

## **Code for Dealing with Joint Arrangements with Third Parties**

### **1. INTRODUCTION**

This Code provides guidance and recommended procedures to avoid conflicts of interest for the Council, its employees and consultants engaged in any joint or proposed joint arrangements with outside bodies on which Members and/or employees will be representatives whether or not assets and/or staff transfer, permanently, temporarily or by secondment. In this Code, “Joint Arrangements” includes proposed, evolving or developing joint arrangements including (but not limited to) the situation before any legal entity or Special Purpose Vehicle (SPV) has been created.

This guidance must be read in conjunction with all other appropriate legislation, guidance, codes and the like. This includes, but is not limited to:

- Localism Act 2011
- Section 117 of the Local Government Act 1972
- The Council’s Constitution, including (but not limited to)
  - Members’ Code of Conduct
  - Employees’ Code of Conduct (when issued)
  - Protocol for Officer / Member relationships
  - Chief Officer Employment Procedure Rules
  - Financial Procedure Rules
  - Contract Procedure Rules
- Disciplinary rules and procedures
- National and local conditions of service
- Internal and external legal advice regarding the conduct of Members and employees in joint working arrangements
- Posts which are “politically restricted” by virtue of the provisions of the Local Government and Housing Act 1989 (as amended)

### **2. PURPOSE**

The purpose of this Code is to ensure probity and confidence in the Council’s dealings with outside bodies. This includes taking steps to avoid conflicts of interest and bias, to maintain commercial confidentiality while safeguarding the use of public money and to limit the financial exposure of the Council, its Members and Officers.

### **3. IDENTIFYING AND DEALING WITH THE POTENTIAL FOR CONFLICT**

In any proposal where Members or employees may have joint interest, or where there are joint working arrangements involving public funds, or transfer of public assets and the like, the following must be established:-

(a) Is there a conflict?

It is impossible to list all areas of a potential conflict and employees and Members are personally responsible for asking themselves whether there is or is likely to be a conflict of interest. The interest need not be pecuniary and will arise wherever there is a possibility of bias, which may influence the decision. There is a danger of bias where an interest affects an individual or a member of their household more than the generality of others who may be affected by a decision.

The type of decisions being made will include:

- transfer of assets from the Council to another person/party with whom they have an interest
- granting of public funds by the Council to another person/party with whom they have an interest
- a decision to enter into a scheme with another person/party with whom they have an interest with an immediate or potential financial impact on the Council
- contractual arrangements between the Council and another party/parties with whom they have an interest and negotiations on such arrangements

Those with a position of potential influence will be:

- members of the Executive / other Members who are advisors (regardless of political party)
- directors on a board or shadow board and subscriber representatives on companies
- trustees
- employees with delegated decision making positions or a policy formulation role
- secondees from the Council to another party with delegated decision making ability or policy formulation posts

(b) Employees

Employees must be clear from whom they take instructions at all times. If an employee's job within the Council would involve them making proposals, drafting policy or influencing any decision or action which will benefit a person or body with whom they have either a direct or potential interest and with whom the Council has or intends to enter into joint arrangements, they must:

- (i) Prepare a report for their line manager, Director or Chief Executive, clearly setting out:
  - the basis of their direct or potential interest
  - any adverse or potentially adverse consequences for the authority and/or benefits to the third party
  - Set out their current or potential areas of influence within the third party.
- (ii) Employees who have prepared a report in accordance with paragraph (b)(i) above shall not be permitted to prepare reports for Members, make any delegated decision, commit expenditure, or give instructions

to other employees to do so on any matter where they have identified such an interest or potential interest.

- (iii) Employees who have applied for, or intend to apply for or have been appointed to a position with a body outside the Authority with whom the Council has or intends to enter into joint arrangements shall not be permitted to instruct other employees, make proposals or delegated decisions or prepare reports on any matters that are directly applicable to any proposed contractual relationship between the Council and their new or potential employer.
- (iv) Secondments to a joint partner or any shadow arrangement set up by the Council to facilitate the negotiations shall be by way of letter clearly setting out the terms of the secondment, use of information, reporting lines, restrictions on activities and the like. Anyone appointed to such an arrangement shall not brief Members or otherwise do anything which may be seen to influence those making decisions on behalf of the Council unless invited to do so by the relevant Director or Chief Executive and shall only then do so in the company of another Council officer.
- (v) In any report prepared for consideration by Members involving arrangements between the Council and a third party with whom the Council has an interest the report shall indicate:
  - the nature of the joint interest/influence
  - any proposed transfer of assets included in the proposal together with details of valuations of the assets and full financial appraisal. Such a report must contain the comments of the Council's Chief Financial Officer.
  - Where a report is lengthy (for example in bidding documents / government submissions etc) the report must clearly state, in the recommendations, each aspect of the bid and seek approval. It is not sufficient merely to seek endorsement of the bid/submission.
  - Where the proposal affects employees this must be clearly stated in the report.
- (vi) At the outset of any such joint arrangements the relevant Director or Chief Executive shall ensure that a clear structure of accountability, line management and reporting lines. This will require review on a regular basis. It must deal with any proposals for secondments. All secondments (whether to posts in the Council or to an outside body) must be made by letter to the employee concerned setting out the structure applicable. All employees working on the proposal must receive written details (whether by way of letter or copy of structure chart) making it clear to them who their line manager is and from whom they may take instructions and to whom they may divulge information (be it their line manager, another employee or committee).

Employees may apply for an employed position with a joint partner of the Authority provided they shall not be employed by the Council and the joint partner at the same time. The employee may use their skills, knowledge and expertise acquired whilst in the employ of the Council but shall not use any

information they have obtained whilst in the Council's employ. Such information shall remain confidential to the Council and not be used for the benefit of the joint partner.

(c) Members

Where Members are likely to be in the position of having a joint influence through being a subscriber, director or other member of a company or third party with which the Council is entering into a joint arrangement adherence must be had to the Members' Code of Conduct. If the Member's position is such that they could be involved in the decision making process on both sides, the relevant Members should consider whether they need to declare a prejudicial interest and not take part in any discussion or vote on the matter. Nor must they be in any position where they may be perceived as influencing the matter within the Authority.

Members shall be informed of any arrangements made under paragraphs (b)(iv) or (b)(vi) above in connection with restrictions on access to Members by those staff seconded to any shadow arrangements.

#### **4. SEPARATION OF FUNCTIONS**

In any situation where joint arrangements are such that Council officers are advising the Authority and the proposed new provider or special purpose vehicle appropriate arrangements shall be considered by the relevant Director or Chief Executive. Where it is necessary for such advice to continue from within the Council pending the new provider being formally established with their own ability to operate financially and contractually the relevant Director or Chief Executive shall ensure robust and sound arrangements are in place to ensure that confidentiality is maintained, advice is provided separately to the Council from the SPV and such other arrangements and/or requirements as may be advised by the Monitoring Officer / Service Director: Legal & Governance and/or Chief Financial Officer from time to time. This shall include (but not exclusively) arrangements for:

- Physical separation of staff
- Confidentiality of paper and electronic information in respect of the project
- Separation of support services such as post handling and typing
- Guidance to staff on arrangements for the contact between them

The relevant Director or Chief Executive shall ensure that all appropriate Members, the Monitoring Officer and the Chief Financial Officer are informed when and what the arrangements are made.

The Chief Financial Officer shall take steps to ensure that arrangements are put in place, and that they are maintained.

#### **5. CONSULTANTS**

In preparing any consultants' briefs drafting contracting terms or otherwise employing consultants, employees must have regard to whether there may be a conflict or potential conflict of interest or whether confidential information may be disclosed which could benefit another party for whom the consultant also acts, even if that other party is a body partly or solely set up by the Council.

In any brief to consultants where they may be required to give advice to the Council and to a third party with whom the Council is or will enter into an agreement, the

consultants shall from the point where a potential conflict of interest may arise only act for one party and not both. All Consultancy contracts and/or letters of appointment will contain an appropriate clause, concerning conflicts of interest and consultants shall be under a duty to immediately notify the Council of any potential conflict. Where a contract has to be terminated or be amended due to a conflict of interest this should be at no cost to the Council. Employees must avoid preparing any brief which may give rise to a consultant acting for both the Authority and a third party where there is a potential for conflict.

## **6. MEANING OF CONFLICT OF INTEREST**

Any interest in a matter, which creates a danger of bias. This shall arise where the interest affects the individual concerned or an organisation, which they influence more than the generality of those affected by the decision.

## **7. SANCTIONS**

In the event of any alleged breach of this Code, if the alleged breach is also an alleged breach of the Members Code of Conduct, it will be dealt with in accordance with the procedures set out by the Localism Act 2011.

In the event of an alleged breach by an officer, the matter will be considered by the Chief Executive, as Head of Paid Service, following consultation with the Service Director: Legal & Governance, in accordance with the Council's disciplinary rules and procedures.

## **8. FURTHER GUIDANCE**

Further and additional guidance may be issued on a case-by-case basis or as needed by the Monitoring Officer / Service Director: Legal & Governance and/or the Chief Financial Officer.