



FALKIRK COUNCIL

EXTRA-MURAL EMPLOYMENT POLICY



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PART 1

1.1 POLICY STATEMENT

Falkirk Council aims to recruit and retain high calibre employees and ensure a commitment to equal opportunities. The Council recognises that on occasion, employees may wish to take on additional employment or voluntary work and this policy is intended to allow employees this flexibility while fulfilling it's obligations in relation to the Working Time Directive, relevant legislation and Falkirk Council's Code of Conduct for Officers.

PART 2

2.1 INTRODUCTION

Employees must not undertake any form of employment additional to their current employment with Falkirk Council which is potentially in conflict or is of such a nature, timing or duration that it may have an adverse effect upon the proper performance of their duties.

2.2 SCOPE

This policy is intended to assist Services to prevent, as far as is practicable, conflicts of interest arising, however unintentional, in relation to the employment of all permanent and temporary employees. It is not intended that this policy apply to casual workers within the Council.

2.3 DEFINITION

Extra-mural employment relates to any paid or unpaid employment undertaken by an employee which is additional to their substantive post with Falkirk Council, including self employment and employment elsewhere within or outwith the Council. It is noted that an employee's substantive post may be with another organisation and that their employment with the Council may be secondary.

This policy also relates to extra-mural activities not regarded as employment but only where such activities may conflict with the proper performance of an employee's duties. This is not intended to refer to adhoc charitable or voluntary work but rather where an individual is an officeholder with a charitable/ voluntary organisation, Parent Council, or other similar body and their extra-mural role has the potential to conflict with their Council employment. For example, a conflict may occur where an employee is involved in issuing grants on behalf of Falkirk Council and also holds a position such as Treasurer or Secretary of a voluntary group applying for financial assistance from the Council. It is not the intention of the policy to prevent employees from undertaking such extra-mural activities but simply to identify the need for such activities to be discussed with the relevant line manager to avoid any conflict of interest arising.

Employees will only be permitted to engage in other employment or business activity provided that it does not interfere with, or adversely affect either the Council's interests or the employees' ability to meet contractual requirements and does not breach any statutory obligation (e.g. Working Time Regulations). Any additional employment or business requires the prior written consent of an employee's line manager.

PART 3

3.0 PROCEDURE

3.1 DECLARING EXTRA-MURAL EMPLOYMENT

Any employee, who is considering undertaking additional employment, starting up a business or becoming an officeholder of a charity or other similar body, must discuss this in advance with their line manager to explore the potential for any conflict of interest to arise and complete a Record of Extra Mural Employment/ Activities form (Appendix 1).

Equally, any employee currently undertaking such extra-mural employment or activities, which have not been notified to their line manager, must complete this form and discuss the impact of this upon their substantive post with their Line Manager immediately.

3.2 IDENTIFYING POTENTIAL CONFLICTS OF INTEREST

If an employee is considering or is currently undertaking extra-mural employment, the employee's line manager should consider the potential for a conflict of interest to arise between the employee's extra-mural employment/ activities and his/her post. This should be considered in consultation with the employee concerned. Where no conflict of interest is identified this should be recorded as detailed in section 3.3.

When recruiting individuals already employed by Falkirk Council it should be established at interview stage whether the employee intends to retain their current post if successful in their application. If an employee intends to retain their current post then a discussion will need to take place with the successful candidate as to whether/ how this may impact on their Council post and an extra-mural employment/ activities form should be completed to reflect this discussion and record any limitations required.

Where a potential conflict of interest is identified, this must be recorded, as detailed in Section 3.4 below and the decision as to whether this is approved or not would lie with the Service Director/ relevant Chief Officer in consultation with Human Resources and Governance.

Areas to be considered, when determining whether a conflict of interest is likely to arise, include:

Hours of Work

Consideration requires to be given generally to whether the hours involved in the employment/business, in terms of their frequency and timing, are liable to affect an employee's capacity at work.

Falkirk Council has a responsibility under the Working Time Directive (WTD) to ensure that employees receive appropriate rest breaks, daily rest periods, and weekly rest periods. Falkirk Council also has a responsibility to ensure that employees do not exceed the maximum weekly working hours of 48 hours in any 7 day period averaged over 52 weeks (as per workplace agreement).

Consideration should therefore be given to the employee's working hours arrangements in the other employment and also to the potential impact of those commitments on their Council duties. For example, would the employee's extra-mural employment impinge upon any requirement for them to work shifts or flexible hours on behalf of the Council? The extra-mural employment needs to be assessed against the WTD to ensure adequate rest periods are available and the additional time does not contravene any of the regulations. See Appendix 2 for WTD entitlements.

External Contractors

If an employee involved in the award of contracts has or is likely to have a business relationship outwith their Council duties with existing or potential external contractors, this may be perceived as a conflict of interest. Advice in this regard may be sought from the Council's Monitoring Officer, who is based within the Governance Section.

Dealings with the Council

Consideration should also be given to whether the employee is likely to have dealings with the Council in the course of their extra-mural employment. For example, could the employee or his/her other employer gain financially or otherwise through decisions or actions taken by the employee in the course of Council employ or as a result of his/her knowledge of confidential Council matters?

General Impact

Consideration requires to be given more generally to whether the extra mural employment or activities concerned is likely to detrimentally impact on public confidence in the Council or has the potential to bring the Council into disrepute.

3.3 WHERE NO CONFLICT OF INTEREST IS IDENTIFIED

Where no conflict of interest is identified, the employee's line manager should confirm his/her knowledge of the employee's extra-mural employment/activities by ensuring that a Record of Extra Mural Employment/ Activities Form (as attached at Appendix 1) is completed and this information is recorded within a Service-based Register (as described in Section 3.5 below).

Thereafter, it is the responsibility of the employee concerned to advise his/her line manager of any change in circumstances relating to their extra-mural employment. The line manager should however, review this on a regular basis, at least annually.

3.4 WHERE A POTENTIAL CONFLICT OF INTEREST IS IDENTIFIED

Where the potential for a conflict of interest to arise is identified, the line manager should discuss this with the employee, taking into consideration the details provided in the Record of Extra Mural Employment/ Activities form, to consider methods of preventing such a conflict arising.

For example:

- Limiting the hours worked in the extra mural employment;
- Taking advice if there is to be a business relationship with the Council in the extra mural employment;
- Ensuring that the employee or his/her other employer does not gain financially or otherwise through decisions or actions taken by the employee in the course of their Council employ or as a result of his/her knowledge of confidential Council matters.

This list is not exhaustive.

The Record of Extra-Mural Employment/ Activities form, as attached at Appendix 1, should be completed, indicating areas of concern and any mechanisms proposed to prevent a conflict of interest arising, and sent to the relevant Service Director/ Chief Officer for consideration.

The Service Director/ Chief Officer, in consultation with Human Resources and Governance, will either:

- (a) Approve the extra-mural activities/employment on the basis of information provided;
- (b) Approve the extra-mural activities/employment with some specified limitations in order to prevent a conflict of interests arising; or
- (c) Where a clear conflict of interest exists, refuse consent for the employee to undertake the extra-mural employment/activities detailed whilst maintaining their Council employment. In such circumstances, the employee concerned should be made aware that undertaking such extra-mural employment/activities could lead to disciplinary action being taken against him/her under the Council's Disciplinary Policy & Code of Practice. Further advice in this regard will be available from Human Resources.

If an employee disagrees with the decision to refuse consent for extra mural employment or activities then they may submit a grievance in accordance with the Grievance Policy.

3.5 RECORDING

In order to assist managers in the systematic review of all declared extra-mural employment undertaken by employees within their section/Service, a register of such activities should be maintained by a nominated individual centrally within each Service.

This register should contain a record of Extra-Mural Employment/ Activities forms and record:

- (a) The nature of the extra-mural employment/activities being undertaken
- (b) The name of any external employer/organisation
- (c) Average hours worked and the timing of such hours
- (d) Whether employment is temporary and if so, the duration of such employment
- (e) Any comments recorded by line manager following meeting with employee
- (f) Any conditions/limitations agreed with employee in relation to their extra-mural employment/activities
- (g) Review date where applicable.

A template Register is attached for information (appendix 3)

The Council's Monitoring Officer should be provided with a copy of this Register and advised of any amendments as required.

3.6 REVIEWING EXTRA-MURAL EMPLOYMENT

The appropriate Manager should arrange to meet with the employee concerned by the agreed review date to consider whether the circumstances surrounding his/her extra-mural employment have altered and to ensure, where applicable, that any condition(s) placed upon such activities are being adhered to.

If at this stage, or at any point during the employee's employment, it becomes apparent that an employee's extra-mural employment is having an adverse effect upon the performance of their Council duties or have resulted in a conflict of interest arising, this matter should be investigated. The Service will in such circumstances have the right to withdraw approval for the extra mural employment with immediate effect. Equally, if any limitations or conditions were in place and are not being adhered to, or other such issues have arisen, disciplinary action may be taken against the employee concerned in accordance with the Council's Disciplinary Policy & Code of Practice.

3.7 CASUAL EMPLOYMENT

Whilst it is not intended that this formal procedure be applied to individuals employed on a casual basis by Falkirk Council, managers should be aware of other employment undertaken by casual employees and should refrain from employing individuals on a casual basis in areas, or undertaking duties, where a potential conflict of interest may arise.

PART 4

4 REVIEW

The Head of Human Resources & Business Transformation, in conjunction with Service Directors and Trade Unions, will monitor and review this policy and procedure as required.

This Policy has been Equality Impact Assessed and no adverse impact has been identified.

APPENDIX 1

RECORD OF EXTRA-MURAL EMPLOYMENT/ ACTIVITIES	
SECTION 1:	
(To be completed by employee)	
Name:	Employee No:
Address:	
Falkirk Council Employment:	
Post:	Service:
Location:	No of Hours:
Status: Permanent/ Temporary	
Working Pattern:	Monday:
Tuesday:	Wednesday:
Thursday:	Friday:
Saturday:	Sunday:
Extra-Mural Employment Details	
Type of Employment: Perm/ Temp/ Casual	
If temporary, please specify duration:	
Employer/ Agency:	
Address:	
Post:	No. of Hours:
Working Pattern:	Monday:
Tuesday:	Wednesday:
Thursday:	Friday:
Saturday:	Sunday:
Description of duties:	
Description of non-employment extra-mural activities – e.g. officeholder of voluntary organisation, Parent Council or similar body:	
Declaration:	
I confirm that the above is accurate and agree to advise my line manager immediately of any changes to this information	
Signed:	Date:

SECTION 2: (To be completed by line manager)	
Areas of Concern/Potential Areas of Conflict Identified:	
Suggested Conditions/ Restrictions relating to extra-mural employment/ activities:	
Comments:	
Review Date:	
Conflict of Interest Identified: Yes/ No If YES- forward to Service Director/Chief Officer for review If NO- forward for inclusion on service register	
Signed:	Date

SECTION 3: (To be completed by Service Director/ Chief Officer)	
This request is (✓ as appropriate):	
Approved:	
Not Approved:	
Approved with conditions :	
Conditions:	
Date of liaison with Monitoring Officer (where appropriate):	
Signed:	Date:

SECTION 4: REVIEW				
<u>Review Date</u>	<u>Change to Extra Mural</u>	<u>Conditions to apply</u>	<u>Comment</u>	<u>Signed</u>

WORKING TIME DIRECTIVE

Rest Break – where the working day exceeds 6 hours an employee is entitled to a 20 minute break. For young workers (under the age of 18) where the working day exceeds 4.5 hours an employee is entitled to a 30 minute break. Lunch breaks qualify as a rest break.

Daily Rest Period – entitlement to a minimum rest period of 11 consecutive hours in every 24 hours. For young workers there is a minimum rest period of 12 consecutive hours in every 24 hours. Some employees e.g. shift workers are excluded from this provision. This can be calculated over 14 days.

Weekly Working Hours – maximum weekly working hours of 48 hours in any 7 day period (Averaged over 52 weeks by Falkirk Council collective agreement). If employees wish to opt out of this, then an agreement must be signed and this is subject to review.

Weekly Rest Period – entitlement to a minimum rest period of 24 consecutive hours per week (or 48 hours per fortnight). For young workers the minimum rest period is 48 consecutive hours in every 7 day period, which cannot be averaged.

For workers with more than one job:

The limits on the working week apply only between **a** worker and **an** employer, and there is no duty on the employer to take into account the existence of a second job in the exercise of the duty to ensure that the worker's average working time does not exceed the permitted limit.

However employers are obliged under the WTR 1998 (Reg 4) to take all reasonable steps to ensure that the 48 hour limit on weekly working hours is complied with. This means that where an employee has 2 jobs both employers will be obliged to ensure that the employees total working hours in the 2 jobs combined do not exceed the limit unless the individual has chosen voluntarily to sign an opt out. If a manager knows or suspects that one of their employees has another job, they should make reasonable enquiries of the employee to ascertain how many hours a week in total he or she is working. If, following such enquiries, it transpires that the employee is working more than an average of 48 hours a week in total, the manager should, in order to comply with the Working Time Regulations 1998, ask the employee whether he or she wishes to sign an opt-out agreement. The manager should point out that, if the employee declines to do so, action will have to be taken to ensure that he or she does not work in excess of 48 hours a week on average. More importantly, if in the manager's view the number of hours being worked might threaten the health or safety of the employee (or of others), the manager must take all reasonable steps to remove the health or safety risk. This might mean instructing the employee to give up the other job, or reduce the number of hours being worked there (if that is reasonable). The priority should be to protect the health and safety of all workers by ensuring that no individual works such long hours as to be a danger to him- or herself or to others.

Rest periods are treated under the WTR as entitlements which the employer must not refuse the worker and as such it is possible for employees to choose to take a second job during his or her 11 hour daily rest period or on his or her weekly rest day. However, Falkirk Council recognises that it is good practice to ensure that the impact of any extra-mural employment on an individual's substantive post is assessed and taken into consideration. Under the general duty on Falkirk Council to ensure the safety and health of employees, the rest periods should be maintained/adhered to.

In the case of young workers, under the age of 18, specific provision is made that the maximum working day and week is for all employments combined and that entitlement to a rest break is to be calculated by reference to hours worked for all employers. If there is more than one; this reflects the different wording of the Young Workers' Directive.

Managers should be aware that if an employee takes on public duties such as becoming a magistrate, legislation may allow such duties to be undertaken. The Employment Rights Act 1996, section 50 permits time off for matters such as serving as a Justice of the Peace, or a member of a local authority, tribunal or school governing body. There are also rights to time off for trade union duties. Managers should take advice before a request is refused.

SERVICE BASED REGISTER

Name and employee Number	Job Title	Current Hours	Name of other employer	Nature of extra-mural employment/ activities being undertaken	Extra-Mural Hours	Duration (if temporary)	Comments	Conditions or limitations agreed with employee	Review date where applicable