

Councillors Responsibilities when sitting on Outside Bodies

The general rule is that if you are a member of a board of directors of a company, a board of trustees or of a management board of a community association then you should act in the best interests of that body even where those interests conflict with those of the Council. This is one of the reasons why you have to declare an interest if you are in a meeting which is discussing the organisation.

Below you will find a brief overview of duties and liabilities you incur when you take part in the work of outside bodies.

Companies and Directors

Companies whether limited by guarantee or shares are incorporated and have their own legal personality separate from the Directors or shareholders. Directors however owe personal duties to the company which can result in personal liability if not fulfilled. You should note that most charities big enough to have paid staff are also companies limited by guarantee. You may be called a Trustee or a Management committee member but it is very likely you are also a company director.

There are four broad categories of duties owed to a company by its directors.:

- **fiduciary duties** (a duty of good faith). These include a duty to act in what you honestly believe to be in the company's best interests, to take care of its assets and not to use your position in the company for your own personal gain. It is also a Directors fiduciary duty to ensure there is no conflict between their role as Director and other interests they may have.
- **a duty of care and skill**, but a director requires no greater skill than might reasonably be expected of someone of that individual's particular knowledge and experience. A director is not deemed to be an expert, but is expected to use due diligence and to obtain expert advice if necessary.
- **an obligation to comply with legislation**, e.g.licensing law and the Companies Acts which includes filing annual returns and accounts, maintaining statutory registers, ensuring independent auditing of accounts.
- **Compliance with the internal management rules** of the company

Directors will risk personal liability in the following circumstances:

- Knowingly acting outside the powers of the Company
- Breach of fiduciary duty
- Negligence
- Trading when insolvent (wrongful trading)

- Fraudulent trading
- Failure to comply with Companies' Acts

Trading when insolvent - Wrongful trading

If a director knows or ought to know that there is no reasonable prospect of the company avoiding liquidation, a Court may require that director contribute to the company's assets on liquidation if the company continues to trade. No such order will be made if the Court is satisfied that the director took all reasonable steps to minimise the loss to the creditors. If a director has concerns about the company's financial position then they would be well advised to inform the other directors and seek advice from the company auditors. They should try to ensure that further debts are not incurred.

Trusts and Charity Trustees

Trustees' prime duties are:

- **to act in accordance with the trust deed and to protect the charity's assets.**
- **To comply with the Charities Acts**, including ensuring that the information relating to the trust and trustees is registered with the Charity Commissioners and that annual account and returns are completed and sent.
- **not to make a private profit** from their position.
- **To perform their duty with the standard of care**, which an ordinary, prudent business person would show.
- **To comply with their statutory duties** including those in relation to tax matters

Trustees must not act in **breach of trust**, for example, they must not:

- act outside the scope of the trust deed – e.g if the charity's aim is to relieve poverty amongst elderly people then it cannot campaign about animal welfare or the war in Iraq – even if the trustees feel strongly about such issues.
- fall below the required standard of care
- make a personal profit from the trust assets
- Carry out campaigning or political activities in breach of their governing document and must only carry out such activities if they will be an effective means of furthering the purposes of the Charity.

Where trustees act in breach of trust, they may incur personal liability for losses incurred.

Community Associations

Other groups, which are not charitable trusts or limited companies, are classified in legal terms as "unincorporated associations". An unincorporated organisation may be charitable and may register as a charity. It has no separate legal identity apart from its members. The rules governing the members' duties and liabilities will be set out in a constitution, which is simply an agreement between the members as to how the organisation will operate.

Usually the constitution will provide for a management committee to be responsible for the everyday running of the organisation.

Management Committee members must act within the constitution, and must take reasonable care in exercising their powers. Any individual member of the management committee who acts outside the authority given to him or her will be personally liable and will not be entitled to an indemnity unless the action is subsequently ratified by the management committee or all the members of the organisation.

Association and Statutory Bodies

Most of these are Joint Committees of the Association of London Government or the Local Government Association set up by agreement between the Councils concerned. There are also statutory bodies on which Haringey must be represented like the North London Waste Authority which comprises representatives of 7 constituent Boroughs. These bodies will have their own legal status, constitution, code of conduct and officer support. Members will be appointed in a full voting capacity with power to take decisions on behalf of the body. Members will owe a primary duty to the body, when acting on its business, rather than to Haringey Council. They should make up their own minds on the merits of any decision, taking into account any professional advice they receive, as distinct from feeling bound by the interests of Haringey.

Partnership Boards

These may be companies, unincorporated associations or more usually informal groupings without any constitution or other legally enforceable rules. Where they are informal groupings then decision making is usually indicative and dependent on ratification by constituent bodies. In these circumstances, Members or officers on these boards must take care not to pre-empt the Council's decision-making as this could lead to challenges on the basis that the Council's discretion has been fettered.

Responsibility to the Members Code of Conduct

Members will be expected to follow the Haringey Code of Conduct in all their dealings on outside bodies except where they are sitting on a public body which has its own code of conduct, when they will be expected to follow that Code.

Members must be alive to possible conflicts of interests and seek advice about personal or prejudicial interests arising out of their participation in an outside body.

In some exceptional cases where the conflict of interest between their role as a Councillor and their membership of the outside body is fundamental and irresolvable then they may have to resign from the outside body.