

STRATFORD-ON-AVON DISTRICT COUNCIL

GUIDANCE FOR MEMBERS APPOINTED AS REPRESENTATIVES ON OUTSIDE BODIES

OBLIGATIONS AND RESPONSIBILITIES OF MEMBERS WHO ARE APPOINTED BY THE COUNCIL TO SERVE ON OUTSIDE BODIES

1. Introduction

This guidance has been produced in an effort to achieve good practice and to support Councillors who are appointed to serve on outside bodies by outlining their responsibilities and obligations in that role. The guidance does not attempt to provide definitive answers to every particular set of circumstances but rather to provide a framework against which members can exercise judgement when faced with potential conflicts. The guidance addresses three specific circumstances which arise from time to time and as a result of which potential conflict can arise. These are:-

- Where the Councillor is appointed Director of a Company
- Where the Councillor is appointed as a Trustee
- Where the Councillor is appointed to an unincorporated Association

2. The Code of Conduct for Councillors

These guidelines should be read in conjunction with the Code of Conduct for Councillors which was adopted by the Council with effect from 2 May 2002.

The Code of Conduct provides (at paragraph 1(3)(b)) that where a member acts as a representative of the Authority on any other body, he must, when acting for that other body, comply with the Authority's Code of Conduct, except and in so far as it conflicts with any other lawful obligations to which that other body may be subject.

Some outside bodies may require the Councillor to treat the body's business as confidential. This may sometimes create a dilemma for the Councillor and may seem contrary to the idea of assisting public accountability. However, the Councillor will be bound by that confidentiality requirement.

3. The Application of the Code of Conduct

Under paragraph 8 of the Code of Conduct a member must regard himself as having a personal interest in the business of any body to which he has been appointed as the Council's representative. Under paragraph 9 of the Code the member must disclose the existence and nature of that interest at the commencement of any discussion on an item affecting that body, or when the interest becomes apparent. A personal interest arising in these circumstances may also be a prejudicial interest under paragraph 10 of the Code of Conduct.

A prejudicial interest is one which a member of the public with a knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.

However, the Code also states that a member *may* regard himself as not having a prejudicial interest in a matter if that matter relates to a body to which he has been appointed or nominated by the authority as its representative.

In other words, the mere fact that a Councillor is a nominated or appointed

member of an outside body does not in itself give rise to a prejudicial interest. However, the particular circumstances arising may be such that the member's judgement of the matter may be impaired in which case the interest should be treated as a prejudicial interest.

A member with a prejudicial interest in any matter must withdraw from the room where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless a dispensation has been obtained from the Council's Standard and Ethics Committee. In addition, a member must not exercise executive functions in relation to that matter and not seek improperly to influence a decision.

4. The Duties of a Director

- Like a Councillor in respect of Council decisions the Director is under a duty to exercise independent judgement though it is permissible for him to take into account the interests of the third party which he represents. In such a case the Director must disclose that position and tread a fine line between the interests of the company and the party represented. The Director cannot vote simply in accordance with the Council mandate : to do so would be a breach of duty.
- The Councillor when acting as a Director owes a fiduciary duty to the company, not to the individual shareholders, to act honestly and in good faith and in the best interests of the company as a whole. Directors are, therefore, in the position of quasi trustees who must take proper care of the assets of the company.
- A general duty of care and skill to the company is imposed, but a Director requires no greater skill than might reasonably be expected of someone of that individual's particular knowledge and experience. A Director is not deemed to be an expert, but is expected to use due diligence and to obtain expert advice if necessary.
- There may be actual or potential conflicts between the interests of the Council and the interests of the company. In such circumstances it would be inappropriate for the Councillor to take part in discussions upon such topics both as a Councillor and as a Director. If the conflict is a serious one or repeatedly presents itself then it may be appropriate for the Councillor to resign as a Director of the company.
- Directors are not allowed to make a private profit from their position. They must therefore disclose any interests they or their family have in relation to the company's contracts. Whether they are then allowed to vote will depend upon the Articles of Association of the company.
- Directors must ensure compliance with relevant companies legislation in relation to the keeping of accounts and the making of relevant returns to the Registrar of Companies. Failure to do so incurs fines and persistent default and lead to disqualification as a Director.
- Directors should also ensure that the company complies with other legislation such as Health and Safety legislation if the company employs staff or employs contractors to undertake work.

5. The Position of Charitable Trustees

A number of useful publications are available on the Charity Commissioners website : www.charitycommission.gov.uk. 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 where they are not strictly trustees.

- Trustees must take care to act in accordance with the Trust deed and to protect the charity's assets. They are also responsible for compliance with the Charities Acts and the Trustee Act 2000.
- Trustees must not make a private profit from their position. They must also perform their duty with the standard of care which an ordinary, prudent business person would show. Higher standards are required of professionals and in relation to investment matters.
- Charitable Trustees must ensure that the information relating to the Trust and Trustees is registered with the Charity Commissioners and that annual accounts and returns are completed and sent.
- If charitable income exceeds £5,000 the letters, advertisements, cheques etc., must bear a statement that the organisation is a registered charity.
- Trustees are under a duty to ensure compliance with all relevant legislation for example in relation to tax and health and safety.

6. Unincorporated Associations

Groups which are neither limited companies nor charitable trusts may be "unincorporated associations" which have no separate identity from their members. The rules governing the members duties and liabilities will (or should) be set out in the organisation's constitution, which is simply an agreement between members as to how the organisation will operate. Usually the organisation's constitution will provide for a management committee to be responsible for the everyday running of the organisation.

Management Committee members must act within the organisation's constitution and must take reasonable care when exercising their powers.

7. General

As mentioned earlier these guidelines are intended solely for the purpose of providing a general basis upon which members appointed to outside bodies can exercise their judgement when balancing their respective responsibilities as a Councillor and a nominated representative. The guidelines cannot provide a detailed answer for all circumstances and consequently, if in doubt, a Councillor should seek further advice and guidance from the Council's Monitoring Officer.