

## Crawley Borough Council

### Review of Outside Bodies and Organisations Scrutiny Panel

Agenda for the **Review of Outside Bodies and Organisations Scrutiny Panel** which will be held in **Committee Room A - Town Hall**, on **Thursday, 22 February 2018 at 6.00 pm**

Nightline Telephone No. 07881 500 227



**Head of Legal and Democratic Services**

Membership:  
Councillors

C A Cheshire (Chair), M L Ayling, R G Burgess, R S Fiveash and  
A Pendlington

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The order of business may change at the Chair's discretion

## Part A Business (Open to the Public)

	<b>Pages</b>
<b>1. Apologies for Absence</b>	
<b>2. Disclosures of Interest &amp; Whipping Declarations</b>	
In accordance with the Council's Code of Conduct, Councillors of the Council are reminded that it is a requirement to declare interests where appropriate.	
Councillors must also declare if they are subject to their party group whip in relation to any items under consideration.	
<b>3. Introduction to the Review and Setting the Scoping Framework and Timescale</b>	3 - 10
To agree the draft scoping framework as enclosed. To be followed by a discussion on any background information and the Review.	
<b>4. Background Information - Legal Implications</b>	11 - 16
Previous copy of Legal Implications for Members on Outside Organisations is enclosed as background Information.	
<b>5. Future Meetings</b>	
To confirm the dates of future meetings. (Please bring your diary to the meeting).	
<b>6. Supplemental Agenda</b>	
Any urgent item(s) complying with Section 100(B) of the Local Government Act 1972.	

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## Draft Scoping Framework

### **Title of Review:**

### **Review of Outside Bodies and Organisations**

#### **PART1: THE REVIEW**

##### **Section 1 - Terms of Reference**

To evaluate the current system and to consider how and if, it adds value to the council.

##### **Section 2 – Reasons for the Review**

Each year the council proposes representations to Outside Organisations to which the Council is invited to make nominations. In the year 2017-2018 there were 28 Outside Organisations and an associated Link Officer to each group. These are Outside Organisations to which the Council is requested to provide nominations. (See Appendix A)

##### **Section 3 - Key Objectives of Review**

- 1) To assess the current position (identify strengths/weaknesses in the ways of working)
  - does the Outside Body representative have to be in their official councillor capacity
  - how often meetings are held and attendance
  - does the Councillor provide feedback (eg HASC feedback to OSC)
- 2) Identify how the Link Officers liaise with the Organisations and Councillors
- 3) Identify how the Organisations liaise with the Councillors
- 4) Improvements to the current system

##### **Section 4 - What will not be included in the scope (and why)**

###### **TBC**

- Executive Membership to Outside Bodies – it is noted that this membership to Outside Bodies links to Cabinet Members' responsibilities and specific delegations.
- It is noted that the review will not include individual outside bodies or organisations' own specific protocols and procedures.

#### **PART 2: EVIDENCE GATHERING AND PLANNING**

##### **Section 5 - Key Documents and Background Information**

- 1) Members' survey in relation to Outside Bodies (follow up interviews if required).
- 2) Link Officers' survey in relation to Outside Bodies.
- 3) Survey/questions to Outside Bodies – to be issued concurrently with nomination requests for 2018/19.
- 4) Background documentation relating to the administration process of Outside Bodies.
- 5) Witness sessions with 2 x Link Officers.

If will be important to take into consideration the current officer(s) resources in terms of gathering data and evidence.

# Agenda Item 3

<b>Section 6 - Witnesses to be invited</b> <i>(some initial suggestions listed below – but probably will need to be more focused and selective)</i>		
<b><u>Organisation</u></b>	<b><u>Name/Position</u></b>	<b><u>Reason for Inviting</u></b>
<b>CBC</b> Community Development	Funding & Commissioning Officer	<ul style="list-style-type: none"> <li>• Link Officer for majority of Outside Bodies.</li> <li>• Lead Officer for Community Grants.</li> </ul>
Planning	Planning Officer	<ul style="list-style-type: none"> <li>• Link Officer for Conservation Area Committees.</li> </ul>
<b>External</b> Potentially individual / Chair from established Outside Body - TBC	TBC	<ul style="list-style-type: none"> <li>• What is their assessment of the current process?</li> </ul>

<b>Section 7 - Site Visits and Attendance at Events</b>		
<b><u>Location/Event</u></b>	<b><u>Date</u></b>	<b><u>Purpose of Visit</u></b>
NA		

<b>Section 8 - Community Engagement Proposals</b>
<p>Potentially this could become a huge review but it is proposed to keep this review more proportionate, by focusing on where it can add most value.</p> <p>It is acknowledged that there are currently a large list of Outside Bodies upon which the Council has representation. However it will be important that by undertaking consultation with Members, officers and stakeholders it would be determined if the current Outside Bodies and Organisations <u>add value to the council</u>.</p>

## **PART 3: ADMINISTRATIVE CHECKLIST**

<b>Section 9 – Planning the Panel’s Work Programme</b>		
	<b><u>Date (prov)</u></b>	<b><u>Details: (e.g. witnesses, objectives etc.)</u></b>
Projected start date	Jan	
1 <sup>st</sup> panel meeting	22.2.18	Background report and scoping framework
		<p>In between Meeting 1 and Meeting 2 the following may be actioned:</p> <ul style="list-style-type: none"> <li>• Member survey issued (interviews conducted by Panel Members if required)</li> <li>• Link Officer survey issued</li> <li>• Survey/questions to Outside Bodies issued concurrently with nomination requests for 2018/19.</li> <li>• Results analysed</li> </ul>

# Agenda Item 3

		<ul style="list-style-type: none"> <li>• Witness sessions arranged.</li> </ul>
2 <sup>nd</sup> panel meeting	March/June	<ul style="list-style-type: none"> <li>• Witness sessions – 2 x Link Officers</li> <li>• Discuss survey results.</li> <li>• Agree recommendations, production of report or further work.</li> </ul>
		<p>Dependent on the outcome of Meeting 2 and whether recommendations have been determined by the Panel, the following may be actioned:</p> <ul style="list-style-type: none"> <li>• Draft report compiled and issued to Panel Members by email for comment.</li> <li>• Panel Members provide feedback on report.</li> <li>• Report finalised for OSC.</li> </ul>
3 <sup>rd</sup> panel meeting		If required – dependent on the outcome of Meeting 2

## Section 10 - Resources and Responsibilities

Chair of Scrutiny Panel	Cllr C A Cheshire
Other Members of Scrutiny Panel	Cllrs M L Ayling, R G Burgess, C A Cheshire, R S Fiveash and A Pendlington
Lead Officer(s)	Chris Pedlow
Scrutiny Support	Heather Girling
Portfolio Holder	Cllr P K Lamb
Head of Service	Head of Legal and Democratic Services

## Section 11 - Reporting Arrangements

<u>Committee/Body</u>	<u>Date (prov.)</u>
Final report of Panel to Overview and Scrutiny Commission	TBC
Final report to Cabinet (as appropriate)	TBC
Final report to other Committee, full Council or Body (as appropriate)	

## Section 12 - Monitoring/Feedback Arrangements

<u>Body/Committee</u>	<u>Details</u>	<u>Date</u>
OSC		TBC

## Section 13 - Approvals

<u>Details</u>	<u>By whom</u>	<u>Date</u>
Terms of reference/Panel agreed	OSC	27.11.17
Scoping Framework - drafted		8.2.18
Scoping Framework - first agreed	Panel	22.2.18

# Agenda Item 3

Appendix A

## Crawley Borough Council

### Outside Organisations to which the Council is invited to make nominations 2017/18

	<b>Name of Organisation</b>	<b>Group Nominations 2017/18</b>
1.	Age UK – West Sussex Trustee Board <i>(Link Officer = Craig Downs)</i>	R Sharma
2.	General Council of Broadfield Youth and Community Centre (BYCC) <i>(Link Officer = John Dale)</i>	T Lunnon  <i>Only 1 Representative invited</i>
3.	Buchan Country Park Advisory Board <i>(Link Officer = John Dale)</i>	I T Irvine T Lunnon C J Mullins T Rana  <ul style="list-style-type: none"> <li>• <i>Very informal body</i></li> <li>• <i>WSCC co-ordinator would welcome any local Members to attend and participate as a full Member</i></li> </ul>
4.	<b>Conservation Area Advisory Committees (CAAC)</b>	<i>Minimum one Member (plus a substitute) from each ward within the CAAC but all Ward Members usually welcome</i>
4(a)	Central Crawley Conservation Area Advisory Committee <i>(Northgate &amp; West Green)</i>  <i>(Link Officer = Justin Kliger)</i>	R S Fiveash K Sudan G Thomas
4(b)	Forestfield and Shrublands Conservation Area Advisory Cttee  <i>(Link Officer = Ian Warren)</i>	D Crow C R Eade
4(c)	Hazelwick Road Conservation Area Committee.  <i>(Link Officer = Tom Nutt)</i>	B J Burgess R G Burgess

# Agenda Item 3

	Name of Organisation	Group Nominations 2017/18
4(d)	Ifield Village Conservation Area Advisory Committee  <i>(Link Officer = Anthony Masson)</i>	P C Smith K Sudan K Sudan G Thomas M A Stone
4(e)	Southgate Conservation Area Advisory Committee  <i>(Link Officer = Ian Warren)</i>	M W Pickett R Sharma J Tarrant
4(f)	Worth Conservation Area Advisory Committee.  <i>(Link Officer = Tom Nutt)</i>	Dr. H S Bloom R A Lanzer Conservative Vacancy
5.	Community Needs Partnership	B J Burgess C A Cheshire R S Fiveash K Sudan L Vitler  The Cabinet Member for Public Protection and Community Engagement has a standing invitation to attend and take part in discussions of the "Community Needs Partnership" with arrangements to invite other relevant Cabinet Members to participate as and when the agenda item may be appropriate to their portfolios.
6.	Courage Dyer Recreational Trust  <i>(Link Officer = Hayley Thorne)</i>	B J Quinn (May 2017 to May 2021) * R Sharma (May 2017 to May 2021) B A Smith (July 2015 to July 2019)  B J Quinn - appointed automatically ex-officio as Mayor.  - 4 year appointments only - Once appointed, not required to remain a Councillor - Only 4 nominations acceptable in total  *The Trustees have requested that Mrs S A Blake remains on the Trust for the year 2017/18, whilst Councillor Quinn is appointed to the Trust as ex-officio as Mayor.
7.	Crawley & Ifield Education Foundation  <i>(Link Officer = David Cooper)</i>	G Thomas  Only 1 Representative invited

# Agenda Item 3

	Name of Organisation	Group Nominations 2017/18
8.	Crawley Arts Council (CAC) <i>(Link Officer = Vicky Wise)</i>	B J Burgess C A Cheshire C J Mullins  <i>Only 3 Representatives invited</i>
9.	Crawley Community and Voluntary Service Trustee Board  <i>(Link Officer = Craig Downs)</i>	M L Ayling T Rana  <i>Only 2 nominations invited as 'participating observers'.  Must <u>not</u> be the Cabinet Member for Public Protection &amp; Community Engagement</i>
10.	Crawley Ethnic Minority Partnership (CEMP) Partnership Board  <i>(Link Officer = Craig Downs)</i>	B A Smith  <i>Only 1 Representative invited</i>
11.	Crawley Museum Society (and Crawley Museum Project Board)  <i>(Link Officer = Nigel Sheehan)</i>	C A Cheshire C J Mullins M Stone  <i>Membership of both the CMS &amp; Project Board to be the same 3 Members &amp; comprise the Cabinet Member for Wellbeing plus one Member from each political group</i>
12.	Crawley Open House Management Committee  <i>(Link Officer = Nikki Hargrave)</i>	T Lunnon G Thomas  (plus officer from Housing and Planning Strategic Services)  <i>N.B. R D Burrett &amp; S J Joyce are on both the Board of Trustees and on the Management Committee (all Trustees sit on the Mgt Ctte but not vice-versa). However, it is understood that these Trustees were appointed in a personal capacity and not directly through the Council.  Crawley Open House will accept 2 nominations only (i.e.in addition to the above Trustees) on the Mgt Ctte.</i>



# Agenda Item 3

	Name of Organisation	Group Nominations 2017/18
13.	<p>Crawley Town FC Travel Plan Steering Group</p> <p><i>(Link Officer = Paul Baker)</i></p>	<p>D Crow J Tarrant 4x Labour vacancies**</p> <p><i>The Council was initially invited to nominate 4 to 6 Members, preferably to include representatives from each of Broadfield North and South, Southgate, Tilgate and Bewbush. As previously suggested, it would be advisable to avoid nominating Members who will be on the Planning Committee.</i></p> <p><i>** There is some doubt as to whether the Steering Group will continue, however if a further meeting is required the Labour Group will make its nominations at that time.</i></p>
14.	<p>Crawley Town Twinning Association (CTTA)</p> <p><i>(Link Officer = Hayley Thorne)</i></p>	<p>C R Eade T Rana R Sharma B A Smith</p> <p><i>The Association is willing to make 4 places available</i></p>
15.	<p>Friends of Broadfield Park</p> <p><i>(Link Officer = Janet Rose)</i></p>	<p>I T Irvine</p>
16.	<p>Friends of Goffs Park (FoGP)</p> <p><i>(Link Officer = Christian Threader and Peter Harsum)</i></p>	<p>C J Mullins R Sharma</p> <p><i>FoGP is willing to make 2 places available and has advised that other Members can still become a Friend of Goffs Park through other ways.</i></p>
17.	<p>Gatwick Airport Community Trust (GACT)</p> <p><i>(Link Officer = Craig Downs)</i></p>	<p>B J Quinn <i>(Trustee – 2 years remain of a 4 year term)</i></p> <p><i>Only 1 Representative invited – 4 year appointment.</i></p>
18.	<p>Relate - North &amp; South West Sussex Trustee Board</p> <p><i>(Link Officer = Craig Downs)</i></p>	<p>K Sudan</p> <p><i>Only 1 representative invited</i></p>

# Agenda Item 3

	<b>Name of Organisation</b>	<b>Group Nominations 2017/18</b>
19.	Court of the University of Sussex <i>(Link Officer = Clem Smith)</i>	M G Jones <i>Only 1 representative invited.</i>
20.	West Sussex Health and Adult Social Care Select Committee * <i>(Link Officer = Heather Girling)</i>	OSC to decide. <i>Must be a Member of the OSC</i>
21.	West Sussex Joint Scrutiny Steering Group* <i>(Link Officer = Heather Girling)</i>	B A Smith <i>Should be the Chair of the OSC</i>
22.	West Sussex Joint Scrutiny Housing Provision for Care Leavers Task and Finish Group * <i>(Link Officer = Nikki Hargrave)</i>	OSC to decide. <i>Must be a Member of the OSC</i>
23.	West Sussex Mediation Service Management Committee <i>(Link Officer = Tony Baldock &amp; Craig Downs)</i>	C A Cheshire (main representative) K Sudan (deputy) <i>The Mediation Service is willing to make 2 main and 2 deputy places available</i>

\* These appointments are made/ratified by the Overview and Scrutiny Commission

# Agenda Item 4

## **MEMBERS ON OUTSIDE ORGANISATIONS: LEGAL IMPLICATIONS**

### **1. INTRODUCTION**

The Council is represented by elected Members on a number of outside organisations. There are often benefits from these arrangements and problems rarely arise in practice. However membership of an outside organisation carries with it various duties and potential liabilities. It is important that the extent of these duties and liabilities are properly understood.

### **2. LIABILITY**

Members will generally always be responsible for their own actions. They may also be responsible for the actions of the outside organisation.

If the Council is itself a member of the organisation (for example the Local Government Association or South-East Employers), then ultimately the Council itself will pick up some responsibility if the organisation defaults on any of its obligations. With most voluntary organisations, however, the Council is itself not a member but is simply invited to nominate someone onto a management committee. In such cases if the organisation defaults on any of its obligations, the member is likely to carry a personal responsibility.

### **3. MAIN TYPES OF ORGANISATIONS**

There are essentially four types of outside organisations – limited liability companies, unincorporated associations, charities and statutory corporations.

#### **(a) Limited Liability Companies**

There are companies limited by guarantee or by share capital. If the Council is a member of one of these companies, then the Council will be represented at general meetings, usually by a member. That member will act as a proxy for the Council, can be directed how to vote and will usually carry no personal liability. However, if at the annual meeting he/she is elected or nominated to serve as a member of the board or management committee and therefore becomes a director of the organisation, he/she then becomes an agent of the company and his or her prime duties are as follows.

Duties:

- (i) A fiduciary duty to the company (not individual shareholders) to act honestly and in good faith and in the best interests of the company as a whole. The fiduciary duty of the director towards the company is very similar to the fiduciary duty of councillors to the Council tax payers.
- (ii) A general duty of care and skill to the company.
- (iii) A director is not deemed to be an expert but is expected to use due diligence and to obtain expert advice when necessary. A duty to exercise independent judgements and not to simply vote in accordance with a Council mandate.

# Agenda Item 4

- (iv) Not to make a private profit from his/her position.
- (v) To disclose actual or potential conflicts between his/her membership of the Council and his/her appointment as a director.
- (vi) To ensure compliance of the Companies Acts, in relation to the keeping of accounts and that the relevant returns are made to the Registrar of Companies.

## Directors' Liabilities

Provide he/she meets the above obligations, a director will not have personal responsibility if a company then defaults on a contract or claim. However, he/she will have some liability if the company acts beyond the activities set out in the Memorandum of Association (the document which sets out the objects of the company) undertakes fraudulent trading i.e. continues to undertake business with intent to defraud, or it undertakes wrongful trading, which arises when a director knew or ought to have concluded that there was no reasonable prospect of the company avoiding insolvent liquidation, and yet he/she allows it to continue trading.

## (b) **Unincorporated Associations**

Organisations which are not charitable trusts or limited liability companies or statutory corporations will generally be unincorporated associations. They have no separate legal identity and the rules governing the members' duties and liability will be set out in a constitution, (which is simply an agreement between the members as to how the organisation will operate). Usually the constitution will provide for a management committee to be responsible for the day to day running of the organisation. An unincorporated organisation may be charitable and may register a charity.

## Duties

Management committee members must act within the constitution and must take reasonable care in exercising their powers.

## Liabilities

- (1) Generally, the management committee members are liable for the acts of the organisation, but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there are not enough funds, the committee members are personally liable for the shortfall.
- (2) If one person is appointed by the constitution to act as the agent of the organisation for certain purposes, then that person acts as the agent of all the members, who have joint liability for the agent's actions.

# Agenda Item 4

- (3) Members of the committee of management will have personal liability if they act outside the authority given to them or if they do not comply with statute, e.g. the payment of employee's tax, etc.

(c) **Charities**

To be a charity an organisation must operate for a charitable purpose. There are four:

- the relief of poverty and human suffering
- the advancement of education
- the advancement of religion
- another purpose for the benefit of the community

It must operate for the public benefit and have exclusively charitable purposes. An organisation which operates for political purposes will not qualify for charitable status.

To register as a charity the organisation must submit its trust deed to the Charity Commissioners for approval. If they are satisfied that the organisation is charitable it will be registered as such.

Those who are responsible for the control and administration of a charity are referred to as its trustees. They may also be called managing trustees, committee members, governors or directors.

Trustees of a charity retain personal liability, and can only delegate if the trust deed authorises them so to do.

## Trustees' Duties

- (1) Trustees must take care to act in accordance with the trust deed and to protect the charity's assets. They are also responsible for compliance with the Charities Acts.
- (2) Trustees must not make a private profit from their position. They must also perform their duty with the standard of care which an ordinary, prudent business person would show. Higher standards are required of professionals, and in relation to investment matters.
- (3) Charitable trustees must ensure that the information relating to the trust and trustees is registered with the Charity Commissioners and that annual accounts and returns are completed and sent.
- (4) Trustees are under a duty to ensure compliance with all relevant legislation (e.g. in relation to tax matters).
- (5) The Charity Commission have issued a useful publication about the responsibilities of Charity Trustees. A copy is attached (Appendix A). The principles apply equally to unincorporated associations and management committees.

# Agenda Item 4

## Trustees' Personal Liability

- (1) Generally, a trustee incurs personal liability if he/she:
  - acts outside the scope of the trust deed
  - falls below the required standard of care
  - makes a personal profit from the trust assets

In such circumstances the trustee will incur personal liability for losses incurred.

- (2) Trustees can be liable personally to third parties because unlike a company a trust has no separate identity from the trustees. Trustees are, however, entitled to an indemnity from the trust assets, provided they act properly in incurring the liability. Trustees remain personally liable once they retire (e.g. if they have entered into a contract on behalf of the trust) and should, therefore, seek an indemnity from their successors. If the charity is a company, however, the trustees for the time being will be responsible.
- (3) Trustees may be liable to fines if they do not comply with the duty to make returns, etc.
- (4) If in doubt, the Charity Commissioners should be consulted. A trustee who does so will avoid personal liability for breach of trust if he/she acts in accordance with any advice given.

## Charitable Companies Incorporated by Guarantee

In a number of cases a charity may, in the first instance be formed as an unincorporated association and later, once established, replaced by a charitable company limited by guarantee. This vehicle is particularly suitable for widespread organisations employing significant numbers of staff and whose purposes involve them in risks of a commercial nature. Generally, the duties and liability of a director of a charitable company will be the same as for a director of a limited liability company.

### (d) **Statutory Corporations**

These have a statutory base and the statute creating them will often contain specific provisions about the liability of members. Local Authority Joint Committees, for example, are covered by the Public Health Act provisions which grant a personal indemnity to Members who act in good faith.

# Agenda Item 4

## 4. SAFEGUARDS

The potential liabilities for assuming roles as a director trustee or member of a management committee are such that they should only be pursued if the representative believes that he or she has the time and capacity to undertake the roles and provided that those responsibilities are taken seriously on a continuing basis. The risks will of course vary depending on the nature of the organisation and its activities.

There are four elementary rules –

- (i) If the organisation occupies property, ensure that arrangements are in place to keep it in repair and that building contents and occupiers liability insurance is in place.
- (ii) If the organisation organised things, make sure that adequate public liability insurance is in place.
- (iii) If the organisation employs staff, make sure it has employees liability insurance and adequate resources to pay the staff.
- (iv) If the organisation enters into contracts, make sure that it has the financial resources to meet its obligations under those contracts.

## 5. DECLARATIONS AND CONFLICTS OF INTERESTS

This is a difficult area. If there is a potential conflict between the interests of the outside organisation and the interest of the Council, the representative appointed by the Council may be put in a difficult position.

At meetings of the outside organisation the representative should always put the body's interests first. When acting as a member of the Council e.g. at Committee meetings he or she should always put the interests of the Council first.

Under the Council's current Code of Conduct for Councillors where a matter comes before the Council and that matter relates to or is likely to affect any body to which a member of the Council has been appointed to, or nominated as a representative of, by the authority, the member will *only* have to declare a personal interest if the member is intending to address the meeting on that business.

If a member also has a "prejudicial interest" under the Code the interest has to be disclosed and the member must withdraw from the meeting. Each situation will need to be considered on its merits and further advice on this issue should be sought from the Monitoring Officer.

Kevin Carr  
Principal Lawyer (Corporate Support)

May 2014

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