



Guidance for Members who are appointed to Outside Bodies

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Introduction

This guidance has been produced for Members 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.

Members may be appointed to a wide range of outside bodies. Most appointments are made by the Leader. Members 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 Members on outside bodies will depend upon the legal nature of that organisation and the capacity in which they are appointed to act. Members 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 Member to take account of the Council's interests, Members should apply their own judgement in any given situation.

The application of the Council's Member Code of Conduct

Members must adhere to the Member Code of Conduct as set out in the Council's Constitution (Part 6A) when taking part in Council business.

Interests

If a Member has a Disclosable Pecuniary Interest (DPI) in a matter to be considered at the meeting they must not speak or vote on the matter. They should also leave the room during any discussion of, or vote on, any matter in which they have a DPI.

Where a matter arises at a meeting which directly relates to the financial interest or wellbeing of a Member's Other Registerable Interests (ORI) they must disclose the interest. The Member must not take part in any discussion or vote on the matter and must not remain in the room.

When Members 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.

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 Member is to be presumed).

In summary, the duties of a Member 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:

- Members will act according to the rules, constitutions and frameworks set by the relevant outside body and, where possible, with those of the Council.
- Members will make independent and personal judgements based on their responsibilities to the outside body.
- Members will report back on their involvement with the outside body – they may be asked to provide feedback each year about the organisation to which they are appointed for consideration by the Leader.

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

Insurance

Members should establish as soon as they are appointed what, if any, insurance is in place that covers them in their role.

Members should establish what insurance the organisation itself holds for other purposes, for example third party liability insurance and employer's 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 the Member as a trustee, director, committee member, etc.

The ability of local authorities to indemnify Members 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 a Member 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’s mandate, to do so would be a breach of duty.

When acting as a Director a Member 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 Member to take part in discussions upon such topics both as a Member and as a Director. If the conflict is a serious one or repeatedly presents itself then it may be appropriate for the Member to resign as a Director of the company. If in doubt, Members 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 Companies House. 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 Member 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 Member 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 Member Code of Conduct

These guidelines should be read in conjunction with the Member Code of Conduct which has been adopted by Council. When Members 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 Member to treat their business as confidential. This may sometimes create a dilemma for the Member and may seem contrary to the idea of assisting public accountability. However, a Member 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 Member and a nominated representative. The guidelines cannot provide a detailed answer for all circumstances and consequently, if in doubt, a Member should seek further advice and guidance from the Council's Monitoring Officer.

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