

Values and Ethics Sub-Committee

Supplementary Information



Date: Monday, 30 September 2019

Time: 12.00 pm

Venue: 1P07, First Floor - City Hall, College Green, Bristol, BS1 5TR

Distribution:

Councillors: Peter Abraham, Adebola Adebayo, Liz Radford, Clive Stevens and Harriet Clough

Copies to: Nancy Rollason (Service Manager Legal), Allison Taylor (Democratic Services Officer), Lucy Fleming (Head of Democratic Engagement) and Louise deCordova (Democratic and Scrutiny Manager)

Issued by: Allison Taylor, Democratic Services
City Hall, Bristol, BS1 5TR
Tel: 0117 92 22237

E-mail: democratic.services@bristol.gov.uk

Date: Friday, 20 September 2019



Supplementary Agenda

5. Outside Bodies

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Value & Ethics Sub-Committee

30 September 2019



Report of: Monitoring Officer
Title: Outside Bodies Guidance
Ward: N/A

Recommendation

To provide input and ultimately to approve the attached guidance for publication/circulation to all members.

Summary

This report is to accompany the working draft of the new Outside Bodies Guidance.

The significant issues in the report are:

The presentation of the attached draft guidance and the opportunity for members to provide input in order to shape the final draft.



Policy

1. N/A

Consultation

2. **Internal**
N/A
3. **External**
N/A

Context

4. Most, if not all, Councillors will be appointed to an outside body at some point during their time in office. There is currently no formal guidance for members available and it this issue has been raised previously at this sub-committee. It is hoped that this guidance, once finalised, will assist members in understanding their roles when appointed to outside bodies, as well as helping them manage the associated risks.

Proposal

5. That members consider the attached working draft and provide input. Once satisfied with the draft, members are further asked to approve the report for publication/circulation to all members.

Legal and Resource Implications

Legal

N/A

Financial

(a) Revenue

N/A

(b) Capital

N/A

Land

N/A

Personnel

N/A

Appendices:

Outside Bodies Guidance (working draft)

GUIDANCE FOR MEMBERS NOMINATED TO SERVE ON OUTSIDE BODIES

Introduction

1. Whilst the Council has a number of committees and sub-committees internally that exercise various functions, there is also an array of outside bodies to which members may be appointed by virtue of being a councillor. This guidance identifies the types of body upon which you may be asked to sit and the duties/responsibilities that will arise from sitting on particular bodies, as well as how to deal with potential conflicts that may arise as a result. Answering the questions in the appendix should mean that you are well equipped to carry out your role.
2. Whilst this guidance necessarily sets out the areas of risk that may arise as a result of being appointed to an outside body, it is important to emphasise that this is not a high risk area. The actions necessary to avoid incurring liability are largely common sense and support is available as/when you do have any concerns.

Purpose of sitting on outside bodies

3. Appointing members to outside bodies is beneficial both directly and indirectly to the Council itself and to the city in general. It directly facilitates the Council's engagement with stakeholders within the city and the region, as well as allowing exchange of expertise and knowledge.

Outside bodies to which members may be appointed and duties arising

4. You may be appointed to an outside body by either the Council or the Mayor. The nature of the role will vary significantly dependent upon the body to which you have been appointed and the nature of the body will be the primary factor in understanding the responsibilities that will come with the role. Various outside bodies will of course have their own constitutions or terms of reference that will also have a significant impact upon the role that you are undertaking, but this guidance is restricted to the general considerations around the interplay between your obligations to the Council and your duties to the outside body.

4.1 Statutory bodies

The membership and powers of such bodies are set out in legislation, as are the responsibilities and liabilities of the members. Whilst the duties will depend on the legislation, generally your primary duty will be to act in the interests of the body itself.

e.g. WECA, Police Authorities and Fire Authorities, Downs Committee, Adoption Panel

4.2 Joint arrangements

Where the outside body is a collaboration with a third party, whether a public authority or otherwise, and the body does not fall within any of the other categories listed below, then you are involved solely to represent the Council and to represent its interests. On that basis, there should be no conflict of interests.

e.g. Bristol Housing Festival

4.3 Companies

Companies are separate legal entities set up by their members, who are either shareholders or guarantors. Companies have limited liability, meaning that the liability of their members is

limited to the amount (if any) that the members have not yet paid up their shares or, as relevant, the amount of the guarantee set out in the company's articles (often £1). The way in which a company acts and operates is regulated by its Articles of Association, any other governing documents (for example, a shareholders' agreement between the company and its shareholders), and also by company law and common law.

Directors of companies have various duties to the company, and these are set out by statute (Companies Act 2006) and at common law. These duties include promoting the success of the company for the benefit of its members as a whole (having regard to a range of factors including the interests of the company's employees, and the impact on the community and the environment), exercising independent judgment, exercising reasonable care, skill and diligence, and avoiding conflicts of interest, among others. If you have any concerns about how to interpret any of these duties, please contact the legal team for guidance.

Directors should be aware that if a company approaching insolvency (meaning, broadly, that the company has insufficient assets to discharge its debts and liabilities), the directors must start to act in the best interests of the company's creditor(s) and not in the best interests of the company. In this scenario, directors should contact the legal team for guidance, as insolvency is a complex area of law and may require external specialist legal advice to be obtained.

Directors can incur personal liability in certain situations, for example if certain filing requirements are not met, which can lead to a penalty being imposed. Another example of where a director can incur personal liability is if s/he is found guilty of wrongful trading (meaning, broadly, that the director allowed the company to continue to trade after s/he knew, or ought to have known, that there was no reasonable prospect of avoiding insolvency), which can result in a director being required to contribute to the company's assets and/or being disqualified as a director for a period of time.

Whilst the Council endeavours to mitigate the risk of conflict arising in its choice of councillors to appoint to company boards, it will inevitably occur on occasion given the separate duties incumbent upon individuals appointed to these roles. If you have any concerns that a conflict has arisen as a result of your role as a director, contact the legal team for guidance on how to manage this.

e.g. Bristol Port Company, Bristol PFI Ltd

4.4 Companies controlled or influenced by the Council

Paragraph 4.3 above is also applicable to Council companies. However, specific governance arrangements are in place in respect of these companies, and the Council has an agreed approach to appointing directors to minimise the risk of conflicts, and to handle these if they occur. Please ensure that if you are appointed as a director of a Council company you are in touch with the Shareholder Liaison Manager who will ensure that you receive all relevant documentation, guidance and training in relation to this role. The legal team are also available in respect of any governance and legal queries.

At the time that this advice was drafted, Council companies are prevented by their Articles from paying any remuneration to members serving on their boards, unless the Council agrees otherwise. Should this position change, then advice should be sought from the legal team as to the amount of remuneration lawfully permissible.

e.g. Bristol Energy Limited, Bristol Waste Company Limited, Bristol Holding Limited, Goram Homes Limited

4.5 Charities

Charities are organisations which operate for public benefit and exclusively for charitable purposes which are specified for each individual charity. The way in which a charity acts and operates is regulated by its governing document (for example, its constitution), by charity law, common law and potentially by other regulatory frameworks as well. The ultimate regulator of charities is the Charity Commission.

Charities can take a variety of legal forms, including being a company, a charitable incorporated organisation (CIO), an unincorporated association, or a trust. The legal form adopted will determine the regulatory framework that applies to the charity, and the risks and liabilities that the trustees are exposed to. For example, if a charity is a company, the issues covered in paragraph 4.3 will apply and the trustees will generally be protected from the charity's liabilities, which will also be the case for a CIO. Contrastingly, if a charity is an unincorporated association or a trust, the charity will not benefit from limited liability and so the trustees will be personally liable for everything that the charity does. It is important that you identify the legal form of the charity that you are being appointed to, and that you understand the consequences of this and the applicable regulatory framework. If you have any queries about this, contact the legal team.

Regardless of the legal form of the charity, if you are appointed as a trustee of a charity, you will have a duty to act in its best interests, along with a number of other fiduciary duties, and can be held personally liable if you are found to be in breach of these duties (regardless of whether or not the charity itself has limited liability). You should familiarise yourself with your duties and the Charity Commission has produced [guidance](#) in relation to this.

e.g. Bristol Buildings Preservation Trust, Bristol Music Trust, Bristol Trust for the Deaf

4.6 Unincorporated associations

These are informal associations in which the relationship between the members is regulated by a membership agreement, rules or a constitution.

e.g. Bristol in Bloom Community Association

5. You may of course take up positions on third party organisations of your own volition i.e. not by appointment of the Council, but in your private capacity. You will still need to ensure that this does not create a conflict of interests with your role as a Councillor and that you make any necessary declarations for the purposes of the register of members' interests. You will not be entitled to an indemnity from the Council in relation to any liability that you may incur in this capacity.

Nature of the role to which you have been appointed

6. Whilst the type of body to which you have been appointed will have a bearing on your duties and responsibilities, you also need to be clear on the nature of your role. Whilst titles will vary, the role that you perform will either be as a contributor or an observer. If you are solely an observer, then you should avoid direct involvement and conflict of interest therefore should not arise, nor would you risk any liability being incurred. Typically roles on outside bodies will though involve active contribution.

Managing conflict

7. Answering the questions in the appendix should mean that you have sufficient information in order to be able to identify conflict as/when it may arise. If you identify an issue in which the

decision being taken may place you in conflict with your position as a Councillor, you should identify this issue at the meeting at which it arises and consider whether you should be involved in the decision-making. This will be applicable at both meetings within the Council and meetings of the outside body. Whilst there may be circumstances in which you may remain involved in the decision-making, particularly in relation to Council companies, often it will be appropriate not to be involved in the decision.

It is not possible to outline a uniform approach in relation to managing conflict and it will be necessary to consider issues that arise on a case-by-case basis. Input can be sought from legal services where necessary.

Indemnity

8. As outlined in paragraph 4, you may incur liability by virtue of sitting on an outside body:

8.1 Companies

A company can indemnify directors in respect of the cost of certain claims and the costs involved in defending such claim. However, a company cannot indemnify directors in respect of an unsuccessful defence of, or fines imposed in, criminal proceedings, or in respect of penalties imposed by regulatory bodies.

Companies can, however, purchase directors' and officers' (D&O) insurance on behalf of its directors, which would typically deal with liabilities arising from claims of negligence, breach of duty or other default (i.e. where an indemnity would not apply). However, such policies would exclude cover for fraud, dishonesty and criminal behaviour.

At the time that this advice was drafted, the Council companies' articles permit the companies to indemnify their directors, and the Council companies have D&O insurance in place which would apply to Council directors.

8.2 Charities

Provided that a trustee acts properly and within their powers, then they may be indemnified if the charity's governing document permits this. Trustees may also take out insurance to protect themselves from personal liabilities, albeit this wouldn't cover criminal acts. Consent of the Charity Commissioners is required if insurance premiums are to be paid out of charitable funds.

8.3 Unincorporated associations

Members' entitlement to indemnity and whether or not insurance premiums may be met by the body will be determined by the terms of the relevant governing document.

9. Bristol City Council does not indemnify councillors in relation to liabilities that they may incur by virtue of sitting on an outside body.

Register of members' interests

10. You should consider whether any outside bodies upon which you sit, whether appointed by the Council or in your private capacity, should be entered on the register of members' interests. If you receive any remuneration by virtue of sitting on the body, then you would be obliged to register the office as a disclosable pecuniary interest (DPI). If there is no remuneration attached,

you should consider whether to enter the post on the register as a non-DPI in the interests of transparency.

11. You are also likely to need to disclose your interest as a Councillor to the Board (or equivalent) of the outside body, so that this can be recorded in their relevant register of interests. If a particular issue arises in the course of your appointment that you feel presents a conflict, you should declare this to the Board as well and consider, with the Board and having consulted the relevant governing document (and potentially the legal team), how to manage this conflict.

Feedback from members

12. Regardless of whether your role is participatory or observational, you will be well placed to comment upon the Council's relationship with the organisation. If you do have any views that you think may either assist other members in the performance of the role in the future or as to whether the nature of the role that you are performing should change or even cease to exist, then these comments should be fed back to [INSERT].

Appendix

This list of questions has been prepared in order to assist in ensuring that you have the necessary information when sitting on an outside body. If you do not know the answer, then the third party should be able to provide you with the necessary information.

1. What type of legal entity, if any, is the organisation?
2. What is the purpose of the organisation and how does this relate to the Council's functions and objectives?
3. In what capacity am I serving? Am I a member or director if it is a company and/or a trustee if it is a charity? Is my role participatory or observational?
4. Do I have a copy of the body's governing instrument (trust deed/constitution/ articles of association)?
5. Does the organisation have a code of conduct with which I need to comply and, if so, do I have a copy?
6. Are meetings conducted in accordance with the governing instrument?
7. Am I aware of the organisation's financial position and is this regularly reported to the governing body? Have I seen the last annual reports and accounts?
8. Am I aware of any contract between the organisation and the Council?
9. Have I been advised of the main risks that the body faces and the steps that are being taken to mitigate those risks?
10. Have I been informed of what, if any, insurance/indemnity the organisation offers in relation to any personal liability that I may incur by virtue of my role?
11. Am I aware of how to handle any potential conflicts of interests that already exist or may arise, in accordance with the body's governing instrument and the relevant regulatory framework?