

PART FIVE
CODES AND PROTOCOLS

CODE OF CONDUCT FOR MEMBERS

Status of code

The County Council adopted this code of conduct for its Members in accordance with Section 51 of the Local Government Act 2000 on 19 July 2007. The Code became effective for the County Council on 1 October 2007.

Application of the code

The Code applies to every councillor and to all co-opted and independent Members. All those Members are required to sign and undertake to observe this Code.

Any person may make a written complaint to the Council's Standards Committee that a Member has acted in breach of this Code. This may lead to an investigation and to sanctions being applied up to disqualification from membership of any local authority for five years.

The Code represents the standard against which the public, their fellow councillors, the County Council's Standards Committee and the Standards Board for England will judge Member's conduct.

Each Member should make sure that s/he is familiar with the requirements for personal conduct set by the Code. It is his/her responsibility to make sure that s/he complies with the Code. Every Member should regularly review his/her personal circumstances with this in mind, particularly when those circumstances change. If in any doubt a Member should seek advice from the County Council's Monitoring Officer or from his/her own legal advisor. In the end however, the decision and the responsibility are the Member's.

THE MODEL CODE OF CONDUCT FOR MEMBERS

Part One - General provisions

1. Introduction and interpretation

- (1) This Code applies to **you** as a member of an authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code
“meeting” means any meeting of
 - (a) the authority;
 - (b) the executive of the authority;
 - (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;“member” includes a co-opted member and an appointed member.
- (5) In relation to a parish council, references to an authority's monitoring officer and an authority's standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

2. Scope

- (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you
 - (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a representative of your authority,and references to your official capacity are construed accordingly.
- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
- (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you

committed before the date you took office, but for which you are convicted after that date).

- (5) Where you act as a representative of your authority
 - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3. General obligations

- (1) You must treat others with respect.
- (2) You must not
 - (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
 - (b) bully any person;
 - (c) intimidate or attempt to intimidate any person who is or is likely to be
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings,in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
- (3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

4.

You must not

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is

- (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

5.

You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6.

You

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of your authority
 - (i) act in accordance with your authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7.

- (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by
 - (a) your authority's chief finance officer; or
 - (b) your authority's monitoring officer,
 where that officer is acting pursuant to his or her statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

8. Personal interests

- (1) You have a personal interest in any business of your authority where either
 - (a) it relates to or is likely to affect
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
 - (ii) any body
 - (aa) exercising functions of a public nature;

- (bb) directed to charitable purposes; or
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),
of which you are a member or in a position of general control or management;
 - (iii) any employment or business carried on by you;
 - (iv) any person or body who employs or has appointed you;
 - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
 - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
 - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
 - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
 - (ix) any land in your authority's area in which you have a beneficial interest;
 - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
 - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of
- (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
 - (ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or

- (iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.
- (2) In sub-paragraph (1)(b), a relevant person is
 - (a) a member of your family or any person with whom you have a close association; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
 - (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

9. Disclosure of personal interests

- (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- (3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- (6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

10. Prejudicial interest generally

- (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where 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 your judgement of the public interest.
- (2) You do not have a prejudicial interest in any business of the authority where that business
 - (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
 - (c) relates to the functions of your authority in respect of
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

11. Prejudicial interests arising in relation to Overview and Scrutiny Committees

You also have a prejudicial interest in any business before an Overview and Scrutiny Committee of your authority (or of a sub-committee of such a committee) where

- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

12. Effect of prejudicial interests on participation

- (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority
 - (a) you must withdraw from the room or chamber where a meeting considering the business is being held
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;unless you have obtained a dispensation from your authority's standards committee;
 - (b) you must not exercise executive functions in relation to that business; and
 - (c) you must not seek improperly to influence a decision about that business.
- (2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the Overview and Scrutiny Committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

13. Registration of members' interests

- (1) Subject to paragraph 14, you must, within 28 days of
 - (a) this Code being adopted by or applied to your authority; or
 - (b) your election or appointment to office (where that is later),register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.
- (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

14. Sensitive information

- (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.
- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.
- (3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Explanatory Notes (extract from the Statutory Instrument)

Paragraph 1 of the Code provides that the Code applies to any member of an authority and that it is the responsibility of each member to comply with the Code.

Paragraph 2 of the Code provides that the Code applies whenever a member is acting in his or her official capacity, and in relation to conduct in a member's private capacity the code only applies where such conduct has resulted in a criminal conviction. Additionally, where a member is acting as a representative of his or her authority, he or she must continue to observe the authority's code, unless he or she is subject to another relevant authority's code, or unless (in relation to any other body) it conflicts with any other legal obligations.

Paragraph 3 of the Code provides that members must treat others with respect and not do anything which may cause their authority to breach equality legislation, or which compromises the impartiality of those who work for the authority or bully anyone or intimate persons involved in code of conduct cases.

Paragraph 4 of the Code provides that members must not without consent disclose confidential information they have acquired and must not prevent others from gaining access to information to which they are entitled.

Paragraph 5 of the Code provides that a member must not conduct himself or herself in a manner which could bring his or her authority into disrepute.

Paragraph 6 of the Code provides that a member must not use his or her position improperly to gain an advantage or confer a disadvantage and that when using or authorising the use of the authority's resources, he or she must act in accordance with the authority's reasonable requirements, must not permit those resources to be used for political purposes and must have regard to the Local Authority Code of Publicity.

Paragraph 7 of the Code provides that a member must have regard to advice given by the chief finance officer and monitoring officer and must give reasons for decisions made.

Paragraph 8 of the Code provides a list of matters which constitute a personal interest.

Paragraph 9 of the Code provides that generally a member with a personal interest in any business of his or her authority must disclose that interest at any meeting at which the business is considered.

Paragraph 10 of the Code provides that generally a member with a personal interest also has a prejudicial interest if the interest could be regarded by a member of the public as so significant that it is likely to prejudice his or her judgement of the public interest. The paragraph provides that in specified circumstances a member may regard himself as not having a prejudicial interest.

Paragraph 11 of the Code provides that a member who was involved in making a decision or taking action on a matter must not be involved in the Overview and Scrutiny committee's consideration of that decision or action.

Paragraph 12 of the Code provides that a member with a prejudicial interest must, unless, for example, he or she is making representations and members of the public are also allowed to make representations on that matter, or he or she has obtained a dispensation, withdraw from any meetings at which the business is being considered, and must not improperly influence decisions in relation to the business.

Paragraph 13 of the Code provides that a member must notify the monitoring officer of his or her personal interests and any change to those interests must also be notified.

Paragraph 14 of the Code provides that a member may notify the monitoring officer of any sensitive information the availability of which to the public creates, or is likely to create, a serious risk that the member or a person who lives with him or her may be subjected to violence or intimidation.

CODE OF CONDUCT FOR OFFICERS

1. INTRODUCTION

- 1.1 The public is entitled to expect the highest standards of conduct from all employees of the County Council. Public confidence would be shaken if there were the least suspicion that employees of the County Council could in any way be influenced by improper motives, however ill-founded this may be.
- 1.2 It is important, in their own interests, for all County Council employees to ensure that they are fully aware of their position as regards standards of conduct, and if in any doubt they should consult their Departmental Personnel Officer for further guidance. Failure to comply with the standards of conduct could result in disciplinary action.
- 1.3 This Code embraces statements and requirements contained within the Scheme of Conditions of Service, Nottinghamshire County Council Financial Regulations, The Personnel Handbook, and other local source documentation. Copies of these documents are available via normal departmental management channels. The Code is produced in the light of challenges that employees face in the new and more commercially orientated environment. This includes the introduction and extension of compulsory competitive tendering, market testing, changes in the management of the Education service, Care in the Community etc.
- 1.4 The Code will apply to all employees of the County Council, but inevitably some of the issues covered within it will affect senior managerial and professional employees more than others. Whilst the Code is reasonably comprehensive, it does not seek to address every possible circumstance, and simply because a particular action may not be addressed within the Code, this does not condone that action by omission. It is also expected that all employees will behave within the law whilst undertaking their official duties.

2. STANDARDS OF SERVICE

- 2.1 County Council employees are expected to give the highest possible standard of service to the public, and where it is part of their duty, to provide appropriate advice to councillors and employees with impartiality. Employees must report to an appropriate senior manager any impropriety, illegality or breach of procedure. In accordance with Financial Regulations if an irregularity occurs, or is suspected, which may involve financial loss, it must be reported immediately to the Service Director, Finance.
- 2.2 Source of information:
 - 2.2.1 paragraph 70 of the purple book;
 - 2.2.2 paragraph 18.4 of the Financial Regulations.

3. DISCLOSURE OF INFORMATION

- 3.1 This Code of Conduct is based on the assumption that open Government is best. Various elements of information are available to Members, auditors, government departments, services users and the public as a statutory right. These will vary from department to department but employees should be aware which information within their control is open and which is not, and act accordingly.
- 3.2 Employees should not use information obtained in the course of their employment with the County Council for personal gain or benefit, nor should they pass it on to others who might use it in such a way. Any particular information received by an employee from a councillor which is personal to that councillor and does not belong to the County Council should not be divulged by the employee without the prior approval of that councillor, except where such a disclosure is required or sanctioned by the law.
- 3.3 Source of information:
- 3.3.1 paragraph 72 of the Purple Book;
 - 3.3.2 the Local Government Act 1972, S100;
 - 3.3.3 the Local Government Planning and Legal Act 1980 S2;
 - 3.3.4 Local Government (Publication of Manpower Information (England)) – Regulations 1982;
 - 3.3.5 Local Government (Access to Information) Act 1985;
 - 3.3.6 Paragraphs 9.1.5, 9.17.1.2 and 20.2.1 of the Financial Regulations;
 - 3.3.7 Nottinghamshire County Council's Members' Access to Information Code of Practice.

4. POLITICAL NEUTRALITY

- 4.1 Employees serve the County Council as a whole. It follows they must serve all councillors and not just those of the controlling group, and must ensure that the individual rights of all councillors are respected.
- 4.2 Some senior employees may also be required to advise political groups. They must do so in ways which do not compromise their political neutrality.
- 4.3 Employees, whether or not politically restricted, must follow every lawful expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work.
- 4.4 Political assistants are exempt from the standards set in the preceding three paragraphs.
- 4.5 Source of information:
- 4.5.1 paragraph 70(c) of the Purple Book;
 - 4.5.2 the Local Government Housing Act 1959;

4.5.3 the Local Government Officers (Political Restrictions) Regulations 1990;

4.5.4 the Local Government (Politically Restricted Posts) (No. 2) Regulations 1990.

5. RELATIONSHIPS

5.1 Councillors

5.1.1 Employees are responsible to the County Council through its senior managers. For some, their role is to give advice to councillors and senior managers, and all are there to carry out the Council's work. Mutual respect between employees and councillors is essential to good Local Government. Where close personal relationships between employees and individual councillors exist, there is a need for care to be taken to avoid inappropriate standards of conduct.

5.2 The local community and service users

5.2.1 Employees should always remember their responsibilities to the community of Nottinghamshire and ensure courteous, efficient and impartial service delivery to all groups and individuals within the County.

5.3 Contractors

5.3.1 All relationships of a business or private nature with external contractors, or potential contractors, should be made known to an appropriate senior manager. Orders and contracts must be awarded on merit, by fair competition against other tenders, and no special favour should be shown to business run by, for example, friends, partners or relatives in the tendering process. No part of the Nottinghamshire community should be discriminated against.

5.3.2 Employees who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, should declare that relationship to an appropriate senior manager.

5.3.3 Source of information:

5.3.3.1 The Local Government and Housing Act S31.

6. APPOINTMENT AND OTHER EMPLOYMENT MATTERS

6.1 Employees involved in appointments should ensure that these are made on the basis of merit. It would be unlawful for an employee to make an appointment which was based on anything other than the ability of the candidate to undertake the duties of the post. In order to avoid any possible accusation of

bias, employees should not be involved in an appointment where they are related to an applicant, or have a close personal relationship outside work with him or her.

6.2 Similarly, employees should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner etc.

6.3 Source of information:

6.3.1 section 1 paragraph 6(a) and 12(a) of the purple book;

6.3.2 the Local Authorities (Standing Orders) Regulations 1993;

6.3.3 section 7, Local Government and Housing Act 1989;

6.3.4 NCC's Recruitment and Selection – Code of Practice (Section C5 of the Personal Handbook);

6.3.5 nepotism (Section C6 of the Personnel Handbook).

7. OUTSIDE COMMITMENTS

7.1 Some employees have conditions of service which require them to obtain written consent to take any outside employment. All employees should be clear about their contractual obligations and should not take outside employment which conflicts with the County Council's interests.

7.2 Where employees are permitted to take outside employment either within their conditions of service or by way of written consent, no outside work of any sort should be undertaken in County Council premises, and use of facilities eg telephones, computers, photocopiers, access to typists etc is forbidden. Similarly receiving correspondence and incoming telephone calls at a County Council workplace where these are related to outside work is not allowed.

7.3 Source of information:

7.3.1 section 7 (paragraph 70(b) and 71) of the purple book;

7.3.2 the National Conditions of Service for chief officers and those for Chief Executives.

8. PERSONAL INTERESTS

8.1 Employees must declare to an appropriate senior manager any financial interests or non-financial interests which could conflict with the County Council's interests.

8.2 A register of financial and non-financial interests is maintained by the Monitoring Officer and all employees should ensure that the nature of the conflict of interests is recorded in that register. Nottinghamshire County Council Financial Regulations also specify that employees who have a direct or indirect pecuniary interest in a contract shall not be supplied with or given access to any tender documents, contracts or other information relating thereto, without the authority of the Monitoring Officer.

8.3 Source of information:

- 8.3.1 FINANCIAL REGULATIONS 2008;
- 8.3.2 paragraph 73 of the purple book.

9. EQUALITY ISSUES

9.1 All County Council employees should ensure that policies relating to equality issues are complied with in addition to the requirements of the law. It is the responsibility of each employee to assist in the creation of a safe work environment where discriminatory behaviour is not tolerated. All members of the Nottinghamshire community, customers and other employees have a right to be treated with fairness and equity. Sections C1 to C12 of the Personnel Handbook and the Equal Opportunities Policy in Service Delivery refer.

9.2 Source of information:

- 9.2.1 Sex Discrimination Act 1975;
- 9.2.2 Race Relations Act 1976;
- 9.2.3 Disabled Persons (Employment) Act 1944 (as amended);
- 9.2.4 Equal Opportunities in Employment;
- 9.2.5 (Section C of the Personnel Handbook);
- 9.2.6 Equal Opportunities Policy in Service Delivery;
- 9.2.7 Harassment Complaints Procedure (Section E5 of the Personnel Handbook).

10. SEPARATION OF ROLES DURING TENDERING

10.1 Employees involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the County Council. Senior employees who have both a client and contractors responsibility must be aware of the need for accountability and openness.

10.2 Employees in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.

10.3 Employees who are privy to confidential information on tenders or costs for either internal or external contractors should not disclose that information to any unauthorised party or organisation.

10.4 Employees should ensure that no special favour is shown to current or recent former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

10.5 Further guidance on the procedures to follow during the tendering process is contained in Nottinghamshire Financial Regulations.

10.6 Source of information:

- 10.6.1 Local Government (Direct Service Organisation);
- 10.6.2 Consultation Regulation 1993 – Section 4 (2) (3);
- 10.6.3 FINANCIAL REGULATIONS 2008.

11. CORRUPTION, GIFTS AND HOSPITALITY

- 11.1 Employees must be aware that it is a serious criminal offence for them corruptly to receive or give any gift, loan, fee, reward or advantage for doing or not doing anything or showing favour or disfavour to any person in their official capacity. If an allegation is made it is for the employee to demonstrate that any such rewards have not been corruptly obtained.
- 11.2 It should be stressed that the need to avoid corruptly receiving gifts, loans, fees etc, covers all aspects of an employees responsibilities, not just those activities involving contractual relationships. Thus, showing favouritism to a client in the provision of a service in return for a favour or gift would be equally corrupt as showing favouritism to a contractor or potential contractor.

12. ACCEPTANCE OF GIFTS

- 12.1 With the exceptions listed below, employees should refuse politely and courteously, any gift, either personally or to members of their family, and should report the offers of such gifts to an appropriate senior manager. The exceptions to this general rule would be:
 - 12.1.1 a modest gift of a promotional character given to a wide range of people, and not uniquely to the employee. These gifts usually given at Christmas and include calendars, diaries, desk sets, flowcharts, tape measures, and other articles of use in the office or job. It would not include, for example, a bottle of whisky;
 - 12.1.2 modest gifts at the conclusion of any courtesy visit to a factory or firm of the sort normally given by that firm.

13. HOSPITALITY AND MEALS

- 13.1 Employees of the County Council should only accept offers of hospitality if there is a genuine need to impart information or represent the County Council. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community, or where the authority should be seen to be represented. Acceptance of such invitations should be cleared in advance with an appropriate senior officer, and should be recorded in the departmental Hospitality Book.
- 13.2 When hospitality has to be declined the offerer should be courteously but firmly informed of the procedures and standards operating within the County Council. When receiving hospitality, employees should be particularly sensitive as to its timing in relation to decisions which the County Council may be taking affecting those providing the hospitality.

13.3 There may be circumstances where it will not always be possible, or even desirable, to reject offers of hospitality on a modest scale. Acceptable examples would include official hospitality at a function organised by a public authority; refreshments following a site visit; or a working lunch of a modest standard to enable the parties to continue to discuss business. The decision whether to accept or not must depend on the circumstances in each case. These circumstances will also determine whether the hospitality needs to be entered in the Register. If in doubt employees should err on the side of caution and enter the appropriate details in the departmental Register.

13.4 Source of information:

13.4.1 Local Government Act 1972, S117 – Pecuniary Interests;

13.4.2 section 7, paragraph 73 of the purple book;

13.4.3 Prevention of Corruption Act 1906 and 1916;

13.4.4 Public Bodies Corrupt Practices Act 1889;

13.4.5 FINANCIAL REGULATIONS 2008.

14. CORRUPTION, GIFTS AND HOSPITALITY

14.1 Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner. They should strive to ensure value for money to the local community and to avoid legal challenge to the County Council.

14.2 Source of information:

14.2.1 FINANCIAL REGULATIONS 2008.

15. SPONSORSHIP – GIVING AND RECEIVING

15.1 Where an outside organisation wishes to sponsor or is seeking to sponsor a County Council activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.

15.2 Where the County Council wishes to sponsor an event or service neither an employee nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to an appropriate senior manager of any such interest. Similarly, where the County Council through sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

15.3 Source of information:

15.3.1 FINANCIAL REGULATIONS 2008.

16. PUBLIC SPEAKING

16.1 Where employees are invited to address public meetings, undertake radio or television interview etc, it is expected that they should clearly understand the basis upon which the invitation was extended. In the majority of cases an employee will be acting as the representative of the County Council, and as such should communicate the policies and procedures of the County Council in a factual and unbiased way. Officers should avoid expressing personal views in such situations, and if during the course of the debate or discussion the personal views of the officer are sought, then he/she should consider most carefully whether this would place them in a position of public conflict with their employer. It may be appropriate in such circumstances for the officer to decline to make further comment and terminate the discussion or interview. It is of course recognised that officers are entitled to personal views, and that these may be very strongly felt. If in a private capacity an officer is invited to comment on County Council policies, they should reflect upon their responsibilities to implement such policies as well as their personal view point.

16.2 Source of information:

16.2.1 section D4, paragraph 13.7 of the Personnel Handbook.

17. EMPLOYEES FACING CRIMINAL CHARGES

17.1 The County Council expects employees facing criminal charges to give notice of such, without delay to an appropriate line manager. Sometimes the nature of the charges will be relevant to the employee's job, in other cases the issue will be less clear cut. For example, the charge of dangerous driving in circumstances where the person is employed as a County Council driver will be relevant; or a charge of grievous bodily harm where the person is employed as a care assistant. On the other hand a clerical assistant faced with a charge of riding a bicycle without lights would not be relevant. Employees are required to notify an appropriate line manager in all circumstances, whether they personally feel the matter is relevant or not.

17.2 Source of information:

17.2.1 section D34, paragraph 4.1 of the Personnel Handbook.

18. CUSTODY AND SECURITY OF ASSETS, STORES, ETC

18.1 Chief officers are responsible for the accountability and control of staff and the security, custody and control of all other resources including plant, building materials, equipment, cash and stores appertaining to their department. (Nottinghamshire Financial Regulations). In addition, Section D35 of the Personnel Handbook provides a framework for restitution which applies to all employees in circumstances where there is a loss of money, property or equipment belonging to the County Council, and voluntary or other funds handled by employees as a result of their employment.

18.2 Source of information:

18.2.1 FINANCIAL REGULATIONS 2008;

18.2.2 section D35 of the Personnel Handbook.

19. HEALTH AND SAFETY

19.1 It is the responsibility of all employees under Health and Safety legislation to take reasonable care for the health and safety of themselves and of persons who may be affected by their actions or omission at work.

19.2 Source on information:

19.2.1 NCC's Safety Manual.

20. HARASSMENT

20.1 The County Council believes in equality and social justice and wishes to make it clear that it will not tolerate any harassment, intimidation, unfair discrimination or victimisation, by or against employees within its workforce.

20.2 Sexual and racial harassment is unlawful, and the County Council has resolved to eliminate these forms, and all other forms of unacceptable behaviour in order to enable all employees to work in any part of the County Council. Each employee has a duty to ensure that the standard of conduct for themselves and for colleagues respects the dignity of others and does not cause offence. Employees should therefore act in such ways as to avoid all forms of unacceptable behaviour in relation to other employees, clients and customers of the County Council.

20.3 Source of information:

20.3.1 Sex Discrimination Act 1975 and 1986;

20.3.2 Race Relations Act 1976;

20.3.3 The Harassment Complaints Procedure (Section E5 of the Personnel Handbook);

20.3.4 Employment Protection Act 1975;

20.3.5 Employment Opportunities Commission Code of Practice;

20.3.6 Commission for Racial Equality Code of Practice.

21. NO SMOKING

21.1 Employees' attention is drawn to the County Council's no smoking policy. All employees will be expected to observe the policy laid down in Section G10 of the Personnel Handbook.

CODE ON MEMBER AND OFFICER RELATIONSHIPS

1. INTRODUCTION

- 1.1 Standards of conduct for Members and officers are contained in separate Codes of Conduct: the National Code of Conduct for Members and the Code of Conduct for Officers. Whilst these are detailed documents, they do not cover explicitly some of the issues arising from the close working relationships which are needed between the two if high value quality services are to be delivered and if the mutual confidence of Members and employees is to be maintained. Any misunderstandings on these issues can, particularly at times of great uncertainty and change, give rise to unnecessary stresses and tensions which, if not resolved, can harm the effectiveness of these relationships. This Code cannot and does not seek to cover every eventuality, but it does seek to strengthen the good working relationships which already exist, to clarify possible areas of doubt which may exist and to offer advice as to how any difficulties which might arise can best be resolved properly and speedily without recourse, if possible, to the more formal procedures.
- 1.2 The Code primarily concerns the relationship between Members and chief officers and other senior managers but the same principles apply to all officers.

2. ROLES AND RESPONSIBILITIES

2.1 Members

- 2.1.1 The role of the councillor is defined by the Local Government Act 1972 and the Local Government and Housing Act 1989. In law, all councillors are equal and have the responsibilities of trustees. No decisions on behalf of the Council can be taken by individual councillors.
- 2.1.2 All councillors are required by law to:
- 2.1.2.1 be guided by the National Code of Local Government Conduct;
 - 2.1.2.2 comply with the Council's Standing Orders and Financial Regulations;
 - 2.1.2.3 ensure that any facilities provided by the Council for Members' use in undertaking their duties are used strictly for those duties and for no other purpose; and
 - 2.1.2.4 to comply with all relevant statutory provisions.

NOTE: It is the responsibility of Members themselves to ensure that they have proper advice. If Members are ever in any doubt in terms of the law, any Council Code, Standing Orders, general propriety, conflicts of interest etc, then the Monitoring Officer should be

consulted. Similarly the Service Director, Finance should be consulted in respect of financial advice.

2.2 Committee Chairs

2.2.1 The role of a Committee Chair is only legally recognised for procedural purposes (eg in conducting meetings and exercising a casting vote). In practice, Chairs are recognised as the 'lead Member' on individual service areas, undertaking the following roles:

- 2.2.1.1 liaising closely with the relevant chief officer(s) in developing policy and service plans;
- 2.2.1.2 responding to the press and making public statements on behalf of the Council; and
- 2.2.1.3 responding to questions at County Council meetings.

2.3 Officers

2.3.1 Officers are employed by, and serve, the whole Council. They advise the Council and its Committees, and are responsible for ensuring that the decisions of the Council, either directly or through its Committees or Sub-Committees or officers themselves where decision-making has been formally delegated to them, are effectively implemented. All are legally required to be politically neutral, and for senior officers this is enforced through the political restrictions of the Local Government and Housing Act 1989. All are required to abide by the Council's Code of Conduct for Employees. The latter includes sections relating to:

- 2.3.1.1 standards of official conduct;
- 2.3.1.2 rules concerning disclosure of information and confidentiality;
- 2.3.1.3 political neutrality;
- 2.3.1.4 rules governing relationships with councillors, local community and contractors;
- 2.3.1.5 appointment and other employment matters;
- 2.3.1.6 outside commitments and personal business interests;
- 2.3.1.7 equality issues;
- 2.3.1.8 separation of roles during tendering;
- 2.3.1.9 corruption, hospitality and gifts;
- 2.3.1.10 use of financial resources; and

2.3.1.11 sponsorship.

2.3.2 Officers are responsible to their line manager and ultimately their chief officer. Chief officers have professional responsibilities and accountabilities to the Chief Executive who has responsibilities for the proper management of the authority's staff. Some chief officers have specific statutory responsibilities as statutory office holders as well.

2.3.3 As Nottinghamshire is a Member-led authority and the Chief Executive, other chief officers and senior officers working to them inevitably need to work closely with Members of the Majority Party or parties if there is to be effective policy development and executive decision-making. This relationship has to function without compromising the ultimate responsibilities of officers to the Council as a whole, and with due regard to such technical, financial, professional and legal advice that officers can legitimately provide to individual Members and other political groups on the Council.

3. INFORMATION FOR MEMBERS

- 3.1 It is important for chief officers and officers to keep Members informed both about the major issues concerning the County Council and, more specifically, about issues and events affecting the areas which they represent. Local Members should be informed about proposals which affect their electoral division whether this be a declaration of a surplus property, a new traffic management scheme or a local planning application. Local Members should also be invited to attend the opening of a new County Council building or road scheme or other similar ceremonies within their electoral division. Where an issue is to be discussed by a Committee on which the local Member does not serve, by convention, in consultation with the appropriate Committee Chairman, a local Member who wishes to do so, should be invited to attend the Committee for consideration of the item and to speak on it if they wish to do so.
- 3.2 Members may request copies of full agendas of Committees and Sub-Committees of which they are not Members. Members' rights to information are subject to legal rules and, if a Member has a legitimate interest in a matter and is able to demonstrate a "need to know", in their role as a county councillor, officers should provide the relevant information to them in accordance with the Council's Code on the issue (see Members' Handbook). Both the Statutory National Code of Conduct and Standing Orders restrict the disclosure of information by Members which they have gained as county councillors when the information is confidential. Such confidential information should not therefore be made available by the Member concerned to the public nor should it be passed on to another county councillor who cannot demonstrate a similar "need to know".
- 3.3 If Members are not receiving, or are having difficulty in obtaining, information which they feel they need or to which they are entitled in order to carry out their

duties as a county councillor they should contact the Monitoring Officer just as officers will seek similar guidance.

4. RESPECT AND COURTESY

- 4.1 For the effective conduct of Council business there must be mutual respect, trust and courtesy in all meetings and contacts, both formal and informal, between Members and officers. This, too, plays a very important part in the Council's reputation and how it is seen in public. It is very important that both Members and officers remember their respective obligations to enhance the Council's reputation and avoid criticism of Members, or officers, in public forums and in situations within the Council where embarrassment might be caused.
- 4.2 If an officer is in breach of this requirement some form of disciplinary action will result. If a Member is in breach, then the Monitoring Officer will be informed, and the local determination of complaints procedure set in motion.

5. UNDUE PRESSURE

- 5.1 In their dealings with chief officers and officers, (especially junior staff) Members need to be aware that it is easy for officers to be overawed and feel at a disadvantage. Such feelings can be intensified where Members hold official and/or political office.
- 5.2 A Member should not apply undue pressure on an officer either to do anything that s/he is not empowered to do or to undertake work outside normal duties or outside normal hours. Particular care needs to be taken in connection with the use of Council property and services.
- 5.3 Similarly, an officer must neither seek to use undue influence on an individual Member to make a decision in their favour nor raise personal matters to do with their job nor make claims or allegations about other staff. The County Council has formal procedures for consultation, grievance and discipline.
- 5.4 Reports to Committee should be written by the chief officer or another officer authorised by him or her except where conventions dictate otherwise. It is likely that a sensitive report would be discussed with the Chair at one of the regular meetings held with the chief officer and the Chair may make suggestions to the chief officer as to the contents of the report. However, the report is the officer's and any amendments can only be made by the chief officer who may consult and inform the Monitoring Officer as necessary.

6. FAMILIARITY

- 6.1 Close personal familiarity between individual Members and those officers with whom they come into regular contact can damage the principle of mutual respect. It could also, intentionally or accidentally, lead to the passing of confidential information or information which should not properly be passed between them, eg personal details.

6.2 Such familiarity could also cause embarrassment to other Members and/or other officers and even give rise to suspicions of favouritism.

6.3 For the above reasons close personal familiarity should be avoided.

7. REDRESS

7.1 If a Member considers that they have not been treated with proper respect or courtesy they may raise it with the officer's line manager or chief officer without delay if they fail to resolve it through direct discussion. A Member may raise the issue with the Chief Executive if the issue still remains unresolved and where appropriate disciplinary action may be taken against an employee.

7.2 If an officer feels the same way about a Member, they should raise the matter with their line manager or the Monitoring Officer as appropriate without delay.

8. POLITICAL ACTIVITY

8.1 Senior officers, except those specially exempted, cannot be local authority councillors or MPs, nor can they "speak or publish written work for the public at large or to a section of the public with the apparent intention of affecting public support for a political party".

8.2 Officers are employed by the County Council as a whole. They serve the Council through Committees and Sub-Committees and are responsible to the Chief Executive and their respective chief officer, and not to individual Members of the Council whatever office they might hold. Their conduct is subject to the application of the County Council's employment policies and procedures, including the Council's Code of Conduct for Employees.

8.3 The Council's Code of Conduct for Employees acknowledges that some senior officers may be required to advise political groups. They must do so in ways which do not compromise their political neutrality.

8.4 The above does not obviate the necessity for regular contact on matters affecting the Council between the Chief Executive, chief officers, senior officers and the leadership of political groups, and on matters affecting Committees between chief officers, other senior officers and Committee Chairs.

8.5 Council decisions can only be made by full Council, Committees, or chief officers acting under delegated authority. Decisions by party political groups do not constitute Council decisions. It is essential therefore that representations to the Council, at any stage in the formal decision-making process with regard to any matter, should be made to the appropriate Committee, and not to a political group.

9. CONCLUSION

9.1 Mutual understanding, openness on sensitive issues and basic respect are the greatest safeguard of the integrity of the Council, its Members and officers.

LOCAL CODE ON CORPORATE GOVERNANCE

Nottinghamshire County Council is committed to ensuring that it has an excellent system of corporate governance and embraces the **core principles** of good governance:

1. **Focusing on the purpose of the Council and on outcomes for the community and creating and implementing a vision for the local area**
2. **Members and officers working together to achieve a common purpose with clearly defined functions and roles**
3. **Promoting values for the Council and demonstrating the values of good governance through upholding high standards of conduct and behaviour**
4. **Taking informed and transparent decisions which are subject to effective scrutiny and managing risk**
5. **Developing the capacity and capability of Members and officers to be effective**
6. **Engaging with local people and other stakeholders to ensure robust public accountability**

Governance is about how local government bodies ensure that they are **doing the right things, in the right way, for the right people, in a timely, inclusive, open, honest and accountable manner**. By publishing this Local Code on Corporate Governance the Council is demonstrating its commitment to achieving these aims.

Nottinghamshire County Council, in embracing the core principles, will exercise leadership for Nottinghamshire by providing a vision for our community and leading by example in the way it makes decisions, and implements those decisions.

Nottinghamshire County Council will produce an **annual governance statement** in order to report publicly on the extent to which it complies with the core principles including how it has monitored the effectiveness of its governance arrangements in the year, and on any planned changes in the coming period.

Nottinghamshire County Council's Chief Executive will be responsible for overseeing the implementation and monitoring of the Local Code on Corporate Governance, reviewing its operation in practice and recommending any changes that may be necessary to maintain it and ensure its effectiveness in practice. The Chief Executive and Corporate Directors will be responsible for ensuring that officers in their departments are aware of and embrace the principles of good corporate governance set out in this Code.

The **core principles** have been translated into a **framework** which seeks to ensure that they are fully integrated in the conduct of the Council's business and establishes a means of demonstrating compliance. The framework is based on the SOLACE/CIPFA 2007 publication "Delivering Good Governance in Local Government".

Nottinghamshire County Council will respond positively to the recommendations of external audit and statutory inspectors in respect of corporate governance and implement agreed actions effectively.

THE CORE PRINCIPLES - FRAMEWORK

1. FOCUSING ON THE PURPOSE OF THE COUNCIL AND ON OUTCOMES FOR THE COMMUNITY AND CREATING AND IMPLEMENTING A VISION FOR THE LOCAL AREA, BY:

1.1 exercising strategic leadership by developing and clearly communicating the Council's purpose and vision and its intended outcomes for citizens and service users. To achieve this Nottinghamshire County Council will:

- 1.1.1 develop and promote the Council's purpose and vision;
- 1.1.2 review on a regular basis the Council's vision for the local area and its implication for the Council's governance arrangements;
- 1.1.3 ensure that partnerships are underpinned by a common vision of their work that is understood and agreed by all partners;
- 1.1.4 publish an annual report (the **annual governance statement**) on a timely basis to communicate the Council's activities and achievements, its financial position and performance.

1.2 ensuring that users receive a high quality of service whether directly, or in partnership, or by commissioning. To achieve this Nottinghamshire County Council will:

- 1.2.1 decide how the quality of service for users is to be measured and make sure that the information needed to review service quality effectively and regularly is available;
- 1.2.2 put in place effective arrangements to identify and deal with failure in service delivery.

1.3 ensuring that the Council makes best use of resources and that tax payers and service users receive excellent value for money. To achieve this Nottinghamshire County Council will:

- 1.3.1 decide how value for money is to be measured and make sure that the Council or partnership has the information needed to review value for money and performance effectively. Measure the environmental impact of policies, plans and decisions.

1.4 Examples of how Nottinghamshire County Council could demonstrate its commitment to this core principle:

- 1.4.1 local code on corporate governance;
- 1.4.2 partnership protocols;
- 1.4.3 local area agreements;
- 1.4.4 annual financial statements;
- 1.4.5 annual business plan;
- 1.4.6 complaints procedure.

2. MEMBERS AND OFFICERS WORKING TOGETHER TO ACHIEVE A COMMON PURPOSE WITH CLEARLY DEFINED FUNCTIONS AND ROLES, BY:

- 2.1 ensuring effective leadership throughout the Council and being clear about executive and non-executive functions and of the roles and responsibilities of the scrutiny function. To achieve this Nottinghamshire County Council will:
- 2.1.1 set out a clear statement of the respective roles and responsibilities of the Executive and of the Executive's Members individually and the Council's approach towards putting this in to practice;
 - 2.1.2 set out a clear statement of the respective roles and responsibilities of other Council Members, Members generally and senior officers.
- 2.2 ensuring that a constructive working relationship exists between Council Members and officers and that the responsibilities of Members and officers are carried out to a high standard. To achieve this Nottinghamshire County Council will:
- 2.2.1 determine a scheme of delegation and reserve powers within the Constitution including a formal schedule of those matters specifically reserved for collective decision of the Council, taking account of relevant legislation, and ensure that it is monitored and updated when required;
 - 2.2.2 make the Chief Executive responsible and accountable to the Council for all aspects of operational management;
 - 2.2.3 develop protocols to ensure that the Leader and Chief Executive negotiate their respective roles early in the relationship and that a shared understanding of roles and objectives is maintained;
 - 2.2.4 make the Council's Section 151 Officer responsible to the Council for ensuring that appropriate advice is given on all financial matters, for keeping proper financial records and accounts, and for maintaining an effective system of internal financial control;
 - 2.2.5 make the Monitoring Officer responsible to the Council for ensuring that agreed procedures are followed and that all applicable statutes and regulations are complied with.
- 2.3 ensuring relationships between the Council, its partners and the public are clear so that each knows what to expect of the other. To achieve this Nottinghamshire County Council will:
- 2.3.1 develop protocols to ensure effective communication between Members and officers in their respective roles;
 - 2.3.2 set out the terms and conditions for remuneration of Members and officers and an effective structure for managing the process, including an effective remuneration panel;
 - 2.3.3 ensure that effective mechanisms exist to monitor service delivery;
 - 2.3.4 ensure that the organisation's vision, strategic plans, priorities and targets are developed through robust mechanisms, and in consultation

- with the local community and other key stakeholders, and that they are clearly articulated and disseminated;
 - 2.3.5 when working in partnership, ensure that Members are clear about their roles and responsibilities both individually and collectively in relation to the partnership and to the Council;
 - 2.3.6 when working in partnership ensure that there is clarity about the legal status of the partnership and ensure that representatives of organisations both understand and make clear to all other partners the extent of their authority to bind their organisation to partner decisions.
- 2.4 Examples of how Nottinghamshire County Council could demonstrate its commitment to this core principle:
- 2.4.1 the Council's Constitution;
 - 2.4.2 record of decisions and supporting materials;
 - 2.4.3 conditions of employment;
 - 2.4.4 scheme of delegation;
 - 2.4.5 job descriptions/specification;
 - 2.4.6 member/officer protocol;
 - 2.4.7 corporate plans;
 - 2.4.8 budgets;
 - 2.4.9 protocols for partnership working.

3. PROMOTING VALUES FOR THE COUNCIL AND DEMONSTRATING THE VALUES OF GOOD GOVERNANCE THROUGH UPHOLDING HIGH STANDARDS OF CONDUCT AND BEHAVIOUR, BY:

- 3.1 ensuring the Council's Members and officers exercise leadership by behaving in ways that exemplify high standards of conduct and effective governance. To achieve this Nottinghamshire County Council will:
- 3.1.1 ensure that the Council's leadership sets a tone for the organisation by creating a climate of openness, support and respect;
 - 3.1.2 ensure that standards of conduct and personal behaviour expected of Members and officers, of work between Members and officers and between the Council, its partners and the community are defined and communicated through codes of conduct and protocols;
 - 3.1.3 put in place arrangements to ensure that Members and officers of the Council are not influenced by prejudice, bias or conflicts of interest in dealing with different stakeholders and put in place appropriate processes to ensure that they continue to operate in practice.
- 3.2 ensuring that organisational values are put into practice and are effective. To achieve this Nottinghamshire County Council will:
- 3.2.1 develop and maintain shared values including leadership values for both the Council and officers reflecting public expectations, and communicate these with Members, officers, the community and partners;

- 3.2.2 put in place arrangements to ensure that systems and processes are designed in conformity with appropriate ethical standards, and monitor their continuing effectiveness in practice;
 - 3.2.3 develop and maintain an effective Standards Committee;
 - 3.2.4 use the Council's shared values to act as a guide for decision making and as a basis for developing positive and trusting relationships within the Council;
 - 3.2.5 in pursuing the vision of a partnership, agree a set of values against which decision making and actions can be judged. Such values must be demonstrated by partners' behaviour both individually and collectively.
- 3.3 Examples of how Nottinghamshire County Council could demonstrate its commitment to this core principle:
- 3.3.1 codes of conduct;
 - 3.3.2 performance appraisal;
 - 3.3.3 complaints procedures;
 - 3.3.4 anti-fraud and - corruption policy;
 - 3.3.5 Standing Orders;
 - 3.3.6 Financial Regulations;
 - 3.3.7 regular reporting to Full Council;
 - 3.3.8 decision-making practices;
 - 3.3.9 protocols for partnership working.

4. TAKING INFORMED AND TRANSPARENT DECISIONS WHICH ARE SUBJECT TO EFFECTIVE SCRUTINY AND MANAGING RISK, BY:

- 4.1 being rigorous and transparent about how decisions are taken and listening and acting on the outcome of constructive scrutiny. To achieve this Nottinghamshire County Council will:
- 4.1.1 develop and maintain an effective scrutiny function which encourages constructive challenge and enhances the Council's performance overall and that of any organisation for which it is responsible;
 - 4.1.2 develop and maintain open and effective mechanisms for documenting evidence for decisions and recording the criteria, rationale and considerations on which decisions are based;
 - 4.1.3 put in place arrangements to safeguard Members and employees against conflicts of interest and put in place appropriate processes to ensure that they continue to operate in practice;
 - 4.1.4 develop and maintain an effective Audit Committee which is independent of the executive and scrutiny functions or make other appropriate arrangements for the discharge of the functions of such a committee;
 - 4.1.5 ensure that effective, transparent and accessible arrangements are in place for dealing with complaints.

- 4.2 having good quality information, advice and support to ensure that services are delivered effectively and are what the community wants/needs. To achieve this Nottinghamshire County Council will:
- 4.2.1 ensure that those making decisions whether for the Council or the partnership are provided with information that is fit for the purpose – relevant, timely and gives clear explanations of technical issues and their implications;
 - 4.2.2 ensure that proper professional advice on matters that have legal or financial implications is available and recorded well in advance of decision making and used appropriately.
- 4.3 ensuring that an effective risk management system is in place. To achieve this Nottinghamshire County Council will:
- 4.3.1 ensure that risk management is embedded into the culture of the Council, with Members and managers at all levels recognising that risk management is part of their jobs;
 - 4.3.2 ensure that effective arrangements for whistleblowing are in place to which officers, staff and all those contracting with or appointed by the Council have access.
- 4.4 using their legal powers to the full benefit of the citizens and communities in their area. To achieve this Nottinghamshire County Council will:
- 4.4.1 actively recognise the limits of lawful activity placed on them by, for example, the ultra vires doctrine but also strive to utilise their powers to the full benefit of their communities;
 - 4.4.2 recognise the limits of lawful action and observe both the specific requirements of legislation and the general responsibilities placed on authorities by public law;
 - 4.4.3 observe all specific legislative requirements placed upon them, as well as the requirements of general law, and in particular to integrate the key principles of good administrative law – rationality, legality and natural justice – into their procedures and decision-making processes.
- 4.5 Examples of how Nottinghamshire County Council could demonstrate its commitment to this core principle:
- 4.5.1 Members' Code of Conduct;
 - 4.5.2 training for committee Members;
 - 4.5.3 complaints procedure;
 - 4.5.4 risk management protocol;
 - 4.5.5 financial standards and regulations;
 - 4.5.6 whistleblowing policy;
 - 4.5.7 Monitoring Officer provisions.

5. DEVELOPING THE CAPACITY AND CAPABILITY OF MEMBERS AND OFFICERS TO BE EFFECTIVE, BY:

- 5.1 making sure that Members and officers have the skills, knowledge, experience and resources they need to perform well in their roles. To achieve this Nottinghamshire County Council will:
 - 5.1.1 provide induction programmes tailored to individual needs and opportunities for Members and officers to update their knowledge on a regular basis;
 - 5.1.2 ensure that the statutory officers have the skills, resources and support necessary to perform effectively in their roles and that these roles are properly understood throughout the Council.
- 5.2 developing the capability of people with governance responsibilities and evaluating their performance, as individuals and as a group. To achieve this Nottinghamshire County Council will:
 - 5.2.1 assess the skills required by Members and officers and make a commitment to develop those skills to enable roles to be carried out effectively;
 - 5.2.2 develop skills on a continuing basis to improve performance, including the ability to scrutinise and challenge and to recognise when outside expert advice is needed;
 - 5.2.3 ensure that effective arrangements are in place for reviewing the performance of the Executive as a whole and of individual Members and agreeing an action plan which might, for example, aim to address any training or development needs.
- 5.3 encouraging new talent for membership of the Council so that best use can be made of individuals' skills and resources in balancing continuity and renewal. To achieve this Nottinghamshire County Council will:
 - 5.3.1 ensure that effective arrangements are in place designed to encourage individuals from all sections of the community to engage with, contribute to and participate in the work of the Council;
 - 5.3.2 ensure that career structures are in place for Members and officers to encourage participation and development.
- 5.4 Examples of how Nottinghamshire County Council could demonstrate its commitment to this core principle:
 - 5.4.1 training and development plan;
 - 5.4.2 induction programme;
 - 5.4.3 update courses/information;
 - 5.4.4 succession planning.

6. ENGAGING WITH LOCAL PEOPLE AND OTHER STAKEHOLDERS TO ENSURE ROBUST PUBLIC ACCOUNTABILITY, BY:

- 6.1 exercising leadership through a robust scrutiny function which effectively engages local people and all local institutional stakeholders, including partnerships, and develops constructive accountability relationships. To achieve this Nottinghamshire County Council will:
 - 6.1.1 make clear to themselves, all officers and the community to whom they are accountable and for what;
 - 6.1.2 consider those institutional stakeholders to whom the Council is accountable and assess the effectiveness of the relationships and any changes required;
 - 6.1.3 produce an annual report on the activity of the scrutiny function.
- 6.2 taking an active and planned approach to dialogue with and accountability to the public to ensure effective and appropriate service delivery whether directly by the Council, in partnership or by commissioning. To achieve this Nottinghamshire County Council will:
 - 6.2.1 ensure clear channels of communication are in place with all sections of the community and other stakeholders, and put in place monitoring arrangements and ensure that they operate effectively;
 - 6.2.2 hold meetings in public unless there are good reasons for confidentiality;
 - 6.2.3 ensure that arrangements are in place to enable the Council to engage with all sections of the community effectively. These arrangements should recognise that different sections of the community have different priorities and establish explicit processes for dealing with these competing demands;
 - 6.2.4 establish a clear policy on the types of issues they will meaningfully consult on or engage with the public and service users about including a feedback mechanism for those consultees to demonstrate what has changed as a result;
 - 6.2.5 on an annual basis, publish a performance plan giving information on the Council's vision, strategy, plans and financial statements as well as information about its outcomes achievements and the satisfaction of service users in the previous period;
 - 6.2.6 ensure that the Council as a whole is open and accessible to the community, service users and its officers and ensure that it has made a commitment to openness and transparency in all its dealings, including partnerships, subject only to the need to preserve confidentiality in those specific circumstances where it is proper and appropriate to do so.
- 6.3 Making the best of human resources by taking an active and planned approach to meet responsibility to officers. To achieve this Nottinghamshire County Council will:

- 6.3.1 develop and maintain a clear policy on how officers and their representatives are consulted and involved in decision making.
- 6.4 Examples of how Nottinghamshire County Council could demonstrate its commitment to this core principle:
 - 6.4.1 community strategy;
 - 6.4.2 annual scrutiny report;
 - 6.4.3 partnership framework;
 - 6.4.4 annual business plan;
 - 6.4.5 Constitution.

CORPORATE POLICY FOR INVOLVEMENT IN PARTNERSHIPS AND OUTSIDE BODIES

Nottinghamshire County Council is involved in a broad range of outside bodies. These range from partnerships with other public bodies, the private sector and voluntary organisations to companies and trusts with social or community objectives. There are lots of different types of bodies with different rules and ways of working, details of which are outlined in the Council's Policy on Involvement in Partnerships and Outside Bodies. This policy was adopted by the County Council on 25 September 2003.

The policy considers why the County Council should be involved in outside bodies and whether this stems from the need to deliver a project in partnership; to provide an organisation with democratic legitimacy; to provide community leadership; to protect the County Council's investment or assets; to provide skills and expertise which may not otherwise be available; or for some other suitable reason.

The policy also considers what the implications may be for the County Council of being involved in outside bodies. For example there are currently:

- implications for the County Council in connection with monitoring, funding, public accountability or in providing other support;
- the potential for personal liability of those appointed on to the Management Committee or Board or outside bodies, for example if the company gets into financial difficulties or where there may be a breach of the person's duties to the outside body; and
- controls under Part V Local Government and Housing Act 1989 which may impact upon the County Council from the County Council's involvement in companies.

The County Council has also adopted a new Code of Conduct for Representatives on Outside Bodies which outlines the duties and responsibilities in more detail and provides general guidance for Members, officers and others who may represent the Council on outside bodies.

The County Council operates a partners' liaison policy 'Listening to you – working in partnership with the County Council'.

POLICY GUIDANCE FOR COUNTY COUNCIL INVOLVEMENT IN PARTNERSHIPS AND OUTSIDE BODIES

Context

1.1. Introduction

There are many reasons why the County Council may wish to enter into Partnerships with or be involved in Companies and Outside Bodies. Innovative Partnerships and arrangements. For example such arrangements may:

- help to lever in external finance which would not otherwise be available to the Council;
- be able to share skills, knowledge and expertise in order to improve service delivery;
- be able to supplement the Council's functions and contribute towards delivering the aims and objectives of the Strategic Plan and Community Strategy for the area;
- add value by providing support which would not otherwise be available.

Councils have been involved in Companies and Partnerships for a long time in diverse and innovative arrangements that have covered a spectrum of services from the arts and community projects, through regeneration, training and front-line service delivery. Any Partnership will always need to be appropriate to the authority, the area and the specific objectives and purposes it is designed to support at the particular time.

This document has been prepared to enable the County Council to give consideration to its involvement in those partnerships and outside bodies and the development of a policy framework for participation. By way of background information the Annex to this document sets out, in broad terms, the different types of outside body.

1.2. Why should the County Council be involved in outside bodies?

There are a number of reasons why the County Council may wish to establish, be involved in and appoint representatives to outside bodies. They include the following:

- to deliver a Partnership Project which requires the input of other partners;
- to provide knowledge, skills and expertise which may not otherwise be available;
- to protect the Council's investment or assets, ie, if the Council has provided grant funding or provides funding for service delivery;
- to provide local accountability or democratic legitimacy through the appointment of an elected representative;
- to ensure that good relationships can be maintained with the body;
- to lever in external funding which would not be available to the County Council on its own;

- or some other good reason.

It may be that the County Council has traditionally appointed to certain Bodies, but should review its involvement in those Bodies as things may have changed as time has moved on. What may have been legitimate when the organisation was created, may no longer be a priority for the Council in the current circumstances and pressures on resources.

With the help of the County Council's representatives on outside bodies, the Council may be able, over time, to review its involvement and to ensure that all of the current appointments continue to be relevant and appropriate.

1.3. Clarity of purpose/objectives

Before entering into a new partnership or involvement in an outside body, the County Council needs to be clear about the Council's objectives and how the partnership or outside body will help to deliver those objectives.

Similar questions should also be asked periodically about the Council's representation on outside bodies. For example, what sort of organisation is appropriate and how will that partnership or outside body help to deliver the County Council's Strategic Plan and Community Strategy.

Clarity of purpose and objectives will also be important to ensure that the Council has the requisite powers to participate in the body and to provide funding or other support, as considered appropriate.

Some of the questions which the Council may wish to ask are:

- why does the Council wish to be involved in the body (see 1.3 above)?;
- whether an outside body will be able to access funds or market which are not available to the Council alone?;
- how can the services or initiative/project best be delivered?;
- is it necessary to create a separate legal entity?;
- is external expertise required to deliver the objectives?;
- what are the problems or the challenges which the Council is trying to address?;
- can existing constraints on service delivery be removed by alternative structures?;
- what influence or control would the Council wish to have over the future operation of the initiative/project/service?;
- what sort of partnership vehicle is appropriate, in view of potential liabilities?;
- how will these proposals help deliver the Council's Strategic Plan and Community Strategy, and other relevant plans and policies, vision and aims?;
- what impact will there be on the Council (including the resources required for monitoring and ensuring accountability)?.

1.4. Powers for involvement in partnerships and outside bodies

There are a number of powers authorising local authorities to be involved in partnerships and outside bodies and it should not be forgotten that as well as finding the appropriate power, the powers need to be exercised properly.

The Council therefore needs to make sure:

- that it identifies the power (ie has the capacity to enter into the partnership, form a company, or participate in the outside body); and
- exercises the powers properly.

Local authorities must act for proper purposes ie proper objectives, they must take into account all relevant considerations and ignore irrelevant matters, must follow all procedural requirements ie the Council's scheme of delegation and procedure rules set out in the Constitution, and must not take a decision which is irrational, in the sense of a decision that no reasonable authority would make (the concept of *Wednesbury* reasonableness). In exercising powers local authorities also need to be mindful of their fiduciary duty to protect the assets of the authority on behalf of the taxpayers and residents whose interests the Council serves, and other statutory duties such as Best Value.

Advice on powers for specific schemes should be sought from the Monitoring Officer.

1.5. The nature of outside bodies

There are a number of legal forms which an outside body may take. The Council should establish a framework (linked to appropriate elements of the Corporate Risk Assessment Policy) within which decisions are taken as to the appropriate participation in an outside body. The Office of Government Commerce "Gateway Review" process could be looked at as a model for certain aspects of this framework.

1.6. Relationships with outside bodies

The County Council has many different relationships with partners and outside bodies, depending upon the nature of the partnership/body and a number of other factors, such as the extent to which the Council may provide funding, assets or perhaps if the organisation delivers services on behalf of the Council. As well as any specific financial issues arising from the particular arrangements, the Council should have regard to its general public stewardship/accountability role and responsibilities.

1.7. Conflicts of interest

The Code of Representation on Outside Bodies sets out in more detail issues regarding conflicts of interest which may arise from time to time for Council representatives on outside bodies. Where Members are involved, these may involve the provisions of the Member Code of Conduct. Any conflicts of interest

which officers may have should be declared in writing to their manager under Section 117 Local Government Act 1972. Advice and guidance on managing those conflicts is contained in the Code at paragraph 5-54.

1.8. Reviewing involvement from time to time

Have things changed?

The County Council is involved in hundreds of relationships with outside bodies and it is therefore appropriate to review the Council's involvement from time to time. It is recommended that involvement is reviewed every year or two and that when such reviews take place, the relevant Council lead officer notifies the Monitoring Officer and the Chief Finance Officer and provides the following information:

- name of Lead Officer;
- purpose of the Council's involvement (see paragraph 1.3 above);
- nature of arrangements, ie representation, service contract, grant funding;
- reporting lines to Cabinet, Council or Committee;
- list names of Council representatives;
- details of the last monitoring report to the Council (ie report and accounts or general information), including the financial position of the organisation;
- opinion of the Lead Officer on whether the Council's involvement should be on-going, and why?;
- status of the organisation under Part V Local Government & Housing Act 1989 (and whether it is controlled, regulated or minority interest);
- date and date of next planned review;
- any recommendations (ie to cease representation); and
- any other relevant information.

How effective is the Council's involvement?

In future, the Council may need to be more selective about whether to be involved by being represented and who is involved in outside bodies, because of the huge amount of person hours currently devoted to involvement, and the risks involved. The Council really needs to decide whether or not involvement is necessary in order to contribute towards the Community Strategy and the Council's aims and objectives, or whether the organisation could achieve such benefits without direct representation from the Council. This may also minimise any potential liability for individuals involved in outside bodies on behalf of the Council. A risk assessment should be an integral part of any review.

CODE OF CONDUCT FOR REPRESENTATIVES ON OUTSIDE BODIES

PART ONE- GENERAL PRINCIPLES

1. INTRODUCTION AND PURPOSE OF THIS CODE

- 1.1 Nottinghamshire County Council is increasingly working with other local authorities, the private, voluntary and community sectors in a broad range of partnership structures which involve different responsibilities and potential liabilities. The rules can be complex and diverse and there are many pitfalls for the inexperienced or unwary.
- 1.2 This Code is for the guidance of Council representatives and supplements the Council's corporate policy and strategy for involvement in partnerships and outside bodies. It aims to clarify roles and responsibilities; to point Members, officers and other nominees in the right direction; and to highlight when it may be appropriate to seek further advice and assistance.
- 1.3 Partnership working is a frequent and recognised way of achieving shared objectives. Partnerships involve different organisations with a variety of legal structures.
- 1.4 This Code cannot prescribe the precise roles and relationships which are appropriate in every circumstance, because they are many and varied. It covers the most important rules to be followed in situations that are likely to be encountered by County Council appointees.
- 1.5 If ever you are unsure about your role or responsibilities in relation to an outside body then please contact the Monitoring Officer at the earliest opportunity.
- 1.6 For further information about this Code or the Corporate Policy for involvement in outside bodies, please contact the Council's Monitoring Officer. If you require information about becoming an independent member of an outside body please contact the Nottinghamshire Association of Voluntary Organisations (telephone 01623 651170) or the National Council of Voluntary Organisations (telephone 0800 2798798).

2. POLICY ON INVOLVEMENT AND REPRESENTATION

The Council has adopted a policy on when it should be involved in partnerships and outside bodies which explains some of the reasons why the Council may wish to appoint a representative eg in order to provide skills or democratic legitimacy, or to protect the Council's assets, or for other reasons. In order to be able to appoint to outside bodies, the Council will need to be clear what the bodies' objectives are and how they link to the Council's own Strategic Plan and Community Strategy, Vision and Aims. The Council will also need to ensure that it has the powers to participate in the body.

2.1 How are appointments made?

Under the Council's Constitution, appointments to outside bodies will be made by the full Council unless the body operates in connection with the functions of the Cabinet (ie is an executive function) in which case the Cabinet will appoint the representatives. Alternatively, there are some cases where that responsibility has been delegated by the Council to the Service Manager Member Support, the Service Manager Decision Making Governance and Scrutiny or the Monitoring Officer acting on behalf of the Council's Chief Executive, following consultation with the Leaders or Chief Whips of the three political groups.

2.2 Who should the Council's representative be?

The choice of the most appropriate representative will depend upon the nature of the outside body and why the Council wishes to be involved. In some circumstances it may be appropriate for officers with professional knowledge, skills and experience to be appointed, in other circumstances Members may be most appropriate; or in some cases third party appointments may be most appropriate.

If the body has a two tier structure, such as a company or an unincorporated association (ie with Members/shareholders and a management committee/board) then you will also need to be clear whether you have been appointed to represent the Council in both capacities, or whether the Council will appoint different people for each of those functions.

2.3 Reporting back to Council

It is important that anyone who is appointed to an outside body provides information and reports periodically to the Council on what the organisation is doing. In most cases, an Annual Report, along with the report and accounts will suffice and your own perspective of the organisation's achievements and potential problems at that point in time; you can also perhaps provide details of the Annual General Meeting of the organisation.

Where the Council provides financial assistance to a charity or voluntary organisation of over £2,000 per annum then the body is under an obligation to state in writing to the Council how the funding has been used (S137A Local Government Act 1972). In addition the Council must make arrangements under S71(5) Local Government and Housing Act 1989 for the Council or Committees to ask questions of Members and officers who are appointed as directors to companies.

You are not required to disclose anything which is commercially confidential to the outside body as this may be in breach of:

- the Member's Code of Conduct;
- your duties of confidentiality to the outside body (whether as director, trustee or more generally); or

- may be a breach of confidence which is something which is actionable at law and could result in an outside organisation suing you and/or the Council for disclosure where loss is suffered.

If you need any advice or assistance at any time then you should contact the Monitoring Officer. You can provide officers with papers from an outside body on a confidential basis, with the sole purpose of advising or assisting you with a Council appointed role.

3. DUTIES AND RESPONSIBILITIES OF DIRECTORS AND TRUSTEES

3.1 When does an appointment take effect?

Any appointment as a director of a company needs to be confirmed by the completion of a form which is signed and submitted to Companies House. The form, known as a "288", requires details of your home address and any current directorships along with any previously held within the last 5 years. The form also needs to be countersigned by another director or the Company Secretary. When you cease to be a director of a company you must also file a form 288 at Companies House.

3.2 Duties of a director

Directors take responsibility for all of the main decisions in relation to the operation of the company including entering into contracts. A few areas are retained for shareholders/members, these include issues such as agreeing the level of dividends, changing the name of the company and sometimes electing or dismissing directors.

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 attend board meetings and follow the rules on the declaration of interests;
- to exercise reasonable skill and care (this is a subjective test based upon the individual's own knowledge and experience) and involves due diligence in the performance of his/her duties as a director; and
- to comply with statutory obligations imposed by the Companies Acts, other legislation and any procedural rules set out in the constitution.

Some of the statutory obligations applicable to directors include:

- maintaining proper accounting records (failure to do so may be a criminal offence);
- maintaining the statutory books ie list of members, directors, interests, keeping minutes;
- VAT and tax penalties are also directors' responsibilities; and

- there may be personal responsibility where the commission of any offence is due to a director's consent, connivance or neglect eg environmental protection or health and safety legislation.

3.3 Extra responsibilities for trustees

In general terms the duties of Trustees cover the above as well as making sure the body acts in accordance with the overriding duty to the beneficiaries of the trust. Those beneficiaries may be people within Nottinghamshire or a specific category of people for whose benefit the trust was originally established. The duties of trustees are largely contained within the Trustee Act 2000.

There is now a statutory duty of care under the Trustee Act 2000 which applies when a Trustee is:

- exercising a general power of investment or any specific power of investment arising from the Trust;
- making investments in line with the Standard Investment Criteria under section 4 of the Act or taking independent advice on investments under section 5;
- exercising the power to acquire land or deal in land;
- appointing agents, custodians or nominees or in reviewing their obligations;
- compounding liabilities under section 15 of the Trustee Act 1925;
- insuring Trust property; and
- dealing with reversionary interests, valuations or audits.

The standard of care expected of Trustees is that which is reasonable in the circumstances, taking into account any particular skills or competencies possessed by the individual, eg the standard of care will be higher for someone with an accounting qualification in relation to financial matters, than someone without the qualification.

Duties and responsibilities applicable to charities are even more extensive, as charitable directors and trustees have additional responsibilities under the Charities Acts. However, there is extensive guidance available from the Charity Commission in connection with those additional responsibilities. A separate leaflet is available from the Charity Commission entitled "Responsibilities of Charity Trustees" (CC3) or is available on <http://www.charity-commission.gov.uk> (telephone 0870 3330123). In many cases the Charity Commission needs to be consulted before a charity takes action or decides on a particular course of action involving charity property.

3.4 Directors' and trustees' responsibilities to others

The law generally regards a director as being in a position of trust, arising from their fiduciary duties. This duty is usually to the shareholders or members of a company and sometimes for the beneficiaries if they are not the shareholders.

When exercising their powers directors must take into consideration the interests of employees of the Company as well as the interests of the shareholders/members (and the beneficiaries of any trust).

If the organisation gets into financial difficulties then the interests of creditors become more important and it may be that the creditors' interests become paramount over duties and responsibilities owed to the others mentioned above.

3.5 Companies

Where the Council is involved in companies or industrial and provident societies extra rules set out in the Local Government and Housing Act 1989 apply. Depending upon how the company is classified (controlled, arms length, influenced or minority interest, it may be regulated by provisions in the Companies Order).

The Act imposes a range of procedural and propriety controls, including limits on any remuneration payable to Members, barring people disqualified from being a councillor from being a director, preventing party political publicity, requiring the provision of information to the Council and its auditors, and allowing access to information (unless this is commercially confidential).

Any Member of the Council should also be entitled to ask questions of a Member or officer who acts as a director of a company on behalf of the Council, and the Council therefore needs to provide appropriate opportunities to enable this to take place.

4. OBSERVERS AND ADVISERS

In some cases the Council may not appoint a full representative to an outside body; it may prefer to rely upon an observer or an adviser to explain the Council's views and to keep the County Council informed of the proceedings of that outside body.

An observer is someone who is invited with the agreement of the Board or management committee of the organisation. An observer does not have the automatic right to speak nor do they have any entitlement to vote. However, the Chair of the organisation may request that the observer participates in some aspects of business at the invitation of the meeting.

An adviser may be called upon to advise the Council's representatives on a body or to advise the outside body directly. Any adviser should always make it clear that they are first and foremost responsible for the County Council's involvement rather than the body itself, however, in most cases, the interests of the Council and the body will coincide.

The individual appointed therefore needs to be aware of potential conflicts of interest and what to do in connection with the management of those conflicts. It is also important that the adviser understands that s/he may be liable for any

advice given which proves to be negligent. If an adviser is unsure as to the position then they should decline to give an opinion or advice, and should suggest that the outside body takes its own independent advice and ensures that it understands it is responsible for its own decision.

In addition, observers and advisers need to be aware that in relation to companies they may inadvertently fall into the position of a director. The definition of a director is anyone who occupies the position of a director, no matter what they are called (eg member of a management committee). However, someone in accordance with whose directions or instructions the directors of a company are accustomed to act, but who is not formally on the Board is known as a “shadow director”. So, if someone effectively controls or directs the activities of a company, even though they are not a registered director, they may still fall within the definition of a shadow director and will have to comply with all of the duties and responsibilities of directors set out above. There are some exceptions in relation to professional advisers, however, anyone advising a company or outside body should be aware of the potential for personal liability.

5. POTENTIAL PERSONAL LIABILITY

Whilst it may be seen as a significant responsibility or even a privilege to represent the Council on outside bodies, frequently individuals are not aware of the potential consequences which could arise from such representation. There are many circumstances in which your acts or the acts of the body on which you represent the Council could translate into personal financial loss.

5.1 Unincorporated associations

As set out in the corporate policy document, unincorporated partnerships or associations are not separate legal entities. This means that the individuals who are represented on the management committee are personally liable for all of the acts or omissions of the body. Each of the individuals are jointly and individually liable for what the organisation does. Partnerships and voluntary organisations often have this legal status. However, they should still have a written constitution setting out the procedural rules which need to be followed and governing how it operates.

5.2 Companies, statutory corporations and industrial and provident societies (IPS)

Incorporated bodies include companies, statutory corporations and Industrial and Provident Societies. Bodies such as schools, quangos and other public authorities ie police and fire authorities are often created by statute and are statutory corporations. Their rules and constitution will usually be set out in the Act which created them.

Since these bodies are separate legal entities they are able to hold property or sue and be sued in their own name. They have limited liability and in general terms it is not possible to look behind the corporate veil of incorporation.

However, there are circumstances when directors or members of the management committee of such bodies can still be personally liable under company and insolvency law. These include:

- where company details are not properly shown on cheques or other correspondence which may mean that individuals are personally liable on contracts;
- where there has been any misfeasance (ie using the company facilities for personal gain) or breaches of the fiduciary or other duties owed to the company (in some cases there may also be criminal offences);
- where there has been “wrongful trading” (where the directors or management committee members 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 insolvent liquidation);
- where there is “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. There may also be questions of fraudulent preference where certain debtors have been paid in preference to others within up to two years of insolvency);
- offences committed by the company which can be attributed to neglect on behalf of the directors, such as insider dealing, those under the Companies Act, or health and safety legislation.

The above cases are illustrative.

5.3 Disqualification from being a director

The Company Directors Disqualification Act 1986 empowers the Court to disqualify people from being a director for up to 15 years when they have been involved in criminal offences, have persistently been in default in making returns to Companies House, where they are bankrupt, where there has been fraudulent or wrongful trading, or where they are otherwise considered unfit to be directors.

The overriding responsibility of a director/management committee member is to act in the best interests of the company/IPS. He or she must exercise independent judgement in making decisions in accordance with the duty of care to the company.

A number of criminal offences could also apply to both the company/IPS and directors or other people involved in the management of the company (ie the chief executive and company secretary), even if they are not on the board or the management committee.

5.4 Charities and trusts

Trusts are arrangements in which trustees hold property or assets which must be used or maintained for the benefit of other people (“the beneficiaries”), or in

the case of charitable trusts, for a charitable purpose. A trust may be incorporated or unincorporated. Trusts are not required to register, unless of course they are a corporate body (company/IPS) or are charitable.

To be a charity, an organisation must operate for charitable purposes. Charitable purposes can be grouped under four main headings:

- the relief of financial hardship;
- the advancement of education;
- the advancement of religion; and
- certain other purposes for the benefit of the community.

All charities must be for the general benefit of the public or a significant section of the community. The Charity Commission is reviewing the register to make sure that bodies are still charitable in the way they operate and will look very closely at new bodies which are being established in order to ensure that they do intend to operate within the boundaries of charity law.

The principles set out above in relation to personal liability of directors and members of management committees apply equally to trusts and charities (which may be incorporated or unincorporated bodies). Additional duties need to be complied with by trustees and charity trustees under the various Charities Acts.

There may be benefits from being a charity, including tax and VAT concessions which may make charitable status advantageous.

5.5 Duties of confidentiality

Someone representing the Council on an outside body may find it difficult to balance the confidentiality duties owed both to the Council and the outside body, when in the alternative forum. Confidential information must be treated with care and if you have any doubt over the status of any information then you should keep that confidential and check with the relevant officer whether or not it is something which is already in the public domain or which may be disclosed.

The legal position is that someone who has received information in confidence is not allowed to take improper advantage of it. Deliberate leaking of confidential information will also be a breach of the Code of Conduct for Members – it is extremely rare that leaking confidential information can be justified in the public interest (as the Courts have defined public interest very narrowly).

5.6 The Members' Code of Conduct

Where a Member acts as a representative of the Council on an outside body, they must comply with the Code of Conduct, unless that body is another relevant authority which has its own Code; or unless observance of the Code

would conflict with any other obligations (ie the duty to act in the best interests of the outside body).

Under the Code a Member must not:

- disclose information given to him/her in confidence by anyone, or information acquired which s/he believes is of a confidential nature, without the consent of a person authorised to give it, or unless s/he is required by law to do so;
- nor prevent another person from gaining access to information to which that person is entitled by law.

There may be other areas of the Code which are also relevant as conduct involving disclosure of confidential information may also be regarded as bringing the Member or the Council into disrepute; may compromise the impartiality of people who work for the Council; may improperly confer or secure an advantage or disadvantage for the Member or any other person; and in some cases knowledge may give someone a personal interest.

5.7 Duty to the outside body

Information gained through representation on an outside body may or may not be confidential. Usually, that outside body will need to produce annual reports and accounts and other information which need to be made publicly available, and may produce literature for public access on its plans and strategies. All of this information may be freely disclosed. If, for example, the body receives public funding and provides services which are available to the public, then the provisions of the Freedom of Information Act 2000 may also apply. This may give individuals access to information on payment of reasonable costs, unless it falls within certain exemptions under the Act.

However, a lot of information you will receive as a member of the management committee or on the board will not be in the public domain and you must therefore respect confidentiality in relation to that information.

In some cases disclosure of confidential information might amount to a breach of duty as a director of an outside body, or could lead to proceedings for breach of confidence.

5.8 Breach of confidence

Where someone discloses information which benefits somebody else but results in a loss to an organisation, then the organisation may be able to sue under the tort of breach of confidence. Damages could be awarded against the person who disclosed the information (and potentially against the Company if the unlawful disclosure was authorised by the Company). Whilst such cases are not common, they nevertheless arise from time to time.

5.9 Press and publicity and qualified privilege

A Member or officer of the Council may often be the relevant spokesperson in connection with interest from the press or in dealing with public relations. In such a capacity Members and officers need to be very careful what they say, both about the Council and its affairs and also any outside body in which it is involved.

Whilst there may be some protection from libel and slander claims (together they are known as defamation), because of the special position of local authorities some information is given “qualified privilege”. Qualified privilege attaches to meetings of the Council, Committees or the Cabinet and any associated papers, but not to everything that Members and officers do.

However, if you publish a false statement about anyone which may injure his or her reputation in the eyes of ordinary members of the public, without justification, or without checking that it is true, then you may be liable for defamation. This means that provided the occasion is protected then Members have freedom of speech and will not be liable for defamation, so long as statements are made honestly and without malice or improper motive.

6. DECLARATION OF INTERESTS

6.1 Declarations of interests at meeting of outside bodies

When outside bodies consider issues related to the Council or where personal interests of an individual arise in relation to the body’s activities, these need to be declared in line with the rules of the organisation and the Model Code of Conduct for Members. The specific rules adopted by each body will vary and therefore you should ask for advice and guidance from the secretary of the organisation and/or the Monitoring Officer, as appropriate.

Representatives on the management committee or on the board of an outside body must act in the interests of that body; 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 body – not just to vote in accordance with the Council’s wishes. Representatives 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.

The overriding responsibility is to seek to avoid the situation where duty and interest conflict and therefore if you are unsure about declaring an interest, it would be wise to declare and leave the meeting during consideration of the business.

6.2 Declarations of interests at Council meetings

Members who are appointed to the management committee or board of outside bodies need to declare their interests in meetings of the Council which consider

issues related to that body. Where Members have been appointed by the Council to serve on the organisation they will also need to ensure those details are included on the Register of Interests kept by the Monitoring Officer under the Model Code of Conduct. They will usually have to declare a personal interest but will be able to remain, speak and vote. However, in some circumstances they may have a prejudicial interest under the Code, in which case they would need to take no part in the matter being considered.

Where a councillor is a director or management committee member of an outside body in their personal capacity, then they will need to declare a personal interest, depending upon the circumstances, and may need to leave the room, if it is considered to be a prejudicial interest (which is likely). Please seek advice from the Monitoring Officer before the meeting if you are unsure (officers would declare an interest under S117 Local Government Act 1972).

6.3 Other issues

Occasionally, there may be other reasons why a representative needs to declare an interest under the Code. Whilst involvement in an outside body may amount to a personal interest, in some cases there may be a prejudicial interest arising from the general law, perhaps because the decision is one to which the rules of natural justice apply. The rules of natural justice require public bodies to act fairly, particularly when decisions may affect the rights and freedoms of individuals. Proper procedures must be followed, which avoid any financial or other interest and must avoid the appearance of bias (whether through prior involvement, knowledge or personal circumstances). The rules of natural justice are similar to the right to a fair hearing under the Human Rights Act. If at any time you are unsure whether you might have an interest which should be declared, please speak to the Monitoring Officer.

7. MANAGING CONFLICTS OF INTEREST

In general terms the purposes of the body and what it wants to do often coincide with the Council's interest and so conflicts may be rare. However, there may be difficulty in some circumstances, for example if the body is not complying with the terms and conditions of a funding agreement between the Council and the body; or the organisation wishes to appeal against a planning decision made by the Council; or where the organisation has wider objects than the reason behind the Council's appointment and wishes to pursue activities which would conflict with Council policy.

You will need to manage the conflicts that will arise appropriately and in certain circumstances may feel that your only option is to resign from the company or body. Similarly, if the Council does not feel that a representative on an outside body is properly fulfilling their role and responsibilities, eg the person is not attending meetings or is voting in ways which may be inappropriate, then the Council could choose to change its representation on the outside body. Clearly there is a greater scope for conflicts to arise where a Member holds an office in

the outside body, eg chair, vice-chair, secretary or treasurer, than if they are a general member.

8. MEMBERS ALLOWANCES, INSURANCE AND INDEMNITY

The Council may have authorised attendance at meetings of outside bodies as an approved duty for Members, allowing travelling and/or subsistence allowances in connection with meetings of the body. Alternatively, any expenses may be defrayed by the body itself, in accordance with its own rules. You should therefore check what payments are authorised by the outside body and whether this will fall to the outside body or the Council in each particular case. For further information on allowances contact the Service Manager, Member Support.

The Council has the power to provide an indemnity for Members under S265 of the Public Health Act 1875 and S39 of the Local Government (Miscellaneous Provisions) Act 1976 when undertaking Council functions. This was confirmed by the case of R v. Westminster City Council, ex parte Legg (2000). These sections may be used to provide some indemnity or insurance for Members acting as directors of a company or as a member of a management committee provided they were acting bona fide under the direction of the Council, but there are limitations.

Section 101 of the Local Government Act 2000 provides for broader indemnities for both Members and officers which would be brought into effect by an Order of the Secretary of State. An Order has not yet been published and therefore the Council may wish to ensure that it keeps its indemnity provisions under review.

However, involvement on behalf of the Council will not provide Members or officers with blanket cover as quite often the objects and activities of outside bodies are much wider than those of the Council. Over and above the possibility of being able to claim under the Council's insurance policy or indemnity, there is no blanket indemnity for representatives on outside bodies. Representatives therefore need to ask about and consider the extent of any insurance or indemnity provided to directors/management committee members by the organisation itself.

As directors have to act in the best interest of companies then it is appropriate that the company indemnify them within the limits allowed by Company Law. Section 310 limits the liability to covering negligence, breach of duty, breach of trust or other default. However, it is not possible to insure or indemnify against criminal liability for fraud, dishonesty or other criminal acts. Any indemnity given under Section 310 will usually be limited to defending proceedings (whether civil or criminal) in which judgement is given in the person's favour, ie only where s/he is acquitted. There also needs to be something in the company's Articles of Association allowing an indemnity to be given. The company may also take out directors' and officers' liability insurance, and pay for that on behalf of its directors and officers.

9. GENERAL ADVICE TO REPRESENTATIVES ON OUTSIDE BODIES

- Ensure that you know the legal status of the organisation - read the constitution (the rules or the Memorandum and Articles of Association) and understand your responsibilities;
- Ensure that if you are represented on the board of a company the relevant form 288 is filed upon your appointment and resignation;
- Make any general declarations of interest at the first board meeting;
- Ask if there is any insurance or indemnity in place;
- Clarify whether the organisation will pay allowances or expenses;
- Ensure the board or management committee has regular financial and other reports which detail the current financial situation of the organisation and any liabilities – take an interest in the business plan;
- Ensure the organisation has sound financial practices and procedures;
- Exercise independent judgement in making decisions;
- Act with integrity;
- Discuss any new activities with relevant officers (you may need to provide them with copy papers) and ensure that risks are properly identified in reports (consistent with local authority decision making - ensure that all relevant information is presented);
- Ask questions and make reasonable enquiries;
- Observe duties of confidentiality (in both directions);
- Carefully consider any conflicts of interest, declare interests, and if appropriate, leave the room for consideration of the business;
- Question responsibility and accountability;
- Take advice from the Monitoring Officer, the Finance Department and your lead officer contact as appropriate - not just when the organisation is likely to become insolvent, but generally. Occasionally, that advice may be to seek external advice on your position, especially if there is a conflict between the organisation and the Council;
- Manage conflict - usually issues can be balanced, but ensure that when in meetings of the body you act in the body's best interests which may not necessarily be those of the Council - if all else fails, resign. Do not just remain a director and fail to attend meetings or you may find that you are in breach of your duty to act in the best interests of that organisation.
- Finally, question the need for future Council involvement! Has the organisation come of age, or has it changed direction from when the County Council first became involved – what useful purpose would ongoing representation serve?

Useful Contacts

National Council for Voluntary Organisations
or www.ncvo-vol.org.uk

0800 2798 798

or contact your nearest local Council for Voluntary Service for Volunteer Bureaux

PART TWO – CHECKLISTS AND PROTOCOLS

NOTE: these will be developed over the coming months, in the interim advice can be obtained from the Monitoring Officer.