

General Purposes Committee

**Tuesday, 12 December 2023 at 6.30 p.m.
Committee Room - Tower Hamlets Town Hall,
160 Whitechapel Road, London E1 1BJ**

Supplemental Agenda 1 – Late reports

- 4 .1 LA Governor Appointment Report December 2023 (Pages 3 - 18)
- 4 .2 Guidance for Members and Officers on Outside Organisations (Pages 19 - 34)

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<p>Non-Executive Report of the:</p> <p>General Purposes Committee</p> <p>December 2023</p>	 <p>TOWER HAMLETS</p>
<p>Report of Lisa Fraser, Corporate Director (Children’s Services)</p>	<p>Classification: Part Exempt</p>
<p>Local Authority Governor Application</p>	

Originating Officer(s)	Farhad Ahmed
Wards affected	All wards
Exempt information	<p>This report’s appendices include information that has been exempted from publication as the Monitoring Officer:</p> <ul style="list-style-type: none"> • has deemed that the information meets the definition of a category of exempt information as set out in the Council’s Access to Information Rules; and • has deemed that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. <p>The exempt information is contained in appendices 1-5. The exempt information falls into this category:</p> <p>1. Information relating to an individual</p>

Reasons for urgency

This report was not published five working days in advance of the meeting due to delays with internal consultations. It is important that the local authority governors to be agreed at this meeting as otherwise there would be a risk that the schools governing bodies would be under resourced in the next quarter.

Executive Summary

This report sets out for Members details of applicants who have applied to be nominated as the local authority governor at Tower Hamlets maintained schools.

Recommendations:

The General Purposes Committee is recommended to:

1. Consider the applications and agree to nominate the applicants to the positions that are available for local authority governors at maintained schools in Tower Hamlets.

1. REASONS FOR THE DECISIONS

- 1.1 The School Governance (Constitution) (England) Regulations 2012 set out the process for the appointment of local authority governors to maintained schools. The Regulations allow for the local authority to nominate a person to fill the position of local authority governor. It is for the governing body to appoint that person if the governing body considers the person meets any eligibility criteria that it has set.
- 1.2 The governor nominations in this report are to fill the current LA governor vacancies

2. ALTERNATIVE OPTIONS

- 2.1 To improve the efficiency for appointing local authority governors to school vacancies, the General Purposes Committee at a meeting held on Wednesday 15 February 2006 made the decision to delegate authority to the Corporate Director (Children, Schools & Families) to appoint and revoke the appointment of local authority governors, except where there was a dispute about an appointment or there was more than one applicant for a post in which case the Committee would decide the appointment.
- 2.2 At a meeting on 29 November 2011, the Council resolved to amend the constitution and the terms of reference of the General Purposes Committee were amended. The committee is now responsible for the appointment and revocation of local authority school governors.
- 2.3 As this is a function of the local authority there is no alternative option.

3. DETAILS OF THE REPORT

- 3.1 Applications to be nominated as the Local Authority governor to 3 schools are attached as Appendices to this report in the restricted area of the agenda.

3.2 APPLICATIONS

New appointments

- a) The Headteacher and Chair of **Woolmore** support the appointment of **Samantha Kangal-Nurse**- Application is enclosed as **Appendix 1**.
- b) The Headteacher and Chair of **Halley** support the appointment of **Carly Holmes** - Application is enclosed as **Appendix 2**.
- c) The Headteacher and Chair of **Marner** support the appointment of **Myles Henry** - Application is enclosed as **Appendix 3**.
- d) The Headteacher and Chair of **George Green** support the appointment of **Tesfa Abrahaley** - Application is enclosed as **Appendix 4**.

New appointments

- e) The Headteacher and Chair of **Elizabeth Selby** support the re-appointment of **Oliver Hopwood** - Application is enclosed as **Appendix 5**.

4. EQUALITIES IMPLICATIONS

- 4.1 Local Authority Governors are drawn from all sectors of the community. There is a mechanism in place to ensure, as far as possible, that the composition of governing bodies reflects the makeup of the school and wider community.

5. OTHER STATUTORY IMPLICATIONS

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:

- Best Value Implications,
- Consultations,
- Environmental (including air quality),
- Risk Management,
- Crime Reduction,
- Safeguarding.

- 5.2 There are no further specific statutory implications arising from the report.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 There are no financial implications arising from the recommendations in this report.

7. COMMENTS OF LEGAL SERVICES

- 7.1 Section 19 of the Education Act 2002 requires each maintained school to have a governing body, which is a body corporate constituted in accordance with the Regulations. Each maintained school is required to have an instrument of government, which specifies the membership of the governing body. Regulations require a governing body to include person appointed as a local authority governor and for a number of associated matters.

- 7.2 The 2012 Regulations detail the composition of the governing body and the appointment of governors, including local authority governors. The 2012 Regulations provide that there can be only one local authority nominated governor. A local authority governor is a person who is nominated by the local authority and is appointed by the governing body after being satisfied that the person meets any eligibility criteria set by the governing body. It is for the governing body to decide whether the Local Authority nominee has the skills to contribute to the effective governance and success of the school and

meets any eligibility criteria they have set. If the governing body has set eligibility criteria, then these should be notified at the meeting, so the Committee can consider them before making a nomination.

- 7.3 Schedule 4 to the 2012 Regulations set out the circumstances in which a person is qualified or disqualified from holding or continuing in office as a governor, details of which are as follows –
- A person who is a registered pupil at a school is disqualified from holding office as a governor of the school.
 - A person must be aged 18 or over at the date of appointment to be qualified to be a governor.
 - A person cannot hold more than one governor post at the same school at the same time.
 - A governor who fails to attend meetings for six months without the consent of the governing body becomes disqualified from continuing to hold office.
 - A person is disqualified from holding or continuing in office if: (1) his or her estate is sequestered (under bankruptcy) or the person is subject to a bankruptcy restrictions order or an interim order; (2) he or she is, broadly speaking, disqualified from being a company director; (3) he or she has been removed from office as trustee of a charity; (4) he or she has a criminal conviction of a specified kind within a specified time period; (5) he or she is subject to a specified prohibition or restriction on employment, such as being barred from ‘regulated activity’ relating to children under the Safeguarding of Vulnerable Groups Act 2006; or (6) he or she refuses to apply for a criminal records certificate when requested to do so by the clerk to the governing body.
 - A person is disqualified from appointment as a local authority governor if he or she is eligible to be a staff governor.
- 7.4 Once appointed, a governor will hold office for a fixed period of four years from the date of appointment, except in a limited number of circumstances. This does not prevent a governor from being elected for a further term. A governor may resign, be removed or be disqualified from holding office in the circumstances specified in the relevant Regulations.
- 7.5 In determining whether to appoint an authority governor, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don’t. The Committee will wish to be satisfied that the process of selection is fair, open and consistent with furtherance of these equality objectives.
- 7.6 The Council’s Constitution gives the General Purposes Committee responsibility for appointment of local authority school governors.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- Appendices 1 – 5 [EXEMPT] LA Governor Application Forms

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- NONE

Officer contact details for documents:

Farhad Ahmed

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Non-Executive Report of the: General Purposes Committee Tuesday, 12 December 2023	 TOWER HAMLETS
Report of: Janet Fasan, Director of Legal and Monitoring Officer	Classification: Open (Unrestricted)
Guidance for Members and Officers on Outside Organisations	

Originating Officer(s)	Matthew Mannion, (Head of Democratic Services)
Wards affected	(All Wards);

Reasons for urgency

This report was not published five working days in advance of the meeting due to delays with internal consultation. It is important that the guidance is considered at this meeting so an approved version can be provided to persons currently serving on outside bodies who would otherwise be at risk by not having the latest legal advice.

Executive Summary

The report presents to the Committee the current Guidance for Members and Officers on Outside Organisations and invites members to review the Guidance and consider whether it is content to approve the draft final version attached to this report.

This Guidance has been revised following suggestions made by members of the Standards Advisory Committee between September 2022 and September 2023, when the Guidance was considered and noted by the Advisory Committee.

Recommendations:

The General Purposes Committee is recommended to:

1. Review and comment on the revised Guidance attached at Appendix 1 to the report.
2. To note that, should the guidance be agreed, it will be circulated to all Members and in particular those Members who are appointed to sit on Outside Bodies by the Council.

1. REASONS FOR THE DECISIONS

- 1.1 The Committee has a role in the appointments of officers, Members or other persons to external bodies on behalf of the Council, where the appointment is not the responsibility of the Mayor.

2. ALTERNATIVE OPTIONS

- 2.1 The Committee may make any suggestions it deems appropriate for consideration by the Monitoring Officer.

3. DETAILS OF THE REPORT

- 3.1 Under the terms of the Council's Constitution, the Mayor can make nominations to outside bodies where the activities of the outside body relate to executive functions. This includes almost all current outside body appointments.
- 3.2 The Constitution delegates the function of making appointments to outside bodies, where the activities of those outside bodies relate to Council functions, to the General Purposes Committee.
- 3.3 The role of serving on an outside body can be very different from the day-to-day role of a Member or an officer. The Council thus produces guidance to assist councillors and officers appointed or nominated by the Council to serve on outside organisations, whether as company director, trustee of a charity or a representative on a management committee.
- 3.4 The Guidance is designed for Members and officers. It sets out general expectations of both and includes an appendix which reflects the duties of directors/trustees as set out in law. It also sets out the various types of organisations that members may typically be appointed to.
- 3.5 The Guidance has been reviewed by the Standards Advisory Committee, which has a role in overseeing standards of behaviour on the part of Members appointed to outside organisations. Suggestions made by the Advisory Committee have been included in the draft guidance attached at Appendix 1.
- 3.6 The Committee is therefore asked to review the draft Guidance as set out in Appendix 1 to the report and make any final comments for the Monitoring Officer to consider.
- 3.7 It should be noted that an external review of the Council's governance in 2020, also recommended that the council review the appropriateness of current arrangements for supporting appointees to outside bodies to fulfil their responsibilities. The Guidance document forms a part of the framework of support.

4. EQUALITIES IMPLICATIONS

- 4.1 The Committee should consider the extent to which the Guidance supports equality of opportunity and engagement for all Members and officers including any impact on protected characteristics.

5. OTHER STATUTORY IMPLICATIONS

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:

- Best Value Implications,
- Consultations,
- Environmental (including air quality),
- Risk Management,
- Crime Reduction,
- Safeguarding.
- Data Protection / Privacy Impact Assessment.

- 5.2 None.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 There are no direct financial implications arising from this report.

7. COMMENTS OF LEGAL SERVICES

- 7.1 The Guidance document sets out important information for members that are appointed to outside organisations . It is essential that it is reviewed from time to time to ensure that it reflects the law and meets members' needs.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE.

Appendices

- Appendix 1 – Draft Guidance for Members and Officers on Outside Organisations

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- NONE.

Officer contact details for documents:
Matthew Mannion (Head of Democratic Services)

GUIDANCE FOR MEMBERS AND OFFICERS ON OUTSIDE ORGANISATIONS

1. Introduction

1.1 This guidance is designed to assist councillors and officers appointed or nominated by the Council to serve on outside organisations, whether as company director, trustee of a charity or a representative on a management committee. It outlines some of the most important responsibilities, but you should contact the Monitoring Officer for advice if you are unclear about any of your obligations.

1.2 Outside organisations include Trusts, Companies, Charities, School Governing Bodies, Community Benefit Societies and Community associations. You may be involved as a director, trustee, governor or member (with or without voting powers).

1.3 In performing your role, you may be acting in various capacities for example as an individual, as a representative of the Council or as director/trustee.

1.4 This can give rise to conflicts of interest, particularly where the organisation is seeking or receiving funding from the Council. You will always need to be clear about your role and alert to potential conflicts of interest so that they can be avoided.

2. General

2.1 Authority to nominate or appoint councillors and officers to serve on outside organisations rests with the Mayor in respect of Executive functions and the General Purposes Committee in respect of non-Executive functions. All nominations to outside organisations are published on the Council's website.

2.2 If you serve on an outside organisation it is your responsibility to commit to the task, attend meetings and support the work of the organisation. Some organisations have rules about attendance (e.g. missing a number of consecutive meetings may lead to loss of the place on the body). It is therefore for you to understand the extent of the commitment before seeking or agreeing to an appointment to an outside organisation.

2.3 Service on an outside organisation requires you to:

- act according to the rules, constitution and framework of the organisation;
- make independent and personal judgements in line with the duty of care to the organisation;
- report back to the Council and lead member or relevant committee as requested or in accordance with any reporting requirements;
- behave ethically, and follow the Council's Member or Officer Codes of Conduct, as appropriate;
- take an active and informed role in the management of the organisation's affairs;
- ensure the Council's Register of Interests is updated to include reference to your role on the organisation.

3. Your Duties and Responsibilities (Council)

3.1 Service on an outside organisation may give rise to a conflict with your role as councillor or officer. This is because as a trustee or a company director you have a legal responsibility to act in the interests of the outside organisation only, as opposed to the interests of the Council or any other body.

3.2 When a conflict of interest arises with your role as councillor/officer on a matter in the Council that relates to the outside organisation to which you have been nominated/appointed, you should seek advice. You should note that the Members' Code of Conduct requires you to avoid conflicts of interest. Accordingly, if a conflict cannot be avoided you may be unable to participate in the decision/discussion that gives rise to the conflict e.g. if you are a cabinet member discussing the terms of a loan or other support to the outside body on which you sit. Officers should seek advice from their Corporate Director as to how best to deal with conflicts and must have regard to the Officers' Code of Conduct.

3.3. Independent or co-opted persons serving on Council Committees are also expected to comply with the Members' Code of Conduct and therefore, should any of those persons also be nominated or appointed by the Council to an outside organisation, the same principles on managing conflicts shall apply to them as to elected councillors.

3.4 Subject to any other duties and responsibilities you owe in respect of your service to the outside organisation (for example the duty of confidentiality), you should:

(i) provide an annual (or other agreed frequency) update on the work of the organisation, and

(ii) provide to the General Purposes Committee, any information relevant to any application from the organisation for funding from the Council

4. Your Duties and Responsibilities (Outside Organisation)

Paragraph 2.2 and 2.3 above sets out your responsibilities in respect of the organisation to which you have been appointed. You should familiarise yourself with the organisation's rules including on what to do when you have a conflict on a matter that relates to the Council e.g involvement in a transaction such as the purchase of land by the organization from the council. It is important that you comply with the organisation's rules and processes for dealing with conflicts of interest.

5. Your Personal Safety

Your personal safety is of paramount importance and you should avoid putting yourself in a position where this is compromised. The link below takes you to a Guide on measures that may help to reduce or prevent risk in circumstances where you might be anxious for your personal safety. ([Personal Safety Guide for Councillors](#))

6. Legal Advice

6.1 A guide to the law as it affects councillors and officers serving on outside organisations is attached as **Appendix A**. The guide covers the range of different outside organisations and, therefore, those seeking guidance can refer to the relevant section.

6.2 A guide to the eligibility criteria for serving on outside organisations is attached as **Appendix B**.

For further Guidance follow links below to the Charity Commission and Company House websites <https://www.gov.uk/guidance/charity-commission-guidance>
<https://www.gov.uk/government/organisations/companies-house>

APPENDIX A

SERVICE ON OUTSIDE ORGANISATIONS A GUIDE TO THE LAW

This advice is for councillors and officers who are appointed or nominated by the Council to outside organisations whether as a company director, trustee of a charity or representative on a management committee. It sets out some of the most important responsibilities and requirements relating to service on the outside organisation. 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 you have queries then you should consult the Monitoring Officer.

For the purposes of this Guide, all references to a “Councillor” includes all elected Councillors, and any other individual nominated or appointed by the Council to an outside body.

General

1. There are some general provisions which apply to Councillors and Officers who act in the role of company director, charity trustee, or on the committee of management of an unincorporated voluntary organisation.
2. Councillors are under a duty to exercise independent judgement in the interest of the organisation in which they are involved. Whilst it is recognised that Councillors and Officers may have a commitment to representing the Council 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 Councillor or Officer is participating in an outside organisation in a representative capacity, s/he 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 Council.
3. The Councillor or Officer in acting as a director/trustee or member of a management committee of an outside organisation must act in the interests of that organisation. A mandate from the Council to vote one way or the other would put the Councillor or Officer in breach of the duty to that organisation. It is permissible to take account of the Council’s wishes, but not to vote simply in accordance with them.
The overriding duty when considering an item before the outside organisation is to act in accordance with the interests of that organisation.
4. Councillors 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.
5. An individual may not be appointed or nominated as a charity trustee or director if s/he is disqualified from taking up this position. Eligibility requirements are set out in Appendix B.

COMPANIES

General

6. 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.

7. 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.

8. 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

9. 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 s/he considers, in good faith, would be most likely to promote the success of the company for the benefit of the company's 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 exercise independent judgement

A director is under a duty to exercise independent judgement. 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 the 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

Council). The director cannot vote and speak simply in accordance with the Council 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 s/he 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 Council and the interests of the company. In such circumstances the Councillor or Officer should notify the Council 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 Council is 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 Councillor or Officer to resign either from the company or from the Council.

(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 s/he 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

10. 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 9(1-3) and 9(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 9(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, (e.g. 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

11. 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 Council may provide indemnities for Councillors 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.

Local Authorities (Companies) Order 1995

12. 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 from the Monitoring Officer.

CHARITIES

General

13. 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 ambulance services;
- other purposes recognised as charitable under existing law and any new purposes which are similar to another prescribed purpose.

14. 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. 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, and will have those obligations even where the charity has the legal form of a company limited by guarantee. 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 as relevant the Trustee Acts) and should note the particular requirements of the applicable Acts in respect of land transactions.

(2) Trustees must ensure the charity is carrying out its purposes for the public benefit, must always act in the charity's best interests and act with reasonable care and skill.

(3) Generally speaking, trustees must not profit from their position. They cannot receive remuneration or any other personal benefit 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.

(4) 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.

(5) If charitable income exceeds £10,000, the letters, advertisements, cheques etc. must bear a statement that the organisation is a registered charity.

(6) Trustees are under a duty to ensure compliance with all relevant legislation and other regulators (if any) which govern the activities of the charity.

(7) Trustees have a duty of care to their charity if they work with vulnerable groups including children and will need to take the necessary steps to safeguard and take responsibility for them.

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 s/he:

- 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
- 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 association's members' duties and liabilities will be set out in a constitution, which is 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, those who are elected or appointed to the association's Management Committee must act within the constitution, and must take reasonable care in exercising their powers and will have the responsibility for holding property and entering into contracts for the association.

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 e.g. 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.

APPENDIX B

Eligibility to serve on Outside Organisations

Trustee

Prospective Trustees must meet the following eligibility requirements before any appointments can be made. They must:

- Be at least **18 years old** or at least 16 years old if the charity is also a Company or Charitable Incorporated Organisation (CIO).
- Have no unspent conviction for an offence involving dishonesty or deception.
- Not be declared bankrupt or be subject to bankruptcy restrictions, an interim order or have an individual voluntary agreement (IVA) with creditors.
- Not be disqualified from being a company director.
- Not been removed as a trustee by either the charity commission, the Scottish charity regulator or the High Court due to misconduct or mismanagement.
- Not be disqualified from being a trustee by an order of the Charity Commission under section 181A of the Charities Act 2011

Director

Prospective Directors must meet the following eligibility requirements before any appointments can be made. They must:

- Be at least **16 years old** for the appointment to the Outside organisation to take effect (section 157 Companies Act 2006).
- Not be subject to a bankruptcy restrictions order or undertaking, or a debt relief restrictions order or undertaking.
- Not be subject to an order made under section 429(2)(b) of the Insolvency Act 1986 (disabilities on revocation of administration order against an individual).
- Not be convicted of an indictable offence (whether on indictment or summarily) in connection with the promotion, formation, management, liquidation or striking off of a company, with the receivership of a company's property or with them being an administrative receiver of a company (section 2, Company Directors Disqualification Act 1986).

For further Guidance follow links below to the Charity Commission and Company House websites <https://www.gov.uk/guidance/charity-commission-guidance>
<https://www.gov.uk/government/organisations/companies-house>