

5 - 4 Part 5.4 Guidance on Interests of Councillors when Acting as Nominated Directors

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5.4 – 1 Introduction

The Council nominates Members to sit on various companies. These include for example, Mid-Derbyshire CA (three nominated directors) and Groundwork Cresswell (two nominated directors).

5.4 – 1.1 Futures Homescape Limited is the largest social landlord in the Borough and will be working in partnership with the Authority, which will remain the strategic housing Authority. This guidance is intended to ensure fairness in dealings that underpin a strong and successful partnership.

5.4 – 1.2 Directors owe a number of quite specific duties to their companies (examples of these are listed in the extract in 2), including the overriding interests of the organisation and not on behalf of any constituency or interest. If the company is also a registered charity, the director owes a fiduciary duty to act in the best interests of the charity. You should insist that you receive information and training on these duties from the company.

5.4 – 1.3 Members also owe clear duties to the Council. These are set out in the Authority's Constitution (for example Article 2).

5.4 – 1.4 The Council nominates Members to be directors of companies to provide an information

bridge between the organisations. It also helps to ensure the effective governance of the companies by providing the experience and skills of Members. This means that Members are encouraged to bring their personal experience to bear, but they should not be involved in taking decisions if they have a prejudicial interest.

5.4 – 1.5 This guidance, therefore, deals with potential conflicts of interests for Councillors nominated as directors. It supplements the provisions of the Members' Code of Conduct, to guide Members on how to comply with it.

5.4 – 2 General Duties

The Members' Code of Conduct places a positive duty on Members to:

- Promote equality by not discriminating against others
- Respect confidential information

5.4 – 3 Register of Interests

Under statutory requirements, each Member has to provide details of their Disclosable Pecuniary Interests which are included in a public register. Members must also let the Monitoring Officer know, in writing, of any changes or additions which should be made to their entries in the register.

5.4 – 4 Declaration of Interests

Alongside the register of Disclosable Pecuniary Interests, the Members' Code of Conduct also requires the declaration of personal and non-pecuniary interests at meetings of the Council. Members can use the register as a trigger to decide which of their interests need to be declared at meetings.

Members have to decide first whether or not they have a personal interest in the matter under discussion.

A personal interest is an interest that affects the Member more than most other people in the area. People in the area include those who live, work or have property in the area of the Council. Members will also have a personal interest if their partner, relative or a close friend, or an organisation that they or the Member works for, is affected more than other people in the area.

If they do have a personal interest, they must declare it and say what that interest is before any meeting where the issue is to be discussed or as soon as it comes to light. However, they can still take part in the meeting and vote unless the personal interest is also a prejudicial interest.

5.4 – 5 What Members Have to Do

A prejudicial interest is a matter of judgement for each Member. What Members have to do is ask themselves whether reasonable Members of the public — if they know all the facts — would think that the Member's interest was so important that their decision would be affected by it. If a Member has a prejudicial interest then they must declare what that interest is (if they have not already done so), and withdraw from the meeting (by leaving the room)'.

5.4 – 6 Guidance

5.4 – 6.1 The nomination of Members to be directors of companies will be made by the Full Council to avoid any allegations of conflict of interest.

5.4 – 6.2 Members who are directors of Futures Homescape Limited should be made aware of the Homes and Communities Agency's regulatory requirements relating to the avoidance of conflict of interest. You should contact the Company Secretary for advice.

5.4 – 6.3 The Members' Code of Conduct applies when Members are nominated by the Council to be directors of companies. However, where the company is bound by legal obligations which conflict with the Code of Conduct, then the Rules of that company apply, subject to the overriding provision set out in Paragraph 5.4 – 5 of this guidance. In these circumstances, Members should seek advice from the Company Secretary and the Council's Monitoring Officer.

5.4 – 6.4 The Council is of the opinion that Members nominated by the Council to be directors of companies should regard themselves as having a prejudicial interest. Thus, Members who are directors will not be able to take part in decisions by the Council relating to those companies.

5.4 – 6.5 This means that at any Council held meeting where such decisions are being made, those Councillors should declare the interest at the start of the meeting, and leave the meeting during the consideration of the decision to be made. This includes Cabinet, Improvement and Scrutiny Committee and Regulatory Board meetings.

5.4 – 6.6 For the avoidance of doubt, this includes decisions on application to the Council for grants or funding to the company. To demonstrate fairness to the other organisations that might be applying for such grants or funding at the same time, the nominated Councillors should regard themselves as having a prejudicial interest, make the appropriate declaration, and leave the meeting whilst the application for the grants or funding is being considered.

5.4 – 6.7 However, where the matter relating to the company at any such Council meeting is for information only, such as receiving the Minutes of the company meetings or Annual Reports, the following dispensation applies:

In these circumstances, the Councillors nominated as directors should declare the interest at the start of the meeting, but can remain in the meeting during the consideration of the information items (which will be marked on the agenda ‘for information’) and answer questions about that item. They should not, however, vote on that item. But if any discussion or debate develops on an information item then the nominated Councillors should leave the room.

5.4 – 6.8 Access to Information and Officers

- (a) The rights to access to information for Members are contained in the Council’s Constitution and in Part VA of the Local Government Act 1972 and in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations SI 2012/2089.
- (b) It is most important that Members nominated as directors do not seek access to, or use exempt information for the purpose of, or with the effect of, gaining advantage for the company. Equally, they must not prevail upon Officers of the Council to seek decisions for that purpose or effect.
- (c) The normal rights of access to information and Officers by Members who are directors of companies will be restricted on the basis that they have personal and prejudicial interests in matters concerning those companies.
- (d) Members nominated as directors of companies will continue to receive exempt Full

Council and Cabinet reports on matters relating to those companies, on the strict understanding that they will not disclose such reports to the companies, without the prior written consent of the Council's Monitoring Officer.

5.4 – 6.9 Insurance

- (a) The Council maintains insurance to cover your personal liability when you are acting as a Councillor in the course of Council business. Details are available from the Executive Director (Resources).
- (b) However, this insurance does not cover your personal liability when acting as a Nominated Director. You should contact the Company Secretary for details of the cover in place. It is your responsibility to do so.
- (c) In either case, the insurance will not cover you for any failure to declare interests, or any liability arising from such failure, or for any criminal acts, such as failing to file accounts with Companies House on time.

5.4 – 6.10 Useful Web Links

For Companies House:

www.gov.uk/government/organisations/companies-house

For the Charity Commission:

www.gov.uk/government/organisations/charity-commission

For the Council's Constitution:

www.ambervalley.gov.uk/council-and-democracy/constitution.aspx

For the Register of Members' Interests

<http://www.ambervalley.gov.uk/council-and-democracy/councillors,-democracy-and-elections/borough-councillor-lookup.aspx>