

Independence of Mind

Common Knowledge

Independence of Mind The Relationship of Councillors and Officers to Outside Bodies

Foreword

An earlier version of this paper originally formed part of a Common Knowledge review of a local authority's relationship with its local voluntary sector. A piece of work commissioned by the local authority. Subsequently it was further developed for another local authority and voluntary sector organisations in general. The paper aims to assist Councillors and Officers clarify their role in and relationships with voluntary sector bodies.

Introduction

1. This paper looks at the roles of Councillors as Trustees or Observers. The points made about Councillors apply in general terms to Officers.

Note on the use of terms

2. The term 'partners' here is restricted to individuals and organisations that share formal responsibility for agreed actions. The term 'stakeholders' to describe those with an interest in a particular area but are not bound by formal commitments to action. Our experience has been that the term 'partnership' is too often used to describe what are simply looser forms of collaboration.

Clarity in relationships, clarity of purpose

3. The potential for effective decision-making, and where appropriate partnership working, is enhanced when the boundaries between different organisations are clearly demarcated and maintained¹.

4. Clear organisational boundaries along with clarity of objectives are the prerequisites of independent action. Where the boundary between voluntary sector organisations and local authorities is porous, difficulties can arise.

5. What is called into question here is Councillors and Officers acting as trustees of charities or of their having formal, or indeed informal, observer status on trustee or managing boards. This is distinct from the case where a Councillor accepts the burden of trusteeship as an individual. It is also distinct from the case where a voluntary organisation invites Councillors or Officers to a meeting for a specified purpose.

6. The tendency to consider it advantageous to have Councillors or Officers as trustees or as observers on trustee or managing boards is based on a misunderstanding.

¹This does not preclude the option of organisational mergers, but is almost certainly a precondition for ones that might be effective.

7. The misunderstanding is based on local authorities, and not uncommonly voluntary organisations, erroneously conflating two distinct and legitimate purposes:

- that of a local authority (or other funder) demonstrating support for an organisation on the one hand
- with that of monitoring or overseeing the use of funds on the other.

8. Councillors and Officers sitting as trustees carry all the responsibilities of trusteeship under charity law².

9. A trustee, whether or not a Councillor or Officer of a funding body, cannot act as a representative of that funding body; their responsibility as a trustee is to the charity and its beneficiaries.

Demonstrating support

10. Local authorities can demonstrate support for voluntary agencies in a number of ways, for example by:

- funding an organisation
- offering free or subsidised use of council facilities
- responding to lobbying and campaigns.

11. Councillor representation on charity bodies is neither a necessary nor sufficient indicator of local authority support. Such representation may, however, have a number of unintended consequences. It may:

- undermine a charity's capacity to recognise itself as fully independent, and take responsibility accordingly
- place Councillors and Officers in a difficult position when making funding and other decisions about grants
- give the impression that some voluntary organisations have disproportionate influence on Council³
- by implication, overemphasise the significance of some voluntary organisations
- give the impression that Council is paying insufficient attention to the impact that funded organisations have, or should have, in the communities they aim to serve.

²It is worth that a charity trustee is not shielded from their obligations under Charity Law because the charity is also a company limited by guarantee.

³There is always the danger that decisions will be *perceived* as unfair in cases where organisations with Councillors or Officers as trustees or observers receive Council funding, but those that do not have such representation are not so funded. Justice must be seen to be done.

12. In terms of individual Councillors, they have every right to support publicly organisations they value; this does not require the status of trusteeship.

Monitoring and oversight

13. It is the responsibility of Council Officers to ensure that appropriate, transparent procedures are in place for monitoring Council-funded voluntary bodies.

14. As noted above, Councillors and Officers fulfilling the role of Trustee are required to act in the interests and on behalf of the voluntary organisation they serve. As Trustees they cannot:

- represent the interests of Council
- be responsible for monitoring themselves, as Trustees, on behalf of another body (i.e. a funder).

Councillors & Officers as observers on charity governing bodies

15. Where a Councillor or Officer has *observer* status on a charity governing body or company board, there is a danger that they could become implicated in the decision-making process. That is, by participating in discussions leading to a decision by bona fide trustees they may unwittingly place themselves in the position of 'constructive trusteeship'.

16. In the case where company law also applies they may find themselves in the position of 'shadow directors'.

17. In circumstances where Councillors and Officers are held to be either constructive trustees or shadow directors, they can be held liable under the relevant Acts as though they were duly elected or properly co-opted.

18. The common sense point to be made is that Councillors and Officers acting as observers are highly likely to be implicated in the decision-making process, either by way of offering direct advice or being considered a source of authoritative opinion, be it technical or political.

19. This paper does not attempt to discuss in general how organisations work and develop. It is useful to note, however, that an organisation's sense of independence is intimately connected to its capacity to develop a sense of self-identity and internal coherence. This process is not aided when decisions and attendant discussions are made in the presence of observers whose - legitimate - interests and responsibilities lie beyond the boundaries of the organisation in which they fulfil an observer role.

A wider perspective

20. The habit has developed of describing citizens in receipt of services as 'customers' or 'consumers'. Whatever the virtues of this perspective, and in this

writer's view they are few, such a conceptualisation of actual or potential service recipients obscures a number of critical factors.

21. If the term customer means anything, it identifies a person in control of resources (however scarce) with the capacity to choose from a number of suppliers of competing services within a market place.

22. Generally, recipients of voluntary sector or indeed Council services will not have a choice about who is to supply a 'needed' service. There is, for example, no real market place of competing suppliers of advice, emergency night shelter, youth and community centres and so forth.

23. Rather, there are monopoly suppliers of a range of services and therefore no real choice from the customer or service user's point of view.

24. Two questions come to the fore:

- how in a monopoly or near-monopoly situation can actual and potential service users be assured that they are receiving the best possible service?
- how can local authorities be similarly assured that the projects and organisations they fund are offering the best possible service?

25. In a market place the price and quality of services can, at least in theory, be compared.

26. In the absence of a meaningful market, emphasis needs to be placed on the evaluation of services by both funding bodies and the funded organisation itself.

27. What follows is that those responsible for the allocation of public funds should be reluctant to be identified with, or formally responsible for, any particular service supplier. Local authorities should form part of the context within which questions about the quality, level and reach of services can be asked. Formally identifying with any particular organisation creates a potential conflict of interest and, as important, does not demonstrate in clear terms independence of mind.

Charity trustees

28. For the sake of completeness, it will be useful to offer a brief summary of the role of charity trustees. This has a bearing on Councillors and Officers relationship with charitable organisations.

29. Trustees are responsible for ensuring that a charity directs its best efforts towards the beneficiaries of their organisation. The Charity Commissioners, in the booklet 'Responsibilities of Charity Trustees', point out that:

'Trustees must be selected for what they can contribute to the charity. They should not be appointed for their status or position in the community alone: this is the function of patrons. Trustees must be able - and willing - to give time to the efficient administration of the charity and the fulfilment of its trusts. They should

be selected on the basis of their relevant experience and skills and must be prepared to take an active part in the running of the charity

'Trustees must act reasonably and prudently in all matters relating to the charity and must always bear in mind the interests of the charity. They should not let their personal views or prejudices affect their conduct as trustees. They should exercise the same degree of care as a prudent businessman would exercise in managing his own affairs or those of someone else for whom he was responsible'

30. The joint NCVO/Charity Commissioners working party report, 'On Trust' makes it clear that:

'Trustees are responsible for the character and personality of their agency: is it lively or sleepy? Is it respected in its constituencies so that it attracts resources? In a word, does it show vitality as conditions change?'

31. The management and strategic oversight of a charitable organisation require of trustees their time and a certain degree of single-mindedness. The intricacies of managing an organisation need close and consistent oversight. Questions of policy and practice inevitably arise as projects develop.

Incompatible responsibilities

32. By virtue of their wider responsibilities to constituents, to the local authority area as a whole, and the considerable demands on their time, Councillors are perhaps not ideally placed to fulfil the role of managing trustees. Such a position implies being in control of, and accepting responsibility for, the day to day running of a charity.

33. The multiple demands made on Councillors will generally allow little time for the detailed oversight of a charitable organisation.

34. There is also the danger that where Councillors, or indeed any trustees, serve on more than one charitable body and there is a 'business' or other formal relationship between those bodies, conflicts of interest may arise.

Conclusion

35. Our view is that Councillors and Officers should not act as trustees on voluntary organisations, or as formal or informal observers at trustee meetings. No prohibition should be placed on Councillors and Officers accepting trusteeship in a personal capacity.

Consequences

36. Acceptance of the proposal will have the effect of clarifying the boundaries between voluntary and statutory sectors. Councils will more easily be able to demonstrate that the focus of their interests are:

- actual or potential service users
- the quality of services being provided

- policy development
- local communities
- strategic oversight and planning.

Voluntary organisations

37. Voluntary organisations will have the opportunity to:

- establish and maintain clear organisational boundaries
- experience and demonstrate their independence
- clarify their role in relation to local authorities and other funders.