

GUIDANCE ON THE DUTIES AND RESPONSIBILITIES OF MEMBERS APPOINTED TO OUTSIDE BODIES

1. This guidance gives an outline of the duties and responsibilities of members appointed to “outside bodies” on the nomination of Fareham Borough Council.
2. It is not intended to provide definitive answers to every question which could be raised in relation to each of the outside bodies to which members of the Council are nominated or appointed. Rather it is intended to alert members to issues of which they should be aware and prompt the seeking of advice from the body itself or from officers of the Council where necessary.

SUITABILITY OF OUTSIDE BODIES

3. Appointment of Members to serve on outside bodies shall be dependent on one or more of the following conditions applying:
 - (a) where it is considered necessary to supplement existing communication channels established by members and/or officers;
 - (b) where the Council has a significant interest in the business dealt with by the body in question, e.g. by virtue of owning relevant premises; providing significant resource contributions; being a key partner; or the fact that the work of the Body is of strategic significance to the Council;
 - (c) where Council appointees are legally required;
 - (d) where the boards of registered charities are required to include Council appointed trustees in order to comply with their Articles of Association or Trust Deeds; and
 - (e) in other cases, where such representation would bring clearly defined mutual benefits to both the authority and the body in question.

BASIS FOR APPOINTMENT

4. Members will be appointed to outside bodies to:
 - (a) represent the Council on joint local authority bodies/consortia
 - (b) represent the Council by attending meetings of other organisations in a purely advisory capacity to:
 - observe proceedings; and/or
 - facilitate information exchange whilst promoting the interests of the Council as opposed to the body; or
 - (c) act as executive members of other organisations (e.g. a director/trustee/voting member of a Management Committee) with an obligation to act in the best interests of the body concerned whilst conducting its business.
5. Where the Council makes appointments/nomination on the basis of sub-paragraph (b) and (c) above, officers shall assist, when requested, in seeking to verify whether the organisations concerned have adequate insurance cover in place to protect the Council’s appointees.

6. Each organisation shall be requested to provide the Council with a clear statement of what is expected of Council appointees, e.g. in terms of the number of meetings to be attended and responsibilities associated with the appointment.
7. It would be inappropriate for a member to hold the position of a Fareham Borough Council appointed representative or trustee at the same time as holding a position that is directly elected or appointed by the same external organisation. An individual member should hold only one position or the other (as once elected as a member they must always act in that capacity and cannot choose when to do so or not). Being appointed as a representative or trustee by two bodies in different capacities may cause conflicts of interest which may not be in the Council's best interests.

THE ROLE OF COUNCIL APPOINTEES

8. The role of Council appointees on outside bodies will vary, but, essentially, will be to:
 - (a) help to secure any objectives of the Council in participating in the organisation;
 - (b) help the organisation to achieve its aims and objectives, legally, properly and effectively;
 - (c) meet any specific legal responsibilities attached to the membership of the organisation;
 - (d) safeguard the Council's interests on those organisations which are funded from or through the Council; and
 - (e) encourage the organisation to adopt sustainable and ethical policies.
9. The three main types of appointee are:

Observer - non-voting role with the main task of viewing the business undertaken and reporting issues back to Council;

Representative - formally appointed to vote on business conducted by the outside body but with no statutory responsibilities; and

Trustee - formally appointed to vote. Must follow legislative responsibilities, as per the Charity Commission guidance (see paragraph 13 below).
10. All outside bodies will have requirements placed on them either by statute or by their constitutions. Members should ensure, where possible, that those bodies comply with the requirements thereon.
11. Members are advised to:
 - (a) ask about any specific legal responsibilities attached to membership of the organisation;
 - (b) read the constitution of the organisation and be aware of its powers, duties and objectives;
 - (c) attend meetings regularly;

- (d) ensure that they receive regular reports on the activities of the organisation and its financial position;
- (e) where the organisation is funded by or through the Council, to obtain a copy of the Annual Report and Accounts to see that the funds have been spent on the agreed objectives; and
- (f) seek advice from the appropriate Council officers in the event of any doubts or concerns about the operation of the organisation.

THE RELATIONSHIP WITH THE COUNCIL'S CODE OF CONDUCT FOR MEMBERS

- 12. Under the Council's Code of Conduct, a member is required to include in his register of interests his membership of any "body to which he has been appointed or nominated by the authority as its representative."
- 13. Such membership of an outside body is at least a personal interest which a member must declare under the Code. The interest may be a prejudicial interest in certain circumstances where the member is not appointed by the Council but is involved in that organisation in a private capacity.
- 14. The Code further provides that when 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 insofar as it conflicts with any other lawful obligations to which that other body may be subject. Where this arises advice should be taken from the Monitoring Officer.
- 15. The latter provision will apply when the member has been appointed or nominated to the membership of the other body by Fareham Borough Council but not otherwise.

PERSONAL RESPONSIBILITY

- 16. Members appointed to outside bodies by the Council should note that although the nomination is made by the Council, once appointed the member is personally responsible for the carrying out of any obligations to the body concerned. The Council does indemnify certain acts under the Council's Officials Indemnity Policy (details of which can be provided by the Finance Department). However, in the event of any default, the individual member will be responsible unless the act is covered by the policy. For this reason it is important that members make sure that they understand the nature of the obligations they are undertaking when they accept nomination or appointment to an outside body by the Council.
- 17. The bodies concerned should be able to provide this information but in case of any unresolved query or potential conflict of interest, a member should seek advice from the Monitoring Officer (Director of Regulatory and Democratic Services).
- 18. The principal types of outside bodies are Charitable Trusts, Unincorporated Associations and Companies, and the significance of each of these for members is set out below.

CHARITABLE TRUSTS

- 19. Guidance is available on the Charity Commission's website:
www.charitycommission.gov.uk. Document CC3 – Responsibility of Charity

Trustees is particularly useful as is the Councillors Guide produced by the LGA and Charity Commission
<http://www.charitycommission.gov.uk/Publications/cc3.aspx>].

20. Trustees will be appointed under the Trust Deed or Scheme. This will set out the objects of the charity which govern how the charity's assets may be used.
21. Trustees must take care to act in accordance with the Trust Deed to protect the Charity's assets. They are also personally responsible for compliance with the Charities' Acts and the Trustee Act 2000.
22. 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.
23. Charitable Trustees must ensure that the information relating to the trust and trustees is registered with the Charity Commission and that annual accounts and returns are completed and sent.
24. If charitable income exceeds £5000, then letters advertisements and cheques etc. must bear a statement that the organisation is a registered charity.
25. Trustees are under a duty to ensure compliance with all relevant legislation for example in relation to tax and health and safety.

UNINCORPORATED ASSOCIATIONS

26. An unincorporated association does not have a separate legal identity. It consists of a group of people (its members) acting together for a common purpose. The rules governing the members' duties and liabilities will (or should) be set out in a constitution.
27. In most cases an unincorporated association cannot sue or be sued. The individual members of the association may be liable on contracts entered into 'on behalf of' the association either because of the way the contract is worded or because they are exceeding their authority. There is no limit on liability as exists for directors of a limited company. It is important that members of such an association should ensure that no financial commitment is entered into unless it is properly authorised and the association holds sufficient funds to cover the liability.
28. Such associations are usually advisory or consultative bodies and do not become involved in financial transactions of any kind. In such cases the question of personal liability is less likely to arise.

LIMITED COMPANIES

29. In some cases an appointment to an outside body will mean becoming a director of a limited company.
30. The objects of a company and the roles of directors will be set out in its Memorandum and Articles of Association and any director should be familiar with these documents.

31. A director has a fiduciary duty to the company to act honestly and in good faith in the best interests of the company as a whole. (This may conflict with the interests of the Council in which case advice should be sought.)
32. A director owes a general duty of care and skill to the company commensurate with his level of skills knowledge and experience.
33. A director must exercise independent judgement. He may take into account the interests of a third party whom he represents but must disclose the position to the company. It would be a breach of duty to vote simply in accordance with a Council mandate or on party political grounds, for example.
34. A director may not make a secret profit from his position and must therefore disclose all interests in contracts or dealings with the company.
35. A director must ensure compliance with the Companies Acts in relation to keeping accounts and making returns to the registrar of Companies, and also with other relevant legislation for example in relation to employment or health and safety.
36. A director must ensure that the company is able to meet its current liabilities.
37. Provided a director acts within his powers and within the powers of the company, and is not negligent or in breach of his fiduciary duty he will not incur personal liability.
38. In some cases an outside body may be both a company limited by guarantee and a charity so the provisions relating to charities set out above will also apply.

INDEMNITY FOR LOSS

39. Fareham Borough Council does not indemnify members of outside bodies for any personal losses or liabilities they may incur, other than under the Officials Indemnity Policy referred to in paragraph 11 above. Members should ensure that the body carries appropriate insurance to cover personal liabilities to the extent that the law allows.

March 2004
updated 15 December 2011