

Monitoring Officer's Advice Note to Executive Members

Personal and Prejudicial Interests

I have been asked to bring to the attention of Executive Members the need for them to consider the issue of personal and prejudicial interest where they are appointed to outside bodies by this Council - in particular when there is a report at Executive relating to the outside body and the matter falls within the Portfolio the Member is required to cover.

This may not be too problematic if such a conflict is a rare occurrence. It could be more difficult however where the Executive Member's involvement in an outside body gives rise to such a frequent requirement for them to withdraw from meetings, by reason of having a personal and prejudicial interest, that it impacts on their ability to act effectively either within the Council or on the outside body.

Members should be aware that under paragraph 10 of the Members' Code of Conduct a **personal** interest always arises from membership of an outside body "of which you are a member or in a position of general control or management", including one to which you have been appointed or nominated by the Council. While this interest needs to be both registered and declared at any meeting where the business relates to or is likely to affect that body, this does not in any way impede your full participation in the meeting.

This note is concerned with the circumstances in which a **personal and prejudicial** interest might arise, when under paragraph 14 of the Code you would have to withdraw from any council meeting at which relevant business within the meaning of paragraph 12 of the Code was being considered. Furthermore Members could not exercise executive functions nor seek improperly to influence a decision in relation to that business. This is mainly where the financial position of the outside body is under discussion.

In light of the concerns raised, advice has been sought from a specialist Local Government Lawyer, Peter Keith-Lucas. Set out below is an extract of the key relevant points contained in his advice.

"In what circumstances would it be difficult for a Cabinet Member to be a member of an outside body?"

It is important that the Council is seen to be at the centre of its community and therefore senior Councillor involvement in outside bodies is important. I would certainly not advocate any blanket prohibition on elected members being members of outside bodies, but there are clearly some areas which cause more difficulties than others.

My advice is that Councillors with an interest in and commitment to a particular area of activity should be very cautious about becoming a member

of an outside body where this will mean that they would need to declare a prejudicial interest and withdraw from consideration of any related matter within the Council, as this means that they are unable to act effectively within the Council. For this purpose the danger areas are as follows -

Bodies which rely on Council financial support

The revised definition of “prejudicial interest” requires that the decision of the Council either affects the financial position of the outside body or that it determines the outside body’s planning or other application. The planning application point is of less concern to a Cabinet Member, as he/she can always declare and withdraw for particular applications. It is more of a problem where the outside body is dependent upon the authority for funding, or for the supply of land, and its activities are within the Cabinet Member’s Portfolio, as it is then likely that the Cabinet Member will have a prejudicial interest (and apparent bias) in decisions on funding and land provision whenever they come before him/her as a single Cabinet Member or before the full Cabinet.

Note that under the old Code there was an exception where a Councillor was appointed to an outside body as a “representative” of the Council, allowing the Councillor to treat it merely as a personal interest. Without explanation, that exception was removed from the 2007 Code, which does cause problems.

A particular issue arises during the preparation and approval of the Council’s Budget. The issue arises if support for outside bodies is likely to come up regularly during the Budget preparation, requiring the Cabinet Member to withdraw. At the formal Budget Debate in Council, it is arguable that all Councillors who are members of outside bodies which stand to receive financial support approved (individually or collectively) in the Council Budget may have prejudicial interests or apparent bias. The issue will be more problematic for Cabinet Members rather than ordinary Councillors, because they are appointed by the authority to more outside bodies, and to those which are more likely to be directly funded by the authority.

Lobbying Organisations and Pressure Groups in respect of matters for which Central Bedfordshire Council is responsible

Where a Cabinet Member is also a member of an outside organisation which is campaigning on a particular local issue, it is likely to give rise to at least apparent bias on the part of the Cabinet Member whenever a relevant matter comes before Cabinet. So it is sensible for a cabinet Member particularly not to be a member of a local campaigning organisation. I am less worried about national organisations such as RSPB or the Ramblers Association, but a local organisation such as “Stop the Bypass” or “Keep the Hospital Open” will cause problems.

Directors

A particular difficulty arises with being appointed as a director of a company. This is because being a paid company director is a specific class of personal (and potentially prejudicial) interest, and a company director has specific statutory obligations under the Companies Act 2006 to promote the best interests of the company and not to allow a conflict of interest to arise.

In practice, it may be possible for the outside body to invite the Councillor to attend and to speak, but not to vote, at its Board meetings as an observer. Provided that the Board does not subordinate itself to the Councillor, making him a “shadow director”, this arrangement allows the Councillor to participate in the outside body without creating a personal or prejudicial interest when relevant matters are under consideration within the Council.

Trustees

Being a trustee is more of a problem in terms of bias than under the Code of Conduct. This is because many trusts are unincorporated, so that there is no “body” that is capable of legal identification. Where the trust is incorporated (normally as a company limited by guarantee), a prejudicial interest in land arises where the Councillor has a “beneficial interest” in the land, but a trustee’s interest in the trust land is not “beneficial”.

On the other hand, a trustee is under an obligation to act in the best interests of the beneficiaries of the trust, and that is likely to give rise to apparent bias.”

From the above advice it is clear that the most problematic areas are likely to be where an outside body depends on the Council either for funding or for providing land, where it is campaigning on a particular local issue, or where the Member is appointed as a company director or a trustee; and the business before the Executive relates to either the body’s finances or the determination of any consent or permission. As always, it is not possible to give clear-cut advice to Members that will cover all situations, as the nature of any interest will depend on the particular circumstances in each case.

It may be helpful just to reiterate that, while I would always advise Members to exercise great caution in relation to potential conflicts of interest, there is no reason to recommend a blanket prohibition on Executive Members serving on outside bodies. In occasional cases of conflict this could be dealt with by withdrawing from either the outside body’s meeting or the Executive’s meeting. The key issue is **how often a personal and prejudicial interest is likely to arise**, and whether the frequency is so great that the Member can no longer effectively conduct their role either on the Executive, or on the outside body to which they have been appointed.

This advice applies equally to Members serving on school governing bodies as to other outside bodies.

In light of the above, I would request you review your entry in the Register of Interests, which can be found under the ‘Your Councillors’ pages on the Council’s website at

<http://www.centralbedfordshire.gov.uk/modgov/mgMemberIndex.asp?FN=ALPHA&VW=LIST&PIC=0>

to check that it lists all the outside bodies to which you have been appointed or nominated by the authority and let me know please of any omissions, inaccuracies or changes that may occur.

Insurance Cover and Indemnity

I have also been asked to establish whether Council Members appointed or nominated to outside bodies are covered by the Council's own indemnity and insurance policy for any liabilities they may incur in the course of their duties on that body.

The Council's Indemnity for Members and Officers (at Part 6 of the Ethical Handbook at the back of the Constitution) provides cover in connection with any action, or failure to act, which has been authorised by the Council or which forms part of, or arises from, any duties or functions placed upon the Member. This does in theory include functions arising from the Member's service on an outside body, where they have been officially appointed by the Council and the outside body itself does not provide its own cover. Enquiries of both the Council's present insurers and our insurance brokers confirm, however, that insurance cover can only be provided when either the Member is sitting on the outside body purely to represent the Council, or the body on which the Member sits is acting only in the interests of the Council.

This means that the Council's insurance-backed indemnity would extend to membership of statutory bodies, where the Member would be acting as the Council's representative (in situations where the body did not provide its own cover); to membership of the many advisory, consultative or liaison bodies of which the Council is a member; and to situations where the Council's representative was appointed purely as a non-voting observer on a company or other incorporated body. Insurance cover would not be provided, however, where the Member was appointed by the Council to serve as either a company director or a charity trustee, where their primary obligations would be to that body rather than to the Council; in this situation the outside body should be expected to provide its own indemnity. From a recent survey it appears that most already do so; further enquiries are being made where this is not the case.

I should stress that in no circumstances will the Council's indemnity/insurance cover Members who are serving on an outside body in a personal capacity, i.e. at their own choice rather than by formal Council appointment.

Officers intend to report in more detail to the next meeting of General Purposes Committee recommending a review of the Council's current appointments to outside bodies, which will take account of the above position.

For school governors, while there is provision in education legislation which severely limits their personal liability, most schools in Central Bedfordshire purchase insurance cover from the Council which includes combined liability. This will provide cover for public liability, employer's liability, libel & slander, officials' indemnity and personal accident, subject to an excess of £50 if a claim against the governor were to be successful.

Please contact me if you need any additional information on conflicts or interest, either generally or in relation to a specific situation, or in relation to potential liabilities.

Barbara Morris
Monitoring Officer