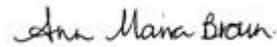


Crawley Borough Council

Governance Committee

Agenda for the **Governance Committee** which will be held in
**Committee Room B - Town Hall, on Tuesday, 18 September 2018 at
7.00 pm**

Nightline Telephone No. 07881 500 227



Head of Legal and Democratic Services

Membership:
Councillors

T Lunnon (Chair), R D Burrett (Vice-Chair), D Crow, C R Eade,
R S Fiveash, P K Lamb, R A Lanzer, K McCarthy, B J Quinn,
A C Skudder and K Sudan

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Published 10 September 2018

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

Part A Business (Open to the Public)

	Pages
1. Apologies for Absence	
2. Disclosures of Interest	
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.	
3. Minutes	3 - 4
To approve as a correct record the minutes of the Governance Committee held on 17 July 2018.	
4. Review of Outside Bodies and Organisations: Scrutiny Panel Final Report	5 - 32
To consider final report OSC/272 of the Review of Outside Bodies and Organisations Scrutiny Panel.	
5. Polling District Review	33 - 34
To consider report LDS/143 of the Head of Legal, Democracy and HR.	
6. Constitutional Review Working Group Update	
Councillor Lamb, as Chair of the Working Group, will provide the Committee with an update.	
7. Notification of Change in Date of the Governance Committee	
Committee Members are requested to note that the Committee meeting scheduled for 22 January 2019 has been cancelled and will now take place on 14 January 2019 at 7pm. This change has been made so that the Polling District Review can be debated by the Committee prior to its consideration on 23 January 2019 by the Special Full Council.	
8. Supplemental Agenda	
Any urgent item(s) complying with Section 100(B) of the Local Government Act 1972.	

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Crawley Borough Council

Minutes of Governance Committee

Tuesday, 17 July 2018 at 7.00 pm

Councillors Present:

T Lunnon (Chair)

R D Burrett (Vice-Chair)

D Crow, C R Eade, R S Fiveash, P K Lamb, R A Lanzer, K McCarthy, B J Quinn,
A C Skudder and K Sudan

Also in Attendance:

Councillor M A Stone

Officers Present:

Ann-Maria Brown Head of Legal and Democratic Services

Mez Matthews Democratic Services Officer

Andrew Oakley Electoral Services Manager

1. Disclosures of Interest

No disclosures of interests were made.

2. Minutes

The minutes of the meeting of the Governance Committee held on 19 June 2018 were approved as a correct record and signed by the Chair.

3. Electoral Review 2018

The Committee considered report LDS/142 of the Head of Legal and Democratic Services which sought the Council's response to the Local Government Boundary Commission's (LGBCE) draft recommendations (June 2018) for electoral arrangements for the Borough.

The Electoral Services Manager drew the Committee's attention to paragraph 4.7 of the report which referred to a clerical error in the LGBCE's draft recommendations in relation to a small area within the Bewbush Ward. The Committee noted that the LGBCE would be able to rectify the error.

The Chair thanked officers for successfully persuading the LGBCE of the importance of the neighbourhood principle within the Borough. This had ensured that, in relation to the electoral boundaries, the majority of the neighbourhoods had remained intact.

Agenda Item 3

Governance Committee (7)
17 July 2018

The Committee considered the Electoral Review Working Group's recommended response to the LGBCE's draft recommendations which were attached as Appendix A to report LDS/142. The Committee also considered Councillor Crow's, Leader of the Conservative Group, alternative response which was attached as Appendix B to report LDS/142. A discussion then took place on both the Electoral Review Working Group's recommended response and the alternative response put forward by Councillor Crow.

Votes were taken on Councillor Crow's alternative proposal (Appendix B to report LDS/142) and variations thereto which were LOST.

The Committee then voted on the recommendation as set out in the report, that Full Council be recommended to support the draft recommendations of the LGBCE for a mixed pattern of 2 and 3 wards with the alterations to Ifield Ward, Langley Green and Manor Royal Ward and Northgate and West Green Ward as set out in Appendix A to report LDS/142.

At the request of Councillor Crow, and in accordance with Council Procedure Rules 25.5, the names of the Councillors voting for and against the above proposal were recorded as set out below:

For the Proposal:

Councillors Fiveash, Lamb, Lunnon, Quinn, Skudder and Sudan (6).

Against the Proposal:

Councillors Burrett, Crow, Eade, Lanzer and McCarthy (5).

Abstentions:

None.

With the vote being 6 for the proposal and 5 against the proposal, the proposal was therefore CARRIED, and it was

RESOLVED

1. That the views of the Electoral Review Working Group on the draft recommendations of the Local Government Boundary Commission for England's draft recommendations be noted.
2. That Full Council be recommended to support the draft recommendations of the Local Government Boundary Commission for England for a mixed pattern of 2 and 3 Councillor wards with the alterations to Ifield Ward, Langley Green and Manor Royal Ward and Northgate and West Green Ward as set out in Appendix A to report LDS/142.

Closure of Meeting

With the business of the Governance Committee concluded, the Chair declared the meeting closed at 7.30 pm

Chair

Agenda Item 4

Crawley Borough Council

Report to Governance Committee 18 September 2018

Review of Outside Bodies and Organisations: Scrutiny Panel Final Report

Report by the Chair of the Review of Outside Bodies and Organisations Scrutiny Panel:
Councillor C A Cheshire, **OSC/272**

1. Purpose

- 1.1 The Review of Outside Bodies and Organisations Scrutiny Panel was established in January 2018 to evaluate the current system and to consider how and if, it adds value to the Council. This report presents the findings and recommendations. The key objectives of the review were:
- a) 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)
 - b) Identify how the Link Officers liaise with the Organisations and Councillors
 - c) Identify how the Organisations liaise with the Councillors
 - d) Improvements to the current system
- 1.2 The Panel met 3 times between January and June 2018. The Members of the Panel were:
Councillors C A Cheshire (Chair), M L Ayling, R G Burgess, R S Fiveash and A Pendlington.

2. Recommendations

- 2.1 To the Governance Committee:

The Committee is recommended to approve:

- a) That an information sheet be prepared giving pertinent information relevant to the Outside Organisations to assist Councillors in agreeing nominations at group meetings which was trialled in advance of the 2018 AGM. (Further information is included in section 7).
- b) That it be highlighted that the nomination of Councillors to Outside Organisations is not predicated on their receipt of a Council grant or the need for scrutiny of its use, due to the stringent monitoring already in operation.
- c) That Councillors who sit on Outside Bodies must accept their obligations to maintain their responsibilities and that guidance/support should be provided to enable an effective service (be this from the Council, the Outside Organisation or that the Councillor initiate this themselves through effective liaison).

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Request Full Council to approve:

- d) That nominations for Conservation Area Committees be defaulted to 'Ward Councillor(s)'.
- e) That 'Friends Groups' be removed from the official list of Outside Bodies list as there should be no formal Councillor representation.
- f) That where a response was not received to the evaluation, an appointment would not usually be made by the council (this is in line with other authorities undertaking a similar review).
- g) That there should be a mutual understanding between Councillors and organisations to maintain communication and effective liaison.
- h) That Councillor M G Jones and Councillor J Tarrant be appointed to represent Crawley Community and Voluntary Service. (Paragraph 8.1 refers).
- i) That the Head of Legal, Democracy and HR be instructed to amend the Council's Constitution to reflect any relevant changes in relation to any outcomes of this review.

3. Reasons for the Recommendations

- 3.1 To enable the Council to consider improvements to its current process (detailed in section 5) in appointing to Outside Bodies and Organisations as this is currently complex and confusing.
- 3.2 The review of Outside Bodies and Organisations has been conducted to ensure that the Council activities in terms of Outside Bodies are more focused, that the information the Council holds is accurate and that Councillors have clear guidance on their role and responsibilities when appointed to an Outside Body.
- 3.3 To assist Councillors and Officers to continue to work in an efficient way. It is evident that the level of appointments to Outside Bodies has an impact on already busy Councillors' workloads. Whilst retaining links with Outside Bodies is an important aspect of community leadership, it is also important that the activities of the Council and Councillors are focused around corporate priorities and *where it can add most value to the Council or consider whether Councillor involvement could be undertaken differently.*

4. Background - The Panel's investigations and information gathering

- 4.1 Outside Bodies are external organisations which have requested that the Council appoint a representative to them. Outside Bodies have separate governance structures to the Council. Appointments to Outside Bodies can be an important mechanism for community leadership, partnership and joint working. However in contrast, the evaluation concluded it is necessary that Councillors take a keen interest in the organisation and its management but in some instances knowledge, information sharing and joint working could be undertaken through other approaches.
- 4.2 It was agreed to review the appointment of Outside Bodies to ensure that Council activities in terms these are more focused and actually add value to the Council. It was also necessary to ensure that Councillors have clear guidance on their role and responsibilities when appointed to an Outside Organisation. The agreed review scope is outlined in Appendix A

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4.3 Several local authorities have also reviewed their appointments to Outside Bodies. In many of these cases, a number of organisations did not respond to the evaluation and it has been recommended that where a response was not received an appointment is no longer made by the Council.

4.4 Appointments to outside bodies can include different roles:

- Trustee
- Committee Member
- Company Director
- Observer

These different roles have different responsibilities and it is important that Councillors are aware of the nature of their appointment. It is imperative that guidance and support be provided for Councillors who sit on Outside Bodies and there should be an understanding of their responsibilities under law. The Legal Implications Guidance (Appendix D) have been updated and will be circulated to Councillors to assist them in their outside body roles.

4.5 As Councillors are appointed by the Council they must consider the code of conduct in terms of their actions on the outside bodies and adhere to the seven principles of public life and the general obligations under the code of conduct including acting with integrity and not bring the Council into disrepute.

5. Current Situation

5.1 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, with usually at least 2-3 Councillors nominated to each Outside Organisation.

5.2 Once nominations are agreed, the Outside Body are informed by the Members' and Mayoral PA, of the details of the appointed Councillor(s) in an email. The email should ask the organisation to provide the Councillor with a clear statement of what will be expected of them. It should also state the Council's requirement for the Councillor to be indemnified, or for their involvement with the Body to be regularly risk assessed.

5.3 The Outside Body should be advised that they would be required to provide Councillors and Link Officers with timely agendas, papers and minutes of meetings.

5.4 The Link Officer are informed by the Members' and Mayoral PA, of the details of the appointed Councillor(s) and the Outside Body in an email that sets out the basis for their involvement in the Outside Body.

5.5 A Councillor, who is asked to take part on an Outside Body, should confirm with the outside organisation what will be expected of them. Councillors should be aware that the rules of the outside body and the Council might limit their ability to take an active part in discussions on particular topics within the Council.

5.6 The role of Councillors on outside bodies may give rise to occasional uncertainty and perhaps to conflicts of interest. In essence, if the outside body comes into conflict with the Council and the Councillor is a director, trustee or on the management committee of the outside body, it is likely that their prime duty would be to the outside body in the conduct of the outside body's affairs.

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- 5.7 If there is a major dispute between the Council and the Outside Body, then the Councillor may be placed in an untenable situation. Ultimately, it is possible that the Councillor may find they are unable adequately to carry out their responsibilities properly, both as a Councillor and as a director, trustee or voting member on the management committee of the Outside Body. In such circumstances there is no alternative but to resign from one of the positions. But this would be an exception, and should not deflect Councillors generally from being prepared to participate in and contribute to the outside organisation.
- 5.8 Councillors are urged to seek advice at an early stage if they are unsure of their responsibilities.
- 5.9 Councillors and officers on Outside Bodies are under a duty to exercise independent judgment in the interest of the organisation in which they are involved. Whilst it is recognised that Councillors and officers may have been appointed to represent the Council on the Outside Organisation, they must be aware that it is their responsibility to decide what view to take on any question before that organisation. Where a Councillor or officer is partaking in an Outside Organisation in a representative capacity, they must declare that fact to the organisation on taking up the appointment. If it is not possible to bring this to the attention of the organisation before the first meeting, then this should be done at the first meeting of the organisation in question. There will be a fine line to tread between the duty to the organisation and to the Council.
- 5.10 Ultimately, the Councillor or officer in acting as a director/trustee or member of a management committee of an Outside Organisation must act in accordance with the interests of that organisation. A mandate from the Council to vote one way or the other would put the Councillor or officer in breach of duty to the organisation. It is permissible to take account of the Council's wishes, but not to vote simply in accordance with them. The overriding duty in considering an item before the Outside Organisation is to vote in accordance with the interests of that organisation. If this is not possible then the Councillor/officer should absent themselves from the consideration of the item and not participate in the decision on the matter.
- 5.11 Councillors and officers on Outside Bodies must also ensure that avoidable loss is not incurred in managing the organisation. They cannot avoid this responsibility by not reading the papers or failing to ask for appropriate reports. They will be expected, where appropriate, to seek professional advice.
- 5.12 Under the Members' Code of Conduct, a Councillor appointed as the Council representative to a specific body has a personal interest which must be declared and forms part of that Member's Register of Interests held by the Council. This also requires the Councillor to disclose the existence and nature of the interest whenever the Councillor wishes to speak on the matter at a meeting of the Council. Councillors will also need to consider whether the personal interest also gives rise to a prejudicial interest in the circumstances.
- 5.13 Councillor duties as directors, or trustees or as members of a Management Committee may well be regarded, on an objective appraisal, as giving rise to a legitimate perception of lack of impartiality, especially having regard to the desirability of maintaining public confidence. Councillors will be aware that participation in the making of a decision by a Councillor disqualified by bias impairs the decision. In these circumstances legal advice should be sought prior to participating. If for example the Councillor simply participated in a decision making forum, bias is unlikely to arise. Similarly for membership of an advisory or consultative body a Court is unlikely to assume bias unless that body had determined a line which is being advocated by the Councillor.

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- 5.14 The same rules do not apply to Councillors who attend meetings of outside bodies unambiguously as observers. Observers can participate in discussions of the outside body but will not have a right to vote.

6. Methods of Investigation and Evidence Gathering

Witnesses

- 6.1 The following officers have been involved in the Review, as the most appropriate stakeholder representatives that had been identified through the Scoping Framework:
- Craig Downs (Funding and Commissioning Officer)
 - Anthony Masson (Senior Planning Officer)
 - Ian Warren (Senior Planning Officer)
- 6.2 Both Senior Planning Officers provided information on the role, the support services provided together with the work carried out with the appointed Councillor(s) throughout the appointment to the Outside Organisations and the Organisations themselves.
- 6.3 Both officers' work was planning based, and for the purposes of the scrutiny panel was in connection with the Conservation Area Committees where there was a historic or architectural interest or if there were comments required on a planning application. The majority of the committees were independent but worked with the Council. Attendance by Councillors tended to be by Ward members. With regards to the role and responsibilities, it was made clear that the officers do not attend every meeting and only do so if there is a specific issue or item of concern. However if/when a new Conservation Area Committee is established greater attendance may be required at the outset purely to assist in the arrangements and to provide guidance. It was confirmed that the officers act as advisors as the Councillors tend to have the local knowledge and provide the conduit between the Council and the Committee.
- 6.4 The Funding and Commissioning Officer confirmed information relating to the grants process. It was acknowledged that the role of the Link Officer was advisory and assisted in enabling communications between the Council and Outside Organisations or Voluntary/Community Sector.
- 6.5 It is therefore noted that Officers' roles should be advisory and the Councillors nominated to outside organisations should be the conduit (link member) and assist the organisation with providing links to other services within the Council should other queries arise. It is paramount for the nominated Councillors to be the link between the organisation and the Council.

All Link Officers are identified based on their specific knowledge of the service area and Outside Organisation.

Link Officer Role -

- To act in an advisory capacity.
- Assist in enabling communications between the Council and Outside Organisation / Voluntary Sector.
- To act as a local contact point if required between the Council and Outside Organisation / Voluntary Sector.

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Desk Based Research

- 6.6 Desk based research was undertaken to survey other authorities that had reviewed their appointments to outside bodies or recently updated their guidance. These included: London Borough of Sutton, Hertsmere Borough Council, London Borough of Southwark, Southampton City Council, Worcester City Council and Dartford Borough Council.

Consultation

- 6.7 The Scrutiny Panel sought views from internal and external stakeholders (Councillors and Link Officers) and all 28 Outside Bodies through a consultation exercise (survey).
- 6.8 At the time of writing, 11 responses had been received from the 28 outside organisations.
- 6.9 Of the 28 surveys sent to Link Officers (one per organisation), 11 responses had been received from Link Officers.
- 6.10 Of the 56 surveys sent to Councillors (one for each organisation), 20 responses had been received from Councillors nominated on Outside Bodies, 36 surveys remain unreturned which the Panel felt was disappointing.

7. Findings, Actions & Supporting Recommendations

- 7.1 Referring to the consultation analysis, it was clear that there were inconsistencies with regards to the survey responses.

Community Grants Programme

- 7.2 It was evidenced that some responses linked the nomination of outside organisations to the receipt of community grants. It was highlighted that this was a misunderstanding. The nomination of Councillors to Outside Organisations should not be undertaken based on the provision of, or the scrutiny of, the Council awarding a Community Grant.
- 7.3 The provision of Community Grants is specifically administered by the Funding and Commissioning Officer within Community Development and applies stringent terms and conditions. Organisations awarded funding are required to sign a standard funding agreement, which includes certain undertakings - which includes providing regular detailed monitoring reports on the use of any funding within a specified period. The Grants Process is audited through the Council's Internal Audit. This is included in the Internal Audit Plan, submitted to the Audit Committee.

Recommendation:

That it be highlighted that the nomination of Councillors to outside organisations is not predicated on their receipt of a Council grant or the need for scrutiny of its use, due to the stringent monitoring already in operation.

Survey Results

- 7.4 At the time of writing, 11 responses had been received from 28 Outside Organisations. Despite continued communication from the council and appeals for returns, the response remained low and therefore the demand for nominations from these organisations could be deemed questionable. Other local authorities had been strict in their approach and where responses had not been received it was proposed by the Scrutiny Panel that an appointment was no longer made. Concern was expressed by the Overview and Scrutiny Commission on 25 June 2018 regarding this stringent approach

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and whilst it was felt a lack of response should be recognised by the Council it should maintain the option to appoint.

Recommendation:

That where a response was not received to the evaluation, an appointment would not usually be made by the Council (this is in line with other authorities undertaking a similar review).

- 7.5 The majority of those responses received from the Outside Organisations were positive in terms of the current relationship and how well this had worked over the last 12 months.
- 7.6 One organisation stated that their group was purely a 'group of volunteers' and the Councillor 'acts voluntarily as contact point to the Council and its services'. It is apparent from this response, that there are groups where there may be no need for an official Council nomination. The Councillor would not serve on the body as a representative of the Council but through a natural interest in local activity and the group would be removed from the official outside bodies list. A 'Friends Group', by default was resident led or by voluntary group. The largest park in the town has Councillor attendance but not in a nominated Councillor capacity and Councillors can still become a 'Friend' through other ways. There was strong support to remove 'Friends Groups' from the Outside Bodies list as there should be no need for formal Councillor representation. A Councillor can continue to liaise and provide guidance as part of their constituency duties or attend independently.

Recommendation:

That 'Friends Groups' be removed from the official list of outside bodies list as there should be no formal Councillor representation.

- 7.7 One organisation highlighted that they no longer wished for a Councillor appointment.
- 7.8 At the time of writing, 11 responses had been received from Link Officers. Unfortunately one Link Officer also responded to say that they did not know which organisations they were a Link Officer for.
- 7.9 Whilst 73% (8) of the respondents receive agendas for the meetings, only 27% (3) regularly attend the meetings. This supports the information provided at the witness sessions by the Planning Officers that officers only attended where there was a specific need.
- 7.10 With reference to the responses from Councillors, 36 surveys remain unreturned. *Based on the 20 responses received, only 55% correctly identified their Link Officer.*
- 7.11 There was a mixed response in terms of 'adding value' to the Council. 75% (15) of Councillor responses had positive comments regarding the process. It should be noted that other respondents included inaccurate reference to the Community Grants process.
- 7.12 More alarmingly, following the analysis that had been completed it was clear that *Councillors were unaware or unsure of the capacity in which they serve on the various Outside Organisations.* When comparing and contrasting the results from the organisations along with those from Councillors nominated for that organisation it was apparent that the majority of Councillors were not clear, or misunderstood the role.
- 7.13 Out of the 7 responses received from both the outside organisation and Councillor, 4 Councillors answered that they did not know in which capacity they served, whilst only 3 Councillors correctly identified the capacity. This potentially has implications with regards

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to voting rights and liabilities. Where an organisation stated that the nominated Councillor would serve as an observer, 1 Councillor correctly identified this to be their role, however another response incorrectly identified that they would be a committee member. This could prove problematic if the Councillor believes they serve in a decision-making capacity.

- 7.14 Interestingly, when comparing the responses to the individual Councillors' Register of Interest forms on the website, these had the correct organisations documented and yet survey responses were still inaccurate. One organisation stated that the nominated Councillor would be a trustee; the Councillor's survey response stated that they did not know in what capacity they would serve and yet in their Register of Interest form documented the organisation as a 'Trustee Board'.
- 7.15 There were responses regarding specific organisations, in particular Conservation Area Committees. Some Ward Councillors tended to be nominated to these as a matter of course. Some survey responses had incorrectly indicated that these Committees provided a way of being aware of activities within the ward. As documented via the witness sessions and the responses from the organisations themselves, the purpose of the Conservation Area Committees was planning based and dealt with historic and architectural interests or if there were comments required on a planning application.
- 7.16 Additionally, a response provided from a specific Conservation Area Committee questioned the need for a Councillor to attend every meeting.
- 7.17 Given this information, it is recommended that these be defaulted to 'Ward Councillor(s)'. In the rationale and grouping of organisations which have in the past had representation from the Council it is clear some groups require a liaison role. Therefore it would be possible for organisations to approach individual Councillors to provide advice and guidance as part of their constituency duties. However this would be at the discretion of the Councillor, rather than the Council.

Recommendation:

That nominations for Conservation Area Committees be defaulted to 'Ward Councillor(s)'.

- 7.18 As a result of the evidence collated, there is a need for Councillors to be better informed regarding the Outside Organisation to which they are appointed. Additional information giving pertinent information relevant to the Outside Organisations would assist Councillors in completing the nominations at group meetings. This would include information such as number of nominees required, frequency of meetings, time of meetings (daytime/evening) and location. It is therefore recommended that an information sheet be compiled by Democratic Services as part of the nomination process (and this was trialled in advance of the 2018 AGM where information was available and an example of which can be found in Appendix B).

Recommendation:

That an information sheet be prepared giving pertinent information relevant to the outside organisations. The aim is to assist Councillors in completing nominations at group meetings.

- 7.19 That Councillors who sit on Outside Bodies must accept their obligations to maintain their responsibilities and support should be provided to enable an effective service (be this from the Council, the outside organisation or that the Councillor initiate this themselves through effective liaison).

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Recommendation:

That Councillors who sit on outside bodies must accept their obligations to maintain their responsibilities and guidance/support should be provided to enable an effective service (be this from the Council, the outside organisation or that the Councillor initiate this themselves through effective liaison).

That there should be a mutual understanding between Councillors and organisations to maintain communication and effective liaison.

7.20 The report was considered by the Overview and Scrutiny Commission at its meeting on 25 June 2018 and its comments are included in Appendix C.

8. Other Considerations

8.1 Since the report went to the Overview and Scrutiny Commission it has emerged that unfortunately there was an error in the organisation's response as documented in paragraph 7.7. The organisation does indeed wish for representation. Following communications, Crawley Community & Voluntary Service (CCVS) wish to retain two councillors. Therefore it was proposed to seek two nominations (one from each Group).

9. Legal Implications

9.1 Legal Implications Guidance document providing Councillors with further information relating to their role has been updated (Appendix D).

10. Background Papers

[Scoping Framework](#)

[Review of Outside Bodies and Organisations Scrutiny Panel Notes 22.2.18](#)

[Review of Outside Bodies and Organisations Scrutiny Panel Notes 28.3.18](#)

11. Panel Membership and Thanks

11.1 The Panel would like to thank all the Councillors, officers and witnesses who gave up their time to attend the various Panel meetings, and for their valued comments, views and advice.

Contact Officers:

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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.

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.

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

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

Section 8 - Community Engagement Proposals
<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

Section 9 – Planning the Panel’s Work Programme		
	<u>Date (prov)</u>	<u>Details: (e.g. witnesses, objectives etc.)</u>
Projected start date	Jan	
1 st 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"> • Member survey issued (interviews conducted by Panel Members if required) • Link Officer survey issued • Survey/questions to Outside Bodies issued concurrently with nomination requests for 2018/19. • Results analysed

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		<ul style="list-style-type: none"> • Witness sessions arranged.
2 nd panel meeting	March/June	<ul style="list-style-type: none"> • Witness sessions – 2 x Link Officers • Discuss survey results. • Agree recommendations, production of report or further work.
		<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"> • Draft report compiled and issued to Panel Members by email for comment. • Panel Members provide feedback on report. • Report finalised for OSC.
3 rd 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	July 2018
Final report to Cabinet (as appropriate)	
Final report to other Committee, full Council or Body (as appropriate) Governance	July or Sept 2018

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

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Appendix B

Trial of additional information provided at Group Meetings providing pertinent information relevant to the outside organisations – provided in advance of 2018 AGM.

Crawley Borough Council

Outside Organisations to which the Council is invited to make nominations

	Name of Organisation	Group Nominations 2017/18
1.	Age UK – West Sussex Trustee Board (Link Officer = Craig Downs) <i>Bi-monthly meeting. Daytime in Littlehampton</i>	R Sharma <i>Only 1 Representative invited</i>
2.	Community Needs Partnership (Link Officer = Lindsay Adams)	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.
3.	Courage Dyer Recreational Trust (Link Officer = Hayley Thorne) <i>Three times a year. Evening</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 <i>*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.</i>

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	Name of Organisation	Group Nominations 2017/18
4.	<p>Crawley Arts Council (CAC)</p> <p><i>(Link Officer = Vicky Wise)</i></p> <p><i>Monthly meeting. Evening</i></p>	<p>B J Burgess C A Cheshire C J Mullins</p> <p><i>Only 3 Representatives invited</i> <i>Only 2 representatives</i></p>
5.	<p>Crawley Ethnic Minority Partnership (CEMP) Partnership Board</p> <p><i>(Link Officer = Craig Downs)</i></p> <p><i>Quarterly meeting. Daytime or Evening</i></p>	<p>B A Smith</p> <p><i>Only 1 Representative invited</i></p>
6.	<p>Crawley Museum Society</p> <p><i>(Link Officer = Nigel Sheehan)</i></p> <p><i>Monthly meeting. Daytime</i></p>	<p>C A Cheshire C J Mullins M Stone</p> <p>Only 3 Representatives invited</p>
7.	<p>Crawley Open House Management Committee</p> <p><i>(Link Officer = Nikki Hargrave)</i></p> <p><i>Bi Monthly meeting (normally 2 meeting in that month) Evening</i></p>	<p>T Lunnon G Thomas</p> <p>(plus officer from Housing and Planning Strategic Services)</p> <p><i>Only 2 representatives</i></p> <p><i>N.B. R D Burrett is on 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.</i></p> <p><i>Crawley Open House will accept 2 nominations only (i.e.in addition to the above Trustees) on the Mgt Ctte.</i></p>
8.	<p>Crawley Town Twinning Association (CTTA)</p> <p><i>(Link Officer = Hayley Thorne)</i></p> <p><i>Monthly meeting. Evening</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> <i>Only 2 representatives</i></p>
9.	<p>Gatwick Airport Community Trust (GACT)</p> <p><i>(Link Officer = Craig Downs)</i></p> <p><i>Quarterly meeting. Daytime or Evening</i></p>	<p>B J Quinn</p> <p><i>(Trustee – 2 years remain of a 4 year term)</i></p> <p><i>Only 1 Representative invited – 4 year appointment.</i></p>

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	Name of Organisation	Group Nominations 2017/18
10.	Relate - North & South West Sussex Trustee Board <i>(Link Officer = Craig Downs)</i> <i>Bi Monthly meeting. Evening</i>	K Sudan <i>Only 1 representative invited</i>
11.	Court of the University of Sussex <i>(Link Officer = Clem Smith)</i>	M G Jones <i>Only 1 representative invited.</i>
12.	West Sussex Health and Adult Social Care Select Committee * <i>(Link Officer = Heather Girling)</i> <i>Bi Monthly meeting. Daytime.</i>	OSC to decide. <i>Must be a Member of the OSC</i>
13.	West Sussex Joint Scrutiny Steering Group* <i>(Link Officer = Heather Girling)</i> <i>Once to twice a year. Daytime</i>	B A Smith <i>Should be the Chair of the OSC</i>
14.	West Sussex Mediation Service Management Committee <i>(Link Officer = Tony Baldock & 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

Outside Organisations - Potential Removal

That Conservation Area Committees be removed from the official list of outside bodies as the nominations to attend should be 'Ward Councillor(s)'.

That 'Friends Groups' including Buchan Country Park advisory Group be removed from the official list of outside bodies list as the Panel agreed that there should be no formal councillor representation.

CCVS has requested that no further nominations are required – only representation required from the Council Link Officer.

	Name of Organisation	Group Nominations 2017/18
15.	Conservation Area Advisory Committees (CAAC)	<i>Minimum one Member (plus a substitute) from each ward within the CAAC but all Ward Members usually welcome</i>

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15a	Central Crawley Conservation Area Advisory Committee (Northgate & West Green) (Link Officer = Justin Kliger)	R S Fiveash K Sudan G Thomas
15b	Forestfield and Shrublands Conservation Area Advisory Cttee (Link Officer = Ian Warren)	D Crow C R Eade
15c	Hazelwick Road Conservation Area Committee. (Link Officer = Tom Nutt)	B J Burgess R G Burgess
15d	Ifield Village Conservation Area Advisory Committee (Link Officer = Anthony Masson)	P C Smith K Sudan G Thomas M A Stone
15e	Southgate Conservation Area Advisory Committee (Link Officer = Ian Warren)	M W Pickett R Sharma J Tarrant
15f	Worth Conservation Area Advisory Committee. (Link Officer = Tom Nutt)	Dr. H S Bloom R A Lanzer Conservative Vacancy
16.	Friends of Broadfield Park (Link Officer = Janet Rose)	I T Irvine
17.	Friends of Goffs Park (FoGP) (Link Officer = Christian Threader and Peter Harsum)	C J Mullins R Sharma 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.
18.	Buchan Country Park Advisory Board (Link Officer = John Dale)	I T Irvine T Lunnon C J Mullins T Rana <ul style="list-style-type: none"> • Very informal body • WSCC co-ordinator would welcome any local Members to attend and participate as a full Member

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Outside Organisations - Removal No longer valid

19.	Crawley Community and Voluntary Service Trustee Board (Link Officer = Craig Downs)	M L Ayling T Rana Only 2 nominations invited as 'participating observers'. Must not be the Cabinet Member for Public Protection & Community Engagement
20.	Crawley Town FC Travel Plan Steering Group (Link Officer = Paul Baker)	D Crow J Tarrant <i>4x Labour vacancies**</i> <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>
21.	Crawley & Ifield Education Foundation (Link Officer = David Cooper)	G Thomas Only 1 Representative invited
22.	West Sussex Joint Scrutiny Housing Provision for Care Leavers Task and Finish Group (Link Officer = Nikki Hargrave)	OSC to decide. Must be a Member of the OSC
23	General Council of Broadfield Youth and Community Centre (BYCC) (Link Officer = John Dale)	T Lunnon Only 1 Representative invited

Comments from the Overview and Scrutiny Commission at its meeting on Monday 25 June 2018

OSC/271

Review of Outside Bodies and Organisations Scrutiny Panel Final Report

Councillors were in favour of Recommendations 2.2 a, b, c, d, e and g and made the following comments:

- Acknowledgement that the provision of the Community Grants process was specifically administrated and applied stringent terms and conditions. The Grants Process was audited through the Council's Internal Audit Plan, submitted to the Audit Committee.
 - Recognition that the nominated councillor role was to ensure due process. Clarification sought on the organisation survey and on the grants process.
 - However, there were areas of uncertainty covering recommendation 'f' as out of 28 outside organisations only 11 had responded. Despite continued communication from the Council the response remained low and therefore the demand for nominations from these organisations could be deemed questionable. Other local authorities had been strict in their approach and where responses had not been received it was proposed that an appointment was no longer made. However some councillors expressed concern regarding this stringent approach and felt the council should maintain the option to appoint. As a result of the discussion, recommendation 2.2(f) of report **OSC/268** was amended as follows (amended wording in bold):
- f) That where a response was not received to the evaluation, an appointment **would not usually be made by the council** ~~is no longer made by the Council~~ (this is in line with other authorities undertaking a similar review).

GUIDANCE TO COUNCILLORS WHO SERVE ON OUTSIDE BODIES – LEGAL IMPLICATIONS

Introduction

This guidance is intended to help Councillors understand their duties when appointed to outside bodies, and how to handle the conflicts of interest that can arise. Councillors always need to be clear about their roles and alert to potential conflicts of interest, in order to ensure transparency and public confidence in local democracy.

1. General

1.1 Membership on outside bodies can take various forms and it is prudent to establish the capacity in which you are appointed. The first question is whether you are appointed by the Council, or in some other capacity. If you are not appointed by the Council to a particular position, you do not owe the Council any duties in relation to the way in which you carry on your membership of the outside body. However, the normal rules on declaring interests apply, and you will need to consider whether your role gives you a personal or pecuniary interest under the Code of Conduct for Councillors in relation to any Council business. The remainder of this guidance covers the case where you are appointed by the Council.

1.2 If you are appointed by the Council, this may be either:

- a) as a member of the management committee, board of directors, or committee of as a trustee of the outside body. Here, you will not only be representing the interests of the Council, but you will also have duties to the outside body and a role in its governance. If you serve in a decision-making capacity or have a position of general control or management on the outside body, whether company, trust or other association, you owe duties and responsibilities to that body which are separate and distinct from your duties owed to the Council. On occasions, it is likely that duties owed to the outside body and to the Council, will conflict e.g. If you are the treasurer of an outside body who has applied to the Council for grant funding and the rest of this guidance gives more detail on this; or
- b) As an 'observer', or an ordinary member, or undertaking a monitoring role, facilitating exchanges of views or information as an extension of your Council duties, but taking no part in the outside body's management or governance, other than to attend and vote at annual or general meetings. Here, you will be mainly concerned with representing the Council and will not have responsibilities for governance of the body.

1.3 Before accepting an appointment to an outside body, you should check:

- the legal status of the organisation e.g. company, trust, charity, unincorporated association;
- the capacity in which you are to be appointed e.g. director, trustee, member with voting rights or member with observer status;
- the purpose of the organisation and how this relates to the Council's functions and objectives;
- the relationship between the Council and the body and the likelihood and

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extent of any conflicts of interest;

- the requirements of the organisation's governing instruction (e.g. constitution; trust deed, memorandum and articles of association), both as a member and generally;
- the organisation's governance and decision making arrangements, including the management of risk;
- the organisation's code of conduct for its members;
- the extent of the organisation's insurance/indemnity cover for its members;

It is your responsibility to obtain the answers to these matters.

- 1.4 Having checked the above matters, you should consider carefully whether you should be appointed to participate formally in the management of the external organisation e.g. as a director, trustee or voting member, or whether your role as a representative of the Council, may be more effectively discharged as a non-voting member with observer status only.
- 1.5 You are entitled to all reasonable assistance from Officers in support of your role as Council representatives on outside bodies. Such assistance will include the provision of information about the body and the identification of a link officer to be available for briefing purposes and to assist you in reporting back to the Council on the activities of the body.

2. What sort of roles does this guidance apply to?

- 2.1 This guidance applies where you are: a member of another authority; a trustee of a charity; or a member of the management board for an unincorporated body.
- 2.2 The various roles will give you responsibilities to the organisation, and to the Council in so far as you are fulfilling a role for the Council, and this can create potential conflicts.
- 2.3 Your responsibilities will depend on the type of body in which you become involved. In summary, the main types are as follows:
- a) **Companies:** Companies are separate legal entities. They are set up by their members, who may be either shareholders or guarantors. Liability of company members is limited to the value of their shares or by guarantee. Directors of companies have a duty to the company to act properly and in good faith. If not, they can incur personal liability, particularly if the company becomes insolvent. The activities and operation of companies are regulated by their Memorandum and Articles of Association, and also by company law.
 - b) **Unincorporated Associations:** Unincorporated associations are informal organisations. The members regulate their relationship by agreement, such as a membership agreement or the rules of the club or association. Because the association has no legal existence separate from its members, the liability of the members is not limited. Each member can incur personal responsibility for liabilities incurred on behalf of the association, and relies on the membership agreement to be able to recover his/her costs from the other members.
 - c) **Charities:** A charity is an organisation which
 - (i) is established for charitable purposes only, and
 - (ii) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.

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Some companies and unincorporated associations are established for charitable purposes. A charity gains relief from corporation tax, VAT and business rates, but is subject to stricter regulation by the Charity Commissioners, to ensure that it is properly managed and that it is spending its money properly on the charitable objects. As a trustee of a charity, you have a duty to act in the best interests of the charity and can be personally liable if you breach that duty.

3. Some other key points to consider at the outset

3.1 Firstly, make sure you are given a clear statement of what is expected of you if you are going to be nominated. You should be able to obtain this from the organisation involved

3.2 **The duty to act in the interests of the outside body** - Being on an outside body can bring many benefits to the Council, the organisation and the community, but it will sometimes create conflicts with your work as a Councillor. For Councillors, it will have to be included as one of your interests in the Members' Register of Interests. You will have a personal interest in Council business referring to it, and sometimes a pecuniary interest where finances or regulatory matters are concerned. You will need to be sure that involvement with the organisation will not prevent you from fully participating in your work as a Councillor, particularly in areas that interest you, or, where you need to represent the community who elected you. This will depend on the nature of the body and type of involvement.

3.3 On the other hand, you will also need to make sure that you are able to commit enough time and attention to the organisation. You will want to make a meaningful contribution to their work too. If you cannot attend meetings very often, or are often conflicted out of participating, you will not be able to give the support that the organisation needs, and this will reflect badly upon the Council and upon you. It is best not to be appointed if you cannot participate fully.

3.4 **Conflict with your role as a Councillor** - As a member of the organisation's management committee, as a director of a company, or as a trustee, you will not only be representing the interests of the Council, but you will also owe duties and responsibilities towards the organisation. You will have to exercise your own best judgement in the best interests of the outside body and you cannot just take instructions from the Council although you may take account of the Council's wishes. Where the Council's wishes may conflict with the best interests of the outside body you must nevertheless, if taking decisions for that outside body, act in its best interests. **Therefore where the Council's interests and the outside body's interests conflict it is crucial not to involve yourself in the decision-making.**

3.5 **Indemnities** - Councillors who participate in external bodies may be indemnified in relation to liabilities they incur in that capacity, though this is subject to certain limitations, which are set out in more detail at paragraphs 8.1 to 8.4 below.

4. Duties and Responsibilities of Councillors on Outside Bodies

4.1 The following is a summary of the main duties and responsibilities of Councillors who are nominated by the Council to the most common types of outside body. The main principles of the obligations applying to company directors also apply to trustees and members of management committees. If you are in doubt about your duties and responsibilities, you may seek advice as above. In many cases, however, it will be more appropriate to seek advice from the advisers to the body involved, as they will have access to the rules and protocols of the body.

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5. Companies

5.1 A company is a separate legal entity which can hold property in its own right, enter into contracts, employ staff and sue and be sued in its own name. The company is distinct from its members, who may be either shareholders or guarantors. The Council itself may be a member of the company, either a shareholder or guarantor.

5.2 If the body is a limited company, and you are asked to be involved, it is likely that you will be appointed as a company director. The duties of a company director are now set out in the Companies Act 2006, which codifies the existing common law and equitable principles. The management of a company is usually the responsibility of the Board of Directors. Directors' powers are usually set out in the company's Articles of Association. Another important document is the Memorandum of Association, which sets out the Company's objectives and powers.

5.3 The duties of a company director are not the same as your responsibilities as a Councillor. **Basically, when involved in company business, the company must come first.** Directors must act in the interests of the company, and not in the interests of other parties, including shareholders.

5.4 **Directors' Responsibilities** are:

- a) **To promote the success of the company**, A director's primary duty is to act in good faith, in the best interests of the organisation and its objects. All directors owe a fiduciary duty to their company, which means they owe loyalty to the company and a duty of care to act in the best interests of the company, having regard to the interests of the members or shareholders of the company, the company's employees, and creditors. This includes having regard to the likely long term consequences of decisions, the interests of employees, fostering relationships with suppliers and customers and others, the impact of operations on the community and environment, maintaining a reputation for high standards of business conduct, and acting fairly between members of the company
- b) **To exercise care, diligence and skill**, using your own knowledge, skill and experience, together with the care, skill and diligence which may reasonably be expected of a person who is carrying out the functions of a director. So a director with significant experience must exercise the appropriate level of diligence in exercising their duties in line with their higher level of expertise. Although directors are not bound to attend all meetings of directors, attendance should be as frequent as possible and directors should ensure that they are reasonably informed at all times.
- c) **Not to exceed powers**. A company director must act in accordance with the company's constitution, and exercise powers for the purposes for which they were given.
- d) **To comply with the Companies Acts** in relation to the keeping of accounts, and ensure that the relevant returns are made to the Registrar of Companies. Failure to do so will incur fines and persistent default can lead to disqualification as a director.
- e) **To avoid conflicts of interest**. A director must avoid a situation in which he or she has, or may have, a direct or indirect interest which conflicts, or could conflict, with the interests of the company. This duty applies particularly to transactions between a director and a third party in relation to the exploitation of any property, information or opportunity.
- f) **To exercise independent judgement**. A director nominated by the Council cannot, for example, simply vote in accordance with the Council's

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instructions. To do so would be a breach of duty. The director must act in the company's interests.

- g) **Not to accept benefits from third parties.** A company director must not accept any benefit from a third party (whether monetary or otherwise) which has been conferred because of the fact that he or she is a director. This is based on the established principle that a director must not make a secret profit as a result of being a director. This duty applies unless the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- h) **To declare an interest in a proposed transaction or arrangement with the company.** A company director who has either a direct or an indirect interest in a proposed transaction or arrangement with the company must declare the 'nature and extent' of that interest to the other directors before the company enters into the transaction.

5.5 **Directors' Liabilities:** If a director fails to carry out his/her duties, action can be brought for breach of duty, either by the company itself, or by a liquidator if the company goes into liquidation, or with the consent of the court, by a shareholder. Such actions are unlikely where the company is properly controlled by the directors.

5.6 Some important considerations are:

- a) It is not always easy to reconcile the various factors which must be taken into account when reaching a major decision. The important thing as a director is to show that you are aware of and have taken account of the relevant factors, and have exercised due care and diligence in giving them all fair consideration.
- b) It may be difficult to be certain whether benefits may be regarded as giving rise to a conflict of interest. If you are unsure take advice from the company's advisers.
- c) Make sure you are aware of the company's constitution, its Memorandum and Articles of Association, so that you know what it can and cannot do. You must take this into account when making decisions, as well as any shareholder decisions that are relevant.
- d) Be diligent, and make sure you are well informed about the company's affairs. Make sure you are well briefed when taking up the role, and that you receive regular briefings throughout your term of office.
- e) Attend training and briefing sessions.
- f) Ensure insurance is in place.
- g) Some Board decisions may be reviewed on a future occasion. Make sure detailed minutes show that all necessary factors have been considered when major decisions are being taken. Obtain expert advice where necessary e.g. regarding impact of a decision on the environment. Take legal advice where there are doubts about a director's duty in relation to a particular matter.

6. Unincorporated Associations

6.1 "Unincorporated associations" have no separate identity from their members. 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 everyday running of the organisation. Management Committee members must act within the constitution, and must take reasonable care in exercising their powers. An unincorporated organisation may be charitable and may register as a charity.

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6.2 If you are involved in a decision making capacity or have a position of general control or management on an unincorporated body, as the body has no separate corporate status, any liabilities will fall upon you personally. Councillors appointed to such bodies should familiarise themselves with the Constitution to understand the nature of their role, responsibilities and liabilities, and should assess the risk of personal liability, and the extent to which it has been covered by insurance.

7. Charities:

7.1 A charity is an organisation which operates for the public benefit and exclusively charitable purposes, either:

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

7.2 A number of useful publications are available on the Charity Commission's website at www.charitycommission.gov.uk. Publication CC3 - 'The Essential Trustee- What you Need to Know' is a useful guide. Those who are responsible for the control and administration of a charity are referred to as its trustees, even where the organisation is a company limited by guarantee and even though they are not strictly trustees. A charity may also be unincorporated.

7.3 Trustees of a charity retain personal liability, and can only delegate to the extent that the constitution authorises them so to do.

7.4 Charitable Trustees' Responsibilities are:

- a) To act in accordance with the charity's trust deed or governing document.
- b) To protect the charity's assets.
- c) To comply with the Charities Acts, and the Trustee Act 2000.
- d) Trustees must not make a private profit from their position. They cannot receive remuneration without the sanction of the Charity Commission.
- e) To 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.
- f) Charitable trustees must ensure that the information relating to the charity and trustees is registered with the Charity Commissioners and that annual accounts, reports and returns are completed and sent.
- g) Trustees are under a duty to ensure compliance with all relevant legislation (e.g. in relation to tax and land matters).

7.5 **Charitable Trustees' Liabilities:** Generally, a trustee may incur personal liability if s/he:-

- acts outside the scope of the trust deed
- falls below the required standard of care
- acts otherwise than in the best interests of the charity, in a way which
- Causes loss to the charity fund
- makes a personal profit from the trust assets

7.6 In such circumstances the trustee will be in breach of trust, and will incur personal liability for losses incurred. If in doubt, always consult the Charity Commissioners. You may avoid personal liability for breach of trust if you act in accordance with their

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advice.

- 7.7 Trustees can incur personal liabilities for contracts they enter into in the name of the charity. They will normally be entitled to be reimbursed from charitable funds for liabilities and expenses properly incurred by them. If the charity is a company, the trustees will be protected from liabilities incurred in the day-to-day running of the charity in the normal course of events, but will be personally liable if they commit a breach of trust, as stated above.

8. Indemnities

- 8.1 Councillors who participate in external bodies may be indemnified in relation to liabilities they incur in that capacity, though this is subject to certain limitations.

- 8.2 Indemnity by the outside body:

- a) Directors: Directors cannot be indemnified by the company against liability for negligence, default, breach of duty and trust. Companies can however purchase insurance to protect directors against claims of negligence, default, breach of duty and trust. Those appointed as directors should ensure that appropriate insurance is in place. Companies can, if their Articles of Association allow, provide for directors to be indemnified for the costs of defending such a claim if they are granted relief by the court or acquitted.
- b) Trustees: Provided a charitable trustee acts properly, and within his/her powers, indemnity can be given from the trust fund. Trustees can take out insurance to protect themselves from personal liabilities, but not for criminal acts such as fraud. If the premiums are to be paid out of the charitable funds, the consent of the Charity Commissioners will be needed.
- c) Unincorporated Associations: Members may be entitled to an indemnity if they act in accordance with the Constitution of the association, and are not at fault. However, regard must be had to the terms of the constitution. The constitution will determine whether insurance can be paid for by the organisation.

- 8.3 Indemnity by the Council: The Council may provide an indemnity where Councillors are acting on an outside body at the request of the Council, and provided:

- the appointment was made by the Council, or
- the nomination was made by the Council, and
- the appointment was specifically approved for the purpose of the indemnity.

- 8.4 The indemnity the Council can provide is subject to limitations. In general terms, if a Councillor is acting properly, within their powers and in good faith, the power to indemnify will usually apply. However, the Council cannot, for example, provide an indemnity in relation to any action or failure by any Member which constitutes a criminal offence, or for any action or failure by any Member which is the result of fraud, or other deliberate wrongdoing or recklessness on the part of the Member. When you are serving on an outside body, the Council's indemnity will only apply after any indemnity or insurance from the body itself. There are further limitations and it is advisable to be clear about the scope of the Council indemnity that may be available to you. You can seek further advice on indemnity from the monitoring officer.

9. Code of Conduct – Councillors' Interests

- 9.1 **Code of Conduct:** Under the Localism Act 2011 all Councillors are subject to the Council's Code of Conduct for Councillors. You will find a copy of the full Code in

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the Constitution and on the Council's web page. When Councillors act as representatives of the Council on another authority, they must comply with the other authority's Code of Conduct. However, when Councillors act as the Council's representative on any other sort of outside body, they must comply with the Council's Code of Conduct unless it conflicts with the lawful obligations of the other body.

- 9.2 The Register of Members Interests requires Councillors to tell the Monitoring Officer in writing within 28 days of taking office, or within 28 days of any change to your interests, of any interests which fall within the categories set out in the Code of Conduct for Councillors. These categories include your membership or position of control or management in any other bodies to which you are appointed or nominated by the Council. It is your duty to keep this up to date.
- 9.3 This means that if you are present at a meeting when an item of business arises which relates to or affects an outside body to which you have been appointed, you must declare that you have a personal interest, and the nature of that interest, before the matter is discussed or as soon as it becomes apparent to you.
- 9.4 An exemption applies where your interest arises solely from your membership of, or position of control or management on:
- any other body to which you were appointed or nominated by the authority
 - any other body exercising functions of a public nature (for example another local authority).

In these exceptional cases, provided that you do not have a pecuniary interest, you only need to declare your interest if and when you speak on the matter.

- 9.5 You will also have a pecuniary interest in Council business affecting the outside body if:
- the matter being considered affects the financial position of the
 - outside body; or
 - relates to an approval, consent, licence, permission or registration
 - affects the outside body e.g. an application for planning permission.
- 9.6 If you have a pecuniary interest in a matter under discussion you must declare it. You must then leave the meeting room, unless members of the public are allowed to make representations, answer questions or give evidence about the matter. If that is the case, you can make your representations etc., but must leave the room immediately after doing so. The Code of Conduct for Councillors supports your role as a community advocate and enables you, even with a pecuniary interest, to represent your community and speak on issues that are important to them and to you.
- 9.7 **Bias:** Where you might be inclined to the view that you have no pecuniary interest, your duties as a director, or trustee, or member of a management committee may well be regarded, on an objective appraisal, as giving rise to a legitimate fear of lack of impartiality, especially having regard to the desirability of maintaining public confidence. Participation in the decision making at a Council committee meeting by a Councillor who is biased potentially invalidates the decision. If you find yourself in this position or are concerned please seek legal advice as above before meeting as the law is complex regarding bias, predisposition and predetermination. Overall the rules of natural justice must prevail.
- 9.8 Where membership of the outside body is on an advisory or consultative basis, bias will not be assumed from mere membership. However, once the outside body has a line which is being advocated by you and you take part in the Council's decision

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making process, this could potentially be viewed as bias, and the Council's decision on the issue could be vulnerable to challenge. It will depend on the facts, and in such circumstances advice should be sought as above.

- 9.9 **Substitution:** Where you take no part in the outside body's management or governance, other than to attend and vote at annual or general meetings e.g. as an 'observer', or undertaking a monitoring role, facilitating exchanges of views or information as an extension of your Council duties, another Councillor may substitute for you on the outside body. However, if you have a role in the governance of the outside body i.e. you serve in a decision-making capacity or have a position of general control or management as director, trustee, etc., no other Councillor can substitute for you.
- 9.10 **Feedback:** Feedback is an excellent vehicle to communicate the Council's involvement in outside bodies to the wider community. It is important for the Council to receive feedback on issues affecting outside organisations where Councillors are nominated to represent the Council.
- 9.11 **Further Guidance:** Further advice or clarification can be sought from the Monitoring Officer.

Legal and Democratic Services

May 2018

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Agenda Item 5

Crawley Borough Council

Report to Governance Committee

Date of meeting 18th September 2018

Polling District Review

Report of the Head of Legal, Democracy and HR – *LDS/143*

1. Purpose

- 1.1 To approve arrangements for a Polling District Review following changes to wards implemented by the Local Government Boundary Commission's review of Crawley's electoral arrangements and in accordance requirements the legislative requirements for regular reviews.

2. Recommendations

- 2.1 That a Polling District Review be conducted as set out in paragraph 4.3 of the report

3. Reasons for the Recommendations

- 3.1 The changes to ward boundaries as a consequence for the Local Government Boundary Commission for England's review will require a review of polling arrangements in the borough and it is proposed to combine this review with the statutory review which must be undertaken during the period between 1st October 2018 and 31st January 2020.

4. Background

- 4.1 The Council has a duty to divide the Borough into polling districts and to designate suitable polling places so as to meet the reasonable requirements of electors and take sufficient account of the accessibility of disabled persons. The Electoral Registration and Administration Act 2013 introduced compulsory review periods of 16 months beginning with 1st October 2013 and every fifth year after that.
- 4.2 The Local Government Boundary Commission have conducted a review of electoral arrangements for the Council. The review concludes with the publication of the Commission's final recommendations on 2nd October 2018 and will involve the redrawing of some ward boundaries. These changes mean making some changes to the current scheme of polling districts and places.

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- 4.3 It is proposed to combine these two processes in a single polling district review to be held with the following timetable:

1st October - publish notice of review inviting comments on the suitability of existing polling arrangements

1st November – initial consultation ends

13th November – consideration by Governance Committee of the results of the consultation and proposals for a new polling scheme reflecting the final recommendations of Local Government Boundary Commission.

19th November – consultation on new arrangements begins

28th December – consultation ends

14th January 2019 – Governance Committee considers final scheme for recommendation to Full Council

23rd January 2019 – Full Council considers final scheme

February 2019 – Electoral Register published to reflect new boundaries

- 4.4 It is proposed that the consultation begins at the earliest opportunity on 1st October with details included on the Council website and invitations to comment sent to local disability organisations, Councillors, County Councillors, the MP for Crawley and local political parties.
- 4.5 A report on the comments received together with the Acting Returning Officer's response and proposals for changes as a result of the Boundary Review will be prepared for the Committee's meeting 13th November.

5. Implications

- 5.1 The creation or removal of polling districts and provision of additional polling places has financial implications in terms of the cost of staffing polling places, the delivery and collection of equipment and the hire of premises.
- 5.2 The Electoral Administration Act 2013 requires the Council to review polling districts and places every five years. Representations must be made by the Returning Officer to the Council and the Council must actively seek representations from persons it thinks have expertise in relation to access to premises or facilities for persons with different forms of disability.

6. Background Papers

[Electoral Commission – Reviews of polling districts, polling places and polling stations](#)

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