

GUIDANCE FOR MEMBERS ON OUTSIDE BODIES

1. INTRODUCTION

1.1 With the increasing emphasis on partnership working, councillors, as community leaders, have an important role to fulfil in supporting and advising outside bodies. However, this can give rise to conflicts of interest, particularly where the organisation is seeking or receiving funding from the Council. Members always need to be clear about their roles and alert to potential conflicts of interest, in order to ensure transparency and public confidence in local democracy.

1.2 This guidance covers, primarily, the position of Members appointed by the Council to serve on outside bodies, though much of the advice applies equally to Members who are involved with outside bodies in a private capacity. In those situations, however, the Council's insurance/indemnity cover will not apply.

This guidance supplements the advice in the Member/Officer Relations Protocol and the [Member] Code of Conduct.

1.3 In the context of this guidance, 'outside bodies' include trusts, companies, charities, school governing bodies, industrial and provident societies and community associations. Members may be involved as a director, trustee, governor or member (with or without voting powers).

1.4 Members who are involved in the management of outside bodies have responsibilities to that body that must be acted upon. Their role, responsibilities and potential liabilities will depend upon the legal nature of the organisation and the capacity in which they have been appointed. Failure to act in a proper manner may give rise to personal liability or liability for the Council.

2. ISSUES 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 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.

2.2 Before accepting an appointment to an outside body, you should check:

- the legal status of the organisation e.g. company, trust, charity, unincorporated association;
- the capacity in which they are to be appointed e.g. director, trustee, member with voting rights or member with observer status;
- the purpose of the organisation and how this relates to the Council’s functions and objectives;
- the relationship between the Council and the body and the likelihood and extent of any conflicts of interest;
- the requirements of the organisation’s governing instrument (e.g. constitution; trust deed, memorandum and articles of association), both as a member and generally;
- the financial status of the organisation;
- the organisation’s governance and decision making arrangements, including the management of risk;
- the organisation’s code of conduct for its members;
- potential liabilities for the organisation’s members;
- the extent of the organisation’s insurance/indemnity cover for its members;
- the application of the Council’s [Member] Code of Conduct;
- bias factors on objective appraisal.

It is your responsibility to obtain the answers to these matters.

2.2 Having checked the above matters, you should consider carefully whether you should be appointed to participate formally in the management of the external organisation e.g. as a director, trustee or voting member, or whether your role as a representative of the Council, may be more effectively discharged as a non-voting member with observer status only.

2.3 You are entitled to all reasonable assistance from Officers in support of your role as Council representatives on outside bodies. Such assistance will include the provision of information about the body and the identification of a contact Officer to be available for briefing purposes and to assist you in reporting back to the Council on the activities of the body.

3. CODES OF CONDUCT

3.1 The Council’s adopted [Member] Code of Conduct states:

- (a) ‘You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example. You should have regard to the Council’s guidance in Protocols on the conduct between officers and members and the conduct when serving on outside bodies’.

- (b) 'Failure to declare a Disclosable Pecuniary Interest may be a criminal offence and you should also declare any Prejudicial Interest that relates to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest. You should register and declare your interests in a manner conforming with the procedures set out by the Council, including Standing Order 19.'

The expectation in the public mind is that, whatever your appointed role, you will at all times, act in the public interest, provide leadership for your community and conduct yourself appropriately.

- 3.2 When appointed to an outside body, you will have responsibilities as a member of the outside body. These responsibilities may potentially include personal liabilities and may also raise questions of conflicts of interest. Conflicts of interest may arise through competing personal interests, or the competing interests of the outside body of which you are a member. You will therefore need to consider whether you can accept such an appointment in each case.
- 3.3 Conflicting interests should be declared on every occasion. It will be a matter for your individual judgement as to whether your interest, in the context of the Council's decision making process, amounts to a prejudicial interest (see Appendix B for the definition of 'prejudicial interest').

Where you have a prejudicial interest in a matter to be considered, or being considered at a meeting you must:

- (a) disclose the interest; and
- (b) explain the nature of that interest at the commencement of that consideration or when the interest becomes apparent; and unless you have been granted a dispensation, you must:
- (c) not participate in any discussion of, or vote taken on, the matter at the meeting; and
- (d) withdraw from the meeting room whenever it becomes apparent that the business is being considered; and
- (e) not seek improperly to influence a decision about that business.
- 3.4 In the context of the outside body's decision making process, conflicting interests should also be declared on every occasion and you should have regard to the organisation's governance and decision making arrangements or code of conduct rules on conflicts of interest.

4. BIAS

- 4.1 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 committee meeting by a Councillor disqualified by bias, potentially invalidates the decision.
- 4.2 Where your membership on the outside body is in an advisory or consultative basis, bias will not be assumed from mere membership. However, once the outside body has a line which is being advocated by you and you take part in the

Council's decision making process, it is likely that the Court would find bias, which could result in the Council's decision being struck down.

5. LEGAL STATUS, CAPACITY, DUTIES AND LIABILITIES

- 5.1 Your specific responsibilities as a member of the outside body will depend upon the legal status of the outside body and the capacity in which you have been appointed. The position in relation to various types of outside body is summarised in Appendix A to this guidance.
- 5.2 The key point to note is that where you are carrying out your duties as a director, trustee, or management committee member, you may take account of the wishes of the Council, but your primary duty is to act in the best interests of the organisation to which you have been appointed.

6. COUNCIL INSURANCE/INDEMNITY

- 6.1 The Council's insurance/indemnity cover only operates when you are pursuing your Council duties.
- 6.2 Generally, whilst the Council appoints councillors to outside bodies, once appointed, they act as members of the outside body rather than as councillors. 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. 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.
- 6.2 The Council's insurance/indemnity cover will only extend to you, where you are assisting the outside body as an adviser or observer, either through facilitating exchanges of views or information as an extension of your Council duties or, otherwise representing the Council. The Council will provide insurance/indemnity cover where the organisation is a joint committee of two or more local authorities.

7. SUBSTITUTION

- 7.1 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.

8. FEEDBACK

- 8.1 Feedback is an excellent vehicle to communicate the Council's involvement in outside bodies to the wider community. It is important for the Council to receive feedback on issues affecting outside organisations where Members are nominated to represent the Council.

8.2 Members' feedback demonstrates transparency in local government through the open reporting of their activities and involvements with and on behalf of the Council with outside bodies.

8.3 You will report back to the Council (at least twice yearly) on your involvement in outside bodies. In most instances, the report will be in the form of the minutes of the outside body, to be noted in the Members' Information Bulletin. On occasions, these minutes may be edited to protect confidentiality or withheld entirely from the public domain, on grounds of confidentiality.

9. COMPLAINTS AND ALLEGATIONS OF BREACHES OF THIS GUIDANCE

9.1 Allegations of any failure to meet this guidance must be made in writing, to the Monitoring Officer. The Monitoring Officer will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than informally referring the matter to the Leader of the relevant party group. More serious complaints may result in an investigation and a hearing before the Hearing Panel.

10. OVERSEEING COMPLIANCE WITH THIS GUIDANCE

The Audit Board oversees compliance with this guidance.

11. FURTHER GUIDANCE

Further advice or clarification can be sought from the Monitoring Officer or the Head of Legal Services.

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Reviewed under Managing Director's delegation 26.09.2012

APPENDIX A

1. Director of Limited 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:

- (i) To promote the success of the company
- (ii) To exercise care, diligence and skill
- (iii) Not to exceed powers
- (iv) To comply with the Companies Acts
- (v) To avoid conflicts of interest
- (vi) To exercise independent judgement
- (vii) Not to accept benefits from third parties
- (viii) To declare an interest in a proposed transaction or arrangement with the company.

2. Local trusts

Occasionally, you may be 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.

3. 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. You must:

- (1) act in accordance with the charity's trust deed or governing document;
- (2) protect the charity's assets and manage the charity's affairs prudently;
- (3) comply with the Charities Acts and the Trustee Act 2000;
- (4) not make a private profit or personal gain from your position of control;
- (5) take proper professional advice on matters on which you are not competent.

4. 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.

5. 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 the company is a separate legal entity from the Council.

6. Joint committee

A joint committee comprising the Council and other local authorities is established under specific legislative provisions e.g. Eltham Crematorium Joint Committee and is not an 'outside body'. 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 [Dartford] Council's [Member] Code of Conduct.

7. Partnership arrangements

The Council may from time to time enter into a co-ordinated, joined-up and partnership approach with other local authorities and organisations. This may be on a voluntary basis e.g. Thames Gateway Kent Partnership or as required by law e.g. Dartford and Gravesham Community Safety Partnership (CSP) between Dartford and Gravesham Councils and other partners, such as the police service, police authority, fire service, PCT and KCC.

The partnership will, in almost all cases, be 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.

APPENDIX B

Prejudicial Interests (as prescribed by Dartford Borough Council)

A prejudicial interest means an interest (other than a Disclosable Pecuniary Interest) in any matter under consideration at any meeting which may reasonably be regarded as affecting your financial position or the financial position of a person or body you are associated with:-

- (a) - to a greater extent than other council tax payers, ratepayers or inhabitants of the Council's area; and
- (b) - where a member of the public with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice your judgment.

You will not normally have a prejudicial interest if:

- (a) you are a tenant of the Council provided that the matter under consideration does not relate particularly to your tenancy or lease; or
- (b) you are a parent or guardian of a child in full time education, unless the matter under consideration relates particularly to the school which your child attends; or
- (c) you are in receipt of, or are entitled to the receipt of, statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992; or
- (d) as a member of the Council, you are given a payment or indemnity; or
- (e) as a member of the Council, you are being/have been bestowed a ceremonial honour by the Council; or
- (f) the Council is setting the council tax or a precept under the Local Government Finance Act 1992; or
- (g) you serve as a member of a body exercising functions of a public nature (e.g. other government agencies, other councils, public health bodies, school governing bodies), unless the matter under consideration relates particularly to the body.

Amendment authorised by the GAC - 27.02.17 – Min. No.75(4)