

## REVISED PROTOCOL FOR OUTSIDE BODIES

### 1 SUMMARY

- 1.1 The report presents a revised “Protocol for Outside Bodies” incorporating the provisions of the Local Authorities (Indemnity for Members and Officers) Order 2004

### 2 INTRODUCTION

- 2.1 The Protocol for Outside Bodies forms part of the Council’s Constitution and provides guidance as to the responsibilities and liabilities that Members and officers may attract in connection with their involvement in organisations outside of the Council.
- 2.2 Arising from the Council’s decision to extend the indemnity provisions as provided by the above order, the protocol for Outside Bodies has been revised to take account of these changes. (Minute 196/05).

### 3 REVISED PROTOCOL

- 3.1 A copy of the revised protocol is appended to the report.
- 3.2 The revisions follow the provisions in the Local Authorities (Indemnities for Members and Officers) Order 2004 which clarified the circumstances in which personal indemnity could be provided and the Council’s decision to extend cover accordingly.
- 3.3 There are specific statutory limitations as to the extent of indemnification the Council is able to provide, and these are detailed in the protocol.

### 4 RESOURCE IMPLICATIONS

- 4.1 The Council's insurance cover has been extended to incorporate these changes

### 5 LEGAL IMPLICATIONS

- 5.1 The levels of partnership, joint working arrangements and appointments to outside bodies are increasing. The indemnity provisions provide a measure of insurance to enable Members and officers to carry out their duties without risk of personal liability provided they have acted honestly and in good faith.

**6 RECOMMENDATION**

- 6.1 It is proposed that the Committee **RESOLVES** that the revised Protocol for Outside Bodies be adopted.

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**Background Papers:-**

None

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## APPENDIX

## PROTOCOL FOR OUTSIDE BODIES

## MEMBERS' AND OFFICERS' RESPONSIBILITIES &amp; LIABILITIES

Members and officers acting on outside bodies may attract personal liability depending on the legal nature of the body and the role fulfilled by the Member or officer. The Council may only delegate its functions to committees or employees of the Council. This means that Members can only represent the Council on outside bodies as observers or facilitators assisting in the exchange of information. Members cannot make decisions binding the Council. Members are therefore not allowed to represent Council in an executive capacity on an outside body. Members may serve on outside bodies in their personal capacity, provided that there is no conflict of interest with their duties as a Member.

The following is intended to provide some useful guidelines. It is a Member/officer's responsibility to ensure that they are aware of their liabilities and any insurance arrangements where they participate on outside bodies. Where uncertainty exists, seek guidance from the Corporate Director (Law, Planning & Administration) or independent legal advice.

**1. The Council may only indemnify Members and Officers in certain circumstances as prescribed by the Local Authorities (indemnity for Members & Officers Order 2004.**

The Council will provide an indemnity in relation to any action or failure to act by any Member or officer which:

- (a) is authorised by the Council;
- (b) forms part of, or arises from, any powers conferred, or duties placed, upon that Member or officer at the request, or with the approval of the authority including acting as the Council's representative on an outside body;
- (c) arises in respect of the cost of defending any claim for an allegation of defamation by a Member or officer acting in an official capacity (but not in respect of any punitive or exemplary damages or arising from malicious or injurious falsehood);
- (d) is in respect of any investigation, hearing or other proceedings for an alleged failure to comply with the Code of Conduct for Members but, if the Member is found to have breached the Code of Conduct, and where an appeal is unsuccessful, then that Member shall reimburse the authority or the Insurer for their costs incurred in relation to those proceedings.

The indemnity includes an act or omission subsequently found to be beyond the powers of the Member or officer in question, but only to the extent that the Member or officer reasonably and genuinely believed that the act or omission was within his/her powers at the time he/she acted.

The indemnity does not apply to the defence of any criminal proceedings brought against a Member or officer unless specifically approved by the Council and then only on similar basis to that relating to proceedings for breaches of the code with regard to reimbursement.

**2. A Member's role on an outside body may occasionally give rise to a conflict of interest.**

If a Member is a director or on the management committee of an outside body, it is likely that their prime duty is to the outside body. Where the Member has been appointed by the Authority as its representative this will not necessarily exclude the Member from participating in Council decision making, even when the outside body is directly affected, as Membership of an outside body need not be regarded as a prejudicial interest under the terms of the code of conduct. However there may be circumstances where a prejudicial interest might arise and Members should seek advice if they are unsure of their position.

In some instances a Member may also find that they are unable to properly carry out their functions as a Member of Council and a Member of the outside body. In such a case the Member may consider resigning from one or other body. Members are advised to seek advice from the Chief Executive or Corporate Director (Law, Planning & Administration) before taking such action.

**3. There are general duties that apply to Members and officers whether they act in the role of company director or trustee or Member of an unincorporated body.**

The Member or officer is under a duty to exercise independent judgement in the interest of the organisation in which they are involved. If the Member or officer is involved in the outside body in a representative capacity, this must be declared to the outside body. A mandate from the Council to vote in one way or another would put the Member or officer in breach of the duty to the organisation.

Members and officers must also ensure that avoidable loss is not incurred in managing the organisation. They must make sure that they have regard to all appropriate reports and papers. They are expected to seek professional advice where appropriate.

The Member/officer must act in accordance with the rules, constitution and framework set by the outside body.

A report back, at least annually, must be given to the relevant committee or Council.

At all times Members and officers must behave ethically, taking an informed role in the outside body's affairs.

Members must represent the Council and not the political party to which they owe their loyalty.

**4. Before accepting a role in a decision-making capacity in any outside organisation consider the following:**

How onerous are the responsibilities likely to be? Do you have the time and capacity to take them on?

Is there likely to be any significant conflict of interest between your role in the outside organisation and your council role? If so, consider refusing the office.

Assess the risk of things going wrong, which might give rise to personal liability. Things to consider include the nature and function of the body and the amount of money with which it deals. Always be aware of the added risks where an organisation employs staff.

In each case the issue of insurance should be considered. Find out if the external body has insurance and if so whether it would cover the key risks of the organisation as well as yourself. Find out if your liability is limited or unlimited

If not, would the organisation consider taking out insurance. If no insurance exists, and indemnity does not apply, this must be weighed in the decision to accept the appointment. Make sure that you are aware of your major responsibilities and liabilities. A guideline on the respective duties and liabilities in relation to companies, trusts and unincorporated associations, is available from the Director (Law, Planning and Administration)