

# **Appointees to outside bodies and organisations –**

## **A Guide to your Legal Obligations**

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## **Appointees to outside bodies and organisations – A Guide to your Legal Obligations**

### **Introduction**

This is a general guide for Councillors and others who are appointed to represent Medway Council on outside bodies and organisations. It deals with various types of bodies and the implications of sitting on them, particularly in terms of legal liability and gives some general guidance on important legal issues including bias, indemnity and insurance.

Councillors and any voting co-opted members of the authority are required to comply with the Members' Code of Conduct set out in Medway Council's Constitution and this has implications for Councillors and others appointed to represent the Council on outside bodies. These are set out in this guide.

In addition to this guide Members will receive a Summary Checklist when they are appointed to an outside body/organisation. It is important that you take time to work through the checklist making sure you can answer the questions.

A list of useful contacts is contained in Appendix A. If you are representing the Council on an outside body/organisation and you have any concerns or questions that this guide does not address, you should contact the relevant officer for advice.

Appendix B contains a list of bodies to which Medway Council appoints or nominate representatives.

This guide also applies to Councillors who are appointed to Alternative Business Structures (ABS), such as parent companies and teckal companies set up to share services with other public bodies and to a lesser extent with the private sector. It is anticipated that such ABS' will become increasingly more common. They can take various forms and can be a complex vehicle. You should therefore seek advice on the specific organisation you will be appointed to in order to ensure you are clear regarding your duties and liabilities in that role and have the necessary insurance. Sections 1, 12 and 13 of this guidance are particularly relevant.

## 1. Directors of Companies

- 1.1 You need to be aware of the following general obligations on Councillors or others who sit as Directors of companies.
- 1.1.1 As a Director you owe a **fiduciary duty to the company**, (not to the individual shareholders or the Directors), to act honestly and in good faith and in the best interests of the company as a whole. Directors must take care of the assets of the company and must ensure that they act within the company's constitution (its Memorandum and articles of association).
- 1.1.2 You also owe a **general duty of care, skill and diligence** to the company – but no greater skill than might reasonably be expected of someone with your particular knowledge and experience. A Director is **not expected to be an expert**, (unless he or she holds themselves out to be one) but is expected to use due diligence and to obtain advice if necessary.
- 1.1.3 Like a Councillor in respect of Council decisions, as a Director you are under a duty to exercise **independent judgement**. If you are in a position where the interest of the Council are relevant you must disclose this and tread a fine line between the interests of the company and the Council. You cannot simply vote in accordance with the Council mandate: to do so means you breach the duty you owe to the Company. In other words simply because the Council has taken a particular line on an issue does not allow you to take the same line when sitting as a Director. If that is not in the best interests of the Company then you will expose yourself to personal liability.
- 1.1.4 There may be **actual or potential conflicts between the interests** of the Council and the interests of the company. For example, the company might be inflating a bid for a Council grant. In such circumstances the proper way for the conflict to be dealt with is for you to resign either from the company or from the Council.
- 1.1.5 Directors are not allowed to make a **private profit** from their position. You must therefore disclose any interests you or your family have in relation to the company's contracts. Whether you are then allowed to vote will depend upon the Articles of Association of the company – you should be given access to these.
- 1.1.6 Directors should also ensure the company **complies with other legislation** such as health and safety legislation if the company employs staff or contractors. Directors should also be aware of whether the body owes any obligations to regulators or other outside bodies e.g. Information Commissioner, Register of Companies, or Health and Safety Executive.
- 1.1.7 Directors have a range of accounting and financial responsibility, including the preparation of accounts for each financial year, ensuring accounting records are maintained sufficient to demonstrate the company's day to day transactions, approving the annual accounts

and reports are sent to shareholders and anyone else entitled to receive them.

1.1.8 Individual Directors can be liable in the following circumstances:

- i) A Director will be liable personally if they knowingly cause the company to act beyond the scope of its Memorandum of Association.
- ii) Directors may be liable for breach of trust if they misapply the money or property of the company. Directors may also be liable if they fail to take action to prevent the breach of a Co-Director of which they are aware.
- iii) If Directors fail to act in accordance with the best interests of the company or if Directors use their powers improperly or make a personal profit from their position as a Director, then they may be personally liable for loss to the company and may be required to give to the company the personal profit made.
- iv) If the level of skill and care shown by a Director falls below that which could reasonably be expected and the company suffers loss, the director will be liable for the loss incurred. However, if it believes the Director acted honestly and reasonably a Court may excuse the Director from his liability.
- v) If a Director knows or ought to know that there is no reasonable prospect of the company avoiding liquidation, the Court may require the Director to contribute to the company's assets on liquidation if the company continues to trade. This is known as wrongful trading. No such order will be made if the Court is satisfied that the Director took all reasonable steps to minimise the loss to the creditors.
- vi) Directors will also be liable if to their knowledge the company carried on business with intent to defraud creditors or any other person, or for any other fraudulent purpose.

1.1.9 As duties are owed to the company the company must bring any action against the Director. Typical remedies include damages and setting aside the offending transaction. Very serious breaches could lead to disqualification of a Director (Company Directors Disqualification Act 1986). It is therefore important that directors receive training and have access to advice.

1.10 A director who does not scrutinise and understand the company's accounts risks incurring personal liability to the company's creditors for wrongful trading if they continue to trade when they knew or ought to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation or insolvent administration. Fraudulent trading is a criminal offence.

1.11 If as a Director you act properly, use adequate skill and act in the best interests of the company you are unlikely to attract personal liability, given companies' status as separate legal bodies.

## 2. Charitable Trustees

- 2.1 Those who are responsible for the control and administration of a charity are referred to as Trustees. This guidance deals with **Charitable Trustees**. If the organisation is not legally a charity – if for example it is a company limited by guarantee you may be a trustee but you are not a Charitable Trustee in which you will need to comply with the duties set out in section 1 above relating to Directors. It is important that you are clear whether the organisation is a Charity with the legal status of a trust or whether it is a company or some other form of organisation.
- 2.2 As a **Charitable Trustee** you have the following duties:
- 2.2.1 A duty to act in the **best interests of the charity**, its beneficiaries and assets without regard to their own private interests.
- 2.2.2 Trustees are responsible for the **proper administration** of the charity. You must receive an up to date copy of the governing document which sets out the purpose and familiarise yourself with it. You should promote the charitable purpose of the charity. You should regularly review your charity's objectives to ensure that the charity's current and proposed activities continue to fall within them. If you fail to do so you will have acted in breach of trust and may be personally liable for making good any loss caused to the charity as a result (even if that other purpose is charitable).
- 2.2.3 You have a **duty of care or prudence**, to ensure that charity property is used appropriately. The standard of prudence is judged by reference to what the ordinary business person would do if they were under a moral obligation to provide for others, not what they would do if they only had themselves to consider. Therefore it would not be acceptable for a charity trustee to take the same risks with a charity's assets as he might be willing to take with his own, such as risking them all on a speculative venture.
- 2.2.4 Trustees must accept **ultimate responsibility** for everything the charity does.
- 2.2.5 Trustees have a duty to **act reasonably and prudently** in all matters relating to their charity. Trustees have a duty to exercise such care and skill as is reasonable in the circumstances having particular regard to any special knowledge or experience that they have or hold themselves out as having.
- 2.2.6 Trustees must **safeguard and protect the assets** of the charity.
- 2.2.7 Trustees have a duty to **act collectively**. All of the charity trustees are collectively responsible for decisions that have been validly made by them so charity trustees should therefore take an active role in making decisions by critically and objectively reviewing proposals and challenging assumptions.

- 2.2.8 Trustees have a duty to operate their charity for the benefit of the public and must report on public benefit in their annual reports.
- 2.2.9 Must **avoid any conflict** between your own personal interests and those of the charity. You have a duty not to place yourself in a position where you have, or may have, an interest that conflicts with your duty as a charity trustee and a charity trustee must not make a profit from his position as a charity trustee.
- 2.3 Charity Trustees of all charities have duties to keep proper financial records, ensure that annual accounts are prepared and arrange for accounting books and records to be retained. Reporting and accounting obligations vary depending on the size of the charity's income and asset value in any financial year, whether or not it is registered, whether it is a charitable company and whether it is part of a group of charities. You will need to check the Charity Commissions guidance on charity reporting and accounting to ensure you are compliant.

2.4 Trustees should be aware of the charity law rules on Fundraising and trading and Campaigning and political activity.

~~Specific requirements must be complied with if the charity is a Charitable Incorporated Organisation (CIO).~~

- 2.5 A registered charity with gross income in its last financial year exceeding £10,000 must state that it is a registered charity in certain documents soliciting money or property on its behalf and in financial documents signed on its behalf.
- 2.6 A registered charity with a gross income exceeding £10,000 in any financial year must file an annual return with the Commission within 10 months of the registered charity's financial year end with prescribed information being required. If a charity has a gross annual income of £10,000 or less, it can complete a simpler annual update form. There is no statutory deadline but this should be submitted to the Commission as soon as possible.
- 2.7 There is a duty to immediately report to the Commission any serious incident that has resulted in, or could result in, a significant loss of funds or a significant risk to a charity's property, work, beneficiaries or reputation. It may also be necessary for a charity to report these incidents to other regulatory agencies or public authorities such as the police, Health and Safety Executive and the Care Quality Commission. It is an offence to give the Charity Commissioners false or misleading information, or to alter, conceal or destroy charity documents which may be required by the Commissioners.
- 2.8 The work must generally be unpaid. Trustees may be paid for their expenses from the charity's income and, very occasionally, the Charity Commission may allow wider remuneration where this is in the interests of the charity.

- 2.9 Trustees must act in accordance with all relevant legislation.
- 2.10 If a Charitable Trustee is in doubt about any issue they should consult the Charity Commission. If the points above and Charity Commission advice are followed personal liability is likely to be avoided.
- 2.11 If a breach of duty gives rise to a loss to the charity, the trustees are vulnerable to a claim to reimburse the charity for the loss caused but in practice it is rare for charity trustees to be held personally liable for breach of trust where they have acted in good faith.
- 2.12 An important point is that Charitable Trustees can be **personally liable to third parties** because (unlike a company) as a trust, the charity has no separate legal identity. Trustees are, however, entitled to an indemnity from the charity if they have acted properly in incurring the liability.
- 2.13 Trustees remain **personally liable when they retire** and should therefore seek an indemnity from their successors.
- 2.14 Trustees may take out **insurance** which should cover them as long as they have acted properly and within their powers for liability while acting as a Trustee (alternatively the charity itself can take out the insurance as long as the trust deed allows it.) The insurance will not cover you against liability for criminal act, fraud etc.
- 2.15 Trustees should note that the following are criminal offences:
- Knowingly or recklessly providing information to the Commission that is false or misleading, and
  - Willfully altering, suppressing, concealing or destroying any document that is required to be produced to the Commission.
- 2.16 A number of useful publications are available on the Charity Commission's website:  
[www.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)

### 3 Unincorporated Associations

- 3.1 Bodies which are neither limited companies nor charitable trusts may be “unincorporated associations”.
- 3.2 Unincorporated associations have no separate legal identity from their members – examples are clubs and residents and tenants associations and other not-for-profit organisations.
- 3.3 The members of a management committee of a charity that is formed as an unincorporated association are likely to be charity trustees.
- 3.4 The rules governing the members' duties and liabilities will (or should) be set out in a constitution, which is simply an agreement between members as to how the organisation will operate. Usually the constitution will provide for a management committee to be responsible



for the everyday running of the organisation. There are some general principles which you should apply:

- 3.4.1 Management Committee members must act within the **terms of the constitution (and any funding/grant agreements)** and must take **reasonable care** when exercising their powers.
- 3.4.2 Councillors who sit on unincorporated association Management Committees will have **joint and severable liability** with other Members. However, you will have an indemnity from the funds if you have acted properly. If the body has insufficient funds you will however be liable for any shortfall.
- 3.4.3 You will be **personally liable** if you act outside of the authority given to you, you do not comply with the law or you act criminally.
- 3.4.4 Members are vulnerable to acts of other members and firm control should be exercised over the extent of each members authority to enter into contracts and otherwise incur liability on behalf of the others.
- 3.4.5 It is possible that the organisation itself can take out **insurance** for its members as long as its constitution allows for this.
- 3.5 In certain circumstances an unincorporated association may be liable to pay tax, including for example where income received from non-members any profit generated will be liable to corporate tax and VAT.

## 4 School Governors

- 4.1 If you become a school governor you are appointed to the “governing body” of the school.
- 4.2 The governing Body, rather than individual Governors, will generally be responsible for the acts of the governors. So long as a Governor acts honestly and reasonably and within their powers when carrying out their delegated powers/duties, any liability will fall on the governing body rather than the individual governor concerned. Therefore, when making decisions as part of the governing body Governors are legally protected as long as they are acting in good faith and there is no element of wrong doing.
- 4.3 Governors should follow these principles:
  - 4.3.1 You should always **act reasonably**, seek and act upon professional advice when necessary and at all times act with the **school’s best interests** as your major consideration.
  - 4.3.2 If, as a governor, you have to act on your own you should ensure you are acting under **properly delegated authority** and that what you are doing falls within the parameters of that authority.

(**Note:** Academies are non-maintained independent schools. If you are

appointed to represent the Council as a Director, Governor or Trustee on an Academy, paragraphs 1 and 2 of this guidance apply.)

## 5 Consultative or advisory bodies

- 5.1 These are bodies that the Council recognises as having a formal advisory or consultative role. An example is an external committee or a statutory partnership which advises the Council on various issues.
- 5.2 Difficulties can arise if as a representative you champion a position taken by the external committee/partnership, when sitting as an elected Member on a Council committee. This can result in the decisions of the Council committee being successfully challenged. **As a representative on a consultative or advisory body it is very important that you understand your legal position in terms of personal and disclosable pecuniary interests and bias.**

## 6 Financial and Governance Issues

- 6.1 If you are part of the management structure of the organisation then you will have certain financial and governance responsibilities to that body. Some of these have already been set out in this guidance. However, there are some financial and governance issues to be aware of:
- 6.1.1 You should ensure that regular accurate and up to date financial information is available to you.
- 6.1.2 You should understand how decisions are made in the organisation. What is the decision making forum? What powers to make decisions have been delegated, to whom and what is the exact scope of the delegation?
- 6.1.3 Do you have any decision-making powers and, if so, what is the exact scope of that power?
- 6.1.4 What is the process if the organisation wants to contract with a third party? Who can sign those contracts in a way that binds the organisation?
- 6.2 **Should the body on which you sit face financial difficulties you should be aware of the following:**
- 6.2.1 You need to apply **reasonable skill and care** to help to protect the body's financial interests.
- 6.2.2 Should the body begin to get into financial difficulties you must take **specialist advice** and act **as early as possible** to protect the body's potential creditors.
- 6.2.3 In particular there may come a point when it is clear that the organisation will have no reasonable prospect of avoiding liquidation and you must then take every step to **minimise losses**

## to creditors.

- 6.3 Whilst this applies to all organisations these obligations are most clearly defined for **companies**. If a company continues to trade after there is no reasonable prospect of avoiding liquidation, this is “wrongful trading” and could lead to **personal financial responsibility to creditors** for the Director. It is important that you remain aware of the company’s financial affairs and act very quickly should you consider it is in financial difficulty by taking professional advice as to the options.

## 7 Insurance

- 7.1 You should establish as soon as you are appointed what, if any, insurance is in place that **covers you in your role**.
- 7.2 You should in general satisfy yourself as to the running of the organisation regarding insurance.
- 7.3 You should establish what insurance the organisation itself holds for **other purposes**, for example third party liability insurance and employers liability insurance (the second of which is a legal obligation for all organisations which employ staff). Clearly adequate and comprehensive insurance cover for the organisation is likely to limit any residual exposure for you as a Trustee, Director, Committee member, etc.

## 8 Responsibility to Regulators

- 8.1 Whilst sitting on an outside body you should be aware of whether the body owes any obligations to regulators or other outside bodies. In particular and depending on the nature of the body, the following organisations might be relevant – ~~Homes and Communities Agency~~, Information Commissioner (data protection and human rights issues), Charity Commission, Register of Companies, or the Health and Safety Executive. The organisation should know which bodies are applicable and have systems in place to liaise and comply with their requirements. It is likely to be part of your role to help ensure that these obligations are complied with.

## 9 Indemnity by the Council for Members and officers

- 9.1 The Council has indemnified all Councillors appointed to any of the Joint Committees, outside bodies, other bodies and charities listed in Appendix B to this guidance. The Chief Executive has delegated authority to add to the list as appropriate. The indemnity also extends to all officers undertaking work for or in connection with such bodies. The indemnity covers “any loss, liability, damage, claim, proceeding, costs (including costs incurred by the member or officer), expenses or demands arising from any act, omission, neglect or error (occurring after 21 October 1999) by the member (or officer) and in the course of exercising, or in connection with the exercise of, the appointment of the member (or the work undertaken by the officer).”

- 9.2 This indemnity does not cover any amount that results directly or indirectly from the commission of a criminal offence, or any amount that results directly or indirectly from the fraud or dishonesty of the member or ~~o~~r-officer.
- 9.3 This indemnity does not apply if the Councillor or officer, without prior written approval of the Council's Chief Executive or Monitoring Officer, admits liability or compromises any claim falling within the scope of this indemnity.
- 9.4 Since the Council resolved in 2001 to agree the terms of the indemnity a new requirement has been introduced by The Local Authorities (Indemnities for Members and Officers) Order 2004 stipulating that the terms of any indemnity must include provision for re-payment of sums expended by the Council or the insurer in cases in which a member has been found to be in breach of the Members' Code of Conduct, or a member or officer has been convicted of a criminal offence (if the indemnity or insurance policy would otherwise cover the proceedings leading to that finding or conviction).
- 9.5 The indemnity does not cover Councillors who serve on outside bodies in a private capacity or those individuals who are not Councillors but have been appointed to represent the Council on any outside bodies. People in that position need to make sure that the organisation itself has provided insurance cover for them.

## 10 Application of the Members' Code of Conduct

- 10.1 Members must adhere to the Members Code of Conduct as set out in Medway Council's Constitution when taking part in Council business – for example when sitting on a Council Committee.

### Interests

- 10.2 If you have a Disclosable Pecuniary Interest (DPI) in a matter to be considered at the meeting and that interest is on your Register of Interests you must not speak or vote on the matter. You should also leave the room during any discussion of, or vote on any matter in which you have a DPI.
- 10.3 The same ~~issues apply~~rule applies if you have any Other Significant Interests and you must disclose it and leave the room during the discussion and not vote on the matter. An OSI is where your interest is closely aligned to the business of the Council agenda item and where the business affects the financial position or well being of the following:
- You;
  - A member of your family or friends or any person with whom you have a close association;
  - Any person or body from whom you have accepted or received any gifts or hospitality

AND where a member of the public with knowledge of the relevant

facts would reasonably think that your interest is so significant that it would be likely to prejudice your judgment of the public interest.

- 10.4 If you do not have a Disclosable Pecuniary Interest or an Other Significant Interest, you may still have another personal interest in a matter to be discussed at a meeting of the authority, if it affects:  
~~your well being or financial position~~  
~~that of your family or close friends~~  
~~that of a club or society in which you have a management role~~  
~~that of another public body of which you are a member to a greater extent than others in your ward.~~
- 10.5 If that is the case then you must declare such an interest but you may speak and vote on the matter, unless the interest is so significant it would be likely to prejudice your judgement on the matter in which case you may need to take no part in the discussion or vote on the matter and could choose to withdraw from the room. It is always advisable to take advice from the Monitoring Officer if you are unsure. This is to avoid the appearance of any bias.
- 10.6 In summary Councillors always have a personal interest in any issue relating to a body on which they are a Council appointed representative and they should always disclose that personal interest if they speak at a meeting of the authority where such an interest arises.
- 10.7 When members discuss at Council meetings matters relating to an outside body on which they serve, they may take account of that outside body's interest. However, they must not vote simply in accordance with the mandate of that outside body. In short, the primary consideration is the public interest.

### Dispensations

- 10.8 Where a Member has a DPI or OSI they may still be able to participate and/or vote at a meeting if they have obtained a dispensation from the Councillor Conduct Committee.
- 10.9 There are five circumstances in respect of which a dispensation may be granted, namely:
- 10.9.1 That so many Members of the decision-making body have DPIs or OSIs in a matter that it would impede the transaction of the business;
- 10.9.2 That, without dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;
- 10.9.3 That the dispensation is in the interests of persons living in Medway;
- 10.9.4 That without a dispensation, no Member of the Cabinet would be able to participate in this matter, or
- 10.9.5 That it is otherwise appropriate to grant a dispensation.

## 11 Bias and closed minds

- 11.1 Members need to be aware of these points on bias and closed minds. If a Member is found to have been influenced by bias when making a Council decision the Council decision must be set aside. (Where actual bias has not been established the personal impartiality of the Member is to be presumed.)
- 11.2 Should a decision be challenged then an objective appraisal will be undertaken. If the material facts give rise to a legitimate fear that the Member might not have been impartial the decision must be set aside. The 'material facts' are not limited to those which were apparent to any complainant but also include those which appear when the matter is investigated.
- 11.3 An important consideration in making an objective appraisal of the facts is the desirability that **the public should remain confident in the administration of government**. Would a fair-minded observer, knowing the background, consider that there was a real danger of bias from the external interest of a Member in the outside body? Is the Council being influenced by the outside body, not just through its representations, but also by the Member who was involved with the creation of that outside body's view and representations? Is the Member not considering the matter with an open mind, predetermining his or her decision based on his or her membership of the outside body? Members should always be aware that should the issue of bias arise their conduct would be questioned in this way.
- 11.4 If there is an allegation of bias or predetermination the member is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because the member had previously done anything that directly or indirectly indicated what view the member took or might take in relation to a matter, and that matter was relevant to the decision (s25 Localism Act).
- 11.5 The other key issue is the type of outside body:
- 11.5.1 For example, if a Member is appointed as the Council's representative on a **Trust** that Member should not sit as a Member of any licensing committee determining an application by the Trust or by any rival nor should they in any way attempt to influence the decision.
- 11.5.2 If the outside body is simply a **discussion forum** it is very unlikely that issues of bias would arise for the representative.
- 11.5.3 If the body is an **advisory or consultative body** a Court will not assume bias and therefore it would possibly be legitimate for the Member to decide they have no significant interest. However, once that body has a 'line' which is being advocated by the Member, it is likely that the Court would find bias.
- 11.6 In summary, the duties of a Councillor as a Director, or a trustee or a

Member of a Management Committee may well give rise to a legitimate fear of lack of impartiality.

## 12 Regulated Companies

- 12.1 A company that is influenced by the Council (20% shareholding or more) or controlled by the Council (50% shareholding or more) will be a regulated company under the Local Authorities (Companies) Order 1995. This piece of legislation has a number of restrictions for members that sit on the board of regulated local authority companies, they are referred to as “regulated directors”. The restrictions are:
- 12.1.1 the maximum amount of remuneration is the greatest amount which would be payable by the Council in respect of a comparable duty performed on behalf of the Council, less any amount paid by the Council to the regulated director for its duties to the Company;
  - 12.1.2 the maximum amount of travelling or subsistence allowance which would be payable to that director by the Council of which he is a member if the relevant duty were an approved duty for the purposes of section 174 of the Local Government Act 1972;
  - 12.1.3 when a regulated director becomes disqualified for membership of the Council, he/she must be removed as a director of the regulated company.
- 12.2 Where members sit on the board of an influenced or regulated company, there will be an inherent conflict of interest in their roles as the Companies Act 2006 requires Directors to consider the best interests of the company and not the shareholders. However, due to the restrictions on the remuneration and expenses of members in relation to such companies, members are unlikely to have a disclosable pecuniary interest (DPI). Members should nonetheless, declare their conflict of interest at Council meetings and avoid voting on or taking Council decisions in relation to such companies, unless they wish to seek a dispensation allowing them to partake in the discussion and/or voting on business relating to such companies.
- 12.3 Some examples are where there is any council decision to be made to award a contract to the company, if Cabinet were considering a report on whether to transfer a service to the company then any member who was a director of that company should not take part in that decision. Similarly any decision to grant planning permission to the company would present a conflict for any member who was a director and who was a member of the Planning Committee. The declaration should be made at the same point as any other DPI or OSI. Members would also need to be aware that they must be clear in which role they are speaking to officers about matters, it is not appropriate for example for a member in their role as director to talk to procurement about contracts that are coming forward for renewal.

12.4 You must also disclose any interests your family and close friends have in relation to the company's contracts as an OSI and not take part in the decision making at the Council.

~~-(Burgoine and Cooke v Waltham Forest LBC [1997] BCC 347).~~

12.5 Officers and members acting within their own local authority LA within their powers and acting in good faith have statutory immunity against personal liability (s265 Public Health Act 1875). This does not apply where they act on a local authority LA-owned company.

12.6 The Council has indemnified all Councillors appointed to any of the outside bodies listed in Appendix B, which includes Medway Council's local authority trading companies. Please refer to section 9 above for details including the circumstances where the indemnity does not apply.

12.7 Members also need to be mindful of the possibility of the issues of a prejudicial interest and a bias or closed mind arising when considering a council matter (s25 Localism Act 2011), as discussed above.

~~Members should also be aware of that Directors who are also councillors are known as "regulated Directors" under the Local Authorities (Companies) Order 1995 and their corresponding duties and limits on remuneration and expenses. Regulated directors must manage conflicts of interest when taking part in decision making for local authority and the company. Regulated directors may need to declare their interest and consider withdrawing from taking part in council or committee decisions.~~

### **13 Teckal Companies (a company exempted from the Public Contracts Regulations 2015)**

13.1 An influenced or regulated company can also be a "Teckal" company, the Teckal exception allows a public authority, in specified circumstances, to procure services, goods or works direct from an external company in which it has control similar to that which it exerts over its own departments. Where one or more public sector ~~or private sector~~ bodies jointly own Teckal companies, there is legal prohibition on the Teckal company, stopping it from pursuing any interests which are contrary to those of its public sector owners. In the Medway Norse model, this legal requirement is met by the chair of the board, who is also a member, having a veto over any decision which is contrary to the public policies or values of Medway Council. Members will need to manage this inherent conflict when sitting on the board of a jointly owned Teckal company.



**Appendix A**

**Contact names for further advice**

**Constitutional issues – Perry Holmes**, Chief Legal Officer Email:

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Telephone: 01634 332133

**Legal issues – Perry Holmes**, Chief Legal Officer Email:

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**Financial issues – Phil Watts**, Chief Finance Officer

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## Appendix B

**List of bodies to which Medway Council appoints or nominates representatives****Joint committees and other joint bodies**

Kent and Essex Inshore Fisheries and Conservation Authority  
[Kent and Medway Economic Partnership](#)  
 Kent and Medway ~~Towns~~-Fire and Rescue Authority  
 Kent and Medway Adults Safeguarding Board  
 Kent Rural Board  
 Patrol Adjudication Joint Committee  
~~Pensions Board~~  
[Kent and Medway](#) Police and Crime Panel ~~for Kent and Medway~~  
[North Kent Enterprise Zone](#)  
[Skills Commission](#)  
 South East Local Enterprise Partnership (SELEP)  
[South East 7 Leaders Meeting](#)  
[South East 7, Sub-National Transport Partnership Board](#)  
 South Thames Gateway Building Control Joint Committee  
 Southern Regional Flood and Coastal Committee  
 Superannuation Fund Committee (with KCC)  
[Sustainability and Transformation Partnership Board](#)  
[Kent and Medway STP Oversight Group](#)

**Other bodies required by statute**

Admiralty Court  
 Adoption Panel  
[Community Safety Partnership](#)  
 Complaints Review Panel (Children's Social Care)  
 Fostering Panel  
 Local Access Forum  
 Medway Admissions Forum  
 Rochester Airport Consultative Committee  
 Standing Advisory Council on Religious Education

**Outside bodies**

Action with Communities in Rural Kent  
~~Art for Life Project~~  
 Association for Port Health Authorities  
 Chatham Historic Dockyard Trust  
 Chatham Maritime Charitable Trust Ltd  
 Court of the University of Kent at Canterbury  
~~Dynamics—The Medway Music Education Hub~~  
~~Ethnic Minority Forum~~  
 Friends of Medway Archives  
~~Groundwork South East~~  
[Gillingham Golf Club](#)  
 Halling Association  
 HANDS Gillingham Volunteer ~~Bureau~~Centre

HANDS Rochester Volunteer [BureauCentre](#)  
 Kent and Medway Civilian Military Partnership Board  
 Kent County Playing Fields Association  
 Kent Downs Area of Outstanding Natural Beauty Joint Advisory  
 Committee  
[Kent People's Trust](#)  
 Kent Resource Partnership Annual Council  
 Local Government Association - General Assembly  
 Lower Lines Trust  
 Lower Medway Internal Drainage Board  
[Macmillan Cancer Support Welfare Fund](#)  
[Medway Cultural Education Partnership](#)  
[Medway Diversity Forum](#)  
[Medway Home Improvement Agency](#)  
 Medway Maritime Hospital Foundation Trust - Council of  
 Governors  
 Medway Queen Preservation Society  
 Medway Tourism Association  
 Medway Towns Sea Cadets  
 Medway University Technical College Trust  
 MHS Homes Community Charity Ltd  
[NHS Medway Primary Care Commissioning Committee](#)  
 North Kent Marshes Drainage Board  
[North Kent Strategic Access and Monitoring Strategy Board \(SAMMS\)](#)  
 RELATE (Medway and Gravesham)  
 Rochester Bridge Trust  
 Rochester Cathedral Council  
 Rochester Diocesan Board of Education  
[Safer Kent](#)  
 South East England Health Scrutiny Network  
 South East Reserve Forces and Cadet Association  
 Strategic Partnering Board (NHS Medway)  
 Thames Gateway Kent Partnership Board  
 Thames Gateway Strategic Group  
 Tourism South East  
~~[Valley of Visions Landscape Liaison Board](#)~~

### **Charities**

All Saints Frindsbury Charities  
[Arthur Ingram Trust](#)  
 Chatham Charities Trustees  
 Gillingham United Charities  
 Gunsley Charity  
 John Baynard's Charity  
 Mayor of Medway's Welfare Fund  
 Rochester Grammar School for Girls Charity  
 Sir Joseph Williamson's Mathematical School Scheme

## Other bodies set up by Medway

Chatham Centre Forum  
 Designated Person Panel  
[Electoral Review Working Group](#)  
 Gillingham Town Centre Forum  
 Housing Asset Management Board  
 Informal Working Party on Polling Districts and Polling Places  
 Member Development Advisory Group  
 Rochester City Centre Forum  
 Rochester Conservation Area Advisory Group  
 Rochester Riverside Project Board  
 Rural Liaison Committee  
 Strood Town Centre Forum  
 Youth Centre Management Committee - Parkwood  
 Youth Centre Management Committee - Strood  
 Youth Centre Management Committee - Woodies  
 Youth Centre Management Committee - Woodlands

## Executive appointments

Bus Lane Adjudication Service Joint Committee  
 Chatham Regeneration Board  
 Children and Adults Capital Programme Cabinet Advisory Group  
[Children and Young People Transformation Board](#)  
 Corporate Parenting Board  
 Development Plans Advisory Group  
[Dynamics – The Medway Music Education Hub](#)  
[Innovation Park Medway Delivery Board](#)  
~~Grounds Maintenance Operational Liaison Board (Medway Norse)~~  
 Medway Commercial Group Ltd  
[Medway Commercial Services Ltd](#)  
[Medway Development Company Limited](#)  
[Medway Education Partnership](#)  
[Medway Growth \(Joint Venture with Medway Property Services\)](#)  
 Medway Public Services Ltd  
[Medway Skills Partnership Board](#)  
~~Medway Commercial Services Ltd~~  
 Medway NORSE Board of Directors ~~and~~  
[Medway NORSE Operational Liaison Board](#)  
 Procurement Board  
 Regeneration, Culture, ~~and~~ Environment ~~and Transformation Capital~~  
~~Programme~~ [Member Project Advisory Group](#) ~~Board~~  
~~Strategic Procurement Board~~  
 South East Local Enterprise Partnership (SELEP) Accountability Board  
 Strood Regeneration Board  
[Transport for the South East Sub-National Transport Body](#)