

Appendix C: Outside Bodies List - Revised Constitutional provisions

Outside Bodies

- 41.1 The Council defines outside bodies as a body which does not exercise a Council function, but which operates within the City of Westminster. Such a body is one which seeks a representative from the Council.
- 41.2 Appointments to outside bodies will be administered by the Head of Governance and Councillor Liaison with appointments and nominations made in accordance with the wishes expressed by the relevant party chief whip.
- 41.3 A list of bodies is attached.

Detailed Background on Outside Bodies and the Insurance for those Serving on Outside Bodies

- 41.4 The Council defines outside bodies as a body which does not exercise a Council function, but which operates within the City of Westminster. Such a body is one which seeks a representative from the Council.
- 41.5 Appointments to outside bodies will be administered by the Head of Governance and Councillor Liaison with appointments and nominations made in accordance with the wishes expressed by the relevant party chief whip. A list of bodies is attached.
- 41.6 Bodies eligible for the list are those that:
- Invite representation from boroughs across London (or wider local government) that we wish to contribute to, including London Councils' bodies
 - The Council is a member organisation of and wish to contribute to
 - Are administered through the Council and need Member representation on their boards.
- 41.7 Nominees should have a clear connection with the Council and ideally be a Member or an Officer of the Council, although there may be rare occasions where an independent nominee is necessary with appropriate safeguards in place.
- 41.8 There are a number of outside bodies of varying descriptions to which the City Council customarily nominates members and officers. In a few cases the City Council's representative merely acts as an "observer" in order to represent the City Council's interests and does not take part in decision making; for the most part such "observers" are covered by the City Council's existing Indemnity given to members and officers and by the Council's public liability insurance. Generally the number of outside bodies to which the Council nominates Members has reduced in recent years and the current list is attached as an Appendix to this section.
- 41.9 In certain cases, however, City Council members and officers act as directors or trustees or members of the management committees of outside bodies or otherwise play an active role in the affairs of the body in question, often

because the constitutions of such bodies stipulate that such Council nominees must act in such capacities. Those who act as directors, trustees or members of the management committee owe a "fiduciary duty" to the outside body in question. In certain very limited circumstances they may be personally liable for the debts of the bodies on which they serve, or in relation to third party claims brought against those bodies.

41.10 Many outside bodies are companies which enjoy limited liability. Generally speaking, the directors of such companies will be personally liable only in exceptional circumstances, such as for deliberate or reckless breach of trust or knowingly causing the company to act beyond its powers or to trade whilst insolvent. Much the same is true in relation to charitable trustees. Many charities are themselves limited companies, normally "companies limited by guarantee" whose members' personal liability is ordinarily restricted to the sum of one pound (£1) which they have guaranteed to contribute towards the payment of the company's debts. Charitable trustees and company directors can generally avoid personal liability by being careful to take appropriate professional advice before making decisions. However, they may be personally liable (without limit) if they deliberately or recklessly take actions in breach of trust or without having taken appropriate advice.

Appendix 1 - current wording in Constitution

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 their power and that their 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 them 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 their 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 their duties on behalf of the City Council (or on behalf of any outside body to which they have 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 their 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 etc1974 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 their 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 2 - suggested amended wording

Indemnity

The City Council will, subject to the exceptions below, indemnify all Councillors or employees of the Council against any damages, costs or legal expenses which any such Councillor or employee may be ordered to pay or may reasonably have incurred arising from activities carried out on behalf of the Council if the Councillor or employee acted in good faith and honestly believed that the act complained of was within their power and that their duty as a Councillor or employee required or entitled them to do or omit to do it. Such indemnity shall apply to any liability incurred by any Councillor or employee as the City Council's representative on an outside body and to any employee who in connection with their employment with the City Council provides an administrative, technical, professional or other service to any person or body outside the City Council.

For avoidance of doubt this indemnity will apply to existing and former Councillors and employees in respect of acts and omissions whilst they were Councillors or employees.

Except as mentioned above the City Council will not itself make any claim against any Councillor or employee for any loss or damage occasioned by any neglect, act, error or omission committed by an individual arising from the pursuit of their duties on behalf of the City Council whilst acting within the scope of their authority.

Exceptions:

- (1) This indemnity will not extend to loss or damage directly or indirectly caused by or arising from:
 - a. Fraud, dishonesty or any criminal offence on the part of a Councillor or employee (except where the criminal offence is an offence under the provisions of the Health &

Safety at Work Act 1974 or relevant statutory provisions within the meaning of that Act in which case the indemnity will continue to apply).

- b. Any neglect, error or omission by an individual otherwise than in the course of his/her duty.
- c. Activities which are “ultra vires” i.e. outside the legal powers of the City Council, 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, i.e. within the legal powers of the City Council
- d. Liability in respect of any surcharge and Sections 17 and 18 of the Audit Commission Act 1998. Provided that where upon final determination of an objection to the Auditor the Council is satisfied that a person the subject of an objection was not blameworthy it will meet the legal costs reasonably incurred by such a person in connection with such objection.

(2) This indemnity will not apply if a Councillor or employee without the written authority of the Director of Law admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of this resolution.

(3) This indemnity will not apply where a Councillor or employee has been appointed to and is acting in the capacity of:

- a. a director on a board of directors of a company; or
- b. a trustee of a trust
- c. a voting member of a management committee of another outside body

Appendix 3 - suggested revised list of Outside Bodies

Name of Organisation	Number of nominees (one unless otherwise indicated) and nomination made by
Central and North West London NHS Foundation Trust	Majority Party
Cross River Partnership	Majority Party
Edward Harvist Trust Charity	Majority Party
Greater London Employment Forum and Greater London Provincial Council	Majority Party
Greater London Reserve Forces and Cadets Association	Majority Party
London Councils (Grants Committee)	Majority Party
London Councils (Joint Pensions Committee)	Majority Party
London Councils (Leader’s Committee – Executive)	Majority Party

London Councils (Transport & Environment Committee (Executive))	Majority Party
Local Government Information Unit	Majority Party
London Road Safety Council	Majority Party
Paddington Welfare Charities	Six nominees – proportionate representation
Sir John Hunt's Gift Committee	Majority Party
Standing Advisory Council for Religious Education	Three nominees – proportionate representation
Westminster Faith Exchange	Two nominees – proportionate representation