

(J) Protocol for Members and Officers involved in Partnerships

1. Introduction

- 1.1 This Protocol is to ensure that Members and officers are aware of their obligations when representing the Council on partnerships, or other outside bodies.
- 1.2 For the purposes of this Protocol, a “partnership” is defined as a joint working arrangement where the members of it:
 - are otherwise independent bodies;
 - agree to co-operate to achieve a common goal;
 - and, to achieve it, create an organisational structure or process and agreed programme; and
 - share information, risks and rewards.
- 1.3 Such joint working arrangements will include borough-wide or strategic partnerships, community partnerships, constituted voluntary groups and smaller community groups. In terms of organisational structure the partnership can take the form of:
 - a company;
 - a charity (not applicable as no members presently represent the Council as a trustee of a charity);
 - an unincorporated association - often comprising representatives from other local authorities and external organisations (for example Douglas Community Partnership).
- 1.4 This may involve the Council asking for Members and/or officers to:
 - become a director of a company;
 - become a charity trustee;
 - sit on the Management Committee of a partner organisation or a joint board or steering group; or
 - be an ordinary member of an unincorporated association.
- 1.5 This Protocol assumes that Members and officers who are asked to become a member of a partnership will:
 - act according to the rules, constitutions and frameworks set by the partnership;
 - will make independent and personal judgements based on their duty of care to the partnership;
 - in the case of Members report back, on their involvement with the partnership, to the Council;
 - in the case of Members comply with the applicable obligations of the Code of Conduct;
 - take an active and informed role in the management of the partnership’s affairs;
 - ensure that membership of a partnership does not include representing a political party.

2. **General Provisions**

- 2.1 There are some general provisions that apply to Members and officers who act in the role of company director, charity trustee or member of an unincorporated body.
- 2.2 Members and officers are under a duty to exercise independent judgement in the interests of the organisation in which they are involved. Whilst it is recognised that Members and officers may have a commitment to representing the Council on the partnership, they must be aware that it is their responsibility to decide on what view to take on any question before that organisation. For example, an instruction from the Council to vote one way or the other would put the Member or officer in breach of his/her duty to the organisation. It is permissible to take account of the Council's wishes, but not to vote simply in accordance with them. Members and Officers should therefore be mindful of the Council's policies, and be able to present them to their fellow members of the organisation, but should be willing to listen to and consider contrary views; if there is a conflict between Council policy and the organisation's wishes, it is feasible that the Council might be persuaded to change its policies.
- 2.3 Members and Officers who represent the Council in such circumstances need to familiarise themselves with the duties they will assume and any potential liabilities they may face. It is essential that they are aware of how to deal with any conflicts of interest that may arise and they need to be sure that the proper procedures have been followed in respect of appointments to the partnership.
- 2.4 Conflicts of Interest should be minimised if there is proper communication between the Council and the organisation; minutes of meetings of such organisations, together with supporting documentation, should be passed to the Chief Executive, who, if there is a matter identified that should be considered by Council or a Committee, can make the appropriate arrangements.

3. **Companies**

- 3.1 Companies can be:
 - Limited by shares, usually operating a trade or business. They have shareholders and distribute profits to shareholders as dividends.
 - Limited by guarantee – or so called "not for profit" organisations, which have members rather than shareholders. This type of company is the basis of the Douglas Development Partnership.
- 3.2 Companies can employ staff, enter into contracts and own land/property. The business of a company is managed by its board of directors.
- 3.3 Companies offer limited liability. This means that the members or shareholders are usually not personally liable for the company's debts and liabilities, subject to limited exceptions.
- 3.4 The powers of the directors are usually set out in the company's Articles of Association. These are the rules that govern the internal management of the company.

4. **Duties of a Company Director**

- 4.1 A director is an agent of the company. Their primary duties are as follows:
 - To act in good faith and in the best interests of the company when making

decisions as a director. This means using their own, independent judgement and not automatically following the views and wishes of the Council (or, if they are a Member, their political group). In certain cases they may find that the best interests of the company and the Council conflict.

- To exercise reasonable care and skill when making decisions as a director. Directors are not deemed to be experts but they are expected to use due diligence and to obtain expert advice if necessary. This is very similar to the Member/Officer relationship in terms of decision making and the provision and consideration of professional advice.
- A fiduciary duty to act honestly and in good faith and in the best interests of the company as a whole. This is very similar to the fiduciary duty of Members to the Council rate payers of the Borough.
- To act in accordance with the company's Memorandum and Articles of Association, and any other rules, regulations or bylaws that the company operates under. Members and Officers should ensure that they have an up to date copy of these documents and are aware of their contents.
- To inform the board of a company if they have any direct or indirect interest in a contract the company is considering, proposing or entering. This, for example, will include contracts between the company and the Council. These requirements are similar to those contained in the Codes of Conduct governing the declaration of interests. In other words a director must notify the other directors before the company makes a decision on the matter concerned and the director should not take part in any board discussions about the contract.
- Not to make a profit from their position within the company. They must therefore declare any interests they have (or those of their family) in relation to the company's contracts.
- To comply with company law. Directors must ensure that the Companies Acts are complied with particularly in respect of the maintenance of accounts and the submission of statutory returns. Failure to do so incurs fines and persistent default can lead to disqualification as a director.

5. **Liabilities as a Company Director**

5.1 Members and Officers acting as company directors may be held personally responsible for the company's debts and liabilities if they:

- Engage in wrongful trading, i.e. if they knowingly permit the company to continue to trade or incur liabilities when they know or ought to have known that the company is unable to pay its debts. Accordingly, Members and officers must ensure that they obtain regular information about the company's financial position. Advice on interpretation of financial information may be obtained from the company's financial advisers or the Council itself. If a Member or officer feels the company is unable to pay its debts they should notify the other directors as soon as possible. They should also consider whether to resign as a director. The Chief Executive will be able to advise them and they should seek his/her advice as soon as possible.
- Mis-apply or misuse the company's money or property.
- Fail to act in the best interests of the company or fail to act with the level of skill that could be reasonably be expected of them, except where the Court is satisfied that they acted honestly and reasonably.

- Exceed the scope of any delegated authority they may have from the company.
- 5.2 Members who are directors of companies as nominees of the Council must comply with the following specific obligations:
- To give information (or report) to the Council about their activities as required by the local authority (save for confidential information) and;
 - To cease to be a director immediately upon ceasing to be a Member.

6. **Unincorporated Associations/Bodies**

- 6.1 Organisations which are neither charities nor companies are referred to as unincorporated associations. They usually operate under a constitution or set of rules defining the organisation's responsibilities and those of its members.
- 6.2 The affairs of an unincorporated association are usually governed by a management committee in accordance with the organisation's constitution or rules.
- 6.3 Unincorporated associations cannot do any of the following in their own name:
- enter into contracts;
 - own land;
 - employ staff.
- 6.4 Members of the organisation's management committee must act in accordance with its constitution and must take reasonable care in exercising the organisation's powers.

7. **Duties of members of Unincorporated Associations/Bodies**

- 7.1 As a matter of good practice Members/officers appointed to represent the Council on an unincorporated association (body or organisation) must:
- act in the best interests of the association;
 - use reasonable care and skill when involved in decision making on behalf of the association;
 - act in accordance with the association's rules or constitution.
- 7.2 Members/officers are therefore encouraged to:
- clarify the extent of any limits to their power to act on behalf of the Council;
 - notify the Chief Executive if the association is proposing to take a course of action which is disadvantageous to the Council or which seems to involve considerable risk;
 - ensure the association has clear rules and procedures for decision making.

8. **Conflicts of Interest**

- 8.1 Conflicts of interest may arise between the Council and a partnership. Even if the Council and the partnership have the same overall aims and objectives Members/officers cannot assume that the respective interests will always be the same. The legal position, and Members/officers obligations remain the same even if the partnership has worthy objectives or is formed in response to a Council or Government initiative.

8.2 Conflicts of interest may arise:

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

8.3 Company law in particular requires directors to act in the best interests of the company but the principle applies to all other forms of partnership. Given that the Council will have nominated the Members or officer as a director to represent or promote the Council's interests, the possibility of a conflict of interest arising could be significant. Accordingly, if Members/officers are uncertain whether a conflict of interest exists they should seek advice from the Chief Executive as soon as possible.

8.4 If Members or officers have a conflict of interest they should:

- Notify the Chief Executive or Assistant Town Clerk.
- Notify the partnership's board of directors or management committee.
- Take no further part in the matter on behalf of the company.

9. **Members' Code of Conduct**

9.1 In most cases when Members represent the Council on a partnership they will be bound by the Council's Code of Conduct unless this conflicts with any lawful obligations to which the partnership is subject.

10. **Reporting to Council**

10.1 Where a Member sits on another organisation by virtue of having been appointed by the Council, they should be aware that in participating in decisions by that organisation, they are doing so as the Council's representative. They are not obliged to blindly follow Council policies, but must put the organisation's interests first. However, any case where the interests of the organisation and the Council are incompatible should be reported to the Chief Executive who in turn may report to the Executive Committee.