

Consultancy by Current and Former Public Sector Employees

RTPI Good Practice Note 2

1. Introduction

This good practice note gives guidance to planners on the professional conduct issues that can arise when they change their employment, engagement or involvement in public affairs. The reputation of planning is based on public perceptions of fair and transparent conduct by planners who act with integrity, independence and probity and do not give rise to conflicts of interest. Planners also owe professional duties to the public, their employers and clients.

The reputation of planning can be diminished if planners' roles and duties overlap in ways that cause conflicts. Care is needed when planners move from public to consultancy employment, move between employers, take additional employment or seek election to, membership of or involvement with public, campaigning or charitable bodies. This guidance applies to these and similar changes, whether they are temporary or permanent, part time or full time, paid or voluntary in nature.

This guidance identifies common issues that can arise when planners change roles. It helps planners to manage change in ways that demonstrate high standards of professional conduct. However, it cannot be exhaustive. Planners must honour the RTPI Code of Professional Conduct (which this guidance supports), even if the individual examples set out here are not relevant to them. The recommendations of the Nolan Committee on Standards in Public Life remain relevant and may help.

Additional help is also available from the RTPI Planners in the Workplace team.



RTPI

mediation of space · making of place

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2. Moving from the Public to the Private Sector

Chartered town planners often move from the public sector; for example to set up their own private practice, to join an existing planning consultancy firm, or to work directly for the development industry. However such movements from the public to the private sector can bring conflicts of interest.

Such conflict can arise particularly if a consultant is asked to work on a case within the geographical area of the authority for which they work or have previously worked. The interests of the client may be in direct or indirect conflict with the policies or decisions of the authority. In these circumstances the chartered town planner is in a sensitive position and must not only act with professional integrity, but be seen to do so by the public. This guidance note seeks to establish broad guidelines to assist both consultants and public authorities in the fulfilment of this principle.

Those who make this transition may be in the position of using knowledge acquired when working for a local or other public authority and turning it to their own private advantage. This applies particularly, but not exclusively, to

chartered town planners who held a position in middle or higher management within the authority. In consequence they may have been party to confidential discussions, or have information about matters which their previous employers would not have wished to become public knowledge. Similarly, they could be in possession of technical or policy related information which if used in a particular way could damage a proposal put forward by their former authority.

It would be wrong, for example, to use knowledge of:

- Possible changes in strategic policy making, e.g. modification of a restrictive employment policy or of areas under discussion for land release for housing, commercial or industrial development;
- Sites which a local authority was considering declaring surplus to its requirements;
- Land which was being evaluated in a development plan still in its formative stages, i.e. it had not yet been published;
- The views of senior officers expressed in internal departmental meetings, e.g. towards a development proposal or a major road scheme; and
- Policy areas in Development Plan Documents which for a variety of circumstances were held to be suspect and vulnerable by certain senior officers.

Former local government officers are more likely to find a conflict of interest than central government employees because of their local knowledge of development opportunities and the intentions of former employers. Yet, particularly if they are operating as sole practitioners, these members are likely to set up practice in the area in which they previously worked because it can provide them with the local contacts which are all important. In addition, they will have personal knowledge of local issues which will help them in deciding how to obtain work.

The first few months are critical and whilst members can choose to undertake work in their former local authority areas immediately on leaving the authority's

service, it is then however, that newly fledged consultants are most vulnerable to conflicts of interest. Issues under discussion at the time of public sector employment will still be current and any confidences relating to these issues will be especially 'sensitive' to the public authority. The dilemma is that consultants may be in breach of confidence if former employers' confidences are disclosed. Yet professional advisers owe a duty to act for, and in the best interest of, their clients. This could be interpreted as putting an obligation on consultants to reveal all that they know on the subject regardless of confidentiality. Members must not breach confidences. They must look ahead and not place or allow themselves to be led into a position where there is this dilemma. This may include choosing not to work for clients known through the previous employment, or within the area of the previous employment for a period of time.

3. Moving between Private Sector Employment

The same matters can arise when moving between private sector employers or opening as a sole practitioner consultant as arise when moving from the public to the private sector. Conflicts of interest must be avoided and information shall not be taken from one employer to another unless it is in the public domain.

4. Guidelines for Current Employees

Members still working in the public sector must abide by the relevant provisions in their contract or conditions of service. Whilst the 'Purple Book' (June 1984) conditions for local authority staff is now old it does set out the general standards that the RTPI is looking to maintain. It states:

"Official Conduct: General (Clause No. 70)

- (a) The public is entitled to demand of a local government officer conduct of the highest standard and public confidence in his integrity would be shaken were the least suspicion to arise that he could in any way be influenced by improper motives.
- (b) An officer's off-duty hours are his personal concern but he should not subordinate his duty to his private interests or put himself in a position where his duty and his private interests conflict. The employing authority should not attempt to preclude officers from undertaking additional employment, but any such employment must not, in the view of the authority, conflict with or react detrimentally to the authority's interests, or in any way weaken public confidence in the conduct of the authority's business.
- (c) The officer should not be called upon to advise any political group of the employing authority either as to the work of the group or as to the work of the authority, neither shall he be required to attend any meeting of any political group.

Whole-time Service (Clause No. 71)

Officers above Scale 6 shall devote their whole-time service to the work of their Council and shall not engage in any other business or take up any other additional appointment without the express consent of the Council."

The more recent 'Green Book' (May 2003) states:

"2. Official Conduct

2.1 Employees will maintain conduct of the highest standard such that public confidence in their integrity is sustained.

2.2 Local codes of practice will be developed to cover the official conduct and the obligations of employees and employers."

Failure to comply with these local codes of practice could put a member in breach of his or her contract of employment. This might lead to dismissal or other action by their employer. Even if not specifically required to do so, members should obtain the written agreement of their employer before undertaking any planning consultancy work. This should avoid later misunderstandings. If this is publicly known to be the accepted procedure, it may prevent misconceptions by third parties. This also applies to staff working on a part-time or contract basis.

In addition, members are reminded that the Code of Professional Conduct prohibits them from undertaking any private planning work, development or dealing in land or buildings in the area which they are in a position to recommend the making of any planning decision materially affecting the development of, or use of, land. There are exemptions for members' residences and for giving planning advice free of charge to the public as part of their employment.

Nevertheless, members should not be prevented from exercising their normal public rights as individuals to comment upon planning applications or proposals, so long as they make it clear they are acting as local residents and not as planning officers.

There is a risk that members may engage in spare time activities which breach the principle that they should not only act with professional integrity, but should be seen to do so by the public and their employers. In essence, members

should ensure that advice given in their spare time (both paid and voluntary) is consistent with that given to their employers and that there is no confusion about the fact that they are acting in a private capacity. Unless they follow this principle, they may run the risk of a disciplinary complaint to their employers or the RTPI.

Those involved with political and voluntary bodies should note Clause 5 of the Code of Professional Conduct which states that:

“Members shall not disclose or use to the advantage of themselves, their employers or clients information acquired in confidence in the course of their work”.

There could, for example, be conflict between being a planning officer to Authority A. and a member of the Planning Committee in Authority B.

Chartered town planners who are also councillors will have to comply with the ‘Model Code of Conduct for Members of Local Authorities’ under the Local Government Act 2000. These include:

2. “Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.
6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions”.

If a member in public service wishes to engage in voluntary activities there is still a risk of conflict but the need for caution should not preclude the activity. For example, members giving advice through Planning Aid should have little difficulty in complying with both their contract and the Code. They must also comply with the 'Code of Practice for Volunteers in Planning Aid Services of the Institute'.

5. Guidelines for the Transition Period: Public to Private

The RTPI does not consider it generally appropriate for public sector employees to carry out paid private planning work in their spare time. Nevertheless, it has to be recognised that there will inevitably be a period of transition when members are about to leave public service to enter consultancy. The following section deals with members' conduct during that period and their first years as a consultant.

Chartered town planners have a contractual and professional obligation to serve their authority selflessly so long as they are in its employ. This duty goes beyond that of merely not revealing confidential information. An obligation remains even though they may have terminated their public sector employment and are serving out their notice. The point made in section 2, about the dilemma of dual interests is especially relevant at this stage. If they feel that they are being placed in a compromising position by pressure from a future employer or potential client, they should discuss the matter with their present employer. If discussion confirms a conflict of interest, the member must resist the pressure and not allow themselves to be compromised.

6. Guidelines for Former Employees

Once they have left their appointment, members are no longer restrained by contract or loyalty to their former employer. They are free to criticise the attitudes and policies of the authority or central government department in which they were employed, but they could be held to be in breach of the RTPI's Code of Professional Conduct if they disclose information acquired in confidence. If the confidentiality of particular information is in question, the test

is whether or not it would have been revealed to a member of the public making the most diligent but fair enquiry of the authority.

If after careful consideration of the issues and likely course of events, (e.g. reference to a public inquiry) it appears that conflict might arise, as described in section 2, the consultant chartered town planner should discuss the matter with the former employer. If this discussion confirms the possibility of conflict, they should advise their client that they cannot personally pursue the case. In other cases when the possibility of conflict is in genuine doubt, it would be prudent to obtain the authority's written consent before proceeding and such consent should not be unreasonably withheld. In the event of difficulties in specific cases the RTPI should be consulted.

For example, where a chartered town planner moves to the private sector and is minded to express a different professional opinion on a matter with which they were personally concerned in their previous employment, then they should not advise such a private client. This may not apply where there has been a change in planning policy or planning circumstance since leaving that employment.

Alternatively members should ensure that a period of two years has elapsed since leaving that employment. Similarly, a chartered town planner moving between private practices must maintain their professional integrity on expressing professional opinions.

If a member acts as an advocate in a case against their former employer, not only should they not disclose privileged information, they should not take advantage of that information in cross-examination.

A former employee should not be prevented from divulging technical information or from criticising methodology, e.g. forecasting techniques used by their previous authority.

Public sector employers should adopt an impartial attitude to former employees who set up in private practice in their areas. Members should not be denied

such levels of assistance and information that would be available to the public whether as applicants, appellants or objectors.

As a corollary, former employees should not expect access to information, confidential documents or privileges that are not normally available to the general public. Neither should they claim or expect any advantages. If they return to the offices of their former employer, they must conduct themselves and expect service in the manner appropriate to any visitor.

7. Conclusion

To summarise:

- A member should look ahead and should not accept a private commission, paid or unpaid, or take up an appointment if there might be any possibility of conflict with the interests of their present employers or with their past employers on matters of a confidential nature;
- If the confidentiality of particular information is in question, the test is whether or not it would have been revealed to a member of the public making the most diligent but fair enquiry of the authority;
- While a member remains in public sector employment they must abide strictly by the terms and conditions of their service. They should notify their employers if they engage in the activities covered in this guidance note;
- Former employees must not disclose or use to their advantage information acquired in confidence. Their professional relationship with officers of their former authority should be 'at arms length' and their conduct while on the authority premises should conform strictly to what is expected of any visiting member of the public;
- The consultant's former employing authority should accord to the member no more and no less than it would to other members of the public.

In short, members should ensure that they not only follow the wording of the Code of Professional Conduct and this good practice note but also are seen at all times to comply with the principle of conduct in such a manner as to uphold the reputation and integrity of the RTPI and the planning profession. If in doubt, they should seek advice from the RTPI.

8. Sources of Further Information

For more information please visit:

Planning Aid www.planningaid.rtpi.org.uk email: info@planningaid.rtpi.org.uk

RTPI Code of Professional Conduct www.rtpi.org.uk/about-the-rtpi/codecond.pdf

Model Code of Conduct for Members of Local Authorities

www.opsi.gov.uk/si/si2001/20013575.htm

Green Book – is the national agreement on pay and conditions of service for local government services. It is available to purchase from Local Government Employers

www.lge.gov.uk/conditions/lgs/content/book_green.html

Alternatively please email: piwp@rtpi.org.uk

The principles contained in this guidance note are relevant to chartered town planners working in all parts of the UK.

Planners in the Workplace is a broad initiative providing services designed to support planners in their roles and to help them develop as planners, as managers and as leaders in the workplace. For more information on this initiative, please email: piwp@rtpi.org.uk

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