

Committee :	Standards Committee
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Title:	ETHICAL STANDARDS IN OUTSOURCING AND COLLABORATION ARRANGEMENTS
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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.