

## Members' Toolkit

### Appointments to Outside Bodies: The Councillors' Roles - General Guidance & Potential Pitfalls and Conflicts



#### 1. Introduction

Alongside their involvement in the council itself, it is possible for members to be involved in a wide range of outside bodies, including community organisations, sports and recreation clubs, housing associations and companies.

Sometimes members will be appointed to sit on these organisations by the council itself, for example to discharge council duties through formal partnerships, or as formal appointments to national or regional 'representative' roles such as on the Welsh Joint Education Committee (WJEC) or one of the National Parks Authorities in Wales. In other cases, the member may be appointed independently of any council involvement. This guidance deals only with those instances in which the councillor has been nominated or appointed onto the outside body by the Council.

Councils can gain a number of benefits from their members being involved in outside bodies:

- To provide knowledge, skills and expertise which may not otherwise be available
- To provide local accountability or democratic legitimacy through the appointment of an elected representative
- To ensure that good relationships can be maintained with the body
- To deliver a partnership project that requires the input of other organisations or community groups
- To protect the Council's investment or assets, ie, if the council has provided grant funding or provides funding for service delivery
- To lever in external funding which would not be available to the Council on its own

There are a number of types of outside bodies in which members may become involved as a representative appointed by the council. Some common examples are:

- National or regional body
- Charitable Trust
- Company limited by shares
- Company limited by guarantee
- Unincorporated association
- Industrial and provident society (mainly housing associations)

The structure of each type of organisation, the management, and the rules which govern the organisation, vary. The following table shows how each type is set up and managed:

<b>Legal Status of the organisation</b>	<b>Governing Document</b>	<b>Management</b>	<b>Possible member involvement</b>	<b>Common types of organisation</b>
A public authority	Constitution usually based on legislation	Authority	Member	National Parks Authority  Fire & Rescue Authority
Charitable Trust	Trust Deed	Trustee meetings	Trustee	Playing field trusts
Company limited by guarantee	Memorandum and Articles	a) Board of Directors b) Meetings of members	Director	Charitable organisations, stock transfer housing companies, community associations
Company limited by shares	Memorandum and Articles	a) Board of Directors b) Meetings of shareholders	Director	Commercial organisations (e.g. joint ventures or companies providing contractual services)
Unincorporated association	Constitution	Management Committee Members meeting	Management Committee member	Community associations

*Adapted from: 'Guidance regarding serving on outside bodies', Winchester City Council*

Regardless of how the appointment is made, the law lays down many requirements with which members must comply. These may include duties to the council, as well as duties to the outside body and its members.

An appointment to an outside body does not, therefore, necessarily mean that you will be representing the Council's interests on that outside body. Indeed there are a number of cases, for example if you are a trustee or a company director, where you must always act in the interests of the outside body and not in the Council's interests.

This can lead to conflicts of interests between your role as a Councillor and your representative role on the outside body.

You will only be considered a representative of your Council on an outside body if you have been formally appointed or nominated by the Council to this role. You should not purport to act as Council representative on an outside body unless a formal appointment has been made.

Set out below are a number of matters that you should take into account if you act on one or more outside body.

## **2. Appointment and reporting back**

Your appointment should be within any policy your Council has adopted for involvement in partnerships and outside bodies. This policy may explain some of the reasons why the Council may wish to appoint a representative e.g. in order to provide skills or democratic legitimacy, or to protect the Council's assets, or for other reasons.

You must ensure that your appointment has been made in accordance with the Council's Constitution. This can be done either by resolution of the Board/Cabinet or another committee or by a member or officer exercising delegated powers.

It is important that anyone who is appointed to an outside body provides information and reports periodically to the Council on what the organisation is doing. Your Council may have adopted a policy on how and when such reports are to be presented. You should ensure that the outside body provides you with sufficient information to enable you to make this report back. BUT - you are not required to disclose anything which is commercially confidential as this may be in breach of:

- the Members' Code of Conduct;
- your duties of confidentiality to the outside body (whether as director, trustee or more generally); or
- may be a breach of confidence in the general sense.

## **3. General Advice and Guidance to Members Appointed to Outside Bodies**

- Ensure that you know the legal status of the organisation – refer to the table above and read the governing document to understand your responsibilities;
- Ensure that if you are appointed a director of a Company the relevant form (form 288) is filed at Companies' House upon your appointment and resignation;
- Make any general declarations of interest at the first meeting (see section 7 below);
- Ask if there is any personal liability insurance or indemnity in place – sometimes referred to as directors' liability insurance (see section 8 below);
- Clarify whether the organisation will pay allowances or expenses(see section 8 below);
- Ensure the board or management committee has regular financial and other reports which detail the current financial situation of the organisation and any liabilities - take an interest in the business plan;

- Discuss with relevant officers any new activities that the outside body undertakes (you may need to provide them with copy papers) and ensure that risks are properly identified in reports (consistent with local authority decision making - ensure that all relevant information is presented);
- Observe duties of confidentiality (in both directions) (see section 7 below);
- Carefully consider any conflicts of interest, declare interests, and if appropriate, leave the room for consideration of the business (see section 6 below);
- Take advice from the Monitoring Officer, the Finance Department and your lead officer contact as appropriate - not just when the organisation is likely to become insolvent, but generally. Occasionally, that advice may be to seek external advice on your position, especially if there is a conflict between the organisation and the Council;
- Manage conflict - usually issues can be balanced, but ensure that when in meetings of the body you act in the body's best interests which may not necessarily be those of the Council - if all else fails, resign. Do not just remain a director and fail to attend meetings or you may find that you are in breach of your duty to act in the best interests of that organisation (see section 6 below).
- Finally, question the need for future Council involvement! Has the organisation come of age, or has it changed direction from when the Council first became involved - what useful purpose would ongoing representation serve?

#### **4. Particular Duties and Responsibilities of Directors and Trustees**

If you are appointed a director of a company then you must act in the best interests of the company. The main duties of a director are:

- to act honestly and in good faith and in the best interests of the company as a whole;
- a duty not to make a personal profit and to take proper care of the company's assets;
- to attend board meetings and follow the rules on the declaration of interests;
- to exercise reasonable skill and care (this is a subjective test based upon the individual's own knowledge and experience and involves due diligence in the performance of his/her duties as a director); and
- to comply with statutory obligations imposed by the Companies Acts, other legislation and any procedural rules set out in the governing document.

If you are appointed as a trustee of a charity then the duties of trustees are generally the same as for a director but in addition you must make sure the trust acts in accordance with the aims and objectives of the trust and you should make sure that you have a clear understanding of what these are (there is normally a trust deed which sets these out).

#### **5. General Duties of a Representative on an Outside Body**

In carrying out your duties as a Trustee or Director of an outside body you must take decisions without being influenced by the fact that you are a councillor. Your primary duty in acting as a representative making management decisions for the outside body is to make these decisions in the interests of the organisation. Members should always ensure that their fellow directors/trustees are aware of the fact that they are councillors.

In these cases, you must act in the interests of that body and exercise independent judgement in making decisions, in accordance with your duty of care to the body. You are not there just to vote in accordance with the Council's wishes. You may have regard to the interests of the Council, but this should not be the overriding consideration. In some cases voting in the Council's interests could be a breach of a director's duty to a company.

In other cases the Council may have expressed a view or formulated a policy and would expect you to convey that view or policy to the outside body. It is acceptable for you to do this as your Council's representative provided that it does not conflict with your particular duties as director or trustee or where it is clearly not contrary to the interests of the organisation.

The overriding responsibility is to seek to avoid a situation where duty and interest conflict and therefore if you are unsure about declaring an interest, it would be wise to declare and leave the meeting during consideration of the business.

## **6. Managing Conflicts of Interest**

In general terms the purposes of the outside body and what it wants to do often coincide with your Council's interest and so conflicts may be rare. However, there may be difficulty in some circumstances, for example if the body is not complying with the terms and conditions of a funding agreement between the Council and the body; or the organisation wishes to appeal against a planning decision made by the Council; or where the organisation has wider objects than the reason behind the Council's appointment and wishes to pursue activities which would conflict with Council policy.

You will need to manage the conflicts that will arise appropriately and in certain circumstances may feel that your only option is to resign from the company or body. Similarly, if the Council does not feel that a representative on an outside body is properly fulfilling their role and responsibilities, e.g. the person is not attending meetings or is voting in ways which may be inappropriate, then the Council could choose to change its representation on the outside body. Clearly there is a greater scope for conflicts to arise where you hold an office in the outside body, e.g. Chair, Vice-Chair, Secretary or Treasurer, than if you are a general member.

## **7. Declarations of Interest and Duties of Confidentiality - the Members' Code of Conduct**

When outside bodies consider issues related to your Council or where you may have a personal interest in relation to the body's activities, these need to be declared in line with the rules of the outside body and the Members Code of Conduct. The specific rules adopted by each body will vary and therefore you should ask for advice and guidance from the secretary of the organisation and/or the Monitoring Officer, as appropriate.

When the Council considers issues relating to or affecting the outside body to which you have been appointed as Council representative you must declare your personal interest in the matter in accordance with the Members' Code of Conduct. If this is your only interest then it will not be considered a prejudicial interest unless the matter relates to an approval, consent, licence, permission or registration. You will also need to ensure details of your appointment are included on the Register of interests kept by the Monitoring Officer.

Confidential information must be treated with care and if you have any doubt over the status of any information then you should keep that confidential and check with the relevant officer, whether or not it is something which is already in the public domain or which may be disclosed.

The legal position is that someone who has received information in confidence is not allowed to take improper advantage of it. Deliberate leaking of confidential information will also be a breach of the Members Code of Conduct.

Where you act as a representative of the Council on an outside body, you must comply with the Code of Conduct of that body, if it has one. If it does not, you must comply with the Members' Code of Conduct unless observance of the Code would conflict with any other obligations (i.e. the duty to act in the best interests of the outside body).

Under the Code you must not:

- disclose information given to you in confidence by anyone, or information acquired which you believe is of a confidential nature, without the consent of a person authorised to give it, or unless you are required by law to do so;
- prevent another person from gaining access to information to which that person is entitled by law.

Disclosing confidential information may also contravene other parts of the Code e.g. it may be regarded as bringing the office of Councillor or the Council into disrepute; may compromise the impartiality of people who work for the Council; may improperly confer or secure an advantage or disadvantage for you or any other person.

## **8. Allowances, insurances and indemnities**

Your Council may have authorised attendance at meetings of outside bodies as an approved duty for Members, allowing travelling and/or subsistence allowances in connection with meetings of the body. Alternatively, any expenses may be defrayed by the body itself, in accordance with its own rules. If the body does pay expenses, you may not claim from the Council. For further information on allowances contact the relevant officer in the Council

In some instances members who represent the Council on outside bodies may carry personal liability for decisions they make and actions which they take in their representative capacity. This is most likely to arise if you have been appointed as director of a company, or a trustee of a charity or onto the management board of an organisation. The outside body may have

insurance to cover your liability in these cases and you should check with the organisation. Alternatively, your Council may have agreed to provide an indemnity to cover any liabilities incurred by members acting in a representative capacity. The Monitoring Officer will be able to provide further information on this.

**This document is based on the document *Members' Toolkit Appointments to Outside Bodies: The Councillors' Roles – General Guidance and Potential Pitfalls and Conflicts* produced by Nottinghamshire County Council and published by ACSes and *Members on Outside Bodies* Briefing WLGA**

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