



City of Westminster

# Committee Report

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<b>Classification:</b>	<b>For General Release</b>
<b>Title:</b>	<b>Outside Body - Governance</b>
<b>Report of:</b>	<b>Head of Committee and Governance Services</b>
<b>Financial Summary:</b>	<b>There are no financial implications arising from this report</b>
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## 1. Executive Summary

- 1.1 This report sets out for the Committee's consideration a proposed addition to the Council's Constitution relating to Outside Bodies. The proposed entry is attached.
- 1.2 Responsibility for additions to the Council's Constitution sits with full Council on the recommendation of the General Purposes Committee. However, the Standards Committee, who have responsibility for Member Conduct, are being asked for their views before the General Purposes Committee is asked to consider the matter for inclusion in the Council's Constitution. The views of the Standards Committee will be reported to the General Purposes Committee

## 2. Recommendations

- 2.1 That the Committee comment on the attached proposed section (Appendix A) for the Council's Constitution and forward its comments to the General Purposes Committee who will recommend the Council to include the appendix in the Council's Constitution.

## 3. Background Information

- 3.1 The Council (Non Executive) and the Cabinet (Executive) have the power to appoint Members, Officers and others to serve on Outside Bodies in a variety of capacities. Both Executive and Non Executive appointments to Outside Bodies have been delegated to Officers.
- 3.2 Broadly speaking there are three circumstances in which a Member or an Officer might attend or be appointed to an outside body:

- (a) To manage or play a direct part in the affairs of that body, for example, as a Trustee or as a member of the Management Committee or Board (“Manager/Trustee”).
  - (b) To offer advice and information on behalf of the Council, for example on Council policy (“adviser”).
  - (c) To observe, perhaps participating in discussion, but taking no part in decision-making or management (“observer”).
- 3.3 In some circumstances, the Council can indemnify both Members and Officers acting responsibly where they attend outside bodies with the approval of the Council. This would not apply to criminal acts or other wrongdoing, recklessness or defamation or where the individual was acting outside the statutory powers of the Council.
- 3.4 In a number of cases particularly those outlined in 3.2 (a) above the Member will not be representing the Council but the organisation. In these circumstances the Member will be unable to rely on the Council’s own Insurance/Indemnity. At the end of 2015 the Cabinet Member for Finance and Corporate Services agreed a new indemnity and appointment arrangements for Members on outside bodies. Broadly prior to any appointment being made the indemnity/insurance arrangements of the organisation are checked and if there is considered to be risk to the Member, ie the Council’s or bodies own insurance does not cover the Member - this is drawn to the Member’s attention. It is then for the relevant Member to decide if they wish to accept the risk and therefore the appointment.
- 3.5 Following the approval of the report referred to in paragraph 3.4 above Officers are undertaking a review of the Outside Bodies to which the Council makes nominations to ascertain the Insurance/Indemnity position. The position, as it is currently, is set out in Appendix C. This list is being reviewed by all Departments to ensure it is comprehensive. The insurance position is still being reviewed in some cases.
- 3.6 Types of Representation
- In some cases, the persons appointed will be Council representatives, ie they will be expected to represent the Council’s views at meetings and look after the Council’s interests.
- 3.7 On other bodies, Members will be nominees i.e. their main responsibility will be to the organisation to which they have been appointed. In some cases there will be a link between the activities of the organisation and those of the Council.
- 3.8 Trustees/Board Members: A Member or Officer appointed to an outside body as a Manager or Trustee owes a duty to that body and not to the Council. Often, the body concerned will be a registered charity or perhaps a company and will have obligations to the charity/company/trust. Trustees/Board Members will have personal liabilities to ensure that the body acts lawfully and

within the terms of reference of the organisation. Other than making a nomination the Council will usually have no legal or other obligation towards the outside body. The body is responsible for its own legal and professional advice and for taking out its own insurance. In particular, any Member or Officer appointed to such a body should always satisfy themselves that the body carries the necessary insurance cover and that they will be appropriately indemnified in respect of claims. If the outside body does not have the necessary insurance cover Members and Officers should check whether they are covered by the Council's insurance policy. A copy of the Indemnity is attached for information as Appendix B.

### **Advisers and Observers**

- 3.9 The Council will indemnify those Members or Officers appointed as an observer or in an advisory capacity, to attend a body set up solely in connection with the Council's functions or in a statutory capacity.
- 3.10 The appointees should act within the scope of their authority. Members should always take professional advice before acting as an adviser, or offering advice, to an outside body, as the indemnity will not apply to a Member acting independently of Officer advice.

## **4. Conflicts of Interest**

- 4.1 In carrying out their role, Members and Officers act both as individuals and as representatives of the Council.

(a) This entails:

- (i) acting according to the Rules, Constitution and framework set by the outside body;
- (ii) making independent and personal judgements in line with their duty of care to the outside body;
- (iii) reporting back to the Council or relevant panel etc;
- (iv) behaving ethically and following as far as applicable the relevant Code of Conduct;
- (v) taking an active and informed role in the management of the outside body's affairs.

(b) It does not entail:

- (i) representing the political party to which Councillors owe their political loyalty;
- (ii) avoiding taking part in the outside body's discussions and decisions;

- (iii) looking at things simply from the Council's perspective;
- (iv) being there in name only and merely turning up to meetings.

4.2 Where a Member is appointed, whether as a Manager or Trustee or otherwise, to an outside body, they should consider whether the Council's Code of Conduct or other protocol applies when the business of that outside body comes before the Council.

## 5. Legal Implications

These are set out in the report.

## 6. Conclusion

6.1 A Guide to the Law for Councillors and Officers is attached as Appendix A. It is suggested that the General Purposes Committee endorse this for inclusion in the Code of Governance.

6.2 The information set out in this report is consistent with that contained in a report to the Cabinet Member for Finance and Corporate Services. Following the report which updated the Council's Indemnity and Insurance arrangements on outside bodies guidance was published in the Weekly Information Bulletin. Furthermore, a check has been undertaken of the Insurance/Indemnity cover of those bodies to which Members have been nominated by the Council but for which the Council indemnity/insurance cover will not apply.

**If you have any questions about this report, or wish to inspect one of the background papers, please contact:**

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## **Appendix A**

### **A Guide to the Law for Councillors and Officers on Outside Bodies**

#### **1. Introduction**

- 1.1 This advice is for Councillors and Officers who represent the Council on organisations outside the Council, whether as a company Director, the Trustee of a charity or a representative on a management committee. It simply sets out some of the most important responsibilities. It is not meant to be a comprehensive guide. If Councillors or Officers have queries then the Director of Law would be happy to advise in the circumstances of your particular concern.

#### **2. General**

- 2.1 There are some general provisions which apply to Councillors and Officers who act in the role of company Director, Trustee or Member of an incorporated body, such as the Committee of management or an unincorporated voluntary organisation.
- 2.2 Members are under a duty to exercise independent judgement in the interest of the organisation in which they are involved. Whilst it is recognised that Councillors and Officers may have a commitment to representing the Council on the outside organisation, they must be aware that it is their responsibility to decide what view to take on any question before that organisation. Where a Councillor or Officer is partaking in an outside organisation in a representative capacity, he/she must declare that fact to the organisation. There will be a fine line to tread between his/her duty to the organisation and to the Council.

#### **Compliance with the code on the Outside Body**

- 2.3 The Code of Conduct applies to Members acting as the authority's representative on another body to comply with the authority's Code of Conduct, unless it conflicts with any legal obligations arising as a consequence of service on that body.
- 2.4 Some outside bodies may require the Councillor to treat the body's business as confidential. This may militate against the idea of assisting the public accountability of the body (but accountability may be through some channel other than the Council), but the Councillor will be bound by that confidentiality.

#### **Consultative or advisory bodies**

- 2.5 A Member could be appointed to an external Committee which advises the Council on various issues. Difficulties may arise where that Member champions a position taken by the external Committee and a challenge has succeeded on the grounds of bias and of a closed mind.

## **Application of the Code to Members**

- 2.6 Under the Code you must declare in your Register of Interests your Membership or position of control or management in any other body to which you have been appointed or nominated by the Council. You therefore will have an “other interest” in any business considered by the Council affecting that body. If the interest is arises solely from your Membership of, or position of control or management on that body you need only declare the interests if and when you speak on the matter. You can remain in the meeting and vote.
- 2.7 If your interest is a Disclosable Pecuniary Interest you must declare it and may only speak at the meeting after being granted a dispensation to allow you to speak in accordance with the Code of Conduct. You must then leave the meeting unless the dispensation allows you to remain. You cannot vote on the matter unless with a grant of a dispensation in accordance with the Members’ Code of Conduct.
- 2.8 If a Member does not have a Disclosable Pecuniary Interest, he/she may stay, speak on the item and vote.

### **Pre-disposition**

- 2.9 It is not a problem for Councillors to be pre-disposed. Pre-disposition is where a Councillor holds a view in favour of or against an issue, for example an application for planning permission but they have an open mind to the merits of the argument before they make the final decision at the Council meeting.
- 2.10 This includes having formed a preliminary view about how they will vote before they attend the meeting and/or expressing that view publicly. They may even have been elected specifically because of their views on this particular issue.

### **Pre-determination or bias**

- 2.11 Pre-determination or bias can lead to problems. It is where a Councillor is closed to the merits of any arguments relating to a particular issue, such as an application for planning permission, and makes a decision on the issue without taking them into account.
- 2.12 Councillors must not even appear to have already decided how they will vote at the meeting, so that nothing will change their mind. This impression can be created in a number of different ways such as quotes given in the press, and what they have said at meetings or written in correspondence.
- 2.13 Rarely will membership of an organisation, such as a national charity, amount to pre-determination or bias on its own unless it has a particular vested interest in the outcome of a specific decision that a Councillor is involved in making.

- 2.14 There is an important difference between those Councillors who are involved in making a decision and those Councillors who are seeking to influence it. This is because Councillors who are not involved with making a decision are generally free to speak about how they want that decision to go.
- 2.15 When considering whether there is an appearance of pre-determination or bias, Councillors who are responsible for making the decision should apply the following test: would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that the Councillor had pre-determined the issue or was biased?
- 2.16 However, when applying this test, they should remember that it is legitimate for a Councillor to be pre-disposed towards a particular outcome on the basis of their support of a general policy. This is as long as they are prepared to be open-minded and consider the arguments and points made about the specific issue under consideration.
- 2.17 Pre-determination or bias may arise:
- (a) where the Councillor has a close connection to someone affected by the decision;
  - (b) where the Councillor has allowed an improper involvement of someone with an interest in the outcome;
  - (c) prior involvement such as hearing an appeal from their own decision;
  - (d) comments made prior to decision which suggest that the Councillor has already made up their mind.
- 2.18 The Councillor or Officer, in acting as a Director/Trustee or Member of a management committee of an organisation, must act in accordance with the interests of that organisation. A mandate from the Council to vote one way or the other would put the Councillor or Officer in breach of the duty to the organisation. It is permissible to take account of the Council's wishes but not to vote simply in accordance with them.
- 2.19 The overriding duty in considering an item before the outside organisation is to vote in accordance with the interests of that organisation.
- 2.20 Councillors and Officers must also ensure that avoidable loss is not incurred in managing the organisation. They cannot avoid this responsibility by not reading the papers or failing to ask for appropriate reports. They will be expected to seek professional advice where appropriate.

### **3. Companies**

- 3.1 The rules for incorporating a company in England and Wales are set out in the [Companies Act 2006](#) (CA 2006). A new business may be set up as a company, or an existing business may be incorporated as a company. On

incorporation a company becomes a separate legal entity which can hold property in its own right, enter into contracts and sue and be sued in its own name. The CA 2006 provides for the incorporation of three types of company (section 3, CA 2006): Limited liability company (limited by shares and limited by guarantee) and unlimited company. 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. This can be as little as £1.

- 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 per the value of the shares held. The liability of the shareholders to creditors of the company is limited to the nominal value of the shares and any premium paid in return for the issue of the shares by the company. Hence, shareholders' personal assets are protected. Shares can be sold.
- 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. This form of company is the most usual in the public and voluntary sector, particularly where charitable status is sought.
- 3.4 The management of a company is generally the responsibility of a board of Directors. The powers of the Directors are usually set out in the company's Articles of Association (the Rules each company has, to govern its internal management). Sometimes even though a company has been incorporated the Directors may be referred to as Members of the Committee of Management, Governors or even Trustees. However, this does not change their status as Directors. Conversely, sometimes officials are called Directors but they are not members of the board. Again, their status will not be affected. Directors are those who are appointed by the company to act in that capacity.

### **Directors' Duties**

- 3.5 A Director is an agent of the company. The provisions in the CA 2006 codify the duties of company directors and those duties are as follows:
  - I. Duty to act within powers. This duty provides that a director must act in accordance with the company's constitution and must only exercise his power for their proper purpose.
  - II. Duty to promote the success of the company for the benefit of its members. This duty provides that the director of a company must act honestly and in good faith in the best interests of the company.
  - III. Duty of care, skills, and diligence. This duty provides that the director of a company must exercise the care, skill and diligence which would be exercised by a reasonably diligent person. So long as the company remains solvent, a Director requires no greater skill than might reasonably be expected of someone of that individual's knowledge and experience. But note that if the

- company becomes insolvent, the Court may expect that the Director brings an appropriate level of skill, competence, and experience to the job.
- IV. Duty to exercise independent judgement. This duty provides that a director of a company must exercise his powers independently, without subordinating their powers to the will of others. 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 mandate. To do so would be a breach of duty.
  - V. Duty to avoid conflict of interest. This duty provides that a director must avoid situations in which he has or can have a direct or indirect interest that conflicts, or may conflict with the company's interest. In case of an actual or potential conflicts between the interests of the Council and the interests of the company, the only proper way for the conflict to be resolved is for the Councillor or Officer to resign either from the company or from the Council.
  - VI. Duty not to accept benefits from third parties. This rule is intended to ensure that a director is not distracted from performing his or her duty to the company by rewards offered for doing unspecified things (or not doing any such things)
  - VII. Duty to declare interest in proposed transactions or arrangements. A director must declare to the other directors any situation in which he is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company.
  - VIII. Directors must ensure compliance with the Companies Acts in relation to keeping of accounts and that the relevant returns are made to the Register of Companies. Failure to do so incurs fines and persistent default can lead to disqualification as a Director. They must also ensure compliance with other legislation, e.g. health and safety, if the company employs staff or employs contractors.

### **Directors' Liabilities**

- 3.6 Breach of the above duties and requirements can result in a director being disqualified from acting as a director and in many cases can lead to the director incurring personal liability (see below). Insurance can be obtained to cover some cases of personal liability
- 3.7 The company number, place of registration, registered office address must appear on the stationery and if any of the Directors' names are on the stationery then all Director's names must appear.
- 3.8 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). Those Directors knowingly causing the company to act beyond the activities set out in the Memorandum will 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.

- 3.9 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.
- 3.10 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 a 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 to the company the personal profit made.
- 3.11 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 the liability.
- 3.12 If a Director knows or ought to know that there is no reasonable prospect of the company avoiding liquidation, a Court may require that Director to contribute to the company's assets on liquidation if the company continues to trade. This is known as wrongful trading. No such order will be made if the Court is satisfied that the Director took all reasonable steps to minimise the loss to the creditors. 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. He/she should try to ensure that further debts are not incurred.
- 3.13 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.
- 3.14 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.
- 3.15 A third party who enters a contract on the assumption that a Director has power to bind the company, may be able to claim damages against the Director if it subsequently transpires that the Director had no such power. Directors would be well advised to ensure that the board approves the contracts and that the authority to enter any contract has been properly delegated before signing it.
- 3.16 Through company liability ceases on dissolution, the liability of the Directors (if any) may still be enforced after dissolution.

## **Local Authorities (Companies) Order 1995 (as amended)**

- 3.17 This Order, made under the Secretary of State's powers contained in Part V, 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 several rules apply. [Note: Part V has been repealed; its coming into effect is awaited. This section will be reviewed as soon as the repeal is effective].
- 3.18 A controlled company (per section 68 of the 1989 act) is either a subsidiary of the authority (per section 1159 of the Companies Act 2006), or where the authority controls the majority of the votes at the company's general meeting, or where the authority has power to appoint or remove a majority of the company directors. And, in a corporate hall of mirrors, a company is also controlled if it is under the control of another controlled company.
- 3.19 An influenced company (under section 69 of the 1989 act) is where a business relationship exists between authority and company. This is where the authority provides more than 50% of funds or value to the company and either at least: 20% of voting rights are held by those associated with the authority; 20% of the company's directors are so associated; or 20% of total voting rights at directors' meetings are held by people so associated. Associated persons are specified in section 69(6).
- 3.20 For the purpose of the Local Government order 1995, "regulated companies" are companies controlled by, or under the influence of, a local authority and where, during any financial year, the authority exerts a 'dominant influence' over the company (in the company law sense).
- 3.21 Councillors or Officers who are Directors of outside companies to which they have been nominated by the Council are under the following obligations:
- (a) (Councillors only) that the remuneration they receive from the company should not exceed that received from the Authority and should be declared.
  - (b) (Officers only) that they shall not receive any fee or reward other than their Council salary, unless so agreed with the Council.
  - (c) To give information to Councillors about their activities as required by the local authority (save for confidential information), and
  - (d) To cease to be a Director immediately upon disqualification as a Councillor or termination of their employment by the Council.

## **4. Charities**

- 4.1 To be a charity, an organisation must operate for a charitable purpose. According to the Charities Act 2011, section 3(1), charitable purposes falls within any of the following description of purposes:

- (a) The prevention and relief of poverty;
  - (b) The advancement of education;
  - (c) The advancement of religion;
  - (d) The advancement of health or the saving of lives
  - (e) Another purpose for the benefit of the community.
- 4.2 It must operate for the public benefit and have exclusively charitable purposes. It is not to be presumed that a purpose of a description mentioned above is for the public benefit. An organisation which operates for political purposes will not qualify for charitable status.
- 4.3 A charity is not a type of legal form or structure; it is a status conferred on a group of individuals or an organisation because of the activities it carries out. The chosen type of structure will affect how the charity will operate. The charity structure is defined by its "governing document". A charity must be registered if it is based in England and Wales and if its income is at least £ 5,000 per year or it is a charitable incorporated organization. For the registration the organisation must submit its completed Constitution and other supporting documents to the Charity Commissioners for approval. If they are satisfied that the organisation is charitable, it will be registered as such.
- 4.4 Charity trustees are those "persons having the general control and management of the administration of a charity" (section 177, ChA 2011). 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. Trustees of a charity retain personal liability and can only delegate to the extent that the Constitution authorises them to do so. There are several useful publications produced by the Charity Commission available on [www.gov.uk/charity-commission](http://www.gov.uk/charity-commission).

### **Trustees' Duties**

- 4.5 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 requirements of the Acts in respect of land transactions.
- 4.6 Trustee must promote charitable purposes.
- 4.7 Trustee must act in the best interest of charity and its beneficiaries.
- 4.8 A charity trustee owes an obligation of undivided loyalty to the beneficiaries of the charity and to the charity itself. This duty includes i) the trustee's duty not to place himself in a position where he has, or may have, an interest that conflicts with his duty as a charity trustee (the "no-conflict rule"); ii) the rule that a charity trustee must not make a profit from his position as a charity trustee (the "no-profit rule"). Charitable Trustees must perform their duty with the standard of care which an ordinary, prudent businessperson would show. Higher standards are required of professionals and in relation to investment matters.

- 4.9 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.
- 4.10 If charitable income exceeds £10,000 the letters, adverts, cheques etc. must bear a statement that the organisation is a registered charity.
- 4.11 Trustees are under a duty to ensure compliance with all relevant legislation (e.g. in relation to tax and land matters).

### **Trustees' Personal Liability**

- 4.12 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.
- 4.13 Generally though, 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.
- 4.14 In such circumstances the Trustee will incur personal liability for losses incurred.
- 4.15 Trustees of a trust can be liable personally to third parties because unlike a company, a trust has no separate identity from the Trustees. The Constitution will normally provide for Trustees to be given 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 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.
- 4.16 Trustees may be liable to fines if they do not comply with the duty to make returns etc.

## **5. Committees of Management**

- 5.1 Groups which are not charitable trusts or limited companies are "unincorporated associations" and have no separate legal identity from their Members. Hence, individual members are personally responsible for any debts and contractual obligations. 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 must be held by individuals as the organisation has no existence of its own.

### **Duties**

- 5.3 Broadly, Management Committee Members must act within the Constitution, and must take reasonable care in exercising their powers.

### **Liabilities**

- 5.4 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.
- 5.5 If the Constitution appoints one person to act as the agent of the organisation for certain purposes then that person acts as the agent of all the Members who have joint liability for the agent's actions.
- 5.6 Members of the Committee of Management will have personal liability if they act outside the authority given to them or if they do not comply with statute e.g. the payment of employees' tax etc.

## **6. Indemnities**

- 6.1 Councillors and Officers who are Directors cannot be indemnified by the company against liability arising out of negligence, default or breach of duty of 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. Equally, in making the appointment, the Council can offer an indemnity against losses which the Councillor may suffer through acting conscientiously as a Director. But note that it is lawful for companies to purchase insurance to protect its Directors against claims of negligence, breach of duty, trust, and default. Directors would be well advised to ensure that such a policy of insurance is maintained at all times.
- 6.2 Under the Local Government Act 2000, it is now possible for the Council to provide indemnities for Councillors or Officers when appointing them to act as Directors, and to buy insurance to cover any losses which they may suffer through acting conscientiously as a Director. However, the first recourse would be to ensure that the company had provided such insurance.
- 6.3 In the case of Councillors and Officers appointed by the Council to be a Trustee of a charity, 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.

- 6.4 Councillors and Officers appointed by the Council to Committees of Management (“unincorporated associations”) will be entitled to an indemnity if they act in accordance with the Constitution of the Committee of Management 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 of the Committee of Management.
- 6.5 In accordance with Chapter 9, Part 4 of this Constitution, the Council will indemnify each of its members and employees against any loss or damage suffered by the member or officer arising from his/her action or failure to act in his/her capacity as a member or officer of the Council.

## Appendix B

### INDEMNITY

1. The City Council will, subject to the conditions, limitations and exceptions below, indemnify all members (which expression shall hereinafter be deemed to include co-opted members of any Council committees) or employees of the Council against any damages, costs or legal expenses including those incurred pursuant to proceedings under Part 3 of the Local Government Act 2000) which any such member or employee may be ordered to pay or may reasonably have incurred arising from activities carried out on behalf of the Council if the member or employee acted in good faith and honestly believed that the act or omission complained of was within his/her power and that his/her duty as a member or employee or (in the case of functions exercised otherwise than in the capacity of member or Council employee) performer of the function in question with the approval or at the request or for the purposes of the Council, required or entitled him/her to do or omit to do it. Such Indemnity shall apply to any liability of any member or employee as the City Council's representative or nominee on an outside body and to any employee who in connection with his/her employment with the City Council provides an administrative, technical, professional or other service to any person or body outside the City Council.

2. For avoidance of doubt this Indemnity will apply to existing and former member and employees in respect of acts and omissions whilst they were members or employees.

3. Subject as aforesaid the City Council will not itself make any claim against any member or employee for any loss or damage occasioned by any neglect, act, error or omission committed by an individual arising from the pursuit of his/her duties on behalf of the City Council (or on behalf of any outside body to which he or she has been appointed by or with the written approval of the Council and as representative or nominee of the City Council) whilst acting within the scope of his/her authority.

#### **Conditions and Limitations:**

- (1) This indemnity will not extend to loss or damage directly or indirectly caused by or arising from:
  - (a) Fraud, dishonesty, deliberate wrongdoing or recklessness, or any criminal offence on the part of a member or employee (except where the criminal offence is an offence under the provisions of the Health and Safety at Work Act etc 1974 or relevant statutory provisions within the meaning of that Act in which case the indemnity will continue to apply).
  - (b) Any action, neglect, error or omission by an individual otherwise than in the course of his/her duty.
  - (c) Activities which are ultra vires the City Council, the body in question or the individual save to the extent that at the time of the activity concerned the individual bona fide and reasonably believed that the activity was intra vires.

## **APPENDIX C - NOTE**

The list sets out those Outside Bodies to which the Council makes an appointment or a nomination.

Generally on those bodies which are exercising a local government function the Member will have the benefit of the Council's Insurance/Indemnity. Those bodies to which the Member is appointed, for example, as a Trustee then the Member will need to be covered by the bodies own or their own cover.

The Council is in the process of checking the insurance position of those outside bodies to which it nominates Members. In a number of cases the Council nominates non-Members. In no circumstances are they covered by the Council's Insurance and this is drawn to their attention of the nominee and organisation at the time of nomination.

## APPENDIX C

Name of Organisation	Status of Council Representative	Council Insurance/Indemnity Application
Abbey Community Association	Observer	Not covered. External body
Age Concern Westminster	Observer	Not covered
Archbishop Tenison's Grammar School Foundation	Trustees	Not covered
London Councils: Leaders Committee	S.101 Committee	Covered
London Councils: Transport and Environment Committee	S.101 Committee	Covered
London Councils: Grants Committee	S.101 Committee	Covered
Joint Pensions Committee	S.101 Committee	Covered
Greater London Employment Forum and Greater London Provincial Council	London Wide Body – Council function being carried out	Covered
Burdett Coutts & Townsend Foundation	Trustee	Not covered
Central and North West London NHS Foundation Trust	Council function being carried out	Covered
City Literary Institute	Council nominated Member	Not applicable. Details of the cover provided by the Institute is being sought
CityWest Homes Ltd	Council function	Not covered
Covent Garden Area Trust	Trustees	Not applicable. Covered provided by Trust is being checked
Cross River Partnership	Council function	Applicable
Edward Harvist Trust Charity	Trustee	Not covered

<b>Name of Organisation</b>	<b>Status of Council Representative</b>	<b>Council Insurance/Indemnity Application</b>
Greater London Reserve Forces & Cadets Association	Local authority representative	Not covered
Hyde Park Place Estate Charity	Trustees	Not covered
Imperial College – Court	Member	Not covered
Jubilee Hall Recreation Centre	Trustee	Not applicable. Insurance team have confirmed insurance cover provided by the organisation is satisfactory
London Road Safety Council	Local Authority nominee	Cover position being clarified
London Marathon Board	Nominated by Council	Not applicable. Insurance team have confirmed insurance cover provided by the organisation is satisfactory
NHS Foundation Trust	Nominated by Council	By NHS
Paddington Welfare Charities	Trustees	Not covered
Sir John Hunt's Gift Committee	Trustees	Not covered. No risk identified
United Westminster Almshouse	Trustee	Not covered
United Westminster Schools Foundation	Trustee	No covered
Westminster Amalgamated Charity	Nominated Trustee	Not covered
Philological Foundation		Not covered
Volunteer Centre Westminster	Observer status	Not covered
St Andrews Club	Observer status	Not covered
St Clement Danes Educational Foundation	Nominated Trustee	Not covered
St Clement Danes Holborn Estates	Nominated Trustee	Not covered
St Clement Danes Parochial Charities	Nominated Trustee	Not covered

<b>Name of Organisation</b>	<b>Status of Council Representative</b>	<b>Council Insurance/Indemnity Application</b>
St James's United Charities	Nominated Trustee	Not covered
St Martin-in-the-Fields Almshouses Charity	Nominated Trustee	Not covered
St Marylebone Almshouse	Nominated Trustee	Not covered
St Marylebone Educational Foundation	Nominated Trustee	Not covered
St Paul's Covent Garden United Charities	Nominated Trustee	Not covered
Westminster Community Homes Ltd	Director	Covered
City of Westminster College Board of Governors	Governor	Not covered by Council
Westminster Adult Education Service	Council related body	Covered by Council
Westminster Kingsway College	Governor	Not covered