

## **APPENDIX 7**

### **A GUIDE FOR MEMBERS AND OFFICERS APPOINTED TO PARTNERSHIPS AND OTHER OUTSIDE BODIES**

#### **Introduction**

This guide covers the various types of bodies appointments are made to by the Council and the duties and responsibilities of those appointed. It gives some general guidance on issues such as bias, indemnity and insurance.

Members are subject to the national Members Code of Conduct. The general principle is that members acting as the Council's representative on an outside body must comply with the Code.

There is no national Code of Conduct for officers. Officers must comply with the Council's Code of Conduct for Employees (Personnel Practice Note 46).

Set out at Appendix 1 is a checklist for appointees. If you cannot answer all the relevant questions please contact a member of the Democratic Services Team.

#### **Directors of Companies**

There are some general obligations on directors of companies. A director owes a fiduciary duty to the company, (not to the individual shareholders or the directors), to act honestly and in good faith and in the best interests of the company as a whole and take proper care of its assets.

A director also owes a duty of care and skill to the company. This is no greater than might reasonably be expected of someone with your particular knowledge and experience. A director is not expected to be an expert (unless they say they are), but is expected to use common sense, act reasonably and ask for advice if necessary.

Directors, like members, are under a duty to use their own independent judgement. If you are in a position where decisions are being taken that might affect the Council's interests then you must disclose this. You must not vote according to a Council mandate: if you do, you may breach the duty owed to the Company if the decision is not in the best interests of the Company. This could expose you to personal liability.

Serious conflicts of interest, for example, where the company inflates a bid for a council grant, may mean you should consider resigning. This may also be the only option if you find you are repeatedly conflicted out of taking part at meetings.

Directors are not allowed to make a private profit from their position. You must disclose any interests you or family have in relation to company contracts. Whether you are then allowed to vote will depend on what the Articles of Association say. You should have been provided with a copy of these when you were appointed.

Directors have to make sure the company complies with the Companies Acts in relation to accounts and returns to the Registrar of Companies. Failure to do so may mean a fine and persistent failure can lead to disqualification as a director.

Directors also have to make sure the company complies with other legislation such as health and safety and employment if the company employs staff or contractors.

If you act properly, use adequate care and skill and act in the best interests of the company you are extremely unlikely to attract any personal liability given that a company is a separate legal body.

### **Charitable Trustees**

People who control and administer charities are known as trustees. If the organisation is not a charity, for example it is company limited by guarantee, then you may be a trustee but not a charitable trustee. It is important to be clear about what your status is. Charitable trustees must:

- act in accordance with the charity's trust deed and protect the charity's assets. They must comply with the Charities' Acts and the Trustee Act 2000.
- not make a private profit from their position.
- act with same amount of care and skill as an ordinary and prudent business person. Higher standards are required of professionals and in relation to investment of funds.
- ensure that the information relating to the trust and trustees is registered with the Charity Commissioners and that annual accounts and returns are completed and sent.
- be aware that if charitable income exceeds £5,000 letterhead, adverts, cheques etc must have a statement on them that the organisation is a registered charity.
- Make sure the charity complies with all relevant legislation, for example, employment, tax and health and safety.

If you are in doubt about your responsibilities the Charity Commission will advise you.

It is important to note that charitable trustees can be personally liable to third parties. This is because, unlike a company, a charity has no separate legal identity. Trustees are entitled to an indemnity from the charity if they have acted properly. Trustees remain personally liable when they retire and should obtain an indemnity from their successors.

Trustees may take out insurance cover provided they have acted properly and within their powers. Alternatively the charity itself can take out the insurance if the trust deed allows it. The insurance will not provide cover against liability for criminal act, fraud etc.

If you are clear about your duties and have taken Charity Commission advice where necessary, any personal liability is highly unlikely to arise.

A number of useful publications are available on the Charity Commission's website: [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)

### **Unincorporated Associations**

These are organisations or 'arrangements' that are neither limited companies nor charitable trusts. Many of the Council's partnerships fall within this category.

They have no separate legal identity and include, for example, bodies such as clubs and residents' and tenants' associations.

The rules governing members' duties and liabilities should be set out in a Constitution. This 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. There are some general principles.

Management Committee members must act within the terms of the Constitution and must take reasonable care when doing so.

Members or officers who sit on Management Committees will have joint and several liability with other members. This means you are responsible as a group and as an individual or number of individuals. You are entitled to an indemnity from the funds of the organisation if you have acted properly. However, if there are insufficient funds, you will be liable for any shortfall. You will have personal liability if you act outside the authority given to you.

As with charitable trusts and companies, the organisation can take out insurance for its members as long as its Constitution allows for this.

### **School Governors**

The governing body of a community, voluntary or maintained school has a separate legal identity from that of the individual governors. As long as a

governor acts honestly and reasonably and within their powers any liability will fall on the governing body.

Governors should ask for professional advice when necessary and at all times act with the school's best interests at heart. If you are asked to act on your own, check that you have the authority to do so.

### **Consultative or advisory bodies**

These are bodies that have a formal advisory or consultative role. For example, an external committee such as the Peak District National Park planning committee or a partnership such as the Local Strategic Partnership.

As a member of one of these bodies, you need to be particularly aware of issues such as the declaration of personal and prejudicial interests, bias and pre-determination. The Standards Board for England's Guidance for Dual-Hatted members is useful in this situation. It can be found on their website at [www.standardsboard.co.uk](http://www.standardsboard.co.uk)

### **Financial and Governance issues**

If you are part of the management structure of an organisation you will have financial and governance responsibilities so:

- Make sure you receive regular, accurate and up to date financial information
- Understand how decisions are made.
- Do **you** have any decision-making powers and if so what is the exact scope of that power?
- What is the process for contracting with a third party? Who can sign contracts in a way which binds the organisation?

Should the organisation get into financial difficulties be aware of:

- The need to apply reasonable skill and care to help to protect its financial interests
- The need to take specialist advice and act as early as possible to protect potential creditors especially when it is clear that the organisation will have no reasonable prospect of avoiding liquidation. If a company continues to trade in these circumstances this could lead to personal financial responsibility.

### **Insurance**

Make sure you know what, if any, insurance cover you have.

Understand what insurance the organisation has for other purposes, for example third party liability insurance and employers liability.

### **Responsibility to Regulators**

Make sure you know whether the organisation owes any obligations to regulators or other outside bodies. For example, a Housing Corporation, the District Auditor, Information Commissioner (data protection and freedom of information), Charity Commission, Register of Companies or the Health and Safety Executive. It may be part of your role to make sure these obligations are complied with.

### **Reporting back to the Council**

One of the reasons for appointments to outside bodies is to establish or reinforce links between the council and the organisation. A flow of information (both ways) is essential. Bearing in mind the duties of confidentiality owed to the outside body, you should make it clear to the organisation that you will be reporting back to the council.

### **Officers as Observers**

Officers may be appointed as observers or to act as a council contact. They will not have any decision-making role. This means there are unlikely to be issues around conflict of interest. However even in an observer role they may have influence in which case they may be deemed to have an executive role even where this was never the intention. Conflicts of interest would then be relevant.

Observers should be aware that:

- You are acting as the Council's representative. You should monitor the work of the organisation and provide a channel for communications between it and the Council. If the body has a funding agreement with the Council, contracts with it or receives a grant, you may be required to lead on formal service monitoring.
- Never criticise the council, its policies, its members, officers, the Government, national politicians or political parties. If others raise criticisms of the Council report those back to your manager.
- Refrain (and be publicly seen to refrain) from taking part in any decision making processes.
- Indicate clearly that you will report back to the council on all relevant issues so that if there are any issues the body wishes to keep confidential or any dispute with the council, you may leave the room.

## **Indemnity by the Council for Members and Officers**

The Council's insurance will cover you against any claim made against you personally as a result of a negligent act or accidental error or omission when you are carrying out a duty on behalf of the council. You must be acting within the scope of your authority. The limit of the cover is £1million. The insurance will not cover criminal offences, fraud, deliberate wrongdoing etc.

In respect of libel and slander you will be indemnified up to a sum of £1million. However, members have to pay 10% of the costs. You must be acting in an official capacity as above.

The insurance covers you against claims for the debts or liabilities of any outside body you have been appointed to or the costs of defending a claim provided you acted in good faith and honestly. It will not cover criminal offences, fraud, deliberate wrongdoing, recklessness or the making of a defamation claim (although it will cover the costs of defending such a claim).

## **Application of the Member Code of Conduct – Personal and Prejudicial interests**

### **Personal Interest**

Any outside appointment to which you have been appointed by the Council must be declared on your Register of Interests Form and the Form kept up to date.

Under paragraph 8 of the Code you will have a personal interest when the business of any such organisation comes up for discussion. Under paragraph 9 of the Code you must disclose this, giving details and not just the name of the organisation, at the start of the meeting or when the interest becomes apparent.

### **Prejudicial interest**

If your interest is one where a member of the public, with suitable background knowledge of your involvement, would regard it as so significant that it would prejudice your judgement, then you will, on the face of it, have a prejudicial interest.

However, the Code says you may consider yourself not to have a prejudicial interest in some circumstances in which case you may stay and vote.

These circumstances are likely to be where there is no financial, licensing or approval aspect to the decision (eg grant application, planning approval) or where the organisation's and the Council's interests are only remotely connected and do not conflict. The Standards Board for England's 'Guidance on the Code' and 'Guidance for Dual-Hatted Members' is useful here.

## **Bias, Closed Mind and Pre- Determination**

Bias, sometimes confused with personal or prejudicial interests, does not originate from the Code of Conduct but from general legal principles. It is where someone allows their judgment to be influenced by some thing when making a decision to the extent that it prejudices the best interests of the body they are representing.

If bias is suspected and a decision challenged an objective assessment is made. If this shows a well-founded suspicion that you might not have been impartial the decision will be set aside

You should always ask yourself 'Would a fair-minded person, knowing the background, consider that there was a real danger of bias arising from the connection between me and the outside body?' and ' Does my involvement mean I have a closed mind and may have pre-determined the decision?'

For example, if a member is appointed as the council's representative on a trust and the trust applies to the Council for a licence or for planning permission , clearly, that member should not decide the application or attempt to influence the decision.

If the outside body is simply a discussion forum it is very unlikely that issues of bias would arise. However if it has a 'line' that is being advocated by the member there is likely to be bias.

If you think bias is an issue you must treat it in the same way as you would a prejudicial interest i.e. declare it and leave the meeting.

## **Dispensations**

In limited circumstances the Standards Committee can grant dispensations to members so that they can take part in decisions where they would otherwise have a prejudicial interest.

These are where;

- Half the members would not otherwise be able to OR
- The council would not be able to comply with the political balance.

A member must send a written request to the Standards Committee (via the Monitoring Officer) for a dispensation and the Committee must decide whether a dispensation is appropriate.

Head of Legal and Democratic Services  
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## APPENDIX 1

### Checklist for Members and Officers – outside bodies and organisations

Congratulations on your appointment by to one of our partner organisations. This checklist is intended to help you in your new role. By asking yourself these questions it should help you get to know the organisation and work more effectively with it. Arrangement will be made for you to meet with either a council lead officer or a senior officer from the outside body/organisation to discuss your role.

You should also have received the Code of Conduct and 'Guidance for Dual-hatted members' produced by the Standards Board for England. Please take time to familiarise yourself with these.

If you have any queries please contact the Democratic Services Manager or one of her team.

#### SELF ASSESSMENT CHECKLIST

1. Who is the officer contact at the Council?	
2. What is the legal status of the organisation? (a company, an unincorporated body such as a management committee, or is it simply an advisory body?)	
3. Do you have a decision-making role or are you simply an observer?	
4. How often does the organisation meet? What percentage of meetings will you be expected to attend?	
5. What are the links with the Council? (in particular does the organisation have any contracts or other legal relations with the Council)	
6. How should you report back to the Council? To whom and in what form?	
7. Is the organisation aware of why you are there and your role in reporting matters back to the Council?	



8. Does the organisation employ any staff?	
9. Does the organisation own or have any rights in any property?	
10. Does the organisation have any contractual commitments?	
11. What insurance does the organisation hold?  (if it employs staff does it carry employee liability cover, does it have third party cover and does it insure you in your capacity?)	
12. Does the organisation understand that you may have to withdraw from decision-making processes if there is conflict of interest with the Council?	
13. What does the organisation want from you? What does it perceive as your role?	
14. For how long is your appointment and how will you pass over to your successor?	
15. How will you be kept up to date with regard to the organisation's financial position?	
16. How are decisions made in the organisation and what is the level of your personal authority to make decisions or take action?.	
17. Apart from your obligations to the organisation what other bodies do you owe duties to?  (For example if the organisation is a company, to the Registrar or Companies, if a charity, the Charity Commission or for Housing Association the Housing Corporation – how are these obligations fulfilled?)	
18. What are the steps to be taken when you leave the organisation?	