Newcastle City Council

THE NEWCASTLE CHARTER

Part 7C – Guidance for Members and Officers – Appointees to Outside Bodies and Organisations

Notes:-

This section contains guidance and is not a formal part of the Council's Constitution

Authorisation

This guidance was prepared by the former Head of Legal Services and agreed by Constitutional Committee on 4 February 2008 and Council on 5 March 2008.

Changes were made in 2012 to reflect the new Members' Code of Conduct and up to date legislation.

NEWCASTLE UPON TYNE CITY COUNCIL

Appointees to outside bodies and organisations – A Guide for Members and Officers
(approved by Council 5 March 2008)

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1. Introduction

This is a general guide for members and officers **who are appointed by the City Council to sit on outside bodies/organisations**.

It describes various types of bodies and the implications of sitting on them, particularly in terms of legal liability. It gives general guidance on issues such as conflicts of interest, indemnity and insurance.

As local authorities work in ever more complex ways and with an increasing range of external bodies, awareness of these issues becomes more important.

Although intended for those formally appointed to outside bodies by the Council, this Guide may also assist:

(a) members or officers who are involved with an organisation in their private capacity, and remind them of their obligations if it has dealings with the Council, or

(b) officers who work with community and voluntary organisations as part of their job, without being formally appointed to them – section 14 of this Guide gives extra advice on this type of situation.

2. Codes of Conduct

Elected **members** are governed by the Members' Code of Conduct (at Part 5.2A of the Newcastle Charter). Any member who is the Council's representative on an outside body should, when acting for that body, comply with the Code, unless it conflicts with any legal obligations to which the outside body is subject.

There is no national Code of Conduct for **officers** in English local authorities, but the Council has adopted its own Code of Conduct for Employees. Like members, officers should comply with that Code when acting as the Council's appointee on an outside body, unless it conflicts with any other legal obligation imposed on the body.

Sections 11 and 13 of this Guide give further advice about the need under these Codes to declare personal interests arising from being a Council appointee.

3. Should Council nominees sit on outside bodies?

Despite the cautionary advice in this Guide, it must be stressed that Council officers and members have for many years worked closely with, and represented the Council on, many outside bodies. Almost always these arrangements have worked well.

There are usually good reasons for Council representatives/nominees to sit on outside bodies, either because (a) it is required by law or (b) the Council is a member of, or has some ownership in, the organisation or (c) the Council is working in partnership with other organisations or public authorities. Appendices B and C of Part 8 of the Newcastle Charter list bodies on which elected members sit as Council nominees.

However, the issues raised in this Guide suggest that in some cases careful thought should be given to how officers and members work with outside organisations and in particular the wisdom of them formally representing the Council on such bodies in any decision-making role. This reservation applies particularly to officers, and those outside bodies which are independent of the local authority (i.e. of which the Council is neither a member nor has any other ownership) and which represent other interests within the wider community.

Officers in carrying out their duties must often quite properly develop close working relationships with outside bodies (sections 14 of this Guide refers to this). However, it is suggested that rarely should it be necessary or desirable for an officer in his or her official capacity to become a member of that body or its decision-making structure or to assume any decision-making role in it. To do so runs the risk of the Council being seen as having undue influence on the organisation or undermining its independence. Equally, it may undermine the Council's ability to be seen to be dealing impartially with that organisation compared with others.

Thus, before deciding to appoint a Council representative/nominee to sit on any independent outside body, careful thought should be given to whether it is really needed or in the interests of either organisation. Can a productive and meaningful working relationship between the two not be achieved by other means? If an appointment is still thought appropriate, the advice of the Service Manager Democratic Services or Assistant Director Law and Governance should be sought before it is made. The Service Manager Democratic Services will keep a record of any such appointment and thus should also be notified when it is made.

4. Checklist for Members and Officers appointed to outside bodies and organisations by the Council

Annex 1 of this Guide is a Checklist for members and officers to use. If you are appointed to an outside body, it would be good practice to see if you can answer the questions in the checklist and, if not, make enquiries to enable you to do so.

This should help you understand the nature of the organisation and your role in it and help you work more effectively.

It is suggested you first ask the organisation itself, usually through its Secretary, to complete the checklist as far as it can and provide you with any documents referred to in it. Help on any outstanding questions can be sought from the Council's Service Manager Democratic Services or any other senior officer whose job involves working with the outside body – they may have useful information about it or your expected role on it.

Having completed the checklist, you should give a copy to the Service Manager Democratic Services. This will help the Council to (a) keep an up-to-date database of every organisation upon which it has nominees and (b) advise other members or officers who in future are asked to sit on the same organisation.

5. Types of Body

A Council member or officer may represent it on an outside body in different ways, depending upon the type of body it is. S/he may for instance be a **member** of a management committee (which manages an unincorporated association) or a **director** of a company and/or a **trustee**

of a registered charity. The following paragraphs describe these different bodies and roles:

5.1 Companies (incorporated bodies)

As an incorporated body, a company has a legal identity of its own, separate from its members. There are different types of company, the most usual being that limited by shares where the potential liability of the members (i.e. the owners or shareholders) is limited by the extent of their shareholding. Another common type is a company limited by guarantee where the members' liability is limited to a nominal sum e.g. £5.

The governing documents of a company are a Memorandum of Association (which sets out the objects and powers of the company) and the Articles of Association (which specify how it will be run, procedures at meetings, appointment of directors, etc).

Whatever type of company, it will be managed (subject to the overall control of its members or shareholders through general meetings) by a committee or board, usually called the Board of Directors.

There are obligations for anyone who is a director of a company.

- **a fiduciary duty to the company**, (not to the individual shareholders or the Directors), to act honestly and in good faith and in the best interests of the company as a whole. Directors are, therefore, in the position of quasi-trustees who must take proper care of the assets of the company.

- **a general duty of care and skill** to the company - but no greater skill than might reasonably be expected of someone with the particular knowledge and experience of that member or officer. A Director is **not expected to be an expert**, (unless he or she holds themselves out to be one) but is expected to use due diligence and to obtain advice if necessary.

- like a councillor in respect of Council decisions, a Director is under a duty to exercise **independent judgement**. If the Council appointed Director is in a position where the interests of the Council are relevant to a particular matter, s/he must disclose this and tread a fine line between the interests of the company and the Council. It is not acceptable to simply vote in accordance with the Council mandate - to do so means the Director has breached the duty owed to the company. In other words, simply because the Council has taken a particular line on an issue does not allow the Council appointee to take the same line when sitting as a Director. If that is not in the best interests of the Company, then s/he should not follow that line.

- There may be **actual or potential conflicts between the interests** of the Council and the interests of the company. For example, the

company might be inflating a bid for a Council grant. In such circumstances the proper way for the conflict to be dealt with is for the member or officer Director to resign from the company.

- Directors are not allowed to make a **private profit** from their position. They must therefore disclose to the company any interests they or their family have in relation to the company's contracts. Whether the Director is then allowed to vote will depend upon the Articles of Association.

- Directors must ensure **compliance** with the Companies Acts in relation to accounts and returns to the Registrar of Companies. Failure to do so can incur a fine and persistent default can lead to disqualification as a Director. In practice, this will be undertaken by officers of the company, particularly its secretary, but the Directors must reasonably satisfy themselves that these obligations are being discharged.

- Directors should also ensure the company **complies with other legislation** such as health and safety legislation if the company employs staff or contractors.

In practice, if as a Director you act in good faith, use adequate skill and vote in the best interests of the company in the light of any professional advice, you are highly unlikely to attract any personal liability, given the status of companies as separate legal bodies.

5.2 Unincorporated associations

An unincorporated association is a group of people bound by a common purpose and not incorporated as a company. Most local voluntary and community organisations, clubs, residents' and tenants' associations, etc. will fall into this category.

An unincorporated association is not recognised as a legal entity – rather the law sees it as 'the members of Anytown Community Association acting together' and recognises only the individuals who make up the organisation. Because it has no legal status, it cannot sue or be sued in its own name.

If an unincorporated association wants to own land or property, it will usually have to appoint two or more of its members as trustees to do so on its behalf.

If an unincorporated association cannot meet its financial obligations or gets into legal trouble, the members of the association (and particularly its management committee as the decision-makers) have potential unlimited personal liability.

There should be a written Constitution, which essentially is a set of rules agreed between members as to how the organisation will operate.

Usually, the constitution will provide for a management committee, drawn from its members, to be responsible for running the organisation, with input from the full membership at general meetings. The constitution may provide for one or more Council nominees(s) to be appointed to sit as a full member of the management committee, in which case that nominee (if s/he agrees to accept that appointment) will have all the potential liabilities of such a member. This should be clarified when nominations are being considered. Alternatively, the Council appointee may be invited to attend management committee meetings simply as an observer or an advisor, in which case s/he will not be (and should not be treated as) a member of the committee and will not be entitled to vote and should not do so.

It is important that where any Council officer or member does attend in an advisory or observer role, s/he is not seen to be exerting any inappropriate influence upon the management committee when it is making decisions.

There are some general points to bear in mind:

- Management Committee members must act within the **terms of the constitution** and must take **reasonable care** when exercising their powers.
- Members or officers who sit as members of a Management Committee will have **joint and several liability** with other members of it. This is because the unincorporated association itself has no legal status, and any redress sought by third parties dealing with it can only be through its members. The members will however have an indemnity from the funds of the association if they have acted properly. However, if the body has insufficient funds, they will be potentially liable for any shortfall.
- There is potential **personal liability** in the event of acting outside of the authority given, not complying with the law or acting criminally.
- It is possible that the organisation itself can take out **insurance** for its members as long as its constitution allows for this.

Management Committees of unincorporated associations often include a mixture of those with little or no commercial or business experience or skills and those who have plenty of such experience and skills. In the vast majority of cases, they work well together, but sometimes problems can occur. The members of a management committee and its employees may disagree about how the body should be run, the members of the committee may fall out between themselves over this, or they may simply be very incompetent at running the organisation. Such problems can in turn lead to financial difficulties and potential personal liability of the members for such things as: outstanding rent arrears on any building the organisation uses; payment of compensation to staff for redundancy, unfair dismissal or discrimination; the payment of any outstanding debts of the organisation.

Any Council member or officer appointed by the Council to a management committee should be aware of these risks and should seek the advice of

the Assistant Director Law and Governance, Chief Finance Officer or Service Manager Democratic Services if s/he has any concerns about the way in which the body is being managed or the likelihood of any of these sorts of financial risks materialising

5.3 Charities

Most charities must be registered with the Charity Commission although some exempted or excepted charities need not be.

A charity will have adopted one of several possible legal structures. The most common are:

- An unincorporated association (see above)
- A company limited by guarantee (see above)
- A charitable trust, which is another type of unincorporated organisation which will be regulated by its trust documents

All charities hold their assets ***in trust*** which is why those responsible for the general control and management of a charity are referred to as Trustees. All charities must have charity trustees or their equivalent. In a company established for charitable purposes, the directors are the equivalent of the charity trustees. In an unincorporated association, the management committee members will fulfil that role.

Charity Trustees

A Trustee of a charity must:

- act in the **best interests** of the charity
- know about and act in accordance with its **governing documents**.
- **protect the charity's property and assets,** and ensure their efficient, economic and effective use.
- **comply with charity law** i.e. the Charities' Acts and the Trustee Act 2000.
- not make a **private profit** from their position or contract to do business with the charity.
- act with the **standard of care** that an ordinary and prudent business person would show. Higher standards are required of professionals and in relation to investment matters.
- ensure that the information relating to the trust and trustees is **registered with the Charity Commission** on time and that annual accounts and returns are completed and sent.
- ensure that letterheads, adverts, cheques etc bear a **statement** that the organisation is a registered charity, if its income exceeds £5,000.
- ensure the charity's **compliance with all relevant legislation**, for example, in relation to tax and health and safety, child protection etc.

- not be employed by the charity unless this is authorised by the governing documents or the Charity Commission.

Anyone can obtain advice and help from the Charity Commission – Tel 0300 0669197. If the points above and Charity Commission advice are followed, personal liability is likely to be avoided.

A number of useful publications are available on the Charity Commission's website: www.charitycommission.gov.uk, in particular 'The Essential Trustee' which explains the roles and responsibilities of charity trustees in some detail.

Trustees of an unincorporated association or a charitable trust can be **personally liable to third parties** because (unlike a company), the charity has no separate legal identity. Trustees are, however, entitled to an indemnity from the charity if they have acted properly in incurring the liability.

Such trustees remain **personally liable when they retire** and should therefore seek an indemnity from their successors.

Trustees may take out **insurance** which should cover them as long as they have acted properly and within their powers for liability while acting as a Trustee. Alternatively, the charity itself has power under the Charities Act 2006 to purchase trustee indemnity insurance, as long as the governing document does not specifically exclude this. However, insurance will not provide cover against liability for criminal acts, fraud etc.

5.4. School Governors

A member or officer may be appointed a school governor on the 'governing body' of a school.

The governing body of a community, voluntary or maintained school has a **separate legal identity** from that of the individual Governors (this is like the position with companies). It means that the Governing Body, rather than individual Governors, will generally be responsible for the acts of the governors. So long as a Governor acts honestly and reasonably and within their powers when carrying out their delegated powers/duties, any liability will fall on the governing body rather than the individual governor concerned.

Governors should follow these principles:

- Always **act reasonably**, seek and act upon professional advice when necessary and at all times act with the **school's best interests** as the main consideration.
- If, as a Governor, it is appropriate to act on your own, ensure you are acting under **properly delegated authority** and that

what you are doing falls within the parameters of that authority.

As the LEA, the Council has developed a model code of conduct for school governors which it encourages governing bodies to adopt. Local authority appointees are required to sign up to that code.

5.5 Consultative or Advisory Bodies

These are bodies the Council may recognise as having a formal advisory or consultative role. An example is an external committee or a statutory partnership which advises the Council on various issues, or the sub-groups of such bodies which may advise those bodies or the Council direct.

Such bodies may have a variety of different arrangements under which they operate, often simply some written terms of reference set out in an agreement between the parties who set up the body. In practice such bodies, given their advisory role, are unlikely to employ anyone or have contractual relations with any third parties or enter into any significant financial commitments. Thus, the Council appointee on such a body should have no risk of any personal liability or any particular legal obligations arising from membership of it. However, it is still important to understand what its remit is and any potential risks and to seek the advice of the Service Manager Democratic Services ,Chief Finance Officer or Assistant Director Law and Governance if in any doubt.

Such a body may champion a position on a particular issue which comes before the Council for consideration and decision. In this event, the Council appointee on such a body must understand his or her position in terms of personal and prejudicial interests and possible bias (see later under sections 12 and 13).

5.6 Partnerships

The Council has a range of partnership arrangements with other organisations to achieve agreed outcomes which the partners believe they cannot reasonably achieve alone. These partnerships may sometimes be formalised into a company arrangement but will usually rely on some form of written Agreement between the parties setting out how they will work together. This is likely to involve Council officers or members being appointed to sit on committees or working groups within these partnerships.

In a sense these partnerships are strictly not ‘outside bodies’ as envisaged by this Guide, being rather joint working arrangements. Often, they may be essentially ‘advisory bodies’ as discussed in 5.5 above. They will not be legal entities (unless formally incorporated as companies) and ultimately each organisation which is a member

of the partnership will exercise its own powers and functions as an independent body, albeit often influenced by the joint objectives of, and any decisions taken or guidance given by, the partnership.

The role and responsibilities of the Council, and its appointees, within such partnerships should be explained in the relevant Partnership Agreement although their main responsibility will be to represent the interests of the city and its inhabitants.

To the extent any partnership purports to contract or deal with the outside world as a partnership, and incurs liabilities in that collective capacity, then unless incorporated, it is likely to be treated as an unincorporated association with the potential unlimited liability of all its members, including the Council, as explained in section 5.2 above.

5.7 Joint Committees and Statutory Bodies

The Council sometimes formally works with other local authorities through joint committees set up under the Local Government Acts 1972 or 2000 in order to better discharge their statutory functions, or through other bodies created by statute e.g. the North East Combined Authority. In both cases, Council representatives will be appointed.

The former are essentially a type of partnership, not strictly outside bodies, which will usually be regulated by a written agreement between the authorities (as to their terms of reference, delegated powers, etc) as well as by local government legislation generally. That legislation provides for different types of joint committee, depending upon whether the committee is discharging executive or non-executive functions on behalf of the two authorities or is acting as an advisory joint committee only. The type of joint committee will also influence other matters e.g. whether political balance rules apply to its membership and whether non-councillors can be co-opted onto it. However, whatever type of joint committee it is, Council appointees, as for any partnership, will be responsible for representing the Council's interests on it. Article 12 of the Council's Charter describes the different types of such joint arrangements which are available.

The latter, as statutory bodies, will be legal entities regulated by the legislation creating them and their own detailed governance arrangements. Being akin to corporate bodies, Council appointees must have regard principally to the interests of the body and the furtherance of its statutory functions and obligations.

6. Financial and Governance issues

If a member or officer is part of the management structure of an organisation, they will have certain financial and governance responsibilities to that body. Some of these have already been mentioned above. However, there are some other financial and governance issues to be aware of:

- Ensure that regular accurate and up to date financial information is available to you.
- Understand how decisions are made in the organisation. What is the decision-making forum? What powers to make decisions have been delegated, to whom and what is the exact scope of the delegation?
- Do you have any decision-making powers and if so, what is the exact scope of that power?
- What is the process if the organisation wants to contract with a third party? Who can sign those contracts in a way which binds the organisation?

Should the body face financial difficulties, you should be aware of the following:

- The need to apply **reasonable skill and care** to help to protect the body's financial interests.
- Should the body begin to get into financial difficulties, you with your fellow directors, committee members or trustees, must take **specialist advice** and act **as early as possible** to protect the body's potential creditors.
- In particular there may come a point when it is clear that the organisation will have no reasonable prospect of avoiding liquidation and you must then take every step to **minimise losses to creditors**.

Whilst this applies to all organisations, these obligations are most clearly defined for **companies**. If a company continues to trade after there is no reasonable prospect of avoiding liquidation, this is "wrongful trading" and could lead to **personal financial responsibility to creditors** for the Director. It is important to remain aware of the company's financial affairs and act very quickly should the company appear to be in financial difficulty. Seek professional advice from the company's legal and/or financial advisors as to the options.

7. Insurance

In general, you should be satisfied about the outside body's provision for insurance. For instance, is there in place any insurance to cover **your role**? What insurance is there for **other purposes**, e.g. third-party liability and employers liability (the latter being a legal obligation for all organisations which employ staff). Adequate and comprehensive

insurance cover for the organisation is likely to limit any residual exposure as a Trustee, Director, committee member etc. Seek the advice of the Chief Finance Officer if you are in any doubt about whether the cover is sufficient.

Any residual risk exposure may well be mitigated through the Council's power to indemnify members and officers against any such liability – see section 10 below about Indemnities.

8. Responsibility to Regulators

Members and officers sitting on an outside body should be aware of whether it owes any obligations to regulators or other outside agencies. The organisation should know which agencies are applicable and have systems in place to liaise with them and comply with their requirements. It is likely to be part of the member or officer appointee role to help ensure these obligations are complied with.

9. Reporting back to the Council and Confidential Information

One reason why members and officers are appointed to an outside body is to establish/reinforce links between it and the Council. A flow of information (both ways) is desirable. There is no standard way of doing this and will vary depending upon the nature of the outside body and its relationship with the Council. Advice on appropriate reporting mechanisms in line with the Newcastle Charter can be sought from the Assistant Director Law and Governance or Service Manager Democratic Services .

If an outside body requires a member, or officer, to treat its business as confidential, this should be complied with. Given this duty of confidentiality, make it clear to the organisation that you will be reporting back to the Council. In that way confidential information can be identified and protected.

Equally, a Council appointee on an outside body should ensure information which is confidential to the Council is not disclosed to that body or other members of it. This obviously applies to information the Council is legally bound not to disclose e.g. because it was expressly given to the Council in confidence or personal data protected by the data protection legislation. However, it also includes any other information which the Council officer or member may have received in confidence, particularly commercially sensitive information, and which if disclosed could harm the Council's interests. The advice of Assistant Director Law and Governance should be sought if you are in any doubt about whether any information can be disclosed.

10. Indemnity by the Council for Members and Officers

The Local Authorities (Indemnities for Members and Officers) Order 2004 allows the Council to indemnify any member or officer out of public funds for any personal liability arising from actions or decisions taken by them in the course of their duties. Importantly in this context, this includes anything done by a member or officer when acting as the Council's representative on an outside body. (Before 2004, the powers of local authorities in this regard were more limited and uncertain).

There are however still some limits on this power of the Council to indemnify. A member or officer cannot be indemnified for any criminal offence, fraud, deliberate wrongdoing or recklessness or the making of a defamation claim (although it can cover running a defence to such a claim). It can cover the costs of defending criminal proceedings but only on the condition that the member or officer reimburses these costs if convicted of the offence.

Subject to these provisos, the Council has a discretion to indemnify any member or officer representative on an outside body for any personal responsibility for the debts or liabilities of the body (or the costs of defending a claim) when the member or officer has acted in good faith and honestly throughout.

For members, any request for (or advice upon) an indemnity should be made to the Service Manager Democratic Services , who will determine whether it should be given and, if so, in what amount and on what conditions, after consultation with the Chief Executive, Chief Finance Officer, Assistant Director Law and Governance [and the Leaders of the two political groups].

For Council officers, it is an implied term of their contract of employment as a result of published Council policy that the Council will (except in the situations listed below) indemnify them against any claims arising whilst pursuing their duties and acting within the scope of their employment provided that the officer has:

(a) acted in good faith, and honestly believed they were acting within their powers as a council employee, and
(b) notified their Director immediately they became aware of the circumstances likely to form the basis of any claim.

The exceptions where this indemnity will not apply are where the loss has been caused by or arises from:

(a) the officer's fraud, dishonesty or commission of any criminal offence, or
(b) the officer's gross or wilful negligence or recklessness without regard to the consequences of their actions, or
(c) any negligence, error or omission by the officer other than in the course of their duties, or

(d) libel or slander unless specifically authorised, or
(e) liability under a court order for repayment obtained by the District Auditor.

Any officer concerned about the possible need to rely on such an indemnity, and whether it is likely to be forthcoming, should consult their Head of Service in the first instance.

11. Application of the Code of Conduct for Members – Personal - interests

This section relates to members conduct when taking part in Council business which affects the outside body to which s/he is appointed.

Registration of Personal Interests

Under paragraph 11(a) of the Code of Conduct, a councillor must register with the Monitoring Officer any Disclosable Pecuniary Interest as set out in Annex 2 of the Code of Conduct.

Under paragraph 11(b) of the Code of Conduct, a councillor must register with the Monitoring Officer his/her membership of, or position of general control or management in, any body to which s/he has been appointed or nominated by the Council. In practice, this will be done automatically by the Service Manager Democratic Services on behalf of the member at the time the appointment is made.

(Incidentally, a councillor must also register their interest in any other body of which they are a member or in a position of control or management if the body exercises public or charitable functions or whose main purposes include the influence of public opinion or policy).

Non-participatory interest

The Code says that sometimes a personal interest will result in a member not being able to participate in a matter. The **initial test** for deciding whether such an interest exists is: Would a member of the public, knowing the relevant facts, reasonably think the personal interest to be so significant that it is likely to prejudice the member's judgement of the public interest?

However, even if that test is satisfied, there will only be an interest that means a member cannot participate in relation to an outside body if the item of Council business in question either (a) affects the financial position of that body or (b) concerns a request for any consent, licence, permission or registration which relates to or affects it.

If a member does have such an interest, s/he must declare that fact to the meeting, leave the meeting and not take any part in the discussion or vote on the matter.

12. Apparent Bias and Predetermination

As well as possible non-participatory interests under the Code of Conduct, local authority decision-makers must also be mindful of the concepts of apparent bias and predetermination.

Section 25 of the Localism Act 2011 provides that:

"A decision maker is not to be taken to have had, or appeared to have had, a closed mind when making the decision just because:

a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take, in relation to a matter, and;
b) the matter was relevant to the decision".

This provision applies to decisions made in discharging functions of the Council, the functions of the Council's Cabinet, decisions of Committee (including Planning and Licensing) and decisions made by officers of the Council. The provision applies to co-opted members as well as councillors (referred to as "member(s)" below) and officers of the Council.

The main point is that by the time the decision maker considers the matter before them they must have an open mind and appear to have an open mind in respect of the decision to be made.

If a member, or officer, can be shown to have made a decision on behalf of the Council– or been party to such a decision – with a biased or closed mind, then the decision could be challenged and set aside. (This could arise where there is likely to be a public perception that because of your personal interest in a particular matter, you cannot properly decide what is in the wider public interest, or where you have reached a definite view on a matter beforehand and thus are not open to properly considering the arguments for and against when asked to make a decision on it). **This is a particular risk in relation to quasi-judicial decisions made by the Council or in the Council's name e.g. the determination of licensing and planning applications.**

In any event, irrespective of any risk of legal challenge, it is important that the public should remain confident in the administration of local government.

Thus, careful consideration should be given to whether membership of an outside body, even as an appointee of the Council, should reasonably preclude participation in any Council discussion and decision on a matter concerning that body. Would a fair-minded observer, knowing the background, consider that there was a real danger of bias from the decision-maker's involvement in the outside body? Is the Council being influenced by the outside body, not just properly through the body's formal

representations, but also by one of the Council's decision-makers having been involved in the forming of that body's view and representations? Is the member considering the matter with an open mind, or has s/he predetermined his or her decision because of his or her membership of the outside body? Members (and Delegated Officers) should always be aware that should the issue of bias arise their conduct could be questioned in this way.

The other key issue here is the type of outside body and the matter being discussed:

- For example, if a member is the Council's appointee on a company or charity or unincorporated association, s/he should certainly not sit as a member of any licensing or planning or grant-awarding committee determining an application in which that body has an interest (e.g. as an applicant or as an objector), nor in any way attempt to influence the decision. On the other hand, there may be much less concern if the member is sitting on a Scrutiny Committee which is for instance simply reviewing the Council's working relationship with the outside body, although if this review was likely to affect the body's financial position, then a non-participatory interest under the Code may arise in any event.

- If the outside body is simply an advisory or consultative body, or a discussion forum, it is much less likely that issues of bias, or conflicts of interest, would arise for the Council appointee. On the other hand, a member's duties as a director, trustee or management committee member may give rise to a greater lack, or perceived lack, of impartiality, depending on the subject matter involved.

13. Application of the Council's Code of Conduct for Employees

Officers are not subject to the Members Code of Conduct, but paragraph 7(a) of the Council's Code of Conduct for Employees requires any officer to declare in writing, using Form CCE.4, any financial or non-financial interest which could conflict with the Council's interests. This will include membership of, or a position of management or control over, an outside body, even where that is as a representative of the Council. Thus, an officer in this position should file a Form CCE.4 as a matter of course.

Paragraph 7(c) of the Employees' Code precludes an officer making any decision on behalf of the Council if s/he has a personal interest in it. Thus, an officer appointee on an outside body must not seek to influence, or take part in, any Council decision which directly concerns or affects that body.

14. Advising and Working in Other Ways with Outside Bodies

This Guide is mainly concerned with members/officers who have been appointed by the Council to hold some sort of formal position on, or membership of, an outside body.

However, they will often become involved with outside bodies in their official capacity in a less formal way. For instance:

i) A ward councillor may have a standing invitation from a local group to attend its management committee meetings as an observer, either to help communication between the group, the Council and the wider community or for advice on how best to pursue particular matters.

ii) Similarly, an officer as part of his/her job might be asked to attend meetings of outside bodies/groups as an observer or information provider or to act as a liaison point with the Council or to give more practical support and advice.

In practice this may result in close and prolonged involvement in the activities and meetings of local organisations.

There is no reason at all in principle why members and officers should not respond positively to such approaches. It is wholly consistent with the Council's policy to support community engagement and involvement.

Conflicts of interest or potential liability should not arise if the member/officer is not a member of the group or taking part in its decision-making or trying unduly to influence its decision-making.

However, there are two general risks which should be borne in mind:

(a) you may be asked to get involved in resolving internal difficulties within the group. For example, if its staff fall out with the management committee or the management committee fall out with each other. You should be wary of becoming involved in these circumstances, because of the risk of you (and, through you, the Council) being drawn into the dispute and being seen, however unfairly, to be taking sides in what ultimately is a private matter. If you choose to try and help in such a situation, you should ensure the precise scope and terms of your involvement are agreed in writing at the outset.

If it seems any such difficulties may harm the Council's interests (e.g. because its grant aid is not being properly spent or grant conditions complied with) then this should be reported to the Chief Finance Officer or Assistant Director Law and Governance to consider appropriate action.

(b) regular involvement with an outside body runs the risk of you being seen as an agent of that body, with the obligations that can go with that. If that involvement appears to be in your official capacity – rather than obviously personal and private – then those obligations may affect the Council. For example, if an employee of an outside body brings proceedings against it for, say, sex discrimination, you (and the Council) could be joined in as a party to those proceedings because of your influence over the body's affairs.

There can be a fine line between on the one hand regularly liaising with a local group, responding to its requests for information and giving guidance and support on non-contentious or purely factual issues (which might even extend, at least in the case of small community groups, to helping them keep their accounts or minute their meetings) and on the other hand becoming involved or taking sides in contentious issues or being a party to its decision-making.

Particular Advice for Officers

This latter issue (i.e. the perception of undue influence) is a particular one for those officers whose jobs require them to work closely with local groups. To help avoid confusion about their role and the risk of them being seen to have too strong an influence over the organisations they work with, officers in particular are recommended to be aware of the following points:

- You are always acting as the **representative** of your Directorate and ultimately the Council. Your principal role is to communicate information and explain the position of the Council or your Directorate on particular matters.

- If your role as a Council officer is to do anything more than that (i.e. to provide any **other support or guidance** to the organisation) then this should be reflected in a written agreement with the organisation, explaining exactly what that role is and how and when it will be performed and any other appropriate terms and conditions. If you have any doubt as to what such an agreement should say, you should discuss with your line manager.

- You should **monitor** the work of the body and provide a channel for communications between it and the Council. If the body has a funding agreement with the Council or contracts with it or receives a grant, you may be required by the Council to lead on formal service monitoring. If this is the case, you should clarify with your line manager exactly what this role entails and ensure the organisation fully understands this.

- As a representative of the Council **never criticise** or appear to criticise the Council, its Members, officers or policies. In addition, refrain from criticising the Government, national politicians and political parties. If

others raise criticisms of the Council, report those criticisms back to your manager.

- As an **observer** or the **provider of support** refrain (and be publicly seen to refrain) from taking part in or appearing to take part in any decision-making processes.

- Indicate very clearly that you will **report back** to the Council all matters and issues which you think are relevant to the Council. Accordingly, should there be any issues which the body wishes to keep confidential from the Council or any dispute with the Council, you should leave and not take part in the discussion.

Some officers as part of their job have to work so closely with some voluntary organisations that there is inevitable risk of some perception that they influence its decision-making. Provided such officers act responsibly and legally and within the terms of their job description and this general guidance, then they will be indemnified under their contract of employment as explained in section 10.

Conclusion

Only exceptionally do the potential difficulties and liabilities mentioned in this Guide arise but it is still important that members and officers be aware of them, to better guard against them.

Inevitably this paper can only give general advice about a potentially wide range of different organisations and situations which any member or officer may have to deal with. If any you have any doubt or concern about your position in relation to any outside body, you can consult the Assistant Director Law and Governance as Monitoring Officer or the Service Manager Democratic Services for advice**.**

Annex 1

Checklist for Members and Officers appointed to outside bodies and organisations by the Council

The organisation	
1. What is the official name and address of the organisation?	
2. What is its legal status? Is it a company or an unincorporated association or a trust or an informal advisory body?	
3. Is it a charity? If so, is it registered with the Charity Commission?	
4. What is the main role or objectives of the organisation?	
5. Does it have a governing document? If so, what is it (e.g. a written Constitution or a Memorandum and Articles of Association) and do I have a copy?	
6. Who are the owners or members of the organisation, or is this information available to inspect?	
7. Who are the key officers of the organisation i.e. its chair, secretary and treasurer?	
8. Does it publish any form of Annual Report about its activities? If so, do I have a copy of the most recent one?	
9. Does it publish annual accounts and are these audited and who by?	
10. Does it have an income and incur expenditure? If so, what were these in its last financial year?	
11. Does the organisation employ any staff? If so, how many?	
12. Does it own or have any rights in any property? If so, what?	
13. Does the organisation have any significant contractual commitments? If so, what are they?	
14. What insurance does the organisation hold? In particular if it employs staff does it carry employee liability cover (which it must as a matter of law), does it have third party cover and does it insure me in my capacity?	
15. How and by whom are decisions made in the organisation?	
16. What are its links with the Council? In particular does it have any contracts or other legal relations with the Council?	

My Role	
17. What exactly is my position in the organisation? Do I have a decision-making role or am I simply an observer?	
18. On what committees of the organisation will I sit and what meetings will I be expected to attend? When and where will they be held?	
19. How will I be kept up to date on the organisation's financial position?	
20. Who is my officer contact at the Council (if any) in relation to the organisation?	
21. Am I expected to report back to the Council about the organisation? If so, to whom and in what form?	
22. Is the organisation aware of my role in reporting matters back to the Council?	
23. Does it understand I may have to withdraw from decision-making processes if there is a conflict of interest with the Council?	
24. Apart from my obligations to the organisation, what other bodies will I owe duties to? E.g. if it is a company, to the Registrar of Companies, or if a charity, the Charity Commission – how are these obligations fulfilled?	
25. How long is my appointment for?	
26. What steps will I or the organisation need to take when my appointment ends?	