

## Outside Bodies

- 40.1** The Council defines outside bodies as a body which does not exercise a Council function but which operates within the City of Westminster. Such a body is one which seeks a representative from the Council or alternatively asks the Council to nominate someone to serve on the body as a trustee.
- 40.2** Except as provided for by the relevant body the persons nominated or appointed do not need to be Members of the Council.
- 40.3** Appointments to outside bodies will be administered by the Head of Committee and Governance Services with appointments and nominations made in accordance with the wishes expressed by the relevant party chief whip.
- 40.4** A list of bodies and persons nominated is attached.

### **DETAILED BACKGROUND ON OUTSIDE BODIES AND THE INSURANCE FOR THOSE SERVING ON OUTSIDE BODIES**

- 40.5** The Council defines outside bodies as a body which does not exercise a Council function but which operates within the City of Westminster. Such a body is one which seeks a representative from the Council or alternatively asks the Council to nominate someone to serve on the body as a trustee. Except as provided for by the relevant body the persons nominated or appointed do not need to be Members of the Council. Appointments to outside bodies will be administered by the Head of Committee and Governance Services with appointments and nominations made in accordance with the wishes expressed by the relevant party chief whip. A list of bodies and persons nominated is attached.
- 40.6** There are a number of outside bodies of varying descriptions to which the City Council customarily nominates members and officers. In a few cases the City Council's representative merely acts as an "observer" in order to represent the City Council's interests and does not take part in decision making; for the most part such "observers" are covered by the City Council's existing Indemnity given to members and officers and by the Council's public liability insurance. Generally the number of outside bodies to which the Council nominates Members has reduced in recent years and the current list is attached as an Appendix to this section. There are also companies or organisations like the City of Westminster Charitable Trust on which members and officers serve ex officio.
- 40.7** In certain cases, however, City Council members and officers act as directors or trustees or members of the management committees of outside bodies or otherwise play an active role in the affairs of the body in question, often because the constitutions of such bodies stipulate that such Council nominees must act in such capacities. Those who act as directors, trustees or members of the management committee owe a "fiduciary duty" to the outside body in question. In certain very limited circumstances they may be personally liable for the debts of the bodies on which they serve, or in relation to third party claims brought against those bodies.

- 40.8** Many outside bodies are companies which enjoy limited liability. Generally speaking, the directors of such companies will be personally liable only in exceptional circumstances, such as for deliberate or reckless breach of trust or knowingly causing the company to act beyond its powers or to trade whilst insolvent. Much the same is true in relation to charitable trustees. Many charities are themselves limited companies, normally "companies limited by guarantee" whose members' personal liability is ordinarily restricted to the sum of one pound (£1) which they have guaranteed to contribute towards the payment of the company's debts. Charitable trustees and company directors can generally avoid personal liability by being careful to take appropriate professional advice before making decisions. However they may be personally liable (without limit) if they deliberately or recklessly take actions in breach of trust or without having taken appropriate advice.
- 40.9** Until relatively recently the Courts, in particular in the case of Burgoigne -v- London Borough of Waltham Forest (1996), had ruled that local authorities could not indemnify members and officers against personal liability for acts committed outside the powers of the local authorities in question. The rationale for this was that, if the local authority had no power to do the act which led to a third party claim, it therefore had no power to use public money to meet such a claim. As a consequence of the Burgoigne and other similar rulings, the City Council's Indemnity to members and officers, a copy of the present version of which is contained in Appendix 2 to this section, specifically excluded those serving on outside bodies in the capacity of director, trustee, or member of a management committee. For the same reason the City Council's public liability insurance, the insurance policy which covers members and officers against third party negligence claims, excluded cover for members and officers serving on outside bodies as directors, trustees or members of a management committee.
- 40.10** It had for some years been customary for the City Council to arrange insurance for its members and officers serving on outside bodies. Because the Burgoigne ruling made clear that the Council could not use public money to pay for such insurance, a special policy was negotiated with the City Council's then insurers, St. Paul's, whereby the only consideration for the insurance cover provided was the completion of a proposal form by members and officers concerned. There was no financial premium payable.
- 40.11** The policy with St. Paul's expired on 31 March 2002. By that time various catastrophes in the world at large, notably the terrorist attacks on New York of 11<sup>th</sup> September 2001, had considerably changed the insurance climate and it became apparent that it would no longer be possible to continue the "free" insurance which had been arranged with St. Paul's. This was made clear by the Council's new insurers, Zurich Municipal, who had won the tender for the renewal of the Council's insurance as from 1<sup>st</sup> April 2002.
- 40.12** In the light of the changes in the insurance climate referred to above, it was necessary for officers to seek alternative means of achieving the same ends. Fortunately the enactment of Section 2 of the Local Government Act 2000, which enables local authorities to spend public money in furtherance of the economic or social well being of their areas, arguably meant that the City Council could now purchase insurance for those serving in a fiduciary capacity on outside bodies, notwithstanding the Burgoigne case. However it was

immediately apparent that the cost to the City Council of providing blanket insurance cover for all members and officers serving on outside bodies would be prohibitively expensive, even if it were possible to arrange it. Officers therefore embarked upon a strategy of ascertaining precisely which members and officers actually needed cover. This involved a three stage process, encompassing (a) writing to members and officers to ascertain which outside bodies they served on and in what capacities; (b) discovering which outside bodies had, or were willing to provide insurance cover for their directors and trustees; and (c), in the light of the responses to (a) and (b), purchasing insurance for the (hopefully) small numbers of members and officers serving in fiduciary capacities on outside bodies which did not provide cover of their own. This process necessarily took a great deal of time and it has been concluded that it is not feasible to continue that approach (see below).

- 40.13** Because of the uncertainty over the power of local authorities to indemnify, and buy insurance for, members and officers serving on outside bodies, Parliament in November 2004 made the Local Authorities (Indemnities for Members and Officers) Order 2004 pursuant to powers contained in Section 101 of the Local Government Act 2000. This makes it clear that local authorities now have the power to indemnify, and buy insurance for, members and officers serving on outside bodies even in a decision-making capacity provided that those serving on such bodies are doing so at the request of, or with the approval of, or for the purposes of, the City Council. The new Order has removed the previous impediment to providing an indemnity to members and officers serving in a fiduciary capacity on outside bodies and accordingly it is recommended that the Council's Indemnity be widened to provide this cover.
- 40.14** Unfortunately investigations by the Director of Finance have revealed that the cost of buying specific insurance cover for those members and officers not already covered by the Council's insurance or that of the outside bodies on which they serve is likely to be prohibitively expensive (the Director of Finance has received quotations of annual premiums in excess £1,000 per individual). Moreover it has become apparent that, to purchase insurance for such members and officers, the Council would be required by the insurers to provide a great deal of information and answer a large number of questions about the nature and activities of the outside bodies in question. This would entail many hours of work on the part of the Insurance Section in the Finance Department in collecting the necessary information. In order to give an idea of scale of the problem, a list of organisations and the councillors who serve on them is attached at Appendix 3 to this section. The list is subject to continual change. A further problem which has become apparent is that the Council's own insurers take a restrictive view of the cover which they can provide and are only willing to extend that cover to members and officers serving on outside bodies which are 'not-for-profit entities', notwithstanding the powers contained in the 2004 Order. An extract from the present officers Indemnity Insurance is contained in Appendix 4 to this section.
- 40.15** In view of this, and in order to devise a system which is workable without being at risk of falling into abeyance through being overly complicated, officers have after much discussion concluded that it is not feasible to provide a complete indemnity covering any member or officer serving on an outside body irrespective of whether or not insurance is in place. This is because the

Council's insurers, with whom officers have had lengthy conversations about this issue, have made it clear that they are unwilling to provide blanket cover. Officers have considered whether the Council should effectively 'self-insure' to the extent that cover is not provided by the Council's insurers, but it has been concluded that it is not financially prudent to do so because of the fact that the risk, however small, cannot be quantified. . Moreover a 'self-insurance' arrangement would require an administratively complex risk management and vetting procedure to be put in place to ensure that the risks being taken on by the Council were not too great. It is therefore recommended that the indemnity provided by the Council should simply be co-extensive with the cover provided by the Council's insurers. In the case of a member or officer serving on an outside body which does not have its own insurance cover and does not come within the cover provided by the Council's insurers the member or officer in question will be told that he or she should either resign from the outside body in question or accept that he or she will not have the benefit of any kind of insurance cover whilst serving on that body. The numbers of such appointments are likely to be minimal. The Council's own public liability insurance policy has an excess of £100,000, the effect of which is that the City Council is self-insuring in any event on claims up to that amount.

## Appendix 1

### INDEMNITY

1. The City Council will, subject to the conditions, limitations and exceptions below, indemnify all members (which expression shall hereinafter be deemed to include co-opted members of any Council committees) or employees of the Council against any damages, costs or legal expenses including those incurred pursuant to proceedings under Part 3 of the Local Government Act 2000) which any such member or employee may be ordered to pay or may reasonably have incurred arising from activities carried out on behalf of the Council if the member or employee acted in good faith and honestly believed that the act or omission complained of was within his/her power and that his/her duty as a member or employee or (in the case of functions exercised otherwise than in the capacity of member or Council employee) performer of the function in question with the approval or at the request or for the purposes of the Council, required or entitled him/her to do or omit to do it. Such Indemnity shall apply to any liability of any member or employee as the City Council's representative or nominee on an outside body and to any employee who in connection with his/her employment with the City Council provides an administrative, technical, professional or other service to any person or body outside the City Council.

2. For avoidance of doubt this Indemnity will apply to existing and former member and employees in respect of acts and omissions whilst they were members or employees.

3. Subject as aforesaid the City Council will not itself make any claim against any member or employee for any loss or damage occasioned by any neglect, act, error or omission committed by an individual arising from the pursuit of his/her duties on behalf of the City Council (or on behalf of any outside body to which he or she has been appointed by or with the written approval of the Council and as representative or nominee of the City Council) whilst acting within the scope of his/her authority.

#### **Conditions and Limitations:**

- (1) This indemnity will not extend to loss or damage directly or indirectly caused by or arising from:
  - (a) Fraud, dishonesty, deliberate wrongdoing or recklessness, or any criminal offence on the part of a member or employee (except where the criminal offence is an offence under the provisions of the Health and Safety at Work Act etc 1974 or relevant statutory provisions within the meaning of that Act in which case the indemnity will continue to apply).
  - (b) Any action, neglect, error or omission by an individual otherwise than in the course of his/her duty.
  - (c) Activities which are ultra vires the City Council, the body in question or the individual save to the extent that at the time of the activity concerned the individual bona fide and reasonably believed that the activity was intra vires.

## Appendix 2

### Indemnity

The City Council will, subject to the exceptions below, indemnify all Councillors or employees of the Council against any damages, costs or legal expenses which any such Councillor or employee may be ordered to pay or may reasonably have incurred arising from activities carried out on behalf of the Council if the Councillor or employee acted in good faith and honestly believed that the act complained of was within his/her power and that his/her duty as a Councillor or employee required or entitled him/her to do or omit to do it. Such indemnity shall apply to any liability incurred by any Councillor or employee as the City Council's representative on an outside body and to any employee who in connection with his/her employment with the City Council provides an administrative, technical, professional or other service to any person or body outside the City Council.

For avoidance of doubt this indemnity will apply to existing and former Councillors and employees in respect of acts and omissions whilst they were Councillors or employees.

Except as mentioned above the City Council will not itself make any claim against any Councillor or employee for any loss or damage occasioned by any neglect, act, error or omission committed by an individual arising from the pursuit of his/her duties on behalf of the City Council whilst acting within the scope of his/her authority.

#### Exceptions:

- (1) This indemnity will not extend to loss or damage directly or indirectly caused by or arising from:
  - (a) Fraud, dishonesty or any criminal offence on the part of a Councillor or employee (except where the criminal offence is an offence under the provisions of the Health & Safety at Work Act 1974 or relevant statutory provisions within the meaning of that Act in which case the indemnity will continue to apply.
  - (b) Any neglect, error or omission by an individual otherwise than in the course of his/her duty
  - (c) Activities which are "ultra vires" i.e outside the legal powers of the City Council, save to the extent that at the time of the activity concerned the individual bona fide and reasonably believed that the activity was intra vires, i.e. within the legal powers of the City Council
  - (d) Liability in respect of any surcharge and Sections 17 and 18 of the Audit Commission Act 1998. Provided that where upon final determination of an objection to the Auditor the Council is satisfied that a person the subject of an objection was not blameworthy it will meet the legal costs reasonably incurred by such a person in connection with such objection.
- (2) This indemnity will not apply if a Councillor or employee without the written authority of the Director of Legal and Administrative Services admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of this resolution.
- (3) This indemnity will not apply where a Councillor or employee has been appointed to and is acting in the capacity of:
  - (a) a director on a board of directors of a company; or
  - (b) a trustee of a trust
  - (c) a voting member of a management committee of another outside body

### OUTSIDE BODIES Appendix 3

Name of Organisation
Agreed Syllabus Conference
Abbey Community Association
Adoption and Fostering Panel
Archbishop Tenison's Grammar School Foundation
Joint Pensions Committee
Burdett Coutts and Townsend School Foundation
Central and North West London NHS Foundation Trust
City Literary Institute
Covent Garden Area Trust
Cross River Partnership
Edward Harvist Trust Charity
Faith Exchange
Grants Committee
Greater London Reserve Forces and Cadets Association
Greater London Employment Forum and Greater London Provincial Council
Hyde Park Place Estate Charity
Imperial College – Court
Joint Pensions Committee
Jubilee Hall Recreation Centre Ltd
Local Government Information Unit
London Councils
London Marathon Board
London Connections at St Martins

<b>Name of Organisation</b>
London Road Safety Council
Paddington Welfare Charities
Philological Foundation
St Andrews Club
St Clement Danes Educational Foundation
St Clement Danes Holborn Estate Charity
St Clement Danes Parochial Charities
St James's United Charities
St Martin-in-the-Fields Almshouse Charity
St Marylebone Almshouse
St Marylebone Educational Foundation Trust
St Paul's Covent Garden United Charities
Schools Admission Forum
Shared Experience
Sir John Hunt's Gift Committee
Soho Parishes Trust
Standing Advisory Council for Religious Education
Transport & Environment Committee (Executive)
United Westminster Almshouse (also Trustees of Sarah Duchess of Somerset Charity)
United Westminster Schools Foundation
Victoria Country History of Middlesex
Volunteer Centre Westminster Board
Westminster Amalgamated Charity



Westminster Arts
Westminster Community Homes Ltd
City of Westminster College Board of Governors
Westminster Adult Education Service
Westminster Kingsway College