



CITY OF LONDON CORPORATION

PROTOCOL FOR MEMBERS AND OFFICERS APPOINTED BY THE CITY CORPORATION TO OUTSIDE BODIES

1. Introduction

- (1) This document sets out guidance for Members and Officers who are appointed by the City Corporation to outside bodies such as companies, charities and unincorporated associations. It is not intended to apply to representatives who may legitimately promote the City Corporation's own interests, for example at meetings of London Councils.
- (2) The City Corporation has nomination/appointment rights to a wide range of outside bodies (eg. voluntary organisations, foundations, trusts, boards of management, central and local authority organisations).
- (3) The City Corporation values its links with these bodies and appreciates the time and service Members and Officers devote to the wider community by participating in their work.

2. General

- (1) Authority to nominate or appoint Members and Officers to serve on outside bodies rests with the Court of Common Council or, if authority has been delegated, the relevant committee.
- (2) A Member or Officer serving on an outside body has a responsibility to commit to the task, attend meetings and support the work of the organisation. Some organisations have rules about attendance (eg. missing a number of consecutive meetings may lead to loss of the place on the body). In view, therefore, of the considerable demands made on Members' and Officers' time, it is important to understand the extent of the commitment before seeking appointment.
- (3) Service on an outside body requires the appointed person to:-
 - act according to the rules, constitution and framework of the outside body;
 - make independent and personal judgements in line with the duty of care to the outside body;
 - report back to the City Corporation as necessary;
 - behave ethically, and follow the City Corporation's Code of Conduct – unless this conflicts with other obligations to which the outside body is subject;
 - take an active and informed role in the management of the outside body's affairs;
 - ensure the Register of Interests is updated to include reference to his/her representational role on the outside body.
- (4) Service on an outside body generally means that a Member or Officer cannot represent the City's interests. For example, if the service is as a trustee or a company director the appointee has a legal responsibility to act in the interests of the outside body only, as opposed to the interests of the City or any other organisation. This could lead to conflicts of interest between the role as a Member/Officer and the role on an outside body.

- (5) When any matter arises within the City Corporation that relates to an outside body on which a Member or Officer sits, a conflict of interest may arise. For Members there is also likely to be a personal interest as such membership must be notified on the Register of Interests. Whether or not the interest is prejudicial under the Code of Conduct will depend on all the circumstances, including whether a member of the public would reasonably consider it is likely to affect the Member's ability to act in the public interest. Members can seek further advice from the Town Clerk or the Comptroller & City Solicitor. Officers will need to seek advice from their Chief Officer as to how best to deal with such a conflict and must have regard to the Officers' Code of Conduct.
- (6) For general advice on any aspect of their service, Members should contact the Members' Service Section of the Town Clerk's Department.

3. Legal Advice

A guide to the law as it affects Members and Officers serving on outside bodies is attached as an appendix. The guide covers the range of different outside bodies and, therefore, those seeking guidance only need to refer to the relevant section.

SERVICE ON OUTSIDE BODIES

A GUIDE TO THE LAW

This advice is for Members and Officers who are appointed by the City Corporation to outside bodies whether as a company director, trustee of a charity or representative on a management committee. It sets out some of the most important responsibilities. More than one set of provisions may apply (for example, if a company limited by guarantee is also a charity). It is not meant to be a comprehensive guide. If Members or Officers have queries then the Town Clerk or Comptroller & City Solicitor should be consulted.

GENERAL

1. There are some general provisions which apply to Members and Officers who act in the role of company director, charity trustee, or on the committee of management of an unincorporated voluntary organisation.
2. Members are under a duty to exercise independent judgement in the interest of the organisation in which they are involved. Whilst it is recognised that Members and Officers may have a commitment to representing the City Corporation on an outside body, they must be aware that it is their responsibility to decide what view to take on any question before that organisation. Where a Member or Officer is participating in an outside organisation in a representative capacity, he/she must declare that fact to the organisation. There may be a fine line to tread between his/her duty to the organisation and to the City Corporation.
3. The Member or Officer in acting as a director/trustee or member of a management committee of an outside body must act in the interests of that organisation. A mandate from the City Corporation to vote one way or the other would put the Member or Officer in breach of the duty to the organisation. It is permissible to take account of the City Corporation's wishes, but not to vote simply in accordance with them. The overriding duty when considering an item before the outside body is to act in accordance with the interests of that organisation.
4. Members and Officers must ensure that the organisation is properly managed in accordance with the law and the organisation's own governing document. They must also ensure that avoidable loss is not incurred in managing the organisation. They cannot avoid these responsibilities by not reading the papers or failing to ask for appropriate reports. They will be expected to seek professional advice where appropriate.

COMPANIES

General

5. On incorporation, a company becomes a separate legal entity which can hold property in its own right, enter into contracts and sue and be sued in its own name. The company is distinct from its members and officers. 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.
6. Companies limited by shares are those that have a share capital. 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 pay a certain amount. This may 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.
7. The management of a company is generally the responsibility of a board of directors. The powers of the directors are usually set out in the company's Articles of Association (the rules each company has to govern its internal management). Sometimes, even though a company has been incorporated, the directors may be referred to as members of the committee of management, governors or even trustees. However this does not change their status as directors. Conversely, sometimes officials are called directors but they are not members of the board. Again, their status will not be affected. Directors are those who are appointed by the company to act in that capacity.

Directors' Duties

8. A director is an agent of the company. His/her prime duties are as follows:-
 - (1) ***Duty to act within powers***

Directors are required to act in accordance with the company's constitution and only exercise powers for the purposes for which they are conferred. This means they must stay within the constraints of the objects clause, if there is one, and must observe the other terms of the Articles of Association.
 - (2) ***Duty to promote the success of the company***

A director must act in a way that he/she considers, in good faith, would be most likely to promote the success of the company for the benefit of the members as a whole. Where the purposes of the company include things other than the benefit of the members, for example where the company is a charity, working to achieve these things will amount to working for the success of the company.
 - (3) ***Duty to exercise independent judgment***

A director is under a duty to exercise independent judgment. This means that they must not be unduly influenced by the wishes or instructions of others, though it is permissible for them to take account of the interests of a third party which they represent. In such a case the director must disclose that position and tread a fine line between the interests of the

company and the party represented (in this case the City Corporation). The director cannot vote and speak simply in accordance with the City Corporation mandate. To do so would be a breach of duty.

(4) ***Duty to exercise reasonable care, skill and diligence***

A director must exercise the care, skill and diligence which would be exercised by a reasonably diligent person with both the general knowledge, skill and experience that the director actually has, and that to be expected of a person carrying out his/her functions in relation to the company. In effect a director must meet the higher of the two requirements. A director is not deemed to be an expert, but is expected to obtain expert advice if necessary.

(5) ***Duty to avoid conflicts of interest***

A director must avoid a situation where he/she will have, or may have, an interest that conflicts with the interests of the company. There may be actual or potential conflicts between the interests of the City Corporation and the interests of the company. In such circumstances the Member or Officer should notify the City Corporation and the company and, if appropriate, take no further part in the determination of the matter giving rise to the interest. For example, this could occur where the City Corporation was considering making a grant to the company, or determining a permission, licence or consent in relation to the company. In extreme cases, if such conflicts regularly arise, it may be necessary for the Member or Officer to resign either from the company or from the City Corporation.

(6) ***Duty not to accept benefits from third parties***

A director must not accept a benefit from a third party conferred by reason of his being a director or his doing (or not doing) anything as a director. However, the duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest. Acceptance of a benefit may also be authorised by the members or, in some cases, by the board.

(7) ***Duty to declare interest in proposed transaction or arrangement***

A director must declare a direct or indirect interest in a proposed transaction or arrangement with the company that he/she is (or should be) aware of. No disclosure is necessary if the other directors are (or should be) aware of the interest, or if it cannot reasonably be regarded as likely to give rise to a conflict of interest. The interest of a person connected to the director, for example a family member, must be disclosed. Whether the director is then allowed to vote will depend on the Articles of Association.

(8) ***Duty to ensure compliance with the Companies Acts***

Directors are under an obligation to see that various information is filed at Companies House. They also have a duty to prepare and file the company's accounts, and to maintain certain statutory books and registers. Failure to do so may incur fines and persistent default can lead to disqualification as a director.

Directors' Liabilities

9. Directors may be liable in the following circumstances:-

- (1) The remedies available against a director for a breach of the duties set out at paragraphs 8 (1-3) and 8 (5-7) above include damages, accounting for profits made, restitution of property and injunctive relief. In practice damages are by far the most common remedy. Damages are the only remedy for a breach of the duty set out at paragraph 8 (4).
- (2) The company's name must clearly be shown on its business stationery. The company number, place of registration and registered office address must be shown on business letters, order forms (including equivalent emails) and any company website. If any of the directors' names are shown then they must all appear. Non-compliance is an offence and the directors and company officers can be fined.
- (3) 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. However liability can be incurred through failing to act. 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.
- (4) 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 lead to disqualification from acting as a director. It is also a criminal offence and can lead to a fine or imprisonment.
- (5) All cheques and similar documents which purport to be signed on behalf of the company must bear the company name. Where they do not, the director signing on behalf of the company may be liable to a fine and may also be liable to the payee if the company fails to honour the cheque. It is, therefore, wise for directors to make sure that all documents they sign on behalf of the company state very clearly that they act as agent for the company, (eg. Director, for and on behalf of).
- (6) 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.
- (7) Though company liability ceases on dissolution, the liability of the directors (if any) may still be enforced after dissolution.

Indemnities and Insurance

10. The following arrangements apply:-

- (1) Directors cannot be indemnified by the company against liability arising out of negligence, default, breach of duty or breach of trust in relation to the company. However, the company's Articles of Association may allow for directors to be indemnified by the company against liability to a third party, although this must not extend to payment of a criminal fine, a financial penalty payable to a regulatory authority, or liabilities incurred in certain legal proceedings where the director is unsuccessful. Please note that it is lawful for companies to purchase insurance to protect their directors against claims of negligence, breach of duty, breach of trust and default. Directors may, therefore, wish to consider maintaining such insurance. For professional directors (accountants, solicitors, etc) providing specialist knowledge and expertise, professional indemnity insurance may be available at a cost.

- (2) The first recourse would be to ensure that the company provides insurance. The City Corporation may provide indemnities for Members or Officers when appointing them to act as directors, and has insurance to cover any losses which they may suffer through acting conscientiously as a director, although the cover only extends to functions being exercised at the request of, or with the approval of, the City Corporation.

Local Authorities (Companies) Order 1995

11. This Order sets out rules concerning local authorities' involvement in "regulated companies" which are subject to extensive controls. "Regulated companies" are so defined if they are controlled or influenced by the local authority. These are at present relatively rare, but one such example is London Councils Limited. Members and Officers can obtain further information on the additional rules affecting such companies upon request.

CHARITIES

General

12. To be a charity an organisation must operate for one of the following charitable purposes and be able to demonstrate that its aims are for the public benefit:-

- 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 disadvantages;
- the advancement of animal welfare;

- the promotion of the efficiency of the armed forces of the Crown or of the police, fire and rescue services or animal services;
 - other purposes recognised as charitable under existing law and any new purposes which are similar to another prescribed purpose.
13. A charitable organisation must operate for the public benefit and have exclusively charitable purposes. An organisation that operates for political purposes does not qualify for charitable status.
 14. To register as a charity the organisation must submit its governing document (constitution or rules, trust deed, or Memorandum and Articles of Association – depending on whether it is an unincorporated association, trust or limited company) plus any other required documents to the Charity Commissioners for approval. If they are satisfied that the organisation is charitable it will be registered as such.
 15. Those who are responsible for the control and administration of a charity are referred to as charity trustees, even where the organisation is a company limited by guarantee although they are not strictly trustees. Trustees of a charity retain personal liability, and can only delegate to the extent that the governing document authorises them so to do.
 16. Specific guidance for those serving on charitable organisations is available from the Charity Commission.

Trustees' Duties

17. Trustees have the following duties:
 - (1) Trustees must take care to act in accordance with the governing document and to protect the charity's assets. They are also responsible for compliance with the Charities Acts, and should note the particular requirements of the Acts in respect of land transactions.
 - (2) Generally speaking, trustees must not profit from their position. They cannot receive remuneration without the sanction of the Charity Commission. They must also perform their duty with the standard of care which an ordinary, prudent business person would show. Higher standards are required of professionals, and in relation to investment matters.
 - (3) Trustees must ensure that the information relating to the charity and trustees is registered with the Charity Commissioners and that annual accounts, reports and returns are completed and sent where this is required.
 - (4) If charitable income exceeds £10,000, the letters, advertisements, cheques etc. must bear a statement that the organisation is a registered charity.
 - (5) Trustees are under a duty to ensure compliance with all relevant legislation and other regulators (if any) which govern the activities of the charity.

Trustees' Personal Liability

18. If in doubt, always consult the Charity Commission. A trustee who does so can avoid personal liability for breach of trust if he/she acts in accordance with the advice given.
19. Liabilities may arise in the following ways:-
 - (1) Generally, a trustee incurs personal liability if he/she:-
 - acts outside the scope of the governing document
 - falls below the required standard of care
 - acts otherwise than in the best interests of the charity, in a way which causes loss to the charity fund
 - makes a personal profit from the charity's assets
 - (2) In such circumstances the trustee will incur personal liability for losses incurred and/or for personal gain.
 - (3) Trustees can be personally liable to third parties because, unlike a company, a trust or unincorporated association has no separate identity from the trustees. The governing document will normally provide for trustees to be given an indemnity from the charity's assets, provided they act properly in incurring the liability. Trustees remain personally liable for their own acts and defaults once they have retired. If they have entered into any ongoing contracts on behalf of the charity they should seek an indemnity from their successors. If the charity is a company, the trustees 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 (see (1) above).
 - (4) Trustees may be liable to fines if they do not comply with the duty to make returns etc.

Indemnities

20. An indemnity can be given from the charity's assets provided the trustee has acted properly and within his/her powers. Trustees may take out insurance to protect themselves against personal liability but not for criminal acts, fraud etc. The premiums can be paid out of the charitable funds so long as there is no express prohibition in the governing document, the trustees observe their duty of care, the insurance is in the best interests of the charity and the cost is reasonable.

COMMITTEES OF MANAGEMENT

Unincorporated Associations

21. Groups which are not trusts or limited companies are "unincorporated associations". 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. An unincorporated association may be charitable and may register as a charity.

22. Property will have to be held by individuals, and contracts entered into 'on behalf of' unincorporated associations, as they have no separate legal identity from their members.

Duties

23. Broadly, Management Committee members must act within the constitution, and must take reasonable care in exercising their powers.

Liabilities

24. The following liabilities may arise:
 - (1) Generally, the Management Committee members are liable for the acts of the organisation, but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there are not enough funds, the Committee members are personally liable for the shortfall.
 - (2) 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 and several liability for the agent's actions.
 - (3) Members of the committee of management will have personal liability if they act outside the authority given to them or if they do not comply with statute eg. the payment of employees' tax etc.

Indemnities

25. Members will be entitled to an indemnity if they act in accordance with the constitution and are not at fault. It is possible to obtain insurance but if the organisation is to pay the premium it must be permitted by the constitution.