

## 5.9 Protocol and Guidance for Elected Members appointed to Outside Bodies

This guide is intended to give a general overview of issues that affect Elected Members who are involved in outside bodies, whether or not their membership arises from an appointment by the Council. Whilst it is not possible to provide a comprehensive guide to all possible situations, the Head of Legal and Democratic Services and his staff will be able to offer specific advice where necessary.

In some cases, the persons appointed will be the Council representative in that they will be expected to bring knowledge and expertise of the Council Services and to represent the Council's views at meetings. However, there are a number of cases, for example if you are a trustee or company director, where you must look after that particular bodies' interests and to further their aims, not the Councils.

In all cases Members should:-

- Operate within the rules and/or constitution of the outside body
- Report back, where appropriate, to the Council or relevant committee
- Behave ethically and follow the Council's code of conduct where it applies
- Take an active and informed role in the affairs of the outside body

There are a number of types of outside bodies in which Councillors may become involved, either independently or, as a representative appointed by the Council. Some of the most common examples are

- A Public Authority
- Charitable trust
- Company limited by shares
- Company limited by guarantee
- Unincorporated association

The structure for each type of organisation, the management and the rules which govern them vary considerably. The following table shows how each type may be set up and managed.

Legal Status of the organisation	Governing Document	Management	Possible member involvement	Common types of organisation
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 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

In carrying out their duties as a Trustee, Director or Management Committee Member, Councillors must take decisions without being influenced by the fact that they are a Councillor. Their primary duty in acting as a representative making decisions for the outside body is to make those decisions in the interests of the organisation. However, Councillors should always ensure that their fellow directors/trustees are aware of the fact that they are Councillors.

### **Main Duties**

The following are the main legal duties of directors of companies. Most of these obligations also apply to trustees and members of committees and associations.

#### **Acting in Good Faith**

A director's primary duty is to act in good faith, in the best interests of the organisation and its objects. All directors owe a fiduciary duty to their company, which means they owe loyalty to the company and a duty of care to act in the best interests of the company, having regard to the interests of the members or shareholders of the company, the company's employees and creditors.

#### **Care, Diligence and Skill**

Directors must exercise the same degree of care which ordinary people might expect to take on their own behalf, although they need exercise no greater skill than may reasonably be expected from persons of similar knowledge and experience.

Although directors are not bound to attend all meetings of directors, attendance should be as frequent as possible and directors should ensure that they are reasonably informed at all times. Directors should not take a passing, or passive interest in the company's financial and other affairs - they are obliged to take an active and enquiring interest in the company.

Certain duties must be performed by officials, and a Board of Directors who have made sensible arrangements authorising others to act on their behalf are entitled to trust those officials to perform their duties honestly. From time to time directors should take steps to ensure that delegated responsibilities are properly performed.

### **Honesty**

Directors must exercise their powers for proper purposes only. They must not allow personal interests to conflict with those of the organisation.

Where a director is directly or indirectly interested in a contract or a proposed contract with the organisation, the director is legally bound by the Companies Acts to declare the nature of the interest at a meeting of the Board of Directors.

All company property in the hands of the directors or under their control must be used for the purpose of the organisation. It is improper for any director to make profit out of a transaction of the organisation or to accept financial inducements.

### **Not to Exceed Powers**

Directors are under a duty to see that they do not act beyond the powers of the organisation. They must ensure that they do not act beyond the powers conferred on them by the Memorandum of Association or constitution. They must not act illegally.

### **Financial Responsibility**

Directors are under a duty to ensure that the company operates within the limits of its financial resources, actual and expected. Despite the limited liability of a company, directors can incur **personal responsibility** for its debts and obligations in certain circumstances.

Directors can also be held **personally liable** if they have allowed a company to operate, or continue to operate, where there was no reasonable prospect that it could and would pay its debts, and these are left unpaid after the liquidation of the company.

It follows that Directors must be extremely scrupulous in the attention they pay to their company's present and future liquidity, and ensuring that their concerns and actions are minuted.

### **Compliance with the Companies Acts**

Directors also have a duty to ensure that the company complies with the requirements of the Companies Acts, although they will normally look to the Company Secretary to ensure compliance.

An organisation's constitution generally says little about how the Board of Directors should run the organisation. In general, a company's Memorandum and Articles of Association will state the objectives of the organisation in the broadest terms and will provide rules for the appointment and periodic re-election of the Board of Directors. The actual responsibility for the running of the organisation is in the hands of the Board and Directors must take appropriate steps to ensure good management of their companies.

## **Trustees**

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).

## **Liability Issues**

In cases where Councillors act in a decision-making capacity specifically in connection with the business of the outside organisation as opposed to merely exercising their role as a representative of the Council, then they will probably be regarded as serving the particular body rather than the Council. In these circumstances, the Council and its insurers may not have agreed to provide an indemnity against claims brought against them personally. Where there is any possibility of legal liability therefore, the outside organisation should provide the appropriate insurance cover for its directors, company officers, committee members etc.

The Council's insurance cover will extend to Councillors assisting outside organisations as advisers or observers, either facilitating exchanges of views of information as an extension of their Council duties or otherwise representing the Council, but the Council's insurance cover does not extend to indemnify Councillors and officials who serve in an executive capacity on an outside body. Councillors and Officers should be clear that if they serve on an outside body as decision makers, they do so in a personal capacity. Outside bodies on which Councillors serve, therefore should provide their own insurance cover.

All those organisations seeking Denbighshire County Council to make appointments will be asked to provide evidence of the level of indemnity provided for its members. Upon commencing their duties on behalf of the organisation, each Councillor should ask the organisation to provide confirmation of the validity of their indemnity arrangements.

## **Conflicts of Interests**

Where Councillors serve as members or directors for outside bodies, it is inevitable that conflicts will arise, from time to time, between the duties they owe to the outside body and the duties they owe to the Council. Conflicting interests should be declared on every occasion. It will be a matter for the individual judgement of the Councillor as to whether he or she participates in discussion of, and votes on, the particular item of business, whether at the meeting of the outside body or a Council committee.

Decisions will be required to be made in accordance with the Code of Conduct and the rules applicable to the outside body and, where appropriate, advice should be sought and obtained from appropriate Council officials.

Provided Members are sensitive to the possibility of conflict of interest, there is no reason why they should not express a 'Council' view when acting on an outside body. However, they should make clear that they do not represent the Council on the outside body, and so cannot bind the Council by what they say. In many cases Members will be able to act as valuable links between outside bodies and the Council.

### **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.

## **Registering Interests**

Under the Council's Code of Conduct, Councillors are required to register their financial interests and other interests in the Council's Register of Interests within 28 days of their election or appointment. They must also notify the Council's Monitoring Officer, in writing, of changes to these details within 28 days of any such change.

## **Checklist for Councillors Appointed to Outside Bodies**

Prior to commencing any duties relevant to the membership of an outside body organisation, Councillors need to ensure that they follow a number of steps:

- Members should ensure that prior to accepting any invitations by outside body organisations to attend their meetings and act on their behalf, that they have firstly been properly appointed on behalf of the Council.
- Members attending a meeting of an outside body organisation for the first time should ensure that they are provided by the organisation with details of the following:-
  - The purpose of the organisation, a copy of its constitution and its terms of reference.
  - A summary of the organisation's role as an employer, as a property holder and as the body responsible for the finances of the organisation.
  - The expected role of the elected Member on the organisation and the extent of their personal liability.
  - Confirmation of the detail and validity of the organisation's insurance and indemnity arrangements to protect Members acting on its behalf.
  - Details of the dates, venue and frequency of meetings which they will be invited or expected to attend.
  - Correspondence and contact details for any queries regarding the organisation and Member's roles.