

# **SOUTH DERBYSHIRE DISTRICT COUNCIL**

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## **CODE OF CONDUCT FOR REPRESENTATIVES ON OUTSIDE BODIES**

# **SOUTH DERBYSHIRE DISTRICT COUNCIL**

## **POLICY GUIDANCE FOR DISTRICT COUNCIL INVOLVEMENT IN PARTNERSHIPS AND OUTSIDE BODIES**

### **Context**

#### **1.1. Introduction**

There are many reasons why the District Council may wish to enter into Partnerships with or be involved in Companies and Outside Bodies. For example such arrangements may:

- help to lever in external finance which would not otherwise be available to the Council;
- be able to share skills, knowledge and expertise in order to improve service delivery;
- be able to supplement the Council's functions and contribute towards delivering the aims and objectives of the Corporate Plan and Community Strategy for the area;
- add value by providing support which would not otherwise be available.

Councils have been involved in Companies and Partnerships for a long time in diverse and innovative arrangements that have covered a spectrum of services from the arts and community projects, through regeneration, training and front-line service delivery. Any Partnership will always need to be appropriate to the authority, the area and the specific objectives and purposes it is designed to support at the particular time.

This document has been prepared to enable the District Council to give consideration to its involvement in those partnerships and outside bodies and the development of a policy framework for participation.

#### **1.2. Why Should the District Council be involved in Outside Bodies?**

There are a number of reasons why the District Council may wish to establish, be involved in and appoint representatives to outside bodies. They include the following:-

- to deliver a Partnership Project which requires the input of other partners;
- to provide knowledge, skills and expertise which may not otherwise be available;
- to protect the Council's investment or assets, i.e. if the Council has provided grant funding or provides funding for service delivery;
- to provide local accountability or democratic legitimacy through the appointment of an elected representative;
- to ensure that good relationships can be maintained with the body;

- to lever in external funding which would not be available to the District Council on its own;
- or some other good reason.

It may be that the District Council has traditionally appointed to certain Bodies, but should review its involvement in those Bodies as things may have changed as time has moved on. What may have been legitimate when the organisation was created, may no longer be a priority for the Council in the current circumstances and pressures on resources.

With the help of the District Council's representatives on outside bodies, the Council may be able, over time, to review its involvement and to ensure that all of the current appointments continue to be relevant and appropriate.

### **1.3. Clarity of purpose/objectives**

Before entering into a new partnership or involvement in an outside body, the District Council needs to be clear about the Council's objectives and how the partnership or outside body will help to deliver those objectives.

Similar questions should also be asked periodically about the Council's representation on outside bodies. For example, what sort of organisation is appropriate and how will that partnership or outside body help to deliver the District Council's Corporate Plan and Community Strategy?

Clarity of purpose and objectives will also be important to ensure that the Council has the requisite powers to participate in the body and to provide funding or other support, as considered appropriate.

Some of the questions which the Council may wish to ask are:

- why does the Council wish to be involved in the body (see 1.2 above)?
- whether an outside body will be able to access funds or market which are not available to the Council alone?
- how can the services or initiative/project best be delivered?
- is it necessary to create a separate legal entity?
- is external expertise required to deliver the objectives?
- what are the problems or the challenges which the Council is trying to address?
- can existing constraints on service delivery be removed by alternative structures?
- what influence or control would the Council wish to have over the future operation of the initiative/project/service?
- what sort of partnership vehicle is appropriate, in view of potential liabilities?

- how will these proposals help deliver the Council's Corporate Plan and Community Strategy, and other relevant plans and policies, vision and aims?
- what impact will there be on the Council (including the resources required for monitoring and ensuring accountability)?

#### **1.4. Powers for Involvement in Partnerships and Outside Bodies**

There are a number of powers authorising local authorities to be involved in partnerships and outside bodies and it should not be forgotten that as well as finding the appropriate power, the powers need to be exercised properly.

The Council therefore needs to make sure:

- that it identifies the power (i.e. has the capacity to enter into the partnership, form a company, or participate in the outside body); and
- exercises the powers properly.

Local authorities must act for proper purposes, i.e. proper objectives, they must take into account all relevant considerations and ignore irrelevant matters, must follow all procedural requirements, i.e. the Council's scheme of delegation and Procedure Rules set out in the Constitution, and must not take a decision which is irrational, in the sense of a decision that no reasonable authority would make (the concept of *Wednesbury* reasonableness). In exercising powers, local authorities also need to be mindful of their fiduciary duty to protect the assets of the authority on behalf of the taxpayers and residents whose interests the Council serves, and other statutory duties such as Best Value.

Advice on powers for specific schemes should be sought from the Monitoring Officer.

#### **1.5. The Nature of Outside Bodies**

There are a number of legal forms which an outside body may take. The Council should establish a framework (linked to appropriate elements of the Corporate Risk Assessment Policy) within which decisions are taken as to the appropriate participation in an outside body. The Office of Government Commerce "Gateway Review" process could be looked at as a model for certain aspects of this framework.

#### **1.6. Relationships with Outside Bodies**

The District Council has many different relationships with partners and outside bodies, depending upon the nature of the partnership/body and a number of other factors, such as the extent to which the Council may provide funding, assets or perhaps if the organisation delivers services on behalf of the Council.

As well as any specific financial issues arising from the particular arrangements, the Council should have regard to its general public stewardship/accountability role and responsibilities.

### **1.7. Conflicts of interest**

The Code of Conduct for Representatives on Outside Bodies sets out in more detail issues regarding conflicts of interest which may arise from time to time for Council representatives on outside bodies. Where Members are involved, these may involve the provisions of the Members' Code of Conduct. Any conflicts of interest which officers may have should be declared in writing to their manager under Section 117 Local Government Act 1972. Advice and guidance on managing those conflicts is contained in the Code at paragraph 7.

### **1.8. Reviewing Involvement From Time To Time**

#### **Have things changed?**

The District Council is involved in many relationships with outside bodies and it is therefore appropriate to review the Council's involvement from time to time. It is recommended that involvement is reviewed every year and that when such reviews take place, the relevant Council Lead Officer notifies the Monitoring Officer and the Director of Corporate Services and provides the following information:

- Name of Lead Officer;
- Purpose of the Council's involvement (see paragraph 1.2 above);
- Nature of arrangements, ie representation, service contract, grant funding;
- Reporting lines to Council or Committee;
- List names of Council representatives;
- Details of the last monitoring report to the Council (i.e. report and accounts or general information), including the financial position of the organisation;
- Opinion of the Lead Officer on whether the Council's involvement should be on-going, and why;
- Status of the organisation under Part V Local Government & Housing Act 1989 (and whether it is controlled, regulated or minority interest);
- Date and date of next planned review;
- Any recommendations (i.e. to cease representation); and
- Any other relevant information.

#### **How effective is the Council's Involvement?**

In future, the Council may need to be more selective about whether to be involved by being represented and who is involved in outside bodies, because of the huge amount of person hours currently devoted to involvement, and the risks involved. The Council really needs to decide whether or not involvement is necessary in order to contribute towards the Corporate Plan, the Community Strategy and the Council's aims and objectives, or whether the organisation could achieve such benefits without direct representation from the Council. This

may also minimise any potential liability for individuals involved in outside bodies on behalf of the Council. A risk assessment should be an integral part of any review.

# **CODE OF CONDUCT FOR REPRESENTATIVES ON OUTSIDE BODIES**

## **GENERAL PRINCIPLES**

### **1. Introduction and Purpose of this Code**

- 1.1. South Derbyshire District Council is increasingly working with other local authorities, the private, voluntary and community sectors in a broad range of partnership structures, which involve different responsibilities and potential liabilities. The rules can be complex and diverse and there are many pitfalls for the inexperienced or unwary.
- 1.2. This Code is for the guidance of Council representatives and supplements the Council's corporate policy and strategy for involvement in partnerships and outside bodies. It aims to clarify roles and responsibilities; to point Members, officers and other nominees in the right direction; and to highlight when it may be appropriate to seek further advice and assistance.
- 1.3. Partnership working is a frequent and recognised way of achieving shared objectives. Partnerships involve different organisations with a variety of legal structures.
- 1.4. This Code cannot prescribe the precise roles and relationships which are appropriate in every circumstance, because they are many and varied. It covers the most important rules to be followed in situations that are likely to be encountered by District Council appointees.
- 1.5. If ever you are unsure about your role or responsibilities in relation to an outside body then please contact the Monitoring Officer at the earliest opportunity.
- 1.6. For further information about this Code or the Corporate Policy for involvement in outside bodies, please contact the Council's Monitoring Officer.

### **2. Policy on Involvement and Representation**

The Council has adopted a policy on when it should be involved in partnerships and outside bodies which explains 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 reasons. In order to be able to appoint to outside bodies, the Council will need to be clear what the bodies' objectives are and how they link to the Council's own Corporate Plan and Community Strategy, Vision and Aims. The Council will also need to ensure that it has the powers to participate in the body.

#### ***2.1. How are appointments made?***

Under the Council's Constitution, appointments to outside bodies will be made by the Full Council or the Finance and Management Committee.

## **2.2. Who should the Council's representative be?**

The choice of the most appropriate representative will depend upon the nature of the outside body and why the Council wishes to be involved. In some circumstances it may be appropriate for officers with professional knowledge, skills and experience to be appointed. In other circumstances, Members may be most appropriate; or in some cases third party appointments may be most appropriate.

If the body has a two tier structure, such as a company or an unincorporated association (i.e. with members/shareholders and a management committee/board) then you will also need to be clear whether you have been appointed to represent the Council in both capacities, or whether the Council will appoint different people for each of those functions.

## **2.3. Reporting back to the Council**

It is important that anyone who is appointed to an outside body provides appropriate information and reports periodically to the Council on what the organisation is doing. In most cases, an Annual Report, along with the report and accounts will suffice and your own perspective of the organisation's achievements and potential problems at that point in time. You can also perhaps provide details of the Annual General Meeting of the organisation.

Where the Council provides financial assistance to a charity or voluntary organisation of over £2,000 per annum then the body is under an obligation to state in writing to the Council how the funding has been used (s137A Local Government Act 1972). In addition, the Council must make arrangements under s71(5) Local Government and Housing Act 1989 for the Council or Committees to ask questions of Members and officers who are appointed as Directors to companies.

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
- may be a breach of confidence which is something which is actionable at law and could result in an outside organisation suing you and/or the Council for disclosure where loss is suffered

If you need any advice or assistance at any time then you should contact the Monitoring Officer. You can provide officers with papers from an outside body on a confidential basis, with the sole purpose of advising or assisting you with a Council-appointed role.

### **3. Duties And Responsibilities of Directors And Trustees**

#### **3.1. When Does an Appointment Take Effect?**

Any appointment as a director of a company needs to be confirmed by the completion of a form which is signed and submitted to Companies House. The form, known as a “288”, requires details of your home address and any current directorships along with any previously held within the last 5 years. The form also needs to be countersigned by another Director or the Company Secretary. When you cease to be a director of a company you must also file a form 288 at Companies House.

#### **3.2. Duties of a Director**

Directors take responsibility for all of the main decisions in relation to the operation of the company, including entering into contracts. A few areas are retained for shareholders/members, which include issues such as agreeing the level of dividends, changing the name of the company and sometimes electing or dismissing directors.

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.

Some of the statutory obligations applicable to directors include:

- maintaining proper accounting records (failure to do so may be a criminal offence);
- maintaining the statutory books, i.e. list of members, directors, interests, keeping minutes;
- VAT and tax penalties are also directors’ responsibilities; and
- there may be personal responsibility where the commission of any offence is due to a director’s consent, connivance or neglect, e.g. environmental protection or health and safety legislation.

#### **3.3. Extra Responsibilities for Trustees**

In general terms the duties of Trustees cover the above as well as making sure the body acts in accordance with the overriding duty to the beneficiaries of the Trust. Those beneficiaries may be people within South Derbyshire or a specific

category of people for whose benefit the Trust was originally established. The duties of Trustees are largely contained within the Trustee Act 2000.

There is now a statutory duty of care under the Trustee Act 2000 which applies when a Trustee is:

- exercising a general power of investment or any specific power of investment arising from the Trust;
- making investments in line with the Standard Investment Criteria under section 4 of the Act or taking independent advice on investments under section 5;
- exercising the power to acquire land or deal in land;
- appointing agents, custodians or nominees or in reviewing their obligations;
- compounding liabilities under section 15 of the Trustee Act 1925;
- insuring Trust property; and
- dealing with reversionary interests, valuations or audits.

The standard of care expected of Trustees is that which is reasonable in the circumstances, taking into account any particular skills or competencies possessed by the individual, e.g. the standard of care will be higher for someone with an accounting qualification in relation to financial matters, than someone without the qualification.

Duties and responsibilities applicable to charities are even more extensive, as charitable directors and trustees have additional responsibilities under the Charities Acts. However, there is extensive guidance available from the Charity Commission in connection with those additional responsibilities. A separate leaflet is available from the Charity Commission entitled "Responsibilities of Charity Trustees" (CC3) or is available on <http://www.charity-commission.gov.uk> (telephone 0870 3330123). In many cases the Charity Commission needs to be consulted before a charity takes action or decides on a particular course of action involving charity property.

### ***3.4. Directors' and Trustees' Responsibilities to Others***

The law generally regards a Director as being in a position of trust, arising from their fiduciary duties. This duty is usually to the shareholders or members of a company and sometimes for the beneficiaries if they are not the shareholders.

When exercising their powers Directors must take into consideration the interests of employees of the Company as well as the interests of the shareholders/members (and the beneficiaries of any trust).

If the organisation gets into financial difficulties then the interests of creditors become more important and it may be that the creditors' interests become paramount over duties and responsibilities owed to the others mentioned above.

### **3.5. Companies**

Where the Council is involved in companies or industrial and provident societies extra rules set out in the Local Government and Housing Act 1989 apply. Depending upon how the company is classified (controlled, arms length, influenced or minority interest), it may be regulated by provisions in the Companies Order.

The Act imposes a range of procedural and propriety controls, including limits on any remuneration payable to Members, barring people disqualified from being a councillor from being a director, preventing party political publicity, requiring the provision of information to the Council and its auditors, and allowing access to information (unless this is commercially confidential).

Any Member of the Council should also be entitled to ask questions of a Member or Officer who acts as a director of a company on behalf of the Council, and the Council therefore needs to provide appropriate opportunities to enable this to take place.

### **4. Observers and Advisers**

In some cases the Council may not appoint a full representative to an outside body; it may prefer to rely upon an observer or an adviser to explain the Council's views and to keep the District Council informed of the proceedings of that outside body.

An observer is someone who is invited with the agreement of the Board or management committee of the organisation. An observer does not have the automatic right to speak, nor do they have any entitlement to vote. However, the chair of the organisation may request that the observer participates in some aspects of business at the invitation of the meeting.

An adviser may be called upon to advise the Council's representatives on a body or to advise the outside body directly. Any adviser should always make it clear that they are first and foremost responsible for the District Council's involvement rather than the body itself. However, in most cases, the interests of the Council and the body will coincide.

The individual appointed therefore needs to be aware of potential conflicts of interest and what to do in connection with the management of those conflicts. It is also important that the adviser understands that he/she may be liable for any advice given which proves to be negligent. If an adviser is unsure as to the position then they should decline to give an opinion or advice, and should suggest that the outside body takes its own independent advice and ensures that it understands it is responsible for its own decision.

In addition, observers and advisers need to be aware that in relation to companies they may inadvertently fall into the position of a director. The

definition of a director is anyone who occupies the position of a director, no matter what they are called (e.g. member of a management committee). However, someone in accordance with whose directions or instructions the directors of a company are accustomed to act, but who is not formally on the Board is known as a “shadow director”. So, if someone effectively controls or directs the activities of a company, even though they are not a registered director, they may still fall within the definition of a shadow director and will have to comply with all of the duties and responsibilities of directors set out above. There are some exceptions in relation to professional advisers, however, anyone advising a company or outside body should be aware of the potential for personal liability.

## **5. Potential Personal Liability**

Whilst it may be seen as a significant responsibility or even a privilege to represent the Council on outside bodies, frequently individuals are not aware of the potential consequences which could arise from such representation. There are many circumstances in which your acts or the acts of the body on which you represent the Council could translate into personal financial loss.

### ***5.1. Unincorporated Associations***

As set out in the corporate policy document, unincorporated partnerships or associations are not separate legal entities. This means that the individuals who are represented on the management committee are personally liable for all of the acts or omissions of the body. Each of the individuals are jointly and individually liable for what the organisation does. Partnerships and voluntary organisations often have this legal status. However, they should still have a written constitution setting out the procedural rules which need to be followed and governing how it operates.

### ***5.2. Companies, Statutory Corporations and Industrial and Provident Societies (IPS)***

Incorporated bodies include companies, statutory corporations and Industrial and Provident Societies. Bodies such as schools, quangos and other public authorities, i.e. police and fire authorities are often created by statute and are statutory corporations. Their rules and constitution will usually be set out in the Act which created them.

Since these bodies are separate legal entities they are able to hold property or sue and be sued in their own name. They have limited liability and in general terms it is not possible to look behind the corporate veil of incorporation.

However, there are circumstances when directors or members of the management committee of such bodies can still be personally liable under company and insolvency law. These include:

- where company details are not properly shown on cheques or other correspondence which may mean that individuals are personally liable on contracts;
- where there has been any misfeasance (i.e. using the company facilities for personal gain) or breaches of the fiduciary or other duties owed to the company (in some cases there may also be criminal offences);
- where there has been “wrongful trading” (where the directors or management committee members have not taken every possible step to minimise potential losses to creditors, when they knew, or ought to have known, the company was unlikely to avoid insolvent liquidation);
- where there is “fraudulent” trading (where the company carries on business with the intent to defraud creditors or for any fraudulent purpose, that is, if it carries on business and incurs debts at a time when there is, to the knowledge of the directors, no real prospect of creditors receiving payment). There may also be questions of fraudulent preference where certain debtors have been paid in preference to others within up to two years of insolvency;
- offences committed by the company which can be attributed to neglect on behalf of the directors, such as insider dealing, those under the Companies Act, or health and safety legislation.

The above cases are illustrative only.

### ***5.3. Disqualification from being a Director***

The Company Directors Disqualification Act 1986 empowers the Court to disqualify people from being a director for up to 15 years when they have been involved in criminal offences, have persistently been in default in making returns to Companies House, where they are bankrupt, where there has been fraudulent or wrongful trading, or where they are otherwise considered unfit to be directors.

The overriding responsibility of a director/management committee member is to act in the best interests of the company/IPS. He or she must exercise independent judgement in making decisions in accordance with the duty of care to the company.

A number of criminal offences could also apply to both the company/IPS and directors or other people involved in the management of the company (i.e. the chief executive and company secretary), even if they are not on the Board or the Management Committee.

### ***5.4. Charities and Trusts***

Trusts are arrangements in which Trustees hold property or assets which must be used or maintained for the benefit of other people (“the beneficiaries”), or in the case of charitable Trusts, for a charitable purpose. A Trust may be incorporated or unincorporated. Trusts are not required to register, unless of course they are a corporate body (company/IPS) or are charitable.

To be a charity, an organisation must operate for charitable purposes. Charitable purposes can be grouped under four main headings:

- the relief of financial hardship;
- the advancement of education;
- the advancement of religion; and
- certain other purposes for the benefit of the community.

All charities must be for the general benefit of the public or a significant section of the community. The Charity Commission is reviewing the register to make sure that bodies are still charitable in the way they operate and will look very closely at new bodies which are being established in order to ensure that they do intend to operate within the boundaries of charity law.

The principles set out above in relation to personal liability of directors and members of management committees apply equally to Trusts and charities (which may be incorporated or unincorporated bodies). Additional duties need to be complied with by Trustees and Charity Trustees under the various Charities Acts.

There may be benefits from being a charity, including tax and VAT concessions which may make charitable status advantageous.

### ***5.5. Duties of Confidentiality***

Someone representing the Council on an outside body may find it difficult to balance the confidentiality duties owed both to the Council and the outside body, when in the alternative forum. 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 - it is extremely rare that leaking confidential information can be justified in the public interest (as the Courts have defined public interest very narrowly).

### ***5.6. The Members' Code of Conduct***

Where a Member acts as a representative of the Council on an outside body, they must comply with the Members' 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 (i.e. the duty to act in the best interests of the outside body).

Under the Code a Member must not:

- disclose information given to him/her in confidence by anyone, or information acquired which s/he believes is of a confidential nature, without the consent of a person authorised to give it, or unless s/he is required by law to do so;
- prevent another person from gaining access to information to which that person is entitled by law.

There may be other areas of the Code which are also relevant as conduct involving disclosure of confidential information may also 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.

### ***5.7. Duty to the Outside Body***

Information gained through representation on an outside body may or may not be confidential. Usually, that outside body will need to produce annual reports and accounts and other information which need to be made publicly available, and may produce literature for public access on its plans and strategies. All of this information may be freely disclosed. If, for example, the body receives public funding and provides services which are available to the public, then the provisions of the Freedom of Information Act may also apply. This may give individuals access to information on payment of reasonable costs, unless it falls within certain exemptions under the Act.

However, a lot of information you will receive as a member of the Management Committee or the Board will not be in the public domain and you must therefore respect confidentiality in relation to that information.

In some cases, disclosure of confidential information might amount to a breach of duty as a director of an outside body, or could lead to proceedings for breach of confidence.

### ***5.8. Breach Of Confidence***

Where someone discloses information which benefits somebody else but results in a loss to an organisation, then the organisation may be able to sue under the tort of breach of confidence. Damages could be awarded against the person who disclosed the information (and potentially against the Company if the unlawful disclosure was authorised by the Company.) Whilst such cases are not common, they nevertheless arise from time to time.

### ***5.9. Press and Publicity and Qualified Privilege***

A Member or Officer of the Council may often be the relevant spokesperson in connection with interest from the press or in dealing with public relations. In such

a capacity, Members and officers need to be very careful what they say, both about the Council and its affairs and also any outside body in which it is involved.

Whilst there may be some protection from libel and slander claims (together they are known as defamation), because of the special position of local authorities some information is given “qualified privilege”. Qualified privilege attaches to meetings of the Council and Committees and any associated papers, but not to everything that Members and officers do.

However, if you publish a false statement about anyone which may injure his or her reputation in the eyes of ordinary members of the public, without justification, or without checking that it is true, then you may be liable for defamation. This means that provided the occasion is protected, Members have freedom of speech and will not be liable for defamation, so long as statements are made honestly and without malice or improper motive.

## **6. Declaration of Interests**

### ***6.1. Declaration of Interests at Meetings of Outside Bodies***

When outside bodies consider issues related to the Council or where personal interests of an individual arise in relation to the body’s activities, these need to be declared in line with the rules of the organisation 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.

Representatives on the management committee or on the board of an outside body must act in the interests of that body; they are there in the capacity of a “trustee” or “quasi trustee”. They must exercise independent judgement in making decisions in accordance with their duty of care to the body - not just to vote in accordance with the Council’s wishes. Representatives 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.

### ***6.2. Declarations of Interests at Council Meetings***

Members who are appointed to the management committee or board of outside bodies need to declare their interests in meetings of the Council which consider issues related to that body. Where Members have been appointed by the Council to serve on the organisation they will also need to ensure those details are included on the Register of Interests kept by the Monitoring Officer under the

Members' Code of Conduct. They will usually have to declare a personal interest and will be able to remain, speak and vote. However, in some circumstances they may have a prejudicial interest under the Code, in which case they would need to withdraw and take no part in the matter being considered.

Where a Councillor is a director or management committee member of an outside body in their personal capacity, then they will need to declare a personal interest, depending upon the circumstances, and may need to leave the room, if it is considered to be a prejudicial interest (which is likely). Please seek advice from the Monitoring Officer before the meeting if you are unsure (officers would declare an interest under s117 Local Government Act 1972).

### **6.3. Other Issues**

Occasionally, there may be other reasons why a representative needs to declare an interest under the Code. Whilst involvement in an outside body may amount to a personal interest, in some cases there may be a prejudicial interest arising from the general law, perhaps because the decision is one to which the rules of natural justice apply. The rules of natural justice require public bodies to act fairly, particularly when decisions may affect the rights and freedoms of individuals. Proper procedures must be followed, which avoid any financial or other interest and must avoid the appearance of bias (whether through prior involvement, knowledge or personal circumstances). The rules of natural justice are similar to the right to a fair hearing under the Human Rights Act. If at any time you are unsure whether you might have an interest which should be declared, please speak to the Monitoring Officer.

## **7. 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 a Member holds an office in the outside body, eg Chair, Vice-Chair, Secretary or Treasurer, than if they are a general member.

## **8. Members' Allowances, Insurance & Indemnity**

The 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. You should therefore check what payments are authorised by the outside body and whether this will fall to the outside body or the Council in each particular case. For further information on allowances contact the Monitoring Officer.

The Council has the power to provide an indemnity for Members under s265 of the Public Health Act 1875 and s39 of the Local Government (Miscellaneous Provisions) Act 1976 when undertaking Council functions. This was confirmed by the case of R v. Westminster City Council, ex parte Legg (2000). These sections may be used to provide some indemnity or insurance for Members acting as directors of a company or as a Member of a Management Committee provided they were acting bona fide under the direction of the Council, but there are limitations.

Section 101 of the Local Government Act 2000 provides for broader indemnities for both Members and Officers which would be brought into effect by an Order of the Secretary of State.

However, involvement on behalf of the Council will not provide Members or Officers with blanket cover, as quite often the objects and activities of outside bodies are much wider than those of the Council. Over and above the possibility of being able to claim under the Council's insurance policy or indemnity, there is no blanket indemnity for representatives on outside bodies. Representatives therefore need to ask about and consider the extent of any insurance or indemnity provided to directors/management committee members by the organisation itself.

As directors have to act in the best interest of companies, it is appropriate that the company indemnifies them within the limits allowed by Company Law. Section 310 limits the liability to covering negligence, breach of duty, breach of trust or other default. However, it is not possible to insure or indemnify against criminal liability for fraud, dishonesty or other criminal acts. Any indemnity given under Section 310 will usually be limited to defending proceedings (whether civil or criminal) in which judgement is given in the person's favour, i.e. only where he/she is acquitted. There also needs to be something in the company's Articles of Association allowing an indemnity to be given. The Company may also take out Directors and Officers liability insurance, and pay for that on behalf of its directors and officers.

## **9. General Advice to Representatives on 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 District Council first became involved - what useful purpose would ongoing representation serve?

<b>Useful Contacts</b>	
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