

# **PART 7 – THE CODES, PROTOCOLS AND ADVICE**

## **E – ADVICE TO COUNCILLORS - DUTIES ON OUTSIDE BODIES**

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## 1. General duties

In general, Councillors who are appointed to charities, community associations or other third sector bodies (whether incorporated or not) should:

- (a) understand clearly the organisation's purposes and main objectives and their own role in the organisation;
- (b) attend meetings regularly and take an active, informed and supportive role in the body's affairs;
- (c) take care always to act in the best interests of the organisation and in accordance with its rules or governing document, while contributing their knowledge and experience as a councillor;
- (d) satisfy themselves that the organisation has transparent governance arrangements, regular reports on its activities and sound financial management, with accounts regularly monitored; and that annual reports and accounts are submitted in timely fashion;
- (e) seek to protect the body's assets and manage its affairs prudently;
- (f) be aware of the main risks the body faces (including funding risks) and the steps to be taken to deal with them;
- (g) ensure it maintains its membership, so that the work of running the organisation and any financial obligations continue to be shared by a reasonable number of people;
- (h) behave ethically in accordance with the organisation's own code of conduct, if they have one, or otherwise the Council's Councillors' Code of Conduct;
- (i) not gain or seek to gain from their appointment any benefit or remuneration (beyond any travel or other allowances formally approved by the body);
- (j) ensure the organisation has appropriate health and safety and equal opportunities policies and adequate insurance arrangements;
- (k) seek to safeguard the Council's interests on those bodies which are funded by or through the Council, to the extent that this does not conflict with their duties towards the organisation; and
- (l) seek advice from the Monitoring Officer or other relevant Council officer if they have concerns about the running of the body.

## 2. Charitable trusts

To be a Charity, an organisation must operate for one of the four charitable purposes, namely:

- the relief of poverty and human suffering;
- the advancement of education;
- the advancement of religion; and
- another purpose for the benefit of the community.

It must operate for the public benefit and have exclusively charitable purposes. An organisation which operates for political purposes will not qualify for charitable status.

Trustees' duties include:

- the need to act in accordance with the constitution of the Charity;

- not making a private profit from their position;
- acting honestly and in good faith in the best interests of the Charity;
- ensuring that information relating to the charity and trustees is registered with the Charity Commissioners and annual accounts, reports and returns are completed and sent;
- ensuring that the body acts in accordance with the overriding duty to the beneficiaries of the Trust;
- ensuring compliance with all relevant legislation (e.g. in relation to tax and land matters);

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 s. 4 of the Act or taking independent advice on investments under s. 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 standards 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.

The Charity Commission have stated they require independence of decision-making.

### **3. Council Owned Companies**

The Council also owns a number of companies incorporated under the Companies Act 2006. These are owned solely or jointly with other parties. A Councillor may be appointed to act as a director of the company.

Each company will have a constitution which will state the powers and responsibilities of the director and Councillors will need to ensure they understand the limits of their powers whilst acting as a director. The CA2006 also imposes many express duties (such as requirements to deliver accounts) but s171-s177 of the Act includes a number of general duties that bind a director in relation to any action and includes the duty:

- To act within powers.
- To promote the success of the company.
- To exercise independent judgment.
- To exercise reasonable care, skill and diligence.
- To avoid conflicts of interest.
- Not to accept benefits from third parties.

- To declare an interest in a proposed transaction or arrangement.

In particular a Councillor would need to consider the potential for conflict between in relation to any Executive Director action they take that benefits a company at the expense of the Council (or vice versa).

#### **4. Conflicts of Interests**

Under the Council's Councillors' Code of Conduct, a Prejudicial Interest always arises from membership of an outside body "of which you are a Councillor or in a position of general control or management", including one to which a Councillor has been appointed or nominated by the Council. This interest needs to be recorded in the Register of Councillors' Interests and declared at any meeting where the business relates to or is likely to affect that body, although it does not impede full participation in the Council's meeting.

Councillors appointed by the Council to an outside body will, when sitting on that body, often have duties to the organisation which take precedence over their duties to the Council. This will depend on the type of organisation on which they serve – with regard to a Trust, the Councillor will have an overriding duty to act in the best interests of the Charity. Councillors will therefore wish to consider, at any time when it appears that the organisation's interests may conflict with the Council's interests, whether that conflict prevents them from taking part in decision-making either at the organisation's meeting or at the Council's meeting. Councillors may of course bring to bear their own experience and knowledge as a councillor, and may have regard to the Council's interests, but have a duty to exercise independent judgement when making decisions. Councillors should not claim to act or give the impression that they are acting under a Council mandate.

In the event of a clear conflict of interests, the Councillor should consider whether it is (a) minor or occasional enough that it can be dealt with by declaring an interest and withdrawing from either the organisation's meeting or the Council's meeting, or (b) so frequent or significant that it prevents the Councillor from effectively fulfilling their responsibilities towards the outside body, in which case resignation from the body may need to be considered. Conflicts of interest are likely to be more acute for Executive Members, particularly where the financial position of the outside body is under consideration and the body depends on the