

OUTSIDE BODIES – GUIDANCE NOTE FOR MEMBERS

1.0 Introduction

1.1 Service on outside bodies has always been an established part of a Member's role. An appointed Member on an outside body will be able to use their knowledge and skills as a Councillor to assist the organisation to which they are appointed.

1.2 Member appointments to outside bodies are normally agreed by the Cabinet or the Council and this guidance draws attention to the main issues which Members should consider when appointed to outside bodies.

1.3 The Council is now increasingly working in partnership with outside bodies and greater clarity is needed as to the role of Members appointed to these bodies. In situations where funding streams may benefit outside bodies and be channelled through the Council as the accountable body, or where the Council funds the outside body directly (e.g. CAB), questions of accountability and governance will arise.

2.0 Matters to consider before appointment

2.1 Membership on outside bodies can take various forms and it would be prudent to establish the capacity in which you are appointed. This may be either:

- as a member of the management committee, board of directors, or committee of trustees of the outside body. Here, you will not only be representing the interests of the Council, but you will also have duties to the outside body and a role in its governance. 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. On occasion, it is likely that duties owed to the outside body and to the Council, will conflict e.g. if you are the treasurer or other person involved in the decision of an outside body who has applied to the Council for grant funding; or
- as an 'observer', or undertaking a monitoring role, facilitating exchanges of views or information as an extension of your Council duties, but take no part in the outside body's management or governance, other than to attend and vote at annual or general meetings. Here, you will be mainly concerned with representing the Council and will not have responsibilities for governance of the body.

3.0 The main issues for you to consider

- the application of the Council's Member Code of Conduct and the principle of bias;

- the primary duty in certain cases, to act in the interests of the outside body;
- conflict with your role as a Councillor;
- indemnities.

4.0 Code of Conduct – Register of Interests

4.1 The law requires you to tell the Monitoring Officer in writing, within 28 days of taking office, or within 28 days of any change to your Register of Interests, of any interests which fall within the categories set out in the Code of Conduct. These categories include your membership or position of control or management in any other bodies to which you are appointed or nominated by the Council.

4.2 The Member Code of Conduct requires you to comply with the Code, unless you are subject to another body's code of conduct.

Note: New provisions in the Localism Act 2011 on registering and declaring pecuniary and non-pecuniary interests have replaced the old rules on personal and prejudicial interests.

5.0 Council decision making (conflicts of interest)

5.1 Where you serve as an appointed or nominated representative of the Council on an outside body, it is inevitable that conflicts (actual or potential) will arise, from time to time, between the duties you owe to the outside body, and the duties you owe to the Council. Conflicting interests should be declared on every occasion. It will be a matter for your individual judgement as to whether you participate in discussion of, and vote on, the particular item of business, whether at a meeting of the outside body, or a Council committee. Decisions will be required to be made against the background of the Member Code of Conduct and any advice sought and obtained from the Monitoring Officer.

Personal Interest

5.2 There may be occasions when it would be right for you to take part in the discussion. For example, where there is a general discussion on the role of the outside body, it is clearly in the public interest, that as the Council's representative, you should be able to speak and the Member Code of Conduct allows you to do this.

5.3 If you are appointed to an outside body, you will have a personal interest in that body.

5.4 Provided that you do not have a pecuniary (see below), you only need to declare your interest if and when you speak on the matter at a Council meeting.

5.6 Example: if you are attending a Council debate on education policy and are also a local education authority appointed governor, you would only need to declare an interest if and when you decided to speak during the debate.

6.0 Pecuniary / Other Disclosable Interest

6.1 You will have a pecuniary / other interest in a matter relating to the outside body, if you are in a position of control or management on the outside body and the interest falls into one of the following two categories:

(a) the matter affects the financial position of the outside body e.g. an application for grant funding to the outside body; or

(b) the matter relates to an approval, consent, licence, permission or registration that affects the outside body e.g. application by the outside body for planning permission.

6.2 If you have a pecuniary / other disclosable interest in a matter under discussion at a Council meeting, you must declare that you have such an interest (and the nature of that interest) as soon as that interest becomes apparent to you.

6.3 The duties to register, disclose and not to participate in respect of any matter in which a member has a “Disclosable Pecuniary Interest” are set out in Chapter 7 of the Localism Act 2011. Disclosable Pecuniary Interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

7.0 Bias

7.1 Where you might be inclined to the view that you have no prejudicial interest, your duties as a director, or as a trustee or a member of a management committee may well be regarded, on an objective appraisal, as giving rise to a legitimate fear of lack of impartiality, especially having regard to the desirability of maintaining public confidence. Participation in the decision making at a Council meeting by a Councillor disqualified by bias, potentially invalidates the decision.

7.2 Where your membership on the outside body is in an advisory or consultative basis, bias will not be assumed from mere membership and therefore it would possibly be legitimate for you to decide that you had no prejudicial interest. However, once the outside body has a line which is being advocated by you, it is likely that the Court would find bias which could result in the Council’s decision being struck down. In each case, the Monitoring Officer or Head of Legal and Democratic Services will need to ascertain the facts and review those facts against the legal framework.

8.0. Matters for you to check – questions for you to ask

8.1 In the event of your being appointed to an outside body, you should be clear about the answers to the following questions. The outside body to which you are nominated should be in a position to respond to your questions. Whilst it is your responsibility to obtain the answers to these questions,

Democratic Services will always be happy to assist you and may already have information available:

- What is the nature of the organisation and its main activities? Is it a company, if so what type of company is it (limited by shares or guarantee)? Is it unincorporated? Does it have charitable status?
- In what capacity do I serve on the outside body? Is the effect of my appointment to make me a member of the company, a director or a charitable trustee?
- Do I have a copy of the body's governing instrument (this may be a trust deed, a constitution or memorandum and articles or association)?
- Have I been supplied with a copy of any code of conduct to which I am subject as a member of the body.
- Am I aware of the identity of other directors, trustees or committee members?
- Is there an officer of the body such as a secretary or clerk to whom I can refer?
- Are written minutes kept of meetings and have I seen these minutes?
- Are meetings being conducted in accordance with the governing instrument?
- Am I aware of the financial position of the organisation to which I have been appointed?
- Am I aware of any contracts between the body and the Council?
- Does the governing body of the organisation receive regular reports on the financial position?
- Have I seen the last annual report and accounts?
- Am I aware and have I been advised of the main risks the body faces and what steps are taken to deal with such risks?
- Have I been informed of the main insurances/indemnities held by the body?

9.0 Duties and responsibilities

9.1 The following is a brief summary of the duties and responsibilities of Councillors who are nominated by the Council to outside bodies. Most of the obligations applying to company directors, also apply to trustees and to members of management committees etc.

(a) Company

If the body is a limited company, it is likely that you will be appointed as a company director.

You will need to complete a form giving your details for filing in the Register of Companies at Companies House <http://www.companieshouse.gov.uk/> the company secretary will assist you with this and advise you on your duties to the company.

Duties of a company director are not the same as your responsibilities as a Councillor. Briefly your responsibilities as a director are:

- To promote the success of the company
- To exercise care, diligence and skill
- Not to exceed powers
- To comply with the Companies Acts
- To avoid conflicts of interest
- To exercise independent judgement
- Not to accept benefits from third parties
- To declare an interest in a proposed transaction or arrangement with the company

(b) Local trusts

Occasionally Members will find themselves invited to serve on local trusts which provide that the local councillor is a trustee ex officio. Many such trusts are of some antiquity and often relate to village halls or other community facilities.

‘Ex officio’ is a Latin term meaning ‘by virtue of office or position.’ Ex-officio members of boards and committees, therefore, are persons who are members by virtue of some other office or position that they hold. Without exception, ex-officio members of boards and committees have exactly the same rights and privileges as do all other members, including, of course, the right to vote.

(c) Charity trustees

A number of useful publications are available on the Charity Commission’s website at www.charitycommission.gov.uk Publication CC3 – ‘The Essential Trustee’ what you need to know is a useful reference document. 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, and even though they are not strictly trustees.

A charity may also be unincorporated (see below). The main duties of charity trustees can be summarised as follows although the outside body should be in a position to advise you more specifically on your duties:

- Act in accordance with the charity's trust deed or governing document;
- Protect the charity's assets and manage the charity's affairs prudently;
- Comply with the Charities Acts and the Trustee Act 2000;
- Not make a private profit or personal gain from their position;
- Take proper professional advice on matters on which they are not competent.

(d) Unincorporated organisations

Groups which are not limited companies may be 'unincorporated associations' which have no separate identity from their members. The rules governing the organisation's members' duties and liabilities will (or should) be set out in a constitution, which is simply an agreement between members as to how the organisation will operate. Usually, the constitution will provide for a management committee to be responsible for the everyday running of the organisation. Management committee members must act within the constitution and must take reasonable care when exercising their powers.

If you are involved in a decision-making capacity or have a position of general control or management on an unincorporated body, you will need to be aware that as the body has no separate corporate status, any liabilities will fall upon you personally and you will need to assess the risk of personal liability and the extent to which this has been covered by insurance, which should be taken out in the name of the organisation's committee members.

(e) Local authority companies

Legislation seeks to restrict and control companies which have a connection with local authorities, either because of the level of interest owned by the local authority, or because of the degree of business and involvement between the local authority and the company.

There are three types of local authority companies which are affected by the legislation. These are controlled, influenced and minority companies.

- **Controlled company:** where there is more than 50% local authority interest;
- **Influenced company:** where there is at least 20% local authority interest plus a business relationship with the company accounting for

over 50% of the company's turnover and/or the company is located on local authority land leased or sold for less than best consideration;

- **Minority company:** where the local authority's interest is less than 20%. This type of company is not treated as part of the local authority, and is able to act with more freedom (subject to the other provisions affecting companies in general).

Controlled and influenced companies are also known as 'regulated companies', under the effective control of the local authority, and under the legislation, subject to the capital finance regime which applies to local authorities, as well as other special propriety controls.

For this reason, the Council usually ensures that any involvement it has in companies, is kept below 20%, i.e. that less than 20% of voting rights/directors are associated with the Council.

If you are nominated a director of a company which has a Council interest, you owe specific duties, obligations, responsibilities etc to the company as detailed in paragraph 9(a) above, as the company is a separate legal entity from the Council.

10.0 Joint committee

10.1 A joint committee comprising the Council and other local authorities is established under specific legislative provisions. Your appointment to a joint committee is treated in exactly the same way as your appointment to any other Council committee. You are collectively responsible with other members of the joint committee, for the committee's decision making process. You must comply with the Wirral Council's Member Code of Conduct.

11.0 Partnership arrangements

11.1 The Council may from time to time enter into co-ordinated, joined-up and partnership approaches with other local authorities and organisations. This may be on a voluntary basis, or as required by law.

11.2 The partnership will usually be an informal arrangement or an unincorporated association and therefore not a formal partnership in law. Your appointment to such a partnership is treated in exactly the same way as your appointment to an outside body and you will need to consider the issues outlined in paragraph 9(d) above.

12.0 Indemnities

12.1 If you serve as a director of a company, trustee of a charity or in other decision-making capacities on outside bodies, you serve the particular body rather than the Council and it follows that the Council cannot indemnify you against claims brought against you personally.

12.2 Where there is any possibility of legal liability, the outside body should effect appropriate insurance cover for its directors, company officers, trustees, committee members etc.

12.3 The Council's indemnity/insurance cover will only extend to you, where you are assisting the outside body as an adviser or observer, through facilitating exchanges of views or information as a councillor or otherwise representing the Council.

13.0 Substitution

13.1 Where you take no part in the outside body's management or governance, other than to attend and vote at annual or general meetings e.g. as an 'observer', or undertaking a monitoring role, facilitating exchanges of views or information as an extension of your Council duties, another Councillor may substitute for you on the outside body. However, if you have a role in the governance of the outside body i.e. you serve in a decision-making capacity or have a position of general control or management as director, trustee etc, no other Councillor can substitute for you.

14.0 Involvement and reporting

14.1 Members appointed to an outside body should ensure that they take a proper role in the management and governance of the body. This will include attending meetings regularly and being familiar with issues relating to that body.

14.2 Through procedures established by the Council, Members will report back to the Council on their involvement in outside bodies. This can include a report in the form of the minutes of the outside body, to be noted by the Council Committee, the Cabinet or Council. Member's reports may be edited to protect confidentiality or withheld entirely from the public domain, on grounds of confidentiality.

15.0 Further advice

15.1 Relationships between the Council and outside bodies and you as the Council's representative can involve complex issues. In any case of uncertainty, dispute or difficulty, advice should be sought from the Head of Legal and Member Services.