

### Members' Toolkit

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

As a Councillor you may be nominated by your Council to sit on various types of outside bodies.

Be aware that this does not 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.

#### **Policy on Involvement and Representation**

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 reason.

#### **How are appointments made?**

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

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

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 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.

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

- Ensure that you know the legal status of the organisation - read the constitution (the rules or the Memorandum and Articles of Association) and understand your responsibilities;
- Ensure that if you are represented on the Board of a Company the relevant form 288 is filed upon your appointment and resignation;
- Make any general declarations of interest at the first board meeting;
- Ask if there is any insurance or indemnity in place;
- Clarify whether the organisation will pay allowances or expenses;
- 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;
- Ensure the organisation has sound financial practices and procedures;
- Exercise independent judgement in making decisions;
- Act with integrity;
- Discuss any new activities with relevant officers (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);
- Ask questions and make reasonable enquiries;
- Observe duties of confidentiality (in both directions);
- Carefully consider any conflicts of interest, declare interests, and if appropriate, leave the room for consideration of the business;
- Question responsibility and accountability;
- 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.
- 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?

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

As a representative on the Management Committee or on the Board of an outside body, 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.

The overriding responsibility is to seek to avoid the 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.

## **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 fiduciary duty to the company, not to make a personal profit and to take proper care of the 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 constitution.

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).

## **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.

### **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.

### **Members Allowances**

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

### **Indemnity**

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.