



## Buckinghamshire Shareholder Committee agenda

Date: Wednesday 12 October 2022

Time: 10.00 am

Venue: The Paralympic Room, Buckinghamshire Council, Gatehouse Road, HP19 8FF

### Membership:

J Chilver (Chairman), S Broadbent, A Cranmer and P Strachan

Agenda Item	Page No
<b>1 Apologies for Absence</b>	
<b>2 Declarations of interest</b>	
<b>3 Minutes of the previous meeting</b> To confirm the minutes of the meeting held on 19 July 2022 as a correct record.	<b>3 - 6</b>
<b>4 Terms of Reference</b> To note the Terms of Reference as updated from the previous meeting.	<b>7 - 10</b>
<b>5 Draft Conflict of Interest Guidance</b> Glenn Watson, Principal Governance Officer to present the draft Conflict of Interest Guidance for review and comment.	<b>11 - 20</b>
<b>6 Forward Plan discussion</b> Items provisionally scheduled for the next meeting on 11 January are: <ul style="list-style-type: none"><li>• Draft AVE 2023/24 business plan</li><li>• Draft BA 2023/24 business plan</li><li>• Draft Consilio 2023/24 business plan</li></ul>	
<b>7 Date of Next Meeting</b> 11 <sup>th</sup> January 2023 at 10 a.m.	

- 8 Exclusion of the public**  
**To resolve:**
- that under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting on the grounds that it involves the likely disclosure of exempt information as defined in the paragraph indicated in Part 1 of Schedule 12A of the Act.
- 9 Confidential minutes of the previous meeting** **21 - 28**  
To confirm the confidential minutes of the meeting held on 19 July 2022 as a correct record and receive an update on actions.
- 10 Update from Consilio Directors** **29 - 76**  
To receive an update from David Pearce and Nigel Dicker, Directors of Consilio on the direction of the business, loan re-payments / structures, performance against the business plan, financing plans and update on work looking at assets potentially being transferred to the Council.
- 11 Aylesbury Vale Estates (AVE) Debt Plans**  
Mark Preston, Head of Projects and Pensions to present a summary of debt paying plans for AVE.
- 12 Buckinghamshire Advantage (BA) Draft Statement of Accounts 2021/22** **77 - 92**  
To receive and comment on the draft Statement of Accounts 2021/22 due to be approved by the BA Board when they meet on 7 November 2022.
- 13 Training Session update**  
To discuss any actions / considerations that arose from the recent training sessions.

If you would like to attend a meeting, but need extra help to do so, for example because of a disability, please contact us as early as possible, so that we can try to put the right support in place.

For further information please contact: Leslie Ashton on 01895 837227, email [democracy@buckinghamshire.gov.uk](mailto:democracy@buckinghamshire.gov.uk)



## Buckinghamshire Shareholder Committee minutes

Minutes of the meeting of the Buckinghamshire Shareholder Committee held on Tuesday 19 July 2022 in The Paralympic Room, Buckinghamshire Council, Gatehouse Road, HP19 8FF, commencing at 10.30 am and concluding at 11.55 am.

### Members present

J Chilver (Chairman), S Broadbent and P Strachan

### Others in attendance

R Ambrose, L Ashton, C Hunter, A Parveen, J Reed and G Watson

### Agenda Item

#### 1 **Appointment of Chairman**

**Resolved:** To note the appointment of Councillor John Chilver as Chairman of the Buckinghamshire Shareholder Committee for the ensuing year.

#### 2 **Apologies for absence**

Apologies had been received from Councillor A Cranmer.

#### 3 **Declarations of interest**

Councillor S Broadbent declared a personal interest in item 9: Buckinghamshire Advantage as the Buckinghamshire Council representative on the Local Enterprise Partnership who had previously agreed funding for Buckinghamshire Advantage.

#### 4 **Introductions and Committee Membership**

Committee Members and supporting officers introduced themselves.

#### 5 **Terms of Reference and Role of the Committee**

The Committee considered the Terms of Reference and highlighted the following amendments to be made:

- 2.1.2. to remove “Deputy Leader”
- 2.1.3. An ‘s’ to be added at the end of Cabinet Member to make it plural
- 2.2. wording to be strengthened around alternate Cabinet Members who could attend a meeting in a Committee Member’s absence to make clear that any alternate Cabinet Member should not be a Board Member of any of the subsidiary companies the Shareholder Committee had responsibility for reviewing.

The Committee noted the decisions delegated to the Shareholder Committee for each Subsidiary as noted in 3.4 of the Terms of Reference.

**RESOLVED**

**That the Terms of Reference be approved subject to the above amendments.**

**6 Exclusion of the public**

**Resolved:** that under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting on the grounds that it involves the likely disclosure of exempt information as defined in the paragraph indicated in Part 1 of Schedule 12A of the Act.

**7 Aylesbury Vale Estates**

Restricted

**8 Consilio**

Restricted

**9 Buckinghamshire Advantage**

Restricted

**10 Methods of Reporting**

Restricted

**11 Training**

Restricted

**12 Forward Plan Discussion**

The Committee discussed items for future meetings and requested that the below items be presented at the October and January meetings respectively:

**12 October**

- Consilio Directors to be invited to attend to give an update on the direction of the business, loan re-payments / structures, performance against the business plan, financing plans and piece of work exploring assets being transferred back to the Council.
- Conflict of Interest guidance
- AVE summary on debt paying plans
- BA Draft Accounts 2021/22

**11 January**

- Draft AVE 2023/24 business plan
- Draft BA 2023/24 business plan
- Draft Consilio 2023/24 business plan

- 13**     **Date of next meeting**  
Wednesday 12 October 2022 at 10 a.m.

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## BUCKINGHAMSHIRE SHAREHOLDER COMMITTEE

### TERMS OF REFERENCE

#### 1. OVERVIEW

- 1.1 The Shareholder Committee forms part of the overall governance arrangements for Buckinghamshire Council ("**the Council**") in relation to companies and other legal entities which are wholly or partly owned or controlled by the Council (including where such control comes about indirectly, such as via a loan agreement) (each a "**Subsidiary**" and together the "**Subsidiaries**").

#### 2. CONSTITUTION

- 2.1 The members of the Shareholder Committee will be set to 4 Cabinet Members consisting of:
- 2.1.1 Cabinet Member for Accessible Housing and Resources (as Chair);
  - 2.1.2 Cabinet Member for Planning and Regeneration
  - 2.1.3 Two other Cabinet Members to be determined by Cabinet
- 2.2 Each Shareholder Committee member may nominate an alternate Cabinet Member to attend a meeting in their place provided that said Member is not a Board Member of any of the subsidiaries and thus does not have a conflict of interest.
- 2.3 The Shareholder Committee will be supported by Council officers as advisors primarily consisting of
- 2.3.1 Section 151 officer
  - 2.3.2 Director of Property and Assets
  - 2.3.3 Director of Major Projects
  - 2.3.4 Chief Legal Officer or representative
  - 2.3.5 Other such officers as may be required including an officer/Member from the service the company or JV is supporting or suitably experienced non-Executive Director.
- 2.4 Committee advisory officer may nominate an alternate officer to attend a meeting in their place.
- 2.5 The Shareholder Committee will appoint the Cabinet Member for Accessible Housing and Resources as Chair of the Shareholder Committee. If the Chair is not present at the start of a meeting of the Shareholder Committee, those members present will appoint one of the members present to chair that meeting.
- 2.6 Additional advisors, who do not need to be officers or members of the Council, may be invited to attend the Shareholder Committee as required.
- 2.7 The Committee will need to follow and have regard to the rules set out in the Constitution including the finance procedure rules.

### 3. ROLE OF THE SHAREHOLDER COMMITTEE

- 3.1 The Shareholder Committee will have a role in ensuring proper governance of the Council's Subsidiaries, such role to include:
- 3.1.1 monitoring information from each Subsidiary, in particular on financial and other risks and escalating such risks within the Council as appropriate.
  - 3.1.2 exercising decisions relating to the Council's role as shareholder, member, owner, lender, or other position of significant control over the Subsidiary, where those decisions have been delegated to the Shareholder Committee;
  - 3.1.3 making reports and recommendations to the Cabinet on areas outside of the Shareholder Committee's delegated authority;
  - 3.1.4 Agreeing and entering into a Memorandum of Agreement (see 3.2below) with each of the Council's Subsidiaries;
  - 3.1.5 The necessary oversight, from a shareholder's perspective, that the parameters, policies, and boundaries, that the council has established are being adhered to including a regular review of whether the Subsidiary provides the most effective vehicle to deliver the outcomes it requires and whether there are viable alternative models which might offer a more effective means of delivering its priorities;
  - 3.1.6 An articulation of what success looks like in terms of delivery models to meet objectives such as achieving social outcomes and/or a return on investment;
  - 3.1.7 Agree a mechanism to communicate the shareholder's views to the Subsidiary by effecting systematic engagement between the Chair/CEO and shareholder role to assure effective performance against strategy and governance;
  - 3.1.8 Provide a holistic review of risk to the Council offered by all active Subsidiaries;
  - 3.1.9 Consider and advise on the duties and if any, the training needs of potential Directors to allow them to competently assume this role;
  - 3.1.10 Making representations to the Directors on the Business Plans of the Subsidiary Companies or other organisations set out in this report;
  - 3.1.11 Receiving reports from the Directors where appropriate, on the progress and conduct of business in accordance with the approved Business Plan;
  - 3.1.12 Reporting to the Cabinet on the performance of the Subsidiary Companies;
  - 3.1.13 Undertaking due diligence on the various Subsidiary Companies to ensure liabilities are known and accounted for within the Council;
  - 3.1.14 Deciding whether a particular Subsidiary needs to be under the oversight of a specific service area;
  - 3.1.15 In the case of forming a new Subsidiary, the committee will first scrutinise the business case for forming the Subsidiary to clarify the service components to be delivered, outcomes sought and options for how these may be delivered and undergo an effective comparison of alternative delivery models to ensure that the objectives, timescales, and drivers of forming the Subsidiary is the optimum approach and; An advisory paper will be submitted to Cabinet for a decision.
- 3.2 It is expected that each Subsidiary will enter into a form of agreement with the Council (whether as owner, controller or lender) setting out the basis of the relationship between them (each a **"Memorandum of Agreement"**).



3.3 A detailed description of the Shareholder Committee's role in relation to each Subsidiary will be set out in the relevant Memorandum of Agreement.

3.4 Authority to make decisions on behalf of the Council is delegated to the Shareholder Committee for each Subsidiary as follows:

3.4.1 Oversight of any decisions that can only be made by the shareholder, (whether as “reserved matters” under the Memorandum of Agreement and Articles of Association or pursuant to the relevant legislation applicable to that Subsidiary) such as:

Approval of Memorandum of Agreement with each Subsidiary
Approval of annual Business Plan and deviations from Business Plan.
Approval of key appointments (including appointment, removal and or replacement of Directors)
Borrowing money, granting security and giving of guarantees
Winding up of Subsidiary
Altering in any respect the articles of association of a Subsidiary (or any other governing document such as the Rules of a Community Benefit Society)
Altering the rights attaching to any of the shares in a Subsidiary
Permitting the registration of any person as a shareholder or member of a Subsidiary
Ensuring that subsidiaries or the subsidiaries interests are not competing against or conflicting with, other subsidiaries or their interests
Ensure that the Council appointments to the board of a Subsidiary comply with the Council’s constitution
Establish proper arrangements to manage potential conflicts of interest in respect of Council Officers appointed to the board of a Subsidiary
Correctly approve pay and pension arrangements in respect of both key employees of the Subsidiary and Council Officers appointed to the board of a Subsidiary and ensure that decisions made to make termination payments are in line with the law and the Subsidiary’s controlling documents.
Amending the amount of a Subsidiary's issued share capital
Altering the name of any Subsidiary

3.4.2 Any Memorandum of Agreement entered into with a Subsidiary may identify additional decisions which are delegated by Cabinet to the Shareholder Committee in relation to that Subsidiary only.

- 3.5 Decisions which are not delegated to the Shareholder Committee in accordance with 3.4 above will be taken through the usual decision-making processes in accordance with the Council's governance and constitutional framework. This will include decisions relating to the issue of loan capital in relation to any Subsidiary and to any approvals relating to any intra-group loans.

#### **4. OPERATION OF THE SHAREHOLDER COMMITTEE**

- 4.1 The Shareholder Committee will meet three times per year, or more frequently if required.
- 4.2 The quorum for a meeting of the Shareholder Committee is a minimum of 2 members.
- 4.3 Meetings will be held in public or otherwise in line with the Council's democratic meeting protocol. There may be particular matters or agenda items which are required to be considered in private due to commercial confidentiality, and these will be handled in accordance with the Council's usual democratic protocol.
- 4.4 Minutes and agendas will be managed and published in accordance with the Council's usual democratic protocol.
- 4.5 The Shareholder Committee shall make its decisions as follows:
- 4.5.1 At meetings of its members by consensus of those present, unless any member of the Shareholder Committee requires a vote, in which event a majority decision will be taken with each member of the Shareholder Committee present having a single vote. Advisors and officers present to support the Shareholder Committee will not have a vote. The Chair of the meeting has a casting vote in the event that there is no clear majority; or
- 4.5.2 In cases of urgency, by a decision made by the Leader or by an alternate Cabinet Member nominated by the Leader.
- 4.6 After each meeting, the Chair shall approve the minutes and authorise the implementation of the Shareholder Committee's decisions, including where relevant the signature of any documents by appropriate Council signatories.
- 4.7 The Shareholder Committee will review the Terms of Reference annually and make any necessary recommendations to Cabinet.

## Conflicts of Interest Guidance

### Guidance for member and officers – council companies and joint ventures

This is a practical guide for officers and councillors who may have a role in connection with the Council's trading companies and joint ventures. It helps them – and the Council itself – to recognise the interests involved and to avoid a conflict between them.

The guidance helps sets out:

- A. Why this guidance matters
- B. Recognising the different roles
- C. Avoiding the problem – the appointment of directors
- D. Recognising the interests involved
- E. Behaviours, codes of conduct and responsibilities
- F. Handling conflicts of interest

Annex – further information

#### A. Why this guidance matters

“Being a director of a local authority controlled company requires officers and elected members appointed to those roles to operate in a completely different legal and philosophical framework to that they are used to inside their local authority. It can lead to real conflicts between the duty owed to the company and the interests of your council.

It can also lead to conflicts of interest on a personal level which makes holding some roles in a local authority unviable whilst continuing as a director. It is necessary to make different assumptions about how things operate and what issues you need to have demonstrated you took into account, and what had no influence.

Too often, this is not understood until problems arise, resulting in reputational and financial damage and in some cases, external intervention directly impacting on your authority.”

**Max Caller, Strategic Adviser and Lead Inspector for HM Government, ‘Local Authority Company Review Guidance’.**

#### B. Recognising the roles

Officers and councillors can be appointed as directors of the Council's companies. It is essential, at the outset, for the Council to be clear on the roles that they intend the officer or councillor will continue to have within the authority; and how this differs from the role of director of the company.

**Officer of the council:** the first duty of an officer of the Council is to the Council itself, using their knowledge and professional expertise, and the council's information and resources, to give advice, make decisions under delegation, and to deploy line management reports generally to deliver the Council's objectives.

**Member of the council:** a member of the Council is democratically elected to represent their communities and may be appointed to formal roles or bodies within the decision-making structure, to make decisions and to shape policy on behalf of the Council. Such roles may involve executive decision making or scrutiny or oversight of the council of other bodies.

**Director of a company:** a director's first duty is to the interests of the company not to the Council. The Institute of Directors' *Corporate Governance Guidance and Principles* states: "an important principle of company law is that directors have a duty to promote the success of the company as a whole. They are specifically prohibited from directing the activities of the company in favour of themselves or particular shareholders and/or stakeholders".

By the nature of these various roles, each has an in-built 'interest', a fiduciary duty to the body concerned. A 'conflict of interest' arises where these roles and duties coincide.

"Council officers and members also have fiduciary duties to the council. Situations can inevitably arise where the same person will be a decision maker or advisor both for the council and one of its entities. Examples of this include matters of reporting, contractual discussions, investment requests or resourcing agreements."

**'Local Authority Company Review Guidance'**

Council appointed directors should, though, make themselves available for council scrutiny committees and other council governance forums which oversee the company (although they should not be obliged to disclose commercially confidential information about the entity).

## **C. Avoiding conflicts**

### **Right person, right role – guidance for the Council in appointing directors**

The Council can minimise the risk of a conflict by considering carefully at the outset who it appoints as a director. For example, a particular professional role – say a Head of Service – and the cluster of skills and experience such a role exhibits, may suggest that this post would be an ideal choice. In practice, this could significantly limit what the postholder is then able to do within the Council as regards decision making, access to information and influence.

Key consideration: in general, the more senior the officer, the more likely it is that their 'day job' for the Council may conflict with a company director role or would need to be inhibited to a counterproductive extent in trying to balance the two. For example, it is not considered good practice for a Section 151 Officer to hold a position within a council company.

"...Given that it is likely that certain decisions of the shareholder will require ratification by the Section 151 officer, it is not considered good practice for a Section 151 officer to hold a position with a council owned entity."

**'Local Authority Company Review Guidance'**

"Conflicts may be reduced if local authority members and officers with designated roles acting for the local authority are not also appointed to senior positions in the company."

**Local Authority Owned Companies: a good practice guide (CIPFA, 2022)**

However it is not just organisational factors that could present a conflict – so could personal factors, for instance where a councillor (or their friend or relative) may have an interest in a competitor to the company concerned.

Key considerations: The council should carefully consider nominations to the board.

*1) Generally:*

Appointments should relate to the relevant position in the council, not to a specific individual. It then follows that if a council-appointed director ceases to be an employee or office holder of the council, they should automatically no longer be able to hold board membership. Appointments should take account of:

- the benefits of appointing independent directors to the entity
- the need to avoid council members and officers also being appointed to senior positions in the company, if such an eventuality is likely to lead to a conflict of interest
- achieving as wide a range of skills as possible relevant to the company's purposes and aims

*2. Positions likely to be conflicted*

Given the nature of their roles, and the likelihood of conflicts of interest, certain officer and councillor positions should not be appointed as directors. These include:

- Section 151 Officer
- Cabinet Members whose portfolio relates to the aims of the company
- Corporate and Service Directors whose service areas relate to the aims of the company
- Any elected member appointed to the Shareholder Committee

*3) Ethical walls*

Consideration should be given prior to the appointment of any officers as to whether any ethical walls are necessary – for example restricting an officer's involvement in the 'council

side' of any projects or initiatives that overlap with the aims and activities of the company/joint venture; or their access to confidential information relating to such projects, initiatives and activities. These should be discussed and agreed with the Monitoring Officer.

A Director will also need to be mindful of the sensitivity of the information gained within the company and take care not to disclose this inappropriately within the Council.

“It could be a breach of a director’s duty to the company either to disclose confidential company information to their appointing council, even if it were relevant to something that the council was discussing, or to disclose confidential council information to the company.”

**Local Authority Owned Companies: a good practice guide (CIPFA, 2022)**

#### **D. Recognising potential conflicts**

What kind of conflicts can arise for an officer or a councillor in serving as a director of a council company? Examples of areas where conflicts can arise include:

- **No scrutiny of own decisions/performance:** holding a council role which involves potential oversight and scrutiny of the entity, while also holding a position with the entity. For example, an entity board member who also holds a position on the council’s Audit & Governance or the Shareholder Committee would clearly be conflicted
- **Council decision affecting the company:** a councillor as director making a decision on the Council that affects the company (such a councillor can however give evidence or advice to the Council on the company's behalf when invited to do so)
- **Personal/private interests:** holding a position as a company board member while having private financial or non-financial interests which may conflict or may be perceived to conflict with the role. For example a company board member, or member of the family, having an interest in a supplier or competitor to the company
- **Gifts & hospitality:** board members receiving benefit (such as gifts and hospitality) from third parties (such as potential suppliers to the company)
- **Access & use of information; opportunity:** the exploitation by a board member of any asset, information or opportunity related to the entity; it could be a breach of a director’s duty to the company either to disclose confidential company information to their appointing council, even if it were relevant to something that the council was discussing, or to disclose confidential council information to the company. (The Companies Act 2006, S175 terms this the avoidance of the “exploitation of any property, information or opportunity” – whether or not the company gains advantage from property, information or opportunity).

This latter bullet point highlights a significant **danger zone**. While a councillor or officer may be clear about their roles within the Council and the company, they must also be alive to what those roles mean for their use of market sensitive information or other confidential intelligence that might be ‘of interest’ to the other entity but to which they would not otherwise be entitled. The officer/councillor would need to be very clear about which role

they were performing – which ‘hat’ they were wearing – and not to disclose or otherwise act on the awareness of any such information in the secondary setting.

Key considerations:

- 1) An appointee should use all opportunities to think about, identify and act to resolve any conflicts of interest. This means considering and registering their standing interests at the point of appointment. It also means taking advantage of the ‘Declaration of Interests’ item on each council or company board meeting agenda to think through what the business on that agenda means for any interests they may have. It is also important to think about the sources of information – particularly confidential information – that the appointee can access or may receive as part of their roles; and the extent to which this is appropriate or requires mindfulness of their fiduciary duties. The same applies to thinking through the implications when managers may oversee staff who may be working on projects which may impact their company role. A discussion with the Monitoring Officer can help.
- 2) Where a potential conflict of interest may arise, then in addition to declaring it at the relevant meeting, the appointee should not vote on the matter.

## **E. Behaviours, Codes and Responsibilities**

Officers and members of the Council are subject to the *Seven Principles of Public Life* (the “Nolan Principles”) and to their respective *Codes of Conduct* under the Council’s Constitution. This applies not only when acting within their organisation but when serving on a council company. This is in addition to the responsibilities each will have under local government and company law. Regard must also be had to the Articles of Association for each company and the conflicts of interest requirements within them. Other sources of guidance are listed in the Annex.

Key consideration: It’s important to be clear about the behavioural expectations. Any officers or members serving as directors should read and understand the guidance listed below.

### **Seven Principles of Public Life**

Everyone serving in public life must act in accordance with the [Nolan Principles of Public Life](#). They also form the springboard for the officer and member codes of conduct.

As such, officers and councillors, even when serving as directors must always demonstrate:

1. selflessness
2. integrity
3. objectivity
4. accountability
5. openness
6. honesty
7. leadership

### **Member Code of Conduct**

Councillors must act in accordance with their council’s Member Code of Conduct. The Council has adopted a Member Code, as the law requires, and this in the [Constitution](#) (Part

H, 2) . The Code applies to a councillor serving as a director of a council company – except in one respect:

“The member’s code of conduct applies to a member’s activity as a director, except only where it directly conflicts with the interests of the company and, where that may be the case, the potential conflict notified to the company secretary and to the Council’s monitoring officer.”

**Local Authority Owned Companies – A Good Practice Guide (CIPFA, 2022)**

The Code requires members to register and declare their interests. One of these interests would be their appointment as a director to a council company. Such transparency is key to instilling public confidence. The Member Code is also clear on the use of information received as a councillor (4.1): “I do not disclose information: a. given to me in confidence by anyone; b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless... I have consulted the Monitoring Officer prior to its release”.

### **Employee Code of Conduct**

The Employee Code of Conduct is in the Council’s [Constitution](#) (Part I, 4). This similarly requires officers to register any interests: “Employees will be required to complete a Declaration of Interests Proforma...at regular intervals as is deemed necessary”. This should include at the point at which they are appointed as a director of a council company.

The Employee Code is also clear (4.38) about the need to avoid personal gain and to uphold and enhance the reputation of the Council. Similarly (4.42): “Employees must not use information obtained in the course of their employment for personal gain or benefit, nor should they pass it on to others who might use it in such a way unless it is necessary and within the law to do so.”

### **Articles of Association**

Each of the companies will have its own Articles of Association and these will typically include their particular requirements for handling conflicts of interest.

## **F. Handling conflicts of interest**

In matters of reporting, contractual discussion, investment requests or resourcing agreements, there is the potential for the same person to be a decision maker or advisor both for the Council and the company. It will become an actual conflict whenever that scenario occurs in practice.

Company directors have a duty in law to avoid a situation where they have, or may have, an interest that conflicts with the interest of the company. Company law and articles of association do allow provisions for directors and shareholders to authorise a conflict in



some circumstances. However an officer or councillor can never waive their duty to act in the public interest when exercising their duties to the Council.

This will on occasion create an inescapable conflict of interest between someone's role as a councillor or officer of the Council and as a director of a company. In practice, once a person is appointed as a Director of the company/joint venture, their prime duty is to the company and their involvement in decision-making/voting on the company Board must reflect that.

### **Process**

1. **Outset - declaration:** potential Council appointees to a company should complete declaration of interest forms before their appointment is made;
2. **Training:** training on identifying conflicts of interest should be given to each appointee, as arranged or commissioned by the Monitoring Officer;
3. **Potential conflicts:** an officer or councillor considers a potential conflict exists between their 'council' and their 'company' role, they should confidentially discuss with the Monitoring Officer (or her Deputies) to determine whether a conflict exists on the council side and with the Company Secretary on the company side.
4. **Declaring the interest:** the person should follow the Council's and the company's normal procedures for declaring and registering an interest; it's important that both officers and councillors take full note of the content of agendas and whether the business to be transacted raises any potential conflicts; there will be a point on each agenda where interests should be declared;
5. **Stand down from discussion:** having declared a conflict of interest, there should be no taking part in a decision about the issue;
6. **Ethical wall:** in the case of an officer who may have a conflict between their roles, the Monitoring Officer may consider implementing an 'ethical wall' between the person and their access to information, or their influence towards fellow officers; this would be recorded and proportionate to the circumstance;
7. **Annual update of registers of interest:** there should be an annual reminder to each officer/councillor to update their registers of interest to encourage continued thinking about potential or emerging interests.

## **Annex**

### **A. Guidance to the Council on the advantages and disadvantages of appointments to a company:**

#### **Potential advantages of council nominees as board directors or trustees:**

- Can improve the relationship between the ALEO [arm's length external organisation] and the council.
- Can bring an insight into the council and its objectives and the broader community.
- Council representatives can gain valuable first-hand experience of service issues and different sectors.

#### **Potential disadvantages of council nominees as board directors or trustees:**

- Can bring additional demands to their already diverse role.
- Representatives may lack the background, skills or understanding required of the role.
- Risk of conflict of interest between their role on the ALEO and their role on the council.
- Negative impact on council decision-making where councillors withdraw from committees owing to conflicts of interest.
- Exposure to legal risks and personal liability.
- Risk to continuity if councillors lose their position if not re-elected.

### **B. Sources of additional guidance for appointees as directors**

[Local Authority Company Review Guidance](#), Max Caller

[Cabinet Office's Code of Conduct for Board Members of Public Bodies](#)

[The Governance of Council Interests in Companies – Code of Practice](#) (2018), Local Government Lawyers.

[Institute of Directors' Corporate Governance Guidance and Principles](#)

Local authority owned companies: a good practice guide (CIPFA, 2022 edition)

### **C. Duties of Directors – duty to avoid conflicts of interest**

#### **1. Companies Act 2006:**

Section 175 of the Companies Act 2006 creates a statutory duty for company directors to “avoid situations” where they may have an interest which conflicts with that of the company.

(1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

(2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).

(3) This duty does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company.

(4) This duty is not infringed—

(a) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(b) if the matter has been authorised by the directors.

## **2. Local Authority Company Review Guidance**

The *Local Authority Company Review Guidance* by Max Caller summarises the Company Act 2006 'duties of directors' as:

- act within their powers
- promote the success of the company
- exercise independent judgement
- exercise reasonable care skill and diligence
- **avoid conflicts of interest**
- **do not accept benefits from third parties**
- **declare an interest in proposed transactions or arrangements with the company**

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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