

# GUILDFORD BOROUGH COUNCIL

## PROTOCOL ON COUNCILLOR APPOINTMENTS TO EXTERNAL ORGANISATIONS

### Introduction

1. The Council has extensive involvement with a wide range of external partnerships and organisations. Councillors may be informally involved on an individual basis with many organisations including community organisations, sports and recreation clubs, housing associations charitable trusts and companies. This Protocol relates to the formal appointment of councillors to external organisations by the Council. The main objective of these appointments is for the Council to develop positive relationships with local organisations in the interests of the local community.
2. Formal appointments include various roles ranging from advisory to membership of management committees as trustees or as company directors. Some roles will have legal duties and responsibilities which must be properly discharged and which can have implications for the Council as well as for the individuals themselves. Consequently, with any relationship involving external organisations there must be a clear definition of roles, responsibilities and accountabilities. This Protocol aims to assist councillors serving on external organisations to be clear on these matters and includes guidance for dealing with any conflicts of interest between the Council and the external organisations.
3. The main purposes of this Protocol are:
  - (i) to ensure that the Council's and individual councillors' interests are properly safeguarded and represented;
  - (ii) to ensure, whenever a councillor is appointed to an external organisation, that all such appointments are properly authorised, recorded and managed; and
  - (iii) to provide a formal procedure with relevant guidance to appointees.

### Existing Guidance for Councillor Appointees

4. The matter of councillors' conduct is addressed by the Council's own local code of conduct ("the Councillors' Code"), which was adopted by the Council pursuant to Section 27 of the Localism Act 2011. The Councillors' Code appears in Part 5 of the Council's Constitution and covers matters of propriety in office, the acceptance of gifts and hospitality and rules relating to disclosable pecuniary interests. The Councillors' Code does not directly address the matter of any conflict between the interests of the Council and those of the external organisation to which a councillor has been appointed. An appointment to an external organisation does not necessarily mean that the councillor will be representing the Council's interests on that external organisation. Indeed, a councillor appointed by the Council to a decision making role in an external organisation (for example, as a director of a company or as a trustee) has a duty to act in the best interests of the organisation notwithstanding a conflict between these interests and those of the Council. This may mean, in some instances, that a councillor cannot participate in a decision of the Council which affects or relates to that external organisation. Importantly, when acting for the other organisation, the appointee has no power to commit the Council to any particular course of action: their role is to exercise independent judgement when deciding issues and to contribute to the decision-making of the other organisation, not to represent the Council in discussions or negotiations within that organisation.

## Types of External Organisation

5. There are a number of types of organisation to which the Council may appoint councillors. Some common examples are:
  - National or regional body
  - Charitable Trust
  - Company limited by shares
  - Company limited by guarantee
  - Unincorporated association
  - Industrial and provident society (mainly housing associations)

## Legal Structures

6. In all cases it is essential that those accepting an appointment to an external organisation should have absolute clarity of the legal status of the organisation concerned and the nature and responsibilities of the appointment itself of the appointment itself. Those proposing to take up appointments must ensure that they possess and have read an up-to-date copy of the organisation's governance documentation, the skills and experience required by the organisation and fully understand all obligations and including any implications relating to personal liability.

### Charitable Status

7. Many organisations with which the Council becomes involved are registered charities. Charities are not themselves a separate category of organisation. Charitable status is a characteristic, which can be attached to a number of different types of organisation provided they are set up for specified, and purely charitable purposes and fulfil the various requirements of the Charity Commission.

There are four main structures available for charities and community groups. These are:

- Unincorporated Association
  - Charitable Trust
  - Charitable Incorporated Organisation (CIO)
  - Charitable Company
8. Organisations that are '*unincorporated*' are associations having no separate legal existence and remain for most purposes a collection of individuals and committee members hold personal liability. Any property or contracts would be held by individuals on behalf of the group. Any legal proceedings taken against the group would be taken against the individuals themselves, making them personally liable. An '*incorporated*' organisation has limited personal liability, a clear statutory framework and clear accountability both to members/shareholders and to a regulatory body. Incorporated charities are registered as companies with Companies House as well as the Charity Commission. If a charity is incorporated, the organisation, rather than individual trustees, is liable for debts and other costs.
  9. Those managing a charitable organisation have the duties and responsibilities of company directors, management committee members or trustees, and are subject to the legal requirements placed upon those organisations by charity law and/or company law as appropriate.

10. The duties of a charity trustee do not differ in principle from those of a non-charitable trustee - to execute the duties of the trust in accordance with its terms of reference and within the law in the interests of the intended beneficiaries. In doing so, they are subject to the jurisdiction of the Charity Commission. In particular, charity trustees may be held personally liable when charity assets are misapplied. This may be so even in some cases where the misapplication has been inadvertent (e.g., where the trustees honestly but mistakenly apply the assets other than for a charitable purpose). It is important to note that charity trustees who suffer financial loss as a result of such a breach are not entitled to be indemnified out of the charity's property.

### Company Status

11. Charitable companies (those incorporated as a company limited by guarantee) must comply with provisions in the Companies Acts 1985, 1989, 2006. Alongside compliance with charity law, they are required to register details of trustees as directors at Companies House. Councillors appointed to such organisations should ensure they are registered as directors and, in due course, ensure their names have been removed should they step down from the role.
12. Individuals appointed to positions within companies or industrial and provident societies (collectively referred to here as companies) should be mindful of Part V of the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995 and Part 1 of the Localism Act 2011. This legislation provides a framework for regulating local authorities' interests in companies, access to its information, the treatment of its accounts, and the stated association with the local authority. The law in this area will determine if a company has become a "regulated company". This means the degree to which local authorities or persons "associated" with local authorities are involved with the company. For these purposes, "associated" persons are current councillors, officers, and anyone who has been a councillor in the past four years, together with certain employees of local authority-controlled companies. A company would be deemed regulated if "associated" persons make up 20% or more of the directors/management committee members or shareholders or hold 20% or more of the voting rights. Appointees should inform the Monitoring Officer should any resignation or appointment lead to the 20% threshold being reached. This information should also be readily available at board/management committee meetings and be properly minuted.

### **Duties and Responsibilities of Directors and Trustees**

13. A councillor appointed as a director of a company must act in the best interests of the company. The main duties of a director are:
  - to act honestly and in good faith and in the best interests of the organisation as a whole;
  - a duty not to make a personal profit and to take proper care of the organisation's assets;
  - to attend board meetings and follow the rules on the declaration of interests;
  - to exercise reasonable skill and care (this is a subjective test based upon the individual's own knowledge and experience and involves due diligence in the performance of his/her duties as a director); and
  - to comply with statutory obligations imposed by the Companies Acts, other legislation and any procedural rules set out in the governing document.
14. A councillor appointed as a trustee of a charity has duties that are generally the same as for a director. In addition, he/she must ensure the trust acts in accordance with the aims

and objectives of the trust and should ensure that he/she has a clear understanding of what these are (there is normally a trust deed which sets these out).

### **General Duties of an Appointee to an External Organisation**

15. In carrying out the duties of a Trustee or Director of an external organisation, decisions must be taken without being influenced by the fact that you are a councillor. The primary duty as an appointee making management decisions for the external organisation is to make these decisions in the interests of the organisation. Councillors should always ensure that their fellow directors/trustees are aware of the fact that they are councillors. In these cases, the councillor must act in the interests of that organisation and exercise independent judgement in making decisions, in accordance with a duty of care to the organisation. The councillor appointee is not there just to vote in accordance with the Council's wishes. You may have regard to the interests of the Council, but only insofar as those interests directly coincide with those of the organisation. In some cases, voting in the Council's interests could be a breach of a director's duty to a company.
16. In other cases, the Council may have expressed a view or formulated a policy and would expect the councillor appointee to convey that view or policy to the external organisation. This is acceptable if it does not conflict with the particular duties as director or trustee, or where it is not contrary to the interests of the organisation. The overriding responsibility is to seek to avoid a situation where duty and interest conflict and therefore if the appointee is unsure about declaring an interest, it would be wise to declare it and leave the meeting during consideration of the business. Correspondingly, where a given decision of the Council may directly affect the company, this may place the councillor acting as a director or trustee in a situation of conflict when making decisions. Advice should be taken from the Monitoring Officer on how to manage this situation.
17. Councillors (and officers) are under a specific obligation as a result of the Local Authorities (Companies) Order 1995 to provide such information about the company as is needed in relation to their role. That obligation is best met by an annual report to the relevant Portfolio Holder and subsequently to Council. While the law now makes this a requirement for involvement in outside companies, it is self-evident that the requirement to report back should apply to involvement in all outside bodies.

### **Appointment Procedure**

18. Councillors will normally be appointed to such external organisations that:
  - (i) Support the Council's Corporate priorities, and/or
  - (ii) Assist in delivery of Council services, and/or
  - (iii) Are using Council facilities
19. All appointees to external organisations shall be sitting borough councillors.
20. When an appointment is made, there shall normally be one councillor appointee and a deputy appointed to each external organisation.
21. The Council shall appoint to external organisations for a four-year term of office following Borough Council elections at the first ordinary Council meeting after the Selection Council meeting. Should a vacancy arise during a term of office, then where applicable the deputy appointee will normally assume the role of the appointee for the term of office remaining and group leaders will be asked to submit nominations for the appointment of a new deputy appointee.

22. The Council or Executive shall approve all contested appointments as appropriate. In relation to contested nominations, each nominee shall have the opportunity to make either a written or an oral personal statement to the appropriate meeting in support of their nomination before the vote is taken, with any oral statement taking no longer than three minutes.
23. The Democratic Services Manager, under delegated authority, will determine uncontested appointments to external organisations.
24. A 'person profile' (as shown in Appendix 1 to this Protocol) shall be completed by each external organisation to ensure that the appointment is a suitable match to the requirements of the organisation and the capacity of the individual councillor in terms of skills, experience and time commitment.
25. It is the expectation of the Council that an induction and suitable training shall be provided for the councillor appointee by the external organisation, which shall include any legal responsibilities, budget and financial issues, information sharing with the council or other bodies and accountability.
26. It is the expectation of the Council that the external organisation will undertake any required and appropriate safeguarding arrangements with regard to the appointment and the appointee.
27. 'Appointments to External Organisations' will be covered in the Council's new councillor induction programme following local Borough elections.
28. Councillors shall not accept an appointment to an external organisation unless there is a full understanding of the commitments and requirements for the role between all parties.
29. Political group leaders shall liaise between themselves to ensure that individual councillor's interest in a specific nomination is shared between them before the meeting at which any contested appointments are to be determined.
30. Councillors appointed to an external organisation shall each year provide written feedback on the work of those organisations over the previous twelve months.
31. Councillor appointees are responsible for ensuring that their appointment has been approved and properly effected in accordance with the external organisation's own rules and procedures.
32. When an appointment ceases for whatever reason (including when that person ceases to be a councillor), the councillor concerned will be responsible for ensuring that it is properly terminated both with the Council and with the external organisation. It is not sufficient simply to cease to attend meetings of the organisation, as this is unlikely to extinguish the individual's legal responsibilities, where these apply.

### **Following Appointment**

33. All appointments approved by the Council, Executive or under authority by officer delegation will be recorded in writing, published in the public domain and the Monitoring Officer informed. Appointments made in accordance with this Protocol will be held on a register of appointments. This register will be publicly available on the Council website and kept up to date by the Democratic Services Manager.

34. Appointees should play an active role in the external organisation particularly by way of regular attendance at meetings and reporting back to the Council. In particular, the appointee should report immediately if there are any material changes in the organisation or its relationship with the Council that would affect the reason they are appointed.

### **Conflicts of Interest**

35. Disclosure of interests rules and the consequences of such disclosure in terms of speaking and voting on specific matters must be followed when working with the external organisation in the same way as council requirements as set out in the Councillors' Code.
36. Often, the purposes of the external organisation will coincide with the interests of the Council and conflicts should be rare. However, there may be difficulty in some circumstances if, for example
- The organisation is not complying with the terms and conditions of a funding agreement with the Council, or;
  - If the organisation is to appeal against a planning decision made by the Council, or;
  - If the organisation has wider objectives than the reason behind the Council's appointment and wishes to pursue activities which would conflict with Council policy.

Such circumstances should be managed appropriately and advice should always be sought from the Monitoring Officer. Resignation may be the outcome.

37. If the Council or Executive does not feel that a representative on an external organisation is properly fulfilling their role and responsibilities, e.g. the person is not attending meetings or is voting in ways which may be inappropriate, then the Council or Executive could choose to change its appointee to the external organisation.
38. If the Council considers an issue relating to or affecting the external organisation you must declare an interest if the matter relates to an approval, consent, licence, permission or registration. Unless the interest is a disclosable pecuniary interest as defined in the Councillors' Code of Conduct, you would still be able to participate and, where applicable, vote on the matter at the meeting, if in doubt you should seek the Monitoring Officer's advice.
39. The Local Authorities (Companies) Order 1995 provides that an appointment to regulated company must end if the appointment as councillor ends. It may be that, on appointment, the Council wishes to make appointment to a company coterminous with a councillor holding a particular role or portfolio as elected member – and to extend these rules to appointment to other external bodies/organisations.

### **Duties of Confidentiality and Conduct**

40. Confidential information must be treated with care and if there is any doubt over the status of any information passed to the councillor by the organisation then it should be kept confidential and a check made with the Data Protection Officer, whether or not it is something which is already in the public domain or which may be disclosed. The specific rules adopted by each organisation will vary and therefore you should ask for advice and guidance from the secretary of the organisation and/or the Monitoring Officer, as appropriate.

41. The legal position is that someone who has received information in confidence is not allowed to take improper advantage of it. Deliberate leaking of confidential information will be a breach of the Councillors Code of Conduct and a breach of the Data Protection Act 1998 and may result in legal action.
42. An appointee by the Council to an external organisation must comply with the Code of Conduct of that organisation, if it has one. If it does not, he/she must comply with the Councillors' Code of Conduct unless observance of the Code would conflict with any other obligations (i.e. the duty to act in the best interests of the external organisation).
43. Under the Code appointees must not:
  - disclose information given in confidence by anyone, or information acquired which is believed to be of a confidential nature, without the consent of a person authorised to give it, or unless required by law to do so;
  - prevent another person from gaining access to information to which that person is entitled by law.

Any correspondence an appointee may have with the relevant external body, if using their council email address or council headed paper may be the subject of a Freedom of Information (FOI) or Environmental Information Regulations (EIR) request from a member of the public. Councillors should therefore note that any written communications made using the council email system may be made publicly available if the council deems it to be captured under FOI or EIR, regardless of whether that councillor believes themselves to be acting outside of their capacity as a councillor.

44. Disclosing confidential information may also contravene other parts of the Code e.g. it may be regarded as bringing the office of Councillor or the Council into disrepute; may compromise the impartiality of people who work for the Council; may improperly confer or secure an advantage or disadvantage the appointee or any other person.
45. The external organisation may make it a condition of appointment that any person appointed or nominated to it is subject to a criminal record check from the Disclosure and Barring Service (DBS).

#### **Allowances, insurances and indemnities**

46. The Council has authorised attendance at meetings of external organisations as an approved duty for councillors, allowing travelling and/or subsistence allowances in connection with meetings of the organisation. Alternatively, the body itself, in accordance with its own rules, may defray any expenses. If the organisation does pay expenses, a claim may not be made from the Council. For further information on allowances, consult the Democratic Services Manager. The Local Authorities (Companies) Order 1995 places strict limits on the allowances permitted to be paid to councillors when appointed to regulated companies, requiring them to be in line with the rules of the Council in relation to a comparable duty.
47. In no instances are councillors who are appointed to external organisations by the Council provided with personal liability indemnity for decisions they make and actions which they take in their representative capacity. The external organisation may have insurance to cover personal liability in these cases and councillors should always check with the organisation itself.