

Company Handbook



Section 3: Guidance for council-appointed directors

Conflicts of interest

An overview of how potential conflicts of interest may arise for council appointed directors of the companies and how these potential conflicts can be managed



Introduction

1. 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 those directors on an ongoing basis.
2. The council will typically appoint at least one Councillor (or sometimes a council officer), as a director of each company to ensure democratic accountability.
3. The council wishes to provide some additional support and guidance to those directors in respect of potential conflicts of interest, given their role in the council as well as in the relevant company.
4. The purpose of this Guidance Note is to help member or officer 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

5. Council officers or 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 or officer of the council.

Potential conflicts when acting as a director of the company

6. Where Councillors or council officers 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
7. Councillors or officers will be given training by the council when they are appointed to their roles which will include consideration of conflicts, and external training will also be provided. The council expects each Board to ensure that ongoing training is provided to its directors in respect of all of their directors' duties, including in relation to conflict.
8. The section below gives a summary of the types of conflicts that Councillors or council officers who are directors should be aware of and how they can be managed. Each company will have a register of interests where relevant conflicts are recorded and maintained by the company secretary.

"Situational conflict"

9. 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.
10. 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.

11. Typically, council companies' articles will pre-authorise conflicts that arise as a result of a director being a Councillor or employee of the council.
12. In order to ensure that "situational conflicts" are appropriately managed, a Councillor or officer 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.

"Transactional conflict"

13. 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).
14. 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 or officer 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.
15. 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.
16. Where the transaction or arrangement is proposed (not existing) the declaration must be made before the company enters into the transaction or arrangement.
17. Typically, council companies' articles will allow a director to continue to be counted for quorum and voting purposes where a conflict has arisen from a 'permitted cause', which includes where a decision relates to a transaction with the council.
18. In order to ensure that "transactional conflicts" are appropriately managed, a Councillor or office 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 or officer

19. The primary potential for conflict for Councillors or officers 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. For example, if a council service is considering awarding a contract to a council-owned company, and the Head of Service is a director of that company, a conflict may arise. Similarly, if a Cabinet member's portfolio includes finance and they are a director of a council-owned company, a conflict may arise if they are asked at Cabinet to approve funding to that 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) avoids appointing Councillors who are Cabinet Members as directors of the companies, if their Cabinet portfolio could mean they are a decision maker in respect of a decision relating to the relevant company;

- c) avoids appointing officers as directors of the companies. The officers who would often be the most suitable appointments (based on their technical and professional knowledge of key areas of the activity of the company) are most likely to experience conflict or contact with the companies' activity. The exception to this approach is in respect of the council's dormant companies where, by definition, the companies do not continue any operations that could bring the relevant officer director into a position of conflict.
21. If a potential conflict does arise, the advice of BCC Legal, via the Shareholder Liaison Manager, should be sought on how to manage it. This could include, for example, if a Councillor is a director of a company and becomes a member of Cabinet with a relevant portfolio, that member excluding themselves from the parts of the Cabinet meeting.
 22. 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).
 23. Similarly, officers are required to disclose any interest or association with any council activity which could cause a potential conflict of interest. Officers who are appointed as directors of council companies should therefore record this appointment as part of their employee declarations.

Further information

24. If you would like more detail on any aspects of this Guidance Note, or would like some advice in respect of a specific concern, please contact the Shareholder Liaison Service: ShareholderLiaison@bristol.gov.uk

Table 1: Version Control Table

| Version | Summary of Edits | Editor | Date of Version |
|----------------|--------------------------------------|------------------------------------|------------------------|
| V 1 | First version for publishing | Shareholder Liaison Service | November 2021 |
| V 2 | Second version for publishing | Shareholder Liaison Service | October 2023 |