

 <b>Standards Committee</b> <b>17 November 2010</b>		<b>Agenda Item No.</b>
<b>Title</b>	Good Practice Guides	
<b>For further information about this report please contact</b>	Graham Leach, Senior Committee Services Officer and Deputy Monitoring Officer, 01926 456114 or <a href="mailto:graham.leach@warwickdc.gov.uk">graham.leach@warwickdc.gov.uk</a>	
<b>Wards of the District directly affected</b>	None	
<b>Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006</b>	No	
<b>Date and meeting when issue was last considered and relevant minute number</b>	n/a	
<b>Background Papers</b>	Warwick District Council –Code of Conduct and Information & Security Policy	

<b>Contrary to the policy framework:</b>	Yes
<b>Contrary to the budgetary framework:</b>	Yes
<b>Key Decision?</b>	Yes
<b>Included within the Forward Plan? (If yes include reference number)</b>	Yes

Officer/Councillor Approval		
With regard to officer approval all reports <i>must</i> be approved by the report authors relevant Deputy Chief Executive, Head of Service, Finance, Monitoring Officer and the relevant Portfolio Holder(s).		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive		
Head of Service		Susie Drummond
CMT		
Section 151 Officer		
Monitoring officer		Andy Jones
Finance		
Portfolio Holder(s)		
Consultation Undertaken		
Please insert details of any consultation undertaken with regard to this report. ICT Manager – TY Walter ICT Trainer – Michelle Eames Print & Design Manager – Ema Townsend		
Final Decision?		Yes
Suggested next steps (if not final decision please set out below)		

## **1. SUMMARY**

- 1.1 To provide guidance for Councillors on the use of emails and letters and on their appointments to outside bodies.

## **2. RECOMMENDATION**

- 2.1 The guidance, appended to this report, regarding use of email and writing letters be issued to all Warwick District Councillors and all Parish/Town Clerks for information;
- 2.2 The guidance on the responsibilities of members when appointed to outside bodies be issued to all Warwick District Councillors and all Parish/Town Clerks for information.
- 2.3 Those Warwick District Councillors who have not signed up to the Council's Information & Security Policy be re issued with a copy and asked to confirm their agreement to it within one month.

## **3. REASONS FOR THE RECOMMENDATION**

- 3.1 To provide clear advice for members on what is regarded by this Standards Committee as acceptable.

## **4. ALTERNATIVE OPTION CONSIDERED**

- 4.1 The Committee could amend the guidance as they see appropriate or decide not to issue the guidance. However, taking into account recent considerations by an Assessment Sub-Committee officers feel that this is not a viable course of action.

## **5. BUDGETARY FRAMEWORK**

- 5.1 There are no budgetary implications of this report.

## **6. POLICY FRAMEWORK**

- 6.1 This has no impact on the Council's Policy Framework or the Community Plan however the guidance is provided to assist members in interpreting Council policy and the Code of Conduct.

## **7. BACKGROUND**

- 7.1 Following a recent Assessment Sub-Committee, the Monitoring Officer was asked to review the relevant Council policies with regard to use of emails by Councillors and review the guidance provided to members about their responsibilities when they are members of other organisations. He was asked to bring reports on both of these matters to the Standards Committee for consideration and approval prior to the District Council elections in May 2011 and these guidelines are attached as appendices 1 and 2.
- 7.2 The Code of Conduct establishes the position for members with regard to disclosure of confidential documents and use of Council Resources (including email). In addition to the Code of Conduct Warwick District Council has adopted an Information Security & Conduct Policy. This policy consists of an overarching policy and nine sub-policies. On the 3<sup>rd</sup> February 2010, members were notified

by letter of the existence of this policy and were also sent copies of the e-mail and Internet acceptable use policies. This was issued to all members asking them to send a notification back that they had considered the Policy. Following a reminder 22 out of 46 have acknowledged that they have read the Policy. It should be noted that even though they have not signed to say they have read the Policy all members are still bound by it. The co-opted members of the Standards Committee were not asked to sign up to this because they are not operating Council equipment or have access to Council systems and therefore are covered within the provisions of the Code of Conduct.

## **Emails & Letter Usage Guidance note**

### **General**

When communicating via emails and letters, Councillors should be mindful of the context and capacity that they are writing in and this should be clearly expressed in the text to ensure clarity for the recipient.

### **Code of Conduct**

Members must take care when communicating via email or letter to ensure that they are not in breach of the Code of Conduct. The Code of Conduct explains that:

Members must not use or attempt to use their position as a member improperly to confer, on or secure for themselves or any other person, an advantage or disadvantage.

Members must, when using or authorising the use by others of the resources of your authority:

- (i) act in accordance with the authority's reasonable requirements;
- (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

Members must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986. *"Although it should be noted that the Government are reviewing the code of practice issued under this act"*

### **Warwick District Council Information & Security Policy**

#### *Section 11 - Usage of Hardware and Software*

"Council electronic equipment and software should be used in a responsible, legal, and ethical fashion. Staff or Members must not take any action that could bring the Council into disrepute, cause offence, interfere with Council work or jeopardise the security of data, networks, equipment or software.

Council computer equipment and software, as well as telecommunication services and other electronic equipment, are for Council business purposes. Occasional personal use by staff is permitted at the discretion of line managers provided it does not interfere with Council work, is not conducted in Council time, conforms to this Policy and is not associated with personal business interests.

Members may use Council equipment for personal use and for Council and ward matters. However, Council equipment must never be used to promote support for a particular political party nor for conducting personal business interests."

### **Emails**

The email account provided by the Council to members' should only be used for Council business and other email accounts should not be used for Council business.

At present, some Councillors have their emails forwarded to other accounts these should not be used to respond, as a Councillor, to enquiries from individuals outside of Warwick District Council. It should be noted that the increasing requirements of government's Code of Connection (CoCo) could mean that in the near future the forwarding of emails to non .gov.uk domain email addresses will have to cease. The Council's network has been joined to the governments secure extranet (GCSx). As a result, the Council is forced to abide by technical, operational and behavioural

constraints described in the CoCo. Failure to comply with these constraints will result in the GCSx connection being terminated, which will have a significant impact on service delivery to the citizen.

Members should exercise significant caution when sending e-mails that contain personal information. Extreme care should be taken to limit the number of recipients, especially when forwarding e-mails. In addition, where the e-mail contains personal information, this must only be sent using a Warwick District Council e-mail address.

Members should in no way use Council resources to promote any political party/or views. This includes the promotion of a political party and directing people to political party websites both in the text of the email and the Members electronic signature. Members Council email address should not be used on any election campaign literature or other party political material. Although it would be reasonable to explain which party the member was part of. A misuse of Council resources could be considered a breach of the Code of Conduct and could lead to sanctions being imposed on the member who breached the Code by the Standards Committee.

While emails may be viewed as a more informal form of communication compared to a letter, however caution should always be taken, when communicating in any written form. This is because the legal status of an e-mail message is similar to any other form of written communication. Consequently, any e-mail message sent from a facility provided to conduct or support official Warwick District Council business should be considered to be an official communication from the Council. In addition, the following lists some of the areas of liability employers are exposed to with the use e-mail:

- Defamation
- Obscene publications
- Breach of confidential information
- Breaching the Data Protection Act
- Copyright material
- Making statements negligently
- Formation of contract
- Discrimination
- Criminal offences
- Transmitting and introducing viruses
- Falsification of e-mail addresses

For these reasons Councillors are advised to follow these few basic steps for e-mails:

- Do not use a non Warwick District Council email address for Council business;
- Use the corporate font Verdana, point 10, for any text in the email (this is because it is not only one of the easiest fonts to read but is also one of the most commonly used fonts across computer software)
- Keep attachment size to a minimum level (ideally no more than 2mb)
- Do not use backgrounds to the email because they do not always translate between different email packages and increase the file size of the email
- Do not include animated or static gifs or jpegs within the email because they do not always translate between different email packages and increase file size of the email
- Do not use icons for fax, email and web. These are usually font based but if the person receiving the email does not have the same font on their machine, the icons do not display correctly and the numbers that follow them get very messy and confused

- Standard signatures on emails should be kept simple and clear to ensure the recipient knows what capacity the email is sent in, a good example is set out below:

Councillor Andrew Mobbs (Conservative)  
Warwick District Councillor – Kenilworth Park Hill

59 Windy Arbour, Kenilworth CV8 2BB  
Tel. 07836 725999 | [www.warwickdc.gov.uk](http://www.warwickdc.gov.uk)

### Letters

When members are writing in a personal capacity they should not use Council stationery or refer to themselves as a Councillor because this could be interpreted as an inappropriate use of Council resources and seeking an advantage.

Members should in no way use letters signed as a Councillor or on Council headed paper to promote any political party/or views of a specific political party.

# Members Appointments to Outside Bodies

## ADVICE NOTE

### General

Member's representational role is enhanced and strengthened by participating in outside bodies, but inevitably there will be great differences in the way these bodies work. The point of Member representation on outside bodies is to further the public interest, either locally or generally and Members need to exercise their judgement in this respect whilst bearing in mind any Council objectives in having representation on the body concerned.

### Do

- Make sure you understand your role from the body and what they expect of you
- Check what indemnities and insurance there is to minimise/eliminate any personal liability you might incur.
- Ensure you receive proper notification of meetings of the body, and look at the records of meetings they produce.
- Ensure you look closely at their accounts.
- Act in the best interests of the body.
- Register your appointment in your Declaration of Financial and Other Interest Form.

### Do Not

- Breach the Council's Code of Conduct requirements.
- Take on an officeholders post without considering the implications for the Council and your elected Member responsibilities.
- Agree to act as a 'go-between' with the Council where there may be a conflict of interest.
- Fail to keep yourself briefed of matters taking place within the organisation.

### Some ground rules to understand

- The Council may not know the detailed organisation of the outside bodies to which they appoint Members
- The Council will probably be only one of a number of organisations with which the body has formal contact
- Members need to make themselves aware, at the time of joining a body, what they are taking on, and what the body expects of them
- Members need to be aware that taking on a specific role with an outside body (e.g. chairmanship of it) may create a conflict when the Council considers matters relating to that body
- Members are bound by their Council's local code of conduct when serving on an outside body unless it conflicts with any legal obligations arising from their membership of that body
- Members may not be automatically covered by the Council's legal machinery or insurance for the activities they may become involved in through membership of an outside body.
- The primary responsibility for indemnities and insurance lies with the outside body on which the Member may serve.
- Generally outside bodies will be performing or facilitating public works or programmes or engaged in philanthropic activity and the competence of administration will vary considerably.

### Standards of Conduct

#### General

A Member must observe the requirements of the Council's Code of Conduct when serving on another body, unless the body has its own Code (or governance guidelines), which requires those serving on it to conduct themselves in a certain way.

In considering matters before the body, the Member can take account of any of the Council's objectives but cannot be bound by the Council to vote one way or the other on a particular matter.

Where there is a conflict of interest between the Council and the body, the overriding duty is to vote in accordance with the interests of that organisation when conducting the business of that body.

If a Member is approached to accept a position as an officeholder with that body, they should consider whether taking such a leading role is compatible with representing the Council.

Part of the role of a Member on an outside body is to liaise between the Council and that body and to report on its business and performance to the Council. To do so effectively requires a degree of impartiality from that body which holding an office is likely to call into question.

A Member who has led an outside body to formulate advice for a Council may very well be deemed to show bias or a closed mind in such circumstances and, quite apart from any considerations under the Code of Conduct, may not be able to participate in discussion and voting, as they are not able to exercise their judgement in the wider public interest.

#### Council's Code of Conduct

Members must register, on their Declaration of Financial & Other Interests Form, membership of or position of general control or management in a body to which they have been appointed or nominated by the Council as its representative.

Members serving on outside bodies must declare at meetings (of the Council, Executive, Committees, etc) a personal interest in the business arising at a meeting, which may affect, or arise from, an outside body on which they serve.

Where a Member has been appointed to an outside body as a representative of the Council they need only declare a personal interest to speak on the matter.

It is important to remember that simply by appointing a Member to an outside body the Code does not grant an automatic exemption from prejudicial interest.

***For example, trustees have specific obligations to the body which they belong; these would almost certainly amount to a prejudicial interest if a Member were involved in discussion in a meeting of the Council (Executive, Committees etc) about a grant to that body, or other matters affecting its financial or business affairs.***

*A Member should normally expect to declare a personal and prejudicial interest in matters affecting the affairs of the body – not just grants, but also issues relating to planning, licensing, property etc.*



It is therefore important that Members remain alert when sensitive issues arise and seek advice where appropriate.

### **Types of Bodies**

Broadly speaking the outside body is likely to be set up as either an incorporated company, an unincorporated organisation, a trust, a partnership or a consultative group. The body may also be charitable and therefore your role may also involve the duties of a charity trustee.

### **Companies**

A company will have a memorandum setting out its objects, and articles of association. These govern the procedures by which decisions are taken and the role of directors or management committee in running the company.

### **Directors Duties**

- To act in good faith and in the interests of the company when conducting its business.
- To act with reasonable skill and care in their role, having regard to their level of expertise.
- To comply with company legislation, make appropriate returns, file accounts etc
- To stay within their and the company's powers and use their powers for proper purposes.
- To avoid situations where their personal interests might conflict with those of the company, make full disclosure of personal transactions and account to the company for any personal profit made.

### **Personal Liabilities of Directors**

A breach of the duties set out above could result in either the Director being fined under company legislation or the company taking action against the director for recovery of money or damages. A director may also become personally liable if they engage in fraudulent trading or wrongful trading.

### **Indemnities**

Generally Directors will be protected from personal liability in excess of the amount unpaid on their shares or their guarantee in the event that the company becomes insolvent provided none of the circumstances above apply.

### **Unincorporated Associations (Management Committees)**

Many voluntary organisations are "unincorporated associations". These bodies have no separate legal identity from their members. The rules governing the member's duties and liabilities should be set out in a constitution. Property will have to be held by individuals, as the organisation has no existence of its own.

### **Duties**

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

### **Liabilities**

Management Committee members are liable for the acts of the organisation.

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.

Management Committee Members are personally liable if they act outside the authority given to them or if they do not comply with statute e.g. the payment of employees' tax etc.

### **Indemnities**

Members of the management committee will generally be entitled to an indemnity from the funds of the organisation or if there are insufficient funds from the other members if they act in accordance with the constitution and are not at fault.

### **Charities**

Whichever legal form the charity takes the following are common requirements.

### **Trustees Duties**

- To act in accordance with the Trust Deed and to protect the charity's assets.
- To not make a private profit from their position.
- 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.
- To have regard to the requirements of the Charities Acts and to ensure that the requirements of the Charity Commissioners are met.

*Leaflets are available from the Charity Commissioners about various aspects of running a charity. Contact Charity Commission PO Box 922 Liverpool L69 3WP Tel No 0870 333 0123, or visit their website [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk).*

### **Trustees Personal Liability**

A breach of the duties would mean the trustee would incur personal liability for losses incurred and may be liable to fines if they do not make returns in accordance with the Charity legislation.

Where the Charity is not a company, trustees can become personally liable to third parties, for example for breach of contracts the trustee may have signed etc.

Trustees generally remain personally liable once they retire and should therefore seek an indemnity from their successors. However, if the charity is a company the trustees for the time being will be responsible.

### **Indemnities**

An indemnity can be given from the trust fund, provided the trustee has acted properly and within their powers.

Trustees may take out insurance to protect themselves against personal liability but not for criminal acts, fraud etc.

There will be no problem if the trustees themselves pay the premiums but if they are paid out of the charitable funds, the trustees will need the consent of the Charity Commissioners unless the trust deed allows it.

Again, any insurance policy should be kept in force by ensuring renewal premiums are paid.

### **Data Protection**

It is possible that through representation on an outside body you will process personal data, which belongs to the body.

If you do this you will need to clarify with the body whether you need to be part of the body's notified arrangements to the Information Commissioner for processing the data.

(Processing data means doing anything with it from obtaining it, working with it to destroying it)

### **Final Thoughts**

If you are at all worried by the administration or management of a body that you have been appointed to, in the first instance you should raise the matter with the person who appears to you to be managing the organisation. If there are matters, which might concern the Council, you can raise the matter with the Council's Monitoring Officer.