

## **GUIDANCE FOR MEMBERS AND OFFICERS INVOLVED IN OUTSIDE ORGANISATIONS**

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### **1. Introduction**

1.1 Members are often appointed or nominated by the Council to represent it on the management committees of outside bodies, or they will be involved in such bodies in their own personal capacity either as ordinary members or as members of the management committee, board of trustees, executive committee etc.

1.2 The Council generally encourages Members and officers to be active citizens and to participate in the wider community, where that organisation's objectives support the delivery of the Council's Strategic Objectives. It is recognised though that these appointments also enable the Council to participate in partner organisations, and also serve as a means for Members and officers to bring back to the Council additional knowledge and experience which are of value to the Council. However, if Members or officers are to take on such additional roles, it is important that they appreciate the responsibilities which they are taking on, understand how these responsibilities interact with their existing responsibilities to the Council, and recognise and deal with any conflicts of interest which may arise.

**If you are appointed or nominated by the Council it is vital that you read this guide and follow its guidance when carrying out your duties.**

General responsibilities and liabilities of members of managing bodies

1.3 Any member of a managing body has a responsibility to take the task seriously, attend meetings and carry out work for the organisation. Some organisations have rules about attendance (e.g. missing a number of consecutive meetings may lead to loss of the place on the committee). In view of the very considerable demands on members' time and energy, it is prudent to check out what is expected before accepting a place and to be clear what commitment can be made right from the start so that the organisation does not have unrealistic expectations of you.

1.4 In participating in outside bodies, Members and officers act both as individuals and, in some instances, as representatives of the Council. What does that mean?

(a) Positively

- acting according to the rules, constitution and framework set by the outside body;
- making independent and personal judgments in line with the duty of care to the outside body;
- reporting back to the Council, where you have been appointed by the Council;
- behaving ethically and following as far as applicable the Council's Code of Conduct for Members or the Code of Conduct for Officers;
- taking an active and informed role in the management of the outside body's affairs.

(b) Negatively

- The Member should not follow instructions from a political party to which they owe their political loyalty;
- It does not entail avoiding taking part in the outside body's discussions and decisions;
- Do not look at things simply from the Council's perspective;
- Do not be there in name only and merely turn up to meetings;

1.5 The role of Members or officers on outside bodies may give rise to occasional conflicts of interest. The Council's Code of Conduct for Members addresses some of the issues in respect of conflicts and interests. In essence, if any matter relating to the outside body comes up in the course of the Member's work as a Member, or in the officer's work for the Council, it is likely that the Member or officer will have an interest which they will have to disclose. Where the conflict is such that it might be considered likely to affect the way that the Member would vote or act as a Member, he/she may have not only to disclose the outside interest but to take no part in the consideration of the matter. The Code of Conduct for Officers includes similar provisions, requiring an officer to refer the matter to another officer to deal with.

1.6 In a very few and extreme cases, if there is a major dispute between the Council and the outside body, the Member or officer could be placed in an untenable situation. It is possible that the Member or officer may find he/she is unable adequately to carry out their responsibilities properly, both as a Member or officer and as a member or director of the outside body. In such cases resignation from the outside body might be appropriate. Such circumstances would be rare and should not deflect Members or officers generally from being prepared to participate in the management and running of outside organisations.

1.7 Because there is always a potential for conflict between the interests of the Council and the outside body, Members and officers who are thinking of taking on such an outside interest should consider how that interest will affect their ability to continue to act as a Member or as an officer. Members and officers are asked to read this guide and if there are issues arising from their particular situation at any time, to contact the Monitoring Officer or his staff for advice.

## **2. GENERAL ADVICE**

2.1 Local authorities are often asked to nominate Members and officers to take part in outside bodies. The range of such external activities is very wide.

2.2 If you are asked to allow the Council to put your name forward, you should ask the Council for a clear statement of what will be expected of you. Any organisation which asks the Council for such a nomination should be able to provide this information. The organisation will also be asked to explain how its operations help the Council to deliver its Strategic Objectives. If it is unable to provide such information, you should ask whether you want to be a member of such an organisation.

2.3 You will probably be agreeing to be a member of that outside body because it is active in an area which is of particular interest to you. But you should be aware that the rules on such outside interests may limit your ability to continue to take an active part in this topic within the Council. You will have to disclose

membership of the outside body in your dealings with the Council. Where any conflict of interest arises between the outside body and the Council, it is likely that you will have to withdraw from any consideration by the Council of any matter affecting the outside body, unless the outside body is another public authority, or you are appointed strictly as the representative of the Council. This aspect is dealt with in more detail below.

2.4 As a member of an outside body, you will be expected to participate fully in that organisation. If your other commitments mean that you will regularly have to miss meetings of the organisation, or that you have to withdraw from meetings because of conflicts of interest, you will be doing that organisation no favours, and this may reflect badly on the Council which put your name forward. If you neglect your responsibilities to that outside body it is even possible that you will incur a personal liability. Therefore do not allow your name to be put forward unless you are satisfied that you can participate fully in that organisation.

2.5 In almost all circumstances you will owe a duty to act in the best interests of the outside body. You will have to exercise your own best judgement and you cannot just take instructions from the Council. It is permissible to take account of the Council's wishes, but in any conflict, you must act in the best interests of the outside body. The Council recognises this in appointing or nominating you.

2.6 Your responsibilities as a member of an outside body depend on the legal form of that body. The principal forms are:

(a) Statutory corporations

These are bodies which are set up under by statute. There is a wide range of such statutory corporations, including school governing bodies, universities, combined Police and Fire Authorities and many "quangos". The members of the statutory corporation, such as the governors of a school, and how they are appointed is set out in the statute, as are the powers of the statutory corporation. That statute will also set out the responsibilities and liabilities of members of the corporation.

(b) Companies

See paragraph 3 below.

(c) Unincorporated Associations

Unincorporated associations are more or less informal organisations, in which the members regulate their relationship by a contract, such as a membership agreement or the rules of the club or association. Because the association has no legal existence separate from its members, there can be no limited liability. Each member incurs full personal liability for his/her own actions, and relies on the membership contract to be able to recover his/her costs from the other members.

(d) Charities

Some companies and unincorporated associations are also charities. To be a charity, the body or organisation must satisfy the Charity Commissioners that it is directed to charitable objectives. As a charity, it gains relief from corporation tax, VAT and business rates, but is subject to stricter regulation by the Charity Commissioners, to ensure that it is properly managed and that it is spending its money properly on the charitable objects.

### **3. COMPANIES**

3.1 On incorporation a company becomes a separate legal entity which can hold property in its own right, enter into contracts, employ staff and sue and be sued in its own name. The company is distinct from its members, who may be either shareholders or guarantors.

3.2 Companies limited by shares are those which have a share capital (e.g. 1000 shares of £1 each). Each Member 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, although there may be restrictions requiring the shares to be offered to existing shareholders. In the case of a limited liability company, the liability of members of the company is limited to the amount they paid or agreed to pay when they joined the company, or the amount of their guarantee. This can be as little as £1.

3.3 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 agree to pay a certain amount. This may also be as little as £1.

3.4 Where a company is a trust, it is not permitted to distribute any profit to its shareholders, but must ensure that any such profit is ploughed back into the business. Trust companies are normally limited by guarantee, and this form of company is the most usual form in the public and voluntary sector, particularly where charitable status is sought.

3.5 The management of a company is generally the responsibility of a board of directors, elected by the Members of the company. 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 the 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.

#### **3.6 Directors' Duties**

A director is an agent of the company. His/her prime duties are as follows:-

(1) A fiduciary duty to the company (not to individual shareholders) 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. The fiduciary duty of the director towards the company is very similar to the fiduciary duty of Members to the Council Tax payers of the Borough.

(2) A general duty of care and skill to the company. So long as the Company remains solvent, a director requires no greater skill than might reasonably be expected of someone of that individual's particular knowledge and experience. A director is not deemed to be an expert, but is expected to use due diligence and to obtain expert advice if necessary.

(3) Like a Member in respect of Council decisions, the director is under a duty to exercise independent judgement, though it is permissible for him/her to take account of the interests of a third party which he/she represents. 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 simply in accordance with the Council's instructions. To do so would be a breach of duty.

(4) No conflict. There may be actual or potential conflicts between the interests of the company and those of the Council. The Member or officer cannot waive their statutory responsibilities as a director. So they may have to cease to act as a Member or officer in relation to the particular matter.

(5) Directors are not allowed to make a private profit from their position. They must therefore disclose any interests they or their family may have in relation to the company's contracts. Whether they are then allowed to vote will depend on the Articles of Association. Equally, officers are not allowed under cover of their office to take any more than their proper remuneration. They must obtain the consent of their employing Council if they are to receive any remuneration from a company to which they have been appointed by their employing Council.

(6) Directors must ensure compliance with the Companies Acts in relation to the keeping of accounts, and that the relevant returns are made to the Registrar of Companies. Directors of charities have similar responsibilities to ensure compliance with charities law. Failure to do so may incur fines and persistent default can lead to disqualification as a director.

### 3.7 Directors' Liabilities

(1) The company's identity must clearly be shown on its stationery. The company number, place of registration, registered office address and 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.

(2) A company can only act within the scope set out in its Memorandum of Association (the document which sets out the objects of the company). A director who knowingly causes the company to act beyond the activities set out in the Memorandum can be liable personally. In very limited circumstances it is possible for the actions of the directors to be ratified by the Members of the company after the event.

(3) A director may also be liable for breach of trust, if he/she misapplies the money or property of the company. Directors may also be liable if they fail to take action to prevent the breach of a co-director of which they are aware.

(4) In the event of failure to act in accordance with the best interests of the company, or if a director uses his/her powers improperly or makes personal profit from his/her position as director, then the director may be personally liable for loss to the company and may be required to give the company the personal profit made.

(5) If the level of skill and care shown by a director falls below that which could be reasonably expected and the company suffers loss, the director will be liable for the loss incurred. However if it believes the director acted honestly and reasonably, a Court may excuse the director liability.

(6) If a company continues to trade despite the fact that the directors know or ought to know that there is no reasonable prospect of the company meeting its liabilities, this is "wrongful trading". Where a director participates in wrongful trading, a Court may require that director to meet any creditor's additional losses resulting from the failure of the company to cease trading as soon as it knew that it could not remain solvent. 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. If a director has concerns about the company's financial position he/she could be well advised to inform the other directors and seek advice from the company auditors.

(7) A director will also be liable if to his/her knowledge the company carries on business with intent to defraud creditors or any other person, or for any other fraudulent purpose. Fraudulent trading can also lead to disqualification from acting as a director.

(8) 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 XCo Ltd)

(9) A third party who enters into a contract on the assumption that a director has power to bind the company, may be liable 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.

(10) Though company liability ceases on dissolution, the liability of the directors (if any) may still be enforced after dissolution.

### 3.8 Indemnities

(1) Members who are directors cannot be indemnified by the company against liability arising out of negligence, default, or breach of duty or trust. However the company's Articles of Association may allow for directors to be indemnified by the company in respect of the cost of defending such proceedings if the director is granted relief by the Court or acquitted. It is lawful for companies to purchase insurance to protect its directors against claims of negligence, breach of duty, trust, default etc. Directors would be well advised to ensure that such a policy of insurance is maintained at all times.

### 3.9 Local Authorities (Companies) Order 1995

(1) This Order, made under the Secretary of State's powers contained in Part Five of the Local Government and Housing Act 1989, sets out rules concerning local authorities' involvement in "regulated companies" which are subject to extensive controls, and their involvement in other companies where a number of rules apply.

(2) "Regulated companies" are so defined if they are controlled or influenced by the local Council. "Influenced companies", under the effective control of the local Council, will be subject to the capital finance regime and special property controls. In broad terms, the test as to whether companies are Council influenced is whether the Council has the right to, or in fact does, exercise a dominant influence over the company in question.

(3) The original concept of controlled influenced and minority interests in companies were introduced by the 1989 Act. "Influenced" means at least 20% local Council interest plus a business relationship with the company accounting for over 50% of the company's turnover and/or the company was located on Council land leased or sold for less than best consideration. "Controlled" means over 50% Council interest. "Minority" less than 20% interest. The concept in the 1989 Act stands, but the Order introduces the term "regulated".

(4) A local Council influenced or controlled company must state this on all business documents.

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(5) Members or officers who are directors of outside companies to which they have been nominated by the Council are under the following obligations:-

(a) (Members only) that the remuneration they receive from the company should not exceed that received from a local Council and should be declared.

(b) to give information to Members about their activities required by the local Council (save for confidential information) and

(c) to cease to be a director immediately upon disqualification or retirement as a Member or termination of their employment by the Council.

**You will be notified by Democratic Services if you are appointed to a regulated local Council company.**

#### **4. CHARITIES**

4.1 To be a charity an organisation must operate for a charitable purpose. There are four such charitable purposes:

- the relief of poverty and human suffering;
- the advancement of education;
- the advancement of religion;
- another purpose for the benefit of the community.

It must operate for the public benefit and have exclusively charitable purposes. An organisation which operates for political purposes will not qualify for charitable status.

4.2 To register as a charity the organisation must submit its completed constitution (usually Certificate of Incorporation and the Memorandum and Articles of Association of a company limited by guarantee) to the Charity Commissioners for approval. If they are satisfied that the organisation is charitable it will be registered as such.

4.3 Those who are responsible for the control and administration of a charity are referred to as its trustees, even where the organisation is a company limited by guarantee and even though they are not strictly trustees. Trustees of a charity retain personal liability, and can only delegate to the extent that the constitution authorises them so to do

#### **4.4 Trustees' Duties**

(1) Trustees must take care to act in accordance with the constitution and to protect the charity's assets. They are also responsible for compliance with the Charities Acts, and should note the particular requirements of the Acts in respect of land transactions.

(2) Trustees must not make a private profit from their position. They cannot receive remuneration 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.

(3) Charitable 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.

(4) If charitable income exceed £10,000, the letters, adverts, cheques etc must bear a statement that the organisation is a registered charity.

(5) Trustees are under a duty to ensure compliance with all relevant legislation (e.g. in relation to tax and land matters).

#### 4.5 Trustees' Personal Liability

(1) Generally a trustee incurs personal liability if he/she:

- acts outside the scope of the trust deed;
- falls below the required standard of care;
- acts otherwise than in the best interests of the charity, in a way which causes loss to the charity fund;
- makes a personal profit from the trust assets.

In such circumstances the trustee will incur personal liability for losses incurred.

(2) If in doubt, always consult the Charity Commissioners. A trustee who does so can avoid personal liability for breach of trust if he/she acts in accordance with the advice given.

(3) Trustees of a trust can be liable personally to third parties unless the trust is also a company, and therefore has a separate legal identify from the trustees. The constitution will normally provide for trustees to be given an indemnity from the trust 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 trust 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 make returns etc.

#### 4.6 Indemnities

An indemnity can be given from the trust fund 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. There will be no problem if the trustees themselves pay the premiums but if they are paid out of the charitable funds the trustees will need the consent of the Charity Commissioners first, unless the trust deed allows it.

## **5. MANAGEMENT COMMITTEES**

### 5.1 Unincorporated Associations

Groups which are not charitable trusts or companies are "unincorporated associations" and have no separate legal identity from their members. The rules governing the members' duties and liability will be set out in a constitution which is simply 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 organisation may be charitable and may register as a charity.

5.2 Property will have to be held by individuals as the association has no legal existence of its own.

### 5.3 Duties

Broadly, Management Committee members must act within the constitution, and must take reasonable care in exercising their powers.

### 5.4 Liabilities

(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 for all the members, who have joint 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 over of employees' tax deductions etc.

### 5.5 Indemnities

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.

## **6. REGISTRATION AND DISCLOSURE OF OUTSIDE INTERESTS FOR MEMBERS**

6.1 Part Three of the Local Government Act 2000 required each Council to adopt a Code of Conduct for Members which must contain all the provisions of the Model Code of Conduct. Each member of the Council, elected or co-opted, is required to sign an undertaking to observe the provisions of the Council's Code of Conduct for Members. The Model Code of Conduct of Members is prescribed by regulations under the Local Government Act 2000 and replaces the old rules on "pecuniary" and "non-pecuniary" interests.

The requirements of the Code of Conduct for Members can be summarised as:

- a. a requirement to comply with specific rules in respect of the member's conduct;
- b. a requirement to notify the Council's Monitoring Officer of ownership, membership, or employment by any outside body, which information will then be included in a public register of interests;
- c. when any matter affecting such an outside body comes before the Council and the member would be involved in consideration of that matter, to disclose the member's interest in that outside body and, in cases where a significant conflict of interest arises, to withdraw from taking any part in that consideration ie leave the room.

Where a member fails to register all such interests, fails to disclose such an interest or fails to withdraw when required to do so, any person may make a complaint to the Council's Standards Committee. If the member is adjudged to have failed to comply with the Code of Conduct, the Member can be suspended from office in whole or in part for up to 6 months, or can be disqualified from being a member of any local Council for up to five years, if the complaint is referred to the Adjudication Panel for England for decision or on Appeal. Other sanctions such as training are also available.

### **6.2 General Rules of Conduct**

The Code of Conduct set out some general rules of conduct which must be observed by members. The most important rules, in the context of outside interests are as follows:

- (a) A member must not disclose information given to him/her in confidence by anyone, or information acquired which he/she believes is of a confidential nature,

without the consent of a person authorised to give it, or unless he/she is required by law to do so;

(b) A member must not in his/her official capacity, or any other circumstances, conduct him/herself in a manner which could reasonably be regarded as bringing his/her office or Council into disrepute;

(c) A member must not in his/her official capacity, or any other circumstance, use his/her position as a member improperly to confer on or secure for himself/herself or any other person, an advantage or disadvantage;

(d) A member must, when using or authorising the use by others of the resources of the Council ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the Council or of the office to which the member has been elected or appointed.

### 6.3 Registration of Interests

The Code of Conduct for Members requires every member to notify the Monitoring Officer of any registerable interests which he/she holds, within one month of election or appointment. Members' declarations or registerable interests are then held in a public register of interests. The member may not act as a member until he/she has completed that declaration. In addition, the member must notify the Monitoring Officer of any change in his/her registerable interests within 28 days of becoming aware of that change.

Membership of an outside body can be a registerable interest under any of the following headings in the prescribed form:

- (a)
  - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
  - (ii) any body—
    - (aa) exercising functions of a public nature;
    - (bb) directed to charitable purposes; or
    - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
  - (iii) any employment or business carried on by you;
  - (iv) any person or body who employs or has appointed you;

- (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
  - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
  - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
  - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
  - (ix) any land in your authority's area in which you have a beneficial interest;
  - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
  - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—
- (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
  - (ii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.
- (2) In sub-paragraph (1)(b), a relevant person is—
- (a) a member of your family or any person with whom you have a close association; or
  - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
  - (d) any body of a type described in sub-paragraph (a)(i) or (ii) (above).

#### 6.4 Disclosure of Personal Interests

Whenever a member is present at a meeting at which a matter is under consideration in which he/she has a personal interest, he/she must disclose both the existence and the nature of that interest before the start of consideration of that matter and any executive member who has taken an executive decision on any matter in which he/she has such a personal interest must ensure that the interest is recorded in the official record of the decision.

A member will have a personal interest in any matter which relates to any registerable interest within paragraph 6.3 above if a decision in relation to that business might reasonably be regarded as affecting his/her well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

- (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
  - (ii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.
- (3) In sub-paragraph (1)(b), a relevant person is—
- (a) a member of your family or any person with whom you have a close association; or
  - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or any body of a type described in sub-paragraph (a)(i) or (ii) (above).

### 6.5 Prejudicial Interests

In some instances, the conflict between the interests of the Council and a member's interest may be of such a substantial nature that the member's interest is not only "personal" but also "prejudicial". The test of whether an interest is prejudicial is the "probable bias" test, **namely whether the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.**

However, there are some exceptions to this rule. So a member who has what would otherwise be a prejudicial interest is given a discretion to regard him/herself as not having a prejudicial interest, but merely a personal interest, in a matter if that matter relates to:

- (a) another relevant Council of which he is a member;

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(b) another public authority in which he/she holds a position of general control or management; or

(c) a body to which he/she has been appointed or nominated by the Council as its representative. In certain circumstances the interest may be such that participation is still inappropriate. Advice should be sought on a case by case basis.

Where a member does have a prejudicial interest, he/she must withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, must not exercise executive functions in relation to that matter, and must not seek improperly to influence a decision about that matter. "Withdraw" in this context means withdrawal from any part of the room, so the member must not observe the consideration of the matter from the public gallery.

"Meeting" means any meeting of the Council, or any of its Committees or Sub-Committees, as well as meetings of the Executive, of any Executive Committee, and of any Joint Committee or Area Committee.

**Members are advised to study their agenda papers carefully prior to any meeting so that potential conflicts can be anticipated before the meeting starts.**

## **7. Registration and Disclosure of Outside Interest for Officers**

### 7.1 Declaration of Interests

Section 117(1) of the Local Government Act 1972 requires that, if it comes to the knowledge of any officer of a Council, that the Council has entered or proposes to enter into any contract in which he/she has a pecuniary interest, whether or not he/she would actually be a party to the contract, he/she must give notice in writing to the Council. There is a difficulty with this provision as the definition of a pecuniary interest has now been repealed, but it must be taken as any circumstance in which he/she or a member of his/her immediate family stand to gain or lose financially as a result of the contract.

### 7.2 Registration of Interests

The Council requires officers graded at SCP 33 and above to declare any interests which they have, both upon appointment and as those interests change, and enter those declarations in a register maintained by the Monitoring Officer. The Register is updated annually, but Officers should notify promptly the Monitoring Officer of any change in circumstances.

## 8. Gifts and Hospitality - General Principles

8.1 Members and officers must never accept any gift or consideration as an inducement for doing or forbearing to do anything in their roles as members or officers of the Council. Indeed, where officers accept any such gift or consideration from anyone who has or is seeking a contract with the Council, the gift or consideration is deemed to have been accepted corruptly unless the officer can prove to the contrary. It is therefore very important to be completely open about any significant gift or hospitality, to avoid the suspicion of misconduct.

8.2 As a general rule, offers of hospitality and/or gifts should be declined. However, it is acknowledged that Members and officers may, as part of their duties and responsibilities be called upon to represent the Council, for example at:

- functions within the community;
- meetings/visits with outside bodies;
- meetings/visits with contractors;
- conferences/courses where hospitality of gifts may be offered.

Before attending such an event, Members and officers should establish the purpose of the event, be able to justify their attendance and identify the outcome/benefit to the Council.

8.3 **Officers:** Detailed guidance for officers on Gifts and Hospitality is contained in the *Code of Conduct for Employees*.

8.4 **Members:** Guidance on Gifts and Hospitality

Hospitality

8.4.1 Members should only accept offers of hospitality if there is a genuine need to represent the Council. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community, where the Council should be seen to be represented or it is necessary to promote the interests of the Council, its citizens or the local economy, provided always that the Member's attendance is consistent with their obligations under the Code of Conduct for Members.

**8.4.2 If Members attend such functions, in line with the Council's Code of Conduct for Members the Register of Gifts and Hospitality must be completed on each occasion hospitality with a value of more than £25 is accepted or refused. The Register must be completed before the hospitality event takes place. It is good practice to register acceptance or refusal of all offers of hospitality in the Register, regardless of their value.**

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8.4.3 When hospitality is declined, the offer should be courteously but firmly refused and the organiser informed of the procedures and standards operating within the Council.

8.4.4 When receiving hospitality, Members should be particularly sensitive as to its timing in relation to decisions which the Council may be taking affecting those providing the hospitality.

8.4.5 Hospitality, where it is incidental, is acceptable in the following circumstances:

- through attendance at relevant conferences and courses;
- where it is clear that it is corporate rather than personal;
- where the Council (acting through the Monitoring Officer) is satisfied that any procurement decisions are not compromised.

#### Gifts

8.4.6 Generally, Members may accept insignificant items of token value such as pens, diaries, mouse mats, badges, scarves, ties etc. It is good practice to register acceptance or refusal of these items in the Register.

**8.4.7 In line with the Council's Code of Conduct for Members, the Register of Gifts and Hospitality must be completed on each occasion a gift with a value of more than £25 is accepted or refused. It is good practice to donate gifts with more than a token value to the Mayor of Burnley's Charity.**

#### Sponsorship -

8.4.8 The standards relating to hospitality and gifts apply equally to situations where an organisation sponsors or wishes to sponsor a Council activity.

8.4.9 In circumstances where the Council wishes to sponsor an event or service, you must be aware that neither you nor your partner, spouse, friend or relative must directly benefit from such sponsorship without there being full disclosure to an appropriate manager of any such interest.

## Appendix I

### Responsibilities of Management Committees etc

The main responsibilities of the management committee or other governing body are:

- to maintain a long term overview of the organisation and all its work;

- to make strategic and major decisions about the organisation's objectives, policies and procedures;
- to ensure the needs and interests of relevant people and bodies are taken into account when making decisions;
- to ensure adequate resources (especially people and money) to carry out the organisation's activities;
- to monitor progress towards objectives, and other work;
- to take legal responsibility for the organisation and all its actions (or inaction). If the organisation gets into legal or financial trouble, members of the management committee or other governing body can in many cases be held personally liable.

### Legal responsibilities

The legal responsibilities of the management committee or other governing body can be divided into 10 main areas:

Constitutional objects and powers - The management committee or other governing body is responsible for ensuring the organisation carries out its objects (aims or purposes) and operates within its powers according to the constitution, so committee members must know what the objects and powers are and understand what they mean. A good committee will always consult users, managers, staff and volunteers before making major decisions.

If an organisation with charitable status operates outside its objects or powers, the Charity Commission can require the charity trustees personally to pay back to the charity any money used for these activities.

Procedures and Accountability - The management committee or other governing body is responsible for ensuring the organisation carries out its business according to its constitution and good practice. Part of the constitution relates to why the organisation exists and the type of activities it is supposed to carry out; a constitution also defines how the organisation is supposed to conduct its business. It is the committee's responsibility to ensure these rules are followed. Specific responsibilities include:

- serving as a well-informed, interested, supportive committee;
- maintaining democratic procedures and accountability;
- holding meetings regularly, and ensuring members have the information needed to make decisions;
- calling the annual general meeting and ensuring elections and other essential items are dealt with as required;
- ensuring adequate communication between the committee, subgroups, managers, staff, volunteers, and the organisation's users, members, clients, residents or other people served by the organisation.

Further legal obligations - Statutory obligations exist in law and must be met: for example having to register under the Data Protection Act if the organisation

keeps information about recognisable living individuals , or having to give contracts of employment to staff who normally work 8 or more hours per week. It is the responsibility of the management committee or other governing body to ensure the organisation meets these obligations.

Contracts - are legally binding commitments which the organisation chooses to enter into: for example renting premises, hiring staff, leasing a photocopier or entering into a contract to provide services. It is the responsibility of the committee or other governing body to ensure the organisation can and does meet the terms of any such undertaking. If the organisation is incorporated as a company limited by guarantee or is registered as an industrial and provident society (IPS) it can enter into contracts in its own name. If it is not a company or an IPS it cannot enter into a legally binding agreement in its own name, so this will have to be done by individuals, usually the organisation's elected officers, acting on behalf of the organisation. Anyone who signs a legal document must be authorised to do so, by a proper decision made by the committee, and must clearly indicate she or he is signing on behalf of the organisation.

To protect themselves as well as the organisation, members of the management committee or other governing body should be satisfied the organisation is meeting its legal obligations with respect to:

- contracts of employment and employment legislation;
- equal opportunities legislation (Race Relations Acts, Sex Discrimination Act, Disability Discrimination Act);
- lease, licence or tenancy agreements;
- Health and Safety at Work Act, Offices, Shops and Railways Premises Act and other health and safety legislation;
- insurance requirements,
- financial record-keeping and information, income tax, national insurance, other taxes, VAT;
- bank accounts, loans, overdrafts;
- fund-raising and grants;
- work done by the organisation under a service agreement or contract;
- Data Protection Act;

Financial responsibility and accountability - The management committee or other governing body is responsible for ensuring the organisation has enough money to carry out its work, meets its financial obligations when they are due, accounts for all its financial dealings and does not get into financial trouble. This includes not only the payment of bills but also ensuring proper records are kept and the organisation's money is spent in the correct way. This means the management committee or other governing body has ultimate responsibility for:

- wages, tax, national insurance, statutory sick pay and maternity pay, pensions, redundancy pay, and any other pay or benefits due to workers under legislation or the terms of their contracts;

- mortgages, rent, rates;
- insurances; -
- all other bills; -
- ensuring the organisation will have enough money to meet any financial obligations when they come due;
- ensuring all grants or other funds received for specific purposes are spent as specified;
- ensuring the organisation is being paid enough for any services it is providing under a service agreement or contract;
- ensuring the organisation's funds are wisely invested;
- ensuring the organisation keeps accurate and comprehensible financial records, accessible to management committee members and authorised members of staff;
- receiving regular financial reports in a form which committee members can understand;
- ensuring annual accounts are drawn up and audited in accordance with the constitution and, where relevant, funders' requirements and/or legislation.

Employment and volunteers - In most voluntary organisations the management committee or other governing body is legally the employer, with responsibility for hiring, supporting and if necessary firing staff. Even if some aspects of employment are delegated to staff or a personnel sub-committee, the committee as a whole is responsible for ensuring the organisation has appropriate procedures to draw up and regularly update job descriptions; ensure adequate funding to pay staff; advertise appropriately, shortlist, interview and select staff; issue and abide by contracts of employment; ensure there is appropriate induction, training, supervision, support, and ideally a regular review and assessment procedure for staff; deal with complaints and grievances; undertake disciplinary and redundancy proceedings.

If some or all of the organisation's work is carried out by volunteers the committee has legal responsibility for them and their work. The committee should ensure they are adequately inducted and supported and there are appropriate disciplinary and grievance procedures

If a staff member or volunteer acts negligently, for example by giving incorrect advice to a client or not looking after a child properly, members of the governing body could be found negligent if the organisation does not have and enforce proper procedures for recruiting and training staff and volunteers, setting standards, monitoring work and maintaining a safe environment.

Equal opportunities -

It is the responsibility of the management committee or other governing body to ensure the organisation complies with equal opportunities legislation (Race Relations Act, Sex Discrimination Acts, Equal Pay Act, Disability Discrimination Acts). But good practice goes far beyond the legislation. If the organisation is concerned about equal opportunities (and the Council believes that all voluntary

organisations should be) it is the committee's responsibility to ensure the organisation has a clear statement of intent on equal opportunities and a workable code of practice setting out how it will make its statement a reality, and to ensure the code of practice is implemented and monitored.

Premises and equipment - A management committee or other governing body generally has overall responsibility for the use, safety and security of premises used by the organisation and must ensure they are properly and legally managed and used. This includes:

- making decisions about major change of premises use. Day to day decisions about use (for example bookings) might be delegated to staff or volunteers but are still the ultimate responsibility of the committee;
- ensuring adequate finance and insurance;
- setting conditions for bookings, hire of premises, licences and similar requirements;
- developing and implementing a health and safety policy covering all aspects of the organisation's work; - ensuring the organisation meets public health and fire regulations and precautions;
- ensuring adequate security for premises, equipment and people;
- approving alterations, repairs and renovations;
- ensuring planning and building regulations are met.

Insurance - The management committee or other governing body is responsible for ensuring all insurances are taken out and paid. Some insurances are compulsory:

- employer's liability insurance must be held by any organisation with paid staff, and the certificate of insurance must be prominently displayed at the organisation's office; - public liability insurance covers injury, loss or damage caused to any person (including volunteers and management committee members) as a result of the organisation's negligence;
- if an organisation has vehicles it must have third party insurance, which covers injury or death caused to other people;
- buildings insurance and/or plate glass windows insurance are not required by law but might be required by the terms of a lease or mortgage.

Legal status - The management committee or other governing body must ensure the organisation meets its legal obligations if it is a company limited by guarantee, an industrial and provident society, a friendly society and/or a registered charity. Any organisation registered under the Companies Acts, the Friendly Societies Act or the Industrial and Provident Societies Act must meet the requirements of the relevant Act. Organisations which fail to do so can face heavy fines, as can individual members of the management committee or other governing body. Responsibilities include:

- preparing annual accounts and balance sheets, having them audited and submitting them to the Registrar of Companies or Registrar of Friendly Societies;

- holding the annual general meeting as required by the constitution, electing directors (management committee) and submitting annual returns to the Registrar;
  - notifying all changes of director to the Registrar;
- In charities the charity trustees (usually the same as the management committee, but not necessarily) have responsibility for:
- preparing annual accounts, having them audited as required and submitting them to the Charity Commission and Inland Revenue;
  - filing an annual report and annual return, as specified in regulations under the Charities Act 1993, with the Charity Commission;
  - ensuring all the organisation's activities fall within the charity's objects and are charitable as defined by law;
  - indicating on all the charity's documents, invoices, cheques and publications that it is a registered charity.

Everything else - Last but not least, the management committee or other governing body is responsible for any other legal responsibilities which might apply. This could include, for example:

- conditions imposed by funders.
- legislation applicable to certain types of work, such as housing associations, work with children or people considered vulnerable, work with dangerous machinery or equipment, food handling, lotteries or public events.

## **Appendix 2**

### **Liabilities of Organisations & Members**

#### Liabilities

Members of the management committee or other governing body are generally legally responsible for what the organisation does only if they have the right to vote on the committee. So co-opted members or representatives of other bodies without voting rights would not usually have any liability for what the organisation

does. If an individual who represents another body has voting rights on the committee any legal liability rests with the individual, not the organisation which she or he is representing.

The legal liability of members of the management committee or other governing body is determined by the legal status of the organisation. This depends on whether the organisation is unincorporated or incorporated.

### Unincorporated organisations

An unincorporated organisation does not have a legal identity of its own. In law, it is simply a collection of individuals. Unincorporated organisations cannot enter into contracts or other legal agreements in their own name. If they want to rent property, employ people, borrow money or take legal action, this has to be done (or will legally be assumed to have been done) by individuals acting on behalf of the organisation. If they want to own property, the property will be legally held by individuals (holding trustees) on behalf of the organisation.

Some unincorporated organisations are registered as friendly societies or trusts, but most are unregistered associations. An unregistered association is not accountable to anyone except its own members and funders, If an unincorporated organisation gets into debt or has other legal problems, the people who have responsibility for the organisation (the management committee, if there is one, or all the members) can be held personally responsible for the difficulties. They have legal liability for whatever mess the organisation gets itself into.

### Ways to limit individual liability

There are several ways to reduce the risk to individual members of the management committee or other governing body:

- Members of the governing body must always act sensibly and responsibly in making decisions about the organisation. This means getting proper information from staff or professional advisers, discussing issues fully; and not taking on obligations they know the organisation might not be able to fulfil.
- Individuals who sign legal or financial undertakings should make it clear, in writing, they are signing on behalf of the organisation rather than as individuals. If possible, they should indicate that their liability is 'limited to the extent of the assets of the organisations'.
- If an individual committee member thinks a decision is irresponsible, she or he can be publicly disassociated from it. If this disassociation is properly minuted, the individual may not be held responsible for any liability arising from the decision.
- The organisation should have all legally required insurances and sufficient other insurance to cover possible claims.
- It is possible to get insurance to indemnify (repay) committee members for any personal liability they incur on behalf of the organisation.

- If the organisation hires several staff, owns premises, or has other long term financial commitments, it should consider incorporation.

### Incorporated organisations

An incorporated organisation has an existence of its own, as a legal body separate from its individual members. The organisation can, in its own name, rent or buy property, hire workers, borrow money or take legal action. This is sometimes referred to as having legal personality.

- In a company limited by shares members (shareholders) invest money in the company in order to make a profit. This structure is not appropriate for voluntary organisations but is sometimes used for trading subsidiaries.
- An industrial and-provident society (IPS) is a genuine co-operative, or a business or industry 'acting for the benefit of the community'. A community business, housing association or voluntary organisation involved in producing and selling goods or other training activities can become an IPS.
- A company limited by guarantee is an appropriate structure for a voluntary group which exists for a social or political reason and puts any profits back into the group. Most voluntary or community groups which incorporate become companies limited by guarantee.

### Extent of individual liability

The members of a company limited by guarantee will guarantee (promise) to pay a small amount, usually £1 or £5, if the organisation gets into financial trouble. Their liability is normally limited to this amount. However, if the Company becomes insolvent and is wound up following wrongful trading (where directors knew or ought to have known before the Company went into liquidation that there was no reasonable prospect that the Company would avoid liquidation) or, fraudulent trading (where the Company business was carried on to defraud creditors), directors and other members of the Company may be ordered to contribute to the Company assets.

Members of the company might be all the current members of the organisation, the founding members, or some or all of the members of the management committee or other governing body. This will be set out in the constitution, which is called the memorandum and articles of association. The memorandum sets out the organisation's objects and what it can do (its powers); the articles set out its rules and procedures.

The liability of company directors (usually the same as the management committee) is limited in the same way. However company directors can lose this protection if it can be shown that they have acted negligently (irresponsibly) or fraudulently (dishonestly). And under the Insolvency Act 1986 company directors can be held personally liable in cases of wrongful trading. This is where a company continues to operate when the directors know, or could reasonably

have been expected to know, that it does not have a reasonable hope of being able to meet its financial obligations when they come due.

If the company is also a charity, the company directors will also be charity trustees. As trustees they can be held personally liable (even though the organisation is incorporated) if the charity's funds are used for purposes which are outside its objects or powers.

To a large extent incorporation reduces the risk of members of the management committee (or separate board of directors, if there is one) being held personally liable if the organisation gets into debt or gets into other trouble. But there is still considerable risk if the committee operates irresponsibly.

All registered charities must have charity trustees (sometimes called managing trustees) who have ultimate responsibility for the organisation. In some charities the trustees delegate some management responsibilities to another body, which might be called a management committee but does not have ultimate responsibility. In this situation the relationship between the two groups must be clearly set out in terms of reference.

Charity trustees cannot 'profit' from the charity. This means they cannot be employed by the organisation, even for part-time or temporary work. Conversely, employees of a charity cannot be trustees and cannot be voting members of the committee if the committee is also the trustee body. (Employees can, of course, attend meetings and participate if the trustees so wish).

Most charities must submit their accounts each year to the Charity Commission and to the Inland Revenue if they want to claim the tax benefits which charities enjoy.

The Charity Commission can advise on any aspect of charity registration or charity law, and should be contacted if there is any doubt about what a charity can and cannot do.

#### Incorporation of charity trustees

It is possible for a charity to incorporate its trustee body, while not incorporating the organisation as a whole. This enables the organisation to own property and enter into contracts or other legal arrangements in its own name, rather than through individuals acting on behalf of the organisation. This type of incorporation does not, however, limit the personal liability of the trustees in any way. Further information is available from the Charity Commission.