are required by statute¹⁹ to appoint a person to be responsible for their financial affairs, this person is known as the Responsible Financial Officer (RFO).

The RFO has statutory obligations and throughout the year the council needs to satisfy itself that expenditure is both lawful and in line with council decisions, and that proper controls are in place to prevent any possibility of fraud²⁰.

Councillors continue to be accountable for ensuring that the council does not spend beyond its means, but the RFO designs and implements the accounting arrangements to assure members that finances are being properly managed.

In carrying out their role the RFO will:

- Prepare Financial Statements for each financial year for councillors and the public.
- Prepare the Accounts and the Annual Return for the Council each year and to submit them to Council for approval and to the Auditor when required.
- Arrange for appropriate Internal Audit in accordance with Financial Regulations.
- Manage the risks faced by the Council and recommend such insurance as is required or is mandatory (Employer's Liability and Fiduciary Guarantee).
- Maintain the Council's asset register.
- Make payment including those relating to salaries.
- Submit VAT returns.

¹⁹ Local Government Act, s151

²⁰ Accounts & Audit Regulations 2011/817