Introduction

Why a strategy for partnership working at Chesterfield Borough Council?

This strategy for partnership working follows a joint scrutiny review by Chesterfield Borough Council and North East Derbyshire District Council. The review made specific recommendations on how partnership working could be improved, and partnerships better scrutinised and monitored.

The joint scrutiny panel recognised that partnerships had become a core approach to service delivery for all local authorities in recent years but there has been little opportunity to reflect on whether the partnerships that have been developed are working efficiently or effectively or in some instances, whether they are still required.

The review resulted in a Partnership Development and Evaluation Toolkit to assess partnerships. The toolkit was designed for use by local authorities or for self assessment by the partnerships themselves.

The review undertook extensive consultation by conducting questionnaires at both authorities, interviewing many different stakeholders and road testing the Partnership Development and Evaluation Toolkit with four key partnerships.

This strategy sets out the process for using this toolkit within Chesterfield Borough Council under the section ‘Monitoring and evaluation of partnerships’. It also looks at how partnerships can be categorised and measured, and the roles and responsibilities of members and officers involved in partnerships.

The Council’s aims and objectives

The strategy is being developed in response to the gap identified by the scrutiny review in how the Council monitors and evaluates the partnerships it is involved in. Partnerships provide a valuable role in working towards the Council’s vision of “Inspiring pride, aspiring to be the best, working for a safer, cleaner, greener, thriving community”. The Council’s long term and annual priorities also benefit from the added value of strong partnership working.
There is a risk within this strategy that if it is not implemented and delivered the gap in the accountability of partnerships will grow and the Council will not benefit fully from the time, effort and resources it is putting into partnership working.

The strategy will link to the budget process by looking at where efficiencies can be delivered in the Council’s partnership working processes.

The national context

Partnerships have become a key delivery mechanism for central government in recent years. Partnerships have been formed across a range of services in order to maximise the potential for communities and make better use of increasingly limited resources.

The most high profile example of this is the creation of Local Strategic Partnerships (LSPs). LSPs are intended to be cross-agency, umbrella partnerships that include all sectors of society, including:

- public
- private
- community
- voluntary.

The LSP remit is aimed at working together to improve the quality of life in a particular locality. The government sees them as the main mechanism for the coordination of delivery of better local services. Although LSP’s are optional, most local authorities have now developed a LSP for their area and some authorities are required to have a LSP to receive Neighbourhood Renewal Funding.

An Audit Commission report on governing partnerships, published in October 2005 states that:

“Local partnerships are essential to deliver improvements in people’s quality of life, but:
- They bring risks as well as opportunities, and governance can be problematic
- They may not deliver good value for public money so local public bodies should ask searching questions about those they are engaged in
- Clear accountability is needed between partners to produce better accountability to the public, including redress when things go wrong.”

The report goes on to say that:

“Partnerships are a significant feature of public service delivery. At the last count, around 5,500 partnerships existed in the UK, accounting for some £4billion of public expenditure.

“Local public bodies should be much more constructively critical about this form of working: it may not be the best solution in every case. They need to be clear about what they are trying to achieve and how they will achieve it by working in partnership.

“This clarity will come when public bodies ask themselves two broad questions about their partnerships.
1) How do partnerships add value?
2) Who is in charge of partnerships?”

The joint scrutiny review, and this strategy, aims to put in place a robust process to answer these questions.
Equality and Diversity

This strategy recognises the general duty to promote race, disability and gender equality, which is reflected in the Council’s Corporate Equality Strategy as well as the Race, Gender and Disability Equality Schemes. The Council is currently achieving Level 2 of the Equality Standard. Therefore, one of the actions in the action plan will be to implement a process for completing Equality Impact Assessments for all partnerships.

**Overall aim objectives, framework**

The overall aim of the strategy is to:

*Put in place a systematic process for managing monitoring and evaluating partnership working across the authority*.  

This will be done within the framework set out by the Joint Scrutiny Panel in the Partnership Development and Evaluation toolkit.

The guiding principles for partnership working shall be to work together in partnership for the benefit of the residents of the Borough of Chesterfield, provided that the Partnership’s aims and objectives accord with those of the Council by:

- developing strong, sustainable, productive and effective partnerships
- ensuring that all partnerships, with which the Council are involved, operate in a climate of openness and transparency and represent best value
- monitoring the performance of partnership working, using the Partnership Development and Evaluation toolkit to ensure that public funds and resources are used to best effect
- evaluating the effectiveness of all partnerships with which the Council is involved, on a regular basis
- empowering and encouraging local communities to develop new partnerships to maximise their potential for improvement and change, whether or not the Council is involved as a partner
- enabling and encouraging partnerships to develop and improve, by providing advice and assistance, where the Council decides not to remain or become involved
- maintaining a database of all partnerships with which the Council is involved
- reporting annually upon the effectiveness of Partnership Working.

**Objectives**

The objectives of this strategy are to:

- provide clear and accessible information about the partnerships / outside bodies on which the Borough Council is represented
- improve partnership working
- rationalise partnership working
- understand the performance of partnerships/outside bodies and how they add value and contribute to the council’s corporate priorities
• demonstrate clear communication channels exist between the borough council and their partners.

**Categorisation of current partnerships**

The Partnership Development and Evaluation Handbook provide the following definition of partnership:

“A group of two or more bodies, which agree common aims and objectives for the purpose of the partnership, and operates in a non-contractual, action focused manner, to achieve stated outcomes with demonstratable benefits for their residents”.

We will use this definition for the purposes of this strategy. Using the above definition as a base, the following groups are identified in the Handbook:

**Contractual arrangements** – these are where a service or project is delivered by others who are ‘contracted’ to do so by the local authority, for example training opportunities provided by organisations such as Groundwork

**Networks** – these are groups which are not action based but exist to share best practice and provide an opportunity to discuss a range of topics, e.g. Scrutiny Officer Networks

**Outside Bodies** – these are groups which, for a variety of reasons, invite the Council to appoint an elected member to serve on their steering committees, e.g. Village Hall Management Committees

**Consultative Groups** – These exist solely to be consulted on a range of topics e.g. Derbyshire Community Engagement Group

It is not always obvious from the name exactly what a group or organisation does, e.g. the Derbyshire Waste Management Partnership proved to be a network. It is, therefore, important that sufficient information is obtained regarding the proposed or existing activities of groups and organisations in order to determine into which category they fall, and that a comprehensive profile of partnership activities is compiled, maintained and updated.

**Making Appointments to Partnership and Outside Bodies**

Where an ‘Outside Body’ is specific to a particular ward or locality then the local Borough councillor for that ward or locality should choose whether to be involved in that organisation as part of their community leadership role, rather than through being appointed by the Council. However, having regard to the Code of Conduct members must remain aware that, in this role it is likely they will be perceived as representative of the council and must therefore act accordingly.

It is important to assess the purpose and aims of partnerships and outside bodies in order to match the appropriate interest, skills, experience and knowledge of potential representatives.
In order to understand where the appropriate skills, qualities and attributes lay it is important utilise the Skills Audit which will be derived from work undertaken in the Member Development Programme.

It is essential that Members are briefed about the partnership they will be joining particularly background information, current issues and the specific role expected of them.

Only current elected Members of the Council should be appointed as Member representatives and representatives must inform the Council of any potential conflict of interest which may arise from appointment to a particular partnership or outside body.

Member appointments will be made annually by Council and officers will be appointed by either the Chief Executive, Deputy Chief Executive or Heads of Service as appropriate. A register of all member and officer representatives will be maintained. Appointments to Partnerships and Outside Bodies will be reviewed on an annual basis.

**Monitoring and Evaluation of Partnerships**

Attached at Appendix A is a list of bodies which has been categorised into:

- Local Community Organisations,
- Partnerships,
- Council/Consultative/Joint Committees/Executives
- External Organisations.

This list will be reviewed, published and maintained and a priority list will be drawn up for the undertaking of a health check.

It is recommended that evaluations be carried out on partnerships and external organisations using the appropriate tools provided in the toolkit.

The Partnership and Evaluation toolkit has been developed to support and guide the evaluation of partnerships to ensure that we are achieving efficiency, effectiveness, appropriateness and value for money from our involvement.

A section of the toolkit includes a questionnaire which can be used to undertake a self assessment of partnerships which will identify what they do well, what they need to improve and what they need to develop. Ultimately the Council may need to decide whether or not to remain as a member of a particular partnership and analysis of this questionnaire can inform that decision.

The questionnaire may also be used to evaluate the development of new partnerships to assess whether it is relevant for the council to become involved.

Partnerships will be evaluated on a number of criteria:

- Focus
- Membership
- Efficiency and Effectiveness
- Accountability and Transparency
- Learning and Sharing
• Evaluation and Monitoring.

Monitoring will take place against stated targets, milestones and outcomes and effective performance management processes will be implemented including benchmarking with other relevant groups. The results of the monitoring process must be used to improve performance.

Roles and responsibilities

There are a range of general roles and responsibilities which Members and officers may be required to undertake when representing the Council on partnerships and other external organisations. These are further expanded in the guidance attached to this strategy.

These roles will not always be relevant in all cases. It is essential that the specific role expected of a Member or Officer is clarified at the time of their appointment to the partnership or outside body:

• To act as a communication channel
• to act as a community leader
• to report to council
• to work together
• to promote cohesion
• to monitor performance
• to provide management and administrative support
• to contribute to strategic planning.

In fulfilling their responsibilities to the external organisation and the Council Members and Officers must comply with their Council’s Codes of Conduct and any relevant code or rules of the organisation concerned.

The general principles for conduct when working in partnerships are:

• respect for others
• honesty and integrity
• objectivity
• confidentiality
• openness and accountability.

Reporting

Engaging and representing the organisation in the partnership and reporting back in to the organisation is a vital role which must be undertaken by the Member/Officer representative on the partnership or outside body.

The frequency and nature of reporting will differ dependent upon the nature of the partnership/outside body and the level of involvement. A programme will be drawn up identifying, for each partnership/outside body the frequency of reporting, the responsible member/officer and where the reports will be submitted.
Members will be fully supported by being briefed prior to attendance at partnership meetings to identify any issues which may be raised by the partnership or which the Borough Council as a partner may wish to raise.

Following partnership meetings Members will be asked to report back in accordance with the programme drawn up. A standard reporting form is included in the ‘Guidance – Partnership Working’ attached to the Strategy.

The guidance is organised in to seven sections

1. Introduction
2. General Roles and Responsibilities
3. General principles for Conduct
4. Making Appointments
5. Skills Qualities and Attributes
6. Liabilities and Indemnities
7. Reporting Form

Annually a report will be presented to full council summarising significant progress or success and highlighting where partnerships are not achieving expected outcomes.

**Training**

Training is essential to support the success of effective partnership working.

Training would cover

- the principles of partnership working
- the expected roles of the Council’s representatives
- an understanding of the link to the council’s priorities
- knowledge of the systems for reporting on, monitoring and evaluating partnerships
- presentation skills for reporting back.

Innovative methods of delivering training should be researched including joint delivery, use of drama groups, discussion groups and electronic handbooks.
Guidance
Partnership Working

Guidance for members and officers involved in working in partnerships and other external organisations

Introduction

The Council works in a wide variety of organisations together with partners from the public, private, voluntary and community sectors, and Members and officers are appointed to represent the Council on these organisations, often with little guidance as to what is expected of them in this role.

The purpose of this guidance is to outline some general principles for the role, responsibilities and conduct of Members and officers when representing the Council on external organisations. It also identifies elements of good practice for the Council in making appointments to such organisations, and the skills, qualities and attributes which are relevant for the Councils’ representatives.

It follows on from the Partnership Working Strategy, which outlines the Council’s strategic approach to partnership working. This guidance aims to provide the detail of how the strategy will work, and information on how Members and officers are expected to carry out their duties when attending partnerships and outside bodies.

The organisations to which the Councils appoint representatives take various legal forms and these are outlined in the section of this guidance on ‘Liabilities and Indemnities’. This identifies the implications for representatives, together with guidance on the duties and responsibilities of partnership ‘Directors’ and ‘Trustees’, and on dealing with conflicts of interest.

For the purposes of this guidance, the following distinctions and working definitions are used:

Partnerships / Other External Organisations

The definition of a ‘Partnership’ adopted by both Councils from Phase I of the Joint Scrutiny Panel’s review is:

“A group of two or more bodies, which agrees common aims and objectives for the purpose of the partnership, operating in a non-contractual, action focused manner, to achieve stated outcomes with demonstrable benefits for the residents of Chesterfield and North East Derbyshire.”

The term ‘Other External Organisations’ is used to include any other bodies
not meeting the above definition of a ‘Partnership’ to which the Councils appoint representatives, such as networks, consultative groups or outside bodies.

**Local Community Organisations**

Many ‘Outside Bodies’ are specific to a particular ward or locality. In this case the local Ward Councillor(s) may choose to be involved in the organisation as part of their general community leadership role within their ward, rather than through being appointed by the Council to represent the Council as a whole.

**Members / Officers**

In some cases the Council will appoint both Members and officers to represent them on an external organisation. Where this guidance refers to ‘representatives’ this may be either Members or officers. Whilst many of the general roles and responsibilities detailed in this guidance may apply to both Members and officers, the emphasis of their respective roles may vary slightly.

**Members will be more likely to:**
- represent the wider electorate/community, not just the Council
- act as a ‘Community Leader’ (see para. 2.5)
- ensure public accountability for the use of Council resources.

**Officers will be more likely to:**
- represent the Council
- act as a ‘critical friend’
- provide technical expertise
- undertake managerial and administrative responsibilities.

**General roles and responsibilities**

There are a range of general roles and responsibilities which Members and officers may be required to undertake when representing the Council on partnerships and other external organisations, and these are detailed below.

Not all of these roles will be relevant in all cases. Some will be relevant when working in a partnership (for instance those involving decision making powers), but not necessarily in other external organisations. Some will be relevant for Members, but not necessarily for officers. It is therefore important that the specific role expected of a Member or officer for each appointment to an external organisation is clarified at the time of their appointment.

In addition to the general roles outlined below, where Members or officers are appointed as Directors or Trustees of organisations, they will be required to fulfil certain legal duties. These are detailed in the section on ‘Liabilities and Indemnities’.
Act as communication channel

- 2-way role – from the Council to the external organisation and vice-versa
- sharing information in order to inform decision-making and policy setting by both bodies
- represent local level concerns and views of service users to the organisation and to the Council
- make contact with the relevant person in the Council on behalf of the external organisation, or direct other members of the organisation / partners to the relevant person at the Council.

Act as community leader

- encourage, enable, stimulate local organisations and individuals to engage, be involved, take up opportunities, organise themselves, express their views
- offer vision, direction and build support – for the community as a whole
- help others to be inclusive of all relevant parts of the community, including excluded, unpopular or ‘hard to reach’ groups.

Report to Council

- report progress of the external organisation back to the Council
- be held to account by the Council for the performance of the organisation, its contribution to the Council’s aims and priorities and for the representatives role within it.

Work together

- take an active role in the working of the external organisation, including attending and participating in meetings
- develop new relationships with a range of partners based on trust and openness
- contribute to the development and delivery of action plans based on local priorities.

Promote cohesion

- encourage consensus amongst members of the organisation, without seeking to act as ‘referee’
- act with impartiality
- manage conflict by using it constructively.

Monitor performance

- monitor the performance of the organisation against the agreed action plan / purpose / aims
- monitor how the work of the organisation benefits local residents
- make sure that the Council fulfils its commitments to the organisation, including addressing and implementing the agreed priorities and actions
- contribute to periodic reviews of the effectiveness of the organisation and of the Council’s contribution and representation, by either the Council or the organisation itself, including use of the Partnership Development and Evaluation Toolkit.
Provide management and administrative support

- If appointed to the governing or controlling body of the external organisation or to a position of responsibility within it (e.g. Chair, Secretary, Treasurer), provide leadership of the organisation and administrative support to it.

Contribute to strategic planning

- Contribute to the development of strategic plans (where appropriate, for instance where Lead Members and Senior Officers are involved in strategic partnership bodies).

General principles for conduct

In fulfilling their responsibilities to the external organisation and the Council, Members and officers must comply with their Council’s Codes of Conduct (for Councillors or Employees as appropriate) and any relevant code or rules of the organisation concerned.

When attending meetings of external organisations, the Councils’ representatives must ensure that their conduct and behaviour do not risk bringing their Council in to disrepute.

Further guidance on conduct in the case of potential conflicts of interest is given in the section of this guidance on ‘Liabilities and Indemnities’.

In addition, the following general principles for conduct when working in external organisations are outlined.

Respect for others

- treat other members of the external organisation with dignity and respect
- respect the views of other members of the organisation
- promote equality of opportunity by not discriminating unlawfully against any person and respect diversity amongst members of the organisation.

Honesty and integrity

- declare any potential conflicts of interest
- avoid being compromised by membership of other organisations (e.g. also being a Member of County Council or Parish Council, whether or not appointed as a representative of that body)
- making it clear which organisation you are representing (e.g. if also a Member of County Council or Parish Council).

Objectivity

- remain impartial and consider issues solely on merit
- make independent and personal judgements on issues in order to fulfil your duty of care to the external organisation, rather than just seeing things from the perspective of the Council or any particular political party.
Confidentiality

- maintain confidentiality (where relevant) of information provided to you by either the Council or the external organisation.

Openness and Accountability

- subject to any confidentiality restrictions, be as open as possible about your actions, and those of the Council and the external organisation, and be prepared to account for these.

4 Making appointments

As there is such a range of external organisations to which the Council appoints representatives, it is essential that the Council can clarify the particular requirements in each case. This is so it can identify those Members and officers who will be best suited to represent the Council.

To do this, the Council will take account of the special interests, enthusiasm, professional experience, skills and knowledge of potential representatives, in order to ‘match’ appointments to those representatives with the required skills and attributes. This will also allow any relevant development needs to be identified.

Use of the Partnership Development and Evaluation Toolkit (outlined in the strategy) will assist the Council to gather information about the purpose and aims of the organisation and to assess their role and contribution to it.

When considering appointing representatives to partnerships and other external organisations, the Council will take account of the following issues:

- the nature of the organisation – is this strategic or operational; is it relevant to part of the Council’s area, the whole area or wider?
- the legal status of the organisation and the implications for the liability of the Council’s representatives
- the role expected of the Council’s representative – will this require a Member or officer or both?
- where the representative is expected to make decisions or other commitments on behalf of the Council, the appropriate level of authority to be delegated to them
- the need to take account of special interests, enthusiasm, professional experience, skills and knowledge of potential representatives, in order to ‘match’ appointments to those representatives with the required skills and attributes
- the need for the representative to be briefed before/upon appointment - background information on the organisation, the specific role expected of them, their legal liabilities and indemnities/insurance provided by the Council and/or the organisation
- the appropriate arrangements for the representative to provide feedback and reports on the progress of the organisation to the Council.

The Councils will review their appointments to external organisations at least annually and will maintain a Register of all Members and officers appointed to
represent the Councils on such bodies. Appointment of Members will be made by Council, and appointment of officers will be made by the Chief Executive, Deputy Chief Executive or Heads of Service as appropriate.

Members and officers appointed to represent their Council will be provided with a copy of this general guidance, in addition to specific information about the organisation and their specific role within it, before/upon appointment.

In the event of the Councils’ representatives being appointed to the governing or controlling body of the external organisation, or to a position of responsibility within it (e.g. Chair, Secretary, Treasurer), the representatives will need to consider any potential conflicts of interest and must notify their Council, in order to enable the Council to advise them of any implications.

### Skills qualities and attributes

Members and officers bring a wide range of skills and qualities to the table when representing the Council on external organisations. This section of the guidance simply identifies those which are particularly relevant for work in such environments.

The degree to which Members and officers who may represent the Council on external organisations already possess these skills, qualities and attributes, or may be able to develop them, should be considered when the Council is making appointments:

**Open approach**

- good listener
- open to alternative viewpoints and advice
- respect the views of others
- learn from others and from good practice elsewhere.

**Inclusive approach**

- build and develop working relationships with others
- promote dialogue and involvement of others
- prepared to trust
- ability to achieve concensus
- seek win-win solutions
- understand interdependency of partners and ability to achieve more together than separately.

**Influencing**

- ability to participate in rational argument
- prepared to challenge views in constructive debate.

**Commitment**

- commitment to the success of the external organisation
- demonstrate enthusiasm and positive approach towards the organisation
- perseverance
- ability to work through difficulties and deal with differing views
- use conflict constructively.
**Vision**
- ability to see the ‘bigger picture’
- retain strategic focus.

**Objectivity**
- ability to make independent and personal judgements in line with your duty of care to the external organisation, not just seeing things from the perspective of the Council or any particular political party.

**Flexibility**
- ability to work in unfamiliar settings and different ways
- adapt to changing circumstances.
Liabilities and indemnities

Members and Officers of local authorities can incur personal, civil and criminal liability as a result of their actions, or decisions, both within the Authority and as members of a wide range of external organisations to which they may be appointed.

Members and Officers enjoy statutory immunity from civil liability where they act within the powers of the Authority in good faith and without negligence. This immunity does not apply, however, where they go beyond the powers of the Authority or act in bad faith or negligently, or where they are acting on external organisations to which they have not been appointed by the Authority. Immunity is not given for criminal liability, such as fraud.

However, under the Local Authorities (Indemnities for Members and Officers) Order 2004 an indemnity may be provided by the Authority in relation to any action or failure to act by the Member or Officer which:
(a) is authorised by the Authority;
(b) forms part of, or arises from, any powers conferred or duties placed upon that Member or Officer at the request of or with the approval of the Authority, including representing the Council on an external organisation; or
(c) arises in respect of the defence costs of any claim for an allegation of defamation by a Member or Officer (but not in respect of any damages which may be awarded).

Scope of Indemnity Available

An indemnity may be provided in relation to an act or omission which is subsequently found to be beyond the powers of the Member or Officer in question, but only to the extent that the Member or Officer reasonably and genuinely believed that the act or omission was within his/her powers at the time when he/she acted.

No indemnity may be provided under the new Regulations in relation to any action by, or failure to act by, any Member or Officer which:
(a) constitutes a criminal offence;
(b) is the result of fraud or other deliberate wrongdoing or recklessness;
(c) results in a Member admitting a breach of the Code of Conduct in any ‘Part 3 Proceedings’ (in respect of any investigation, hearing or other proceedings for an alleged failure to comply with the Code of Conduct for Members); or
(d) relates to a claim by a Member or Officer that he/she has been defamed. However in respect of (a) and (c), an indemnity can be provided in respect of legal representation to defend a criminal conviction or a ‘Part 3 Proceeding’ but, if the Member or Officer is convicted of the criminal offence or a Member is found to have breached the Code of Conduct, and where an appeal is unsuccessful, then that Member or Officer shall reimburse the Authority or the insurer for their costs incurred in relation to those proceedings. The sum to be reimbursed is recoverable by the Authority or insurer as a civil debt.
No indemnity can be made available to any Member or Officer who voluntarily joins any external organisation.

**Legal Status of Organisation and Liability**

There are several types of organisation, to which Members and Officers may be appointed by the Council. The legal status of the organisation will determine the liability implications for Members and Officers appointed to it.

(a) **An unincorporated association** – the individuals who are represented on the management committee of such a body are personally liable for all of the acts or omissions of the body. It does not have a separate legal status and acts as a collection of individuals who are jointly and severally liable. Partnerships or voluntary organisations often have this legal status.

(b) **A company limited by shares or guarantee** – this is a separate legal entity which means it can hold property or sue and be sued in its own name and has limited liability. There are certain circumstances where Directors can have personal liability (see para. 6.6 below).

(c) **An industrial and provident society** (IPS) – as in the case of a company this has separate legal status and limited liability. Similar rules apply to those applicable to companies and again members of the management committee may have personal liability.

(d) **A trust** – this can either be an unincorporated association, a company or an IPS (with liability implications as appropriate), and is usually set up for non-profit distributing and/or charitable ventures.

(e) **A co-operative** – again this may be an unincorporated association, a company or an IPS (with liability implications as appropriate), and is a body established for the mutual benefit of its members, which may be employees, tenants, people with trading interests or otherwise.

6.5.2 Whatever the status of the organisation, it should have a written constitution -either the ‘rules’ of an Industrial and Provident Society; the ‘Memorandum and Articles of Association’ of a company; or a ‘governing instrument’ or other form of constitution, setting out:

- the members of the organisation
- the reasons for its formation
- the purpose, terms of reference and aims and objectives of the organisation
- the arrangements and procedures for operation of the organisation
- the date of the formation of the organisation and, if appropriate, its expected lifetime


Many of the organisations the Council is involved with will not have a legal status such as a company, and so will not have a formal governing document.
like a ‘Memorandum and Articles of Association’ as a prerequisite for it coming into being. However, it is important that a formal constitution exists to ensure that all members of the organisation are aware of their role and responsibilities.

Duties and Responsibilities of directors and trustees

Where the external organisation has the legal status of a limited company, it is important that Members and Officers understand the duties and responsibilities of directors, as they are very different from those of Members of a local authority. The responsibilities of directors are set out in legislation and apply to anybody occupying the position of a director, no matter what they are called e.g. member of a management committee.

The main duties of a director are:

- to act honestly and in good faith and in the best interests of the company as a whole
- a fiduciary duty to the company, not to make a personal profit and to take proper care of the assets
- to exercise reasonable skill and care (this is a subjective test based upon the individual’s own knowledge and experience), and due diligence in the performance of his/her duties; and
- to comply with statutory obligations imposed by the Companies Acts and other legislation and procedural controls in the constitution.

Generally speaking, directors are not liable for company debts and obligations. However, there are exceptions, when Directors may be personally liable for the debts of the organisation, e.g.

- when company details are not properly shown on cheques
- where there has been any misfeasance (a kind of wrong doing) or breaches of the fiduciary (prudent use of the Company’s resources/money) or other duties owed to the company
- where there has been wrongful trading (where the Directors have not taken every possible step to minimise potential losses to creditors, when they knew, or ought to have known, the company was unlikely to avoid liquidation)
- fraudulent trading (where the company carries on business with the intent to defraud creditors or for any fraudulent purpose that is, if it carries on business and incurs debts at a time when there is, to the knowledge of the Directors, no real prospect of creditors receiving payment
- offences committed by the company which can be attributed to neglect
- on behalf of the Directors such as those under the Companies Act or Social Security Act.

The above principles apply equally to members of management committees of Industrial and Provident Societies and charitable trustees.

There are additional duties which need to be complied with by charity trustees under the Charities Acts legislation, such as:
• ensuring the Trust complies with the requirements of the Charity Commission
• ensuring it does not breach any of the requirements or rules set out in its ‘governing document’
• ensuring it remains true to the purposes and objects for which it was set up.

Conflict of Interests

Councillors who are appointed by their authority to be members of an external organisation, or to be on the management committee or board of an external organisation must declare a personal interest at any meeting of their own Council, Cabinet or any of its committees which considers issues related to that organisation.

After declaring such a personal interest, the Member can take part in the meeting, unless the interest is prejudicial. The interest will be prejudicial only if the item being considered by the Council, committee etc. relates to:

• the Member’s own financial position, or the financial position of the
  external organisation, or
• any licence or permission (e.g. planning application) relating to the Member or to the external organisation. If the Member has such a prejudicial interest, they should leave the meeting while the item is being considered. Also they should not seek to influence a decision on the matter outside the meeting.

The same rules apply where the Member is a member (or on the Board or management committee) of certain other external organisations, even if they have not been appointed to them by their authority. These external organisations are:

• those exercising functions of a public nature
• those directed to charitable purposes only
• those whose main purposes include the influence of public opinion or policy (e.g. a political party or trade union).

If the Member is on an external organisation of their own choice (not appointed to it by their Council) which is not one of the three types listed in paragraph 6.7.3 above, they will have to decide whether to declare a personal or prejudicial interest. They can seek advice from the Council’s Monitoring Officer in such cases.

When external organisations consider issues related to the Council or where personal interests of an individual arise in relation to the organisations activities, these need to be declared in accordance with the rules of that organisation or, if there are none specifically relating to interest, in accordance with the Council’s Code of Conduct.

The overriding responsibility is to seek to avoid the situation where duty and interest conflict and therefore if Members are unsure about declaring an interest, it would be wise to declare and leave the meeting during consideration of the business. The specific rules adopted by each organisation will vary and therefore
Members should ask for advice and guidance from the secretary of the organisation and/or the Council’s Monitoring Officer, as appropriate.

When a Member acts on the management committee or on the board of an external organisation then they must act in the interests of that organisation; they are there in the capacity of a ‘trustee’ or ‘quasi trustee’. They must exercise independent judgement in making decisions in accordance with their duty of care to the organisation – not just to vote in accordance with the Council’s wishes. Members may have regard to the interests of the Council, but this should not be the overriding consideration. **In some cases voting in the Council’s interests could be a breach of a Director’s duty to a company.**

Clearly, there is greater scope for conflicts to arise where a Member holds an office in the external organisation, e.g. Chair, Vice-Chair, Secretary or Treasurer.
Appendix A

<table>
<thead>
<tr>
<th>checklist for members and officers appointed by the council to external organisations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Checked the legal status of the external organisation</strong></td>
</tr>
<tr>
<td><strong>Checked what insurance or indemnity is in place, both by the Council and by the external organisation</strong></td>
</tr>
<tr>
<td><strong>Ensured the organisation has an appropriate constitution</strong></td>
</tr>
<tr>
<td><strong>Ensured you understand your role and responsibilities as the Council’s representative on the external organisation</strong></td>
</tr>
<tr>
<td><strong>Ensured the organisation has sound financial practices and procedures</strong></td>
</tr>
<tr>
<td><strong>Attended meetings of the organisation and participated</strong></td>
</tr>
<tr>
<td><strong>Observed duties of confidentiality (in both directions)</strong></td>
</tr>
<tr>
<td><strong>Declared personal interests, and if appropriate, left the room for consideration of the item - seek advice from the Council’s Monitoring Officer, if unsure</strong></td>
</tr>
<tr>
<td><strong>Ensured that when in meetings of the organisation, you have acted in the organisation’s best interests, which may not necessarily be those of the Council</strong></td>
</tr>
<tr>
<td><strong>If you are unable to satisfactorily deal with conflicts of interest, you have resigned from the external organisation and notified the Council</strong></td>
</tr>
<tr>
<td><strong>If you no longer intend to be involved in the organisation, you have resigned from it and notified the Council – if you hold a position of Director and just fail to attend meetings, you may find that you are in breach of your duty to act in the best interests of that organisation.</strong></td>
</tr>
</tbody>
</table>