

# Ethics Committee Supplementary Agenda



**4. Urgent Business (if any) (Pages 3 - 26)**

To receive notice of any business not on the agenda which in the opinion of the Chair, by reason of special circumstances, be considered as a matter of urgency.

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## LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>ETHICS COMMITTEE</b>	
<b>DATE OF DECISION</b>	<b>8 FEBRUARY 2023</b>	
<b>REPORT TITLE:</b>	<b>PROTOCOL FOR COUNCILLORS AND OFFICERS APPOINTED OR NOMINATED TO OUTSIDE BODIES</b>	
<b>CORPORATE DIRECTOR / DIRECTOR:</b>	<b>STEPHEN LAWRENCE-ORUMWENSE DIRECTOR OF LEGAL SERVICES &amp; MONITORING OFFICER JANE WEST CORPORATE DIRECTOR OF RESOURCES</b>	
<b>LEAD OFFICER:</b>	<b>STEPHEN LAWRENCE-ORUMWENSE DIRECTOR OF LEGAL SERVICES &amp; MONITORING OFFICER</b>	
<b>LEAD MEMBER:</b>	<b>CLLR JASON CUMMINGS LEAD MEMBER FOR RESOURCES</b>	
<b>DECISION TAKER:</b>	<b>N/A</b>	
<b>AUTHORITY TO TAKE DECISION:</b>	<b>N/A</b>	
<b>KEY DECISION?</b> [Insert Ref. Number if a Key Decision]	<b>No</b>	<b>REASON: N/A</b>
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>NO</b>	
<b>WARDS AFFECTED:</b>	<b>N/A</b>	

### 1 SUMMARY OF REPORT

- 1.1 The purpose of this report is to seek the Committee's comments on and approval of the draft Protocol for Councillors and Officers representing the Council on Outside Bodies ("Outside Bodies Protocol").

### 2 RECOMMENDATIONS

- 2.1 The Committee should consider and agree the draft Outside Bodies Protocol attached to this Report at Appendix 1.

### **3 REASONS FOR RECOMMENDATIONS**

- 3.1 The adoption of the Protocol enables the Council to provide sound and basic advice and guidance to its representatives appointed or nominated to external bodies such as companies and charities. It aligns with the Council's commitment to effective good governance in the conduct of its affairs.

### **4 BACKGROUND AND DETAILS**

- 4.1 The Council has nomination/appointment rights to a wide range of outside bodies such as community and voluntary organisations, foundations, trusts, companies, charities, boards of management, central and local authority organisations. These appointments are usually made to safeguard the Council's interests on a body funded by the Council, or where there is a statutory power or duty that requires the appointment, or to help secure any objectives of the Council in participating in the body.
- 4.2 It is important that the Council's representatives receive basic advice and guidance to help manage and navigate through the competing interest and issues arising from their roles and responsibilities.
- 4.3 Attached at Appendix 1 is the draft 'Protocol for Councillors, officers and individuals appointed or nominated by the Council to outside bodies'. The draft is based on the standard format used by a number of local authorities. As such it provides a brief overview of the key issues, the expectations when appointed to an outside body, the criteria for appointment, checklist for those appointed and a guide to the law.
- 4.4. If approved, the draft Protocol will be available to all Councillors and Officers appointed by the Council to various outside bodies.

### **5. ALTERNATIVE OPTIONS CONSIDERED**

Not applicable.

### **6. CONSULTATION**

- 6.1 The Croydon Companies Supervision and Monitoring Panel (CCSMP), an officer group responsible for the oversight of the Council's companies, was consulted on the draft Protocol.

### **7. CONTRIBUTION TO COUNCIL PRIORITIES**

**7.1** The recommendation aligns with the Mayor’s Business Plan 2022-26 Outcome 1 Priority 4: Ensure good governance is embedded and adopt best practice.

## **8. IMPLICATIONS**

### **8.1 FINANCIAL IMPLICATIONS**

8.1.1 There are no financial implications arising from the recommendation.

### **8.2 LEGAL IMPLICATIONS**

8.2.1 There are no legal implication arising from the recommendation.

### **8.3 EQUALITIES IMPLICATIONS**

8.3.1 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between people who share those protected characteristics and people who do not
- Foster good relations between people who share those characteristics and people who do not.

The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex, and sexual orientation. Marriage and civil partnership status applies to the first part of the duty. The recommendations do not give arise to any equality’s issues.

## **9 APPENDICES**

Appendix 1 draft Protocol for Councillors and Officers representing the Council on Outside Bodies

## **10 BACKGROUND DOCUMENTS**

None

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## **Protocol for Councillors, officers and individuals appointed or nominated by the Council to outside bodies**

### **1. Introduction**

- 1.1 This document sets out guidance for elected Councillors, Officers and other individuals who are not elected Councillors or Officers, who are appointed or nominated by the Council to serve on outside bodies such as companies, charities and unincorporated associations. It is not intended to apply to representatives who may legitimately promote the Council's own interests, for example at meetings of London Councils.
- 1.2 The Council has nomination/appointment rights to a wide range of outside bodies (e.g. community and voluntary organisations, foundations, trusts, companies, charities, boards of management, central and local authority organisations).
- 1.3 The reasons why the Council appoints to outside bodies include:
- to safeguard the Council's interests on a body funded by the Council
  - there is a statutory power or duty which requires the appointment
  - to provide the organisation with the appointee's knowledge and experience
  - to help secure any objectives of the Council in participating in the body
  - to provide a learning experience for the appointee.
- 1.4 Generally, there are three circumstances in which a Council appointee might attend an outside body:
- to manage or play a direct part in the affairs of that body, for example as a trustee, a governor or as a member/ director of a management company or board ('manager/ trustee')
  - to offer advice and information on behalf of the Council, for example on Council policy ('adviser')
  - to observe, perhaps participating in discussion but taking no part in decision-making or management ('observer').
- 1.5 The Monitoring Officer can provide more advice in relation to serving in these different capacities.
- 1.6 The Council values its links with these bodies and appreciates the time and service Councillors, Officers and other individuals devote to the wider community by participating in their work. A list of bodies to which the Council currently makes appointments or nominations will be made available on the Council's website.

### **2. General**

- 2.1 Any Councillor or individual serving on an outside body has a responsibility to commit to the task, attend meetings and support the work of the organisation. Some organisations have rules about attendance (e.g. missing a number of meetings may lead to loss of the place on the body) and some roles have statutory duties to comply

with. In view, therefore, of the considerable demands made on Councillors' and other appointees' time, it is important to understand the extent of the commitment before accepting an appointment. Service on an outside body requires the nominated or appointed person to:

- act according to the rules, constitution and framework of the outside body
- make independent and personal judgements in line with the duty of care to the outside body and any statutory duties
- report back to the Council on an annual basis, and to the relevant lead member or committee as appropriate during the year
- behave ethically and follow the Members' or Officers' Code of Conduct as appropriate, unless this conflicts with other obligations to which the outside body is subject
- take an active and informed role in the management of the outside body's affairs
- ensure the Council's Register of Interests is updated to include reference to their representational role on the outside body
- avoid conflicts of interest and make relevant declarations when necessary; for Councillors and Co-optees: declare their role on an outside body at Council meetings when matters affecting the body are discussed and not participate in the discussion of the matter if the Members' Code of Conduct requires.

2.2 Authority to nominate or appoint Councillors, Officers and other individuals to serve on outside bodies rests with the Mayor in respect of Executive functions and he has delegated this authority to the S151 Officer in consultation with the Council's Chief Executive in relation to Council nominated directors for the boards of Group entities; and to Annual Council and General Purposes Committee in respect of non-Executive functions, unless otherwise delegated. Where the outside body does not specify particular requirements for their appointees, the Mayor/ S151 Officer/ General Purposes Committee/ delegated decision maker, as appropriate, will seek to identify an appointee with relevant experience and/or expertise for the role and there may be other specific procedures to follow for the relevant outside body. All nominations to outside bodies are published on the Council's website.

2.3 Criteria for considering whether a Councillor or other individual should be nominated or appointed to an outside body appear at Appendix A.

2.4 The length of service of any appointment will normally be until there are changes to the post holder's role at the Council or if they leave the Council. Any length of service is not guaranteed and is subject to review annually by the relevant decision maker. Any appointment which arises from a position on the Cabinet is subject to review if the postholder changes. If there is a difference between the term of appointment of the outside body and of the Councillor, the shorter term will apply.

2.5 The Mayor/ General Purposes Committee/ delegated decision maker will seek to ensure appropriate succession planning and continuity when refreshing outside appointments.



- 2.6 Any Councillor or individual appointed to represent the Council on an external body shall take care to establish the legal status of the appointment and the potential liabilities that may be involved before confirming acceptance and should seek the advice of the Monitoring Officer if they have any concerns or are unclear about the nature of such appointments. Bearing in mind the potential liabilities that may be incurred through formal involvement in an organisation, appointment to roles with observer status only is generally advisable unless there are exceptional reasons for more formal participation.
- 2.7 Unless the Councillor or individual has been appointed to the outside body strictly as a representative of the Council, they will have a duty to act in the best interests of that body and cannot represent the Council's interests. For example, if the service is as a trustee or a company director the appointee has a legal responsibility to act in the interests of the outside body only, as opposed to the interests of the Council or any other organisation.
- 2.4 When any matter arises within the Council that relates to an outside body on which a Councillor, Officer or other nominated/appointed individual sits, a conflict of interest may arise. For Councillors, or other nominated/appointed individual serving on Council Committees, an interest may arise which must be declared and recorded on the Councillor or individual's Register of Interests. Whether or not the interest is a disclosable pecuniary or other registrable interest under the Code of Conduct for Members will depend on all the circumstances, including whether a member of the public would reasonably consider it is likely to affect the Member's ability to act in the public interest. Independent or co-opted persons serving on Council Committees are also required to comply with the Members' Code of Conduct and therefore, should any of those persons also be nominated or appointed by the Council to an outside body, the same principles on managing conflicts shall apply to them as to elected Councillor.
- 2.8 Councillors and any relevant individual should refer to the Code of Conduct, any relevant Guidance which the Council has published, and can seek further advice from the Monitoring Officer. Officers will need to seek advice from their Corporate Director as to how best to deal with such a conflict and must have regard to the Officers' Code of Conduct.
- 2.9 Conversely, when any matter arises within the outside body on which a Councillor, Officer or nominated/appointed individual sits that relates to the Council, a conflict of interest may also arise and should be managed in accordance with that outside body's rules and processes for dealing with conflicts of interest.
- 2.6 Subject to any other duties and responsibilities Councillors, Officers and nominated/appointed individuals owe in respect of their service to the outside body (for example the duty of confidentiality), those persons should provide an annual update on the work of the outside body to Full Council (using the form attached at Appendix B).
- 2.7 A checklist for Councillors and other nominated/ appointed individuals on outside bodies appears at Appendix C. For general advice on any aspect of their service,

Councillors, or other nominated/ appointed individuals, should contact the Democratic Services Team.

### **3. Legal Advice**

- 3.1 A guide to the law as it affects Councillors, Officers and individuals serving on outside bodies is attached as Appendix D.

## **APPENDIX A**

### **CRITERIA FOR APPOINTMENTS TO OUTSIDE BODIES**

The following criteria will be considered when deciding whether or not to nominate or appoint a Councillor or other individual to an outside body:

1. There is a statutory or legal requirement to appoint one or more individuals to the body
2. The constitution of the outside body requires a nominee or appointee from the Council
3. A Councillor has to be appointed because it is a political appointee relating to the governmental nature of the body (e.g. London Councils)
4. The Council is working in partnership with the outside body and there is a requirement by way of a legal agreement for a nominee/ appointee to a joint board or other corporate entity
5. Where appointments to outside bodies are discretionary the following matters will be taken into account, namely, how representation on the body:
  - (i) Adds value to or furthers the Council's priorities
  - (ii) Provides support to the body and enables Councillors to fulfil their community leadership roles
  - (iii) Enables a positive influence on the effectiveness of the body for the benefit of the wider community
  - (iv) Is necessary to protect the Council's investment and assets
  - (v) Does not involve significant cost or resource implications for the Council when measured against any accrued benefit
  - (vi) Avoids risk of any detrimental impact on the Council or loss of opportunity if not represented.

## APPENDIX B

### Croydon Council

#### Appointment to outside bodies annual feedback form

*Where more than one representative from the Council is nominated to the body, they should liaise to complete this feedback.*

Name of organisation	
Name of Member/ individual	
Period of review	
Number of meetings called to attend	
Number of meetings attended	
Reasons for not attending, if appropriate	
Brief synopsis of key work delivered by the outside body during the past municipal year	
What background/ briefing information did you receive from the body on its constitution, aims, objectives etc and was it sufficient to enable you to carry out your appointed role? What additional information do you require?	
How effective do you think the organisation is? What contribution is it making to the Council's key priorities? Give examples to illustrate your reply	
Do you think the Council should continue to be represented on this organisation?	Yes/ No
If no, please state why	

Any additional information that fellow Members/ Officers may find useful	

**Councillor/ Officer .....**

**Dated.....**

**Return completed forms to [Democratic.Services@croydon.gov.uk](mailto:Democratic.Services@croydon.gov.uk)**

## **APPENDIX C**

### **CHECKLIST FOR COUNCILLORS AND OTHER INDIVIDUALS SERVING ON OUTSIDE ORGANISATIONS**

This checklist is intended to highlight some of the key issues for Councillors and other individuals serving on outside bodies. The purpose of nominations and appointments to outside bodies is to further the public interest, either locally or generally, and nominees/ appointees need to exercise judgement in this respect while bearing in mind any objectives the Council may have in making the nomination/ appointment.

Councillors, co-optees and officers appointed to an outside body by the Council are required to comply with the Council's own Codes of Conduct as appropriate when serving on an outside body unless it conflicts with any legal obligation arising from membership of that body.

Before you join an outside body:

- (1) Ask the body for a clear statement of what will be expected of you and the capacity in which you are to be appointed (e.g. director, trustee, member with voting rights or member with observer status)
- (2) Clarify the legal status of the body and the body's purpose, and how this relates to the Council's functions and objectives
- (3) Ensure that the Council has made very clear to you and the outside body in what capacity you are being nominated to serve. Make sure that if you have a strictly representative role you declare that fact to the organisation
- (4) Be aware of the rules of the outside body and understand that you must always act according to the rules, constitution and framework of that body, including any code of conduct
- (5) Check whether or not the organisation has an indemnity and if not, whether the Council has an indemnity and insurance to protect you from future liability

Once you become a member of the outside body:

- (1) Take an active and informed role in the management of the outside body's affairs
- (2) Be aware that you are expected to represent the interests of the body and not look at things simply from the Council's perspective alone. Nor, if you are a member of a political party, should you represent that party on the body
- (3) You cannot be bound by the Council to vote in a certain way on a particular matter

- (4) You must not commit the Council to any expenditure (including the use of officer time and resources)
- (5) You are required to report back to the Council on the body's progress but you must not disclose to the Council confidential information from the body.

#### Declarations of interest:

- (1) Remember to declare at Council, committee meetings and any other meetings, any interest that may affect or arise from an outside body on which you serve
- (2) For Councillors, the action you should take if you have a disclosable pecuniary interest, another non-registrable interest or a non-registrable interest is set out in the Member Code of Conduct and its associated guidance. For Officers, the action you should take if you have any financial or non-financial interests that could bring you into conflict with the Council's interests is set out in the Officer Code of Conduct and its associated guidance.

#### Conflicts of interest

- (1) Exercise independent personal judgement in line with the duty of care to the outside body
- (2) If the outside body comes into conflict with the Council and you are a director, trustee or chairman of a management committee of the outside body, your prime duty will be to the outside body in the conduct of the outside body's affairs. You will have an interest in matters concerning the organisation.
- (3) If you find that you have to declare an interest too frequently at Council meetings in relation to matters concerning the body, you may wish to consider resigning from the body.

## **APPENDIX D**

### **SERVICE ON OUTSIDE BODIES: A GUIDE TO THE LAW**

This advice is for Councillors and Officers who are appointed or nominated by the Council to outside bodies whether as a company director, trustee of a charity or representative on a management committee. It sets out some of the most important responsibilities and requirements relating to service on the outside body. More than one set of provisions may apply (for example, if a company limited by guarantee is also a charity). It is not meant to be a comprehensive guide.

If Councillors or Officers have queries then they should consult the Monitoring Officer. For the purposes of this Guide, all references to a "Councillor" includes all elected Councillors, and any other individual nominated or appointed by the Council to an outside body.

#### **General**

1. There are some general provisions which apply to Councillors and Officers who act in the role of company director, charity trustee, or on the committee of management of an unincorporated voluntary organisation.
- 3 The Councillor or Officer in acting as a director/trustee or member of a management committee of an outside body must act in the interests of that organisation.
- 4 Councillors and Officers must ensure that the organisation is properly managed in accordance with the law and the organisation's own governing documents. They must also ensure that avoidable loss is not incurred in managing the organisation. They cannot avoid these responsibilities by not reading the papers or failing to ask for appropriate reports. They will be expected to seek professional advice where appropriate.
- 5 An individual may not be appointed or nominated as a charity trustee or director if they are disqualified from taking up this position. Eligibility requirements are set out in Appendix E.

#### **Companies - General**

- 6 On incorporation, a company becomes a separate legal entity which can hold property in its own right, enter into contracts and sue and be sued in its own name. The company is distinct from its members and officers. In the case of a limited liability company, the liability of members/ shareholders of the company is limited to the amount they paid or agreed to pay when they joined the company.
- 7 Companies limited by shares are those that have a share capital. Each shareholder holds shares and receives a share in the profits made by the company according to the value of the shares held. Shares can be sold. Companies limited by guarantee are those where there is no shareholding. Instead, each member agrees that in the event of the



company being wound up they will pay a certain amount. This may be as little as £1. This form of company is the most usual in the public and voluntary sector particularly where charitable status is sought.

- 8 The management of a company is generally the responsibility of a board of directors. The powers of the directors are usually set out in the company's Articles of Association (the rules each company has to govern its internal management). Sometimes, even though a company has been incorporated, the directors may be referred to as members of the committee of management, governors or even trustees. However, this does not change their status as directors. Conversely, sometimes officials are called directors but they are not members of the board. Again, their status will not be affected. Directors are those who are appointed by the company to act in that capacity.

### **Companies - Directors' Duties**

9. A director is an agent of the company. Directors have various duties under the Companies Act 2006, fiduciary duties and other statutory or common law duties. Their prime duties are as follows:

- (1) *Duty to act within powers*

Directors are required to act in accordance with the company's constitution and only exercise powers for the purposes for which they are conferred. This means they must stay within the constraints of the objects clause, if there is one, and must observe the other terms of the Articles of Association and any delegated powers.

- (2) *Duty to promote the success of the company*

A director must act in a way that they consider, in good faith, would be most likely to promote the success of the company for the benefit of the company's members as a whole. Where the purposes of the company include things other than the benefit of the members, for example where the company is a charity, working to achieve these things will amount to working for the success of the company.

- (3) *Duty to exercise independent judgement*

A director is under a duty to exercise independent judgement. This means that they must not be unduly influenced by the wishes or instructions of others, though it is permissible for them to take account of the interests of the third party which they represent. In such a case the director must disclose that position and tread a fine line between the interests of the company and the party represented (in this case the Council). The director cannot vote and speak simply in accordance with the Council mandate. To do so would be a breach of duty.

- (4) *Duty to exercise reasonable care, skill and diligence*

A director must exercise the care, skill and diligence which would be exercised by a reasonably diligent person with both the general knowledge, skill and experience that the director actually has, and that to be expected of a person

carrying out their functions in relation to the company. In effect a director must meet the higher of the two requirements. A director is not deemed to be an expert, but is expected to obtain expert advice if necessary.

(5) *Duty to avoid conflicts of interest*

A director must avoid a situation where they will have, or may have, an interest that conflicts with the interests of the company. There may be actual or potential conflicts between the interests of the Council and the interests of the company. In such circumstances the Councillor or Officer should notify the Council and the company and obtain any necessary approvals following relevant procedures or, if appropriate, take no further part in the determination of the matter giving rise to the interest. For example, this could occur where the Council was considering making a grant to the company, or determining a permission, licence or consent in relation to the company. In extreme cases, if such conflicts regularly arise, it may be necessary for the Councillor or Officer to resign either from the company or from the Council.

(6) *Duty not to accept benefits from third parties*

A director must not accept a benefit from a third party conferred by reason of their being a director or their doing (or not doing) anything as a director. However, the duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest. Acceptance of a benefit may also be authorised by the members or, in some cases, by the board.

(7) *Duty to declare interest in proposed transaction or arrangement*

A director must declare a direct or indirect interest in a proposed transaction or arrangement with the company that they are (or should be) aware of. No disclosure is necessary if the other directors are (or should be) aware of the interest, or if it cannot reasonably be regarded as likely to give rise to a conflict of interest. The interest of a person connected to the director, for example a family member, must be disclosed. Whether the director is then allowed to vote will depend on the Articles of Association.

(8) *Duty to ensure compliance with the Companies Acts*

Directors are under an obligation to see that various information is filed at Companies House. They also have a duty to prepare and file the company's accounts, and to maintain certain statutory books and registers. Failure to do so may incur fines and persistent default can lead to disqualification as a director. Directors should ensure that formal procedures are followed at Board meetings and records of decisions are kept, including Board minutes.

More useful information appears on the [website of Companies House](#).

## **Companies - Directors' Liabilities**

10. Directors may be liable in the following circumstances:

- (1) The remedies available against a director for a breach of the duties set out at paragraphs 9(1-3) and 9(5-7) above include damages, accounting for profits made, restitution of property and injunctive relief. In practice damages are by far the most common remedy. Damages are the only remedy for a breach of the duty set out at paragraph 9(4).
- (2) The company's name must clearly be shown on its business stationery. The company number, place of registration and registered office address must be shown on business letters, order forms (including equivalent emails) and any company website. If any of the directors' names are shown then they must all appear. Non-compliance is an offence and the directors and company officers can be fined.
- (3) If a director knows or ought to know that there is no reasonable prospect of the company avoiding liquidation, a Court may require that director to contribute to the company's assets on liquidation if the company continues to trade. This is known as wrongful trading. No such order will be made if the Court is satisfied that the director took all reasonable steps to minimise the loss to the creditors. However, liability can be incurred through failing to act. If a director has concerns about the company's financial position they would be well advised to inform the other directors and seek advice from the company auditors. They should try to ensure that further debts are not incurred.
- (4) A director will also be liable if to their knowledge the company carries on business with intent to defraud creditors or any other person, or for any other fraudulent purpose. Fraudulent trading can lead to disqualification from acting as a director. It is also a criminal offence and can lead to a fine or imprisonment.
- (5) All cheques and similar documents which purport to be signed on behalf of the company must bear the company name. Where they do not, the director signing on behalf of the company may be liable to a fine and may also be liable to the payee if the company fails to honour the cheque. It is, therefore, wise for directors to make sure that all documents they sign on behalf of the company state very clearly that they act as agent for the company, (e.g. Director, for and on behalf of).
- (6) A third party who enters into a contract on the assumption that a director has power to bind the company, may be able to claim damages against the director if it subsequently transpires that the director had no such power. Directors would be well advised to ensure that contracts are approved by the board and that the authority to enter into any contract has been properly delegated before signing it.
- (7) Though company liability ceases on dissolution, the liability of the directors (if any) may still be enforced after dissolution.

## **Companies - Indemnities and Insurance**

11. The following arrangements apply:

- (1) Directors cannot be indemnified by the company against liability arising out of negligence, default, breach of duty or breach of trust in relation to the company. However, the company's Articles of Association may allow for directors to be indemnified by the company and/ or insured against liability to a third party, although this must not extend to payment of a criminal fine, a financial penalty payable to a regulatory authority, or liabilities incurred in certain legal proceedings where the director is unsuccessful. Please note that it is lawful for companies to purchase insurance to protect their directors against claims of negligence, breach of duty, breach of trust and default. Directors may, therefore, wish to consider maintaining such insurance. For professional directors (accountants, solicitors, etc.) providing specialist knowledge and expertise, professional indemnity insurance may be available at a cost.
- (2) The first recourse would be to ensure that the company provides insurance. The Council may provide indemnities for Councillors or Officers when appointing them to act as directors, and will consider insurance to cover any losses which they may suffer through acting conscientiously as a director but, where the body already has an indemnity or insurance cover, Councillors or Officers will be expected to call on that cover in the first instance. Once appointed, Directors should ensure that they check the status and scope of the relevant insurance policy at least annually.

### **Companies - Local Authorities (Companies) Order 1995**

12. This Order sets out rules concerning local authorities' involvement in "regulated companies" which are subject to controls. "Regulated companies" are so defined if they are controlled or influenced by the local authority. Members and Officers can obtain further information on the additional rules affecting such companies upon request.

### **Charities - General**

13. To be a charity an organisation must operate for one of the following charitable purposes and be able to demonstrate that its aims are for the public benefit:
- the prevention or relief of poverty;
  - the advancement of education;
  - the advancement of religion;
  - the advancement of health or the saving of lives;
  - the advancement of citizenship or community development;
  - the advancement of the arts, culture, heritage or science;
  - the advancement of amateur sport;
  - the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
  - the advancement of environmental protection or improvement;

- the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantages;
  - the advancement of animal welfare;
  - the promotion of the efficiency of the armed forces of the Crown or of the police, fire and rescue services or ambulance services;
  - other purposes recognised as charitable under existing law and any new purposes which are similar to another prescribed purpose.
14. A charitable organisation must operate for the public benefit and have exclusively charitable purposes. An organisation that operates for political purposes does not qualify for charitable status. To register as a charity the organisation must submit its governing document (constitution or rules, trust deed, or Memorandum and Articles of Association – depending on whether it is an unincorporated association, trust or limited company) plus any other required documents to the Charity Commissioners for approval. If they are satisfied that the organisation is charitable it will be registered as such.
15. Those who are responsible for the control and administration of a charity are referred to as charity trustees, and will have those obligations even where the charity has the legal form of a company limited by guarantee. Trustees of a charity retain personal liability, and can only delegate to the extent that the governing document authorises them so to do.
16. Specific guidance for those serving on charitable organisations is available from the [Charity Commission](#).

### **Charities - Trustees' Duties**

17. Trustees have the following duties:
- (1) Trustees must take care to act in accordance with the governing document and to protect the charity's assets. They are also responsible for compliance with the Charities Acts, (and as relevant the Trustee Acts) and should note the particular requirements of the applicable Acts in respect of land transactions.
  - (2) Trustees must ensure the charity is carrying out its purposes for the public benefit, must always act in the charity's best interests and act with reasonable care and skill.
  - (3) Generally speaking, trustees must not profit from their position. They cannot receive remuneration or any other personal benefit without the sanction of the Charity Commission. They must also perform their duty with the standard of care which an ordinary, prudent business person would show. Higher standards are required of professionals, and in relation to investment matters.

- (4) Trustees must ensure that the information relating to the charity and trustees is registered with the Charity Commissioners and that annual accounts, reports and returns are completed and sent where this is required.
- (5) If charitable income exceeds £10,000, the letters, advertisements, cheques etc. must bear a statement that the organisation is a registered charity.
- (6) Trustees are under a duty to ensure compliance with all relevant legislation and other regulators (if any) which govern the activities of the charity.
- (7) Trustees have a duty of care to their charity if they work with vulnerable groups including children and will need to take the necessary steps to safeguard and take responsibility for them.

### **Charities - Trustees' Personal Liability**

18. If in doubt, always consult the Charity Commission. A trustee who does so can avoid personal liability for breach of trust if they act in accordance with the advice given.
19. Liabilities may arise in the following ways:
  - (1) Generally, a trustee may incur personal liability if they:
    - act outside the scope of the governing document
    - fall below the required standard of care
    - act otherwise than in the best interests of the charity, in a way which causes loss to the charity
    - make a personal profit from the charity's assets.
  - (2) In such circumstances the trustee may incur personal liability for losses incurred and/or for personal gain.
  - (3) Trustees can be personally liable to third parties because, unlike a company, a trust or unincorporated association has no separate identity from the trustees. The governing document will normally provide for trustees to be given an indemnity from the charity's assets, provided they act properly in incurring the liability. Trustees remain personally liable for their own acts and defaults once they have retired. If they have entered into any ongoing contracts on behalf of the charity they should seek an indemnity from their successors. If the charity is a company, the trustees will be protected from liabilities incurred in the day-to-day running of the charity in the normal course, but will be personally liable if they commit a breach of trust (see (1) above).
  - (4) Trustees may be liable to fines if they do not comply with the duty to make returns etc.

### **Charities - Indemnities**

20. An indemnity can be given from the charity's assets provided the trustee has acted properly and within his/her powers. Trustees may take out insurance to protect themselves against personal liability but not for criminal acts, fraud etc. The premiums can be paid out of the charitable funds so long as there is no express prohibition in the governing document, the trustees observe their duty of care, the insurance is in the best interests of the charity and the cost is reasonable. The Council may provide indemnities for Councillors or Officers when appointing them to act as trustees, and will consider insurance to cover any losses which they may suffer through acting conscientiously as a trustee but, where the body already has an indemnity or insurance cover, Councillors or Officers will be expected to call on that cover in the first instance. Once appointed, Directors should ensure that they check the status and scope of the relevant insurance policy at least annually.

### **Committees of management – unincorporated associations**

21. Groups which are not trusts or limited companies are "unincorporated associations", which is an organisation set up through an agreement between a group of people who come together for a reason other than to make a profit (for example, a voluntary group or a sports club). The rules governing the association's members' duties and liabilities will be set out in a constitution, which is an agreement between the members as to how the organisation will operate. Usually the constitution will provide for a management committee to be responsible for the everyday running of the organisation. An unincorporated association may be charitable and may register as a charity.
22. Property will have to be held by individuals, and contracts entered into 'on behalf of' unincorporated associations, as they have no separate legal identity from their members.

### **Committees of management - duties**

23. Broadly, those who are elected or appointed to the association's Management Committee must act within the constitution, and must take reasonable care in exercising their powers and will have the responsibility for holding property and entering into contracts for the association.

### **Committees of management - liabilities**

24. The following liabilities may arise:
- (1) Generally, the Management Committee members are liable for the acts of the organisation, but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there are not enough funds, the Committee members are personally liable for the shortfall.

- (2) If one person is appointed by the constitution to act as the agent of the organisation for certain purposes, then that person acts as the agent of all the members, who have joint and several liability for the agent's actions.
  - (3) Members of the committee of management will have personal liability if they act outside the authority given to them or if they do not comply with statute e.g. the payment of employees' tax etc. Indemnities
25. Members will be entitled to an indemnity if they act in accordance with the constitution and are not at fault. It is possible to obtain insurance but if the organisation is to pay the premium it must be permitted by the constitution. The Council may provide indemnities for Councillors or Officers when appointing them to act as committee members, and will consider insurance to cover any losses which they may suffer through acting conscientiously as a trustee but, where the body already has an indemnity or insurance cover, Councillors or Officers will be expected to call on that cover in the first instance. Once appointed, committee members should ensure that they check the status and scope of the relevant insurance policy at least annually.



## APPENDIX E

### ELIGIBILITY TO SERVE ON AN OUTSIDE BODY

<b>Trustee</b>	<b>Director</b>
<p>Prospective Trustees must meet the following eligibility requirements before any appointments can be made. They must:</p> <ul style="list-style-type: none"><li>• Be at least 18 years old or at least 16 years old if the charity is also a Company or Charitable Incorporated Organisation (CIO).</li><li>• Have no unspent conviction for an offence involving dishonesty or deception.</li><li>• Not be declared bankrupt or be subject to bankruptcy restrictions, an interim order or have an individual voluntary agreement (IVA) with creditors.</li><li>• Not be disqualified from being a company director.</li><li>• Not been removed as a trustee by either the charity commission, the Scottish charity regulator or the High Court due to misconduct or mismanagement.</li><li>• Not be disqualified from being a trustee by an order of the Charity Commission under section 181A of the Charities Act 2011</li></ul>	<p>Prospective Directors must meet the following eligibility requirements before any appointments can be made. They must:</p> <ul style="list-style-type: none"><li>• Be at least 16 years old for the appointment to the Outside Body to take effect (section 157 Companies Act 2006).</li><li>• Not be subject to a bankruptcy restrictions order or undertaking, or a debt relief restrictions order or undertaking.</li><li>• Not be subject to an order made under section 429(2)(b) of the Insolvency Act 1986 (disabilities on revocation of administration order against an individual).</li><li>• Not be convicted of an indictable offence (whether on indictment or summarily) in connection with the promotion, formation, management, liquidation or striking off of a company, with the receivership of a company's property or with them being an administrative receiver of a company (section 2, Company Directors Disqualification Act 1986).</li></ul>

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