

APPOINTMENT OF REPRESENTATIVES TO OUTSIDE BODIES

1 SUMMARY

- 1.1 Members are invited to nominate representatives to serve on Outside Bodies for the Municipal Year 2000/2001 and to consider whether appointments should stand for 2001/2002. This is not a statutory responsibility.

2 APPOINTMENTS TO OUTSIDE BODIES

2.1 Changes to list of Outside Bodies

- 2.1.1 Recently officers have approached Outside Bodies that have previously invited the Council to appoint representatives, seeking up to date information relating to the purpose and Terms of Reference of Bodies and also information relating to the frequency and timing of meetings. Further to these enquiries it has emerged that the following Outside Bodies no longer exist or are not seeking Nominations for 2000/01.

- 2.1.2 **Essex Arts Forum and Museums in Essex – The Authority** does not subscribe to these Outside Bodies and is therefore not invited to nominate representatives for 2000/01, unless subscription is paid.

Rochford District Arts Council – no longer exists

Essex County Council Tourism Liaison Committee – no longer exists

Off the Record – no longer exists

Roach Valley Conservation Zone Group – no longer exists

Rochford Sports Scholarship Panel – no longer exists

South Essex Health Authority/District Joint Consultative Committee – no longer exists, however future partnership arrangements likely to include countywide and district level working with Health Authority and meetings with Primary Care Groups involving Member nominations.

- 2.1.3 Attached at Appendix 1 is a list of those Bodies currently seeking nominations, along with relevant details concerning Terms of Reference and Frequency/Timing of meetings where given on the returned form.

2.2 Instances where Nominations will need to be made later in the year

2.2.1 AEC Health Forum – Members are advised that a Health Forum under the auspices of the AEC has yet to be agreed. The AEC are, as yet, not in a position to advise on Membership or Nomination rights at this time. It is therefore suggested that the Chief Executive be delegated to appoint nominations at the appropriate time, in consultation with Group Leaders.

2.3 Nomination for Rayleigh and Rochford Citizens Advice Bureaux

2.3.1 The return received from Rochford CAB includes a request for a single Member nomination for both Rayleigh and Rochford Citizens Advice Bureaux in order to provide a co-ordinated and uniform approach. The Bureaux are also seeking one officer nomination. Members are invited to consider this request. Details of the appointment are included in Appendix 1.

2.4 Sanctuary Housing Association

2.4.1 In their return, Sanctuary Housing Association indicate that, following a major re-organisation of the management of their housing stock in Essex, the Essex Committee to which Rochford have previously appointed a Member has been dissolved. They do, however, invite Members to nominate to their East Anglia Committee which meets in Ipswich. Details of the appointment are included in Appendix 1

2.5 Political Pro Rata Rules

2.5.1 Council has previously agreed that appointments to outside bodies should be made in accordance with the number of seats each political group holds on the Council as a whole. Based on the current 85 vacancies on outside bodies (including the Local Government Association nominations and also the 2 Bodies requiring Subscription), and the current representation of political groups on the Council, the following allocation of places would apply:-

Conservative	40
Labour	19
Liberal Democrat	19
Independent Members Group	7

2.5.2 If Members are minded not to nominate to those Outside Bodies requiring subscription, the allocation to both the Conservative Group and the Independent Members Group would be reduced by one place each

2.6 Responsibility and Liability

- 2.6.1 At its meeting on 1 June 1999, the Audit Services Committee considered a report by the Head of Legal Services relating to Members' responsibilities and liabilities when representing the Authority on an Outside Body. Attached at Appendix 2 is a copy of the "aide memoire" considered at that meeting along with an extract from the report for information

2.7 Appointments for Municipal Years 2000/2001 and 2001/2002

- 2.7.1 In previous years, Members have appointed representatives to outside bodies for that Municipal Year only. Given there are no District Council Elections in 2001, Members may wish to consider making appointments for the 2 year period, subject to any vacancies arising throughout the period being reported to the relevant parent Committee as appropriate.

2.8 AEC General Assembly – 13 July 2000

In considering Appointments to Outside Bodies, Members are advised that the AEC General Assembly will be held on 13 July in Ingatestone, Essex, to which this Authority is invited to nominate up to 12 representatives. (9 Members and 3 Officers). The Assembly will begin at 10.45AM and finish between 3.30PM and 4.00PM. Members are invited to consider their nominations to the Assembly.

3 LEGAL IMPLICATIONS

- 3.1 As outlined in Appendix 2

4 RESOURCE IMPLICATIONS

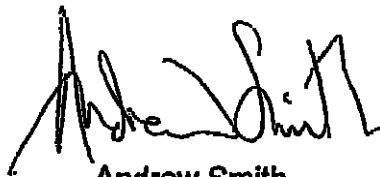
- 4.1 In previous years, Attendance and Travel allowance has been paid for Members attendance at Outside Body Meetings. This has been met from existing budgets.

5 RECOMMENDATION

- 5.1 It is proposed that the Council **RESOLVES**

(1) Nominations to Outside Bodies indicating whether these are for the Municipal Years 2000/2001 only or for 2000/2001 and 2001/2002

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- (2) that attendance and travel allowance be paid for Members attendance at Outside Body meetings on which they represent this Authority
 - (3) that the Chief Executive be delegated Authority to nominate to the AEC Health Forum, at the appropriate time, in consultation with Group Leaders.
 - (4) Nominations of 9 Members and 3 Officers to attend the AEC General Assembly in July 2000. (HAMS)



Andrew Smith

Head of Administrative and Member Services

Background Papers:

Responses received from Outside Bodies

For further information please contact Angus Wyatt on (01702) 318143

Appendix 1

Association of Essex Councils

Nominees - 1

Meetings – 7 September, 2 November, and 7 December 2000, 8 February, 12 April, 12 July (AGM) 2001

Terms of reference – Representing Local Government in Essex

**Association of Essex Councils
LA21 Members Group**

Nominees – 1

Terms of reference – Local Agenda 21 and Sustainability Issues.

**Association of Essex Councils
Regional Strategy Group**

Nominees – 1

Terms of reference – Town and Country Planning Issues

**Association of Essex Councils
Community Safety Members' Steering Committee**

Nominees – 1

Meetings 3 or 4 times a year, 10:00 – 13:00

Terms of reference – Community Safety Issues

Anglia Polytechnic University – Consultative Committee

Nominees – 1

Bradwell Local Community Liaison Council

Nominees – 2

Terms of reference – Liaison between BNFL and local organisations on matters arising from the operation/management of Bradwell Power Station

Meetings - twice yearly (some adhoc as necessary) at Bradwell Power Station

Castle Point Borough Council European Liaison Committee

Nominees – 1

Terms of reference – dealing with European issues including twinning and obtaining European funding in conjunction with neighbouring Local Authorities

Meetings 2 – 3 times per year

Castle Point (Southend on Sea and District) Post and Telecommunications Advisory Committee

Nominees – 1

Terms of reference – to provide interface between Royal Mail and British Telecom on service provision

Meetings quarterly

Castle Point and Rochford Drug Reference Group

Nominees – 2

Terms of reference – to raise awareness of drug issues throughout area including monitoring of prevention activities and initiating own projects

Meetings bi monthly

Rayleigh Citizens Advice Bureau

Nominees – 1

Meetings bi monthly

Terms of reference – provision of free, confidential, impartial Legal Advice

Rochford Citizens Advice Bureau

Nominees – 1

Meetings quarterly

Terms of reference – provision of free, confidential, impartial Legal Advice

Castle Point and Rochford Police Community Consultative Group

Nominees – 1

Terms of reference – consultation between the Police Authority, Police and Members of the Public

Meetings 5 per year

Consortium of Waste Collection Authorities

Nominees - 6

Meetings approx. every 6 weeks (7.00PM)

Council for the Protection of Rural Essex

Nominees – 1

Terms of reference – lobbying organisation to protect Essex countryside (matters relating to Planning etc)

Meetings bi monthly in Chelmsford

Crouch Harbour Authority

Nominees – 1

Meetings – 13 Sept 2000 19:30, 17 Jan 2001 19:30

Crouch Valley Scout District

Nominees – 1

Terms of reference – to support (not financially) scouting in the district

Meetings 3 – 4 per year

Essex County Youth Service Local Strategy Group

Nominees - 3

Terms of reference – Support for young people in the locality

Essex Heritage Trust

Nominees – 1

Meetings 3 per year (March, July, October)

Great Eastern Rail Forum

Nominees - 2

Terms of reference – Liaison and provision of interface between Service Provider, Regulator and Local Authority

Meetings twice yearly

Hockley Community Centre Association – Executive Committee

Nominees – 2

Terms of reference – to oversee the running of the Hockley Community Centre

Meetings 2nd Tuesday of every Month 8.30PM

Hockley and Hawkwell Old Peoples Welfare Committee

Nominees - 1

Meetings 4 per year evenings

Hullbridge Community Association

Nominees – 2

Meetings – Monthly (except August) 1st Wednesday of the month

Hullbridge Senior Citizens Welfare Council

Nominees – 1

Meetings quarterly (AGM 7:00PM, others 2:00PM)

The Old Peoples Welfare Committee for Rochford & District

Nominees – 2

Meetings 2nd Wednesday of each month (7.00PM)

Local Government Association

Nominees – 1 voting Member and 1 Substitute

LGA Rural Commission

Nominees – 1 voting Member (Councillor) and 1 non voting Member (Councillor or Officer)

LGA Urban Commission

Nominees – 1 voting Member (Councillor) and 1 non voting Member (Councillor or Officer)

“ROOM” The National Council for Housing and Planning

Nominees – 1

Terms of reference – All aspects of local concern relating to housing and town planning

Meetings 4 regional meetings per year plus national conference

Rawreth Parish Hall

Nominees – 1

Meetings approx. 2 monthly

Rayleigh Age Concern

Nominees - 1

Terms of reference – day-care/lunch club for the elderly/retired residents

Meetings bi monthly (usually Wednesday, 2nd of relevant month, mid afternoon)

Rayleigh Mount Local Committee

Nominees - 2

Terms of reference – management of Rayleigh Mount

Meetings twice a year March and September 19:00

Regional Employers Organisation

Nominees – 1

Meetings quarterly

Relate South Essex

Nominees - 1

Meetings quarterly

Roche Care Centre Users Group

Nominees – 1

Meetings 3-4 monthly, afternoons

Rochford Crossroads care Attendant Scheme

Nominees – 2

Terms of reference – provision of respite breaks, emotional support and practical help to carers

Meetings approx. every 6 weeks

Rochford District Local Transportation Panel

Nominees – 5

Rochford Domestic Violence Panel

Nominees – 1

Rochford Health for All 2000 Action Team

Nominees – 1

Terms of Reference – to promote the health of residents of the Rochford District

To work collaboratively with statutory and voluntary agencies to the Benefit of local people

Meetings 2 monthly 9.30-11.30AM

Rochford & District Chamber of Trade and Commerce

Nominees – 1

Terms of reference – to represent the views of Traders, in particular in negotiation with Local Government bodies

Meetings 1st Wednesday monthly 6.30 – 7.30PM

Rochford Hundred Association of Local Councils

Nominees – 1

Meetings 3rd Thursday April, July, October 8.00PM

Rochford Sports Council

Nominees – 1

Terms of reference – the promotion of sports for all in the Rochford district

Meetings monthly excluding August & December, usually Wednesdays 7.30PM

Rural Community Council of Essex

Nominees – 1

Terms of reference – to improve and enhance the quality of life of those who live in rural areas of Essex through the promotion of self help projects and community based voluntary action, and by influencing the policy development of appropriate authorities

Meetings – AGM July, conferences

Sanctuary Housing Association

Nominees – 1

Terms of reference – To monitor performance, agree action and strategy of East Anglian Area Office

Meetings – Once every 2 months

London Southend Airport Consultative Committee

Nominees – 3

Meetings 4 per annum

NCE SHAPE Ltd

Nominees – 1

Terms of reference – to provide strategic overview of the operation of projects for single homeless people in Rochford District

Meetings quarterly

South Essex Environmental Protection Sub Committee

Nominees – 3

South East Essex Technology Centre

Nominees - 1

Southend District Community Health Council

Nominees - 3

Terms of reference – statutory body charged with representing the interests the local community in the NHS

Meetings –

Council 3rd Wednesdays in Jan, March, May, July, Sept & Nov @ 7.30PM

Forums and task groups – up to six groups meet in alternative months from Feb – Dec annually

Statutory Annual Meeting with Health Authority & Local Trusts

The CHC sets an independent & contemporary monitoring agenda – some activity may take place during weekends or bank holidays

Southend District Mental Health Association

Nominees – 2

Terms of reference – provision of support services, welfare benefits advice, three group homes and a drop in service

Meetings every 2 months 10:00 – 12:00

Springboard Home Improvement Service Support Group

Nominees – 1

Terms of reference – to support the Home Improvement Service

Meetings twice a year

Youth Sports Advisory Group

Nominees – 1

Terms of reference – to co-ordinate and offer sporting opportunities for young people in the district to take part in whatever level they wish, thus reaching their full potential

Meetings – quarterly – 6PM

Active Christian Trust – The Warehouse Centre

Nominees – 2

Meetings every 6 weeks (evenings)

Youth Arts Partnership

Nominees – 1

Terms of Reference – Partnership of all secondary schools, District Council, Youth Service to deliver Arts to Young People

**NOMINATIONS INVITED SUBJECT TO SUBSCRIPTION BEING PAID BY
THE DISTRICT COUNCIL**

Museums in Essex

Nominees – 1

**Terms of reference – to promote the enhancement of the museum service
throughout Essex**

Meetings 3 per year

Subscription £between 200 and 300 for 1 years subscription

Essex Arts Forum

Nominees – 1

Terms of Reference – to promote the Arts throughout Essex

Meetings 4 times a year

Subscription £190 for 1 years subscription

A GUIDANCE CODE FOR MEMBERS ON OUTSIDE BODIES

1. Members are appointed formally by the Council annually to serve on a range of outside bodies, including voluntary organisations and other local government associations.
2. In carrying out that role, Members act both as individuals and as representatives of the Council. What does that entail?
 - 2.1 **Positively**
 - It entails acting according to the rules, constitution and framework set out by the outside body.
 - It entails making independent and personal judgements in line with their duty of care to the outside body.
 - It entails reporting back, at least annually, to the Council or relevant committee.
 - It entails behaving ethically and following as far as applicable the National Code of Local Government Conduct.
 - It entails taking an active and informed role in the management of the outside body's affairs.
 - 2.2 **Negatively**
 - It does not entail representing the political party to which Members owe their political loyalty.
 - It does not entail avoiding taking part in the outside body's discussions and decisions.
 - It does not entail looking at things simply from the Council's perspective.
 - It does not entail being there in name only and merely turning up to meetings.
3. The role of Members on outside bodies may give rise to occasional uncertainty and perhaps to conflicts of interest. The attached Appendix offers a simple legal guide on the responsibilities of Members and officers. Members are asked to read the guide and if there are issues arising from their particular situation at any time, to contact the Head of Administrative and Member Services for advice.

4. Members will appreciate that this guide and also the National Code of Conduct address some of the issues around the possibility of conflicts of interest. In essence, if the outside body comes into conflict with the Council and the Member is a director or on the management committee of the outside body, it is likely that the Member's prime duty would be to the outside body in *the conduct of the outside body's affairs*. The Member is however also given specific dispensation in the National Code of Conduct to participate in the Council decision-making affecting the outside body to which he or she has been appointed. However, in the case of this Council there is a convention that if the matter under discussion would affect the finances of the outside body then the Member, whilst being able to speak on the matter, will not vote. It is **absolutely necessary** for the membership of the outside body to be declared at the meeting as an interest when declarations are taken whenever a matter is on an agenda which in any way relates to or affects the outside body.
5. If there is a major dispute between the Council and the outside body, then the Member may be placed in an untenable situation. Before taking precipitate action the Member is advised to seek the advice of the Corporate Director (Law, Planning and Administration).
6. At the end of the day, it is possible that a Member may find he/she is unable adequately to carry out his/her responsibilities properly, both as a Member of the Council and as a member or director of the outside body. But that would be an exception, and should not deflect Members generally from being prepared to participate in the management and running of outside organisations.

A GUIDE TO THE LAW FOR MEMBERS AND OFFICERS ON OUTSIDE BODIES

This note is for Members 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 Members or officers have queries then Andrew Smith would be happy to advise in the circumstances of your particular concern. He can be contacted on 01702 318135.

1. GENERAL

- 1.1 There are some general provisions which apply to Members and officers who act in the role of company director, trustee or member of an incorporated body, such as the committee of management of an unincorporated voluntary organisation.
- 1.2 A Member in this role is under a duty to exercise independent judgement in the interest of the organisation in which he/she is involved. Whilst it is recognised that a Member or an officer may have a commitment to representing the Council on the outside organisation, he/she must be aware that it is his/her responsibility to decide what view to take on any question before the organisation. Where a Member 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.
- 1.3 The bottom line is that in the end, the Member or officer in acting as a director/trustee or member of a management committee or 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 Member 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. The overriding duty in considering an item before the outside organisation is to vote in accordance with the interests of that organisation.
- 1.4 A Member or an officer in this role must also ensure that avoidable loss is not incurred in managing the organisation. He/she cannot avoid this responsibility by not reading the papers or failing to ask for appropriate reports. He/she will be expected to seek professional advice where appropriate.
- 1.5 A person responsible for the management of an outside organisation can be sometimes the subject of insurance cover or

an indemnity from the organisation but not from the Council, save in very rare circumstances. Membership of an outside body can give rise to personal liability so it is very important from the point of view of the Member or officers to ensure that the organisation is properly, effectively and efficiently run and operates within the limits of its powers and observes all regulatory requirements.

2. COMPANIES

2.1 On incorporation a company becomes a separate legal entity which can hold property in its own right, enter into contracts and sue and be used in its own name. The company is distinct from its shareholders and members. 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.

2.2 Companies limited by shares are those which have a share capital (eg 1000 share of £1 each). Each member of the company holds shares and received a share in the profits made by the company according to the value of the shares held. Shares can be sold.

Companies limited by guarantee are those when there is no shareholding. Instead, each member of the company 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.

2.3 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 the capacity.

2.4 Directors' Duties

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

- (1)** A fiduciary duty to the company (not individual shareholders) to act honestly and in good faith and in the

best interests of the company as a whole. Directors are therefore in the position of "quasi trustees" who must take proper care of the assets of the company. the fiduciary duty of the director towards the company is very similar to the fiduciary duty of Councillors to the Council Tax payers of the District.

- (2) A general duty of care and skill to the company, but a director requires no greater skill than might reasonably be expected of someone of that individual's particular knowledge and experience. A director is not deemed to be an expert, but is expected to use due diligence and to obtain expert advice if necessary.
- (3) Like a Councillor in respect of Council decisions, the director is under a duty to exercise independent judgement, though it is permissible for him/her to take account of the interests of a third party which he/she represents. In such a case the director must disclose that position and treads 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 a Council mandate. To do so would be a breach of duty.
- (4) **No conflict.** There may be actual or potential conflicts between the interests of the Council and the interests of the company. In such circumstances the only proper way for the conflict to be resolved is for the Councillor to resign either from the company or from the Council.
- (5) Directors are not allowed to make a private profit from their position. They must therefore disclose any interests they or their family may have in relation to the company's contracts. Whether they are then allowed to vote will depend on the Articles of Association.
- (6) Directors must ensure compliance with the Companies Acts in relation to the keeping of accounts, and that the relevant returns are made to the Registrar of Companies. Failure to do so incurs fines and persistent default can lead to disqualification as a director.

2.5 Directors' Liabilities

- (1) The company's identity must clearly be shown on its stationery. The company number, place of registration, registered office address and if any of the directors' names are shown then they must all appear. Non-compliance is an offence and the directors and company officers can be fined.

- (2) A company can only act within the scope set out in its Memorandum of Association (the document which sets out the objects of the company). 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) A director may also be liable for breach of trust, if he/she misapplies the money or property of the company. Directors may also be liable if they fail to take action to prevent the breach of a co-director of which they are aware.
- (4) In the event of failure to act in accordance with the best interests of the company, or if a director uses his/her powers improperly or makes 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 the company the personal profit made.
- (5) If the level of skill and care shown by a director falls below that which could be reasonably expected and the company suffers loss, the director will be liable to the loss incurred. However if it believes the director acted honestly and reasonably, a Court may excuse the director the liability.
- (6) 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 creditors. If a director has concerns about the company's financial position he/she would 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.
- (7) A director will also be liable if his/her knowledge the company carries on business with intent to defraud creditors or any other person, or for any other fraudulent purpose. Fraudulent trading can also lead to disqualification from acting as a director.
- (8) All cheques and similar documents which purport to be signed on behalf of the company must bear the company name. Where they do not, the director signing on behalf of the company may be liable to a fine and may also be liable to the payee if the company fails to honour the cheque. It is therefore wise for directors to make sure that all documents they sign on behalf of

the company state very clearly that they act as agent for the company (eg Director, for and on behalf of.....).

- (9) A third party who enters into a contract on the assumption that a director has power to bind the company, may be able to claim damages against the director if it subsequently transpires that the director had no such power. Directors would be well advised to ensure that contracts are approved by the board and that the authority to enter into any contract has been properly delegated before signing it.
- (10) Though company liability ceases on dissolution, the liability of the directors (if any) may still be enforced after dissolution.

2.6 Indemnities

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

2.7 Local Authorities (Companies) Order 1995

- (1) This Order, made under the Secretary of State's powers contained in Part V of the Local Government & Housing Act 1989, sets out rules concerning local authorities' involvement in "regulated companies" which are subject to extensive controls, and their involvement in other companies where a number of rules apply.
- (2) "Regulated companies" are so defined if they are controlled or influenced by the local authority. "Influenced companies", under the effective control of the local authority, will be subject to capital finance regime and special propriety controls. In broad terms, the test as to whether companies are local authority influenced is whether the local authority has the right to, or in fact does, exercise a dominant influence over the company in question. "

- (3) The original concept of controlled, influenced, and minority interests in companies were introduced by the 1989 Act. "Influenced" means at least 20% interest. The concept in the 1989 Act stands, but the Order introduces the term "regulated".
- (4) Councillors who are directors of outside companies to which they have been nominated by the Council are under the following obligations:-
 - (a) that the remuneration they receive from the company should not exceed that received from a local authority, and should be declared;
 - (b) to give information to Councillors about their activities as required by the local authority (save for confidential information), and
 - (c) to cease to be a director immediately upon disqualification as a Councillor.

3. INDUSTRIAL AND PROVIDENT SOCIETIES

- 3.1 These are corporate bodies formed under Acts of Parliament which created this type of organisation and registered with the Registrar of Friendly Societies. A common example of these is a housing association. However, a Society can carry on any trade or business but must either be a co-operative society or carry on its trade or business for the benefit of the community, so it is appropriate for it to be registered as a society and not a company.
- 3.2 Instead of a board of directors the Society is run by a management committee. Members of the Society hold shares in it and their position is similar to that of shareholders in a company.
- 3.3 The responsibilities, duties and liabilities of members of the management committee are similar to those of directors of a company.

4. CHARITIES

- 4.1 To be a charity an organisation must operate for a charitable purpose. There are four:
 - the relief of poverty and human suffering
 - the advancement of education

- the advancement of religion
- another purpose for the benefit of the community.

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

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

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

4.4 Trustees' Duties

- (1) Trustees must take care to act in accordance with the Trust Deed and to protect the charity's assets. They are also responsible for compliance with the Charities Acts.
- (2) Trustees must not make a private profit from their position. They must also perform their duty with the standard of care which an ordinary, prudent business person would show. Higher standards are required of professionals, and in relation to investment matters.
- (3) Charitable trustees must ensure that the information relating to the trust and trustees is registered with the Charity Commissioners and that annual accounts and returns are completed and sent.
- (4) If charitable income exceeds £5000, the letters, adverts, cheques etc must bear a statement that the organisation is a registered charity.
- (5) Trustees are under a duty to ensure compliance with all relevant legislation (eg in relation to tax matters).

4.5 Trustees' Personal Liability

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

- (2) 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
 - makes a personal profit from the trust assets
- (3) In such circumstances the trustee will incur personal liability for losses incurred.
- (4) Trustees can be liable personally to third parties because unlike a company, a trust has no separate identity from the trustees. Trustees are however entitled to an indemnity from the trust assets, provided they act properly in incurring the liability. Trustees remain personally liable once they retire (eg if they have entered into a contract on behalf of the trust) and should therefore seek an indemnity from their successors. If the charity is a company however the trustees for the time being will be responsible.
- (5) Trustees may be liable to fines if they do not comply with the duty to make returns etc.

4.5 Indemnities

An indemnity can be given from the trust fund provided the trustee has acted properly and within his/her powers. Trustees may take out insurance to protect themselves against personal liability but not for criminal acts, fraud etc. There will be no problem if the trustees themselves pay the premiums but if they are paid out of the charitable funds the trustees will need the consent of the Charity Commissioners unless the trust deed allows it.

5. COMMITTEES OF MANAGEMENT

5.1 Unincorporated Associations

Groups which are not charitable trusts or limited companies are "unincorporated associations" and have no separate legal identity from their members. The rules governing the members' duties and liability will be set out in a constitution which is simply an agreement between the members as to how the organisation will operate. Usually the constitution will provide for a management committee to be responsible for the everyday

running of the organisation. An unincorporated organisation may be charitable and may register as a charity.

- 5.2 Properly will have to be held by individuals as the organisation has no existence of its own.

5.3 Duties

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

5.4 Liabilities

- (1) Generally, the Management Committee members are liable for the acts of the organisation, but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there are not enough funds, the Committee members are personally liable for the shortfall.
- (2) If one person is appointed by the constitution to act as the agent of the organisation for certain purposes, then that person acts as the agent of all the members, who have joint liability for the agent's actions.
- (3) Members of the Committee of Management will have personal liability if they act outside the authority given to them or if they do not comply with statute eg the payment of employees' tax etc.

5.5 Indemnities

Members will be entitled to an indemnity if they act in accordance with the constitution and are not at fault. It is possible to obtain insurance but if the organisation is to pay the premium it must be permitted by the constitution.

6. OTHER CORPORATIONS

- 6.1 There are bodies created by an Act of Parliament to carry out particular functions and whose constitution is set out in the legislation relating to that specific body.
- 6.2 The powers of the members of the body and duties and liabilities of those members individually and collectively depend upon the wording of the legislation in question. In general terms the position of a member is similar to that of a Councillor. It is prudent therefore for a member of one of these bodies to obtain information for himself/herself from the clerk of chief

administrative officer of the body on the powers and duties of the body, its standing orders and other procedures which it must follow and financial or other regulations which govern conduct of its business.

7. JOINT COMMITTEES OF LOCAL AUTHORITIES

- 7.1** The position of a Member on a joint committee is identical to that of a Member on any Committee of the Council.

8. CONSULTATIVE BODIES

- 8.1** These are bodies set up by another body or the Council to advise it. These bodies do not take decisions or authorise action; however, the advice given can be persuasive and result in a particular decision being taken or action carried out by the body which the consultative body advises. Accordingly a member of one of these consultative bodies should always ensure that any advice given is soundly based on all relevant factors being taken into account, any irrelevant ones being disregarded, and is in accordance with the law and is reasonable. Advice which is tainted by malice or negligently given which results in an adverse effect on another can give rise to legal liability.

- 8.2** Members on consultative bodies are bound by the National Code of Conduct.

- (3) outside the Council's statutory powers, or
- (4) as a director of a board of a limited company, a trustee of a trust, a voting member of a management committee.

Since the Council may only delegate power to a committee and not to an individual Member, Members were advised that they should only participate in outside bodies as observers or facilitators. It was recognised that in practice Members are keen to take a more active rôle and, of necessity, this can only be in a personal capacity and should not conflict with their duties as a member of the Council. In most instances, therefore, a Member will not be indemnified by the Council and where the particular outside body does not hold insurance, the possibility of personal risk arises. A survey of 40 outside bodies had revealed that, of 21 respondents, only 6 possessed insurance which would cover Members acting in decision-making capacities; one had insurance but was still to confirm whether members would be covered; and one provides Members with indemnity but does not have insurance. The majority of organisations do not therefore have insurance that would cover Members.

It was noted, that in the light of a nationwide debate on the position of Members serving on outside bodies, the Local Government Association has produced a Code of Practice for Local Authority Members and Officers Serving on the Boards of Voluntary Organisations. The Committee examined a number of options to provide greater certainty in the future, including the completion and maintenance of a formal register of all outside bodies including details of the position held by a member and insurance arrangements. The suggested format of such a register was annexed to the report, together with an aide memoire outlining the position of Member representatives on outside bodies.

The following main points arose during discussion:

- (i) It was considered that it would be useful for the aide memoire to be sent to all District Council representatives on outside bodies at the time of confirmation of their appointment, together with, but separately printed for additional emphasis, the paragraph in the Head of Legal services' report commencing "Remembering that the Council may only delegate power to a Committee....."
- (ii) The Committee agreed with a Member's suggestion that the aide memoire should be incorporated within the report to the forthcoming Meeting of Finance and General Purposes Committee concerning Outside Bodies.
- (iii) It was considered that restricting Members to a purely advisory rôle on outside bodies, with no voting rights, did not facilitate the democratic process. It was therefore suggested that the Local Government Association could be contacted to highlight this dilemma and for possible solutions.
- (iv) In reply to a Member question, the Corporate Director (Finance and External Services) confirmed that loans to outside bodies are secured on their premises, so the potential inability of District Council representatives to take part in decision making would not result in the Council's financial investment being put at risk.

Resolved

- (1) That representation on outside bodies which did not respond to the survey, those which have indicated that they have no insurance and those indicated in the Head of Legal Services report to be of limited value be reviewed.
- (2) That Members be advised to confirm insurance arrangements on taking up nominations to outside bodies.
- (3) That a register of outside body involvement be completed and maintained
- (4) That the aide-memoire be included in the year book, distributed to all Councillors along with the extract from the report as described above, and be included in the report

Remembering that the Council may only delegate power to a committee and not an individual Member, the effect of the above is that from a liability point of view, Members should only participate in outside bodies as observers or facilitators. In practice Members are keen to take a more active role and, of necessity, this can only be in a personal capacity and should not conflict with their duties as a member of the Council. In most instances therefore a Member will not be indemnified by the Council and where the particular outside body does not hold insurance, the possibility of personal risk arises