

PART 5f – PROTOCOL FOR MEMBERS ON OUTSIDE BODIES

Effective from ~~249~~ May 2023 ~~20 May 2015~~

Approved by Council on ~~x 2023~~ 30 March 2015

This guidance/protocol is broken down into the following elements:

- Core competencies for elected members serving on outside bodies.
- Guidance for councillors serving on outside bodies based on the type of appointment
- The online reporting form (https://www.fylde.gov.uk/forms/ShowForm.asp?fm_fid=887) must be completed by every member serving on an outside body every six months, with all completed information being ~~considered by one of the Council's scrutiny committees~~ circulated to all members of the Council for information.
- Those members failing to complete the information following a second reminder from an officer will be brought to the attention of ~~one of the Council's scrutiny committee's~~ the relevant programme committee chairman. The Chairman must enquire whether that member wishes to continue on the Outside Body.
- Application form for members wishing to submit a challenge to an appointment to an outside body. All appointments are determined at the next ordinary Council following the AGM, except in an election year where appointments are considered at the AGM. The intention is that two months prior to this date, all councillors will be reminded of their opportunity to submit an application for consideration by the Council in non-election years.

1 CORE COMPETENCIES FOR MEMBERS SERVING ON OUTSIDE BODIES

- (i) Is generally available to attend meetings of the outside body
- (ii) Attends all meetings where circumstances permit
- (iii) Has an understanding, underpinned by appropriate experience or knowledge, of the purpose and work of the outside body
- (iv) Understands their role as the council's representative, including the need to represent the council as a whole
- (v) Uses their role on the outside body to champion the interests of the people of Fylde, insofar as this is consistent with any other duty
- (vi) Regularly reports on their work with the outside body to all members of the Council
- (vii) Knows the procedure for dealing with conflicts between their own interests, those of the Council and those of the outside body
- (viii) Has appropriate understanding of any regulatory framework that affects the outside body
- (ix) Has the skills needed to properly fulfil his or her role in the outside body
- (x) Informs the Council Leader if they are unable to continue to fulfil the competencies

2 COUNCILLORS APPOINTED AS DIRECTORS OF LIMITED LIABILITY COMPANIES

2.1 Legal Status

- (i) Upon incorporation a company becomes a separate legal entity, which can hold property in its own right, enter into contracts and sue and be sued in its own name.
- (ii) Companies limited by shares are those which have a share capital e.g. 1000 shares of £1 each.
- (iii) Each member holds shares and receives a share in the profits made by the company in the form of a dividend. Shares can be sold. Liability in the event of a winding-up is limited to any amount unpaid on the shares held.
- (iv) Companies limited by guarantee do not have shares. Instead, each member agrees that in the event of the company being wound up they will agree to pay an agreed amount e.g. £1. This is most common in the public and voluntary sector, particularly where charitable status is sought.

2.2 Directors' Duties

- (i) The council should not nominate a councillor for appointment as a director of a company where there is a realistic possibility that the interests of the company may come into conflict with those of the council and, in the event of such a conflict, the council would expect or require the nominee to act in the interests of the council rather than the company.
- (ii) A councillor should not accept nomination to be a director of a company where there is a realistic possibility that the interests of the company may conflict with those of the council and the councillor would not feel able, in those circumstances, to act in the interest of the company rather than the council.
- (iii) The role of a councillor who has been appointed as a director will depend upon the company's constitution. A company's constitution will vest most of its powers in the board of directors and the board will exercise these either directly or through managers appointed by the board. Directors must understand the requirements of the Company's constitution and the law in order to fulfill their responsibilities properly.
- (iv) Directors will need to be aware of the requirements of the UK Corporate Governance Code published by the Financial Reporting Council to the extent that this has been adopted by the company, including general management of the company, rules on directors' remuneration, internal financial and operational controls and risk management.
- (v) Directors must:
 - (a) act in good faith in what they believe to be in the best interests of the company (not the Council);
 - (b) act with reasonable care, diligence and skill;
 - (c) exercise their powers reasonably and for the purpose for which they are given;
 - (d) keep an open mind when making decisions on company business, in particular a councillor director must exercise independent judgment and not simply

follow Council policy when voting on company matters; avoid placing themselves in a position where their private interests or their position as a councillor conflict with their duties to the company;

- (e) be aware of the company's financial position through attendance at board meetings and reading the accounts, agendas and minutes, it is not sufficient to assume that the other directors are doing a good job.
- (vi) Some directors may be given special responsibilities under the company's constitution, for instance a managing director or finance director. Those with special roles will be expected to have the personal and technical skills to perform the duties associated with that role, which may be onerous.
- (vii) The above duties apply to non-executive directors as well as executive directors.
- (viii) There are other statutory requirements which may be relevant depending on the company's business. Directors will need to be familiar with these. For example, if the company is an investment vehicle which engages in fundraising activity, financial services legislation will apply.

2.3 Observer Status

- (i) The position of observer has no specific legal status in company or local authority law. Any person appointed as an observer should ensure that their role is clearly defined and avoid involvement in the management of the Company. If an observer acts beyond their remit and exercises real influence over the company's affairs and decision making the observer may be deemed to be a shadow director, with all the responsibilities of an ordinary director.
- (ii) Observers and others, such as professional advisors, may be invited to attend board meetings. Generally the minutes of the meetings will note the names of observers and the fact that they are "in attendance". Persons "in attendance" have no specific legal status and in itself the phrase does not indicate any particular level of participation in the company's affairs.

2.4 Personal Liability

A director (or shadow director) may incur personal liability if they are in breach of their duties. This may arise where:

- the company is found, in the course of winding up, to have been trading for fraudulent purposes. If a director has acted dishonestly this is also a criminal offence;
- following liquidation, a director is found liable for wrongful trading, i.e. allowing the Company to continue to trade at a time when the director knew or ought reasonably to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation;
- the company commits a breach of the criminal law, for example, health and safety legislation;
- a director acts negligently or in breach of their duty to the company (including the duty to maintain confidential any confidential information relating to the company that comes into their possession);
- a director knowingly causes the company to act beyond the activities authorized by its constitution;
- there is a breach of trust, such as the misappropriation of company funds or property;
- a director uses their powers improperly or makes a personal profit from their position as director;

- there is a failure to comply with the requirements of companies' legislation, such as the making of returns to the Registrar of Companies.

2.5 Insurance

Councillors appointed as directors should find out if the company maintains appropriate insurance cover against directors' liability. If this is not in place this should be requested, but this is a matter entirely for the board and the Council cannot insist upon this. It will be necessary to ensure that the company has the resources to maintain payment of the insurance premiums.

Further guidance on the responsibilities of company director is available on the website's business link: www.gov.uk/running-a-limited-company/directors-responsibilities

3 APPOINTMENT OF A TRUSTEE TO A TRUST OR CHARITY

3.1 Legal Status

- (i) The role and responsibilities of a trustee will depend, upon the provisions of the ~~trusts~~ governing documents of the trust and the general law relating to trusts and charities. A trust's governing document can be a trust deed or a scheme made by the charity commission.
- (ii) It is quite common for companies to be set up by trusts with charitable objects. In this case the trustees will also be directors of the company and would have the obligations set out in Appendix C above as well as the obligations set out in this section. Councillors involved with charitable companies should ensure that they understand the capacity in which they have been appointed.

3.2 Duties

- (i) The role of a trustee is generally to ~~fulfill~~fulfil the objects of the trust and apply the income and, if appropriate the capital of the trust in accordance with the provisions of its governing documents
- (ii) Trustees are subject to various duties, including the duty to:
 - (a) act for the benefit of the charity and its beneficiaries;
 - (b) preserve the capital of the charity (unless the trust deed gives the trustees the right to spend the capital or the charity is small and the trustees have resolved to spend the capital under the Charities Act ~~1993~~2006)
 - (c) make sure income is spent only on the things authori~~sed~~zed in the governing documents;
 - (d) invest the capital only in authori~~sed~~zed investments, having first taken professional advice;
 - (e) produce annual accounts;
 - (f) act with reasonable care and skill in administering the trust, and
 - (g) to act unanimously (unless the trust deed allows majority decisions);
 - (h) comply with the Charities Acts and other legislation affecting the charity.
- (iii) The Charity Commission's website – www.charitycommission.gov.uk – contains useful guidance in particular Publication CC3. -'The Essential Trustee' which outlines the basic principles that should guide trustees when administering their charity:
 - the income and property of the charity must be applied for the purposes set out in the governing document and for no other purposes;
 - the trustees must act reasonably and prudently in all matters relating to the charity and must always bear in mind the interests of the charity. They should not let their personal views or prejudice affect their conduct as trustees;
 - trustees should exercise the same degree of care in dealing with the administration of their charity as a prudent businessman would exercise in managing his or her own affairs or those of somebody else for whom he or she was responsible, and

- where trustees are required to make a decision which affects a personal interest of one of their members that person should not be present at any discussion or vote on the matter.

3.3 **Liability**

- (i) Trustees are jointly and severally liable to the charity for breaches of trust. They may incur personal liability for losses incurred if they:
 - (a) act outside the scope of the trust deed;
 - (b) fall below the required standard of care;
 - (c) make a personal profit from the trust assets;
- (ii) Trustees will incur personal liabilities under contracts they enter into in the name of the charity. They are however, entitled to be reimbursed from the charity's funds for all liabilities and expenses properly incurred by them, provided this is authorized by the trustees in accordance with the trust deed.

3.4 **Insurance and Indemnity**

An indemnity can be given from the trust fund provided the trustee has acted properly and within their powers. Trustees may take out insurance to protect themselves against personal liability except criminal liability. Payment of the premiums must be authorized by the trust deed if they are to be met from charitable funds.

4 UNINCORPORATED ASSOCIATIONS

4.1 Legal Status

- (i) Most societies, clubs and similar organizations (other than companies, industrial societies and trusts), are unincorporated associations. This is an informal organisation which may arise where several people join together, with the intention of creating legal relations, to carry out a mutual purpose otherwise than for profit.
- (ii) There is no statutory definition of an unincorporated association but it has been described by the court as ‘an association of persons bound together by identifiable rules and having an identifiable membership’. Unlike a company it does not have a separate legal status distinct from its members.
- (iii) Because unincorporated associations are not set up under a particular legislation, their structures may vary. However, the rules of an unincorporated association are usually found in its constitution, which sets out the roles and responsibilities of its members.

4.2 Duties

- (i) An unincorporated association will typically have an executive or management committee with its powers and composition defined by the constitution. Key decisions will usually be made by the members at general meetings. The day to day administration of an association is usually undertaken by the officers and members of the executive or management committee.
- (ii) Broadly, executive or management committee members must act within the constitution and must take reasonable care in exercising their powers.
- (iii) Where an unincorporated association is a registered charity the members of the executive or management committee may also be charity trustees. As such, their role and responsibilities will be determined not only by the association’s constitution but also by the general law relating to trusts and charities.

4.3 Observer Status

The Council may appoint a councillor to the executive or management committee of an unincorporated association as an observer. A councillor acting as an observer should avoid exceeding this role by becoming directly involved in the management of the association as they may be deemed to be an ordinary member for the purposes of determining liability.

4.4 Liabilities

- (i) Members of the management committee are generally liable, jointly and severally, for the acts of the organisation, but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there are insufficient funds the members are personally liable for the shortfall.
- (ii) Particular care should also be taken when entering into contracts on behalf of the association. If the individual lacks the authority to do so, they may find themselves personally liable for the performance of the contract.

4.5 Insurance

Where the councillor is appointed to represent the interests of the Council then the Council’s insurance will cover them so long as they do not wilfully commit an offence.

5 STEERING GROUPS, JOINT COMMITTEES AND PARTNERSHIP BODIES, INCLUDING COMMUNITY AREA PARTNERSHIPS

- (a) The responsibilities of a councillor who is appointed as a member of any of these bodies will be determined by the terms of reference, constitution or partnership agreement under which they are established and governed.
- (b) It is necessary to ensure that the councillor's role on the body is clear, and, in particular, whether they are acting as a delegate or representative of the Council to further the interests of the Council, or whether they are expected to exercise independent judgment in the best interests of the body concerned.
- (c) Liability will depend on the nature and functions of the body and the constitution or agreement under which it is established. Insurance may be available to cover certain liability.



**QUESTIONNAIRE FOR MEMBERS ANTICIPATING NOMINATION TO REPRESENT THE COUNCIL
ON AN OUTSIDE BODY**

Name of outside body	
Description of role (e.g., committee member, director)	
What does the role involve?	
What experience and/ or interest in this subject makes you suitable for the role?	
What skills will you use in the role?	

How will you represent the council in the role?	
How will you add value to the outside body in your role?	
How would you report to the council on your activities in the role?	
What other outside bodies do you sit on?	
Will you be able to attend all (or nearly all) of the meetings that you will be expected to attend?	

The core competencies for members representing the council on outside bodies are:

- (i) Is generally available to attend meetings of the outside body
- (ii) Attends all meetings where circumstances permit
- (iii) Has an understanding, underpinned by appropriate experience or knowledge, of the purpose and work of the outside body
- (iv) Understands their role as the council's representative, including the need to represent the council as a whole
- (v) Uses their role on the outside body to champion the interests of the people of Fylde, insofar as this is consistent with any other duty
- (vi) Regularly reports on their work with the outside body to all members of the Council
- (vii) Knows the procedure for dealing with conflicts between their own interests, those of the Council and those of the outside body
- (viii) Has appropriate understanding of any regulatory framework that affects the outside body
- (ix) Has the skills needed to properly fulfil his or her role in the outside body
- (x) Informs the Council Leader if they are unable to continue to fulfil the competencies

I consider that I fulfil (or will fulfil) the core competencies for representing the council on the outside body named above and would be willing to accept a nomination to do so.

Name

Date