

## **Guidance for Council-Appointed Directors - Conflicts of Interest**

### **Introduction**

1. All Directors of companies have legal responsibilities, as defined under the Companies Act 2006, and under a wide variety of other laws and regulations such as insolvency and health and safety legislation.
2. The general duties of directors are set out in Chapter 2 of Part 10 of the Companies Act 2006: -
  - to act within powers in accordance with the company's constitution and to use those powers only for the purposes for which they were conferred
  - to promote the success of the company for the benefit of its members as a whole
  - to exercise independent judgement
  - to exercise reasonable care, skill and diligence
  - to avoid conflicts, or possible conflicts between interests as a Director and the interests of the company
  - not to accept benefits from third parties, if they may be regarded as likely to give rise to a conflict of interest
  - to declare any direct or indirect interest in a proposed transaction or arrangement.
3. The council appoints the directors of each of its wholly owned companies. It is expected that each Board will ensure that adequate training is provided to councillors who are appointed as board directors on an ongoing basis.
4. The council will typically appoint at least one Councillor as a director of each company to ensure democratic accountability and consistency of alignment with the vision and core values of the Council.
5. The purpose of this guidance is to help member directors appointed to the boards of council companies understand the potential for conflicts of interest, how these can be addressed, and to be able to identify where to go to seek more detailed advice.

### **Overview of conflicts of interest**

6. Section 175 of the Companies Act 2006 sets out the directors' duty to avoid conflicts of interest; Section 175(1) states that: "A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company."...

7. A failure to acknowledge and manage a conflict of interest could cause a significant reputational risk, may result in disqualification and have financial consequences for the Director. Remember, if you think you might have a conflict of interest, always disclose it and consider seeking advice from the Council's Monitoring Officer and / or the Company Secretary.
8. Councillors who are directors of council companies will need to consider conflicts from two perspectives: (a) potential conflicts when acting as a director of the company, and (b) potential conflicts when acting as a Councillor of the council.

### **Potential conflicts when acting as a director of the company**

9. Where Councillors are appointed as directors of council companies, there are two types of conflicts to consider at company level:
  - a) "situational" conflicts of interest; and
  - b) "transactional" conflicts of interest
10. Each company will have a register of interests where relevant conflicts are recorded and maintained by the company secretary. The Council also holds a Register of Councillor Interests.

### **“Situational conflict”**

11. A “situational” conflict can arise where a director has loyalties to more than one person e.g., where they are sitting on more than one company board or are a Councillor or officer of the council with whom the company has contracts.
12. Situational conflicts are governed by section 175 of the Companies Act 2006. Under section 175, a director must avoid situations in which they can have a direct or indirect interest that conflicts or may conflict with the interests of the company. If a director falls into this situation, they must have their conflict authorised by the directors in order to continue acting as a director.
13. In order to ensure that “situational conflicts” are appropriately managed, a Councillor who is appointed as a director of a council company should declare their role and seek additional guidance from the company secretary on an ongoing basis. Any declarations of interest should be clearly recorded in the minutes of board meetings.

### **“Transactional conflict”**

14. A "transactional" conflict of interest can arise where the company enters into, or proposes to enter, a transaction or arrangement with a third party (including the council).
15. Transactional conflicts of interest relate either to existing transactions or arrangements (section 182 of the Companies Act 2006) or proposed transactions or arrangements (section 177); for example, where a director is also a Councillor of the

council which is proposing to enter a contract with the company or guarantee a loan for the company. Indirect transactional conflicts can also arise, for example, where there is a spouse of a director involved in the relevant transaction.

16. Under both sections 182 and 177, if a director of a company is in any way, directly or indirectly, interested in a proposed or existing transaction or arrangement with the company, they must declare the nature and extent of that interest to the other directors.
17. Where the transaction or arrangement is proposed (not existing) the declaration must be made before the company enters into the transaction or arrangement.
18. In order to ensure that “transactional conflicts” are appropriately managed, a Councillor who is appointed as a director of a council company should make relevant declarations to the Board and seek guidance from the company secretary on an ongoing basis.

### **Potential conflicts when acting as a Councillor**

19. The primary potential for conflict for Councillors who are appointed as directors when carrying out their work with the council is if they are involved in decision making processes in respect of the relevant company.
20. The council seeks to manage the potential for such conflicts arising. In particular, it:
  - a) has regard to the Members’ Code of Conduct which includes detailed provisions about the appropriate management of potential conflicts;
  - b) does not appoint Councillors who are Cabinet Members as directors of the companies,
21. In order to be transparent about any potential conflicts, Councillors are required to disclose interests that they hold, including non-pecuniary interests. It is therefore advisable that Councillors who are appointed as directors of Council companies record this appointment on the register of members’ interests as an ‘other’ interest (as defined in the Member Code of Conduct).

Conflicts of interest may be waived by a company but, as a matter of public law, never in the decision making of the Council in relation to the company. A Member as director, therefore, must not be a party to making a decision of the Council affecting the company, but may proffer evidence or advice to the Council on the company’s behalf when invited to do so.

22. The Member’s Code of Conduct applies to a Member’s activity as a director, except only where it directly conflicts with the interests of the company and, where that may be the case, the potential conflict notified to the company secretary and to the Council’s monitoring officer.

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