



# South Derbyshire District Council

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**F. McArdle**  
Chief Executive

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Our Ref: PDS/KW  
Your Ref:

Date: 17th May 2006

Dear Councillor,

## Annual Council Meeting

YOU ARE HEREBY SUMMONED to attend the ANNUAL MEETING of the Council to be held in the Council Chamber, Civic Offices, Civic Way, Swadlincote on THURSDAY, 25TH MAY 2006 at 6.00 p.m. to transact the business set out on the attached agenda.

Yours faithfully,

Chief Executive

To: **Labour Group**

Councillor Jones (Chair), Councillor Lauro (Vice-Chair) and Councillors Bambrick, Bell, Carroll, Dunn, Harrington, Isham, Lane, Mrs. Mead, Mulgrew, Pabla, Richards, Shepherd, Southerd, Southern, Taylor, Tilley, Whyman, M.B.E. and Wilkins.

**Conservative Group**

Councillors Atkin, Bale, Bladen, Ford, Mrs. Hall, Harrison, Mrs. Hood, Hood, Lemmon, Mrs. Littlejohn, Nalty, Mrs. Renwick, Shaw and Mrs. Wheeler.

**Independent Member**

Councillor Mrs. Walton.



INVESTOR IN PEOPLE

## AGENDA

- (1) Apologies.
- (2) To report the result of the election held on 20th April 2006 to fill the casual vacancy in the Swadlincote Ward.
- (3) To confirm the Open Minutes of the Meeting of the Council held on 13th April 2006 (Minutes Nos. CL/155 - CL/164)(**Pages 5-9**).
- (4) Annual Audit and Inspection Letter. (**Page 10**)
- (5) Presentation on Swadlincote Town Centre Masterplan.✓
- (6) To receive any declarations of interest arising from any items on the agenda.✓
- (7) To appoint the Leader of the Council for the ensuing year.✓
- (8) To appoint the Deputy Leader of the Council for the ensuing year.✓
- (9) To receive any announcements from the Chair, Leader and Head of Paid Service.✓
- (10) To receive any questions by members of the public pursuant to Council Procedure Rule No. 10.✓
- (11) To receive any questions by Members of the Council pursuant to Council Procedure Rule No. 11.✓
- (12) To deal with any business remaining from the last Meeting.✓
- (13) To consider any Notices of Motion in order of which they have been received.✓

### PART I - ITEMS FOR CONSIDERATION IN PUBLIC (OPEN)

- (14) To receive and consider the Open reports of the following Committees:-

<u>Committee</u>	<u>Date</u>	<u>Minutes Nos.</u>
Environmental and Development Services ( <b>Pages 33-36</b> )	20.04.06	EDS/67 - EDS/71
Development Control ( <b>Pages 37-41</b> )	25.04.06	DC/120 - DC/128
Housing and Community Services ( <b>Pages 42-51</b> )	27.04.06	HCS/84 - HCS/96
Finance and Management ( <b>Pages 52-68</b> )	04.05.06	FM/135 - FM/146
Community Scrutiny ( <b>Pages 69-71</b> )	08.05.06	CYS/32 - CYS/34
Corporate Scrutiny	15.05.06	To be circulated
Development Control	16.05.06	To be circulated
Overview	22.05.06	To be circulated

- (15) To authorise the sealing of the documents listed. (**Page 72**)
- (16) Establishment of an Audit Sub-Committee (**Page 73**)
- (17) Political Composition. (**To be circulated**).

- (18) To appoint Members to serve on Committees for the ensuing year (including Chairs and Vice-Chairs), in accordance with the allocation of seats to Groups and to appoint Members to Working Panels (**To be circulated**).
- (19) To appoint the Substitute Panels. (**To be circulated**).
- (20) To appoint the Chair of the following Area Meetings:-
  - Etwall Area Meeting
  - Linton Area Meeting
  - Melbourne Area Meeting
  - Newhall Area Meeting
  - Repton Area Meeting
  - Swadlincote Area Meeting
- (21) To appoint or submit nominations for representatives to serve on outside bodies. (**To be circulated**).
- (22) Members' Allowances 2006/07 (**Page 84**)
- (23) Code of Conduct for Representatives on Outside Bodies (**Page 86**)
- (24) Review of Constitution (**Page 107**)
- (25) Annual Report of the Overview and Scrutiny Committees (**To be circulated**).
- (26) Corporate Plan 2006/09 (**To be circulated**).
- (27) Comprehensive Performance Assessment for District Councils from 2006 (Final Proposals Consultation (**Page 108**))

## PART II

### THE PRESS AND THE PUBLIC MAY BE EXCLUDED FROM THE MEETING DURING CONSIDERATION OF THE FOLLOWING ITEMS (EXEMPT)

- (28) The Chair will therefore move:-

That in accordance with Section 100(A)(4) of the Local Government Act 1972 the press and public be excluded from the remainder of the Meeting as it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that there would be disclosed exempt information as defined in the paragraphs of Part I of Schedule 12A of the Act indicated in the reports of Committees.

- (29) To confirm the Exempt Minutes of the Meeting of the Council held on 13th April 2006 (Minutes Nos. CL/165 - CL/166)(**Pages 117-118**).

(30) To receive and consider the Exempt reports of the following Committees:-

<u>Committee</u>	<u>Date</u>	<u>Minutes Nos.</u>
Environmental and Development Services ( <b>Pages 119-121</b> )	20.04.06	EDS/72 - EDS/74
Development Control ( <b>Page 122</b> )	25.04.06	DC/129
Housing and Community Services ( <b>Pages 123-124</b> )	27.04.06	HCS/97 - HCS/99
Finance and Management ( <b>Pages 125-128</b> )	04.05.06	FM/147 - FM/154

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REPORT TO:	COUNCIL	AGENDA ITEM: 15
DATE OF MEETING:	25th May 2006	CATEGORY: DELEGATED
REPORT FROM:	CHIEF EXECUTIVE	OPEN PARAGRAPH NO: N/A
MEMBERS' CONTACT POINT:	PAUL SPENCER (5722)	DOC:
SUBJECT:	SEALED DOCUMENTS	REF: PS/KW
WARD(S) AFFECTED:	VARIOUS	TERMS OF REFERENCE: N/A

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## 1.0 Purpose of Report/Detail/Recommendation

1.1 To authorise the Sealed Documents listed below, which have no specific authority:-

<u>Date</u>	<u>No. of Seal</u>	<u>Nature of Document</u>
30.03.06	9287	Transfer: 54 Harbin Road, Walton-on-Trent
10.04.06	9289	Transfer: 35 Hartshill Road, Hartshorne
10.04.06	9290	Transfer: 32 The Crest, Linton
18.04.06	9294	Transfer: 25 Limetree Avenue, Midway
24.04.06	9296	Transfer: 1 Edward Street, Hartshorne
28.04.06	9297	Transfer: 2 Hall Street, Church Gresley
12.05.06	9308	Transfer: Flat No.6 The Shrubbery, Woodville

## 2.0 Financial Implications

2.1 None.

## 3.0 Corporate Implications

3.1 None.

## 4.0 Community Implications

4.1 None.

## 5.0 Background Papers

5.1 Seal Register

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REPORT TO:	Council	AGENDA ITEM: 16
DATE OF MEETING:	25 <sup>th</sup> May 2006	CATEGORY: DELEGATED
REPORT FROM:	Director of Corporate Services	OPEN
MEMBERS' CONTACT POINT:	Tony Stamper (Extn 5706)	DOC:
SUBJECT:	Establishment of an Audit Sub-Committee	REF:
WARD(S) AFFECTED:	All	

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### 1.0 Recommendations

- 1.1 That Members approve the formation of an Audit Sub-Committee to make recommendations to the Finance and Management Committee.
- 1.2 That the Terms of Reference be adopted.
- 1.3 That the Sub-Committee is to comprise five Members, the committee being politically balanced with Member representatives being appointed accordingly.
- 1.4 That the consequential amendments to the Constitution be approved.
- 1.5 That meetings of the Audit Sub-Committee be included in the 2006/07 committee cycle.
- 1.6 That the Audit Sub-Committee's Terms of Reference be reviewed each year.

### 2.0 Purpose of Report

- 2.1 The purpose of this report is to consider the creation of a separate Audit Sub-Committee in accordance with CIPFA new guidance on the principles for the establishment of Audit Committees.

### 3.0 Executive Summary

- 3.1 The CPA Framework for District Councils includes a Use of Resources Assessment. The guidance from the Audit Commission, relating to the Use of Resources, identified the need for a dedicated Audit Committee.
- 3.2 The Audit Commission recommends that, to meet Best Practice in respect of corporate governance, such a forum should exist within each local authority.

- 3.3 In order to achieve the highest Use of Resources Assessment, in relation to internal control, it is considered necessary to establish an Audit Committee function.

#### 4.0 Detail

- 4.1 The current Comprehensive Performance Assessment framework includes a Use of Resources Judgement. This judgement assesses how well a Council manages and uses its financial resources to support its delivery of the Council's priorities.
- 4.2 This new framework has been deemed "the harder test". Rather than focusing on whether a council has robust frameworks in place, the test has moved on to assess the impact that these frameworks have had.
- 4.3 The Audit Commission requires councils to have an audit committee in order to gain a level 4 in the Use of Resources Assessment.
- 4.4 Their guidance recommends that an Audit Committee:
- is independent of the Executive and Scrutiny functions.
  - has terms of reference which are reviewed on an annual basis, thereby including relevant governance developments.
  - provides effective leadership on audit and governance issues.
  - is proactive and has a forward-looking programme of meetings and agenda items to ensure comprehensive coverage of all responsibilities in relation to the internal control environment.

In addition:

- The Council has taken steps to ensure that the Audit Committee Chair either has previous knowledge of, or has received appropriate training on, financial and risk management, accounting concepts standards, and the regulatory regime.
  - Audit Committee Members should be provided with specific training relevant to their responsibilities.
- 4.5 CIPFA considers it to be good practice to establish an Audit Committee and has recently issued a guidance document "Audit Committees – Practical Guidance for Local Authorities".
- 4.6 There is no statutory requirement for a local authority to have an Audit Committee.
- 4.7 The guidance details the three main ways of governing local government determined by the Local Government Act 2000 but does not mention the committee approach. CIPFA accepts that different arrangements for managing and governing individual local authorities determine how an Audit Committee role is fulfilled.
- 4.8 Although the guidance prescribes no single model it does state that there are features that are common to all. These are detailed in the Position Statement and include a statement of purpose, core functions, features, structure and administration (see Appendix 1).

- 4.9 It is proposed that a Sub-Committee making recommendations to the Finance and Management Committee is the appropriate way for an Authority of our size to undertake this function.
- 4.10 The proposed Terms of Reference are detailed in Appendix 2 and the Structure Arrangements in Appendix 3. These are based primarily on CIPFA's guidance and the Audit Commission's Use of Resources advice, although Good Practice adopted by "4<sup>th</sup> Option" District Councils has been included.
- 4.11 Certain areas, that will be included within the proposed arrangements, are presently dealt with by Council or the Finance and Management Committee. These will continue to be administered in this manner, in line with any recommendations made by the Sub-Committee.
- 4.12 One issue that has been unclear for the Council is the make-up of the Committee in order to ensure its independence. The Good Practice guidance recommends that it should be independent of the Executive and Scrutiny functions. However, this guidance may not be entirely practical for "4<sup>th</sup> Option" councils such as South Derbyshire.
- 4.13 Consequently, advice has been sought from CIPFA and the Audit Commission. This clarifies that, to maintain independence, the Committee should not consist of the Chairs and Vice-Chairs of the three Policy Committees, plus the Leader and Deputy Leader of the Council (this being effectively the Council's Executive for this purpose).
- 4.14 In addition, it should not include any Members of the Council's Finance and Management Committee, however there may be some discretion around the Scrutiny function. The Audit Commission considers that Members of a Scrutiny committee can also be a Member of the Audit Committee, although it is recommended that they are not the Chair.

## **5.0 Financial Implications**

- 5.1 Attendance at meetings will attract travelling allowances.

## **6.0 Corporate Implications**

- 6.1 The Audit Sub-Committee will be charged with developing and implementing sound audit and governance arrangements within the Council and, as such, will contribute to achieving the objectives within the Corporate Plan.
- 6.2 Continuous improvement by increasing the focus on the Council's internal control environment, including audit and governance issues, will reflect favourably in the Use of Resources Assessment.

## **7.0 Community Implications**

- 7.1 None



## **8.0 Conclusions**

- 8.1 Whilst much of what is required, by good practice, is presently undertaken by the Council, it is reported to various committees.
- 8.2 Best Practice now dictates that, in order to highlight the importance of the internal control environment within our corporate governance arrangements, it is better focussed within an Audit Committee.

## **9.0 Background Papers**

- 9.1 CIPFA publication - Audit Committee Principles in Local Government  
Audit Commission - Use of Resources Guidance for Auditors 2005  
CIPFA Scotland publication - Audit Committee Principles Guidance

## AUDIT COMMITTEE PRINCIPLES IN LOCAL GOVERNMENT

### POSITION STATEMENT

This statement reflects the views of CIPFA's Audit Panel on the role of audit committees in local government. It emphasises the importance of audit committees being in place in all principal local authorities.

Audit committees are a key component of corporate governance. They are a key source of assurance about the organisation's arrangements for managing risk, maintaining an effective control environment, and reporting on financial and non-financial performance.

Guidance on implementing and running audit committees in local government lags behind other sectors. CIPFA will therefore be publishing further guidance, drawn from practical examples and experience of other parts of the public sector in 2005.

The way in which an audit committee is organised will vary depending upon the specific political and management arrangements in place in any local authority. CIPFA's further guidance will explore how audit committees relate to local authorities different arrangements for managing and governing themselves. It is not therefore appropriate to prescribe any particular model. But there are features that should be common to all:

- 1 A Statement of Purpose
- 2 Core Functions
- 3 Features
- 4 Structure and Administration

#### **1. A Statement of Purpose**

The local authority should formally approve a Statement of Purpose, along the following lines:

The purpose of an Audit Committee is to provide independent assurance of the adequacy of the risk management framework and the associated control environment, independent scrutiny of the authority's financial and non-financial performance to the extent that it affects the authority's exposure to risk and weakens the control environment, and to oversee the financial reporting process.

## 2. Core functions

Audit Committees will:

- Approve (but not direct) internal audit's strategy, plan and performance.
- Review summary internal audit reports and the main issues arising, and seek assurance that action has been taken where necessary.
- Consider the reports of external audit and inspection agencies.
- Consider the effectiveness of the authority's risk management arrangements, the control environment and associated anti fraud and anti corruption arrangements. Seek assurances that action is being taken on risk related issues identified by auditors and inspectors.
- Be satisfied that the authority's assurance statements, including the Statement on Internal Control<sup>1</sup>, properly reflect the risk environment and any actions required to improve it.
- Ensure that there are effective relationships between external and internal audit, inspection agencies and other relevant bodies, and that the value of the audit process is actively promoted.
- Review the financial statements, external auditor's opinion and reports to members, and monitor management action in response to the issues raised by external audit.

## 3. Features

Good audit committees will be characterised by:

- Strong chairmanship – displaying a depth of skills and interest<sup>2</sup>
- Unbiased attitudes - treating auditors, the executive and management equally
- The ability to challenge the Executive (leader/chief executive/mayor or whatever combination) when required

<sup>1</sup> Extract from CIPFA's guidance *The Statement on Internal Control – meeting the requirements of the Accounts and Audit Regulations 2003*. "The Accounts and Audit Regulations 2003 state that the relevant body is responsible for ensuring that the body (authority) has "a sound system of internal control". Members and member committee committees should therefore establish procedures to provide sufficient assurance for them to be able to attest to this".

<sup>2</sup> There are many personal qualities needed to be an effective chair, but key to these are promoting apolitical open discussion, managing meetings to cover all business and encouraging a candid approach from all participants. An interest, and knowledge in financial and risk management, accounting concepts and standards, and the regulatory regime are also essential. A specialism in one of these areas would be an advantage.

- A membership that is balanced<sup>3</sup>, objective, independent of mind, and knowledgeable.

#### 4. Structure and Administration

Although no single model of committee is prescribed, all should:

- Be independent of the Executive and Scrutiny functions.
- Have clear reporting lines and rights of access to other committee /functions, for example scrutiny and service committees, corporate risk management boards and other strategic groups.
- Meet regularly – at least four times a year with a quorum, and have a clear policy on those items to be considered in private and those to be considered in public.
- Meet separately with the external auditor at least once a year.
- Include, as regular attendees, the Responsible Finance Officer, Chief Executive, Head of Internal Audit and Appointed External Auditor and Relationship Manager. Other attendees may include the Monitoring Officer (for standards issues) and the Head of Resources (where such a post exists) The committee should have the right to call any other officers or agencies of the council as required.
- Be properly trained to fulfil their role<sup>4</sup>.

<sup>3</sup> The political balance of a formal committee of an authority will reflect the political balance of the council. However, balance in terms of apolitical attitudes is as important.

<sup>4</sup> Further guidance will be available on the skills, knowledge and personal attributes required of committee members but key areas for training would include financial and risk management, auditing and accounting concepts and standards, regulatory requirements for financial reporting, and corporate governance.

## AUDIT SUB-COMMITTEE

### TERMS OF REFERENCE

#### Statement of Purpose

The purpose of the Audit Sub-Committee is to provide independent assurance of the adequacy of the risk management framework and the associated control environment, and to provide independent scrutiny of the Authority's financial and non-financial performance to the extent that it affects the Authority's exposure to risk and weakens the control environment. The Audit Sub-Committee will also oversee the Authority's corporate governance arrangements.

#### Reporting Framework

The Audit Sub-Committee will make recommendations to the Finance and Management Committee whilst maintaining its independence.

#### Terms of Reference

##### **Audit Activity**

##### External Audit

To consider any matters arising from the External Auditor's annual letter (after presentation to Council), relevant reports, and the report to those charged with governance (In certain instances these reports may also be reported to the appropriate Policy Committee or Council)

To consider specific reports as agreed with the External Auditor.

To comment on the scope and depth of external audit work and to ensure it gives value for money.

To liaise with the Audit Commission on the appointment of the Council's External Auditor.

##### Internal Audit

To consider (but not direct) Internal Audit's strategy, operational plan and performance.

To consider the Audit Manager's annual report and opinion, and a summary of internal audit activity.

To consider summaries of specific internal audit reports as requested.

To consider a report from Internal Audit on agreed recommendations not implemented within reasonable timescale.

## Overall

To ensure that there are effective relationships between External and Internal audit, inspection agencies and other relevant bodies, and that the value of the audit process is actively promoted.

To confirm the joint-working arrangements between Internal and External audit.

To commission work from Internal and External audit subject to approval by the Responsible Finance Officer.

## **Regulatory Framework**

To maintain an overview of the Council's Constitution in respect of Financial Regulations and Procedure Rules, Contract Procedure Rules and Codes of Conduct and behaviour.

To review any issue referred to it by the Chief Executive or Director, or any Council body.

To monitor the effective development and operation of risk management and corporate governance in the Council.

To monitor Council policies on 'Raising Concerns at Work' and the anti-fraud and corruption strategy.

To oversee the production of the Authority's Statement on Internal Control and to recommend its adoption.

To consider the Council's arrangements for corporate governance and to agree necessary actions to ensure compliance with Best Practice.

To consider the Council's compliance with its own and other published standards and controls.

## **Accounts**

To review the annual Statement of Accounts. Specifically, to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the annual audit that need to be brought to the attention of the Council.

To consider the External Auditor's report to those charged with governance on issues arising from the audit of the accounts.

## AUDIT SUB-COMMITTEE

### Structure Arrangements

1. The body operates as a Sub-Committee of the Finance and Management Committee and is subject to the Procedure Rules contained in the Council's Constitution.
2. The body is a formal Sub-Committee appointed by Council drawn from a range of membership backgrounds and expertise.
3. The Sub-Committee has been constituted outside the framework of the scrutiny role.
4. In the unlikely event of a dispute between the Audit Sub-Committee and the Finance and Management Committee, the relevant item is to be referred to Full Council.
5. The Sub-Committee will be administered by the Legal and Democratic Services Division.

### Membership

The Audit Sub-Committee is to comprise five elected Members, being politically balanced.

Appointment of nominees to the Audit Sub-Committee, to maintain political balance, is to be identified by the Leaders of the political groups.

Appointment of the Chair and Vice-Chair of the Sub-Committee is to be undertaken at the first meeting of the Sub-Committee that is to be composed of Councillors who are objectively independent of mind and knowledgeable.

### Training:

Training in their role is to be provided for all Audit Sub-Committee Members.

### Officer Attendance:

The following officers will attend the meetings of the Audit Sub-Committee to advise where appropriate:

- Chief Executive (strategic link between Members and Officers).
- Director of Corporate Services (as Responsible Finance Officer with Section 1 responsibility).
- Head of Finance and Property Services.
- Head of Legal and Democratic Services (Monitoring Officer).

- Audit Manager.
- Other Council officers as required, as determined by the subject matters raised (expect this to be those officers responsible for the management of internal control and related management issues).
- External Auditor (when appropriate).

Quorum:

The Sub-Committee has a quorum of 3 Members.

Meetings:

Meetings should be held 4 times a year. They are to be scheduled within the municipal year to meet the key events in the audit calendar, such as approval of the Audit Plan, receipt of the External Audit management letter etc.



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REPORT TO:	ANNUAL COUNCIL	AGENDA ITEM:	22
DATE OF MEETING:	25 <sup>TH</sup> MAY 2006	CATEGORY:	DELEGATED
REPORT FROM:	CHIEF EXECUTIVE	OPEN	
		PARAGRAPH NO:	N/A
MEMBERS' CONTACT POINT:	NEIL BETTERIDGE (5831)	DOC:	
SUBJECT:	MEMBERS' ALLOWANCES 2006/07	REF:	
WARD(S) AFFECTED:	ALL		

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#### 1.0 Reason for Exempt

1.1 Not applicable.

#### 2.0 Recommendations

2.1 That the levels of Members' allowances proposed for 2006/07 be approved.

#### 3.0 Purpose of Report

3.1 To consider the levels of Members' allowances for the municipal year 2006/07.

#### 4.0 Detail

- 4.1 Members will recall that at the Council Meeting held on 6<sup>th</sup> November 2003, consideration was given to a report of an Independent Remuneration Panel on Members' allowances. The recommendations contained in the report were accepted but on the grounds of affordability at that time, it was agreed that the basic and special responsibility allowances be increased by the annual local government pay percentage increase agreed each April plus a further 6.6% for the next three years to move towards the Panel's recommendations in terms of these allowances. An option was also reserved to move towards the Panel's recommendations at a revised rate, dependent upon the Council's resources in future years.
- 4.2 In July 2004, the Service and Financial Planning Working Panel recommended the allocation of the necessary financial provision to enable the full levels of allowances contained in the report of the Independent Remuneration Panel to be met. This recommendation was subsequently approved by the Finance and Management Committee.

- 4.3 The agreed pay percentage increase for 2006/07 is 2.95% and details of the current levels and the proposed levels with effect from 25<sup>th</sup> May 2006 are as follows:-

	2005/06	2006/07
<b>BASIC ALLOWANCE</b>	£5,130	£5,280
<b>SPECIAL RESPONSIBILITY ALLOWANCES</b>		
Leader of the Council	£16,926	£17,424
Deputy Leader of the Council	£9,309	£9,582
Chairs of Policy Committees (x 3)	£8,463	£8,712
Vice-Chairs of Policy Committees (x 3)	£2,115	£2,178
Chair of Development Control Committee	£8,463	£8,712
Vice-Chair of Development Control Committee	£2,115	£2,178
Chairs of Scrutiny Committees (x 3)	£6,771	£6,972
Vice-Chairs of Scrutiny Committees (x 3)	£1,692	£1,743
Leader of Opposition	£8,463	£8,712
Deputy Leader of Opposition	£2,115	£2,178
Chair of Standards Committee	£1,692	£1,743
Co-opted Members (x 5)	£267	£276

- 4.4 The new levels of allowances for 2006/07 will be advertised in the local press.

#### **5.0 Financial Implications**

- 5.1 The levels of allowances can be met from existing budgets.

#### **6.0 Corporate Implications**

- 6.1 None.

#### **7.0 Community Implications**

- 7.1 None.

#### **8.0 Background Papers**

- 8.1 7 Apr 05 Report to Council Meeting

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REPORT TO:	ANNUAL COUNCIL	AGENDA ITEM:	23
DATE OF MEETING:	25 <sup>TH</sup> MAY 2006	CATEGORY:	DELEGATED
REPORT FROM:	CHIEF EXECUTIVE	OPEN PARAGRAPH NO:	N/A
MEMBERS' CONTACT POINT:	NEIL BETTERIDGE (595895)	DOC:	
SUBJECT:	CODE OF CONDUCT FOR REPRESENTATIVES ON OUTSIDE BODIES	REF:	
WARD(S) AFFECTED:	ALL		

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#### 1.0 Reason for Exempt

1.1 Not applicable.

#### 2.0 Recommendations

2.1 That the Code of Conduct for Representatives on Outside Bodies be approved and adopted.

#### 3.0 Purpose of Report

3.1 To consider the adoption of a Code of Conduct for Representatives on Outside Bodies for incorporation in the Council's Constitution.

#### 4.0 Detail

4.1 Members will be aware that the Council's Self Assessment relating to the Local Code of Corporate Governance, approved at the Council Meeting on 11<sup>th</sup> August 2005, contains the following requirement under Roles and Responsibilities – Members:-

- Define clearly and in writing the roles of Members, including their responsibility for strategic leadership and ensure the Council achieves its community aims and provides services in accordance with its targets.

4.2 As part of this requirement, a Code of Conduct for Representatives on Outside Bodies has been prepared and a copy is attached at Annexe 'A' for Members' consideration. This document also incorporates policy guidance for District Council involvement in partnerships and outside bodies.

- 4.3 It is suggested that the document be incorporated in the Council's Constitution to complement the other Codes and Protocols already contained therein.

**5.0 Financial Implications**

- 5.1 None.

**6.0 Corporate/Community Implications**

- 6.1 The document represents an action point in the Council's Self Assessment relating to the Local Code of Corporate Governance.

**7.0 Background Papers**

- 7.1 Code of Conduct for Representatives on Outside Bodies

ANNEXE 'A'SOUTH DERBYSHIRE DISTRICT COUNCILPOLICY GUIDANCE FOR DISTRICT COUNCIL INVOLVEMENT IN  
PARTNERSHIPS AND OUTSIDE BODIESContext**1.1. Introduction**

There are many reasons why the District Council may wish to enter into Partnerships with or be involved in Companies and Outside Bodies. For example such arrangements may:

- help to lever in external finance which would not otherwise be available to the Council;
- be able to share skills, knowledge and expertise in order to improve service delivery;
- be able to supplement the Council's functions and contribute towards delivering the aims and objectives of the Corporate Plan and Community Strategy for the area;
- add value by providing support which would not otherwise be available.

Councils have been involved in Companies and Partnerships for a long time in diverse and innovative arrangements that have covered a spectrum of services from the arts and community projects, through regeneration, training and front-line service delivery. Any Partnership will always need to be appropriate to the authority, the area and the specific objectives and purposes it is designed to support at the particular time.

This document has been prepared to enable the District Council to give consideration to its involvement in those partnerships and outside bodies and the development of a policy framework for participation.

**1.2. Why Should the District Council be involved in Outside Bodies?**

There are a number of reasons why the District Council may wish to establish, be involved in and appoint representatives to outside bodies. They include the following:-

- to deliver a Partnership Project which requires the input of other partners;
- to provide knowledge, skills and expertise which may not otherwise be available;
- to protect the Council's investment or assets, i.e. if the Council has provided grant funding or provides funding for service delivery;
- to provide local accountability or democratic legitimacy through the appointment of an elected representative;
- to ensure that good relationships can be maintained with the body;

- to lever in external funding which would not be available to the District Council on its own;
- or some other good reason.

It may be that the District Council has traditionally appointed to certain Bodies, but should review its involvement in those Bodies as things may have changed as time has moved on. What may have been legitimate when the organisation was created, may no longer be a priority for the Council in the current circumstances and pressures on resources.

With the help of the District Council's representatives on outside bodies, the Council may be able, over time, to review its involvement and to ensure that all of the current appointments continue to be relevant and appropriate.

### **1.3. Clarity of purpose/objectives**

Before entering into a new partnership or involvement in an outside body, the District Council needs to be clear about the Council's objectives and how the partnership or outside body will help to deliver those objectives.

Similar questions should also be asked periodically about the Council's representation on outside bodies. For example, what sort of organisation is appropriate and how will that partnership or outside body help to deliver the District Council's Corporate Plan and Community Strategy?

Clarity of purpose and objectives will also be important to ensure that the Council has the requisite powers to participate in the body and to provide funding or other support, as considered appropriate.

Some of the questions which the Council may wish to ask are:

- why does the Council wish to be involved in the body (see 1.2 above)?
- whether an outside body will be able to access funds or market which are not available to the Council alone?
- how can the services or initiative/project best be delivered?
- is it necessary to create a separate legal entity?
- is external expertise required to deliver the objectives?
- what are the problems or the challenges which the Council is trying to address?
- can existing constraints on service delivery be removed by alternative structures?
- what influence or control would the Council wish to have over the future operation of the initiative/project/service?
- what sort of partnership vehicle is appropriate, in view of potential liabilities?

- how will these proposals help deliver the Council's Corporate Plan and Community Strategy, and other relevant plans and policies, vision and aims?
- what impact will there be on the Council (including the resources required for monitoring and ensuring accountability)?

#### **1.4. Powers for Involvement in Partnerships and Outside Bodies**

There are a number of powers authorising local authorities to be involved in partnerships and outside bodies and it should not be forgotten that as well as finding the appropriate power, the powers need to be exercised properly.

The Council therefore needs to make sure:

- that it identifies the power (i.e. has the capacity to enter into the partnership, form a company, or participate in the outside body); and
- exercises the powers properly.

Local authorities must act for proper purposes, i.e. proper objectives, they must take into account all relevant considerations and ignore irrelevant matters, must follow all procedural requirements, i.e. the Council's scheme of delegation and Procedure Rules set out in the Constitution, and must not take a decision which is irrational, in the sense of a decision that no reasonable authority would make (the concept of *Wednesbury* reasonableness). In exercising powers, local authorities also need to be mindful of their fiduciary duty to protect the assets of the authority on behalf of the taxpayers and residents whose interests the Council serves, and other statutory duties such as Best Value.

Advice on powers for specific schemes should be sought from the Monitoring Officer.

#### **1.5. The Nature of Outside Bodies**

There are a number of legal forms which an outside body may take. The Council should establish a framework (linked to appropriate elements of the Corporate Risk Assessment Policy) within which decisions are taken as to the appropriate participation in an outside body. The Office of Government Commerce "Gateway Review" process could be looked at as a model for certain aspects of this framework.

#### **1.6. Relationships with Outside Bodies**

The District Council has many different relationships with partners and outside bodies, depending upon the nature of the partnership/body and a number of other factors, such as the extent to which the Council may provide funding, assets or perhaps if the organisation delivers services on behalf of the Council.

As well as any specific financial issues arising from the particular arrangements, the Council should have regard to its general public stewardship/accountability role and responsibilities.

### **1.7. Conflicts of interest**

The Code of Conduct for Representatives on Outside Bodies sets out in more detail issues regarding conflicts of interest which may arise from time to time for Council representatives on outside bodies. Where Members are involved, these may involve the provisions of the Members' Code of Conduct. Any conflicts of interest which officers may have should be declared in writing to their manager under Section 117 Local Government Act 1972. Advice and guidance on managing those conflicts is contained in the Code at paragraph 7.

### **1.8. Reviewing Involvement From Time To Time**

#### **Have things changed?**

The District Council is involved in many relationships with outside bodies and it is therefore appropriate to review the Council's involvement from time to time. It is recommended that involvement is reviewed every year and that when such reviews take place, the relevant Council Lead Officer notifies the Monitoring Officer and the Director of Corporate Services and provides the following information:

- Name of Lead Officer;
- Purpose of the Council's involvement (see paragraph 1.2 above);
- Nature of arrangements, ie representation, service contract, grant funding;
- Reporting lines to Council or Committee;
- List names of Council representatives;
- Details of the last monitoring report to the Council (i.e. report and accounts or general information), including the financial position of the organisation;
- Opinion of the Lead Officer on whether the Council's involvement should be on-going, and why;
- Status of the organisation under Part V Local Government & Housing Act 1989 (and whether it is controlled, regulated or minority interest);
- Date and date of next planned review;
- Any recommendations (i.e. to cease representation); and
- Any other relevant information.

#### **How effective is the Council's Involvement?**

In future, the Council may need to be more selective about whether to be involved by being represented and who is involved in outside bodies, because of the huge amount of person hours currently devoted to involvement, and the risks involved. The Council really needs to decide whether or not involvement is necessary in order to contribute towards the Corporate Plan, the Community Strategy and the Council's aims and objectives, or whether the organisation could achieve such benefits without direct representation from the Council. This



may also minimise any potential liability for individuals involved in outside bodies on behalf of the Council. A risk assessment should be an integral part of any review.

## **CODE OF CONDUCT FOR REPRESENTATIVES ON OUTSIDE BODIES**

### **GENERAL PRINCIPLES**

#### **1. Introduction and Purpose of this Code**

- 1.1. South Derbyshire District Council is increasingly working with other local authorities, the private, voluntary and community sectors in a broad range of partnership structures, which involve different responsibilities and potential liabilities. The rules can be complex and diverse and there are many pitfalls for the inexperienced or unwary.
- 1.2. This Code is for the guidance of Council representatives and supplements the Council's corporate policy and strategy for involvement in partnerships and outside bodies. It aims to clarify roles and responsibilities; to point Members, officers and other nominees in the right direction; and to highlight when it may be appropriate to seek further advice and assistance.
- 1.3. Partnership working is a frequent and recognised way of achieving shared objectives. Partnerships involve different organisations with a variety of legal structures.
- 1.4. This Code cannot prescribe the precise roles and relationships which are appropriate in every circumstance, because they are many and varied. It covers the most important rules to be followed in situations that are likely to be encountered by District Council appointees.
- 1.5. If ever you are unsure about your role or responsibilities in relation to an outside body then please contact the Monitoring Officer at the earliest opportunity.
- 1.6. For further information about this Code or the Corporate Policy for involvement in outside bodies, please contact the Council's Monitoring Officer.

#### **2. Policy on Involvement and Representation**

The Council has adopted a policy on when it should be involved in partnerships and outside bodies which explains some of the reasons why the Council may wish to appoint a representative e.g. in order to provide skills or democratic legitimacy, or to protect the Council's assets, or for other reasons. In order to be able to appoint to outside bodies, the Council will need to be clear what the bodies' objectives are and how they link to the Council's own Corporate Plan and Community Strategy, Vision and Aims. The Council will also need to ensure that it has the powers to participate in the body.

##### ***2.1. How are appointments made?***

Under the Council's Constitution, appointments to outside bodies will be made by the Full Council or the Finance and Management Committee.

## **2.2. Who should the Council's representative be?**

The choice of the most appropriate representative will depend upon the nature of the outside body and why the Council wishes to be involved. In some circumstances it may be appropriate for officers with professional knowledge, skills and experience to be appointed. In other circumstances, Members may be most appropriate; or in some cases third party appointments may be most appropriate.

If the body has a two tier structure, such as a company or an unincorporated association (i.e. with members/shareholders and a management committee/board) then you will also need to be clear whether you have been appointed to represent the Council in both capacities, or whether the Council will appoint different people for each of those functions.

## **2.3. Reporting back to the Council**

It is important that anyone who is appointed to an outside body provides appropriate information and reports periodically to the Council on what the organisation is doing. In most cases, an Annual Report, along with the report and accounts will suffice and your own perspective of the organisation's achievements and potential problems at that point in time. You can also perhaps provide details of the Annual General Meeting of the organisation.

Where the Council provides financial assistance to a charity or voluntary organisation of over £2,000 per annum then the body is under an obligation to state in writing to the Council how the funding has been used (s137A Local Government Act 1972). In addition, the Council must make arrangements under s71(5) Local Government and Housing Act 1989 for the Council or Committees to ask questions of Members and officers who are appointed as Directors to companies.

You are not required to disclose anything which is commercially confidential to the outside body as this may be in breach of:

- the Members' Code of Conduct;
- your duties of confidentiality to the outside body (whether as director, trustee or more generally); or
- may be a breach of confidence which is something which is actionable at law and could result in an outside organisation suing you and/or the Council for disclosure where loss is suffered

If you need any advice or assistance at any time then you should contact the Monitoring Officer. You can provide officers with papers from an outside body on a confidential basis, with the sole purpose of advising or assisting you with a Council-appointed role.

### 3. Duties And Responsibilities of Directors And Trustees

#### 3.1. *When Does an Appointment Take Effect?*

Any appointment as a director of a company needs to be confirmed by the completion of a form which is signed and submitted to Companies House. The form, known as a "288", requires details of your home address and any current directorships along with any previously held within the last 5 years. The form also needs to be countersigned by another Director or the Company Secretary. When you cease to be a director of a company you must also file a form 288 at Companies House.

#### 3.2. *Duties of a Director*

Directors take responsibility for all of the main decisions in relation to the operation of the company, including entering into contracts. A few areas are retained for shareholders/members, which include issues such as agreeing the level of dividends, changing the name of the company and sometimes electing or dismissing directors.

The main duties of a director are:

- to act honestly and in good faith and in the best interests of the company as a whole;
- a fiduciary duty to the company, not to make a personal profit and to take proper care of the assets;
- to attend board meetings and follow the rules on the declaration of interests;
- to exercise reasonable skill and care (this is a subjective test based upon the individual's own knowledge and experience) and involves due diligence in the performance of his/her duties as a director; and
- to comply with statutory obligations imposed by the Companies Acts, other legislation and any procedural rules set out in the constitution.

Some of the statutory obligations applicable to directors include:

- maintaining proper accounting records (failure to do so may be a criminal offence);
- maintaining the statutory books, i.e. list of members, directors, interests, keeping minutes;
- VAT and tax penalties are also directors' responsibilities; and
- there may be personal responsibility where the commission of any offence is due to a director's consent, connivance or neglect, e.g. environmental protection or health and safety legislation.

#### 3.3. *Extra Responsibilities for Trustees*

In general terms the duties of Trustees cover the above as well as making sure the body acts in accordance with the overriding duty to the beneficiaries of the Trust. Those beneficiaries may be people within South Derbyshire or a specific category of people for whose benefit the Trust was originally established. The duties of Trustees are largely contained within the Trustee Act 2000.

There is now a statutory duty of care under the Trustee Act 2000 which applies when a Trustee is:

- exercising a general power of investment or any specific power of investment arising from the Trust;
- making investments in line with the Standard Investment Criteria under section 4 of the Act or taking independent advice on investments under section 5;
- exercising the power to acquire land or deal in land;
- appointing agents, custodians or nominees or in reviewing their obligations;
- compounding liabilities under section 15 of the Trustee Act 1925;
- insuring Trust property; and
- dealing with reversionary interests, valuations or audits.

The standard of care expected of Trustees is that which is reasonable in the circumstances, taking into account any particular skills or competencies possessed by the individual, e.g. the standard of care will be higher for someone with an accounting qualification in relation to financial matters, than someone without the qualification.

Duties and responsibilities applicable to charities are even more extensive, as charitable directors and trustees have additional responsibilities under the Charities Acts. However, there is extensive guidance available from the Charity Commission in connection with those additional responsibilities. A separate leaflet is available from the Charity Commission entitled "Responsibilities of Charity Trustees" (CC3) or is available on <http://www.charity-commission.gov.uk> (telephone 0870 3330123). In many cases the Charity Commission needs to be consulted before a charity takes action or decides on a particular course of action involving charity property.

### **3.4. Directors' and Trustees' Responsibilities to Others**

The law generally regards a Director as being in a position of trust, arising from their fiduciary duties. This duty is usually to the shareholders or members of a company and sometimes for the beneficiaries if they are not the shareholders.

When exercising their powers Directors must take into consideration the interests of employees of the Company as well as the interests of the shareholders/members (and the beneficiaries of any trust).

If the organisation gets into financial difficulties then the interests of creditors become more important and it may be that the creditors' interests become paramount over duties and responsibilities owed to the others mentioned above.

### **3.5. Companies**

Where the Council is involved in companies or industrial and provident societies extra rules set out in the Local Government and Housing Act 1989 apply. Depending upon how the company is classified (controlled, arms length, influenced or minority interest), it may be regulated by provisions in the Companies Order.

The Act imposes a range of procedural and propriety controls, including limits on any remuneration payable to Members, barring people disqualified from being a councillor from being a director, preventing party political publicity, requiring the provision of information to the Council and its auditors, and allowing access to information (unless this is commercially confidential).

Any Member of the Council should also be entitled to ask questions of a Member or Officer who acts as a director of a company on behalf of the Council, and the Council therefore needs to provide appropriate opportunities to enable this to take place.

### **4. Observers and Advisers**

In some cases the Council may not appoint a full representative to an outside body; it may prefer to rely upon an observer or an adviser to explain the Council's views and to keep the District Council informed of the proceedings of that outside body.

An observer is someone who is invited with the agreement of the Board or management committee of the organisation. An observer does not have the automatic right to speak, nor do they have any entitlement to vote. However, the chair of the organisation may request that the observer participates in some aspects of business at the invitation of the meeting.

An adviser may be called upon to advise the Council's representatives on a body or to advise the outside body directly. Any adviser should always make it clear that they are first and foremost responsible for the District Council's involvement rather than the body itself. However, in most cases, the interests of the Council and the body will coincide.

The individual appointed therefore needs to be aware of potential conflicts of interest and what to do in connection with the management of those conflicts. It is also important that the adviser understands that he/she may be liable for any advice given which proves to be negligent. If an adviser is unsure as to the position then they should decline to give an opinion or advice, and should suggest that the outside body takes its own independent advice and ensures that it understands it is responsible for its own decision.

In addition, observers and advisers need to be aware that in relation to companies they may inadvertently fall into the position of a director. The

definition of a director is anyone who occupies the position of a director, no matter what they are called (e.g. member of a management committee). However, someone in accordance with whose directions or instructions the directors of a company are accustomed to act, but who is not formally on the Board is known as a "shadow director". So, if someone effectively controls or directs the activities of a company, even though they are not a registered director, they may still fall within the definition of a shadow director and will have to comply with all of the duties and responsibilities of directors set out above. There are some exceptions in relation to professional advisers, however, anyone advising a company or outside body should be aware of the potential for personal liability.

## **5. Potential Personal Liability**

Whilst it may be seen as a significant responsibility or even a privilege to represent the Council on outside bodies, frequently individuals are not aware of the potential consequences which could arise from such representation. There are many circumstances in which your acts or the acts of the body on which you represent the Council could translate into personal financial loss.

### **5.1. Unincorporated Associations**

As set out in the corporate policy document, unincorporated partnerships or associations are not separate legal entities. This means that the individuals who are represented on the management committee are personally liable for all of the acts or omissions of the body. Each of the individuals are jointly and individually liable for what the organisation does. Partnerships and voluntary organisations often have this legal status. However, they should still have a written constitution setting out the procedural rules which need to be followed and governing how it operates.

### **5.2. Companies, Statutory Corporations and Industrial and Provident Societies (IPS)**

Incorporated bodies include companies, statutory corporations and Industrial and Provident Societies. Bodies such as schools, quangos and other public authorities, i.e. police and fire authorities are often created by statute and are statutory corporations. Their rules and constitution will usually be set out in the Act which created them.

Since these bodies are separate legal entities they are able to hold property or sue and be sued in their own name. They have limited liability and in general terms it is not possible to look behind the corporate veil of incorporation.

However, there are circumstances when directors or members of the management committee of such bodies can still be personally liable under company and insolvency law. These include:

- where company details are not properly shown on cheques or other correspondence which may mean that individuals are personally liable on contracts;
- where there has been any misfeasance (i.e. using the company facilities for personal gain) or breaches of the fiduciary or other duties owed to the company (in some cases there may also be criminal offences);
- where there has been "wrongful trading" (where the directors or management committee members have not taken every possible step to minimise potential losses to creditors, when they knew, or ought to have known, the company was unlikely to avoid insolvent liquidation);
- where there is "fraudulent" trading (where the company carries on business with the intent to defraud creditors or for any fraudulent purpose, that is, if it carries on business and incurs debts at a time when there is, to the knowledge of the directors, no real prospect of creditors receiving payment). There may also be questions of fraudulent preference where certain debtors have been paid in preference to others within up to two years of insolvency;
- offences committed by the company which can be attributed to neglect on behalf of the directors, such as insider dealing, those under the Companies Act, or health and safety legislation.

The above cases are illustrative only.

### **5.3. Disqualification from being a Director**

The Company Directors Disqualification Act 1986 empowers the Court to disqualify people from being a director for up to 15 years when they have been involved in criminal offences, have persistently been in default in making returns to Companies House, where they are bankrupt, where there has been fraudulent or wrongful trading, or where they are otherwise considered unfit to be directors.

The overriding responsibility of a director/management committee member is to act in the best interests of the company/IPS. He or she must exercise independent judgement in making decisions in accordance with the duty of care to the company.

A number of criminal offences could also apply to both the company/IPS and directors or other people involved in the management of the company (i.e. the chief executive and company secretary), even if they are not on the Board or the Management Committee.

### **5.4. Charities and Trusts**

Trusts are arrangements in which Trustees hold property or assets which must be used or maintained for the benefit of other people ("the beneficiaries"), or in the case of charitable Trusts, for a charitable purpose. A Trust may be incorporated or unincorporated. Trusts are not required to register, unless of course they are a corporate body (company/IPS) or are charitable.



To be a charity, an organisation must operate for charitable purposes. Charitable purposes can be grouped under four main headings:

- the relief of financial hardship;
- the advancement of education;
- the advancement of religion; and
- certain other purposes for the benefit of the community.

All charities must be for the general benefit of the public or a significant section of the community. The Charity Commission is reviewing the register to make sure that bodies are still charitable in the way they operate and will look very closely at new bodies which are being established in order to ensure that they do intend to operate within the boundaries of charity law.

The principles set out above in relation to personal liability of directors and members of management committees apply equally to Trusts and charities (which may be incorporated or unincorporated bodies). Additional duties need to be complied with by Trustees and Charity Trustees under the various Charities Acts.

There may be benefits from being a charity, including tax and VAT concessions which may make charitable status advantageous.

### ***5.5. Duties of Confidentiality***

Someone representing the Council on an outside body may find it difficult to balance the confidentiality duties owed both to the Council and the outside body, when in the alternative forum. Confidential information must be treated with care and if you have any doubt over the status of any information then you should keep that confidential and check with the relevant officer whether or not it is something which is already in the public domain or which may be disclosed.

The legal position is that someone who has received information in confidence is not allowed to take improper advantage of it. Deliberate leaking of confidential information will also be a breach of the Members' Code of Conduct - it is extremely rare that leaking confidential information can be justified in the public interest (as the Courts have defined public interest very narrowly).

### ***5.6. The Members' Code of Conduct***

Where a Member acts as a representative of the Council on an outside body, they must comply with the Members' Code of Conduct, unless that body is another relevant authority which has its own Code; or unless observance of the Code would conflict with any other obligations (i.e. the duty to act in the best interests of the outside body).

Under the Code a Member must not:

- disclose information given to him/her in confidence by anyone, or information acquired which s/he believes is of a confidential nature, without the consent of a person authorised to give it, or unless s/he is required by law to do so;
- prevent another person from gaining access to information to which that person is entitled by law.

There may be other areas of the Code which are also relevant as conduct involving disclosure of confidential information may also be regarded as bringing the Member or the Council into disrepute; may compromise the impartiality of people who work for the Council; may improperly confer or secure an advantage or disadvantage for the Member or any other person; and in some cases knowledge may give someone a personal interest.

### **5.7. Duty to the Outside Body**

Information gained through representation on an outside body may or may not be confidential. Usually, that outside body will need to produce annual reports and accounts and other information which need to be made publicly available, and may produce literature for public access on its plans and strategies. All of this information may be freely disclosed. If, for example, the body receives public funding and provides services which are available to the public, then the provisions of the Freedom of Information Act may also apply. This may give individuals access to information on payment of reasonable costs, unless it falls within certain exemptions under the Act.

However, a lot of information you will receive as a member of the Management Committee or the Board will not be in the public domain and you must therefore respect confidentiality in relation to that information.

In some cases, disclosure of confidential information might amount to a breach of duty as a director of an outside body, or could lead to proceedings for breach of confidence.

### **5.8. Breach Of Confidence**

Where someone discloses information which benefits somebody else but results in a loss to an organisation, then the organisation may be able to sue under the tort of breach of confidence. Damages could be awarded against the person who disclosed the information (and potentially against the Company if the unlawful disclosure was authorised by the Company.) Whilst such cases are not common, they nevertheless arise from time to time.

### **5.9. Press and Publicity and Qualified Privilege**

A Member or Officer of the Council may often be the relevant spokesperson in connection with interest from the press or in dealing with public relations. In such

a capacity, Members and officers need to be very careful what they say, both about the Council and its affairs and also any outside body in which it is involved.

Whilst there may be some protection from libel and slander claims (together they are known as defamation), because of the special position of local authorities some information is given "qualified privilege". Qualified privilege attaches to meetings of the Council and Committees and any associated papers, but not to everything that Members and officers do.

However, if you publish a false statement about anyone which may injure his or her reputation in the eyes of ordinary members of the public, without justification, or without checking that it is true, then you may be liable for defamation. This means that provided the occasion is protected, Members have freedom of speech and will not be liable for defamation, so long as statements are made honestly and without malice or improper motive.

## **6. Declaration of Interests**

### ***6.1. Declaration of Interests at Meetings of Outside Bodies***

When outside bodies consider issues related to the Council or where personal interests of an individual arise in relation to the body's activities, these need to be declared in line with the rules of the organisation and the Members' Code of Conduct. The specific rules adopted by each body will vary and therefore you should ask for advice and guidance from the secretary of the organisation and/or the Monitoring Officer, as appropriate.

Representatives on the management committee or on the board of an outside body must act in the interests of that body; they are there in the capacity of a "trustee" or "quasi trustee". They must exercise independent judgement in making decisions in accordance with their duty of care to the body - not just to vote in accordance with the Council's wishes. Representatives may have regard to the interests of the Council, but this should not be the overriding consideration. In some cases, voting in the Council's interests could be a breach of a Director's duty to a company.

The overriding responsibility is to seek to avoid the situation where duty and interest conflict and therefore if you are unsure about declaring an interest, it would be wise to declare and leave the meeting during consideration of the business.

### ***6.2. Declarations of Interests at Council Meetings***

Members who are appointed to the management committee or board of outside bodies need to declare their interests in meetings of the Council which consider issues related to that body. Where Members have been appointed by the Council to serve on the organisation they will also need to ensure those details are included on the Register of Interests kept by the Monitoring Officer under the

Members' Code of Conduct. They will usually have to declare a personal interest and will be able to remain, speak and vote. However, in some circumstances they may have a prejudicial interest under the Code, in which case they would need to withdraw and take no part in the matter being considered.

Where a Councillor is a director or management committee member of an outside body in their personal capacity, then they will need to declare a personal interest, depending upon the circumstances, and may need to leave the room, if it is considered to be a prejudicial interest (which is likely). Please seek advice from the Monitoring Officer before the meeting if you are unsure (officers would declare an interest under s117 Local Government Act 1972).

### **6.3. Other Issues**

Occasionally, there may be other reasons why a representative needs to declare an interest under the Code. Whilst involvement in an outside body may amount to a personal interest, in some cases there may be a prejudicial interest arising from the general law, perhaps because the decision is one to which the rules of natural justice apply. The rules of natural justice require public bodies to act fairly, particularly when decisions may affect the rights and freedoms of individuals. Proper procedures must be followed, which avoid any financial or other interest and must avoid the appearance of bias (whether through prior involvement, knowledge or personal circumstances). The rules of natural justice are similar to the right to a fair hearing under the Human Rights Act. If at any time you are unsure whether you might have an interest which should be declared, please speak to the Monitoring Officer.

## **7. Managing Conflicts of Interest**

In general terms, the purposes of the body and what it wants to do often coincide with the Council's interest and so conflicts may be rare. However, there may be difficulty in some circumstances, for example if the body is not complying with the terms and conditions of a funding agreement between the Council and the body; or the organisation wishes to appeal against a planning decision made by the Council; or where the organisation has wider objects than the reason behind the Council's appointment and wishes to pursue activities which would conflict with Council policy.

You will need to manage the conflicts that will arise appropriately and in certain circumstances may feel that your only option is to resign from the company or body. Similarly, if the Council does not feel that a representative on an outside body is properly fulfilling their role and responsibilities, e.g. the person is not attending meetings or is voting in ways which may be inappropriate, then the Council could choose to change its representation on the outside body. Clearly there is a greater scope for conflicts to arise where a Member holds an office in the outside body, eg Chair, Vice-Chair, Secretary or Treasurer, than if they are a general member.

### **8. Members' Allowances, Insurance & Indemnity**

The Council may have authorised attendance at meetings of outside bodies as an approved duty for Members, allowing travelling and/or subsistence allowances in connection with meetings of the body. Alternatively, any expenses may be defrayed by the body itself, in accordance with its own rules. You should therefore check what payments are authorised by the outside body and whether this will fall to the outside body or the Council in each particular case. For further information on allowances contact the Monitoring Officer.

The Council has the power to provide an indemnity for Members under s265 of the Public Health Act 1875 and s39 of the Local Government (Miscellaneous Provisions) Act 1976 when undertaking Council functions. This was confirmed by the case of *R v. Westminster City Council, ex parte Legg* (2000). These sections may be used to provide some indemnity or insurance for Members acting as directors of a company or as a Member of a Management Committee provided they were acting bona fide under the direction of the Council, but there are limitations.

Section 101 of the Local Government Act 2000 provides for broader indemnities for both Members and Officers which would be brought into effect by an Order of the Secretary of State.

However, involvement on behalf of the Council will not provide Members or Officers with blanket cover, as quite often the objects and activities of outside bodies are much wider than those of the Council. Over and above the possibility of being able to claim under the Council's insurance policy or indemnity, there is no blanket indemnity for representatives on outside bodies. Representatives therefore need to ask about and consider the extent of any insurance or indemnity provided to directors/management committee members by the organisation itself.

As directors have to act in the best interest of companies, it is appropriate that the company indemnifies them within the limits allowed by Company Law. Section 310 limits the liability to covering negligence, breach of duty, breach of trust or other default. However, it is not possible to insure or indemnify against criminal liability for fraud, dishonesty or other criminal acts. Any indemnity given under Section 310 will usually be limited to defending proceedings (whether civil or criminal) in which judgement is given in the person's favour, i.e. only where he/she is acquitted. There also needs to be something in the company's Articles of Association allowing an indemnity to be given. The Company may also take out Directors and Officers liability insurance, and pay for that on behalf of its directors and officers.

## 9. General Advice to Representatives on Outside Bodies:

- Ensure that you know the legal status of the organisation - read the constitution (the rules or the Memorandum and Articles of Association) and understand your responsibilities;
- Ensure that if you are represented on the Board of a Company the relevant form 288 is filed upon your appointment and resignation;
- Make any general declarations of interest at the first board meeting;
- Ask if there is any insurance or indemnity in place;
- Clarify whether the organisation will pay allowances or expenses;
- Ensure the board or management committee has regular financial and other reports which detail the current financial situation of the organisation and any liabilities - take an interest in the business plan;
- Ensure the organisation has sound financial practices and procedures;
- Exercise independent judgement in making decisions;
- Act with integrity;
- Discuss any new activities with relevant officers (you may need to provide them with copy papers) and ensure that risks are properly identified in reports (consistent with local authority decision making - ensure that all relevant information is presented);
- Ask questions and make reasonable enquiries;
- Observe duties of confidentiality (in both directions);
- Carefully consider any conflicts of interest, declare interests, and if appropriate, leave the room for consideration of the business;
- Question responsibility and accountability;
- Take advice from the Monitoring Officer, the Finance Department and your lead officer contact as appropriate - not just when the organisation is likely to become insolvent, but generally. Occasionally, that advice may be to seek external advice on your position, especially if there is a conflict between the organisation and the Council;

- Manage conflict - usually issues can be balanced, but ensure that when in meetings of the body you act in the body's best interests which may not necessarily be those of the Council - if all else fails, resign. Do not just remain a director and fail to attend meetings or you may find that you are in breach of your duty to act in the best interests of that organisation.
- Finally, question the need for future Council involvement! Has the organisation come of age, or has it changed direction from when the District Council first became involved - what useful purpose would ongoing representation serve?

Useful Contacts	
Head of Legal and Democratic Services and Monitoring Officer: Andrea McCaskie	01283 595831
Principal Democratic Services Officer: Neil Betteridge	01283 595895

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REPORT TO:	COUNCIL	AGENDA ITEM:	24
DATE OF MEETING:	25TH MAY 2006	CATEGORY:	DELEGATED
REPORT FROM:	CHIEF EXECUTIVE	OPEN PARAGRAPH NO:	N/A
MEMBERS' CONTACT POINT:	PAUL SPENCER (595722)	DOC:	
SUBJECT:	REVIEW OF CONSTITUTION	REF:	
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE:	N/A

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## 1.0 Recommendations

- 1.1 That the Terms of Reference of the Environmental and Development Services and Housing and Community Services Committees be extended to include the consideration of consultation documents related to their Service areas.

## 2.0 Purpose of Report

- 2.1 To seek Members' approval for a minor variation to the Constitution.

## 3.0 Detail

- 3.1 Part three of the Constitution provides the terms of reference for the Council's policy and regulatory committees. Currently, the consideration of policy or consultation documents is a function of the Finance and Management Committee. This means that the two other policy committees are not able to consider consultation documents about their respective service areas.
- 3.2 It is proposed to overcome this by extending the terms of reference of the Environmental and Development Services and Housing and Community Services Committees. For each of these Committees, the following additional function is suggested:

"To consider and determine issues about any policy document from other organisations, which affect the District and are related to this Committee's areas of responsibility".

## 4.0 Financial Implications

- 4.1 None arising directly from this report

## 5.0 Background Papers

- 5.1 The Council's Constitution.



REPORT TO:	COUNCIL	AGENDA ITEM:	27
DATE OF MEETING:	25 <sup>th</sup> May 2006	CATEGORY:	DELEGATED
REPORT FROM:	DEPUTY CHIEF EXECUTIVE	OPEN	
MEMBERS' CONTACT POINT:	Peter Woolrich Ext 5726	DOC:	CPA 2 Consultation.doc
SUBJECT:	COMPREHENSIVE PERFORMANCE ASSESSMENT FOR DISTRICT COUNCILS FROM 2006 (FINAL PROPOSALS CONSULTATION)		
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE:	G

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### 1.0 Purpose of Report

- 1.1 To advise Members of the Audit Commission's (AC's) final proposals for district council Comprehensive Performance Assessment (CPA) from 2006 which have been published for consultation.

### 2.0 Recommendation

- 2.1 That Members welcome the opportunity to comment on the proposals and that the comments in the report together with Member's observations are forwarded to the Audit Commission.

### 3.0 Detail

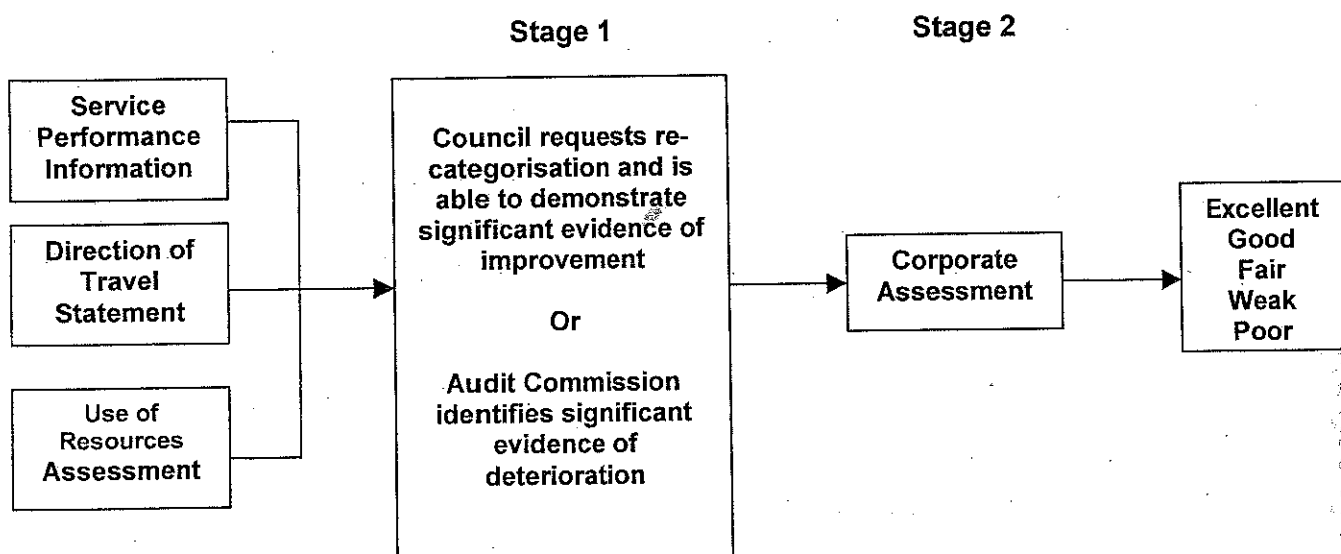
- 3.1 Following an initial consultation in September 2005, the Audit Commission has published its final proposals for district council CPA from 2006. The new system will commence in October 2006. The initial consultations last September offered a range of options but, as the majority of respondents supported Option 4, this has been used as the basis for these final proposals. Comments are invited by 30<sup>th</sup> May 2006. Annexe A lists a series of questions posed by the AC to guide responses.
- 3.2 The new system will NOT see all district councils undergoing further corporate assessments. The new system retains the original categorisations (i.e. poor to excellent) and, ONLY in those cases where councils can demonstrate substantial improvement in performance (i.e. requiring a higher grade) or the AC feel that performance has deteriorated (and therefore indicating a lower grade), will a new corporate assessment be undertaken.

3.3 The methodology being described is much simpler. The framework will involve a two stage approach:

- ♦ To decide whether or not there is sufficient evidence of a potential category change
- ♦ To undertake a corporate assessment following which a change in category may be warranted

3.4 Councils will continue to have annual direction of travel and use of resource assessments which, together with annual performance information (a new specific suite of Performance Indicators), will be used by a Regional Commission Panel to assess evidence of change or deterioration. The Commission Panels will include council peer representatives. The process is outlined below: -

#### District council CPA re-categorisation from 2006



3.5 The system being proposed is not seen as a harder test and is comparable to the previous system even to retaining the same rating system. It will begin in October this year when councils can request a corporate assessment and re-categorisation will be available from January 2007. The system will also continue to report (and update scores) on County basis quarterly as new corporate assessments are published.

3.6 The consultation document also provides details of the Corporate Assessment process, which has also been updated. There are now three key questions and five themes, which broadly reflect the structure for unitary tier corporate assessment. The proposed new criteria or Key Lines of Enquiry (KLOE) have also been published alongside this consultation. Many of the KLOE reflect the criteria for unitary councils, though suitably tailored to reflect district responsibilities. However it should be noted that Councils would have expected to have improved since the last CPA and the KLOE reflects this by

having essentially higher standards (i.e. the goal posts have been moved forward). These are to be piloted this summer with a final version published subsequently. Details of the process are outlined in ANNEX B.

- 3.7 For the first time District Councils have been given a set suite of Performance Indicators (PI's) for CPA. The purpose of this collection of PI's is to contribute to the service assessment element when requesting a corporate assessment and particularly reflect specific District council services (Planning, Waste collection/recycling, housing etc).
- 3.8 As part of the Process, the AC has also updated the Use of Resources part of the process, although this is not part of this consultation process. The new criteria, called Key Lines of Enquiry for Use of Resources are not substantially different but do contain a more overall shift towards a greater clarification of some previously contentious lines particularly scores and deferring some requirements to 2007.

### Comment

- 3.9 It has generally been recognised that the original CPA process and performance management systems had some key problems including a focus on extremes of performance and compliance, its complex and rigid nature, its resource costs and implications, and on its focused accountability to government rather than the general public. This replacement package looks to be a substantive improvement in that the system is simpler, appears more flexible and will be based on a balanced overview of performance.
- 3.10 It should be easier to implement and require very little resources particularly from those District Councils who maintain their satisfactory levels of performance and this is to be welcomed. However, the issue of resources has to be qualified. For those councils who remain unaffected (as their scores/category remain the same) there will be a resource saving. For those councils who wish to challenge for a higher grade or for those that the Commission consider are deteriorating, then a new Corporate Assessment will be undertaken. Whilst there are now no service diagnostics involved and the themes have been reduced from 10 to 5, there will be a resources cost, which is difficult to quantify or compare at this stage.
- 3.11 By retaining the self-explanatory ratings system, the new process retains backward comparability to its predecessor and should therefore be more easily communicated and understood by the public and this again is to be welcomed.
- 3.12 Based on these conclusions officers have made appropriate responses to the questions posed in Annex A.

#### **4.0 Financial Implications**

- 4.1 None arising directly from this report, although there may well be less resources required to carry out future CPA, although this will be subject to whether or not a Corporate Assessment is involved.

#### **5.0 Background Papers**

CPA – District Council Framework from 2006 – Consultation Document for the Comprehensive Performance Assessment of district councils.  
Audit Commission

## Annex A

# Consultation questions

### 1 The overall framework

- 1.1 Do you agree or disagree with the overall approach proposed for the future CPA framework for district councils ? If so, which aspects do you disagree with?

**Agree**

### 2 Re-categorisation

- 2.1 Do you agree or disagree that we should undertake re-categorisation activity only where there is significant evidence to indicate a potential change from the original CPA category ?

**Agree**

- 2.2 Do you agree or disagree with our proposals about how a council can seek re-categorisation and how that decision will be made ?

**Agree**

- 2.3 We have suggested a range of evidence that the Commission should take into account in deciding whether or not to undertake a corporate assessment. Do you agree or disagree with this? Is there any other evidence we should consider?

**Agree**

### 3 Use of resources

- 3.1 Following the consultation recently undertaken for use of resources assessments, do you have any additional comments?

**No**

- 3.2 What are your views about the most appropriate timing of the use of resources assessment and reporting for district councils in the future?

***Welcome the changes and support the deferment of the alignment and 'must have' criteria to 2007***

### 4 Direction of travel

- 4.1 Do you agree or disagree that we should continue the approach to direction of travel statements introduced in 2005 ? If you disagree, how should it be changed ?

**Agree**

- 4.2 Do you agree or disagree with the proposal to introduce some common statements so that progress is reported in a more consistent way?

**Agree**

## **5 Analysis of service performance information**

- 5.1 Do you agree or disagree with our proposals for the analysis of service performance information, which will be used as part of the evidence in deciding whether or not to undertake a corporate assessment?

**Agree**

- 5.2 In relation to the proposed set of performance indicators, do you agree or disagree that these are appropriate in the context of considering either Improvement or deterioration in services? If you disagree, which indicators would be more suitable?

**Agree.**

- 5.3 Do you think the proposed set of performance indicators are broadly representative of the services district councils provide ?

***Consider that they are particularly relevant to District Council service delivery***

## **6 Corporate assessment**

- 6.1 What are your views on the proposed changes to the corporate assessment process including:
- a) a reduction in corporate assessment themes from ten to five;
  - b) involvement of a council peer on the assessment team;
  - c) the introduction of web-based stakeholder surveys;
  - d) no diagnostic assessments and a greater reliance on pre-site analysis to minimise the on-site work; and
  - e) the use of BFI assessments, use of resources as part of the range of evidence taken into account rather than specific components of the corporate assessment.

***Consider appropriate, easier and simpler system and is welcomed. Removal of diagnostic assessment should have resource savings. Welcome involvement of council peer on the assessment team as will provide service/member perspective to the auditors.***

- 6.2 Do you agree or disagree with the key lines of enquiry proposed for use in corporate assessment from 2006 ? If you disagree, what amendments do you propose ?

***Agree but need to ensure that there is backward compatibility with the earlier CPA KLOE.***

- 6.3 Do you agree or disagree with the proposed approach to scoring and weighting, which adopts the LSIF scoring system, but allows comparability with

previous assessments ? If you disagree, what alternatives do you propose ?

**Agree**

**7 Supporting Strategic Regulation**

- 7.1 In addition to our questions about the proposals for specific changes to the CPA framework, we are also interested in your views on any areas of change, which might support the Commission's principles of Strategic Regulation.
- 7.2 How could CPA be used over the next two years to ease the transition to a new assessment framework from 2008 ?
- 7.3 Are there any ways in which the CPA framework could be refined so that it:
- a) continues to encourage improvement ?
  - b) encourages innovation to a greater extent ?
  - c) further reflects the interests of users and residents ?

**No comment**

- 8 Are there any other comments you would like to make in relation to the proposals in this paper ?

**None**

## Annex B

# Corporate Assessment

Self-assessment will remain the starting point for corporate assessment but the process has been streamlined. Changes include :-

- ◆ no diagnostic assessments;
- ◆ auditor's judgement (now use of resources) and BFI assessments are no longer separate components, although they will be integral to the evidence considered for corporate assessment;
- ◆ direct involvement of a council peer in the assessment process;
- ◆ five corporate assessment themes instead of ten;
- ◆ greater reliance on pre-site analysis to minimise the on-site work; and
- ◆ the introduction of web-based stakeholder surveys, as currently used in corporate assessment for single tier and county councils. This involves web-based surveys of key partners within the locality to ascertain their views of the council, reducing the need for extensive interviews and written evidence.

As a result corporate assessments will be more proportionate and significantly less resource intensive than previously.

New KLOE have been updated and streamlined but still relate to the original KLOE. There are also some changes in emphasis particularly **to reflect the continuous improvement in local government** with more explicit references to partnership. Key questions and themes are :-

Key questions	Themes
1. What is the council, together with its partners, trying to achieve?	1. Ambition for the community 2. Prioritisation
2. What is the capacity of the council, including its work with partners, to deliver what it is trying to achieve?	3. Capacity 4. Performance management
3. What has been achieved?	5. Achievement of improvement

In line with our other inspection activity and that of other regulators, the Commission proposes to adopt the LSIF scoring system for corporate assessment theme scores. These are as follows:-

Score	Label
4	Well above minimum requirements – performing strongly
3	Consistently above minimum requirements – performing well
2	At only minimum requirements – adequate performance
1	Below minimum requirements – inadequate performance



As there are now 5 themes instead of 10, the theme weightings have been adjusted as follows :-

Theme	Weighting
Ambition	2
Prioritisation	2
Capacity	2
Performance Management	2
Achievement	7

Using the same categories as in previous CPA the new scores will be :

Category	Required Score
Excellent	45 – 60
Good	36 - 44
Fair	28 – 35
Weak	21 – 27
Poor	20 or less

Service users (customers) and diversity will continue to central to the assessment. The remaining details refer to the Commission's Reporting and quality assurances.