

Guidance for Members who are appointed by the Council to serve on Outside Bodies

Introduction

This guidance has been produced to support Councillors who are appointed to serve on outside bodies by outlining their responsibilities and obligations in that role. The guidance does not attempt to provide definitive answers to every particular set of circumstances but rather to provide a framework against which members can exercise judgement when faced with potential conflicts.

Councillors may be appointed to a wide range of outside bodies. Most appointments are made by the Cabinet. Councillors may also be appointed directly by the outside body itself to serve in a private capacity (for instance as a member of the community) rather than as an elected member of the Council, or they may be serving as a member of that body before being elected as a Councillor.

The roles of Councillors on outside bodies will depend upon the legal nature of that organisation and the capacity in which they are appointed to act. Councillors must act according to the framework set by the outside body and take an informed role in the management of the outside body's affairs. This involves attending meetings on a regular basis and carrying out their duties to the best of their abilities. Whilst it is permissible for a Councillor to take account of the Council's interests, Councillors should apply their own judgement in any given situation.

The application of the council's code of conduct

Members must adhere to the council's code of conduct as set out in the council's constitution when taking part in council business.

Interests

If you have a Disclosable Pecuniary Interest (DPI) in a matter to be considered at the meeting, and that interest is on your register of interests, you must not speak or vote on the matter. You should also leave the room during any discussion of, or vote on any matter in which you have a DPI.

When councillors discuss matters relating to an outside body on which they serve at council meetings, they may take account of that outside body's interest. However, they should not vote simply in accordance with the mandate of that outside body. The primary consideration is the public interest.

Where a Councillor has been appointed to an outside body as a representative of the council he/she may regard themselves as not having an interest. It is important to remember that simply by appointing a Councillor to an outside body the council does not grant the person an automatic exemption from conflicts of interest in every circumstance

relating to that body.

Bias and Predetermination

If a member is found to have been biased when making a council decision, the decision is likely to be set aside in the event of legal challenge. (Where actual bias has not been established the personal impartiality of the Councillor is to be presumed.)

In summary, the duties of a Councillor as a Director, or a trustee or a member of a management committee may well give rise to a legitimate fear of lack of impartiality.

The fundamental principles of this guidance are as follows:-

- Councillors will act according to the rules, constitutions and frameworks set by the relevant outside body and, where possible, with those of the Council
- Councillors will make independent and personal judgements based on their responsibilities to the outside body
- Councillors will report back on their involvement with the outside body – you will be asked to complete a feedback form each year about the organisation to which you are appointed for consideration by the Cabinet

The guidance addresses three specific circumstances which arise from time to time and as a result of which potential conflict can arise. These are:-

- Where the Councillor is appointed Director of a Company
- Where the Councillor is appointed as a Trustee
- Where the Councillor is appointed to an Unincorporated Association

Insurance

You should establish as soon as you are appointed what, if any, insurance is in place that covers you in your role.

You should establish what insurance the organization itself holds for other purposes, for example third party liability insurance and employers liability insurance (the second of which is a legal obligation for all organisations which employ staff). Clearly adequate and comprehensive insurance cover for the organisation is likely to limit any residual exposure for you as a Trustee, Director, Committee member, etc.

The ability of local authorities to indemnify councillors and officers for any personal liability arising from actions or decisions taken by them in the course of their official duties is covered under the Local Authorities (Indemnities for Members and Officers) Order 2004.

Where the Councillor is appointed Director of a Company

Companies can be:

- Limited by shares, usually operating a trade or business. They have shareholders and distribute profits to shareholders as dividends.
- Limited by guarantee, “not for profit” organisations. This type of company may also be a charity and has members rather than shareholders.

Companies offer limited liability which means that the members or shareholders are usually not personally liable for the company’s debt and liabilities, subject to some limited

exemptions.

The powers of the directors are usually set out in the Articles of Association. These are the rules that govern the internal management of the company.

The Director cannot vote simply in accordance with the Council mandate, to do so would be a breach of duty.

When acting as a Director a Councillor owes a fiduciary duty to the company, not to the individual shareholders, to act honestly and in good faith and in the best interests of the company as a whole. Directors must take proper care of the interests of the company.

A general duty of care and skill to the company is imposed, but a Director requires no greater skill than might reasonably be expected of someone of that individual's particular knowledge and experience. A Director is not deemed to be an expert, but is expected to use due diligence and to obtain expert advice if necessary.

There may be actual or potential conflicts between the interests of the Council and the interests of the company. In such circumstances it would be inappropriate for the Councillor to take part in discussions upon such topics both as a Councillor and as a Director. If the conflict is a serious one or repeatedly presents itself then it may be appropriate for the Councillor to resign as a Director of the company. If in doubt, Councillors should seek advice from the Monitoring Officer about any potential conflicts of interest.

Directors are not allowed to make a private profit from their position. They must therefore disclose any interests they or their family have in relation to the company's contracts. Whether they are then allowed to vote will depend upon the Articles of Association of the company.

Directors must ensure compliance with relevant companies legislation in relation to the keeping of accounts and the making of relevant returns to the Registrar of Companies. Failure to do so incurs fines and persistent default may lead to disqualification as a Director.

Directors should also ensure that the company complies with other legislation such as Health and Safety legislation if the company employs staff or employs contractors to undertake work.

Where the Councillor is appointed as a Trustee

A number of useful publications are available on the Charity Commission's website: www.charitycommission.gov.uk.

Those who are responsible for the control and administration of a charity are referred to as trustees, even where the organisation is a company limited by guarantee where they are not strictly trustees.

Trustees must take care to act in accordance with the Trust deed and to protect the charity's assets. They are also responsible for compliance with the Charities Acts and the

Trustee Act 2000.

Trustees must not make a private profit from their position. They must also perform their duty with the standard of care which an ordinary, prudent business person would show. Higher standards are required of professionals and in relation to investment matters.

Charitable Trustees must ensure that the information relating to the Trust and Trustees is registered with the Charity Commissioners and annual accounts and returns are completed and sent.

If charitable income exceeds £5,000 the letters, advertisements, cheques etc., must bear a statement that the organisation is a registered charity.

Trustees are under a duty to ensure compliance with all relevant legislation for example in relation to tax and health and safety.

Where the Councillor is appointed to an Unincorporated Association

Groups which are neither limited companies nor charitable trusts may be “unincorporated associations” which have no separate legal identity from their members.

The rules governing the members’ duties and liabilities will (or should) be set out in the organisation’s constitution, which is simply an agreement between members as to how the organisation will operate. Usually the organisation’s constitution will provide for a management committee to be responsible for the everyday running of the organisation. Management Committee members must act within the organisation’s constitution and must take reasonable care when exercising their powers.

The Code of Conduct for Councillors

These guidelines should be read in conjunction with the Members’ Code of Conduct which has been adopted by Council. When Councillors are representing the Council on another body, they must follow the code unless it conflicts with a legal duty owed to the other body.

Some outside bodies may require the Councillor to treat their business as confidential. This may sometimes create a dilemma for the Councillor and may seem contrary to the idea of assisting public accountability. However, a Councillor will be bound by any confidentiality undertaking given.

General

As mentioned earlier these guidelines are intended solely for the purpose of providing a general basis upon which members appointed to outside bodies can exercise their judgement when balancing their respective responsibilities as a Councillor and a nominated representative. The guidelines cannot provide a detailed answer for all circumstances and consequently, if in doubt, a Councillor should seek further advice and guidance from the Council’s Monitoring Officer.

Head of Law & Governance

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