

## **GUIDANCE NOTES FOR MEMBERS AND OFFICERS REPRESENTING THE CITY COUNCIL ON OUTSIDE BODIES**

### **1. Introduction**

- 1.1. Portsmouth City Council's (PCC) policy is to support and encourage participation by Councillors and Officers in the activities of outside organisations ("**Outside Bodies**") which further PCC's policies and priorities.
- 1.2. Appointments to Outside Bodies do not need to be ratified formally by the full city council. Councillors and Officers are expected to exercise their own judgements in deciding how important it is to offer their services to the organisation concerned.
- 1.3. Appointments to Outside Bodies must for;
  - 1.3.1. Councillors - comply with Part 4E of the Constitution (Appointments to Outside Bodies - Political Proportionality Protocol);
  - 1.3.2. Officers - be endorsed by the relevant strategic director/head of service or the Chief Executive.
- 1.4. It is important that the criteria for what is considered by PCC to be an Outside Body is clear and that Councillors and Officers are clear as to their responsibilities and liabilities in relation to their appointments to Outside Bodies. These differ depending on the type of appointment made.
- 1.5. Councillors and Officers should familiarise themselves with this guidance and seek further support from Legal Services should further support be needed.

### **2. What is an Outside Body?**

- 2.1. An Outside Body must;
  - 2.1.1. Be a legally separate organisation to PCC;
  - 2.1.2. Be required to or wish to appoint a Councillor or Officer to their organisation;
  - 2.1.3. Meet at least one of the following criteria for an Outside Body;
    - 2.1.3.1. There is a statutory or legal requirement that PCC appoints to the body; and/or
    - 2.1.3.2. There is a clear link between the aims of the body and the priorities of PCC at a strategic or ward/area level; and/or
    - 2.1.3.3. The relevant Portfolio Holder<sup>1</sup> or Director/Chief Executive has agreed that there are exceptional circumstances for an appointment to be made.
  - 2.1.4. Have been approved for inclusion on the Register of Outside Bodies by the Local Democracy Manager in consultation with the Monitoring Officer.
- 2.2. The Register of Outside Bodies and the administration of the appointments / nominations process will be managed by PCC's Democratic Services Team. Any uncertainty as to whether or not an entity is to be an Outside Body is to be made

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<sup>1</sup> i.e. a Councillor who is a member of the cabinet with responsibility for a specific PCC service area.

by the Democratic Services Manager having taken advice from the Monitoring Officer.

### **What is not an Outside Body?**

- 2.3. An Outside Body is not:
- 2.3.1. a committee of PCC or a Joint Committee between PCC and another organisation;
  - 2.3.2. A school (either maintained or non-maintained) where the appointment is as a school governor.

### **3. Types of Outside Body**

- 3.1. Outside Bodies can include organisations such as;
- 3.1.1. Companies (including those owned by PCC);
  - 3.1.2. Charities;
  - 3.1.3. Management Committees;
  - 3.1.4. Unincorporated Associations;
  - 3.1.5. Steering Groups, (non-PCC) committees and Partnership boards
- 3.2. Appointees can take a range of roles on Outside Bodies including;
- 3.2.1. Director;
  - 3.2.2. Trustee;
  - 3.2.3. Committee Member;
  - 3.2.4. Observer / advisor

### **Guidance for Councillors and Officers on Outside Bodies**

#### **4. General Issues**

- 4.1. As a representative on an Outside Body, Councillors and Officers are under a duty to act in the best interest of that organisation. This can potentially result in a conflict of interest between the interests of the organisation and those of PCC. Not to act in the best interest of the organisation can lead to a personal liability for any losses which result. If there is a conflict between the Councillors or Officers duty to an organisation and that owed to PCC, the Councillor or Officer must ensure that their prime duty is to the organisation when acting on its behalf.
- 4.2. In certain circumstances, where the conflict is extreme or cannot be resolved, the Councillor or Officer should consider resigning from the organisation. See paragraph 12 of this guidance for more on Conflict of Interests. Councillors should also note the contents of paragraph 5.
- 4.3. Councillors and Officers cannot be told by PCC how to vote. Councillors should not simply vote on political lines. It is possible to take account of PCC's wishes, but not to vote simply in accordance with them.
- 4.4. Councillors and Officers should ensure that they find out whether the organisation is offering insurance or will indemnify them for their actions on behalf of the organisation.

## 5. Councillors on Outside Bodies

- 5.1. All Councillors are subject to PCC's Councillor Code of Conduct. When Councillors act as PCC's representative on any sort of Outside Body, they must comply with PCC's Code of Conduct unless it conflicts with the lawful obligations of the other body.
- 5.2. Councillors will have a **Personal Interest** in any business of PCC that relates to or is likely to affect the Outside Body.
- 5.3. This means that if a Councillor is present at a meeting where an item of business arises which relates to or affects an Outside Body to which that Councillor has been appointed, that Councillor must declare that Personal Interest and the nature of that Personal Interest before the matter is discussed or as soon as it becomes apparent to that Councillor.
- 5.4. Where a Councillor has a **Personal Interest** then they will also have a **Prejudicial Interest** in PCC business when the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice that Councillor's judgement of the public interest.
- 5.5. If the Councillor has a Prejudicial Interest in a matter under discussion then they must declare it. They must then leave the meeting room, unless members of the public are allowed to make representations, answer questions or give evidence about the matter. If that is the case, the Councillor can make their representations etc., but must leave the room immediately after doing so. The Code of Conduct supports Councillor's role as a community advocate and enables Councillors, even with a Prejudicial Interest, to represent their community and speak on issues that are important to them and to the Councillor.

### **Bias and Predetermination**

- 5.6. If a Councillor believes that they have no Prejudicial Interest, then that Councillor's duties as a director or trustee or member of a management committee may well be regarded, on an objective appraisal, as giving rise to a legitimate fear of lack of impartiality, especially having regard to the desirability of maintaining public confidence. Participation in the decision making at a PCC committee meeting by a Councillor who is biased or has predetermined the decision potentially invalidates the decision.
- 5.7. Where membership of the Outside Body is on an advisory or consultative basis, bias will not be assumed from mere membership. However once the Outside Body has a line which is being advocated by that Councillor, this could potentially be viewed as bias, and PCC's decision on the issue could be vulnerable to challenge if that Councillor participate in those circumstances. It will depend on the facts and in such circumstances advice should be sought from the City Solicitor.
- 5.8. Councillors who are directors of companies to which they have been nominated by PCC are under the following obligations<sup>2</sup>:-
  - 5.8.1. That the remuneration they receive from the company should not exceed that received from the local authority, and should be declared.

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<sup>2</sup> Local Authorities (Companies) Order 1995 (SI 1995/849).

- 5.8.2. To give information to other councillors about their activities as required by the local authority (save for confidential information).
- 5.8.3. To cease to be a director immediately upon disqualification as a councillor
- 5.9. Councillors may wish to seek training from PCC before accepting a role with an Outside Body.
- 6. Officers on Outside Bodies**
- 6.1. Officers must comply with PCC's *Employees' Code of Conduct*. In particular;
  - 6.1.1. Officers must declare to their head of service any financial or personal/social interest that could conflict with PCC's interest or cause their conduct to be questioned.
  - 6.1.2. Officers must safeguard PCC confidential information
  - 6.1.3. Officers have a duty of fidelity to PCC where they should not breach confidence or participate in competing activities.
  - 6.1.4. Any additional work (paid or unpaid, which would include participating on an Outside Body) must not conflict with PCC's interest or weaken public confidence in PCC. Officers must therefore have written consent (to be retained on their personal file) from their head of service in advance when they wish to work outside PCC.
- 6.2. Officers may wish to seek training from PCC before accepting a role with an Outside Body.

#### Roles with Outside Bodies

#### **7. Directors of Companies**

- 7.1. Directors are appointed by the company or its shareholders. Duties are imposed by the Companies Act 2006 (as amended) and Directors maybe held personally liable if they fail those duties. The General Duties under the Companies Act are set out at Appendix 1.
- 7.2. Directors are under a duty to exercise independent judgment - they must act on their own judgment and not as directed by any other (including PCC).
- 7.3. Directors have other duties such as ensuring compliance with the requirements to keep accounts and make relevant returns to the registrar of companies (Companies House).
- 7.4. The consequences of breach of the General Duties are that the company may seek an injunction, damages or compensation from its directors. Failure to disclose an interest in an existing transaction or arrangement with the company carries the risk of a criminal fine
- 7.5. If a director has acted in a way which breaches the General Duty then;
  - 7.5.1. It maybe possible for the breach to be ratified by a resolution of the companies' shareholders;
  - 7.5.2. It maybe possible for the court to grant relief if the director acted honestly and reasonably;
  - 7.5.3. The company may have arranged insurance for the benefit of its directors

which would cover some or all of the liability of the director.

- 7.5.4. The company may indemnify the director against costs incurred in successfully defending a claim for breach of duties owed to the company.
- 7.6. Insurance/Indemnity. The company may indemnify directors in respect of certain proceedings brought against a director by third parties. The indemnity may cover both the cost of the claim itself and the costs involved in defending it.
- 7.7. The company may also take out directors' and officers' ("D&O") insurance on behalf of directors. Such policies typically cover directors' liabilities arising from claims of negligence, breach of duty or other default and usual exclude liability for fraud, dishonesty and criminal behaviour. Councillors / Officers should ensure they understand the limitations of cover and ensure policies are reviewed regularly.
- 7.8. Insolvency of a company. If the company is in financial difficulties then as directors should seek independent advice as soon as possible to ensure that they avoid personal liability under insolvency legislation.
- 7.9. Duties as a director will change where a company is (or is on the verge of being) insolvent so that rather than having a general duty to promote the success of the company (2, above), directors must act instead in the best interest of the company's creditors.
- 7.10. "*wrongful trading*" can also occur when a company is (or is on the verge of being) insolvent and in such circumstances a director can be ordered to contribute towards the general pool of assets which are available to a company's creditors where the director;
- 7.10.1. knew or ought to have concluded that there was no reasonable prospect of the company avoiding insolvent liquidation or administration;
- 7.10.2. continues to allow the company to trade after he or she knew or ought to have so concluded
- 7.10.3. does not take every step he or she ought to from that time to minimise the potential loss to creditors.
- 7.11. More detailed guidance on being a company director is available from PCC legal services and can also be found on [www.gov.uk](http://www.gov.uk).

## **8. Trustee of a Charity**

- 8.1. A charity is an organisation that must act for a charitable purpose, namely;
- 8.1.1. The prevention or relief of poverty;
- 8.1.2. The advancement of education;
- 8.1.3. The advancement of religion;
- 8.1.4. The advancement of health or the saving of lives;
- 8.1.5. The advancement of citizenship or community development;
- 8.1.6. The advancement of the arts, culture, heritage or science;
- 8.1.7. The advancement of amateur sport;
- 8.1.8. The advancement of human rights, conflict resolution or reconciliation or

the promotion of religious or racial harmony or equality and diversity;

- 8.1.9. The advancement of environmental protection;
- 8.1.10. The relief of those in need by reason of youth, ill-health, disability, financial hardship or other disadvantage;
- 8.1.11. The advancement of animal welfare;
- 8.1.12. The promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services;
- 8.1.13. Any other charitable purpose.

They must operate for the public benefit and have exclusively charitable purposes, an organisation for example, which operated for political purposes would not qualify for charitable status.

- 8.2. Trustees of charities are the people responsible for controlling the management and administration of the charity. As such, they have full responsibility for the conduct of the charity but are only personally liable for any debts or other liabilities if:-
  - 8.2.1. they cause loss to the charity by acting unlawfully, imprudently or outside the terms of the charities governing document; or
  - 8.2.2. commit the charity to debts which amount to more than its assets.
- 8.3. Provided the trustees act prudently, lawfully and in accordance with their governing document, any liabilities they incur as trustees will be met out of the charity's resources. Where trustees seek advice of professional officers, particularly with regard to legal and financial matters, they will be deemed to have acted prudently.
- 8.4. Trustees may not make a personal profit from the trust's assets.
- 8.5. 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.
- 8.6. If charitable income exceeds £10,000, all letters, advertisements, cheques etc must bear a statement that the organisation is a registered charity.
- 8.7. Trustees are under a duty to ensure compliance with all relevant legislation.
- 8.8. 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 or negligence 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
- 9. Management Committees**
  - 9.1. Groups which are not charitable trusts or limited companies are 'unincorporated associations and therefore have no separate legal identity from their members.
  - 9.2. An unincorporated organisation may be charitable and may register as a charity. Property therefore has to be held by individuals as the organisation has no legal

existence of its own.

- 9.3. Such organisations usually have a constitution showing how they will operate.
- 9.4. 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.
- 9.5. 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 a statute.
- 9.6. Councillors or Officers appointed to the Committee will be entitled to an indemnity from the organisation if they act in accordance with the organisations 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 committee's constitution.

### **Indemnities and Insurance by PCC to Councillors and Officers.**

#### **10. The Council's Indemnity to Councillors and Officers/Insurance**

- 10.1. Councillors and Officers of PCC can incur personal civil and criminal liability as a result of their actions, both within PCC and as a result of their actions carried out on Outside Bodies. Councillors and Officers enjoy statutory immunity from civil liability where they act within the powers of PCC in good faith and without negligence<sup>3</sup> but this immunity does not apply where they go beyond the powers of the Council or act in bad faith, nor does it apply where they are acting on Outside Bodies to which they may have been appointed by the Council and it does not protect them from criminal liability, for example for fraud or for corporate killing where they exercise managerial responsibility..
- 10.2. To partially address this gap, PCC provides an indemnity<sup>4</sup> to Councillors and Officers subject to a number of conditions. Councillors and Officers must ensure they are familiar with the conditions which apply to the indemnity when they are considering joining an Outside Body.
- 10.3. The following is a brief summary but is not an exhaustive description of the terms of the indemnity, which can be found in full at Appendix 3. The indemnity applies to any Councillor or Officer who suffers any loss or damage suffered arising from their action or failure to act "*in his/her capacity as a member or officer of the Council*"
- 10.4. For the purpose of the indemnity, a loss or damage shall be deemed to have arisen to the member or officer "*in his/her capacity as a member or officer of the Council*" where;
  - 10.4.1. The act or failure to act occurred not in the discharge of the functions of the Councillor or Officer as a Councillor or Officer of the Council but in their capacity as a member or employee of another organisation, where the Councillor or Officer is, at the time of the action or failure to act, a member or employee of that organisation either -
    - 10.4.1.1. In consequence of his/her appointment as such member or

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<sup>3</sup> Section 265 of the Public Health Act 1875.

<sup>4</sup> As approved by a meeting of the Full Council, 4<sup>th</sup> April 2006.

officer of that organisation by the Council; or

10.4.1.2. In consequence of his/her nomination for appointment as such member or officer of that organisation by the authority; or

10.4.1.3. Where the Council has specifically approved such appointment as such a member or employee of that organisation for the purpose of these indemnities.

10.5. The indemnity would not apply in circumstances which include where a criminal act is proved or where a Councillor has failed to act in accordance with PCC's Councillor Code of Conduct.

10.6. To benefit from the indemnity, Councillors should ensure that their involvement with the company is properly declared so as to ensure compliance with the Councillor Code of Conduct.

10.7. Councillors and Officers should ensure that they check with the Outside Body and with the PCC Insurance Team to ensure that they understand what insurance is in place to cover their actions as a representative of the Outside Body. Councillors and Officers should keep this under regular review as it is their own personal responsibility.

## **11. Statutory Indemnities**

11.1. Section 265 of the Public Health Act 1875 provides limited protection to Councillors and Officers from personal liability in respect of matters done in good faith for the purpose of executing any public, general or local act. This protection from personal liability may not apply if the Councillor or Officer is negligent.

11.2. This statutory indemnity is only likely to apply where the Councillor or Officer is acting as an observer or advisor to the Outside Body. It is unlikely to apply where they are appointed as a director or a trustee of the Outside Body.

## **Conflict of Interest**

### **12. Conflict of Interests**

12.1. Conflict issues may arise with your role as PCC officer or councillor (1) as Company Director/Trustee of Charity/Member of a Management Committee, and (2) as an employee / councillor of PCC. The legal duty under company law and the Charities Act 2011 is to avoid conflicts of interests by avoiding a situation in which you have (or can have) a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company or charity.

12.2. The fact that you as a Company Director/Trustee of Charity/Member of a Management Committee are appointed by and may also be an officer or councillor of PCC is likely to place you in a position of potential conflict between loyalty to PCC and duties to the company/charity/management committee

12.3. Conflicts of interest can be actual, potential or perceived;

12.3.1. Actual - there is a real conflict between duties and interests

12.3.2. Potential - there could be conflict between duties and interests

12.3.3. Perceived - a third party could form the view that there is a conflict between duties and interests

- 12.4. It is impossible to define all instances of a conflict of interest, so in many cases a reasonable degree of openness and judgment is required to assess the nature and extend of conflict of interest.
- 12.5. The company/charities/management committees constitution will have been drafted to set out what is to be done in circumstances where there is a conflict of interest.
- 12.6. There maybe a register of interests which will require self-declaration and management.
- 12.7. All conflicts of interest must be disclosed to the board of Directors or Trustees (excluding the director affected). If you are unsure whether you have a conflict of interest it is always better to disclose it and consider seeking independent legal advice.
- 12.8. A failure to acknowledge and manage a conflict of interest could cause a significant reputational risk, may result in disqualification and have financial consequences for you. Moreover, some conflicts can also have criminal implications. Remember, if you think you might have a conflict of interest, always disclose it and consider seeking independent legal advice.
- 12.9. The duty to avoid conflicts of interest will continue to apply after a person ceases to be a director as regards the exploitation of any property, information or opportunity of which he became aware when he was a director.
- 12.10. Councillors' should also note their responsibility to declare their interests with the Council as set out in paragraph 5.

## **Conclusion**

### **13. In Summary**

- 13.1. Where Councillors and Officers serve on an Outside Body (either as appointed, recommended or endorsed by PCC), those individuals will create legal relationships between themselves and the Outside Body.
- 13.2. Councillors and Officers should understand the nature of their involvement with the Outside Body and the implications of their involvement and bear in mind that they may owe parallel duties to the Outside Body and to PCC which may not result in conflicts of interest.
- 13.3. In practice, the safest course of action is for Councillors and Officers to ensure that the Outside Body has taken out insurance covering their potential liability.
- 13.4. It is possible to avoid most difficulties by appointing PCC representatives to Outside Bodies on the basis of observer status only. However such a role is very limited and would it not be possible for the Councillor or Officer to have voting rights. Such a role may prove to be unsatisfactory to both the Councillor or Officer and the Outside Body concerned.
- 13.5. Limited professional advice from PCC Officers is available to both Councillors and Officers but such advice will be limited to Councillor and Officer functions related to PCC. Advice cannot be given in relation to Councillor and Officer functions as representatives of the Outside Body. In such circumstances, Councillors and Officers should seek advice from the relevant Outside Body, their professional

advisors or instruct independent advisors themselves.

**Appendix 1 - General duties as a director of a company under the Companies Act 2006**

1. Act within your powers	You must act in accordance with the company's constitution. This includes its Articles of Association and resolutions and agreements of a constitutional nature (such as shareholder or joint venture agreements)
2. Promote the success of the company	<p>You must act in the way you consider, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole. In doing so you must have regard to (not exhaustive);</p> <ul style="list-style-type: none"> <li>• the likely consequences of any decision in the long term</li> <li>• the interests of the company's employees</li> <li>• the need to foster the company's business relationships with suppliers, customers and others</li> <li>• the impact of the company's operations on the community and the environment</li> <li>• the desirability of the company maintaining a reputation for high standards of business conduct</li> <li>• the need to act fairly as between members of the company</li> </ul>
3. Exercise independent judgment	You must exercise independent judgment and make your own decisions. This does not prevent you acting in accordance with the company's constitution or agreements which the company had entered into.
4. Exercise reasonable care, skill and diligence	<p>You must exercise the same care, skill and diligence that would be exercised by a reasonably diligent person with;</p> <ul style="list-style-type: none"> <li>• (objective) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as you in relation to the company</li> <li>• (subjective) the general knowledge, skill and experience that you actually possess.</li> </ul>
5. Avoid conflicts of interest	<p>You must avoid a situation in which you have, or could have, an interest that conflicts, or may conflict, with the interests of the company. The duty would not be infringed if;</p> <ul style="list-style-type: none"> <li>• The situation cannot reasonably be regarded as likely to give rise to a conflict of interest i.e. will there actually be a conflict or potential for conflict with the interests of the company;</li> <li>• The situation has been pre-authorised. Authorisation may be given in the Articles of Association, by specific shareholder resolutions or sometimes by other directors.</li> </ul> <p>If you think you maybe conflicted;</p> <ul style="list-style-type: none"> <li>• Get Pre-authority where you have a common conflict situation.</li> <li>• Check what the Articles of Association say.</li> </ul>
6. Not accept benefits from third parties	You must not accept a benefit from a third party given because you are a director or because you do (or do not do) anything as a director. You would not breach this duty if your acceptance cannot reasonably be regarded as likely to give rise to a conflict of interest.
7. Declare interests in proposed or existing transactions or arrangements with the company	If you are in any way directly or indirectly interested in a transaction or arrangement with the company, you must declare the nature and extent of that interest to the other directors. You would not be in breach of this if your interest in the transaction cannot be reasonably regarded as likely to give rise to a conflict of interest or an interest has not been declared because you are unaware that you have an interest or the other directors are (or ought reasonably be) aware of it.

**Appendix 2 - Checklist for Councillors and Officers on an Outside Body**

[Non-exhaustive checklist]

Does PCC recognise the Outside Body? <ul style="list-style-type: none"> <li>▪ Be a legally separate organisation to PCC;</li> <li>▪ Be required to or wish to appoint a Councillor or Officer to their organisation;</li> <li>▪ Meet at least one of the following criteria for an Outside Body; <ul style="list-style-type: none"> <li>▪ There is a statutory or legal requirement that PCC appoints to the body; and/or</li> <li>▪ There is a clear link between the aims of the body and the priorities of PCC at a strategic or ward/area level; and/or</li> <li>▪ The relevant Portfolio Holder or Director has agreed that there are exceptional circumstances for an appointment to be made.</li> </ul> </li> <li>▪ Have been approved for inclusion on the Register of Outside Bodies.</li> </ul>	
<b>Councillors only</b>	
Have you been appointed in accordance with Part 4E of PCC Constitution?	
Have you registered your appointment with Democratic Services?	
Have you declared your interest to the PCC Monitoring Officer?	
<b>Officers only</b>	
Have you obtained the written permission of your director/head of Service to be appointed to the Outside Body?	
Has that interest been registered on your personnel file?	
Have you registered your appointment with Democratic Services?	
<b>Matters to check</b>	
Do you understand the aims and objectives of the Outside Body?	
Have you read and understood how decisions are made at the Outside Body (with reference to any constitutional documents)?	
Do you understand the commitment required of you (such as frequency of meetings)?	
Have you been issued with a written Letter of Appointment?	
Are you satisfied that the Outside Body has appropriate insurance (where you are a trustee or director)?	

### **Appendix 3 - Terms of the Indemnity given by PCC - April 2006.**

*Reproduced from the text of the report to the Standards Committee by the Deputy Monitoring Officer dated 27<sup>th</sup> February 2006.*

1. The Council will, subject to the exceptions set out below, indemnify each of its members and employees against any loss or damage suffered by the member or officer arising from his/her action or failure to act in his/her capacity as a member or officer of the Council.  
This indemnity will not extend to loss or damage directly or indirectly caused by or arising from;
  - 1.1 any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the member or officer;
  - 1.2 any act or failure to act by the member or employee otherwise than in his/her capacity as a member or officer of the Council, or
  - 1.3 failure by the member to comply with the Council's Code of Conduct for Members
2. The Council will, subject to the exceptions set out below, indemnify each of its members and officers against the reasonable costs which he/she may incur in securing appropriate legal advice and representation in respect of any civil or criminal proceedings or Part 3 proceedings to which he/she is subject.
  - 2.1 "*Criminal proceedings*" includes any interview or investigation by the Police, and any proceedings before a criminal court, in the United Kingdom
  - 2.2 "*Part 3 proceedings*" means any investigation or hearing in respect of an alleged failure to comply with the Council's Code of Conduct for Members under Part 3 of the Local Government Act 2000
  - 2.3 This indemnity will not extend to Part 3 proceedings where the allegation has been referred to the Monitoring Officer for local investigation and/or determination by the Standards Committee
  - 2.4 This indemnity shall not extend to any advice or representation in respect of any claim or threatened claim in defamation by or against the member or officer
  - 2.5 Where any member or officer avails him/herself of this indemnity in respect of defending him/herself against any criminal proceedings or Part 3 proceedings, the indemnity is subject to a condition that if, in respect of the matter in relation to which the member or officer has made use of this indemnity
    - 2.5.1 the member or officer is convicted of a criminal offence in consequence of such proceedings, or
    - 2.5.2 a Case Tribunal or Standards Committee determine that the member has failed to comply with the Code of Conduct for Members and the conviction or determination is not overturned on appeal, the member shall reimburse the authority for any sums expended by the Council pursuant to the indemnity.
  - 2.6 Where the Council arranges insurance to cover its liability under this indemnity, the requirement to reimburse in Paragraph 2.5 shall apply as if references to the authority were references to the insurer
3. For the purpose of these indemnities, a loss or damage shall be deemed to have arisen to the member or officer "in his/her capacity as a member or officer of the Council" where:
  - 3.1 The act or failure to act was outside the powers of the Council, or outside the powers of the member or officer, but the member or officer reasonably believed that the act or failure to act was within the powers of the Council or within the powers of the member or officer (as appropriate) at the time that he/she acted or failed to act, as the case may be;

- 3.2 The act or failure to act occurred not in the discharge of the functions of the member or officer as a member or officer of the Council but in their capacity as a member or employee of another organisation, where the member or officer is, at the time of the action or failure to act, a member or employee of that organisation either -
  - 3.2.1 in consequence of his/her appointment as such member or officer of that organisation by the Council; or
  - 3.2.2 in consequence of his/her nomination for appointment as such member or officer of that organisation by the authority; or
  - 3.2.3 where the Council has specifically approved such appointment as such a member or employee of that organisation for the purpose of these indemnities.
4. The Council undertakes not to sue (or join in action as co-defendant) an officer of the Council in respect of any negligent act or failure to act by the officer in his/her capacity as an officer of the Council, subject to the following exceptions:
  - 4.1 Any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the officer; or
  - 4.2 Any act or failure to act by the officer otherwise than in his/her capacity as a member or officer of the Council.
5. These indemnities and undertaking will not apply if a member or officer, without the express permission of the Council or of the appropriate officer of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of the resolution
6. These indemnities and undertaking are without prejudice to the rights of the Council to take disciplinary action against an officer in respect of any act or failure to act
7. These indemnities and undertaking shall apply retrospectively to any act or failure to act which may have occurred before this date and shall continue to apply after the member or officer has ceased to be a member or officer of the authority as well as during his/her membership of or employment by the Council.