

Guidance for council appointees to outside bodies

1 Introduction

- 1.2 This guidance is designed to help Councillors who are appointed to outside bodies to understand the roles, responsibilities, liabilities and obligations that may arise because of your connection with external organisations.
- 1.3 Your membership of an outside body is not the same as membership of the Council. The role may bring different duties, obligations and liabilities depending upon the type of organisation involved. There may also be occasions that raise conflicts of interest. This document is intended to give clear guidance to help you navigate these issues. Paragraphs 7, 8 and 9 provide information on registering interest and on how to deal with conflicts of interest.
- 1.4 Depending on the legal nature of the body and the role fulfilled you may take on personal responsibility for decisions and actions of the outside body. You should make yourself aware of the liabilities and any insurance arrangements that are in place before you participate in outside bodies. Paragraphs 2 and 3 this guidance sets out the general roles and responsibilities for Councillors on outside bodies.
- 1.5 The council will indemnify Councillors and officers representing the council on outside bodies in most circumstances. There are however specific statutory limits to the indemnification that the council is able to provide. These are set out in paragraph 14.2 of this Guidance.
- 1.6 Councillors can also serve on outside bodies in their personal capacity provided that there is no conflict of interest with their duties as a member of Gloucester City Council. In 2021 the Council encouraged outside bodies to move towards greater direct appointments of Councillors acting in a personal capacity rather than as appointees of the Council. Advice is available to help Councillors to assess their position.

You need to consider the following:-

- Is there is likely to be any significant conflict of interest between your role in the outside organisation and your council role before accepting the office;
- clarify the insurance arrangements (does it cover the key risks of the organisation as well as the Councillor and is the liability limited or unlimited) and assess the possibility of any implications on you as an individual (specifically consider the nature and function of

- the body and the amount of money it deals with – always be aware of the added risk where the organisation employs staff);
- if no insurance exists this must be weighed up in the decision to accept the appointment;
 - ask about any specific legal responsibilities attached to the membership of the organisation;
 - read the constitution of the organisation and be aware of its powers, duties and objectives;
 - attend meetings regularly and present apologies in good time when you are unable to attend;
 - satisfy yourself that you will receive regular reports on the activities of the organisation and its financial position;
 - satisfy yourself that the organisation has adequate Health and Safety and Equalities Policies;
 - obtain a copy of the annual report and accounts to ensure that funds are spent on agreed objectives where the organisation is funded by or through the council; and
 - seek advice from the appropriate council officers in the event of any doubt or concerns about the running of the organisation.

2. Your responsibilities as a councillor

2.1 In carrying out the role of a representative on the outside body, councillors act both as individuals and as representatives of the council.

2.2 Councillors should

- act according to the rules, constitution and framework set by the outside body;
- take an active and informed role in the outside body's affairs;
- make independent and personal judgements in line with your duty of care to the outside body;
- report back to Gloucester City Council from time to time
- promote equality as an integral part of the role and treat everyone with fairness and dignity;
- from time to time it is possible that a conflict of interest may arise between your role as a councillor and the role you are undertaking on an outside body. Please see paragraph 9 for help to manage this type of situation. You are also urged to seek officer advice in you have any concerns.

- behave ethically and follow as far as applicable the code of conduct for Councillors; and
- wherever possible approach the lead officer for the outside body for a briefing on agenda items before attending meetings of the outside body.

2.3 Councillors should not:

- represent the political party to which you are aligned;
- consider matters purely from the council's perspective;
- commit the council to any expenditure; (in accordance with the council's financial procedure rules any additional expenditure requests must be authorised by the appropriate person or body).

3. The role of the councillor

3.1 Your role as a council representative on an outside body will vary but essentially the role will be

- to help the organisation to achieve its aims and objectives legally, properly and effectively; and
- to meet any specific legal responsibilities attached to membership of the organisation.

4. Expenses, remuneration and benefits

4.1 Councillors should not benefit personally from their appointment to outside organisations.

4.2 If you are appointed by the Council to serve on an outside body, attendance at meetings of that outside body are an approved duty and travel and subsistence expenses may be claimed. [Also see the councillors' allowance scheme].

4.3 If you are offered any gift or hospitality, in your capacity as a council appointee to an outside body you must treat the offer in accordance with the Councillor Code of Conduct rules on gifts and hospitality [Also see the Councillor Code of Conduct].

4.4 If you are appointed as a Company Director, free access to that company's facilities should only be accepted where it is necessary to discharge your duties and responsibilities as a director and should be declared to the Council.

4.5 The Councillor Code of Conduct should be followed at all times.

5. Reporting back

- 5.1 There are legislative provisions requiring some outside bodies to provide information to councils such as the 1995 Local Authorities (Companies) Order which requires a company to provide such information about the affairs of the company as the council, or a member, reasonably requires for the proper discharge of their functions. The council has agreed that the provision of information by a company (or indeed any organisation) should be extended to a council appointee on the outside body to report back to the Council. .
- 5.2 As mentioned above the Council has agreed that there should be regular mechanisms to require/allow council appointees to report back on their involvement in all outside bodies.
- 5.3 Accordingly all Councillors appointed to an outside body are required to submit a brief **annual report** to the Monitoring Officer [a template report is available and should be used to ensure consistency - See annex A to this Guidance]. The reports will be circulated to all Councillors for information. The Overview and Scrutiny Committee may wish to consider some or all of these reports as part of their annual work programme.
- 5.4 In addition, there will be an opportunity at **Council** for representatives on outside bodies to report on the work of the body where that work will be of interest and relevance to the Council. The time available for these reports will be prescribed and anyone wishing to make a report should advise the Democratic Services Manager in advance of the dispatch of the Council agenda.
- 5.5 Finally, and recognising that there are a number of organisations to which the council appoints members where more regular feedback from members would be appropriate, you may choose to provide a brief, written update on the work of an outside body for inclusion in the **Members' Bulletin**.

6. Further advice

- 6.1 Relationships between the council, outside bodies and the council's representative can be complex. In any case of dispute or difficulty, Councillors should seek advice from the secretary or clerk to the outside body, who can then take advice from professional advisors where necessary.
- 6.2 If Councillors are concerned about the position they find themselves in as an appointee on an outside body, they should contact the Monitoring Officer for further advice.

7. Council's code of conduct – general provisions

- 7.1 The Councillor Council Code of Conduct requires that Councillors must observe the code of conduct whenever they are acting as a representative of the authority. If your membership of an outside body creates a declarable or registerable interest you must act in accordance with the Code and the Council's Constitution.

8. Your Councillor Register of Interests

- 8.1 Your membership of an outside body is not a disclosable pecuniary interest.
- 8.2 However, your membership of an outside body is likely to give rise to an "other interest" as defined at paragraph 18 of the City's Councillor Code of Conduct if an item of business affects the outside body on which you serve. You should declare such an interest at any meeting where the interest arises and consider what effect, if any, it has on your participation at the meeting.

9. Conflicts of interest, bias and predetermination.

- 9.1 Any Councillor who attends a Council meeting where there is an item of business which relates to or affects an outside body on which they sit, will need to disclose the interest at the meeting, regardless of whether or not they were appointed onto the outside body by the council, or by the outside body itself.
- 9.6 Councillors should take advice from the Monitoring Officer should they consider that they have any conflict arising from their involvement with the outside body.
- 9.7 Councillors should also avoid any situation which could lead to a perception of predetermination or bias when they are considering business at a meeting of the Council, Cabinet, Committee or any other decision-making forum of the Council. Any decision of the council that might have been affected by bias or predetermination on the part of one or more councillor, which would be at risk of legal challenge.. Councillors therefore need to be careful about the possibility of bias and predetermination when they are dealing with matters involving an outside body on which they serve. Do not be influenced by any allegiance to an outside body on which you serve and do not give the impression that you might be influenced by it. Do

not predetermine your view on a matter of Council business until you have properly considered all of the relevant information relating to the matter, including the information which might arise from debate at any meeting.

- 9.9 Whilst it is accepted that councillors will discuss matters with colleagues and constituents and bring the benefit of those discussions to the committee room, you must still listen to the arguments and be prepared to change your mind if the evidence presented requires it.
- 9.10 In some instances a Councillor may conclude that they are unable to properly carry out their functions as a member of the council and a member of the outside body. In the event that a councillor considers there to be irreconcilable conflicts between their role as a member of the council and a member of the outside body, the advice of the the Monitoring Officer should be sought.

10. Limited Companies and Directorships

- 10.1 A company has a separate legal personality to its shareholders (also described as company members or subscribers). One of the main advantages of acting through a limited company is that shareholders can claim the benefit of limited liability. In the case of a company limited by shares this means that they will not be liable for the debts of the company if the company makes losses over and above the amount which they have pledged to pay the company for their shares. In a company limited by guarantee this means that the shareholders 'guarantee' to contribute a specified sum if called upon to do so (usually a nominal amount of £1) in the event that the company goes into insolvent liquidation.
- 10.2 Separate legal arrangements exist to register an appointment as a director of a company, this includes completion of a form (known as 'Form 288') which needs to be signed and submitted to Companies House. The company secretary of the outside body should assist you with this.
- 10.3 The directorship should also be recorded in the Council's Register of Members' Interests (within 28 days of the appointment). Directors take responsibility for all the main decisions in relation to the operation of the company, including entering into contracts.
- 10.4 If you are appointed by the Council to act as a company director you have a duty to act in the best interest of the company.

10.5 You are advised to consider the specific rules pertaining to the company you have been appointed to but the general legal responsibilities of company directors are:

- to ensure that the company acts within its legal powers;
- to act honestly and in good faith in the best interests of the company;
- not to make a personal profit and to take proper care of the assets;
- to avoid conflicts of interest and not to allow personal interest to influence action as a director;
- to record personal interests in the company's Register of Director's Interests;
- to act with reasonable competence and care;
- to exercise reasonable skill and care (this is a subjective test based upon the individual's own knowledge and experience); and
- not knowingly allow the Company to trade fraudulently, recklessly or in an insolvent position.

10.6 If you are a Council appointed director you are advised:

- to clarify the insurance arrangements and consider any implications;
- to be familiar with the Articles and Memorandum of Association of the company;
- to ensure that your interests are registered with the company;
- to attend board meetings regularly, read the agenda in advance and seek a briefing from officers of the company where necessary;
- to ensure that the company has proper procedures for reporting performance and financial information to board members at each meeting;
- to take an interest in the appointment of the management of the company to ensure that suitable qualified and experienced managers are in place;
- to ensure that the company has adequate Health and Safety and Equalities Policies; and
- to seek advice from the appropriate council officers if in any doubt about the financial viability of the company or any aspect of its operation.

10.7 Councillors need to be particularly careful when acting as a company director if there is any prospect of the company becoming insolvent i.e. not having sufficient assets to pay its debts. When a company becomes insolvent, or it is foreseeable that it will be insolvent, directors of the company have a higher duty of

competence and attention to company business than when the company is still solvent. If Directors fail to take every possible step to minimise the company's debts, they may be personally liable for any additional losses suffered by creditors of the company ("wrongful trading"). A director may be found guilty of fraudulent trading (a criminal offence) if they allow the company to trade with an intent to defraud creditors.

10.8 Councillors should be aware that if they become a Company Director there are some useful guidance documents to assist you on the websites of the Institute of Directors and Companies House.

10.9 There may be occasions where conflicts of interest arise between the council and the company. This may mean that the primary responsibility to the company could conflict with the council's interest. In these circumstances, Councillors are advised to declare the conflict at any council meetings or discussions and take no part in the decision-making process. Some examples of potential conflict include:

- contracts between the Council and the Company;
- negotiations on agreements, such as terms of leases;
- applications for council permission, e.g. planning consent;
- applications for council grants and other funding

11. Charitable trustees

11.1 To be a charity an organisation must operate for one or more of these charitable purposes:

- the prevention or relief of poverty or need
- the advancement of education;
- the advancement of religion;
- the advancement of health or saving of life
- the advancement of citizenship or community development
- the advancement of the arts, culture heritage or science
- the advancement of amateur sport
- the advancement of human rights, conflict resolution or the promotion of harmony
- environmental protection or improvement
- the advancement of animal welfare
- the promotion of the efficiency of the armed forces, police, fire and rescue services and
- any another charitable purpose.

11.2 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); and
- council representatives are advised to clarify the insurance arrangements and assess the possibilities of any implications on themselves as individuals.

11.4 Under the Trustee Act 2000 there is a duty of care 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.

11.5 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. Additional information relating to the responsibilities for charitable directors and trustees is available on the Charity commission's website <http://www.charity-commission.gov.uk>.

11.6 A Councillor who is appointed by the Council to act as a charity trustee should act in the best interest of the charity.

12. Partnerships

12.1 The Council may appoint councillors to serve as representatives on partnerships. Councillors in this position have three main roles:

- to promote the council's objectives in participating in the partnership;

- to ensure that the partnership delivers its own objectives:
- to safeguard the council's interests within the partnership, particularly where the council is a funding partner or the accountable body for external funding

12.2 Council representatives on partnerships are advised to:

- be clear on the council's own objectives in participating in the partnership;
- read the constitution of the partnership and be aware of its objectives and powers;
- attend partnership meetings regularly, read the agendas in advance and seek briefing from officers where necessary;
- ensure that the partnership has proper procedures for reporting progress and financial information; and
- take an interest in the appointment of key staff.

13. Unincorporated organisations

13.1 Groups which are not charitable trusts or limited companies are 'unincorporated associations' and have no separate legal identity from their members. The rules governing the membership of unincorporated organisations, including members' duties and liability may be set out in a constitution, which is simply an agreement between the members as to how the organisation will operate. Any constitution is likely to provide for management committees to be responsible for the everyday running of the organisation. An unincorporated organisation may be charitable and therefore register as a charity.

13.2 Management committee members must act within the constitution of that outside body and must take reasonable care when exercising their powers.

13.3 If Councillors become involved in the administration of an unincorporated body, they need to be aware that, as the body has no separate corporate status, any liabilities will fall upon the members personally. This means that if something goes wrong and the organisation is sued, the members/owners personal assets are at risk – they cannot stand behind a company or other body which gives them some legal protection.

13.4 If Councillors take on personal responsibilities for the organisation, such as buying equipment or renting premises, they are personally liable for the entire cost, and can only recover those costs from the organisation to the extent that it actually has the money to reimburse them, or from the other members of the organisation to

the extent that the membership agreement gives them the right to be reimbursed by each of them.

- 13.5 Councillors need to be very careful about the risk of personal liability and the extent to which this has been covered by insurance arrangements (either arranged by the organisation itself or by the council or by indemnities).

14. Indemnity for members

- 14.1 The council may only indemnify Councillors in certain circumstances as prescribed by the Local Authorities (Indemnity for Members and Officers) Order 2004.

- 14.2 The council will provide an indemnity in relation to any action (or failure to act) by any Councillor which:

- is authorised by the council;
- forms part of, or arises from, any powers conferred, or duties placed, upon that Councillor at the request, or with the approval of the authority including acting as the council's representative on an outside body;
- arises in respect of the cost of defending any claim for an allegation of defamation by a Councillor acting in an official capacity (but not in respect of any punitive or exemplary damages or arising from malicious or injurious falsehood);
- is in respect of any investigation, hearing or other proceedings for an alleged failure to comply with the code of conduct for councillors but, if the member is found to have breached the code of conduct, and where an appeal is unsuccessful, then that councillor shall reimburse the authority or the insurer for their costs incurred in relation to those proceedings;

- 14.3 The indemnity includes an act or omission subsequently found to be beyond the powers of the Councillor in question, but only to the extent that the Councillor reasonably and genuinely believed that the act or omission was within their powers at the time they acted.

- 14.4 The indemnity does not apply to the defence of any criminal proceedings brought against a Councillor unless specifically approved by the council and then only on a similar basis to that relating to proceedings for breaches of the code of conduct.

- 14.5 It is possible in some circumstances for the council to indemnify (i.e. stand behind the councillor and pick up any personal legal liabilities/costs/damages which the councillor incurs as a result of his/her appointment to an outside body).