

Complete Agenda



Democratic Service
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To: Members of the Standards Committee

21/01/20

Dear Member,

STANDARDS COMMITTEE – 27 JANUARY, 2020 LATE REPORT

I enclose a late report in respect of the following item:-

5. ETHICS STANDARDS IN OUTSOURCING AND COLLABORATION 2 - 10 ARRANGEMENTS

To consider the report of the Monitoring Officer (attached).

Yours sincerely,

Democratic Services Officer

Agenda Item 5

Committee :	Standards Committee
Date :	27 January 2020
Title:	ETHICAL STANDARDS IN OUTSOURCING AND COLLABORATION ARRANGEMENTS
Author :	Monitoring Officer
Action :	For Information

1. Background

By now the nature of Local Government means that the Council is working jointly across the range of projects in a number of fields. As part of this there are a range of different governance arrangements. Many of these adapt or place different requirements on members and can change the relationship with the Council they were elected to. The aim of this report is to provide an overview of these arrangements to the Committee and explain how propriety matters are addressed.

2. Recommendation

Accept the Report.

3. The Code of Conduct

“18.3 GENERAL PROVISIONS”

18.3.1. Save where paragraph 18.3.3 applies, you must observe this code of conduct :

- (a) whenever you conduct the business, or are present at a meeting, of your authority;
- (b) whenever you act, claim to act or give the impression you are acting in the role of member to which you were elected or appointed;
- (c) whenever you act; claim to act or give the impression you are acting as a representative of your authority; or
- (d) at all times and in any capacity, in respect of conduct identified in paragraphs 18.3.6(a) and 18.3.8”

“18.3.3 When you are elected, appointed or nominated by your authority to serve

- (a) on another relevant authority, or any other body, which includes a police authority or Local Health Board you must, when acting for that other authority or body, comply with the code of conduct of that other authority or body; or

- (b) on any other body which does not have a code relating to the conduct of its members, you must, when acting for that other body, comply with this code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.”

You will note that the code at 18.3.3 states that a member is required to comply with the code of conduct of the body to which he or she has been appointed and if it does not have a code in relation to conduct, the Council’s Code of Conduct.

The aim of this report is to focus on the situations where members are appointed to bodies which have been established or could be established by the Authority in order to achieve its functions. The appointment of a member to the Snowdonia National Park Authority or the North Wales Fire and Rescue Service is relatively clear because they are public authorities who have a Code of Conduct in the same way as this Authority and members are required to commit to the Code when accepting their office. They have their own Standards Committee.

4. Governance Models

In Appendix 1 there is a broad overview of the type of joint working and out sourcing models which are most often used for that purpose. It should be noted of course that there are other models of out sourcing where a Company or other external body is appointed through a procurement process to provide services by contract. Rarely will members be appointed to a management role in these bodies.

You will also note that the Code of Conduct implications divide into two quite clear sets across the models.

(a) Joint-Committees

Also without exception Joint-Committee joint-working arrangements are established through a partnership agreement, the Inter-Authority Agreement or Governance Agreement. The Agreement records the delegation, governance, finance, staff, assets and the responsibilities and accountabilities of the partners. Joint working arrangements such as the school improvement service GwE and the North Wales Economic Condition Board (“EAB”) are based on such an agreement. In relation to member propriety some specific steps are taken:

- Identify who will be the Monitoring Officer of the partnership
- Identify which Code of Conduct is relevant
- Identify any specific requirements in relation to the Code of Conduct

It is provided that the Code of Conduct is relevant to co-opted members with a vote. However in the case of the EAB it was decided because of the nature and extent of the work that it would be appropriate to adopt specific interests arrangements for representatives who attended formally without a vote. This is to be seen at Appendix 2.

Although this provision does not come within the statutory ethical framework it does provide for declarations of interest by those with Advisor status to the Board and re-enforces the Governance.

(b) Companies

As noted in the table and in my opinion it is difficult to ascribe the Code of Conduct to Companies established by the Council. Recently the Council established Byw'n Iach Cyf in order to provide leisure services. Following the establishment of the Company it was granted a contract to run the services and the Board was appointed from amongst the Council's members. There are statutory duties on Directors which stem from the Companies Act 2006:

- To work within their powers
- To promote the success of the company
- To exercise independent judgment
- To exercise reasonable care, skill and diligence
- To avoid conflicts of interests
- Not to accept benefit from third parties
- To declare interests in proposed transactions or arrangements.

Within the Company's Constitution, articles will be found which deal with conflicts of interest but in a way which is different from the Members Code of Conduct e.g.:

- i. It's based on the concept of a conflict of interest from the perspective Company not the public. Therefore in accordance with Section 175 of the Companies Act 2006 Directors must avoid situations where he or she has interests which conflict or could conflict with the Company's interest
- ii. Membership of the Council does not constitute an interest
- iii. The Company Board may authorise a Director to participate
- iv. The conflict must be declared
- v. Voting is not permitted and the meeting must be left unless the Chairman permits otherwise

(c) Charities

There are two situations which are relevant to a charity from a Code of Conduct respective:

- (i) If the Council is the Trustee then it is the Council's arrangements and Code of Conduct which is relevant to the member who participates in the decision.
- (ii) If a member or members are appointed as Trustees then the statutory duties on Trustees are relevant to them. In that case it is the requirements as Trustees which are relevant from the conduct perspective.

On appointment the following general provisions are relevant:

- Fiduciary nature of charity trusteeship
- Duty to promote charitable purposes
- Public benefit
- Duty of undivided loyalty (no-profit and no-conflict rules)
- Duty to act in best interests of charity and its beneficiaries
- Duty to act in good faith
- Duty to act within powers
- Duty of prudence
- Duty to act collectively

5. Conclusions

You will note that there are varying implications for joint-working or out-sourcing models where members are appointed to joint or external bodies. It is an overview of the models which is set out here and of course there are other models which might be relevant. However it underlines the range of models from a Code of Conduct perspective which is relevant to these arrangements. It also emphasizes the varied implications of appointments to these bodies.

APPENDIX 1

	Type	Description	Code Arrangements when attending	Effect on Role in the Council
1.	Joint Committee - Host Authority	<p>Multiple authorities combine to provide services through jointly managed department. Host authority acts as legal entity for contracting, property and staff etc</p> <p>Authorities will provide budget for service and define functions. Delegation will be agreed and Joint Committee will have a management and supervision role within defined parameters .</p>	Home Authority Code of Conduct	No specific effect as it is a Joint Committee which is constitutionally the Authority...
2.	Joint Committee - Lead Authority	<p>Multiple authorities combine to provide services. Lead authority responsible for delivery of services for Joint Committee.</p> <p>Authorities will provide budget for services and will delegate to Joint Committee. Lead Authority will de-facto contract to provide service and Joint Committee will have a contract management role.</p>	Home Authority Code of Conduct	No specific effect as it is a Joint Committee which is constitutionally the Authority...
3.	Local Authority wholly owned close controlled company – single authority	<p>“Tecakl Company” Company set up to provide services but wholly owned by Authority which appoints board.</p> <p>Council will commission services through subsidised service contract or provision of grants.</p>	Companies have their own governance arrangements. In addition to Directors statutory duties there are arrangements in their constitution which deal with Conflicts of Interest in different ways to the Code of Conduct	
4.	Local Authority wholly owned close controlled – multiple local authorities	As above but two or more authorities share role usually through shareholders agreement.	Companies have their own governance arrangements. In addition to Directors statutory duties there are arrangements in their constitution which deal with	If a matter which affected the Company came before the Council for consideration the requirement is to declare the interest but there would be no need to withdraw. The exception would be in relation

		Councils will commission services through subsidised service contract or provision of grants.	Conflicts of Interest in different ways to the Code of Conduct	to a planning application or regulatory application which operates as with any other interest.
5.	Local Authority arms length company controlled company – single local authority	Local Authority Company owned by it but representation on board limited by statute to 2/5ths Council will commission services through subsidised service contract or provision of grants.	Companies have their own governance arrangements. In addition to Directors statutory duties there are arrangements in their constitution which deal with Conflicts of Interest in different ways to the Code of Conduct	If a matter which affected the Company came before the Council for consideration the requirement is to declare the interest but there would be no need to withdraw. The exception would be in relation to a planning application or regulatory application which operates as with any other interest.
6	Local Authority arms length company controlled company – multiple local authority	As above but two or more authorities share role usually through shareholders agreement. Council will commission services through subsidised service contract or provision of grants.	Companies have their own governance arrangements. In addition to Directors statutory duties there are arrangements in their constitution which deal with Conflicts of Interest in different ways to the Code of Conduct	If a matter which affected the Company came before the Council for consideration the requirement is to declare the interest but there would be no need to withdraw. The exception would be in relation to a planning application or regulatory application which operates as with any other interest.
7.	Charitable Trust – Local Authority trustee	Charitable trust manages service or element of service. Council will commission services through subsidised service contract or provision of grants.	Charities have their own governance arrangements. In addition to trustees statutory duties there are arrangements in their constitution which deal with Conflicts of Interest in different ways to the Code of Conduct. However, the Code of Conduct would apply where the Council is the Trustee.	(a) no specific implication as it is the Council not the Member who is the Trustee (b) If a matter which affected the Charity came before the Council for consideration the requirement is to declare the interest but there would be no need to withdraw. The exception would be in relation to a planning application or regulatory application which operates as with any other interest.

APPENDIX 2

CODE OF CONDUCT FOR NWEAB ADVISERS

1. You must in all matters consider whether you have a personal interest and whether this code of conduct requires you to disclose that interest.
2. You must regard yourself as having a personal interest in any business of the North Wales Growth Board if:
 - a it is likely to affect the well-being or financial position of such persons below to a greater extent than other tax payers in North Wales:
 - i you;
 - ii anyone with whom you live; or
 - iii anyone with whom you have close personal association;
 - b it relates to or is likely to affect any of the following:
 - i any employment or business of such a person;
 - ii any person who employs or has appointed such a person, any firm in which such a person is a partner or any company for which such a person is a remunerated director;
 - iii any corporate body which has a place of business or land in North Wales, and in which any such persons has a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;
 - iv any contract for goods, services or works made between the NWEAB and:
 - aa any such person;
 - bb a firm in which such a person is a partner;
 - cc a company of which such a person is a remunerated director; or
 - dd a body of the description specified in sub-paragraph (iii) above;
 - v any land in North Wales:
 - aa in which such a person has a beneficial interest; or
 - bb which such a person has a licence (alone or jointly with others) to occupy for 28 days or more;
 - vi any land where the landlord is the NWEAB and the tenant is:
 - aa a firm in which such a person is a partner;
 - bb a company of which such a person is a remunerated director; or
 - cc a body of the description specified in sub-paragraph (iii) above;
 - vii any of the following bodies in which such a person is a member or holds a position of general control or management:
 - aa a public authority or body exercising functions of a public nature;
 - bb a company, industrial and provident society, charity, or body directed to charitable purposes;
 - cc a body whose principal purposes include the influence of public opinion or policy;
 - dd a trade union or professional association; or
 - ee a private club, society or association operating within North Wales.

Declaration of Personal Interests

- 3 Where you have a personal interest in any business of the NWEAB and you attend a meeting at which that business is considered, you must declare the existence and nature of that interest before or at the commencement of that item, or when the interest becomes apparent.
- 4 Where you have a personal interest in any business of your authority and you write or speak to an officer or member of the NWEAB then you must:
 - a include details of that interest in the written communication; or

- b declare the interest at the commencement, or when it becomes apparent to you that you have such an interest.
- 5 You must, in respect of a personal interest not previously declared, before or immediately after the close of a meeting where the declaration is made, give written notification to the NWEAB's monitoring officer on the prescribed form, containing:
 - a details of the personal interest;
 - b details of the business to which the personal interest relates; and
 - c your signature.
- 6 A personal interest is also a prejudicial interest if it is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest except as set out in paragraph 7 below.
- 7 You will not be regarded as having a prejudicial interest in any business where that business is not the determination of any approval, consent, licence, permission or registration and:
 - a It relates to:
 - i another public authority or body exercising functions of a public nature in which you hold a position of general control or management;
 - ii a body to which you have been elected, appointed or nominated by the NWEAB;
 - iii your role as a school governor (where you are not appointed or nominated by an authority which is a member of NWEAB) unless it relates particularly to the school of which you are a governor; or
 - iv your role as a member of a Local Health Board where you have not been appointed or nominated by an authority which is a member of the NWEAB;
 - v save that an interest shall not be considered as being personal and prejudicial where it relates to or is likely to affect the Party which has appointed the Adviser to the Joint Committee.
 - b It relates to:
 - i the housing functions of an authority which is a member of the NWEAB where you hold a tenancy or lease with that authority, provided that you do not have arrears of rent of more than two months, and provided that those functions do not relate particularly to your tenancy or lease; or
 - ii the functions of an authority which is a member of the NWEAB in respect of school meals, transport and travelling expenses, where you are a guardian, parent, grandparent or have parental responsibility (as defined in section 3 of the Children Act 1989) of a child in full time education, unless it relates particularly to the school which that child attends.
 - c It relates to or is likely to affect an Adviser which has appointed you as its representative to the Joint Committee.

Overview and Scrutiny Committees

- 8 You also have a prejudicial interest in any business before an overview and scrutiny committee of any authority (or of a sub-committee of such a committee) where:
 - a that business relates to a decision made (whether implemented or not) or action taken by the NWEAB or another of its committees, sub-committees, joint committees or joint sub-committees; and
 - b at the time the decision was made or action was taken, you were an adviser to the NWEAB, committee, sub-committee, joint-committee or joint sub-committee AND you were present when that decision was made or action was taken.

Participation in Relation to Disclosed Interests

- 9 Where you have a prejudicial interest in any business of the NWEAB, unless you have obtained a dispensation from the Accountable Body's Standards Committee, you must:
 - a withdraw from the room, chamber or place where a meeting considering the business is being held:

- i where sub-paragraph (ii) below applies, immediately after the period for making representations, answering questions or giving evidence relating to the business has ended and in any event before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration; or
 - ii in any other case, whenever it becomes apparent that that business is being considered at that meeting;
 - b not exercise NWEAB functions in relation to that business;
 - c not seek to influence a decision about that business;
 - d not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business unless the public has a right to do so; and
 - e not make any oral representations (whether in person or some form of electronic communication) in respect of that business or immediately cease to make such oral representations when the prejudicial interest becomes apparent unless the public has a right to do so.
- 10 Where you have a prejudicial interest in any business of your authority you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.
- 11 Paragraph 10 does not prevent you attending and participating in a meeting if:
- a you are required to attend a meeting of an overview or scrutiny committee, by such committee exercising its statutory powers;
 - b you are attending only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise; or
 - c you have the benefit of a dispensation provided that you:
 - i state at the meeting that you are relying on the dispensation; and
 - ii before or immediately after the close of the meeting give written notification to your authority containing:
 - aa details of the prejudicial interest;
 - bb details of the business to which the prejudicial interest relates;
 - cc details of, and the date on which, the dispensation was granted; and
 - dd your signature.
- 12 Where you have a prejudicial interest and are making written or oral representations to the NWEAB in reliance upon a dispensation, you must provide details of the dispensation within any such written or oral representation and, in the latter case, provide written notification to the NWEAB within 14 days of making the representation.