

POLICY

PROCEDURAL JUSTICE – FAIRNESS IN DECISION MAKING

1.0 WHAT IS PROCEDURAL JUSTICE AND WHY DOES IT MATTER TO US?

A national 2023 study has revealed that, over the last four years, behavioural issues related to councillors, such as bullying and disrespect, have occurred in over half of councils. These types of incidents create dysfunction and can prevent council business from proceeding, but also result in a negative impact on the affected councillors, community and officers.

This impact includes complaints regarding standards of behaviour in public life and the subsequent investigations process, increased dysfunction and fracturing of councils, resignations of councillors and officers, and less people wishing to stand for an elected office or seek employment with a council.

Councillors make decisions as a corporate body (Local Government Act 1972 S14(2)) and this policy paper introduces recommendations related to how councillors can make those decisions by interacting with each other through processes that are considered fair; this is known as procedural justice. This policy is for all parish and town councils and aims to enable the councils to run better, with less standards issues and, potentially, more people wishing to become councillors.

2.0 THE RESEARCH THAT INFORMED THIS POLICY

Interviews with councillors provided data relating to councillors' experiences and highlighted a lack of consideration for procedural justice; examples of long lasting negative impacts were reported. However, all councillors interviewed recalled positive aspects relating to the outcomes of the decisions made; this is despite councillors striving to overcome the injustices they reported facing within the decision making. All councillors interviewed cited increasing requirements to source and digest complex information from multiple sources as well as requiring an increase in support related to technology. Of concern female councillors reported not trusting male councillors, with specific examples provided of power and control by "mean old men".

3.0 HOW TO IMPROVE PROCEDURAL JUSTICE

The research identified seven policy levers (elements to be included within a policy) and an ecosystem of equity of knowledge specific for councillors engaged in corporate decision making. The policy levers are set out below:

1. Contextual Fit

This relates to the three way relationship between:

- strategies and processes of the council,
- needs of the community, and
- values, knowledge and resource of councillors.

Adjusting the decision-making process according to the subject being considered, with a focus on equity, ensures the availability of knowledge to all, and the ability for councillors to voice their agency (their thoughts and position during debate). This in turn can improve the perception of positive interpersonal activities and relationships and, importantly, the quality of the decision making and actionable outcomes.

Action: consider appropriate pace for decision making, equity of access to appropriate information, and opportunity for engagement of all impacted parties.

2. Legitimacy

When the council operates without any issues, and delivers the needs of both the community and those who are part of the decision making it is accepted as right and proper. In the research councillors did not present with equal power and influence with many unable to represent the needs of their constituents. In these cases, they were legitimate stakeholders with a legitimate resource to offer but operated within a procedurally unjust context.

Action: ask councillors and community whether they perceive the decision making by the council as legitimate and act on procedural injustice that is highlighted.

3. Facilitation

Facilitation of engagement within the contextual fit and the decision making, alongside capacity building assistance for councillors to enable them to voice their agency including the standard setting of positive interactions, is a key resource requirement for procedural justice within a corporate body. The councillor responses indicated recognition of facilitation that needed to be skilled, accessible and trustworthy and they relied on officer knowledge and research capacity to provide the knowledge needed for legitimacy, and

skilled chairing to deliver positive interactions. Suitable facilitation can offer strategic direction and endeavour to maintain positive approaches.

Action: Provide a positive facilitation presence and guide the decision making process to maintain procedural justice. This may require appropriate intervention, awareness raising of procedural injustice being created within the decision makers and one to one assistance to those requiring specific assistance.

4. Integrating Knowledge System

This lies at the heart of councillor decision making. It can be challenging when political manifestos and pressure tactics influence the facts being considered. Integrating knowledge from all stakeholders enables reflection and learning, informed debate and an opportunity to adjust processes; this is an integrating knowledge system. It is particularly important for community-based projects with community control elements where contextual fit appropriate approaches to engagement and communication are required to ensure equitable knowledge.

Action: Consider the ecosystem for equity of knowledge; how can the ideal position be accomplished? This may require engagement strategies, workshops, and one to one assistance particularly if technology is to be utilised.

5. Flexible Processes

Being flexible is a true basis for group decision-making. Additional information and stakeholders may arise during the decision-making process requiring plans to be adjusted; correctability is made possible with strategy and manifesto adjusted as required. Care must be taken as the loss of investment in personal and social capital is not always welcomed by those involved.

Action: Encourage reflection within the decision making processes, and creativity and innovation by all especially when issues arise. This will enable the decision makers to 'own' the need to be flexible, adapt the process, and identify strategic and operational changes.

6. Interpersonal Activity Resolution

This is closely related to facilitation but deserves its own policy lever. Facilitation by officers has limitations; it can offer strategic direction and endeavour to maintain positive actions, and interviewees cited cases where they had called on officers for such help.

Meeting chairs can endeavour to provide councillors an opportunity to voice their agency but this was often reported as impossible due to interpersonal activities. Councillors also cited a lack of direction when facilitation reached its permitted boundaries; these occasions occurred in times of power play and other negative interpersonal activities which resulted in councillors withdrawing from processes.

Action: Be mindful of procedural justice and consider an officer-based assessment of the processes utilised; is there any action that can be taken to correct injustices. Can decision makers be encouraged to consider what is not going well and adjust processes?

7. Participatory Approach

These policy levers create a framework for procedural justice to which we can add the intentions of transparency and accountability, and action that is free of manipulation. This is a participatory approach of the council as a whole, involving all councillors.

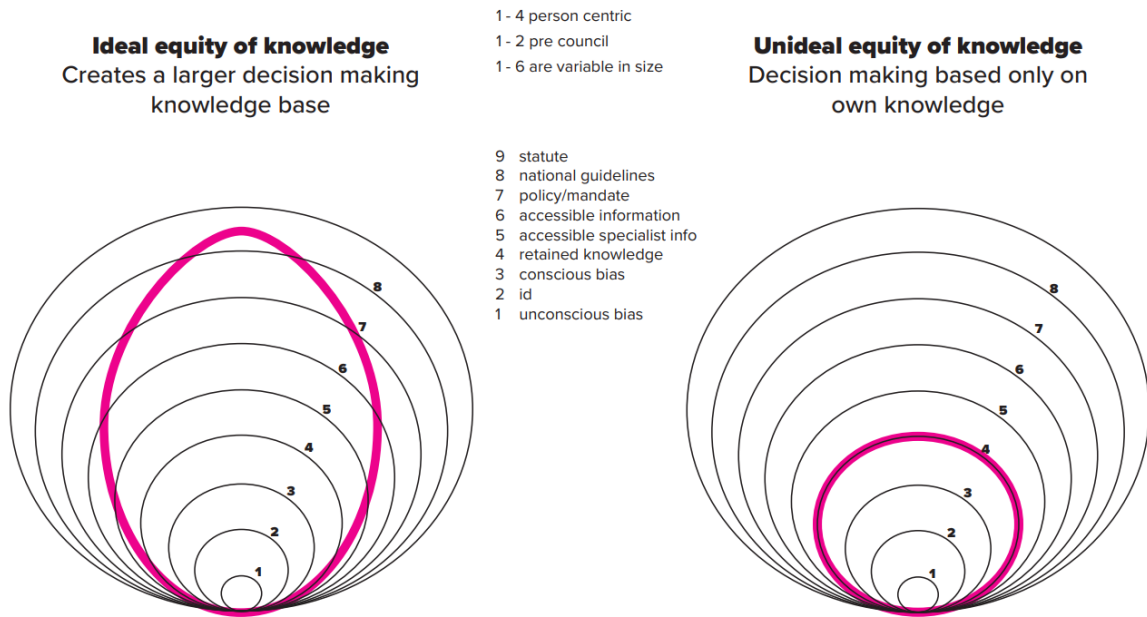
Action: Consider whether there are councillors ‘frozen out’ of the decision-making processes through direct procedural injustice e.g. inequity of knowledge, or indirect procedural injustice e.g. through the use of governance arrangements and non-inclusion on decision making bodies. Adjust the processes to be considered participatory.

4.0 BASIS OF DECISION MAKING – AN ECOSYSTEM OF EQUITY OF KNOWLEDGE

Councillors provided examples of cases where they had drawn from multiple sources of knowledge;

- unconscious bias and id that a councillor can be considered to be elected with
- conscious bias and retained information that a councillor always has available,
- levels of knowledge associated with accessible specialist information,
- accessible information (general),
- policies and mandates,
- national guidelines, and
- statute.

These knowledge sources enable us to construct an ecosystem:



The ecosystem extant (coloured pink) adjusts dependent on the topic and the councillors involved. The unideal equity of knowledge occurs by choice (whereupon a councillor chooses not to access the additional knowledge available) or by inequitable decision-making processes (whereupon additional knowledge is not made available).

These ecosystems assist us in identifying the equity of knowledge of councillors when engaged in decision making and where actions can be taken to first assess why we have an inequity and then deliver improvements.

5.0 SUMMARY

If we deliver enhanced procedural justice, we have an opportunity to decrease disruptive and negative behaviours within the decision making process. Councils will run better, there will be less standards complaints and more people will wish to stand as councillors. This requires us to influence emotions and attitudes, to change behaviours of councillors and community members and, importantly, to build on the group setting of the body corporate and its culture.

How a body reaches its decisions is as important as the actual decisions made by the body and the policy levers and ecosystem consideration provide a grounded approach to achieve procedural justice.

For more information contact

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