

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

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

You need to 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.

How are appointments made?

You can only be appointed to an outside body as a Councillor if this is done in accordance with the Council's Constitution. Part B6 (page3) Local Choice Functions, paragraph 18 of the Constitution requires that initial appointments to outside bodies after a new Council is elected are to be made by the full Council. Thereafter the Assistant Director Legal and Democratic is authorised, in consultation with Group Leaders, to make new appointments, fill vacancies, approve variations to existing appointments and delete organisations from the approved list.

You must ensure that your appointment has been made in accordance with the Constitution and should not purport to act as a Council representative on an outside body unless a formal appointment has been made. This guidance does not cover any situation where a Member chooses to sit on an outside body in their own private capacity (i.e. not as a Councillor).

Set out below are a number of matters that you should take into account if you act as a Council representative on one or more outside bodies.

General Advice and Guidance to Members Appointed to Outside Bodies

- Ensure that you know the legal status of the organisation – read the constitution, rules, trust deed or Memorandum and Articles of Association, etc. - and understand your responsibilities;

Note: the main types of body to which you may be appointed may be:

- a statutory body – undertaking specific duties conferred by law;
 - a registered company – usually a non-profit company limited by guarantee; rarely a company limited by shares (profit making);
 - a registered charity or industrial and provident society providing a voluntary/community service;
 - a grant-making trust (normally a registered charity) disbursing endowed funds;
 - an unincorporated association – often local community groups that are neither companies nor charities, and have no separate identity from their individual members;
 - a consultative or advisory body – which may be a joint forum of local authorities or a partnership arrangement with other public/private/third sector bodies (national, regional or local);
 - a discussion/liaison group with no responsibilities of its own.
- 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 Council 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 – remember that each enquiry has a cost to the organisation to answer;
- 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 Chief Finance Officer 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! Does it link in some way with the Council's strategic objectives? Does continued Member representation bring clear benefits for either the Council or the local community? Has the organisation 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 independently constituted 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 only exceptions will be certain consultative/advisory bodies such as EERA, the LGA or the LSP, where the representative will normally be expected to act in the Council's interests; each case will need to be considered on its merits).

The overriding responsibility is to seek to avoid the situation where duty and interest conflict. 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 as a company director 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 of 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. In the case of adult safeguarding or children's safeguarding, take advice from the relevant Director. Just as with Council business you should not become involved in the detail of individual cases or staff below Executive level;
- To comply with statutory obligations imposed by the Companies Acts, other legislation and any procedural rules set out in the Constitution; and
- You should not commit Council resources unless you are sure that Officers can make them available.

If you are appointed as a trustee of a registered 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 set these out).

Declarations of interest and duties of confidentiality – the Members' Code of Conduct

When outside bodies consider issues related to the 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.

If you are appointed to the Management Committee or board of outside bodies you must declare this interest in meetings of the Council which consider issues related to that body. You will also need to ensure those duties 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. Always seek clarification from the outside bodies whether you are permitted to release particular details of decisions of that body if you intend to discuss matters with the Council.

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 Council's Code of Conduct, unless that body is another relevant authority which has its own Code; or unless observance of the Code would conflict with any other obligations (e.g. the duty to act in the best interests of the outside body).

Under the Council's 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 Member 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 the Member or any other person; and in some cases knowledge may give someone a personal interest.

Managing conflicts of interest

In general terms the purposes of the body and what it wants to do often coincide with the 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.

Reporting back to the Council

Many local authorities require that anyone who is appointed to an outside body provides information and reports periodically to the Council on what the organisation is doing. Central Bedfordshire Council has not adopted any policy on this matter, but you should ensure that the outside body provides you with sufficient information to enable you to make this report back if requested. However, you are not required to disclose anything which is commercially confidential to the outside body 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
- confidence in the general sense.

Members' Allowances

The Council's Members' Allowances Scheme defines attendance at meetings of all outside bodies where the Member is attending as the Council's duly authorised representative (whether appointed for a fixed term or authorised on an ad hoc basis) as an approved duty for the purposes of travelling and subsistence allowances, subject to no such allowances being claimed by the Member from the outside body concerned. If the body does pay such expenses, you may not claim from the Council. For further information on allowances contact the Senior Members' Support Development Officer.

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