



INTEGRITY IN PUBLIC LIFE

ADVICE FOR COUNCILLORS ON ARM'S LENGTH EXTERNAL ORGANISATIONS

1. Introduction

- 1.1 This Advice Note, issued by the Standards Commission, aims to provide councillors with an overview of matters they should consider when they are involved with, or have been nominated or appointed by their council, to the board of an arm's length external organisation (ALEO).
- 1.2 The advice focuses on councillors' responsibilities under the ethical standards framework and seeks to assist them in recognising and dealing with potential conflicts of interest, to minimise risks to governance and accountability arrangements.
- 1.3 Councillors have a personal responsibility to adhere to the rules in the Councillors' Code of Conduct (the Code). This Advice Note is intended to help them interpret the provisions in the Code that may relate to their involvement with an ALEO. It should therefore be considered in conjunction with the Code.

2. Background

- 2.1 The Standards Commission's functions are provided for by the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#). This Act created an ethical standards framework whereby councillors and members of devolved public bodies are required to comply with their respective Codes of Conduct, approved by the Scottish Ministers, together with Guidance issued by the Standards Commission.
- 2.2 The role of the Standards Commission is to:
 - encourage high ethical standards in public life; by promoting adherence to the Codes of Conduct, and by issuing guidance on how the provisions within the Codes should be interpreted; and
 - adjudicate on alleged breaches of the Codes of Conduct, and where a breach is found, to apply a sanction.
- 2.3 While there is no legal definition of an ALEO, it is generally seen as a body with its own legal identity, which has been set up by a council to deliver some of its functions. They are often used by councils as an efficient and cost-effective way of delivering public services, including ones relating to leisure, arts, culture, employment, economic development and urban regeneration, waste management, property development and social care. ALEOs are often referred to as 'trusts', although their legal structure is more normally that of a company or limited liability partnership. Separately, some ALEOs can also register as charities, provided they have a wholly charitable purpose.

- 2.4 While governance for ALEOs can be complex, it also needs to be strong and effective, and should be managed through the council’s ALEO governance and scrutiny framework. Representation on ALEOs by councillors can help ensure they are well-run and that all funds are being used appropriately and in accordance with best value principles. Councillors can also inform the ALEO about the council’s policies and priorities. However, councillors sitting on ALEOs have legal obligations and responsibilities to those ALEOs as well as to their council. When members of an ALEO Board, councillors have a duty to act in the best interests of that organisation and not the body that appointed them (being their council). There is the potential for risks and conflicts of interest to arise given a councillor can have obligations and responsibilities to both their council and an ALEO.
- 2.5 Audit Scotland advises in both its report on ‘How Councils Work’ in respect of [ALEOs](#) and its report on ‘[The Role of Boards](#)’ that board members should be aware of the skills, knowledge, experience and other attributes they need to fulfil successfully any specific board position, and assure themselves that they can meet those requirements. Councillors should, therefore, ensure that they have the skills, knowledge, experience and other attributes required to be a member of a specific ALEO before accepting any nomination or appointment to be on its board. Councillors may wish to refer to the Scottish Government’s ‘[On Board - A Guide for Members of Statutory Boards](#)’, which outlines some helpful information about the skills, knowledge, experience and other attributes required to be an effective member of a board.
- 2.6 The Scottish Parliament’s Local Government and Regeneration Committee published a report in March 2016 on an inquiry they had undertaken into ALEOs. The Committee recommended that councillors who are nominated or appointed as board members of any ALEO that is delivering public services should be provided with mandatory training on declarations of interests, conflicts of interests and risk awareness. This Advice Note is intended as an additional resource available to support the training provided to councillors by their council.

3. Understanding the Council’s Role and Responsibilities

- 3.1 Councils have a statutory obligation to comply with the ‘[Following the Public Pound](#)’ Code (FPP Code), published jointly by the Accounts Commission and COSLA, regardless of how the services they are responsible for are delivered. The FPP Code sets out the principles of best practice in circumstances where councils have established significant funding relationships with companies, trusts and other bodies on anything other than on a straightforward contractual basis. This includes when councils are entering into or implementing any arrangement or agreement with a body corporate (which can include an ALEO).
- 3.2 The FPP Code requires councils to ensure that councillors and officers are properly advised of their responsibilities to both the council and any of its ALEOs. This includes the responsibility to identify and declare interests.
- 3.3 The Accounts Commission’s 2011 Report ‘[How Councils work series: ALEOs: are you getting it right?](#)’ provides a range of practical advice for councils and councillors to ensure that they fulfil their responsibilities. Specifically, the report advises that in order to fulfil their FPP Code responsibilities, councils should provide councillors (and officers) with ongoing advice and training. Councillors may wish to ensure that they have read, and are familiar, with this advice and that they seek and attend such training.

4. Understanding an Individual Councillor’s Role & Responsibilities

- 4.1 It is important for councils to ensure governance and accountability in respect of both finance and performance. If a councillor is nominated, appointed or otherwise agrees to sit on an ALEO,

they need to be aware of their obligations to the ALEO and reconcile these with their obligations to the council.

- 4.2 Councillors should seek an induction on being an ALEO member to assist them in understanding the roles and responsibilities they are to undertake. They should consider providing feedback on any training or induction they receive, to help ensure it remains effective and relevant.
- 4.3 The Code makes it clear that councillors still need to observe its rules even when they are undertaking their duties as a member of an ALEO. They will also be bound by any code of conduct for members of the ALEO. When acting as a member of the ALEO, councillors are responsible to it and must act in its best interests. This obligation is outlined in Paragraph 3.30 of the Code, which states:

If I am appointed or nominated by the Council as a member of another body or organisation, I will abide by that body's rules of conduct and will act in the best interests of that body or organisation while acting as a member of it. I will also continue to observe the rules of this Code when carrying out the duties of the body or organisation.

In most cases a councillor's duty under the Code to act in the public interest will align with their duty to act in the best interests of the ALEO. If, however, their duties to the council and ALEO do not align or have the potential to diverge, they must follow the rules that govern how to manage conflicts of interest.

- 4.4 Councillors should make sure they are clear about the status of their appointment. For example, they should establish whether it is intended that they are to be an observer only, or whether they are to be on the board of an ALEO in a decision-making capacity. If a councillor becomes a director of an ALEO that is a company, they will assume personal responsibilities under the Companies Acts. If they become a trustee of an ALEO that is a charity then they will have duties under the Charities and Trustee Investment (Scotland) Act 2005, as outlined in the Office of the Scottish Charity Regulator's Guidance. This Guidance can be found at: www.oscr.org.uk/charities/guidance/guidance-and-good-practice-for-charity-trustees.
- 4.5 In order to be able to understand the differing roles and responsibilities, councillors should ensure, before accepting an appointment or nomination to a partner organisation, that they are clear as to the status of that organisation. Councillors may wish to consider the following questions:
- do both the council and the organisation consider the organisation to be an ALEO?
 - if it is an ALEO, how is it constituted? Is it:
 - a company, including a company limited by guarantee?
 - a Limited Liability Partnership?
 - A Scottish Charitable Incorporated Organisation (SCIO)?
 - regardless of how it is constituted, is the ALEO also a registered charity?
 - does the ALEO have decision-making powers or is it simply an advisory body?
 - has the ALEO been established wholly, or mainly, to provide services to the council?
 - does the ALEO provide services to anyone else?
- 4.6 Councillors should check whether the ALEO has a contractual arrangement with the council for the supply of goods and services. They should ensure that they understand the basis and content of such contracts and the implications of any failure to fulfil their provisions.
- 4.7 Councillors should ensure that they are fully aware of the ALEO's purpose and structure and why it was established. Councillors should also ensure they understand the functions the ALEO performs and the activities it undertakes, including any external trading activities that involve it contracting with third parties.

- 4.8 It is also important to have knowledge of the funding arrangements for the ALEO including the level of funding provided by the council, the body’s solvency, and whether the council is a guarantor. Councillors should be satisfied that they are aware of the ALEO’s financial monitoring and reporting arrangements.
- 4.9 The table below summarises some important matters a councillor should consider before accepting an appointment or nomination to sit on an ALEO.

Their responsibilities as a Board member of an ALEO.
Any Code of Conduct for the ALEO.
The legal status of the ALEO.
The purpose and function of the ALEO and the activities it undertakes.
The ALEO’s funding arrangements.
Whether the ALEO has a contractual relationship with the council.
Whether the ALEO has been established either wholly, or mainly, to provide services to the council.
Whether the ALEO trades externally (i.e. whether it provides services to other third parties).
The status of their appointment to the ALEO.
Whether the appointment would mean they would have to frequently declare interests at meetings of a particular committee, by reason of any personal conflicts, being their actions, connections, legal obligations; or the quasi-judicial or regulatory nature of the committee.
Whether the Council approved the appointment.

5. Risks to Governance and Accountability

- 5.1 ALEOs can play a significant role in a council’s service delivery and the council is often a major, if not the sole, source of funding for an ALEO. Therefore, strong governance and, in particular, regular and proportionate monitoring, is essential. This is to ensure effective service delivery and to mitigate against any risks, which includes minimising potential conflicts of interest. Councils, when determining governance arrangements at the outset, should ensure they are considering both the advantages and risks of having its representatives on boards, and considering arrangements for funding and scrutiny that, for example, minimise potential conflicts. Both the [FPP Code](#), and the [Accounts Commission’s ‘How Councils Work’](#) report on ALEOs, emphasise the need for councils to carefully consider representation, including ensuring the right mix of skills, knowledge and experience required to govern the organisation.
- 5.2 Governance in itself can pose a risk if a councillor has a role on both an ALEO Board and also on the council committee with responsibility for scrutinising its performance and governance arrangements. Such a councillor would have an inherent conflict between their role as a board member in how the ALEO is governed, and their interest as a committee member in holding it to account. As such, councils should not rely entirely on those who sit on ALEO boards to scrutinise and monitor them. It is important, therefore, that councillors are aware of and understand the scrutiny, reporting and monitoring arrangements that the council has in place in respect of its ALEOs.
- 5.3 As noted above when members of an ALEO Board, councillors have a duty to act in the best interests of that organisation. Councillors appointed to ALEOs should make this clear to any councillor colleagues who may be trying to lobby or influence them in respect of decisions to be made by the ALEO.

6. Registration of Interests

- 6.1 It is a councillor's personal responsibility to ensure their **register of interests** is accurate and up to date. Councillors must ensure any changes are made within one month of their circumstances changing.
- 6.2 In terms of their membership of an ALEO, councillors should, in particular, consider whether they need to register an interest under Categories 3 (Contracts) and 8 (Non-Financial Interests).
- 6.3 It should be noted that if a councillor's position on an ALEO had been remunerated, they would have been required to register it as such under Paragraph 4.4 of the Code. However, the Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2011, prohibit a local authority from allowing a body controlled by it to make any payments to councillors by way of remuneration, other than the reimbursement of authorised and receipted expenses.
- 6.4 **Category 3:** If a councillor is a partner or a director of a firm or undertaking, including being a director of an ALEO, which has a contract with their council to provide goods and services, they are required to register a description of the contract, including its duration.
- 6.5 **Category 8:** Councillors must register and describe any relevant non-financial interests, which includes membership of, or holding office in, public bodies, companies and voluntary organisations. Paragraph 4.22 of the Code states that non-financial interests in this context are:

Those which members of the public with knowledge of the relevant facts might reasonably think could influence [their] actions, speeches, votes or decision-making in [the] Council (this includes its Committees and memberships of other organisations to which [they] have been appointed or nominated by [their] Council).

- 6.6 Councillors must, therefore, register any appointment to an ALEO under category 8. It should be noted that while councillors may be required to declare their interest in an ALEO, in terms of Section 5 of the Code, any such declaration would not remedy a failure to register in terms of Section 4.
- 6.7 If a councillor is unclear about how much information to include in their Register of Interests or in any declaration of interest, they should refer to the Code and to the Standards Commission's Guidance and / or seek advice from their council's Monitoring Officer.
- 6.8 Councillors should note that what they may be required to register on an ALEO's register of interests and what they may be required to declare at ALEO meetings may be different to that which is required by the Code. Councillors should seek advice if they are unclear about what is required.

7. Identifying Potential Conflicts of Interest and Making Declarations of Interest

- 7.1 Councillors should ensure that they can identify potential conflicts of interest. These will include not just the potential for competing interests between the ALEO, the council and also any other organisation they are part of but also any personal interests they may have. Paragraph 3.31 of the Code makes it clear that it is a councillor's responsibility to identify conflicts of interest and it is for them to seek advice on their responsibilities to both the council and ALEO, as required. Paragraph 3.31 states:

I accept that if I am a director or trustee (or equivalent) of a company or a charity, as a nominee of my Council, I will be responsible for identifying, and taking advice on, any conflicts of interest that may arise between the company or charity and my Council.

7.2 Anything a councillor has included in their register of interests would normally constitute a connection, in terms of Section 5 of the Code. However, paragraph 5.4(c) makes it clear that membership of an ALEO is not considered a connection for the purpose of the Code. This means that a councillor will only need to declare their interest in an ALEO to which they have been appointed or nominated by their council if:

- the matter being considered by the council is quasi-judicial or regulatory in nature and the ALEO is the applicant or objector or otherwise has a material interest; or
- the councillor has a personal conflict by reason of their actions, other connections to the ALEO (such as if a close friend or family member works for the ALEO) or their legal obligations.

7.3 Councillors are allowed to take part in any council discussions and decision-making on finance and funding matters relating to an ALEO, even if they are appointed or nominated to that ALEO by their council.

7.4 In terms of the second bullet point at 7.2 above, any councillor who has a connection to a matter involving an ALEO (over and above being appointed or nominated to it by their council), will need to declare an interest and withdraw from the council meeting where the matter is being discussed if the objective test below is met:

where a member of the public, with knowledge of the relevant facts would reasonably regard [the] connection to a particular matter as being so significant that it would be considered as being likely to influence [the councillor's] discussion or decision-making.

7.5 An example of where a councillor may have a personal conflict by reason of their actions could be where they have stated during a meeting of an ALEO that the ALEO requires further financial support and have then voted in favour of applying to the council for more funding. If the councillor's political group subsequently makes it clear that its members are to vote, at a forthcoming council meeting, to reject the funding request, then it is likely that the councillor's actions would result in a personal conflict that would prevent them from taking part in the discussion and decision-making at the council meeting. This is because a member of the public, with knowledge of the relevant facts, may reasonably regard the councillor to be personally conflicted.

7.6 The table below summaries the main points councillors should consider when identifying conflicts of interest and determining whether to declare an interest.

It is a councillor's personal responsibility to identify conflicts of interest. They cannot rely on council officers to remind them to do so.
The Code recognises that councillors who are appointed or nominated to ALEOs should be able to bring their knowledge and experience of that ALEO to the council's discussions and decision-making.
Councillors will not normally have to declare an interest at a council meeting as a result of their membership of, or appointment to, an ALEO. However, if they have a personal conflict by reason of their actions, connections or their legal obligations, or the matter being considered is quasi-judicial or regulatory in nature (and involves the ALEO), then they will have to declare an interest and withdraw from the meeting.
The ALEO may have its own standards, rules and code of conduct. Councillors appointed or nominated to ALEOs should be mindful of their responsibilities under these as well as the Code.
Councillors are allowed to take part in any council discussions and decision-making on funding matters relating to any ALEO, even if they are appointed or nominated to that ALEO by their council. However, where possible, they should avoid being on any council committee that is responsible for governing or scrutinising the ALEO in question.

- 7.6 Councillors should not rely on, or expect, council employees to remind them to register or make any declarations of interest in respect of an ALEO. It is a councillor’s own personal responsibility to register interests and make declarations as required by the Code. If a councillor is in any doubt, they should ask for help.
- 7.7 Councillors should consider whether agendas for meetings raise any issue of declaration of interest and, if so, should make any necessary declaration of interest as soon as practicable, at the meeting where that interest arises. If a councillor only identifies the need for a declaration of interest when a particular matter is being discussed, they must declare the interest as soon as they realise it is necessary to do so (see paragraph 5.6 of the Code).
- 7.8 Councillors should begin their statement with the words “I declare an interest” and identify the item or items of business to which it relates. They do not need to give a detailed description of the interest, but the statement must contain sufficient information to enable those present to understand the nature of the interest. Councillors should indicate, when making the declaration, that they intend to leave the room (or online meeting) when the item is discussed. Councillors should then remove themselves from the meeting until the discussion and any decision-making on the item in question has concluded. Further guidance on this is contained in the Standards Commission’s [Advice Note](#) for Councillors on How to Declare Interests.
- 7.9 If accepting an appointment on an ALEO would mean that a councillor would have to declare interests frequently at meetings of a particular committee, or in respect of any role they are undertaking as a councillor, they should consider carefully whether it is appropriate to accept the appointment. This might be, for example, because their partner works for the ALEO in a role which would mean they would regularly have a personal connection to decisions the committee has to take; or if the ALEO often has applications before a regulatory committee of which they are a member.
- 7.10 The table below summarises the main questions councillors should consider when identifying potential conflicts of interest and making declarations of interest.

What are the potential conflicts between the specific ALEO they are appointed to and the council?
Are they clear about their responsibilities to both the ALEO and the council?
Do they have any personal interests in the matters being discussed?
Is the matter being discussed at council quasi-judicial or regulatory in nature and, if so, does the ALEO have an interest in it?
Have they registered their membership of an ALEO as required by the Code?
Have they checked the meeting agenda and papers to determine whether they will need to make any declarations of interest?
Are they regularly making declarations of conflicts of interest?

8. Confidentiality

- 8.1 Councillors may have access to information that should not be disclosed to both the council and ALEO. As such, they should be aware of the following confidentiality requirements outlined in paragraphs 3.21 to 3.23 of the Code:

3.21 I will not disclose confidential information or information which should reasonably be regarded as being of a confidential or private nature, without the express consent of a person or body authorised to give such consent, or unless required to do so by law. I note that if I cannot obtain such express consent, I will assume it is not given.

- 3.22 I accept that confidential information can include discussions, documents, information which is not yet public or never intended to be public, and information deemed confidential by statute.
- 3.23 I will only use confidential information to undertake my duties as a councillor. I will not use it in any way for personal or party-political advantage or to discredit my Council (even if my personal view is that the information should be publicly available).

- 8.2 This means that if a councillor is provided with confidential information, such as information disclosed in a closed or private section of a council meeting or legal advice obtained by the council (either from officers or external legal advisers), they should not disclose or release it to the ALEO or to any other outside body or individual, even if it concerns the ALEO. If such a case were to arise, the councillor should raise the matter with the council's Monitoring Officer or their deputies.
- 8.3 **If a councillor is in any doubt about whether information is confidential, they should seek advice from their council's Monitoring Officer or their deputies.**
- 8.4 If a councillor is a director of an ALEO, they should ensure they are aware of their personal responsibilities under the Companies Acts. The law provides that a director of a company must avoid a situation in which they have, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company and, in particular, the exploitation of any property, information or opportunity. In addition to this, a non-contractual duty of confidentiality may be imposed by common law whenever a director receives information they know or ought to know is to be regarded as confidential. A director's duty of confidentiality can be expressed in a contract of employment or implied by law.
- 8.5 Similarly, charities legislation provides that a trustee of a charity must, in circumstances capable of giving rise to a conflict of interest between the charity and any person (which could include a council) responsible for the appointment of the charity trustee, put the interests of the charity first; and disclose the conflicting interest to the charity and refrain from participating in any deliberation or decision relating to the matter in question. Such circumstances could include being privy to confidential information in their role as a councillor.

9. Training and Assistance

- 9.1 Councillors should obtain training on their role from the council and / or the ALEO when appointed or nominated to an ALEO and should also attend any ongoing or refresher training in respect of their role as a councillor. Where the ALEO is a charity, specific training should be provided on the specific roles and duties of charity trustees. Depending on the resources available, the training may be provided by the council or the ALEO. However, it is a councillor's personal responsibility to seek out appropriate training and to ensure they are confident about any responsibilities and obligations in their different roles.

If a councillor has any concerns about how an appointment to an ALEO will impact on their role as a councillor or require advice on interpreting the provisions in the Code, they should seek assistance from the council's Monitoring Officer. Councillors can also refer to the Standards Commission's Guidance on the Code, which can be found on its website at www.standardscommissionscotland.org.uk/guidance/guidance-notes or contact the Standards Commission via email: enquiries@standardscommission.org.uk.

10. Sources of Information

- 10.1 Further sources of information that may be of assistance are listed in the table below.

Publication	Issued By
Guidance and Good Practice for Charity Trustees	Office of the Scottish Charity Regulator
On Board – A Guide for Members of Statutory Boards	Scottish Government
Reports to the Accounts Commission: ALEOs Following the Public Pound – follow up report (See Appendix 1 for 1996 Accounts Commission/COSLA Code)	Audit Scotland
How councils work series: ALEOs: are you getting it right	Accounts Commission
Office of the Scottish Charity Regulator: Who's in charge guidance?	OSCR
How councils work series: Roles and working relationships	Audit Scotland
The Role of Boards	Audit Scotland
Registration of Interests Amendment Regulations 2010	Scottish Statutory Instrument
Registration of Interests Regulations 2003	Scottish Statutory Instrument
Inquiry into arm's length external organisations	Scottish Parliament Local Government and Regeneration Committee

