

## **OBLIGATIONS OF MEMBERS WHO ARE APPOINTED BY THEIR AUTHORITY TO SERVE ON OUTSIDE BODIES**

### **1. Introduction**

This paper has been prepared to provide extended guidance for Members who face issues arising under the Code of Conduct.

It is not always clear to Members what they are taking on. Their ability to take part in debate concerning those outside bodies in the Executive or Committees is also circumscribed by the law. This guidance does not attempt to provide definitive answers to every problem, but it hopes to provide assistance and pointers. Any specific advice should be obtained from the Monitoring Officer.

### **2. Roles and Responsibilities**

(extracted from the Council's "Anti Fraud and Corruption Strategy")

In carrying out their roles Councillors will act both as individuals and as representatives of the Council. This means:-

Acting according to the rules, constitution and framework set by the outside body

Making independent and personal judgements in line with their "duty of care" to the outside body

Reporting back as necessary to the Council or relevant Committee

Behaving ethically and following as far as applicable the Code of Conduct for Councillors, Independent and Other Voting Representatives

Taking an active and informed role in the management of the outside bodies affairs

Not representing the political party to which the Councillor owes their political loyalty

Taking part in the outside bodies discussions and decisions

Not looking at things simply from the Council's perspective

Taking an active part in meetings and events organised by groups.

### **3. Compliance with the Code on the Outside Body**

Members acting as the Council's representative on another body must comply with the Council's Code of Conduct, unless it conflicts with any legal obligations arising as a consequence of service on that body.

Some outside bodies may require the Councillor to treat the bodies business as confidential. This may militate against the idea of assisting the public accountability of the body (accountability may be through some channel other than the Council), but the Councillor will be bound by that confidentiality.

Some of the duties of Directors and Trustees which are likely to affect consideration under the Code of Conduct are as follows:-

#### **4. The duties of a Director**

1. 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 are, therefore, in the position of quasi-trustees who must take proper care of the assets of the company.
2. A general duty of care and skill to the company, 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.
3. Like a Councillor in respect of Council decisions, a director is under a duty to exercise independent judgement, though it is permissible for him to take into account the interests of the third party which he represents. In such a case the Director must disclose that position and tread a fine line between the interests of the company and the party represented. The Director cannot vote simply in accordance with the Council mandate; to do so would be a breach of duty.
4. There may be actual or potential conflicts between the interests of the Council and the interests of the company. For example, the company might be inflating a bid for Council grant. In such circumstances the only proper way for the conflict to be resolved is for the Councillor to resign either from the company or from the Council.
5. 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.
6. Directors must ensure compliance with the Companies Acts in relation to the keeping of accounts and that the relevant returns are made to the Registrar of Companies. Failure to do so incurs fines and persistent default can lead to disqualification as a Director. Councillors who are directors should ask the appropriate officer/postholder about this.

7. Directors should also ensure compliance with other legislation such as health and safety legislation if the company employs staff or employs contractors to undertake works.

## **5. Position of Charitable Trustees**

A number of useful publications are available on the Charity Commission's website: [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk). Those who are responsible for the control and administration of a charity are referred to as Trustees, even where the charitable organisation is a company limited by guarantee (even though they are not strictly Trustees).

1. 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.
2. 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).
3. Charitable trustees must 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.
4. If charitable income exceeds £5,000 the letters, adverts, cheques etc must bear a statement that the organisation is a registered charity.
5. Trustees are under a duty to ensure compliance with all relevant legislation, for example, in relation to tax and health and safety.

## **6. Unincorporated Associations**

Groups which are neither limited companies nor charitable trusts may be "unincorporated associations" which have no separate identity from their Members. The rules governing the 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.

## **7. Consultative or Advisory Bodies**

A Member could for example be appointed to an external committee which advises the Council on various issues. Difficulties have arisen where that Member champions a position taken by the external Committee and a

challenge may be made on the grounds of bias and/or a closed mind. (Please see Paragraph 9)

## **8. Application of the Code to Members**

A Member must regard himself/herself as having a personal interest in the business of any body to which he/she has been appointed as the Council's representative. Again the Member must disclose the existence and nature of that interest at the commencement of that matter, or when the interest becomes apparent.

However, the Code also sets out prejudicial interests and says that a Member *may* regard himself as not having a prejudicial interest in a matter if that matter relates to "a body to which he has been appointed or nominated by the Authority as its representative". A prejudicial interest is one which a member of the public with a knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest.

## **9. Bias**

Members must remain impartial when sitting on outside bodies and partaking in decision making processes. Any suggestion of bias or any apparent bias affecting a Members judgment will result in a decision being challengeable. Members must give full, careful and independent consideration of the matter (in the same way as they would when participating in Council decision making processes). (If a fair minded and informed observer can reasonably conclude that there is a real possibility of bias on the part of a Member because of their Council interests, then a decision of the Body may be challenged). Members who are affected by bias or pre-determination (closing one's mind to change on the basis of what is presented) should take no part in the debate/decision making process.

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## **10. Closed Mind**

Any decision must also be considered with an open mind. A Member must not pre-determine a matter.