

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

1. Introduction

- 1.1. This guidance is intended to help councillors understand their duties when appointed to outside bodies, and how to handle the conflicts of interest that can arise. The guidance relates only to nominations or appointments made of councillors by the Council to outside bodies or by the outside bodies themselves.
- 1.2. If a councillor is appointed to an external body in any other capacity, (i.e., not as a councillor) they do not owe the council any duties in relation to the way that they carry on their membership of the outside body. However, the councillor will need to record their role in the members' register of interests. The guidance does not attempt to provide a comprehensive guide. If you have any further queries, you can obtain advice from the Monitoring Officer. Councillors may be appointed to a wide range of outside bodies. Most appointments are made by the Cabinet.
- 1.3. 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
 - take an informed role in the management of the outside body's affairs
 - attend meetings on a regular basis
 - carrying out their duties to the best of their abilities.
- 1.4. 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
- 1.5. 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
- 1.6. 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.

2. What might your appointment be?

2.1. If you are appointed by the Council to an Outside Body, this may be either:

- **as a member** e.g. of the management committee, board of directors, or committee of trustees of the outside body.

If you serve in a decision-making capacity or have a position of general control or management on the outside body, whether company, trust or other association, you owe duties and responsibilities to that body which are separate and distinct from your duties owed to the council. It will be important for you to be clear what those duties are by referring to the constitution or relevant governing documents.

On occasion, it is possible that duties owed to the outside body and to the council, will conflict e.g. if you are the treasurer of an outside body who has applied to the council for grant funding and the rest of this guidance gives more detail on this; or

- **as an ‘observer’**, or an ordinary member, or undertaking a monitoring role, or facilitating exchanges of views or information as an extension of your council duties but taking no part in the outside body’s management or governance, other than to attend and participate in meetings. Here, you will be mainly concerned with representing the council and will not have responsibilities for decision making or the governance of the body.

3. What sort of Roles does it apply to?

3.1. This guidance applies where you are a “member”, which could be:

- a director of a company in which the Council has an interest; a member of another public body;
- a trustee of a charity;
- or a person appointed to the management board of an unincorporated body.

3.2. Your responsibilities will depend on the type of body you are appointed to. The main types are as follows (see further guidance later in this document):

- Companies
- Unincorporated Associations:
- Charities:
- Other statutory bodies:

4. The application of the council's Code of Conduct

4.1. 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 of Conduct unless it conflicts with a legal duty owed to the other body.

- 4.2. You should ensure that you enter any appointment to an Outside Body on to your Register of Interests (including those where you are appointed in a private capacity).
- 4.3. Where you are representing the Council on an Outside Body or where you are appointed to an outside body and a matter relating to that Outside Body is to be discussed at a meeting of the Council:
 - If you have a Disclosable Pecuniary Interest (DPI) in a matter to be considered at the meeting you must declare as such, and you must leave the room during any discussion of, or vote on, any matter in which you have a DPI.
 - if a matter arises at a meeting which directly relates to the financial interest or wellbeing of one of your Other Registerable Interests (ORI) you must disclose as such and you must leave the room during any discussion of, or vote on, any matter in which you have such an interest.

5. Bias and Predetermination

- 5.1. Even where your duties as a director, or trustee, or member of a management committee of an external body do not amount to a disclosable pecuniary interest, they may well be regarded, on an objective appraisal, as giving rise to a perception of bias, especially having regard to the desirability of maintaining public confidence.
- 5.2. Participation in the decision making at a Council meeting by a Councillor who is biased could potentially invalidate the decision of the Council where there is an issue of pre-determination and bias.
- 5.3. Examples may include where you have sat on an Outside Body and taken a decision to apply to the Council for funding. You should then not participate in the decision of the Council as to whether to award that funding or not.
- 5.4. Where the Council's wishes may conflict with the best interests of the outside body you must nevertheless, if taking decisions for that outside body, act in its best interests. If you consider that any such conflict prevents you from taking a decision for the outside body it is likely to be advisable not to participate in that decision.
- 5.5. Where membership of the outside body is on an advisory or consultative basis, bias will not be assumed from mere membership. However, once the outside body has a line which is being advocated by you, this could potentially be viewed as bias, and the Council's decision on the issue could be vulnerable to challenge if you participate in those circumstances. It will depend on the facts, and in such circumstances, advice should be sought from the monitoring officer

6. Insurance & Indemnities

- 6.1. Councillors who participate in external bodies may be indemnified in relation to liabilities they incur in that capacity, though this is subject to certain limitations.
- 6.2. Indemnity by the outside body:
 - a) Directors:

Directors cannot be indemnified by the company against liability for negligence, default, breach of duty and trust. Companies can however purchase insurance to protect directors against claims of negligence, default, breach of duty and trust. Those appointed as directors should ensure that appropriate insurance is in place. Companies can, if their Articles of Association allow, provide for directors to be indemnified for the costs of defending such a claim if they are granted relief by the court or acquitted.

b) Trustees:

Provided a charitable trustee act properly, and within his/her powers, indemnity can be given from the trust fund. Trustees can take out insurance to protect themselves from personal liabilities, but not for criminal acts such as fraud. If the premiums are to be paid out of the charitable funds, the consent of the Charity Commissioners will be needed.

c) Unincorporated Associations:

Members may be entitled to an indemnity if they act in accordance with the Constitution of the association and are not exceeding their powers. However, regard must be had to the terms of the constitution. The constitution will determine whether insurance can be paid for by the organisation.

d) Other statutory bodies:

Members may be entitled to an indemnity if they act in accordance with the terms of reference of the body and are not exceeding their powers. However, regard must be had to the terms of the constitution.

- 6.3. You should establish as soon as you are appointed what, if any, insurance is held by the Outside Body that covers you in your role including what insurance the organisation 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)
- 6.4. The Council may provide an indemnity where Councillors are acting on an outside body at the request of the Council.
- 6.5. The indemnity the Council can provide is subject to limitations. In general terms, if a Councillor is acting properly, within their powers and in good faith, the power to indemnify will usually apply. However, the Council cannot, for example, provide an indemnity in relation to any action or failure by any Member which constitutes a criminal offence, or for any action or failure by any Member which is the result of fraud, or other deliberate wrongdoing or recklessness on the part of the Member.
- 6.6. When you are serving on an outside body, the Council's indemnity will only apply after any indemnity or insurance from the body itself. There are further limitations and it is advisable to be clear about the scope of the Council indemnity that may be available to you. You can seek further advice on any indemnity from the monitoring officer.

7. Appointment as a Director of a Company

- 7.1. Companies are separate legal entities. The company is distinct from its members, who may be either shareholders or guarantors. The Council itself may be a member of the company, either a shareholder or guarantor
- 7.2. If the body is a limited company, and you are asked to be involved, it is likely that you will be appointed as a company director. [The duties of a company director](#) are now set out in the Companies Act 2006.
- 7.3. The management of a company is usually the responsibility of the Board of Directors. Directors' powers are usually set out in the company's Articles of Association. Another important document is the Memorandum of Association, which sets out the Company's objectives and powers.
- 7.4. The duties of a company director are not the same as your responsibilities as a Councillor. Basically, when involved in company business, the company must come first. Directors must act in the interests of the company, and not in the interests of other parties, including shareholders. You cannot vote simply in accordance with the Council mandate, to do so would be a breach of duty as a Director.
- 7.5. 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
- 7.6. If a director fails to carry out his/her duties, action can be brought for breach of duty, either by the company itself, or by a liquidator if the company goes into liquidation, or with the consent of the court, by a shareholder. Such actions are unlikely where the company is properly controlled by the directors.
- 7.7. Some important considerations are:
 - It is not always easy to reconcile the various factors which must be taken into account when reaching a major decision. The important thing as a director is to show that you are aware of and have taken account of the relevant factors, and have exercised due care and diligence in giving them all fair consideration.
 - It may be difficult to be certain whether benefits may be regarded as giving rise to a conflict of interest. If you are unsure take advice from the company's advisers.
 - Make sure you are aware of the company's constitution; its Memorandum and Articles of Association, so that you know what it can and cannot do. You must take this into account when making decisions, as well as any shareholder decisions that are relevant.
 - Be diligent, and make sure you are well informed about the company's affairs. Make sure you are well briefed when taking up the role, and that you receive regular briefings throughout your term of office.
 - Attend training and briefing sessions
 - Ensure insurance is in place.
 - Some Board decisions may be reviewed on a future occasion. Make sure detailed minutes show that all necessary factors have been considered

when major decisions are being taken. Obtain expert advice where necessary e.g. regarding impact of a decision on the environment.

- Take legal advice where there are doubts about a director's duty in relation to a particular matter

7.8. 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. You should decide in which role you are to act on the matter. If in doubt, Councillors should seek advice from the Monitoring Officer about any potential conflicts of interest

8. Where the Councillor is appointed as a Trustee of a Charity

8.1. Some companies and unincorporated associations are established for charitable purposes. Councillors should note that you can be both a Trustee and a Director, where the charity operates both models and you are appointed as such. Ensure you understand what role you are appointed to at the outset.

8.2. A charity is an organisation which:

- is established for [charitable purposes](#) only, and
- falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.

8.3. 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.

8.4. Trustees of a charity retain personal liability and can only delegate to the extent that the constitution authorises them so to do. Generally, a trustee may incur personal liability if they:

- act outside the scope of the trust deed
- act in a way that falls below the required standard of care
- act otherwise than in the best interests of the charity, in a way which causes loss to the charity fund
- makes a personal profit from the trust assets

8.5. 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.

8.6. Trustees have a number of [trustee duties](#) which they must comply with.

8.7. If in doubt, always consult the [Charity Commission](#). You may avoid personal liability for breach of trust if you act in accordance with their advice

9. Where the Councillor is appointed to an Unincorporated Association

9.1. Unincorporated associations are informal organisations / groups which are neither limited companies nor charitable trusts may be "unincorporated associations" which have no separate legal identity from their members.

- 9.2. 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.
- 9.3. 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.
- 9.4. Because the association has no legal existence separate from its members, the liability of the members is not limited. Each member can incur personal responsibility for liabilities incurred on behalf of the association and relies on the membership agreement to be able to recover his/her costs from the other members. Councillors appointed to such bodies should familiarise themselves with the Constitution to understand the nature of their role, responsibilities and liabilities, and should assess the risk of personal liability, and the extent to which it has been covered by insurance.

10. Other Statutory Bodies

- 10.1. These are public bodies established by statutory provisions which will set out their functions, the parameters of their jurisdiction and the way in which they are governed.
- 10.2. This includes bodies such as the Police and Crime Commissioner Panel.
- 10.3. The details of representation of the council on such bodies may be set out in statute or regulations, or in terms of reference or constitutions established in accordance with the statutory provisions.
- 10.4. You should be clear about whether you are sitting on such bodies to make delegated decisions on behalf of the council, or purely as members of a board or committee of that body.
- 10.5. You will need to be clear about how decisions are made, any parameters relating to these, and how you declare your interests and how any potential conflicts are managed.
- 10.6. Much will depend upon whether the body is exercising its own statutory functions or whether you are exercising council functions whilst sitting on the body.

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Useful Links

Directorships:

[Companies House - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

[Being a company director - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

[Directors' duties and responsibilities | Factsheets | IoD](#)

[7 duties of a company director – Companies House \(blog.gov.uk\)](https://blog.gov.uk)

Trustees / Charities:

[The Charity Commission - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

[The essential trustee: what you need to know, what you need to do - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

[Charity trustee: what's involved \(CC3a\) - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

[Charity types: how to choose a structure \(CC22a\) - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Unincorporated Organisations:

[Unincorporated associations - GOV.UK \(www.gov.uk\)](http://www.gov.uk)