

SCARBOROUGH BOROUGH COUNCIL

PROTOCOL FOR MEMBERS ON OUTSIDE BODIES

This Protocol covers the following information:

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- 2. Role Profile for Council representatives on outside bodies**
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1. The Appointment Process

The Council makes appointments to outside bodies (external organisations) that have organisational objectives that the Council supports and where there are areas of mutual interest. The purpose of the appointments is to assist these organisations e.g. with understanding of council matters and enable effective communications with the Council.

Executive Appointments

Certain positions on external bodies however, form part of the portfolio of members of the Executive unless the Leader determines otherwise e.g. any partnership body with delegated responsibility for committing monies within Council budgets, or an appointee exercising the role of 'corporate member' of another body, for example the British Ports Association.

In relation to such positions, the Leader of the Council is responsible for determining whether the responsibility will form part of the portfolio of an Executive Member or whether the decision upon the appointment should be made by Full Council.

Term of Appointment

Appointments made by Full Council are generally for a four year term at the start of the newly elected Council. However, the Council (save in relation to an appointment that forms part of the portfolio of an Executive Member) retains the right to replace any appointed Member at any time and for any appropriate reason.

When the outside body is first notified of the new appointee, then the outside body is encouraged to report to Democratic Services or the Council's Accountable Officer

any concerns they may have about the performance of the Member on the outside body including non-attendance. These concerns will then be reported to the Leader and Group Leader to consider appropriate action.

For any changes to the Council's representation on outside bodies which need to be made during the four year term, the Council has delegated responsibility for this decision to the Leader. The Leader will then include any such Council appointments in his statement to the next Council meeting.

Limit on Length of Service

In recognition of the value of experience and the need for continuity, incumbents who are eligible and willing to seek reappointment, may apply for a second four year term. However, to ensure a healthy mix of Board Members and to achieve a balance between new members and those with experience, the limit on length of service for any Member is two consecutive terms on the same Board, subject to the exceptions below:

- (a) Any appointment which forms part of the portfolio of an Executive Member, shall not be restricted by the maximum term
- (b) Where an appointment is made to fill a vacancy subsequent to Annual Council, the balance of the term shall not count toward the maximum length of service on the external body
- (c) A Member continuing to serve past the end of their term, until a successor is appointed
- (d) Where insufficient applications have been received for an appointment.

Vacancies

A vacancy on an external body is created when a Member resigns or vacates the position for any reason, and is effective on the earliest of:

- (1) the date of resignation;
- (2) the date the Member ceases to be qualified;
- (3) the date the Member is removed from the position by Council (or the Leader where the appointment forms part of the portfolio of an Executive member of Council); or
- (4) the date of death or other incapacitation.

Upon any vacancy occurring, the appointment is referred to the Leader to make a replacement.

Nominations

In respect of Members of political groups on the Council, the Group Leaders submit nominations with regard to the following:

- To only put forward nominees with the interest and agreement of those proposed
- To minimise the potential for conflicts of interest via consideration of existing Member interests
- To only put forward names of Members who have the potential to meet the requirements of the role

2. Role Profile for Council representatives on outside bodies

The Council makes appointments to sit on outside bodies based on merit. Appointees are not expected to 'represent' the Borough Council but are rather appointed based on an expectation that they will apply their skills and experience in the best interests of the body to which they are appointed.

Whilst each outside body is unique, the following role description is applicable to all appointees of the Council on outside bodies:

- To champion the interests of the people of the Borough on the outside body
- To attend generally all meetings of the outside body as required
- To understand, underpinned by appropriate experience or knowledge, the purpose and work of the outside body
- To report annually on the work of the outside body for publication on the Council's website (or sooner if there are significant matters of interest)
- To understand the procedure for dealing with conflicts between their own interests, those of the Council and those of the outside body
- To have an appropriate understanding of any regulatory framework that affects the outside body, operating within the rules of the outside body at all times
- To have or gain the skills needed to fulfil properly his or her role on the outside body
- To behave ethically and follow the Council's Member Code of Conduct
- To inform Democratic Services if they wish to resign from their position on the outside body or if the body has ceased

3. Types of appointments

There are different types of organisations to which the Council makes appointments. The types of appointments are:

- (i) Companies**
- (ii) Charity Trusts**
- (iii) Unincorporated Associations**
- (iv) Other (Steering Groups/Partnerships/Committees)**

The sections below describe the key duties in relation to different types of appointments.

(i) Appointments as Directors of Limited Liability Companies

Legal Status

1. Upon incorporation a company becomes a separate legal entity, which can hold property in its own right, enter into contracts and sue and be sued in its own name.
2. Companies limited by shares are those which have a share capital e.g. 1000 shares of £1 each. Each member holds shares and receives a share in the profits made by the company in the form of a dividend. Shares can be sold. Liability in the event of a winding-up is limited to any amount unpaid on the shares held.
3. Companies limited by guarantee do not have shares. Instead, each member agrees that in the event of the company being wound up they will agree to pay an agreed amount e.g. £1. This is most common in the public and voluntary sector, particularly where charitable status is sought.

Directors' Duties

4. The Council should not nominate a councillor for appointment as a director of a company where there is a realistic possibility that the interests of the company may come into conflict with those of the Council and, in the event of such a conflict the director should seek independent legal advice.
5. A councillor should not accept nomination to be director of a company where there is a realistic possibility that the interests of the company may conflict with those of the Council and the councillor would not feel able, in those circumstances, to act in the interest of the company rather than the Council.
6. The role of a councillor who has been appointed as a director will depend upon the company's constitution. A company's constitution will vest most of its powers in the board of directors and the board will exercise these either directly or through managers appointed by the board. Directors must understand the requirements of the company's constitution and the law in order to fulfil their responsibilities properly.
7. Directors will need to be aware of the requirements of the UK Corporate Governance Code published by the Financial Reporting Council to the extent that this has been adopted by the company, including general management of

the company, rules on directors' remuneration, internal financial and operational controls and risk management.

8. Directors must:

- act in good faith in what they believe to be in the best interests of the company (not the Council);
- act with reasonable care, diligence and skill;
- exercise their powers reasonably and for the purpose for which they are given;
- keep an open mind when making decisions on company business, in particular a councillor director must exercise independent judgement and not simply follow Council policy when voting on company matters;
- avoid placing themselves in a position where their private interests or their position as a councillor conflict with their duties to the company;
- be aware of the company's financial position through attendance at board meetings and reading the accounts, agendas and minutes. It is not sufficient to assume that the other directors are doing a good job.

9. Some directors may be given special responsibilities under the company's constitution, for instance a managing or finance director. Those with special roles will be expected to have the personal and technical skills to perform the duties associated with that role, which may be onerous.

10. The above duties apply to non-executive directors as well as executive directors.

11. There are other statutory requirements which may be relevant depending on the company's business. Directors will need to be familiar with these. For example, if the company is an investment vehicle which engages in fundraising activity, financial services legislation will apply.

(ii) Appointments to Charity Trusts

Legal status

1. The role and responsibilities of a trustee will depend upon the provisions of the trust's governing documents, and the general law relating to trusts and charities. A trust's governing document can be a trust deed or a scheme made by the Charity Commission.
2. It is quite common for companies to be set up by trusts with charitable objects. Councillors involved with charitable companies should ensure that they understand the capacity in which they have been appointed.

Duties

3. The role of a trustee is generally to fulfil the objects of the trust and apply the income and, if appropriate the capital of the trust in accordance with the provisions of its governing documents.
4. Trustees are subject to various duties, including the duty to:
 - act for the benefit of the charity and its beneficiaries;
 - make sure income is spent only on the things authorised in the governing documents;
 - invest the capital only in authorised investments, having first taken professional advice;
 - produce annual accounts;
 - act with reasonable care and skill in administering the trust;
 - act unanimously (unless the trust deed allows majority decisions);
 - comply with the Charities Acts and other legislation affecting the charity.
5. The Charity Commission's website contains useful guidance, in particular Publication CC3 'The Essential Trustee' which outlines the basic principles that should guide trustees when administering their charity:
 - the income and property of the charity must be applied for the purposes set out in the governing document and for no other purposes;
 - trustees must act reasonably and prudently in all matters relating to the charity and must always bear in mind the interests of the charity. They should not let their personal views or prejudice affect their conduct as trustees;
 - trustees should exercise the same degree of care in dealing with the administration of their charity as a prudent businessman would exercise in managing his or her own affairs or those of somebody else for whom he or she was responsible; and
 - where trustees are required to make a decision which affects a personal interest of one of their members, that person should not be present at any discussion or vote on the matter.

(iii) Appointments to Unincorporated Associations

Legal Status

1. Most societies, clubs and similar organisations (other than companies and trusts), are unincorporated associations.
2. There is no statutory definition of an unincorporated association but it has been described by the court as 'an association of persons bound together by

identifiable rules and having an identifiable membership'. Unlike a company, it does not have a separate legal status distinct from its members.

3. Because unincorporated associations are not set up under a particular legislation, their structures may vary. However, the rules of an unincorporated association are usually found in its constitution, which sets out the roles and responsibilities of its members.

Duties

4. An unincorporated association will typically have an executive or management committee with its powers and composition defined by the constitution. Key decisions will usually be made by the members at general meetings. The day to day administration of an association is usually undertaken by the officers and members of the executive or management committee.
5. Broadly, executive or management committee members must act within the constitution and must take reasonable care in exercising their powers.
6. Where an unincorporated association is a registered charity, the members of the executive or management committee may also be charity trustees. As such their role and responsibilities will be determined not only by the association's constitution, but also by the general law relating to trusts and charities.

(iv) Other (Steering Groups/Partnerships/Committees) Appointments

1. The responsibilities of a councillor who is appointed as a member of any of these bodies will be determined by the terms of reference, constitution or partnership agreement under which they are established and governed.
2. It is necessary to ensure that the councillor's role on the body is clear, and, in particular, whether they are acting as a delegate or representative of the Council to further the interests of the Council, or whether they are expected to exercise independent judgement in the best interests of the body concerned.

4. Personal Liability

The Council provides an indemnity in relation to the role of Members and officers on outside bodies that are not separate legal entities. The Council has public and employers' liability insurance policies in respect of the role of Members and officers when acting as representatives of the Council and conducting activities approved by the Council. Members must ensure that they understand the extent of their individual responsibilities within the outside body.

Outside bodies that are legal entities in their own right (e.g. companies) must have appropriate insurance arrangements in place to indemnify the individuals concerned. It is therefore imperative that Council appointees confirm that appropriate cover exists. If there is any doubt, then advice should be obtained from the Monitoring Officer.

5. Member Interests

Where councillors serve as members or directors of outside bodies, it is inevitable that conflicts will arise from time to time, between the duties they owe to the outside body, and the duties they owe to the Council. Conflicting interests should be declared on every occasion. It will be a matter for the individual judgement of the councillor as to whether he or she participates in discussion of, and votes on, the particular item of business, whether at a meeting of the outside body, the Council or a Council committee. Decisions will be required to be made in the context of the Code of Conduct and the rules applicable to the outside body and, where appropriate, any advice should be obtained from the Monitoring Officer.

Provided Members are sensitive to the possibility of conflicts of interest, there is no reason why they should not express a 'Council' view when acting on an outside body. However, they should make it clear that they do not represent the Council on the outside body, and so cannot bind the Council by what they say. In many cases, Members will be able to act as valuable links between outside bodies and the Council.

6. Timetable for Member appointments and feedback

Timing	Action
Council Election – May	All councillors invited to put their names forward via their Group Leaders for places on outside bodies to be appointed by full Council. All provided with list of outside bodies, Protocol, and link to feedback reports from the current incumbent.
May in election year	Group Leaders submit nominations for decision by full Council.
Annual Council Meeting in election year	Approve list of Council appointments to outside bodies
End of March annually	Request feedback from Members who serve on outside bodies through annual feedback form
May annually before the Annual Council Meeting	Publish completed feedback forms on the Council website

7. Checklist for newly appointed Members on outside bodies

Prior to commencing any duties relevant to the membership of an outside body, Members need to ensure that they take the following steps:

- ✓ Arrange an introductory meeting with the relevant officers on the outside body (this is the responsibility for each Member to arrange) and liaise with the Council's Accountable Officer for that outside body
- ✓ Confirm what meetings attendance is needed at and add these to your diary. Should you anticipate any future difficulties in attending meetings, then raise this with your Group Leader so an alternative appointee can be considered
- ✓ For outside bodies that are legal entities in their own right, confirm that appropriate insurance arrangements are in place to indemnify appointees
- ✓ Obtain a copy of the outside body's Constitution/Articles etc.
- ✓ Read last year's annual report and financial accounts

Each outside body normally has its own clerking arrangements. Therefore all appointees should liaise directly with the relevant external organisation for administrative enquiries such as checking meeting dates and times.

APPENDIX

ANNUAL FEEDBACK FORM FOR APPOINTEES ON OUTSIDE BODIES

Elected Member	
Date completed this form	
Name of outside body	
Role and responsibility of the Council Appointee (e.g. Trustee, Company Director etc)	
Attendance record i.e. Total number of meetings in year / number attended	
What activity have you undertaken through this role?	
What outcomes have been achieved?	
Are there any issues relating to the work of the outside body that you would like to raise?*	
Is there good value in continuing with Council representation on the body?	

*Please note that the contents provided will be published and therefore should not include any confidential information