



Commissioner for Ethical Standards in Public Life in Scotland

CONFIDENTIAL

Kevin Stewart MSP
Convener
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

16 December 2015

Dear Convener

Councillors Sitting on Arms Length External Organisations

Thank you for your letter of 2 December seeking my views on the approach taken by councillors appointed to ALEOs in dealing with issues of declaration and conflict of interest.

I have had an opportunity to review the Official Reports of the evidence given at the committee's meetings on 5 October, 18 November and 2 December. Unless I am mistaken in my understanding of the reports, it seems that the councillors who gave evidence were generally aware of and acting in accordance with the specific exclusion set out in paragraph 5.18 of the Councillors' Code of Conduct, albeit without specifically referring to it.

As you are aware, paragraph 5.18 of the Code sets out a specific exclusion from the general rule about declaration of interests, and the consequences of doing so, for councillors who are appointed to:

(d) a body being a company: -

- i. established wholly or mainly for the purpose of providing services to the councillor's local authority; and
- ii. which has entered into a contractual arrangement with that local authority for the supply of goods and/or services to that local authority.

Even allowing for the variety of approaches to the structure and functions of ALEOs, it is my understanding that most will be covered by this exclusion. In those circumstances, it provides as follows:

So as to enable the councillor to take part in the consideration and discussion of, and to vote upon, any matter relating to the body in question the councillor is required to declare his or her interest at all meetings where matters relating to the body in question are to be discussed. This is always provided the exclusion does not apply in respect of any matter of a quasi-judicial or regulatory nature where the body in question is applying to the local authority for a licence, a consent or an approval, is making an objection or representation or has a material interest concerning such a licence, consent or approval or is the subject of a statutory order of a regulatory nature, made, or proposed to be made, by the local authority.

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I think it possible that the proviso relating to quasi-judicial or regulatory matters, such as decisions on planning applications, may help to explain the apparent differences of approach which you have detected between councillors.

That said, I acknowledge that the position of councillors who are appointed to ALEOs may mean that it can be difficult at times to reconcile their obligations to the ALEO with their obligations to the Council. The Council will often be a significant, if not the major, source of funding for the ALEO. The special exclusion is a pragmatic departure from the general rules set out in the Code. The exclusion is designed to make it easier for the ALEO and the Council to continue to operate without being inhibited by some of the potential difficulties which you and other members of the committee were exploring with the witnesses. However, it cannot remove the risk of conflicts of interest, as was also evident, and I think that it could lead to some confusion about the effect and application of the general rules about declaration of interests and participation in meetings where an interest has been declared.

There have been no further ALEO related complaints since I wrote to you on 21 May. To that extent, I have no cause for concern. On the matter of guidance, I would refer you to the new, draft guidance on the Code published by the Standards Commission and available here: <http://www.standardscommissionscotland.org.uk/content/consultation-documents>.

Yours sincerely

Bill Thomson
Commissioner

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