

Division(s):

CABINET – 24 NOVEMBER 2009

OUTSIDE BODIES

Report by Assistant Head of Legal & Democratic Services

Introduction

Partnership Bodies

1. In the Summer the Cabinet approved member appointments to a variety of bodies and agreed the basis on which appointments to the respective bodies should be made. The Cabinet also agreed the governance arrangements for strategic partnerships (listed in **Annex 2.**)
2. The report agreed the membership of strategic partnerships should be linked to the role of the cabinet member not to individually named members. This report seeks the approval of Cabinet to add those bodies to the 'All Appointments' list as a separate category of 'Partnership Bodies'. It is suggested that the criteria for appointment be reviewed at the beginning of each new Council term.

Appointments to Outside Bodies

3. In accordance with the process agreed in July, Cabinet is asked to consider making appointments as set out below.

Strategic Outside Body:	Appointed in June 2009	Recommendation
South East England Councils	Councillor Robertson	Councillor Rose

Member Champion:		
Bus Champion	Councillor Marilyn Badcock	Councillor Lilley

Advice Note to Members on Outside Bodies

4. The Standards Committee at its meeting on 30 September 2009 considered a paper setting out general advice for councillors, which had been prepared by the Oxfordshire District and County Secretaries/Monitoring Officers Group, about some issues which can and do arise when councillors are appointed to serve on bodies to which the Council may traditionally make appointments. The Standards Committee recommended that Cabinet endorse the guidance, which is attached as Annex 1 to this report.

Indemnity Policy for Members

5. At the same meeting the Standards Committee also considered a report on indemnity/insurance issues for members. The Monitoring Officer had been asked to provide legal advice with regards to indemnifications provided to Members whilst they were discharging their responsibilities as Members, including acting on Outside Bodies. The Council currently has insurance arrangements for the indemnification of Members but has not taken the opportunity to extend the indemnifications that are now allowable under the Local Authorities (Indemnities for Members and Officers) Order 2004 ("the Order").
6. It was reported that Members have an increased role, responsibility and involvement not only in outsider bodies where they will be representing the County Council but there is also increased partnership working and innovation together with the new community leadership role. In addition, the standards of behaviour and conduct are now regulated by the Members Code of Conduct which is overseen by this Standards Committee.
7. Councils have a discretion in certain circumstances to provide an indemnity or insurance against Members incurring personal liability for their actions or indeed failure to act.
8. The power applies to Members whose actions or failures to act are authorised by the Council or who undertake a function at the request of, or with the approval of the Council, or for the purposes of the Council. In recognition of the wider partnership remit that Members now have, the power to indemnify or insure includes circumstances where the Member is not acting in their capacity as a Member, for example, when acting on an outside body at the request of the Council.
9. The Standards Committee approved for its part the draft indemnity for Members and agreed to recommend the Cabinet to delegate authority to the Monitoring Officer to put in place appropriate indemnity and insurance to enable members to undertake their functions.

RECOMMENDATIONS

Cabinet is RECOMMENDED to:

- (a) agree the procedure for considering appointments to strategic partnerships as set out in the report;**
- (b) agree specific appointments as set out in paragraph 4 above;**
- (c) endorse the advice note for councillors serving on outside bodies for issuing to all members appointed to outside bodies; and,**
- (d) delegate authority to the Monitoring Officer to put in place appropriate indemnity and insurance to enable members to undertake their functions.**

Tony Cloke
Assistant Head of legal & Democratic Services

Contact Officer: Sue Whitehead. Committee Services Manager
Tel: 01865 810262

November 2009



**An advice note for
councillors serving
on outside organisations**

1 Introduction

This is general advice for councillors which has been prepared by the Oxfordshire District and County Secretaries/Monitoring Officers Group about some issues which can and do arise when councillors are appointed to serve on bodies to which the Council may traditionally make appointments.

The business of local government, at all levels, now includes far more partnership working, and work in the community. Councillors' representational role is enhanced and strengthened by participating in outside bodies but inevitably there will be great differences in the way these bodies work. It is not possible therefore to give exhaustive advice about every issue which a councillor may face if serving on an outside body, but this note deals with some of the most fundamental issues.

2 General background

2.1 Once councillors are elected to serve on the Council they may very well be nominated by the Council to serve on other bodies which deal with a variety of issues on a district, county or regional basis. Such bodies are many and varied: examples being community hall committees, cultural arts and sports and tourism promotional bodies, charitable bodies, voluntary and advisory organisations and bodies dealing with various major public programmes as well as bodies actually run by other public institutions.

2.2 Councillors need to understand certain ground rules as part of their take up of an appointment on an outside body:-

- it is not necessarily the case that the Council knows in detail the organisation of the outside bodies to which they appoint councillors, as these bodies are independent bodies of varied backgrounds;
- the Council will probably be only one of a number of organisations with which the body has formal contact;
- Councillors need to make themselves aware, at the time of joining a body, what they are taking on, and what the body expects of them;
- Councillors need to be aware that taking on a specific role with an outside body (e.g. chairmanship of it) may create a conflict when the Council considers matters relating to that body;
- Councillors are bound by their Council's local code of conduct when serving on an outside body *unless* it conflicts with any legal obligations arising from their membership of that body;
- there are many different forms of organisation as described above, and councillors should be aware that they are not covered by the Council's legal machinery or insurance for the activities they may become involved

in through membership of an outside body. A separate note about limitation of risk and the insurance situation is given below. (Section 5).

- generally outside bodies will be performing or facilitating public works or programmes or engaged in philanthropic activity and the competence of administration of them will vary considerably. Councillors serving on them need to be alert to problems and to seek advice about any matters which may be of concern from the Council's Monitoring Officer.

2.3 This introductory advice is not intended to dissuade councillors from participating in the valuable work of outside bodies. It is simply saying that outside bodies are very varied in their culture and operational base and the Council as such does not know enough about them to give them a seal of approval to the extent that the councillor is "fireproof" if serving as a Council nominee - checks and clarity of purpose established by the councillor are very necessary.

2.4 At the end of this advice note there are some useful contacts listed, both within and outside the Council. There are also some Do's and Don'ts which might help you when representing the Council on an outside body.

3 Types of bodies

3.1 As mentioned above organisations are many and varied. It is impossible to provide advice about every problem that may be encountered.

3.2 Broadly speaking bodies may fall into one of the following categories:-

- a formally incorporated company
e.g. South East Employers
- an unincorporated organisation
e.g. Oxfordshire Association of Local Councils
- a charitable body
e.g. Woodstock Relief in Need Charity
- partnerships/consultative groups
e.g. Oxfordshire Partnership
Oxford Airport Consultative Committee

3.3 The obligations of a councillor will vary depending upon the role taken. Again, in general, the obligations of being a director of a company, or charity trustee will be specific and more clearly defined in law than for membership of an unincorporated body. The point of councillor representation on outside bodies is to further the public interest, either locally or generally, and councillors need

to exercise their judgement in this respect whilst bearing in mind any Council objectives in having representation on the body concerned.

- 3.4 For unincorporated organisations, the rules governing the (councillors') duties and liabilities should be set out in a constitution which will govern how the organisation will operate. Quite often the constitution will provide for a management committee to be responsible for the everyday running of the organisation.**
- 3.5 There are also bodies which could be described as "consultative" or pressure groups. Membership of these bodies can bring particular problems which are discussed below.**
- 3.6 The succinct advice is to be aware of your responsibilities and ensure you take advice if necessary from the appropriate person in the organisation on which you are serving.**

4 The application of the Council's Code of Conduct

- 4.1 As indicated above, an elected councillor is bound to observe the requirements of the Council's Code when serving on another body, as well as observing the body's own code/governance guidelines which require those serving on it to conduct themselves in a certain way.

(Note: for councillors serving on more than one authority be aware of the Code for the authority which is making the appointment).

- 4.2 The relevant parts of the Council's Code are:-

Paragraph 13 - this requires councillors to register membership of, or position of general control or management in, a body to which they have been appointed or nominated by the Authority as its representative. The standard Register of Interest forms that councillors complete provides for this information to be listed.

Paragraph 9(2) - this requires councillors serving on outside bodies, providing s/he does not have a prejudicial interest (see paragraph 4.3), to disclose to the meeting (of the Council/ its Executive/ its committees) a personal interest and nature of that interest when s/he addresses the meeting on that business.

The declaration of a personal interest would not disallow the councillor from speaking and voting on the particular issue at the meeting.

- 4.3 If a councillor considers that s/he has a prejudicial interest in an outside body to which s/he has been appointed, then the councillor should declare that s/he has a prejudicial interest and the nature of that interest as soon as the interest becomes apparent. The councillor should then leave the room **unless** members of the public are allowed to make representations, give evidence or

answer questions about the matter. If this is the case, the councillor can also attend for that purpose. However, once the councillor's representation is made, s/he must leave the room. A councillor cannot remain in the public gallery to observe the vote on the matter. In addition, a councillor must not seek to improperly influence a decision in which s/he has a prejudicial interest. Consultation with the Council's Monitoring Officer may be required when there are circumstances which may give rise to problems in this respect.

- 4.4 Councillors should be aware of the above and how to interpret the Code to identify and avoid conflicts of interest. The following guidance may assist.
- (a) Ordinary members of management committees (or similar)
- (i) Where Council has appointed a councillor to an outside body as a representative of the Council s/he may regard themselves as not having a prejudicial interest. It is important to remember that simply by appointing a councillor to an outside body the Council *does not* grant the person an automatic exemption from prejudicial interest in every circumstance relating to that body. For example, trustees have specific obligations to the body to which they belong; these would almost certainly amount to a prejudicial interest if a councillor were involved in discussion in a meeting of the Council (or its Executive or Committees etc.) about a grant to that body, or other matters affecting its financial or business affairs. It is therefore important that, in spite of the general rule of exemption, councillors remain alert when sensitive issues arise and seek advice where appropriate
 - (ii) For councillors who are not appointed by the Council to the body the normal rules about personal and prejudicial interests apply (unless the body falls into another exemption category). This also includes councillors who have been appointed to Body A as the Council's representative and then appointed/nominated by Body A to represent it on Body B.
 - (iii) Councillors should bear in mind that the terms of exception referred to in paragraph 4.4 (i) should be interpreted as implying that where a councillor is on an outside body, but not as the Council's representative, a prejudicial interest may exist.
- (b) Officeholders (Chairman, Treasurer etc)
- (i) If a councillor, who is the Council's representative on a body, is approached to accept a position as an officeholder with that body, s/he should consider whether taking such a leading role is compatible with representing the Council. Part of the role of a councillor on an outside body is to liaise between the Council and that body and to report on its business and performance to the Council. To do so effectively requires a degree of impartiality from that body which holding an office may call into question.
 - (ii) It may be that part of an organisation's motivation in seeking to have a councillor as an officeholder is to gain extra influence with the Council. It

is important therefore that from the start the councillor makes clear that as an officeholder the likelihood of conflicts of interest arising is significantly greater. It may indeed make the position untenable - see paragraph (iv) below. As an officeholder a councillor should normally expect to declare a personal and prejudicial interest in matters affecting the affairs of the body - not just grants, but also issues relating to planning, licensing, property etc. Regard should also be had to paragraph 6 (a) of the Code which states that a councillor must not in his official capacity, or any other circumstances, use his position as a councillor improperly to confer on or secure for themselves or any other person, an advantage or disadvantage.

- (iii) Officeholders should equally be aware of the need to be careful in avoiding conflicts of interest arising when acting in their capacity as members of an outside body because of its dealings with the Council. This could come from individual cases or from more significant policy and financial aspects of the relationship between the body and the Council. Some bodies may themselves have governance arrangements designed to regulate ethical standards.
- (iv) It is important to avoid any perception of impropriety. The potential for incompatibility between a councillor's role as an officeholder on an outside body and membership of the Council will be influenced by a number of factors, such as
 - the degree to which the body is dependent on the Council for financial or other support, and the scale of that support
 - the general nature of the relationship between the Council and the body
 - the real or perceived influence the councillor may be able to exert over the Council - for example, is s/he a member of the Executive or is s/he "high profile" in some other way? Would a decision contrary to his/her point of view either by the Council or by the management committee of the outside body be perceived as politically embarrassing?
 - Would the Council be perceived as seeking to exercise undue influence over the body, or vice versa?
- (v) Such considerations will apply to all councillors who hold office, whether or not they have been appointed to the body by the Council.

5 Indemnities: general

- 5.1 Within this note specific advice is given, in the relevant sections, about the need for insurance cover to be available through the body on which the councillor serves.
- 5.2 The general ability of the Council to provide an overall indemnity for councillors serving on outside bodies is still not entirely clear in law but, for the purpose of this advice note, bodies that are independent of the Council and on which councillors may serve are the source through which insurance should be

available. These bodies will have a variety of people serving on them, other than members of councils - it is for the body to see to it, as far as they are able within their powers, that their representatives are covered by insurance.

- 5.3 The ability of local authorities to indemnify councillors and officers for any *personal liability* arising from actions or decisions taken by them in the course of their official duties is covered under the Local Authorities (Indemnities for Members and Officers) Order 2004.

The scope of the order can be summarised as follows:

- (a) Where the councillor is carrying out any function which is at the request of, with the approval of or for the purposes of, the Authority.
- (b) Where the councillor is carrying out any function which is at the request of, with the approval of the Authority but acting in capacities other than a councillor of the Authority.
- (c) Where the action or inaction complained of falls outside the powers of the Authority itself or outside the powers of a councillor individually (*ultra vires*), provided the officer or member reasonably believed the matter was not outside those powers.
- (d) Where a councillor makes a statement that certain steps have been taken or requirements fulfilled, but it later becomes clear that this is not the case. Again, the officer or member indemnified must reasonably believe that the statement was true when it was made.

- 5.4 Outside the scope of the power to indemnify are the following circumstances:

- (a) criminal acts
- (b) any other intentional wrongdoing
- (c) fraud
- (d) recklessness
- (e) defamation (but not the defence of an accusation)

6 Guidance about serving on particular bodies

6.1 Companies

There is a considerable body of law concerning the duties of those who may run companies i.e. directors. There are rules in the Local Government and Housing Act 1989 concerning Council involvement in companies. Because the legal implications and rules are extensive, and councillors' involvement with companies is on the increase, separate guidance is given to councillors who may serve in such capacity, through an Appendix to this note.

6.2 Unincorporated organisations (management committees)

(a) general status

Groups that 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 should 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.

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

(b) duties

Broadly, Management Committee councillors must act within the constitution (of the unincorporated organisation), and must take reasonable care in exercising their powers.

(c) liabilities

- (i) Generally, 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 is no insurance cover from the organisation, the Management Committee members are personally liable for the shortfall.
- (ii) 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.
- (iii) Members of the Management Committee 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.

(d) indemnities

Councillors will be entitled to an indemnity if they act in accordance with the constitution and are not at fault provided the body concerned has obtained insurance, but if the organisation is to pay the premium it must be permitted by the constitution. The necessary insurance policy would need to be renewed otherwise it would become invalid. Councillors would then not be covered.

6.3 Charities

(a) general status

- (i) To be a charity, an organisation must operate for a charitable purpose of which 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

- (ii) 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.
- (iii) 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.
- (iv) 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 and even though they are not strictly trustees. Trustees of a charity retain personal liability and can only delegate it if the trust authorises them so to do.

(b) trustees' duties

- (i) Trustees must take care to act in accordance with the Trust Deed and to protect the charity's assets.
- (ii) 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.
- (iii) Charity trustees need to have regard to the requirements of the Charities Acts and to ensure that the requirements of the Charity Commissioners are met. Advice and guidance on these details would normally be available from the administrator of the Trust. There are leaflets available from the Charity Commissioners about various aspects of running a charity. These should be obtainable from the administrator of the Trust.

(c) trustees' personal liability

- (i) If in doubt, always consult the person who is responsible for the administration of the charity but ultimately you should consult the Charity Commissioners. Contact details are at the end of this note. A trustee who does so should avoid personal liability for breach of trust if they act in accordance with the advice given.
- (ii) Generally though a trustee incurs personal liability if they:
 - act outside the scope of the trust deed
 - fall below the required standard of care
 - make a personal profit from the trust assets
- (iii) In such circumstances the trustee will incur personal liability for losses incurred.

- (iv) 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 (e.g. 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.
- (v) Trustees may be liable to fines if they do not comply with the duty to make returns etc.

(d) **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. Again any insurance policy should be kept in force by ensuring renewal premiums are paid.

6.4 **Consultative/advisory bodies/pressure groups**

- (a) Difficulty can arise where a councillor serving on a particular body champions a cause being promoted by that body or has been closely involved in formulating advice or preparing an application for assistance in some form which is required from the Council. In such circumstances the councillor should be aware that it will be necessary to consider their position if and when the matter comes before the Council.
- (b) A councillor who has led an outside body to formulate advice for a Council may very well be deemed to show bias or a closed mind in such circumstances and quite apart from any considerations under the Code of Conduct may not be able to participate in discussion and voting at the Council, as they are not able to exercise their judgement in the wider public interest.
- (c) Examples of close involvement on issues coming before the Council and arising through membership of these types of bodies could occur through membership of historical or civic societies, or local arms of national organisations like Friends of the Earth.

6.5 **Partnerships**

- (a) Today, within the public sector, bodies are formed which can be described as *partnerships*. These can involve local authorities with other public sector bodies or sections of other public sector bodies in dealing with specific issues. These partnerships can range from informal groups where each organisation's representative comes to the group with a defined purpose/supply of resources from his/her organisation to contribute to the

achievement of a particular programme of events, to more formal arrangements where a legal agreement is entered into between all the parties as to what the object of the partnership is and what the obligations/inputs will be from the partners (for example the Oxfordshire Waste Partnership).

- (b) In the former case the representatives on the partnership steering group or “committee” should act within the scope of the authority given to them by their Council, which on occasions may need to be clarified when the agenda for the partnership meetings is prepared. In the latter case, the legal agreement should set out the rights and obligations of the partners and the representative will need to be familiar with these requirements. It is likely that in these circumstances the Council’s legal officer will have drafted, or approved, an agreement to regulate the arrangements in accordance with the Council’s decision to be involved.

7 Reporting back

- 7.1 The Council requires reports back from councillors at least once per year on outside body activity. This is to help in monitoring the value of representation, any particular problems encountered, and to keep the Council aware of any relevant activities of the body during the year.
- 7.2 Councillors should report back annually via [the Weekly Information Sheet]. Reports should be sent to an officer in Democratic Services. The system of annual reporting does not mean a councillor should not report back after each meeting, if there are reasons to make the Council aware of a particular issue.

8 Data protection

- 8.1 It is possible that through representation on an outside body you will process personal data that belongs to the body. If you do this you will need to ensure with the body whether you need to be part of the body’s notified arrangements to the Information Commissioner for processing the data.

(Processing data means doing anything with it from obtaining it, working with it to destroying it.)

9 Some final thoughts

- 9.1 The way local government operates increasingly involves councillors participating in the affairs of other organisations. These organisations may be close partners of the Council helping to deliver services or they may be more distant bodies carrying out some particular role within a local community. It is an important part of local governance that councillors should feel able to participate in such bodies if they wish or if the Council feels it is beneficial. Some help can be available to councillors to enable them to carry out their tasks on bodies in which they may take an interest but the bottom line is that the organisations are separate from the Council and the councillor must act in accordance with the interests of the organisation.

- 9.2 In considering matters before the body, the councillor can take account of any of the Council's objectives but cannot be bound by the Council to vote one way or the other on a particular matter. The overriding duty is to vote in accordance with the interests of that organisation.
- 9.3 Councillors should always be clear about their role on the organisation. In the most basic cases, a councillor may well be a representative on the body simply to render general help and advice - or to help in specific circumstances. In such cases there should be few issues arising. If a councillor's role expands then, as set out elsewhere in this note, advice may need to be sought about possible conflict of interest, particularly of the councillor who holds a specific office on the District Council e.g. member of the Executive or Committee Chairman.
- 9.4 If you are at all concerned by the administration or management of a body that you have been appointed to, in the first instance you should raise the matter with the person who appears to you to be managing the organisation. If there are matters which might concern the Council you can raise the matter with the Council's responsible officer for outside body nominations - the Head of Legal and Democratic Services. It may not be possible for the Council to resolve the issues but the Council may then be able to consider whether continued representation on the body is justified or desirable.

DO's and DON'T's

Do

- Make sure you understand from the body on which you represent the Council what they expect of you (i.e. a clear relationship statement).
- Obtain any written information from the body such as their constitution, objectives/powers and duties summary accounts etc. to help you do your job properly.
- Seek assurances and evidence about insurance to minimise/eliminate any personal liability you might incur.
- Ensure you receive proper notification of meetings of the body and look at the records of meetings they produce.
- Act in the best interests of the body.
- Liaise with the Council on any issues which concern the body - but not so as to infringe any provision of the Code of Conduct.
- Report back to the Council on activities of the body - either annually or after a particular meeting if necessary.
- Raise any issues of general administration of the body with the identified contact person in the organisation.
- If you have concerns which you feel you cannot raise with the body, report to the Council's appropriate Officer.

Do Not

- Breach the Council's Code of Conduct requirements.
- Take on an officeholder's post in the organisation without considering the implications for the Council and your elected councillor responsibilities.
- Vote on any issues in the organisation other than in the best interests of the organisation.
- Agree to act as a 'go-between' with the Council on any issue which may cause a conflict of interest.
- Fail to keep yourself briefed of matters taking place within the organisation.

Useful Contacts

Charity Commission, PO Box 922, Liverpool L69 3WP; Tel. No. 0870 333 0123
website www.charitycommission.gov.uk

National Council for Voluntary Organisations, Regents Wharf, All Saints Street,
London N1; Tel. No. 020 7713 6161

Community Matters, 8-9 Upper Street, London N1 0PQ; Tel. No. 0171 226 0189
(specialise in advice about Community Associations)

Oxfordshire Rural Community Council, Jericho Farm, Worton, Witney OX29 4JZ
Tel. No. 01865 883488
(advice can be obtained about village hall arrangements)

ADVICE TO COUNCILLORS REGARDING COMPANIES

1 Companies

- 1.1 Sometimes a councillor will find they have been nominated to serve on an outside body which is a registered company. If so, the following advice is relevant.
- 1.2 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 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.
- 1.3 Companies limited by shares are those which have a share capital (e.g. 1,000 shares of £1 each). Each member holds shares and receives 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 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.
- 1.4 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.

2 Directors' duties

- 2.1 A director is an agent of the company. His/her prime duties are as follows:-
 - (a) **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 Council Tax payers.
 - (b) **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 diligence and to obtain expert advice if necessary.

- (c) 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 that s/he 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 the Council mandate. To do so would be a breach of duty.
- (d) **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.
- (e) 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.
- (f) Directors must **ensure compliance with the Companies Acts** in relation to the keeping of accounts and ensuring 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.

3 Directors' liabilities

- 3.1 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.
- 3.2 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.
- 3.3 A director may also be liable for breach of trust if they misapply the money or property of the company. Directors may also be liable if they fail to take action to prevent breach by a co-director of which they are aware.
- 3.4 In the event of failure to act in accordance with the best interests of the company, or if a director uses their powers improperly or makes a personal profit from their position as director, then the director may be personally liable for loss to the company and may be required to give to the company any personal profit made.

- 3.5 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 for the loss incurred. However, if it believes the director acted honestly and reasonably, a Court may excuse the director the liability.
- 3.6 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 the creditors. If a director has concerns about the company's financial position they could be well advised to inform the other directors and seek advice from the company auditors. They should try to ensure that further debts are not incurred.
- 3.7 A director will also be liable if, to their 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.
- 3.8 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, (e.g. Director, for and on behalf of)
- 3.9 A third party who enters into a contract, on the assumption that a director had 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.
- 3.10 Though company liability ceases on dissolution, the liability of the directors (if any) may still be enforced after dissolution.

4 Indemnities

- 4.1 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, and default. Directors would be well advised to ensure that such a policy of insurance is maintained at all times.**
- 4.2 **It is not possible for the Council to provide indemnities or insurance for councillors acting as directors.**

5 Local Authorities (Companies) Order 1995

- 5.1 This Order, made under the Secretary of State's powers contained in Part V of the 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 a number of rules apply.
- 5.2 "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 the capital controls regime and special property 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 of the company in question.
- 5.3 The original concept of controlled, influenced and minority interests in companies was introduced by the 1989 Act. "Influenced" means at least 20 per cent local authority interest plus a business relationship with the company accounting for over 50 per cent of the company's turnover and/or the company was located on local authority land leased or sold for less than best consideration. "Controlled" means over 50 per cent local authority interests, and "minority" less than 20 per cent interest. The concept in the 1989 Act continues, but the 1995 Order introduced the term "regulated".
- 5.4 Councillors who are directors of outside companies to which they have been nominated by the Council are under the following obligations:
- (a) 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.

Councillors should be alert to the demands of being a Director of a company if they are invited to serve in that capacity on a body which is a registered company.

List of Thematic Partnerships

Thematic Partnerships – responsible for the following areas of focus and reporting to the Public Service Board on partnership targets:

1. **Spatial Planning and Infrastructure Partnership** – a new partnership that develops the role of the Central Oxfordshire Member Steering Group as a strategic county-wide partnership including housing development, access/transport and commissioning economic strategy and assessments. The Housing Partnership will report to this partnership.
2. **Environment and Waste Partnership** – a strategic partnership combining existing waste and environment partnerships with oversight of delivery groups for waste, clean and green, climate change, flooding and biodiversity.
3. **Children's' Trust.**
4. **Health and Well Being Partnership.**
5. **Safer Communities Partnership.**
6. **Oxfordshire Economic Partnership.**
7. **Stronger Communities Partnership** – developing the existing role of the Oxfordshire Voluntary Sector Development Partnership as an independent strategic partnership for the voluntary, community and faith sectors.

Thematic partnerships may also perform other roles including satisfying statutory requirements (for example, the Children's Trust) and management of contractual arrangements (for example, waste) between organisations. Partnerships will not be responsible to the Public Service Board for these functions, which will be overseen by the relevant accountable bodies.