

# **Supplementary Committee Agenda**



## **Constitution and Members Services Scrutiny Standing Panel Tuesday, 26th March, 2013**

**Place:** Committee Room 1

**Time:** 7.00 pm

**Committee Secretary:** M Jenkins - The Office of the Chief Executive  
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### **8. REVIEW OF OUTSIDE ORGANISATIONS (Pages 3 - 20)**

(Assistant to the Chief Executive) Report attached.

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## **Report to the Constitution and Member Services Scrutiny Standing Panel**



**Date of meeting:** 26 March 2013

**Report of:** Assistant to the Chief Executive



**Subject:** Protocol on Partnerships and External Organisations

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### **Recommendations:**

- (1) To consider the draft changes to the Protocol on Partnerships and External Organisations as set out in the Appendix to this report;
- (2) To receive an oral report on the comments of the Council's Insurers (Zurich Municipal) on the contents of section 7 and Appendix 1 of the Protocol; and
- (3) To consider the arrangements that the Panel wish to recommend for inclusion in the Protocol concerning reporting arrangements for outside organisations.

### **Report**

#### **1. Introduction**

1.1 Appendix 1 to this report shows the Protocol which is currently published in the Council's Constitution which gives advice to Councillors and officers who serve as the Authority's representatives on outside organisations.

1.2 The Protocol covers a number of areas including appointment procedures, reports by representatives, agreements with external organisations regarding the proper role of elected and officer representatives, insurance and conflicts of interest. This Protocol was first devised in 2005 and subsequently amended following review by the Scrutiny Panel in 2007.

1.3 The review of this Protocol should be seen as going hand-in-hand with the review of the list of outside organisations which is submitted elsewhere on this agenda.

#### **2. Review of the Protocol**

2.1 Appendix 1 shows the present wording of the Protocol and changes proposed in bold type/underlined. Those changes which are of a minor clerical nature, will not be referred to in the following commentary:

**(a) Paragraphs 3.1 and 3.3**

The wording of these paragraphs has been changed so as to reflect the fact that some appointments to outside organisations are made by the Council and those relating to executive functions by the Leader

**(b) Paragraph 3.2**

It is proposed to delete this section, if the Council agrees to delete from the Constitution the protocol regarding allocation of seats which is referred to in this paragraph. This is a matter which the Panel considered at the previous meeting when it was decided to make the Appointments Panel, which deals with these matters, a permanent feature of the Constitution.

**(c) Paragraph 9.3(c)**

Additional wording has been added to this paragraph in order to reflect the Code of Conduct adopted by the Council and now in operation. Previous references to prejudicial and personal interests have been deleted as these terms derive from the former national code.

The current position is that if an interest is not a disclosable pecuniary interest (i.e., relating to the personal circumstances of a member or his/her spouse etc) then the interest is a non pecuniary one. The Council's Code states that non pecuniary interests should be declared but do not debar a member who is a representative of the Council on an external body from taking part in a discussion except where regulatory decisions (e.g., planning, licensing etc) are sought by that organisation. This is because circumstances of this kind can create conflicts of interest.

**(d) Paragraph 12**

This section has been updated to take account of changes in the Code of Conduct, along similar lines to paragraph 9.3(c)

**3. Other Matters**

3.1 Section 7 of the Protocol and Appendix 1 deal with insurance and indemnities. In summary, a member has liability cover from the Authority for actions undertaken lawfully and in accordance with the Council's statutory duties. However, if a member acts outside the Council's requirements, or in contravention of any statute, there is no such cover for the member concerned. As it is now some time since the contents of the Protocol relating to insurance matters has been reviewed, comments have been sought from Zurich Municipal. An oral report will be made on the outcome.

3.2 Section 10 of the Protocol refers to reporting arrangements. This is a matter which has already been discussed by the Panel when dealing with the review of the list of outside organisations. Hopefully, that list will be finalised at tonight's meeting but members are asked to consider what arrangements should be included in the Protocol regarding reporting.

3.3 Key factors that could be taken into account are as follows:

(a) Council meetings now have a standing item on the agenda to allow members of the Council to ask for reports at the succeeding meeting on any outside organisation;

(b) The Panel has taken the view that not all organisations necessarily need a full report on a regular basis or an annual report. They have signalled a more selective approach to the organisations where reports are to be requested. In the schedule attached to the review of outside bodies, references are made to the kind of reporting arrangements which members may favour.

(c) Appendix 2 to the Protocol sets out a form of agreement that external organisations are required to complete when they accept a Council representative. Likewise there is a pro forma for reporting by Councillor representatives to enable these to be submitted to the Council for information purposes. This has sometimes also been linked to the question of the attendance records for the Council's representatives.

These two processes have not been a great success. The creation of an agreement with outside organisations has caused some of the smaller organisations concern in terms of what they are being asked to do. Although many and varied attempts have been made over the years to obtain reports from all representatives, this has generally not been achieved and has been pursued less energetically in recent years than previously.

#### **4. Next Steps**

4.1 This Protocol forms part of the Constitution and may not be changed without the approval of the Overview and Scrutiny Committee and the Council. Members may like to consider what further consultation on the changes might be appropriate and it is suggested that their review of outside organisation lists should be coupled to a report on this Protocol. In terms of the list of organisations involved, members of the Panel may wish to consider whether any further consultation is required.

4.2 In compiling the schedule of organisations and the responses, many representatives have been given the opportunity of commenting on their organisations and most have now responded.

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**PROTOCOL ON PARTNERSHIPS  
AND OTHER EXTERNAL ORGANISATIONS**

**Adopted by Epping Forest District  
Council on 13.12.05  
Revised on 18.12.07**

## PROTOCOL - PARTNERSHIPS AND EXTERNAL ORGANISATIONS

### 1. Purpose of Protocol

- 1.1 To provide a framework of advice for the conduct of members and officers when representing the Council on external partnerships and other organisations.
- 1.2 To provide specific guidelines on questions relating to:
  - (a) member and officer liabilities;
  - (b) indemnities;
  - (c) reporting back to the Council;
  - (d) annual reports; and
  - (e) training.
- 1.3 This protocol is limited to appointments made in connection with the Council's powers, duties and general activities. It does not apply to membership of outside organisations held on a personal basis (i.e., independently of the Council). In such cases the member or officer concerned has a personal responsibility to consider issues such as indemnities, potential conflicts of interest and declarations of interest (see paragraphs 6.4 and 6.5 of this protocol).

### 2. Council involvement with External Partnerships and Organisations

- 2.1 The Council is routinely invited to appoint representatives to external bodies. Such invitations usually arise in one of the following ways:
  - (a) by virtue of a statutory duty or other legal requirement;
  - (b) by virtue of a specific decision or policy adopted by the Council;
  - (c) by virtue of invitations deriving from the Council's community leadership/consultative role; and
  - (d) by virtue of professional contacts among officers or through liaison arrangements delegated to them.
- 2.2 This protocol is intended to regularise the arrangements operating in any such case.

### 3. Appointments - Members of the Council

- 3.1 Member appointments are usually consolidated in May each year **by the Leader of the Council (in the case of executive functions) and** at the Annual Council meeting **(in respect of Council functions). The Leader of the Council and the Council itself** sometimes deals with appointments, usually in relation to casual vacancies or new bodies **at other times of the year.** All bodies **are** reviewed annually.
- 3.2 Member appointments are subject to separate protocols in the Council's Constitution covering:
  - (a) allocation of places between the political groups; and
  - (b) allocation of places on outside organisations to Portfolio Holders where Cabinet functions are directly involved.



3.3 Reference to those separate rules is necessary on all questions of appointment procedure. No appointment of a member to an outside body or partnership can be made without decision **by the Council or the Leader who will satisfy themselves** that this involvement is relevant to the powers and duties of the Council or is otherwise desirable.

3.5 When taking up their appointments, Councillors will be provided with a copy of this protocol and past annual reports so that they are fully briefed on the organisation concerned.

#### **4. Appointments - Officers of the Council**

4.1 Officers serve on outside bodies in 3 main capacities:

(a) when appointed by the Council, in lieu of a member representative or where both a member and an officer is desirable;

These appointments under 4.1 (a) above are subject to the same rules as applied to members.

(b) by virtue of the post occupied or professional background/development requirements;

These are agreed by Heads of Service. For more junior positions, Heads of Service give approval, except where consultation with members or Management Board is desirable.

(c) by virtue of a special invitation outside the normal terms of an officer's employment.

**4.2** These appointments require approval by the Management Board and the Council in the case of Senior Officers. **Less senior** staff are dealt with by Heads of Service. The Council's staffing policies stipulate the correct method of making these appointments.

#### **5. Appointments – Non-Councillors**

5.1 Sometimes the Council appoints representatives who are neither Councillors nor officers. Such representatives are subject to the provisions of this protocol except in so far as they may not be able to report back in the manner prescribed for elected members and officers. In the latter circumstances, they should contact the relevant Head of Service or the Portfolio Holder concerned for advice.

#### **6. Representatives on Outside Partnerships and Organisations - Policy Aspects**

6.1 Where any external organisations are involved in any matter which directly or indirectly affects the policies, responsibilities and powers of the Council, representatives must be aware at all times that the Council's policy is paramount. No undertakings should be given which in any way compromise the legal requirements applying to Council operations or which compromise the policy of the Authority.

6.2 Representatives should report back to the Council on any matters affecting the Council and seek information with which to advise an external organisation or

partnership. In reporting back, a representative may wish to request the relevant decision maker (e.g. the Cabinet or a Portfolio Holder) to consider any recommendations from the organisation concerned. No undertakings should be given on the outcome.

6.3 Some external partnerships have a basis in statutory powers whereby a number of partner bodies work together to achieve joint objectives. Although representatives are already able to participate in the proceedings of such partnerships, they should bear in mind at all times:

- (a) that the Council may have established policies and procedures which may be affected by those decisions; and
- (b) that implementation of partnership objectives may still require decisions by the Council in terms of staffing, finance and other resourcing matters.

6.4 In relation to Trusts, it is likely that if a Council representative accepts a position of trustee, this will create a legal duty to work for objectives of the Trust instead of the Council. In such circumstances serving Councillors acting as representatives must be mindful of conflicts of interest, which may be created, and act in accordance with the Council's code of conduct. (See Section 12 below.)

## **7. Representatives on Outside Organisations and Partnerships - Insurance and Indemnities**

7.1 Local Authorities are unable to provide all embracing indemnities or incur costs for all activities on all outside bodies. The Council's insurers can provide an indemnity to individual members and employees in limited circumstances only.

7.2 The circumstances in which the Council's insurers (currently Zurich) advise an indemnity can be provided are:

- (a) where an individual acts solely on behalf of his or her authority, within the terms of reference laid down by the authority, and solely in pursuance of the local authority's statutory powers;
- (b) where the individual acts solely in an advisory capacity in connection with the local authority's functions;
- (c) where the individual occupies an observer role on the board or committee of an outside organisation, representing the local authority's interests (rather than in a decision-making capacity);
- (d) where the individual acts on behalf of a joint committee established by two or more local authorities.

7.3 The authority is not able to provide an indemnity in respect of those activities where the individual acts:

- (a) solely on behalf of an outside body; or
- (b) outside his or her delegated powers; or
- (c) outside the authority's statutory powers.

- 7.4 Members and officers of the Council can therefore participate on outside organisations as observers or facilitators in the exchange of views or information as an extension of their position as local authority Councillors, but they may not make any decisions which are binding on the local authority.
- 7.5 Members are also not indemnified if they serve in an executive capacity on an outside body. A Member's status as a local authority councillor does not prevent the Member serving on an outside body in a personal capacity (i.e. not as a Council representative), provided that this does not create a conflict with his or her duties as a local authority member. Outside bodies must provide cover in either of these situations and local authority Members and employees should ensure that adequate cover for them is in place before agreeing to being appointed.
- 7.6 The same principles apply to officers as are set out in paragraph 6.4 **(Trusts)** above.

## **8. Written Agreements**

8.1 The Local Government Association, in conjunction with the National Council for Voluntary Organisations, has produced a Code of Practice, a key recommendation of which is a formal written agreement between external organisations and the Council. This protocol therefore requires such an agreement to be compiled in each case covering the following:

- (a) the relationship between the local authority and the organisation e.g. funder, partner;
- (b) the formal role and responsibilities of the authority, employee or Member, e.g. director, trustee, adviser, observer;
- (c) a general statement regarding what is expected from the local authority Member or employee;
- (d) the responsibilities and liabilities of members where board membership of the outside organisation is involved in terms of legislation, regulation and accounting standards;
- (e) confirmation that, where the outside organisation is a charity, a Member or employee who is acting as a trustee must act in the interests of the charity rather than the authority when serving in that capacity;
- (f) the role of observers, including receipt or withholding of confidential papers, attendance or exclusion from meetings and any speaking or voting rights;
- (g) the arrangements made by the outside organisation to indemnify their members against the risk of personal liability where board or trustee membership is involved; and
- (h) the arrangements made by the authority to cover their Members and employees whilst serving on outside organisations.

8.2 The Council will maintain up-to-date records of the approved involvement of the authority and its members and employees who serve on outside organisations including:

- (a) regular reviews of all placements and categorisations;

- (b) the establishment of a register to be used as the basis for central record;
- (c) specific terms of reference being given to each individual involved with an outside body;
- (d) confirmation of the extent to which the authority's indemnity does apply, emphasising the consequences for the individual if his or her terms of reference are exceeded;
- (e) a clear statement that the authority's indemnity will not be available where the individual is:
  - a director on the board of a limited company; or
  - a trustee of a trust or charity; or
  - a voting member of the management committee of an unincorporated association;
 and is not exercising a local authority function;
- (f) the position of an individual member on the Board or Committee of a grant-aided organisation to be amended to observer only; and
- (g) written confirmation to all Members and employees that personal or social memberships (i.e. those not connected with the Council) are not covered by the authority's indemnity.

8.3 A form of agreement document is attached as Appendix 2.

## **9. Representatives on External Organisations/Partnerships - Directorships**

9.1 Memberships of some organisations confer executive responsibilities on Council representatives. Cases in point are trustees of charities, directorships and membership of other statutory authorities.

9.2 There is a general presumption against such positions being held by representatives of this Council. This reflects conflicts of interest which can arise between the aims and objectives of the Council and those of the organisation concerned.

9.3 In cases where representatives hold such positions they must ensure:

- (a) that they have been duly appointed by the Council **or the Leader** (in the case of members) or the Management Board (in the case of officers);
- (b) that their duties on behalf of the organisation do not conflict with their role as Councillor or officer; and
- (c) that they maintain a clear distinction of responsibilities by declaring interests and not participating in Council meetings or discussions where there is a direct conflict of interest as defined by the Code of Conduct, **such conflicts are restricted to situations where the external partnership or Trust is seeking any regulatory decision, approval or statutory order from the Council (e.g. planning**

**permission, licensing approvals etc. or where the body in question is in negotiation with the Council regarding its financial interests.**

9.4 Representatives should seek timely advice on their position under the Code of Conduct for Members and Officers and any advice issued by the Standards Board for England and the Epping Forest District Standards Committee.

**10. Reporting Arrangements - Members of the Council**

10.1 A prime responsibility for members and non members who serve on outside organisations and partnerships is to keep the Authority informed of the work of those bodies. Such reports can also provide useful information by which the Council can judge whether continued involvement is of benefit to the Council. The Council will seek to receive copies of minutes of organisations but the reports by the representative may still be required.

10.2 Such reports should cover:

- (a) reports to the Cabinet on specific matters actually or potentially affecting the Council or on urgent matters; and
- (b) annual reports (even if these are produced separately by the organisation concerned).

10.3 Reports under 10.2(b) should be made in cases where an organisation does not produce its own annual report. A prescribed format (attached Appendix 3) should be used. A relevant timescale will be prescribed for this leading to the Annual Council meeting each year. Copies of these reports will be provided to all political groups on the Council.

10.4 Where a representative is not a Councillor, reports under 9.2(a) above should be directed to the Head of Service concerned or the appropriate portfolio holder.

**11. Reporting Arrangements - Officers of the Council**

11.1 Officers serving on outside organisations or partnerships as representatives of the Council shall keep their line manager(s) or Head of Service informed about the work of the body concerned. Heads of Service shall determine whether any information should be referred to the Management Board/Portfolio Holder.

11.2 Where officers serve on such bodies either as Council representatives or independently they must include those appointments in their declarations of interest under the Officer Code of Conduct.

**12. Effect of the Code of Conduct – Elected Members**

12.1 The Council's Code of Conduct states that a Councillor has a **non pecuniary** interest in any business of the Authority where it relates to or is likely to affect any external body to which they are appointed or nominated by the Council as its representative. However, that interest need only be disclosed at a meeting if the Councillor speaks on the matter concerned.

12.2 Such interests **for representatives on external organisations** may, if those interests affect the financial position **or any regulatory approval** for any such body on which they are represented including such matters as granting of any consent,

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approval, licence or registration. In these circumstances the Councillor must declare **an** interest and leave any meeting for the duration of the discussion. Regulatory decisions and the need to declare interests may apply to grant aid applications for organisations on which Councillors are representatives and property matters involving the Council, are cases where Councillors **also** need to exercise care not to breach the Code

**12.3 In cases where a body is not in negotiation with the Council or seeking a regulatory decision, membership of that organisation alone should not be regarded as preventing a representative from reporting to the Council on that body. It is important that the Council is kept informed about the work of all organisations on which it is represented.**

**12.4 Where a Councillor is a member of an external organisation but not as a representative of Epping Forest District Council, the Code of Conduct will apply to any interests which arise and members should follow the advice given in 12.1 -12.3 above to determine when involvement in a Council decision is inappropriate.**

### **13. Review of Protocol**

13.1 The protocol shall be subject to review on a regular basis or according to specific circumstances.

# LIST OF APPENDICES

- Appendix 1 - Statement of Indemnities/Insurance in respect of outside bodies**
- Appendix 2 - Agreement Document**
- Appendix 3 - Annual Report Format**

**PROTOCOL ON PARTNERSHIPS  
AND OTHER EXTERNAL ORGANISATIONS**

**APPENDIX 1**

**INSURANCE AND INDEMNITY STATEMENT**

**1. Circumstances in which indemnities that can be provided by the Council's Insurers in respect of member or officer involvement in external partnerships and organisations:**

- (a) Where an individual acts solely on behalf of his or her authority, within the terms of reference laid down by the authority, and solely in pursuance of the local authority's statutory powers;
- (b) Where the individual acts solely in an advisory capacity in connection with the local authority's functions;
- (c) Where the individual occupies an observer role on the board or committee of an outside organisation, representing the local authority's interests (rather than in a decision-making capacity);
- (d) Where the individual acts on behalf of a joint committee established by two or more local authorities.

**2. Activities for which the Council is unable to provide indemnities**

Activities where the individual member or officer acts:

- (a) solely on behalf of an outside body; or
- (b) outside his or her delegated powers; or
- (c) outside the authority's statutory powers.

**Notes:**

- 1. This statement derives from the indemnity provisions and exclusions from the Council's Public Liability Policy held with Zurich Municipal.
- 2. This statement will be reproduced as part of the agreement with each outside organisation. (See Appendix 2)



**PROTOCOL ON PARTNERSHIPS  
AND OTHER EXTERNAL ORGANISATIONS**

**APPENDIX 2**

**STANDARD FORM OF AGREEMENT  
BETWEEN EPPING FOREST DISTRICT COUNCIL AND \_\_\_\_\_**

**A. STATEMENT OF PARTICULARS \_\_\_\_\_**

|  |  |
|--|--|
| NAME OF ORGANISATION/<br>PARTNERSHIP<br>(1)  |  |
| ADDRESS FOR<br>CORRESPONDENCE<br>(2)   |  |
| E-Mail<br>(3)  |  |
| Telephone No<br>(4)  |  |
| Fax No<br>(5)  |  |
| AIMS AND OBJECTIVES OF<br>ORGANISATION (Supply<br>copy of Constitution,<br>governing instrument or trust<br>deed)<br>(6)   |  |
| MEETING/AGENDA<br>ARRANGEMENTS (Please<br>describe)<br>(7)   |  |
| WHAT STATUS/ROLE WILL<br>THE COUNCIL<br>REPRESENTATIVE FULFIL?<br>(viz observer, voting<br>committee member, trustee,<br>director etc)<br><br>(Please state any restrictions<br>including any on confidential<br>information)<br>(8) |  |

|   |  |
|---|--|
| <p>DOES PUBLIC LIABILITY INSURANCE EXIST FOR THE WORK OF THE ORGANISATION? (Give name of insurer and policy number)<br/>(9)</p> |  |
| <p>IS THE ORGANISATION A REGISTERED CHARITY? (Give registration number)<br/>(10)</p>  |  |

**B. FINANCIAL INFORMATION**

|   |  |
|---|--|
| <p>Does this organisation receive grant aid or similar financial support from Epping Forest District Council? (Give details)<br/>(11)</p> |  |
|---|--|

**C. STATEMENT OF PARTICULARS - EPPING FOREST DISTRICT COUNCIL**

|   |  |
|---|--|
| <p>REPRESENTATIVES OF EPPING FOREST DISTRICT COUNCIL</p>          |  |
| <p>STATUS (OFFICER/MEMBER)<br/>(12)</p>                           |  |
| <p>TERM OF APPOINTMENT<br/>(13)</p>                               |  |
| <p>CONTACT DETAILS (Address, telephone, fax, e-mail)<br/>(14)</p> |  |

#### **D. TERMS OF AGREEMENT - [Organisation]**

The \_\_\_\_\_ agrees to:

- (a) provide details of all relevant documentation and access to all meetings to the representatives of Epping Forest District Council;
- (b) provide details of meeting venues, times of meetings;
- (c) acknowledge that no Council representative may make decisions or give commitment on behalf of the Council in respect of any matter affecting the organisation;
- (d) acknowledge that no Council representative may commit the Council to any action or policy affecting the organisation;
- (e) acknowledge that a Council representative may be required to declare a personal interest in terms of his or her representation on the organisation and in some circumstances, may have a prejudicial interest which will require withdrawal from any District Council body considering a matter concerning that organisation;
- (f) note that Council representatives will only be indemnified as set out in the enclosed statement;
- (g) assist the Council representative in submitting regular reports to Epping Forest District Council on matters affecting the organisation;
- (h) agrees to provide separate copies of agenda, minutes, reports, statements of accounts, annual reports to Epping Forest District Council in addition to those provided under 1(a) above;
- (i) where appropriate, agrees to the attendance at meetings of nominated deputies when the representative is absent.

#### **E. TERMS OF AGREEMENT - EPPING FOREST DISTRICT COUNCIL**

The Epping Forest District Council agrees as follows:

- (a) to appoint representatives and deputy representatives in accordance with the organisation's requirements;
- (b) to keep the organisation informed of relevant Council decisions via its representative(s);
- (c) to indemnify its representatives but only in accordance with the statement attached;
- (d) that it expects Council representatives to attend meetings and participate in any training deemed necessary by the organisation;
- (e) to advise representatives on any matters relating to interests as they arise.

#### **F. SIGNATURES**

- (a) For \_\_\_\_\_ [Organisation]

On behalf of the above-named organisation, I agree to the conditions attaching to the appointment of representative(s) by Epping Forest District Council

Signed \_\_\_\_\_  
Name \_\_\_\_\_  
Position \_\_\_\_\_  
Date \_\_\_\_\_

(b) For Epping Forest District Council

On behalf of Epping Forest District Council, I confirm the conditions and undertakings attaching to Council representation on the above-named organisation.

Signed \_\_\_\_\_  
Name \_\_\_\_\_  
Position \_\_\_\_\_  
Date \_\_\_\_\_