

## Appendix 3



## South Somerset District Council

### **The Roles and Responsibilities of Councillors appointed to Outside Bodies**

## Guidance to Councillors appointed to Outside Bodies

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.

Service on outside bodies has always been an established part of a Councillor's role. An appointed Member on an outside body will be able to use their knowledge and skills as a Councillor to assist the organisation to which they are appointed.

The Council is now increasingly working in partnership with outside bodies and greater clarity is needed as to the role of Members appointed to these bodies. In situations where funding streams may benefit outside bodies and be channelled through the Council as the accountable body, or where the Council funds the outside body directly (e.g. CAB), questions of accountability and governance will arise.

### SSDC definition of an outside body:

**“An outside body (also known as an organisation), shall have formal governance, and shall not have been established, or be administered, by SSDC or have SSDC officers as the primary point of contact.”**

### Introduction

1. This guidance sets out the main issues which councillors should consider when appointed by the Council to serve on outside bodies.
2. In the context of this guidance 'outside bodies' include trusts, companies, charities, industrial and provident societies and community associations. Councillors may be involved as a director, trustee, governor, member or observer (with or without voting powers).
3. Councillors who are involved in the management of outside bodies have responsibilities to that body that must be acted upon. Their role, responsibilities and potential liabilities will depend upon the legal nature of the organisation and the capacity in which they have been appointed. Failure to act in a proper manner may give rise to personal liability or liability for the Council.
4. With the increasing emphasis on partnership working, councillors, as community leaders, have an important role to fulfil in supporting and advising outside bodies. However, this can give rise to conflicts of interest, particularly where the organisation is seeking or receiving funding from the Council. Councillors always need to be clear about their roles and alert to potential conflicts of interest in order to ensure transparency and public confidence in local democracy.
5. This guidance seeks to help councillors discharge their responsibilities on outside bodies clearly and effectively. It covers, primarily, the position of councillors appointed by the Council to serve on outside bodies, though much of the advice

applies equally to councillors who are involved with outside bodies in a private capacity. Councillors who are members of an outside organisation in a private capacity or in a Parish Council role, and not appointed by SSDC will not be covered by SSDC insurances.

6. Membership of an outside body does not include representing a political party.
7. Appointments made to any outside body should be drawn from current serving District Councillors only.
8. Training on the legal responsibilities, including declarations/conflicts of interest of Councillors appointed to outside bodies will be included in the initial induction programme of training for new Councillors. Councillors may also seek advice from the Monitoring Officer at any time.
9. This guidance is general and councillors should contact the Monitoring Officer for further advice if they have any particular issues of concern.
10. The remainder of this guidance includes the following:
  - issues to consider before appointment;
  - application of the Code of Conduct for Councillors;
  - legal status of outside bodies, capacity of appointment, duties and liabilities;
  - insurance and indemnity.
  - criteria against which it can be judged whether to accept a new proposition from an outside body for Councillor representation

### **Issues to consider before appointment**

11. Before accepting an appointment to an outside body councillors should check the following information which will be supplied by Democratic Services relating to the outside body:
  - the legal status of the organisation e.g. company, trust, charity, unincorporated association;
  - the capacity in which the councillor is to be appointed e.g. director, trustee, member with voting rights or member with observer status;
  - the purpose of the organisation and how this relates to the Council's functions and objectives;
  - the relationship between the Council and the body and the likelihood and extent of any conflicts of interest (known to the individual councillor);
  - the requirements of the organisation's governing instrument (e.g. constitution; trust deed; memorandum and articles of association), both as a member and generally;
  - the financial status of the organisation;
  - the governance and decision making arrangements, including the management of risk;
  - any code of conduct for members;

- potential liabilities;
  - the extent of any insurance cover for members.
12. Having checked the above matters, councillors should consider carefully whether they should be appointed to participate formally in the management of the external organisation e.g. as a director, trustee or voting member, or whether their role as a representative of the Council may be more effectively discharged as a non-voting member with observer status only. **Bearing in mind the potential liabilities that may be incurred through formal involvement in an organisation councillors are generally advised to seek appointment as members with observer status only, unless there are exceptional reasons for more formal participation.**
13. Councillors are encouraged to seek advice from the Monitoring Officer where any of the above issues are unclear.

### **Application of the Code of Conduct for Members**

14. The Council's Code of Conduct for Members in Part 5 of the Constitution places specific obligations on councillors when acting in that capacity in their dealings with outside organisations. The Code will, in particular, apply where a councillor is acting as a representative of the Council on an outside body.
15. Apart from the general duty to promote and support high standards of conduct the following duties of the Code are particularly relevant in this context:
- act solely in the public interest and never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate;
  - avoid placing yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties;
  - make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit;
  - declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and take steps to resolve any conflicts in a way that protects the public interest.
  - comply with the statutory requirements on the registration and declaration of interests.
16. Councillors who have a disclosable pecuniary interest in any business at a meeting of the Council e.g. award of a contract, must not participate in any discussion of the matter or vote on it unless a dispensation has been obtained. Failure to comply with these requirements without reasonable excuse may result in prosecution.
17. Councillors that serve on more than one body, in particular, need to be mindful of potential conflicts of interest and always act in an open and transparent manner in carrying out their respective roles. For example, where a councillor is at a council meeting considering an application for a grant or a community asset transfer request from a parish council or other public body of which they are a member they should declare the existence and nature of their interest. Having done so, they may, generally, take part in the discussion of that item and vote, unless there are particular reasons why this would not be appropriate. It is also advisable as a matter of transparency to include details of the interest in their register of interests.

18. Councillors appointed to serve on outside bodies should be mindful of their legal obligations regarding disclosure of confidential information and in case of doubt should seek advice from the Monitoring Officer.
19. Councillors also need to comply with the duties and requirements of the Equality Act 2010 in their appointment to any outside body as well as their role as a District Councillor (see Appendix E).

### **Predetermination and Bias**

20. Aside from the Code of Conduct, under the common law councillors must be careful to avoid any pre-determination or bias in their decision making. Predetermination occurs where someone has a closed mind so that they are unable to apply their judgment fully and properly to the issue requiring a decision. This can lead to legal challenges and decisions being set aside.
21. The Localism Act 2011 has clarified the rules on predetermination. It makes it clear that a councillor is not deemed to have had a closed mind on an issue just because they have indicated what view they have taken or may take before the issue is decided. A councillor is not, for example, prevented from participating in discussion of an issue or voting on it if they have campaigned on the issue or made public statements about their approach to it.
22. The general position, however, remains that, whatever their views, members must approach their decision-making with an open mind in the sense that they must have regard to all material considerations and must be prepared to change their views if persuaded that they should.
23. Councillors need to be aware that decisions may be challenged and set aside on the grounds of bias. Under the common law bias involves some element of partiality or personal interest in the outcome of a case, as a result of a close connection with the parties, or the subject matter of the dispute, or because of a tendency towards a particular shared point of view.
24. The relevant test for bias is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the decision maker was biased.
25. The risk of a successful challenge on these grounds may be overcome by proper observance of the requirements of the code of conduct and particularly the provisions set out in paragraph 14 above.

### **Legal status, capacity, duties and liabilities**

26. The specific responsibilities of councillors will depend upon the legal status of the outside body and the capacity in which they have been appointed. The position of councillors in relation to various types of outside body is summarised in the appendices to this note as follows:

Appendix A - Director of Limited Liability Company  
Appendix B - Trustee of Trust or Charitable Trust  
Appendix C - Member of Unincorporated Association  
Appendix D - Member of Steering Group, Joint Committee or Partnership Body

The key point to note is that where councillors are carrying out their duties as a trustee, director, or management committee member, they may take account of the wishes of the Council, but their primary duty is to act in the best interests of the organisation to which they have been appointed.

### **Liability, Insurance and Indemnity**

27. Councillors can incur personal civil and criminal liability from formal participation in outside bodies.
28. However, under section 265, Public Health Act 1875 (as applied by Section 39, Local Government (Miscellaneous Provisions) Act 1976), councillors enjoy statutory immunity from civil liability where they act within the powers of the authority, in good faith and without negligence.
29. But this immunity does not apply where they act beyond the powers of the council or act in bad faith (i.e. with dishonest or malicious intent) or negligently, and it does not protect them from criminal liability, for example for fraud or for corporate killing where they exercise managerial responsibilities.
30. South Somerset District Council has insurance provision to protect its assets and liabilities. Within these provisions the Council has cover to protect its elected and co-opted members when carrying out duties in connection with the business of the Council. Those afforded the protection are;
  - elected Members of the Council or co-opted members of any Committee or Sub-Committee.
  - members of committees, schemes or associations formed to assist in the activities of the Council.

### **Appointments at Committee**

31. All appointments to outside bodies will be made at the Annual Council meeting or at the relevant Area Committee meeting.

### **Criteria to accept a new proposition from an outside body for Councillor representation:**

32. The following should be considered before accepting any request from a new outside organisation for representation by an SSDC Councillor:-
  1. Relevance to Council Plan
  2. Benefit to SSDC
  3. Benefit to Outside Organisation
  4. Organisation's expectations of the Councillor representative
  5. Does the organisation need Councillor or Officer representation?

### **Information required prior to accepting a new outside body for Councillor representation:**

33. The following information must be established by the Democratic Services team or relevant Area Development Manager prior to any Councillor appointment to an outside

organisation, and, be made available to any interested Councillor prior to their appointment:-

- Identify an officer point of contact
- Primary aims and objectives of the outside body
- Justification for the appointment
- Role of the appointed member
- Set out any legal and/or financial implications
- Indication of time commitment required
- Skills and/or experience required from the council representative

**Councillors representing outside bodies will be required to produce a small annual report or paragraph to be added to the members annual report. The report to include information on the activities and achievements of the outside body and the number of meetings attended.**

#### **Further Advice**

34. Further assistance on the issues covered in this guidance may be obtained from the Council's Monitoring Officer.