

# Guidance for Members on Appointments to Outside Bodies

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## 1. Introduction

This guidance note is intended to assist in understanding Members' roles, rights, obligations and responsibilities when they are appointed to outside bodies.

2. **What does the term 'outside body' mean?** The term 'outside body' refers to the full range of organisations with which members might find themselves involved, including:

- those outside bodies with their own corporate identity at one end of the scale (for example, a limited company, trust, school governing body or charity),
- unincorporated associations at the other (for example, a community association), where there is no separate and distinct identity other than that of the individual members themselves (who generally have full responsibility for the outside body's actions).

The nature of the role, responsibilities and potential liabilities of members will depend upon the legal nature of the outside body concerned, as well as the capacity in which they have been appointed. Failure to act in a proper manner may give rise to personal liability or liability for the Council.

Conflicts of interest can arise, particularly where a body receives grant aid or other support from the Council. Members must always walk a very fine line between the respective roles of members, where primary duties are to the Council, and representative on an outside body, where separate and distinct obligations arise.

Such bodies are diverse and multi-faceted, whose areas of interest cover the full spectrum of civic and community activities. Broadly speaking, Members will be appointed to such bodies to represent the County Council.

Other types of body to whom Members may be appointed are those to which members are directly appointed as individuals, sometimes because of their status as members (but not necessarily so), or by reason of their own areas of interest, capacity or experience.

This guidance focuses on the position of members appointed by the Council or Cabinet to serve on outside bodies, but much of it will apply equally to members involved in such bodies in a private capacity (where it is important to note that the Council's insurance cover will not apply). The advice provided herein is not exhaustive, hence members should contact the Monitoring Officer or the Assistant Director of Legal Services for further advice in relation to any specific areas of concern they may have.

## 3. What powers exist to appoint members and officers to external organisations?

There are several approaches to the way members and officers are appointed to an outside body. For example:

- The Council has a power to appoint to an outside body or
- The Council has the power to nominate a Member or Officer to the outside body. However, the power of appointment remains with the outside body or
- The Council itself is a member of the outside body, which has a power to appoint a member or officer to attend meetings of the body as its representative.

The first decision to be taken is whether the authority will appoint or nominate either an officer or a councillor (member) onto an outside body. Whilst there are some specific powers of appointment, such as for local authority governors of schools, most outside appointments are made either under:

- *Section 111 of the Local Government Act 1972*, because it is anticipated that having a council appointee on the body is “conducive or incidental to, or calculated to facilitate” the discharge of the authority’s functions.
- *Section 1 of the Localism Act 2011* (the general power of competence that applies to local authorities in England).

#### **4. What are the general principles and provisions where members are involved in an outside body?**

There are fundamental principles that members should observe when appointed to outside bodies. Members must:

- Act in accordance with the rules, constitution and governance framework set by the relevant outside body.
- Make independent and personal judgements based on their duty of care to the outside body and must act in the best interest of that body as they see them.
- Regularly report to the Council on their involvement with the outside body.
- Comply with their obligations to the Council pursuant to any code of member conduct adopted by the Council.
- Take an active and informed role in the management of the outside body’s affairs, unless appointed solely as an observer.

A member is duty-bound to exercise independent judgement in the interests of the outside body to which they have been appointed, irrespective of whether the legal status of that outside body means that the member is acting as:

- a company director,
- a charity trustee or
- a member of an unincorporated association.

Members appointed to an outside body by the Council will also have a commitment to represent GCC while appointed to that outside body, but it will be their responsibility to decide on what view to take on any question before that body. By way of example, an instruction from the Council to vote in a particular way would put the member in breach of his/her duty to the outside body. It is permissible in those

circumstances to take account of the Council's wishes, but it is not permissible to vote simply in accordance with those wishes without applying one's own judgement.

Where a member is formally appointed to an outside body by GCC in order to represent the Council, the fact that they are representing the Council should always be declared to the outside body. Moreover, members so appointed should familiarise themselves with the duties they will assume and any potential liabilities they may incur. It is essential that any potential for conflict of interest is recognised, and for there to be a strategy in place to deal with such conflicts.

### **5. What should be considered before Appointment?**

Before accepting an appointment to an outside body (whether by County Council/Cabinet nomination or otherwise), members should be provided with details of the status of the outside body and the following information to ensure they understand the following in respect of each such appointment:

- The legal status of the outside body (e.g., limited company, trust, charity, or unincorporated association).
- The capacity in which the member is appointed to the outside body (e.g., director, trustee, member with full voting rights or member with observer status only).
- The outside body's purpose and the activities carried out by it.
- The way the outside body's activities relate to the objectives and functions of the Council.
- The relationship between the Council and the outside body.
- Potential conflicts of interest between those of the Council and/or the member and/or the outside body.
- The requirements of the outside body's instrument of governance (e.g. its constitution, trust deed or memorandum and articles of association).
- The financial status/security of the outside body.
- The Council's arrangements for governance, decision-making and managing risk.
- The Council's code of conduct for members.
- Potential liabilities arising from the member's appointment to the outside body.
- The extent of any insurance cover that is in place in respect of members appointed to outside bodies.

Having carefully considered all of these issues, consideration should also be given to the question of whether such an appointment will require the member to participate in the management of the outside body on a formal basis (e.g. as a director), or whether the role will be a non-voting, non-participative observer only. The obligations placed on members under the formal form of appointment (e.g. as a director) will be significantly more onerous than a non-voting, non-participative observer.

## **6. What is the Legal status, Capacity, Duties and Liabilities in being appointed to an outside body?**

The specific responsibilities of a member appointed to an outside body will depend upon the legal status of that outside body and the capacity in which the member serves when appointed to that body.

For the purpose of this guidance, the position of members is considered in the context of the following most commonly occurring circumstances:

- Director of a limited liability company (limited by shares or guarantee)
- Member of an unincorporated association
- Member of a steering group, joint committee or partnership body.

Appendix 1 provides an overarching summary of the liabilities and responsibilities of the different types of outside bodies.

### **6.1 What are the responsibilities on being appointed to a Limited Liability Companies?**

Companies can be:

- limited by shares, usually operating a trade or business, with shareholders (to whom profits may be distributed as dividends); or
- limited by guarantee as a “not for profit” organisation, with members or trustees rather than shareholders. Companies of this type are often charitable companies

Companies have their own separate identity at law. Their day-to-day business is managed by a board of directors. They offer the benefit of limited liability, which means that shareholders or members are not personally liable for the company’s debts and liabilities. As a separate legal entity, a company can employ staff, enter into contracts, own land or property and sue or be sued in its own name. The powers of directors are usually set out in the company’s Articles of Association, which are the set of rules governing the internal management arrangements.

Given that this guidance is not intended to be exhaustive, members are advised to acquaint themselves with the information available to directors and potential directors on the Companies House website (<http://www.companieshouse.gov.uk/>) and the website for the Institute of Directors (<http://www.iod.com/>).

#### **6.1.1 What are the duties of a Company Director?**

- **To act honestly, in good faith and in the best interests of the company as a whole, with an open mind and by exercising independent judgement.** This is a fiduciary duty owed by directors to their companies (rather than individual shareholders) to act honestly. It places directors in the position of quasi-trustees who must take proper care of the company's assets. This involves exercising individual and independent judgement in all matters, by reference to all relevant considerations. In certain instances, a member might feel that the best interests of the company and the Council conflict.

It includes having regard (to amongst other things)

- the likely consequences of any decision in the long term, the interests of the company's employees,
  - the need to foster the company's business relationships with suppliers, customers and others,
  - the impact of the company's operations on the community and environment
  - the desirability of the company maintaining a reputation for high standards of business conduct.
  - The need to act fairly as between members of the company
- **To exercise reasonable care, skill and diligence when making decisions as a director.** No greater skill is required than might reasonably be expected 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. This is similar to the member/officer relationship in terms of decision-making and the provision and consideration of professional advice.
  - **To exercise powers reasonably and for the purpose for which they are given.** This will require an objective judgement.
  - **To be aware of the company's financial position.** Attendance at board meetings and giving due consideration to the company's accounts, agendas and minutes will satisfy this requirement. It is not enough to assume that the other company directors are doing a good job.
  - **To act in accordance with the company's memorandum and articles of association, plus any other rules, regulations or bylaws pursuant to which the company operates.** It is the responsibility of individual directors to keep themselves fully up-to-date and informed as to the consequences of such matters.
  - **Not to make a profit from being a director and to inform the board of the company of any direct or indirect interests the director may have in a contract the company is considering, proposing or has entered into.** This will include contracts between the company and the Council, and covers both personal and family interests. In broad terms, a member must notify the other directors before the company makes a decision on the contract, and should take no part in any board discussions or decisions on the matter,

subject to any provisions on the generality of decision-making in the company's Articles of Association.

- **To comply fully with the provisions of company law and any other applicable legislation.** Directors must ensure that the Companies Acts are adhered to in full, particularly with regard to the maintenance of accounts and the submission of statutory returns to the Registrar of Companies. Failure to do so will incur fines and persistent default can lead to disqualification as a director. If the company employs staff or contractors to undertake works, then directors should ensure compliance with, for example, health and safety laws.

N.B. some directors may be given special responsibilities, for example as managing director or finance director. Those with special roles will be expected to have the personal and technical skills to perform the duties associated with that role, which may be onerous.

### 6.1.2 What are the Liabilities of a Director?

In general terms, directors have no personal liability for the debts they incur on the company's behalf, subject to there being no question of misconduct. However, directors *can* be held responsible for certain types of activities, including serious wrongdoings, which might lead to personal liability to others and even criminal liability. These include –

- **Wrongful trading**, where a director knows (or is expected to know) that the company is likely to go into liquidation and he or she fails to take action to reduce the amount the company owes to creditors. Here, doing nothing is not an option and directors *must* take action to protect creditors as soon as they become aware (or should have been aware) of the risk of insolvency. When judging whether or not a director should have been aware of the risk, the court will expect every director to have at least the general knowledge, skill and experience which could be expected of someone in that position. If a director is found to have been trading wrongfully, a court can order a personal contribution to the assets of the company when it is liquidated.
- **Fraudulent trading**, where there is a deliberate attempt to defraud creditors, as a consequence of which the company fails. There needs to be evidence that the director intended to defraud, and mere omissions to act are not sufficient. The consequences are severe; as well as leading to a personal contribution to the assets of the company when it is liquidated, fraudulent trading is a criminal offence and may lead to fines and imprisonment.
- **Breach of a warrant of authority**, which arises when a director gives someone else the impression that they have the authority to act on behalf of the company when in fact, they do not. Any loss incurred by that person as a result of the lack of such authority is capable of being recovered from the director personally.
- **Acting as a director whilst disqualified**, in which case there is personal liability for debts incurred during the relevant period.

- **Failing to maintain up-to-date company records**, both at Companies House and as part of the book-keeping arrangements for the company, in which case a personal fine will ensue.
- **Issues of the Environment**, where at law, civil or criminal proceedings may be taken against a director for the actions of the company in relation to environmental matters (e.g. acts of pollution).
- **Individual liability under the Health and Safety at Work etc Act 1974 (HSWA)**. An individual director can be held criminally responsible for health and safety where:
  - (a) The company itself is found guilty of a health and safety offence;
  - (b) The offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, the director or manager

Consent means knowledge and awareness of the circumstances and the risks which caused the health and safety failure. Connivance means knowing and not doing anything about the risks. Neglect means unreasonable breaching of a duty of care. In addition, a director convicted of a breach under the HSWA 1974 can be disqualified from being a director.

Directors must therefore ensure that they are kept informed on a regular basis of the company's health and safety risks and performance. To achieve this, companies may choose to appoint a health and safety director or allocate health and safety responsibilities to a senior manager, an existing director, the chief executive or a specially formed health and safety committee.

The appointed individual (or committee) should be charged with keeping the board regularly informed of health and safety matters. However, companies must remember that responsibility for health and safety does not stop with a health and safety director or committee. A collective effort is required to manage the health and safety of a company and will assist in complying with laws and regulations.

- **Personal guarantees**, where directors have personally guaranteed a loan to the company and the company cannot meet the conditions of the loan, in which case the lender may choose to enforce the guarantee against the personal assets of the directors themselves. In extreme cases, directors may have to sell their homes or be declared bankrupt.

### 6.1.3 Conflicts of Interest

Even if the Council and the company to which a member is appointed have the same overall aims and objectives, it cannot be assumed that their interests will always be the same.

Conflicts of interest can arise in several circumstances, including where –



- the council is selling, leasing or donating land to the company.
- the company and the council are negotiating a contract with each other.
- the company is seeking funding from the council.
- there is a dispute between the company and the council; or
- the company is tendering or negotiating to provide goods, services or works to the council.

A director of a company must avoid a situation in which they have, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company. Conflicts of interests exist where a person has conflicting duties to two or more other persons for example, the Company and the Council. Where a director has a substantive conflict, they must remove themselves by not taking part in the activity giving rise to the conflict. If they fail or are unable to do so, then the Director is in breach of the duty to avoid direct or indirect conflicts of interest. The consequences of failing to do so may have professional, legal or even criminal consequences.

If a member is uncertain about whether or not a conflict of interest exists, they should seek advice from the Council's Monitoring Officer at the earliest opportunity. At the same time, the company's board of directors should be notified. No further action should be taken in any matter where a potential conflict of interest has arisen until the Council's Monitoring Officer has provided their advice.

### **6.2 What are the responsibilities on being appointed to a Charity or Trust?**

Charities may be created by registering any of the following with the Charity Commission:

- a trust deed, in which case the trustees of the trust become charity trustees
- an unincorporated association, in which case the management committee become charity trustees.
- a charitable company limited by guarantee, in which case the directors become charity trustees

In order to qualify for charitable status, the Charity Commission will need to be satisfied that the body in question is operating for one of the following 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.

#### **6.2.1 What are the Duties of a Charity Trustee?**

Generally, charity trustees must –

- act strictly in accordance with the charity's constitution and rules
- observe compliance with all relevant legislation.
- act in the best interests of the charity.



- manage the charity's affairs with the standard of care which an ordinary, prudent business person would show in their own affairs.
- not derive any personal benefit or gain from the charity.
- take proper professional advice on matters they are not competent to decide for themselves.
- ensure the charity's bank accounts are operated by more than one person.
- ensure the trustees have proper control of the charity's property and assets.
- ensure the charity keeps full and proper accounting records.
- spend charity income solely for the purposes set out in the charity's constitution.
- ensure charity property is properly maintained and insured.
- ensure compliance with the Charities Acts and the Trustee Act 2000.

### **6.2.2 What personal liabilities arise as a Charity Trustee?**

This may arise if a trustee:

- acts outside the scope of the trust deed
- falls below the required standard of care
- makes a personal profit from trust assets.

Personal liability to a third party may arise because a charitable trust by deed, unlike a company, is not a separate legal entity.

As with appointments as company directors, trustees should ensure that adequate public, personal and professional insurance cover is in place as appropriate. An indemnity can also be provided by the trust fund, as long as trustees act properly and within their powers.

For further detailed advice and guidance on duties and liabilities, a number of helpful publications are available via the website of the Charity Commission (<http://www.charity-commission.gov.uk/>).

### **6.3 What are the responsibilities on being appointed to an Unincorporated Association?**

Bodies that are neither companies nor charities are referred to as unincorporated associations. Their affairs are usually governed by a management committee in accordance with a constitution and agreed set of procedural rules, which represent no more than an agreement between the members as to how the unincorporated associations will operate. They have no ability to enter into contracts, own land or employ staff in their own name, and they have no separate identity from their members.

Members of the management committee must follow the body's constitution and rules of procedure, and they must take reasonable care when exercising the unincorporated association's powers. Generally, they are personally liable for the body's acts (both jointly and severally), but they are entitled to an indemnity from its funds provided they have acted properly. If funds are insufficient to cover liabilities, however, committee members are personally liable for the shortfall. They also incur

personal liability if they act outside the authority given to them, or fail to comply with all relevant legal obligations. Insurance may be available, but payment of the premiums must be authorised by the constitution if they are to be met from the funds of the association.

Members appointed to such bodies should familiarise themselves fully with the constitution and rules of procedure in order to understand the nature of their role, responsibilities and liabilities.

### **6.3.1 What are the duties as being a member of an unincorporated association?**

Members appointed to represent the Council on an unincorporated association must:

- act in the best interests of the body
- use reasonable care and skill when involved in decision-making on behalf of the association
- act in accordance with its constitution and rules of procedure.

Members are encouraged to clarify the extent of any limits to their ability to act on the Council's behalf when appointed, and to notify the Council if the association proposes to take a course of action that is disadvantageous to the Council or which seems to involve significant risk.

Sometimes an unincorporated association is also a registered charity, in which case members of the management committee will be charity trustees. This means they will also be bound by the rules that apply to trusts and charities (as above).

### **6.4 What are the responsibilities on being appointed to Steering Groups, Joint Committees and Partnership Bodies**

The responsibilities of a member appointed to such outside bodies will be determined by the terms of reference, constitution or partnership agreement (as appropriate) under which they are established and governed.

Members should ensure that they understand the requirements of their role when appointed to an outside body and, in particular, whether they act as a delegate or representative of the Council to further its interests, or whether they are expected to exercise independent judgement in the best interests of the body concerned. Liability will depend on the nature and functions of the body, as well as its own constitution or the agreement under which it is established. Insurance cover may be available in certain circumstances.

Many arrangements are labelled as partnerships in the public sector without the intention to create a legal partnership. In a true partnership, any partner is "jointly and severally" liable for any liabilities incurred by any other partner. That partner may be able to recover all or some of those losses from the other partners under the partnership agreement. Such liability can be limited for limited partners in a Limited Partnership and for partners in a Limited Liability Partnership. Ordinarily, the terms of the operating arrangements will make clear about whether a particular working arrangement creates a partnership and include clauses to confirm there is no

intention to create one.

#### 6.4.1 Where can partnerships arise for members appointed to outside bodies?

Partnerships can cover a wide area from an informal partnership to a full partnership arrangement which triggers legal obligations between the partners. A partnership can be:

- **Statutory:** For example, Crime and Disorder Reduction Partnerships. Usually their purpose is clearly defined, and participation is compulsory, but they are not separate legal entities even though they have that appearance.
- **Public/public:** For example, shared service arrangements and social care and health integration via agreements under Section 75 of the NHS Act. They tend to be driven by government policy or government funding.
- **Public/private partnerships:** For example, through a public partnership agreement, whereby the public authority retains the public service mission, invites the private company to finance, build renovate, operate and maintain the infrastructure and/or supply a service.
- **Voluntary sector:** local agreements for service delivery via local voluntary sector bodies co-ordinated by the local authority.
- **Commercial:** through a variety of outsourcing and joint venture arrangements.<sup>i</sup>

#### 6.4.2 How do you recognise a Partnership arrangement?

Partnerships can be formed in a variety of different ways and the relationship with the Council can be through:

- A partnership properly so called. There are, however, very few “persons carrying on a business in common with a view to profit” or “limited partnerships” in the public sector.
- Informal arrangements. In effect, no more than people getting together to coordinate effort, with no legally binding consequences.
- A contract for services. Outsourcing contracts can have a partnership feel. This can include the provision of administrative, professional and technical services by one public body to another under the Local Authorities (Goods and Services) Act 1970.
- Through unincorporated associations. There is a legally binding relationship, founded in contract with express and implied obligations and indemnities. This is common for small local partnerships. They should have a written constitution, and are easy to create and dismantle.
- An agency arrangement. A “contract of agency” has a special legal meaning, but in this context the reference is to one authority discharging the functions of another under a statutory power.

- A joint committee. These are multi-authority committees discharging functions on behalf of several authorities. They operate like a single authority committee, usually with a “lead authority” host.
- A joint venture. This will be a new entity, generally a limited company, owned by the “partners”.
- Through a company limited by shares, a company limited by guarantee or possibly a Limited Liability Partnership (LLP).
- Through an Industrial and Provident Society (IPS), a Friendly Society, a Community Interest Company (CIC), or a Cooperative Society. Each has a particular set of features and system of regulation. The term “mutual” is loosely applied to some of these.
- Through a trust. This is a legal relationship rather than an entity: a way of holding and safeguarding assets, but the trustees are often seen as a legal entity.
- Through a charity. This is a descriptive term for an organisation which has “charitable” purposes, is regulated in a particular way and enjoys some tax and fund-raising privileges. It could be a charitable incorporated organisation (CIO), a charitable company (limited by guarantee), an unincorporated association or a trust.<sup>ii</sup>

### **7. What does Observer Status mean?**

The position of observer has no specific legal status in company or public law. Any member appointed as an observer should ensure their role is clearly defined and avoid involvement in the management of the body concerned. For example, if an observer acts beyond their remit and exercises real influence over a company’s affairs and decision-making, the observer may be deemed to be acting as a shadow director, with all the duties and liabilities of an ordinary director.

Observers may (and in most circumstances should) attend board meetings and, when doing so, ensure that the minutes of such meetings note that they attended as observers only. Any member acting as an observer should take every step to ensure that it is clearly understood they have no other status or involvement beyond such status.

### **8. What are my obligations concerning the Member Code of Conduct when I am appointed to an outside body?**

Members are required to comply with the Member Code of Conduct when appointed to an outside body as a representative of the Council, except where there would be a conflict with any lawful obligations to which that outside body may be subject.

### **9. What Liability arises from being part of an outside body and is any Insurance and Indemnity available?**

Members can incur personal, civil and criminal liability from formal participation in outside bodies, although under section 265 of the Public Health Act 1875 (as applied

by section 39 of the Local Government (Miscellaneous Provisions) Act 1976), they enjoy statutory immunity from civil liability where they act within the powers of the Council, in good faith and without negligence. It is important to note, however, that this immunity does not apply where members act beyond the powers of the Council, or in bad faith (i.e. with dishonest or malicious intent), or negligently. Similarly, it offers no protection from criminal liability (e.g. for fraud or for corporate killing where managerial responsibilities are exercised).

In the case of limited companies, insurance cover can generally be put in place to protect directors in the proper and lawful conduct of their duties. However, this may not always be the most effective protection available, considering that the risks commonly regarded as the most serious (e.g. in respect of criminal liability and wrongful trading) are often excluded from insurance cover. Companies' legislation allows for liability insurance to be arranged to cover for directors and officers, with the company paying the premium. Directors should satisfy themselves that the cover is both relevant and adequate because this type of policy excludes dishonesty, fraud, slander, libel, pollution and claims or actions resulting from a director trying to benefit personally.

Appointments to non-corporate organisations (unincorporated associations) are more risky for a local authority because there is the absence of a corporate veil. This means that a member or officer of the organisation acting on behalf of the organisation actually acts in their own personal capacity. Therefore, it is likely that any costs or liability which they may personally incur would usually be provided from the organisation's assets (if there are any) or from other members of the non-corporate organisation. If there are insufficient assets the appointing authority can provide the officer or member with an indemnity or insurance to cover any such liabilities through the Indemnities Order referred to below.

The Indemnities Order under the Local Government Act 2000 gives the Council the power to provide some protection for a member or officer acting as the Council's nominated director, where a claim is brought against them because of some negligent act, or failure to act, in the course of carrying out their duties as directors. The measures an authority can take are either –

- providing a specific indemnity to the member or officer;
- securing the provision of an insurance policy; or
- both of these.

Cover by indemnity is only available where the officer or member has been specifically appointed by the Council to act as its nominated director but any criminal liability cannot be included. However, it can be used to meet the cost of defending criminal proceedings, but those costs must be reimbursed in the case of a conviction. Cover will also not be available for intentional wrongdoing, fraud or recklessness, or to institute proceedings for defamation (although cover to defend defamation proceedings *is* available). It extends to cases where members or officers have acted outside the powers of the council (i.e. *ultra vires*), provided they reasonably believed that what they were doing at the time was within the powers of the council.

Appendix 2 provides a summary of the forms of protection which apply to a varying degree to different legal entities.

## 10. Supplemental Note: Officer appointments to Outside Bodies

There are occasions when the Council appoints Officers to represent the Council. For example, as directors of outside bodies linked to the County Council. There is a risk of conflicts of interests on the part of officers due to their obligations to the companies, as directors. Ordinarily, no one running an external body should have responsibility or influence within the authority for any dealings with that external body. Therefore, appropriate safeguards may be considered appropriate as follows:

- Recognising conflicts of interest. It should be noted that where such conflicts arise that as the officer's duty to the authority is contractual, it is possible for the authority to waive the officer's contractual obligations if appropriate, where such conflicts arise.
- The decision-making process and
- Risk assessment
- In extreme situations, the officer concerned may have to resign the role.

Section 117 of the Local Government Act 1972 requires officers to declare any direct or indirect pecuniary interest in any contract or proposed contract with the authority by notice in writing to the authority. The officer must not accept any fee or other reward by virtue of his office or employment except their proper remuneration. The council has adopted a code of conduct for its employees which incorporates the provisions of 117 of the Local Government Act. Further, the Council's Contract Procedure Rules set down the rules that govern the conduct of council business.

### What other forms of external arrangements exist with outside bodies?

**The Council may be a member of the company as a shareholder.** In these instances, the Council body itself is the shareholder. The Council's role, as shareholders of any company is to ensure that the company is well run and well managed. This is undertaken by monitoring the performance of the company and raising their objections or giving their approval to actions of the management of the company.

## 10. Appendices

The Appendices to this guidance note contain the following:

|            |   |
|------------|---|
| Appendix 1 | Summary of the legal status of external organisations and their powers and liabilities. |
| Appendix 2 | Protections for members and officers appointed to external bodies                       |

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**Appendix 1**

**Table showing summary of legal status of external organisations and their powers and liabilities**

| <b>Organisation</b>   | <b>Examples</b>  | <b>Corporate /non-corporate</b> | <b>Sources of powers and liabilities</b>  |
|---|--|---------------------------------|---|
| Statutory corporations  | <ul style="list-style-type: none"> <li>• Local authorities.</li> <li>• Most non-departmental public bodies</li> <li>• NHS trusts.</li> <li>• Community, foundation and voluntary schools.</li> </ul> | Corporate                       | <ul style="list-style-type: none"> <li>• Statutory powers.</li> <li>• Dissolution by statute.</li> <li>• Some statutory immunity.</li> </ul>  |
| Chartered corporations  | <ul style="list-style-type: none"> <li>• Early universities.</li> <li>• Some non-departmental public bodies.</li> </ul>  | Corporate                       | <ul style="list-style-type: none"> <li>• Powers as natural person unless limited by charter.</li> <li>• No crown immunity.</li> <li>• Limited liability.</li> </ul>   |
| Companies limited by shares or guarantee  | <ul style="list-style-type: none"> <li>• Most companies (limited by shares).</li> <li>• Most charities (limited by guarantee).</li> <li>• Local authority companies.</li> </ul>                      | Corporate                       | <ul style="list-style-type: none"> <li>• Powers in memorandum and articles of association.</li> <li>• Members (that is, shareholders or owners) appoint board of directors to run the company.</li> <li>• Liability of members limited to share price or guarantee</li> </ul>   |
| Co-operative and community benefit societies (formerly known as Industrial and Provident Societies) | Some housing associations.   | Corporate                       | <ul style="list-style-type: none"> <li>• Powers in governing documents.</li> <li>• Cooperative society or industry, business or trade carried on for the benefit of the community.</li> <li>• Liability of members limited to subscription (for more information, see <i>Liabilities arising from insolvency of company or association</i>).</li> </ul> |
| Partnerships  | A relationship between persons carrying on a business in common with a view to profit  | Non-corporate                   | <ul style="list-style-type: none"> <li>• Joint and several liability incurred for all partners for debts incurred by any partner.</li> </ul>  |

## Guidance to Members on representation on Outside Bodies

|                                 |  |                                |   |
|---------------------------------|--|--------------------------------|---|
|                                 | (section 1, Partnership Act 1890).   |                                | <ul style="list-style-type: none"> <li>• Powers in governing documents.</li> </ul>  |
| Limited Liability Partnerships  | <p>Can be used:</p> <ul style="list-style-type: none"> <li>• For projects that do not rely on trading regulations (which specify that local authorities can only trade through a company).</li> <li>• When exercising another power, for example to buy and sell land, under a development partnership.</li> </ul> | Corporate                      | <ul style="list-style-type: none"> <li>• Partners are members and employees.</li> <li>• Limited liability.</li> <li>• Tax transparent.</li> <li>• Business carried on with a view to profit.</li> <li>• Local authorities cannot trade through it.</li> </ul> |
| Limited partnerships            | <p>Development partnerships in which the local authority contributes land but has no further liability.</p> <p>The developer bears all risk.</p>   | Non-corporate                  | <ul style="list-style-type: none"> <li>• Arrangement with general partners, whose liability is unlimited, and limited partners whose liability is limited.</li> <li>• Tax-transparent.</li> </ul>   |
| Trusts                          | <p>Small local charities.</p> <p>Can be created by deed or contract.</p>   | Non-corporate                  | <ul style="list-style-type: none"> <li>• Created by deed or contract.</li> <li>• Often charitable.</li> <li>• Tax exempt.</li> </ul>  |
| Unincorporated associations     | <ul style="list-style-type: none"> <li>• Private investment clubs.</li> <li>• Community associations.</li> <li>• Residents' action groups.</li> <li>• Social, sporting and community clubs and groups.</li> </ul>  | Non-corporate                  | <ul style="list-style-type: none"> <li>• No separate legal entity.</li> <li>• Unlimited liability.</li> <li>• Association rules bind members but not third parties.</li> </ul>  |
| Local authority joint committee | Often used for sea fisheries, parks and some shared services arrangements.   | Local authority, non-corporate | <ul style="list-style-type: none"> <li>• No separate legal entity.</li> <li>• Lead authority enters into contracts and employs staff on behalf of other member authorities.</li> </ul>  |

## Appendix 2

### Protections for members and officers appointed to external bodies

Members and officers participating in external bodies may receive protection against personal liability from:

- Statutory forms of relief.
- Statutory immunity.
- Exclusion clauses.
  - Ratification of acts.
  - Permission to bring proceedings

These forms of protection apply to a varying extent to different legal entities, as set out in the table below

| <b>Legal structure</b>  | <b>Statutory relief</b> | <b>Statutory immunity</b> | <b>Exclusion clauses</b> | <b>Ratification of acts</b> | <b>Discretion to bring proceedings</b> |
|---|-------------------------|---------------------------|--------------------------|-----------------------------|--|
| Unincorporated associations   | No                      | No                        | Yes                      | Yes                         | Yes                                    |
| Trusts  | Yes                     | No                        | Yes                      | No                          | Yes                                    |
| Companies   | Yes                     | No                        | No                       | Yes                         | Yes                                    |
| Statutory corporations  | No                      | Some                      | In theory                | Yes                         | n/a                                    |
| Chartered corporations  | No                      | No                        | In theory                | Yes                         | n/a                                    |
| Co-operative and community benefit societies (formerly known as Industrial and Provident Societies) | No                      | No                        | Yes                      | Yes                         | n/a                                    |

<sup>i</sup> Acknowledgement: The Local Government Lawyers : Monitoring Officer Handbook.

<sup>ii</sup> As above – acknowledgement to the Local Government Lawyers – Monitoring Officer Handbook

<sup>iii</sup> Acknowledgement: Former Assistant Director of Law for the original guidance and Practical Law Plc Practice Note 3-503-6323 *Local Government: appointment of members and officers to external organisations.*