

Audit Committee

31 May 2013

Partnership Governance



Report of Corporate Director Resources

Purpose of the Report

1. To advise the Committee of known arrangements in place that can provide assurance on the adequacy and effectiveness of the Council's partnership governance arrangements.

Background

2. At the last meeting of the Audit Committee, issues were discussed relating to partnership governance arrangements.
3. The Committee requested information on how assurance is provided on the effectiveness of partnership working, following an example referred to by Councillor Temple on the closure of Derwentside Citizens Advice Bureau at short notice.
4. Partnerships with the council can take many forms, and consequently the governance arrangements can also take many different forms.
5. To help improve governance arrangements on the council's most significant partnerships, the Council has adopted a partnership governance framework. This is supported by the Partnership and Community Engagement Service within Assistant Chief Executive's Service Grouping.
6. Under this framework, partnership working is defined as,
 - Working **with** others: where the Council agrees to work with partners to achieve a mutually shared objective
 - Working **through** others: where the Council funds external organisations to deliver a product or a service on its behalf
 - Working **for** others: where another organisation funds the Council to deliver a product or a service on its behalf

A significant partnership exists where two or more independent bodies make an agreement to work collectively to achieve a shared objective and collectively take decisions on significant financial, operational or strategic issues.

The distinctive feature of partnerships is that they involve **taking decisions collectively** and require **joint governance**.

7. As part of this framework, assurance is provided that arrangements in place are effective by Council lead officers for each partnership who are required to carry out an annual self-assessment on the effectiveness of governance arrangements in place from the council's perspective.
8. The self-assessment tool is designed to provide assurance that:
 - The partnership's purpose, aims and objectives are reviewed to reflect current remit
 - Working arrangements , including sub-groups it oversees are appropriate
 - Performance, finance and risks are well managed
 - The public and key service users can easily access key information
 - The public and key service users understand how to make complaints and suggestions
 - Working arrangements are set out in an up-to-date agreement
9. Other arrangements in place, identified through the annual review of the Council's corporate governance arrangements, which contribute to the control and assurance framework around partnership governance risks include:
 - The strategic arm of the Delivery Improvement Group which supports the County Durham Partnership (CPD), consider how partners' plans align and where efficiencies/value can be maximised through integration, shared services and joint commissioning.
 - An annual light-touch review of CDP achievements and the requirements for additional interventions where there is slippage or targets have not been achieved is carried out.
 - The performance arm of the CDP's Delivery Improvement Group which monitors performance against the Sustainable Community Strategy (SCS) Action Plan.
 - The CDP Performance Management Framework which measures the impact and progress of the SCS over a three year period via a basket of performance indicators aligned to the priority themes and key objectives.
 - Bi-monthly updates to Cabinet which provide an update on key issues and achievements of all bodies included in the CDP Framework. Annual review of the CDP framework
 - Through the Thematic partnerships of the CDP, the Council aligns activities with other public sector service providers and is able to utilise their organisational mechanisms e.g. the Health and Well Being Board draws on the PCT arrangements, and the Safe Durham Partnership draws upon Police led mechanisms. Examples where we work with partners through the County Durham

Partnership in developing our response and implementation plans include a shared NHS and Council programme to responding to NHS, Public Health, community safety, welfare reform and Housing changes.

- Working groups established for the Voluntary and Community Sector (VCS) led by DCC with VCS reps, to establish arrangements to support front line VCS organisations in County Durham
 - A VCS Working Group with Local Council representatives in place. This is the primary forum for DCC to engage with the VCS. This group includes three Cabinet Members and is chaired by the Assistant Chief Executive. The VCS Working Group is supported by the multi-agency Third Sector Strategy Group.
 - The County Durham Compact provides a framework of engagement within the voluntary and community sector, including annual reporting.
 - Regular reports to Cabinet on the work of Area Action Partnerships (AAP's) and CDP
 - Regular meetings of AAP boards to discuss how the AAP is progressing against its action plan, manage spending and work with local partners around service issues.
 - Overview and Scrutiny review of AAP's which concluded that the AAPs were fit for purpose but also made a number of recommendations for improvements
 - All AAP project risks are considered as part of the appraisal process in place for all AAP area budget applications and also Councillor focused Neighbourhood projects.
10. The Local Government Association (LGA) peer review last year also provided an independent opinion on our partnership working.
11. Some independent assurance, on the effectiveness of the partnership governance framework and the individual significant partnerships within it, is provided by Internal Audit as part of a rolling programme of assurance reviews informed by the annual self-assessment exercise.
12. Examples of partnerships governance reviews carried out or planned by Internal Audit include:
- Safe Durham Partnership (2011/12)
 - Local Resilience Forum (Planned last year but cancelled pending corporate review of business continuity)
 - Area Action Partnerships – Funding arrangements (2011/12)
 - Area Action Partnerships - Information Governance Review (In progress)
 - Children's Trust (planned for review in 2012/13 but deferred until 2013/14 as the service is currently reviewing)
 - One Point Service (2011/12)
 - Public Health Transfer – Due diligence exercise (2012/13)

13. In addition the risk based approach applied by Internal Audit to the review of all key service activities should ensure that other potential partnership risks are identified during discussions with service managers as part of the planning and preparation stage of each audit. These discussions should also identify how service managers gain assurance that partnership working is effective. If the risks are considered high and there is little or no other source of assurance, the scope and terms of reference for the audit should ensure that these risks are reviewed as part of the audit.
14. Given the likelihood of an increasing use of partnership working and alternative ways of delivering council services, the adequacy of assurance on partnership working has recently been raised in consultation meetings with Corporate Directors on next year's audit plan. As a result, more audit resources are likely to be allocated to significant partnerships assurance work next year.
15. However, Internal Audit has limited resources and can therefore not be relied upon to be the sole provider of evidence based assurance. To help the Corporate Management Team and the Audit Committee to understand how assurance is provided and what assurance is provided, Internal Audit intends to lead on the development of assurance maps for all key service activities. Given the reliance on effective partnership working for the delivery of many of the council's priorities and objectives, the mapping of assurance on partnerships risk is a key area that needs to be considered in this exercise.
16. At the last meeting of the Committee, concerns were also raised about the lack of guidance provided to elected members in relation to their involvement with partnerships and acting as trustees on outside bodies. A guidance note had been prepared by legal and democratic services to assist in this regard. The latest guidance note, dated December 2010, is attached at Appendix 2 for information. This is currently being reviewed.

Recommendations and reasons

17. The Committee note the identified sources of assurance on the Council's partnerships governance arrangements and plans to develop assurance maps to help identify all key sources of assurance, improve understanding of what assurance is provided and identify any gaps where further assurance is required.
18. The Committee note the guidance available to elected members on their involvement with partnerships and outside bodies.

Appendix 1: Implications

Finance -

None directly as a result of this report.

Staffing -

None

Risk -

None

Equality and Diversity / Public Sector Equality Duty -

None

Accommodation -

None

Crime and Disorder -

None

Human Rights -

None

Consultation -

None

Procurement -

None

Disability Issues -

None

Legal Implications -

None



GUIDANCE NOTE FOR COUNCILLORS

WHO SERVE ON OUTSIDE BODIES

1. INTRODUCTION

Members often act as members of organisations, sometimes termed 'outside bodies', which are separate to the County Council, but whose aims and objectives are in accordance with or complimentary to those of the County Council. This guidance note seeks to provide some general advice for Members about their roles and responsibilities when serving on such bodies. It is not possible to provide a comprehensive guide to every situation that may arise and further advice on specific issues is always available from Legal Services.

The types of organisation with which Members may be involved can be many and varied and may exist on a national, regional or sub-regional basis, but usually fall into the following categories:

- Statutorily constituted public bodies independent of the County Council for which legislation provides for membership to be appointed from the County Council (e.g. Police Authority, Fire Authority).
- Companies of a commercial nature, usually companies limited by shares (e.g. Durham County Waste Management Company).
- Companies of a social nature. These are usually companies limited by guarantee (e.g. County Durham Development Company). Such companies may be registered charities or Community Interest Companies
- Trusts which may or may not be charities.
- Unincorporated associations which may or may not be charities.
- Special interest groups, Advisory Bodies, consultative or pressure groups (e.g. Local Government Association, Employers' Organisations etc.).

Members come to serve or attend the boards of these organisations from several different routes including:

Local authority nomination of a Member.

This can be through legislation which requires nomination by the authority of a certain number of Members to a panel or board. This usually happens where a local authority has a substantial interest in the area of work of the organisation and might fund some of its activities or purchase services from it. It may also, in relation to companies, be a shareholder or member of the company. The governing instrument of the organisation may also stipulate that the local authority is entitled to nominate a Member to serve on the board.

- **Invitation by an organisation to the local authority**

Organisations, typically charities and voluntary organisations, may invite a local authority to nominate a Member to serve on their boards.

- **Members' personal interest in the subject area of an organisation**

Members will often take up a position on the Governing Body of an organisation, usually a voluntary organisation, without being nominated or appointed by the local authority.

- **Local authority Member as observer**

Members may be asked to attend meetings of organisations as observers or representatives of the County Council rather than as members of boards with the full duties of trustees or directors.

How a Member is appointed and the role undertaken will affect the power of the County Council to provide Members serving on outside bodies with an indemnity for any loss or claim against them whilst acting on behalf of that body. For more details see section 5 on 'Indemnities to Members' below.

2. GENERAL MATTERS

There are a number of general rules of which Members need to be aware when taking up an appointment on an outside body of whatever nature. These are as follows:-

- Members need to be aware at the time of joining a body, what they are taking on and what that body expects of them.
- Members **must** act in the interests of that organisation as they are generally held to have a fiduciary relationship with the organisation (i.e. they should act honestly and in good faith; and they should not put their personal interests or that of a third party before their duty to the organisation). A mandate from the Council to vote one way or the other would put the representative in breach of their duty to the organisation. It is permissible to take account of the Council's wishes but the Member must exercise independent judgement in the matter. The overriding duty in considering items before the outside organisation is to vote in accordance with the interests of that organisation.

N.B. This would not apply if a Member attended solely as an observer in a non voting capacity **and** not as part of the organisation (e.g. 'link members' on various voluntary organisations funded by the County Council through Service Level Agreements).

- Members should be aware that taking on a specific role may create a conflict of interest when the Council considers matters relating to that body.
- Members should take an active and informed role in the affairs of the outside body.
- Members are bound by the Council's Code of Conduct when serving on any outside body unless this conflicts with any legal obligations arising from membership of that body (see below for more details).
- Members should endeavour not to be merely a passive member of the outside body, just turning up to meetings, not reading papers or failing to ask for appropriate reports.
- Some outside bodies may require members to keep business discussions and information confidential. Whilst this may appear to diminish the public accountability of the outside body, Members are bound by that confidentiality.
- Members should ensure, wherever possible, that insurance provision is made **by the organisation** to cover the actions of the member.

3. CODE OF CONDUCT

The Code of Conduct for Members has relevance to the way Members conduct themselves on outside bodies.

Paragraph 2 of the Council's Code of Conduct emphasises a Member is bound to observe the requirements of the Council's Code when serving on another body, unless that Member is subject to another relevant authority's Code, or unless (in relation to any other body) the Council's Code conflicts with any other legal obligations.

Personal Interests

The Council's Code is also relevant to Members acting on outside bodies in relation to the declaration of personal interests. In particular:

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

- Paragraph 9 - requires Members serving on outside bodies to **declare** at any Council meeting a personal interest in the business arising at the meeting which may affect, or arise from, an outside body on which they serve as Members

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

Prejudicial Interests

The Code also deals with the position where a Member's interest in the business of an outside body could be prejudicial. The declaration of a prejudicial interest generally requires the Member not to participate in the business concerned and to leave the meeting (see paragraph 12 of the Code for details). Paragraph 10(1) of the Code says a prejudicial 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*".

The Code provides at paragraph 10(2) that where Members are appointed or nominated *by the Council* to an outside body they may regard themselves as not having a prejudicial interest in a matter as long as that matter does **not** relate to their financial position, the financial position of the outside body or the determination of approvals, licences, consents or permissions with respect to that outside body.

However even when appointed to outside bodies by the Council, Members still need to consider the particular circumstances of each meeting or agenda item and decide whether they have a prejudicial interest as the Code does not give the automatic right to regard "outside body business" as a personal interest only. As an example this could include occasions when consideration is being given to possible enforcement action against that body. Consultation with the Council's Monitoring Officer may be required when there are circumstances which may give rise to problems in this respect.

Members who are involved with outside bodies but have not been appointed to that position by the Council should apply the normal rules about prejudicial interests (unless the body falls into another exemption category – see paragraph 10(2) (c) of the Code). This also includes Members who have been appointed to Body A as the Council's representative and then appointed/nominated by Body A to represent it on Body B.

Members should also be aware there is a greater potential for matters to involve a prejudicial interest when they have accepted a position as an officeholder on an outside body (e.g. Chairman, Treasurer etc.) As an officeholder a Member should normally expect to declare a personal and prejudicial interest in matters affecting the affairs of the body - not just grants, but also issues relating to planning, licensing, property etc.

Other matters relating to the Code of Conduct

Members should be alert to possible conflicts of interest. This could arise from individual circumstances relating to the outside body or from more significant policy and financial aspects of the relationship between the organisation and the Council. Some outside bodies may themselves have governance arrangements designed to regulate ethical standards.

Regard should also be had to paragraph 6 (a) of the Code which states that a Member must not use or attempt to use his position as a Member improperly to confer on or secure for himself or any other person, an advantage or disadvantage.

It is also important to avoid any perception of impropriety. This could be influenced by factors such as:

- The degree to which the outside body is dependent on the Council for financial or other support, and the scale of that support
- The general nature of the relationship between the Council and the outside body
- The real or perceived influence the Member may be able to exert over the Council - for example, is he or she a Member of the Cabinet/Chair of a particular Committee or 'high profile' in some other way? Would a decision contrary to a Member's known point of view made either by the Council or by the 'management committee' of the outside body be perceived as politically embarrassing?
- Would the Council be perceived as seeking to exercise undue influence over the outside body, or vice versa?

Such considerations will apply to all Members who hold office, whether or not they have been appointed to the outside body by the Council.

4. GUIDANCE ABOUT SERVING ON PARTICULAR OUTSIDE BODIES

A. COMPANIES

What is a company?

A company is a separate legal entity which can hold property in its own right, enter into contracts and sue and be sued in its own name. The company is distinct from its shareholders and members. In the case of a limited liability company, the liability of members of the company is limited to the amount they paid or agreed to pay when they joined the company. This can be as little as £1.

Companies limited by shares are those which have a share capital (eg 1000 shares of £1 each). Each member holds shares and receives a share in the profits made by the company according to the value of the shares held. Shares can be sold.

Companies limited by guarantee are those where there is no shareholding. Instead each member agrees that in the event of the company being wound up they will agree to pay a certain amount. This may also be as little as £1. This form of company is the most usual in the public and voluntary sector, particularly where charitable status is sought.

The management of a company is generally the responsibility of a board of directors. The powers of the directors are usually set out in the company's Articles of Association (the rules each company has to govern its internal management). Sometimes, even though a company has been incorporated, the directors may be referred to as members of the committee of management, governors or even trustees. However this does not change their status as directors under the Companies Act. Conversely, sometimes officials are called "directors" but they are **not** members of the board. Again their status will not be affected. Directors are only those who are appointed by the company to act in that capacity.

Directors' Duties

In accordance with the Companies Act 2006, the statutory duties owed by a director of a company to the company are as follows:-

- (1) A duty to act in accordance with the Company's constitution and only exercise powers for the purposes for which they are conferred.
- (2) A duty to promote the success of the company for the benefit of its members as a whole.

In doing so a director must have regard (amongst other matters) to

- *The likely consequences of any decision in the long term*
 - *The interests of the company's employees*
 - *The need to foster the company's business relationships with suppliers, customers and others*
 - *The impact of the company's operations on the community and the environment*
 - *The desirability of the company maintaining a reputation for high standards of business conduct*
 - *The need to act fairly as between members of the company*
- (3) A duty to exercise reasonable care, skill and diligence to the company.

However a director requires no greater skill than might reasonably be expected of someone of that individual's particular knowledge and experience. A director is not deemed to be an expert, but is expected to use due diligence and to obtain expert advice if necessary.

- (4) A duty to exercise independent judgement.

A director will continue to be able to rely on the judgment of others in areas where he is not expert. A director's judgment must be his own judgment.

- (5) A duty to avoid conflicts of interest.

There may be actual or potential conflicts between the interests of the Council and the interests of the company (see also conflicts of interest and the Council's Code of Conduct above). In such circumstances the only proper way for the conflict to be resolved is for the representative to resign either from the company or from the Council.

- (6) A duty not to accept benefits from third parties conferred by reason of being a director or doing or not doing anything as a director.

- (7) A duty to declare an interest in a proposed transaction or arrangement with the company.

Directors' Liabilities

- (1) The company's registered name must clearly be shown on all forms of business correspondence and documentation including cheques, whether in hard copy, electronic or any other form. A company must display *the company's registered number, the place of registration and the registered office address* on its business letters, order forms and website *and if any of the directors' names are shown then they must all appear.*

Non-compliance is an offence and the directors and company officers can be fined.

- (2) Directors have a responsibility to prepare and deliver documents on behalf of the company to Companies House as and when required by the Companies Act.

Failure to submit certain information on time is a criminal offence for which directors may be prosecuted and fined.

- (3) A company must disclose the address of its registered office, any inspection place and the type of company records kept at that office or place to any person it deals with in the course of business who makes a written request to the company for that information. The information

must be provided in writing within five working days of receipt of that request.

Non-compliance is an offence and the directors and company officers can be fined.

- (4) A director may also be liable for breach of trust, if he/she misapplies the money or property of the company.

Directors may also be liable if they fail to take action to prevent the breach of a co-director of which they are aware.

- (5) In the event of failure to act in accordance with the best interests of the company, or if a director uses his/her powers improperly or makes a personal profit from his/her position as director, then the director may be personally liable for loss to the company and may be required to give to the company the personal profit made.

- (6) If the level of skill and care shown by a director falls below that which could be reasonably expected and the company suffers loss, the director will be liable for the loss incurred.

If it believes the director acted honestly and reasonably, a Court may excuse the director the liability.

- (7) If a director knows or ought to know that there is no reasonable prospect of the company avoiding liquidation, a Court may require that director to contribute to the company's assets on liquidation if the company continues to trade. This is known as wrongful trading.

No such order will be made if the Court is satisfied that the director took all reasonable steps to minimise the loss to the creditors. If a director has concerns about the company's financial position he/she would be well advised to inform the other directors and seek advice from the company auditors. He/she should try to ensure that further debts are not incurred.

- (8) A director will also be liable if to his/her knowledge the company carries on business with intent to defraud creditors or any other person, or for any other fraudulent purpose.

Fraudulent trading can also lead to disqualification from acting as a director.

- (9) A third party who enters into a contract on the assumption that a director has power to bind the company, may be able to claim damages against the director if it subsequently transpires that the director had no such power.

Directors would be well advised to ensure that contracts are approved by the board and that the authority to enter into any contract has been properly delegated before signing it.

- (10) Though company liability ceases on dissolution the liability of the directors (if any) may still be enforced **after** dissolution.

Obligations of Directors nominated by the Council to Outside Companies

Members who are nominated as directors by the Council to Outside Companies are also under the following obligations:-

- The remuneration they receive from the company should not exceed that received from the Council, and should be declared.
- To give information to Councillors about their activities as required by the Council (except confidential information); and
- To cease to be a Director immediately upon disqualification as a Councillor.

B. CHARITABLE TRUSTS

To be a charity an organisation must operate for the public benefit and exist exclusively for one or more of the following charitable purposes:

- The prevention or relief of poverty
- The advancement of education.
- The advancement of religion.
- The advancement of health or the saving of lives
- The advancement of citizenship or community development
- The advancement of the arts, culture, heritage or science
- The advancement of amateur sport
- The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
- The advancement of environmental protection or improvement
- The relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage
- The advancement of animal welfare

- The promotion of the efficiency of the armed forces of the Crown, or the efficiency of the police, fire and rescue services or ambulance services
- Any other purposes currently recognised as charitable and any new charitable purposes which are similar to another charitable purpose

An organisation that operates for political purposes cannot register for charitable status.

To register as a charity the organisation must submit its Trust Deed (similar to the Memorandum and Articles of Association of a company limited by guarantee) to the Charity Commissioners for approval. If the Commission is satisfied that the organisation is charitable, it will be registered.

Those who are responsible for the control and administration of a charity are called Trustees, even where the organisation is a company limited by guarantee. Trustees retain personal liability, and can only delegate it if the Trust Deed authorises them so to do.

Trustees' Duties

Trustees are responsible for controlling the management and administration of a charity.

Trustees must take care to act in accordance with the Trust Deed and to protect the charity's assets. They are responsible for compliance with the Charities Acts and the Trustee Act 2000 and should note the particular requirements of the Acts in respect of land transactions.¹

(1) Duty of Care

Trustees must exercise reasonable care and skill as trustees, using personal knowledge and experience to ensure that the charity is well run and efficient. They must perform their duty with the standard of care that an ordinary, prudent business person would show. Higher standards are required of professional Trustees and in relation to investment matters.

Consider getting external professional advice on all matters where there may be material risk to the charity, or where the trustees may be in breach of their duties.

(2) Duty of Prudence

Trustees must;

¹ When selling, leasing or transferring charity land, the law sets out clear requirements to ensure that these important transactions are properly managed in the charity's interest and that trustees obtain the best reasonable price in the circumstances. For further information see the Charity Commission's Guidance Note CC28 – What Trustees need to know about disposing of charity land.

- Ensure that the charity is and will remain solvent
- Use charitable funds and assets wisely, and only to further the purposes and interest of the charity.
- Avoid undertaking activities that might place the charity's property, funds, assets or reputation at undue risk
- Take special care when investing the funds of the charity, or borrowing funds for the charity to use
- Not make any private profit from their position. Trustees cannot be paid or benefit in any way from their connection with the charity. There are limited exceptions to this rule, and the 1993 Act allows Trustees to be paid in circumstances for providing services to the charity over and above their normal trustee duties.

(3) Ensuring Compliance

Trustees must ensure that their charity complies with;

- Charity Law and the requirements of the Charity Commission as regulator that information relating to the Charity and Trustees is registered with the Charity Commission and that annual accounts, reports and returns are completed and sent
- The requirements or rules, and the charitable purpose and objects, set out in the charity's own governing document.
- The requirements of other legislation and other regulators (if any) which govern the activities of the charity
- The requirement for trustees to act with integrity, and avoid any personal conflicts of interest or misuse of charity funds or assets.
- The requirement that if charitable income exceeds £10,000, the charity's letters, adverts, cheques etc. must bear a statement that the organisation is a registered charity and the charity's registered number.

Trustees' Personal Liability

If in doubt, it is important to seek further advice. It is also possible to consult the Charity Commission. A Trustee who does consult the Charity Commission can avoid personal liability for breach of trust if they act in accordance with the advice given.

Generally, a Trustee incurs personal liability if they:

- Act outside the scope of the Trust Deed.

- Act in breach of the law
- Fall below the required standard of care.
- Make a personal profit from Trust assets
- Act other than in the best interests of the charity, in a way which causes loss to the charity's funds. In such circumstances the trustee will incur personal liability for losses incurred.

Trustees can be personally liable to third parties because unlike a company, a Trust has no separate identity from the Trustees. Trustees will normally be given an indemnity from the Trust assets, provided they act properly in incurring the liability. Trustees remain personally liable once they retire (e.g. if they have entered into a contract on behalf of the Trust) and should therefore seek an indemnity from their successors. If the charity is a company, the Trustees for the time being will be protected from liabilities incurred in the day to day running of the charity in the normal course, but will be personally liable if they commit a breach of trust.

Trustees may be liable to fines if they do not comply with the duty to make returns etc to the Charity Commission.

Trustees Indemnities

An indemnity can be given from the Trusts funds provided Trustees have acted properly and within their powers. Trustees may take out insurance to protect themselves against personal liability but not for criminal acts, fraud etc. There will be no problem if Trustees themselves pay the premiums but if they are paid out of the charitable funds the Trustees will need the consent of the Charity Commission, unless the trust deed allows it.

C. UNINCORPORATED ASSOCIATIONS

Groups that are not charitable trusts or limited companies are called "unincorporated associations". Property is held by individuals, as the group has no separate legal identity. The rules governing the members' duties and liabilities will be set out in a constitution, which is simply an agreement between the members as to how the organisation will operate. Usually the constitution will provide for a Management Committee to be responsible for the everyday running of the organisation. Management Committee members must act within the constitution and must take reasonable care when exercising their powers. An "unincorporated association" may have exclusively charitable objects and may register as a charity, but will be subject to its constitution being approved by the Charity Commission.

Generally, Management Committee members are liable for the acts of the organisation, but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there are not enough funds, the Committee members are personally liable for any shortfall. It is possible to

obtain insurance but if the organisation is to pay the premium it must be permitted by the constitution. See also 'Indemnities to Members' below.

Management Committee members have personal liability if they act outside the authority given to them or if they do not comply with statute e.g. the payment of employees' tax etc.

If one person is appointed by the constitution to act as the agent of the organisation for certain purposes, then that person acts as the agent of all the members, who have joint liability for the agent's actions.

5. INDEMNITIES TO MEMBERS

The Local Government (Indemnities for Members and Officers) Order 2004 gave specific power for authorities to grant indemnities to cover the potential liability of members (and officers) in a wide range of circumstances. As a result Durham County Council at its Cabinet of 28 September 2006 adopted a scheme of indemnity.

The scheme provides an indemnity for any loss suffered by a Member whilst acting as a member of an outside body as a result of an appointment or nomination made by the authority or where the authority has specifically approved the appointment.

The indemnity does not, therefore, cover a Member's involvement in an organisation that he/she joins of his/her own volition. Nor, in law, can the indemnity cover the following:

- Criminal activity;
- Fraud or deliberate wrong doing or recklessness;
- The costs of pursuing a defamation action; or
- Liability for actions taken outside the powers of the outside body, even if the action was taken in the honest belief that it was within the outside bodies power.

However, an indemnity can be provided for the costs of defending criminal proceedings or Standards for England proceedings on the condition that if a finding is made against the Member, all such costs must be reimbursed.

6. CONTACTS

If you have any concerns or queries concerning your role as a representative on an outside body it is important to seek further advice. More detailed advice about any of the above issues is available from the Council's Monitoring Officer.

Further advice about charities is available from:

Charity Commission Direct
PO Box 1227
Liverpool
L69 3UG

Tel: 0845 3000 218
Fax: 0151 703 1555

enquiries@charitycommission.gov.uk

Website: www.charitycommission.gov.uk