

Whitehaven Rugby League Football Club - Review of the Role of Council Members

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Summary and Recommendations:

The report sets out the results of the Chief Executive's investigation into the role of Council Members appointed to the Board of the Whitehaven Rugby League Football Club as requested by Overview and Scrutiny Committee on 27th September 2010.

At this meeting, Overview and Scrutiny Committee considered a letter it had received from three Councillors requesting an item of business be placed on the Committee's Work Plan to review the role of the two Directors the Council placed on the management committee of Whitehaven Rugby League Football Club, with specific reference to seven questions.

Following discussion as to the appropriate way forward, the Committee agreed to accept the item of work onto its work plan and to ask the Chief Executive to investigate the matter and report back to the next meeting of the Committee.

This report sets out the results of that investigation and details answers to the specific questions raised. The main conclusion of the review is that although there are lessons to be learned, there is no evidence of improper conduct by Members that has led to any financial loss for Copeland Borough Council.

There are however a number of lessons to be learned for the future and these are set out in the recommendations below. A number of the improvements have already been put in place e.g. the risk monitoring section of Executive reports, a tightening up of the use of Urgent Action process, a review of the grant monitoring process is underway, and responsibility for actions agreed at the Executive.

The Recommendations arising from this review are:

- (i) The Guidance attached at Appendix A should be updated where appropriate and re-issued to Members.
- (ii) The reporting back procedures for Members agreed by Council in April 2004 (attached at Appendix B) should be reviewed and updated by Overview and Scrutiny Committee with a view to implementing them as quickly as possible.
- (iii) Members nominated to outside bodies should be required to fill in the annual reporting back return referred to above, as updated by Overview and Scrutiny Committee, by end of April 2011. Following this a review of Member appointments should be carried out by the Chief Executive in consultation with the Leader of the Council, to consider in particular the benefits to both the Council and Outside Body and to identify any potential conflicts of interest. This should be an annual process.
- (iv) Members should ensure they update the Register of Members Interests as and when appropriate.
- (v) Specific training be provided to Councillors to serve as refresher training on their duties as Councillors, including when serving on outside bodies, when to declare interests etc. This should also be included in future new Member induction programmes. The Member Development Group should be involved in defining the programme.
- (vi) A specific officer nominee will be made to support and advise members in their role. Officers' role as advisors should be clearly set out to ensure they do not have a conflict with their principal role to support the interest of Copeland Borough Council.
- (vii) The checklist for Executive Decisions now includes a Risk Management section so the risk of all future decisions is formally recorded and monitored. It should be clearly stated in this section both what the risk is and who has responsibility for monitoring and reporting back (if necessary).
- (vii) There are a number of internal administrative processes which have proven to be in need of review, some of which have already been enacted. The Chief Executive is asked to review any internal administrative procedures identified in the report which remain to be addressed.

1. Background Information

1.1 The Whitehaven Rugby League Football Club has recently been placed in Administration and a number of questions have been raised over Copeland Borough Council's involvement with the Club. Copeland Borough Council has supported the Whitehaven Rugby League Football Club both financially and in officer / member support over a number of years. The main points arising from more recent involvement are set out below, together with a chronology of some of the main events.

1.2 £75,000 Loan - Approval Process:

- (i) On 11th March 2008 the Executive approved an urgent item on its agenda to consider an application to the West Cumbria Development Fund Ltd from Copeland Borough Council for £75,000. The application itself covered a number of issues including as part of the Risk Management section that it would 'seek to nominate its Head of Finance onto the Rugby club board in order to monitor the interests of public funding in the club'. The application also makes clear that the Council has enough funds to support the club from its own funds, but want to ensure transparency in that the loan is for economic regeneration purposes only i.e. to support the Pow Beck scheme. The risk to the future of the Club's future of not providing the loan was spelled out. The Executive Decision was – 'That Executive note the current opportunities for moving forward with the Pow Beck Valley regeneration proposals and subject to the approval of the relevant Overview and Scrutiny Chairs approve an advance of a loan to the value of £75,000 in order to kick start the programme. The Urgent Action decision was signed on 13th March by 3 Members, the Executive Member for Regeneration, the Overview and Scrutiny Committee Management Committee Chair, Overview and Scrutiny Committee Economic Development Chair and three officers, (the then Chief Executive, the Monitoring Officer and the then Section 151 Officer).
- (ii) On 13th March 2008 the loan of £75,000 was paid to Whitehaven Rugby League Football Club, and this was followed by a letter on 14th March 2008 from Copeland Borough Council Chief Executive to Whitehaven Rugby League Football Club and countersigned by Section 151 Officer and Acting Director Whitehaven Rugby League Football Club to agree the loan terms.

- (iii) A Letter on 10th July 2008 from West Cumbria Development Fund Ltd to Copeland Borough Council Chief Executive confirmed the approval of an application for a loan of £75,000 in order to assist in securing its immediate future and thereby safeguarding the future of the Pow Beck regeneration plans. The loan given on the understanding it was fully underwritten by Copeland Borough Council who would forward it to Whitehaven Rugby League Football Club and that it be repaid by 30th March 2011. This was agreed on 18th July 2008.
- (iv) The agreement between Copeland Borough Council and Whitehaven Rugby League Football Club was signed on 24th February 2009 and which mirrored the agreement with West Cumbria Development Ltd. On 16th March 2009 the final agreement with West Cumbria Development Ltd was received (signed on 19th) and a cheque was received for £75,000. It is not clear why the agreements and cheque were not signed / received earlier; however the absence of key senior officers involved in the initial agreement from mid 2008 may have been a contributing factor. Ultimately whilst the delay in signing the agreement and receiving the cheque were clearly an administrative error and resulted in some accounting mis-statements; the errors did not impact on any outcomes, nor cause any loss to Copeland Borough Council.
- (v) **Current Situation** – Discussions are ongoing with the West Cumbria Development Fund regarding the terms for repayment of the Loan which currently requires repayment by 30th March 2011. The Council is also able to claim in the Administration of the Company for a principal debt owed to it.

1.3 Bank Guarantee – approval process:

- (i) On 15th July 2008 the Executive approved a request to underwrite an overdraft facility to the Whitehaven Rugby League Football Club for £50,000 for a period of up to 6 months to 1st Feb 2009. The report had attached to it a cash flow statement from Whitehaven Rugby League Football Club showing a worsening cash flow position until November 2008 when it states the situation should be remedied. The Section 151 Officer comments in the report state that additional financial information had been requested and an update would be given at the meeting (an amended cash flow was considered). She also pointed out that the worst case would be that the Council would need to fund the £50,000 if the Club were to default. Subsequently the details of the agreement were negotiated and on 17th September the guarantee was signed.

- (ii) On 17th February 2009 the Executive were asked to approve a request to extend overdraft facility of £50,000 for a further twelve months to the end of February 2010. The report sets out the financial risk to the Council. The Executive only agreed to six months and asked for further financial details to be brought back to the Executive in three months to enable decision to be made (~~however this further report back did not happen~~). The above decision was endorsed by full Council on 24th February 2009.
- (iv) On 22nd September 2009 the Executive were requested to approve an extension of the overdraft of £50,000 to be underwritten for a further six months to end of March 2010. The risk to the Council was highlighted in the report. The Section 151 Officer comments were 'the financial performance of the club is improving. Executive however must request regular i.e. quarterly reporting of the financial position and business plan development to assure itself of the need to continue to provide this guarantee and to assess the risks attached to it'. Executive agreed the extension.
- (v) Current Position – Negotiations are continuing with the Bank over what amount if any is due under the Guarantee.

1.4 Accounting Arrangements / Share Issues

The Audit Committee on 27th September 2010 was notified of the changes required to the 2009/10 Accounts in relation to the Whitehaven Rugby League Football Club going into administration. The final submission to the Audit Commission contained within the Letter of Representation stated:

'Post Balance Sheet events – since the date of approval of the financial statements by the Council, additional significant post balance sheet events have occurred which, although not requiring additional adjustment; require disclosure in the financial statements. These relate to:

(i) Whitehaven Rugby League Football Club Ltd which may go into administration. The full extent of the potential liabilities to the Council in respect of Whitehaven Rugby League Football Club Ltd is as follows:

- The Council has within its balance sheet, shares in the club with a carrying book value of £30,000, which are now likely to have a nil value. (please see explanatory note below)

- The Council underwrote a loan from West Cumbria Development Fund to the Whitehaven Rugby League Football Club for £75,000, which may now have to be repaid to the West Cumbria Development Fund; and
- The Council acted as a guarantor for the Whitehaven Rugby League Football Club in respect of a bank overdraft facility to a maximum value of £50,000.

The adjustments required to write off these liabilities will be reflected in the 2010/11 financial statements'.

The maximum liability to Copeland Borough Council is £125,000. The financial implication of the £75,000 loan and the £50,000 overdraft facility on the Council is still being investigated.

Explanatory Note:

In terms of the shares, the Authority held 30,000 £1 ordinary shares in Whitehaven 1992 Limited representing 45.8% of the total called up share capital of the company. The Whitehaven Rugby League Football Club Ltd is a 71.2% owned subsidiary of the Whitehaven 1992 Limited Company. This represents a 32.6% interest that the Council had in the Whitehaven Rugby League Football Club. It should be noted that in 1997/98 the shares were transferred to the Council at a nominal value from Albright and Wilson UK Ltd. The value in the Accounts is a book value only and should not be treated as a cash value.

In addition to the above shares, Councillor Knowles previously held twenty shares of £5 each which he formally transferred to the Council on 13th March 2008. Despite the appropriate documentation being completed by Councillor Knowles and the Council's Head of Legal Services, the transaction was never notified to Companies House by the Whitehaven Rugby League Football Club and was not reflected in the Council's accounts. RSM Tenon, the Whitehaven Rugby League Football Club Administrators have verbally accepted that the transfer of the shares took place (formal confirmation in writing has been requested).

1.6 Financial Support from West Cumbria Development Fund

Councillor Norwood has written to West Cumbria Development Fund to obtain the answers to the questions shown below and West Cumbria Development Fund's replies are set out for completeness.

- **What funds have been paid to Whitehaven Rugby League Club over the last 10 years?**

West Cumbria Development Found has not paid any funds directly to the Whitehaven Rugby League Club in the past ten years.

- **Have any monies been via'd through West Cumbria Development Fund to the Whitehaven Rugby League?**
 - (i) In March 2008 Copeland Borough Council took out a £75,000 loan from West Cumbria Development Fund "for the purpose of assisting Whitehaven Rugby League Football Club develop a sustainable business plan to satisfy the necessary funding conditions to start the Pow Beck Valley regeneration programme". This loan is due to be repaid by Copeland Borough Council by 31.03.11.
 - (ii) In March 2008 BNFL Enterprises transferred £500,000 to West Cumbria Development Fund which was "...assigned to the development of the Whitehaven Rugby League stadium provided it supports West Lakes Renaissance and Copeland Borough Council's economic development plans for the Pow Beck Valley area of Whitehaven".

This £500,000 has been held by West Cumbria Development Fund and is released under joint instruction from West Lakes Renaissance (now Britain's Energy Coast-West Cumbria) and Copeland Borough Council.

There have been two withdrawals to date:

£100,000 was released in May 2009 "to progress the development of a joint stadium to be shared by Whitehaven Rugby League FC and Whitehaven Amateurs Football Club. Agreement in principle has now been reached with both clubs to form a Special Purpose Vehicle to develop the new stadium".

£44,530 was released in June 2010 "to be used by Whitehaven Rugby League Football Club for essential activities required for the transition to a Special Purpose Vehicle and the new stadium".

- **What monies are held by the Fund for the Whitehaven Rugby League?**

West Cumbria Development Fund is still holding £355,470 of the original BNFL Enterprises £500,000.

2. Conclusions on Specific Questions Raised

- (i) Were the Councillors who were appointed to the Whitehaven Rugby League Football Club board given any appropriate training and support to perform this function?**

On 13th January 2009 Council (ref:C79) approved that Councillors C Giel and T J Knowles be nominated for appointment to the Board of the Whitehaven Rugby League Football Club at the Extraordinary General Meeting of the Club to be held on 15th January 2009. There were no officer nominations. Subsequently both Councillors resigned their appointments when the Whitehaven Rugby League Football Club went into administration in September 2010.

No specific training was given to support the Councillors on their role as Directors. A Guidance Note for Members was produced in 2006 and distributed to all Members (see **Appendix A**). Currently Member involvement on Outside Bodies is not included as an item on the Council's induction / training process.

Officer support was given over a period of time by Regeneration officers; however their principal interest was in the development of the Pow Beck Sports Village Project. Support was also given on request by other officers (e.g. Section 151 Chief Finance Officer, to advise on the financial position). There was however no specifically 'named' officer advisor to support members.

There is a Register of Members Interests, in which Members are required to record their interests in outside bodies. A reminder is periodically sent out to all Members to remind them of this requirement (last one sent 20/8/10). No officer check is undertaken to verify whether Members do update their interests

- (ii) What was the reason for removing officers for this role and replacing them with councillors? Is there any reason to believe that their decisions contributed to financial loss suffered by the club or the council?**

Officers were not removed from the Board, they were never appointed.

As part of the original application for the loan to the West Cumbria Development Fund, it was stated that Copeland Borough Council would 'seek to nominate its Head of Finance onto the Rugby club board' – this

ultimately did not become a condition of the loan and the Head of Finance has never been formally recorded as a Director of the Board. The Council has never formally nominated any officers to the Board of the Whitehaven Rugby League Football Club.

I am informed the Section 151 Officer of the time attended one Whitehaven Rugby League Football Club Board meeting (and was reported in the press as being a member of the Board) but this was never formalised. Subsequent Section 151 Officers were not nominated to the Board. (This would be a conflict with their statutory Council role).

Officers have supported Members in various roles throughout their period on the Board, much of this informally (i.e. not through the Executive). There was however no formal reporting of any risk assessment undertaken on the Whitehaven Rugby League's financial position as a whole, and the possibility of having the guarantees called in. Section 151 Officer comments made on the bank guarantee suggested regular reports should be made to the Executive on the financial position. This does not appear to have been done formally, (albeit there is evidence of a lot of work behind the scene). The purpose of underwriting the loan and guarantee was to support the Club's deteriorating financial position and to support the development of the Pow Beck Scheme.

It is clear that the Whitehaven Rugby League Football Club was in financial difficulty, even prior to the Council authorising the loan in March 2008. There is neither evidence nor any reason to believe that the Directors' actions added to the poor financial position of the club, nor that having Officers on the Board would have changed that position.

(iii) What reporting mechanisms existed for the councillors to report back any issues that were found during their time on the board?

The Guidance set out in Appendix A, makes reference to reporting back to Council at least annually. There is no current framework in operation. However, Members have previously considered such a framework: In 2004 for example the Overview and Scrutiny Committee - Performance and Resources developed a pro forma for reporting back to Council (attached at Appendix B). This was reported to Council on 20 April 2004 and a framework approved, although it appears not to have been successfully implemented. It would be beneficial to update and implement the reporting back procedure as soon as possible and Overview and Scrutiny Committee 1 may wish to be involved in that process. In particular, it may be useful to add questions regarding any potential

conflicts of interest identified, including any funding the body receives from the Council.

The current list of outside bodies on which there is member representation was approved in April 2010. This shows forty-one bodies including Whitehaven Rugby League Football Club. However, there was no formal member reporting back in respect of any of those bodies.

It should be noted that although nominations are made by Council the first duty of Directors of Companies is to the Company itself. The Guidance issued warns about conflicting interests.

In general terms once Members are appointed to the Board, Directors are agents of the company, where they have a fiduciary duty to act honestly and in good faith and a general duty to take reasonable care and skill in acting in the company's affairs. They also have a duty to avoid conflicts of interest. Where there is a conflict of interest the director's primary duty is to the company and not the Council.

- (iv) **What reporting back to Council took place? Was the Council kept fully informed of all actions of the board? Is the reporting considered to have been adequate? If not why not, and what improvements can be put in place for the future.**

Although there were no formal reporting mechanisms in place, on 24 February 2009 Cllr Giel agreed to include an update in the next Portfolio report on Whitehaven Rugby League Football Club. At the Council meeting on 31 March 2009 a detailed report was submitted to Council as part of the Executive report to Council (Minute C.93 on 24 February 2009 "... the Deputy Leader Cllr Mrs Giel agreed to include an update in the next portfolio Report on Whitehaven Rugby League Football Club."). – Appendix C attached.

Tape recordings of Council meetings have been reviewed as part of the investigation and there is very limited reference to or questions regarding Whitehaven Rugby League Football Club from April 2009 to October 2010.

The Council did not know of every single action of the Board, although it did not need to know everything. There will inevitably be confidentiality issues (as the first duty of the Director is to the Company itself). It will have been for Council to request further reports and to arrange how frequently these should be. A review and implementation of the reporting mechanism referred to above (attached at Appendix B) would be a significant improvement.

It would have been reasonable for the Council or one of its officers to make formal enquiries about the financial position of the club so that an informed position could be reached on Guarantees. It is clear that the former Section 151 Officer had considered the accounting position as she had commented on a report to the Executive on 22 September 2009:-
"The financial performance of the club is improving. Executive, however, must request regular i.e. quarterly reporting of the financial position and business plan development to assure itself of the need to continue to provide this guarantee and assess the risks attached to it." Procedures should be improved to ensure this happens in future.

- (v) **Did the Council get all information that was requested from the representatives during this time?**

See report back in March 2009. Otherwise it would have been open for members to ask questions at Council. There is no evidence that the Council did not get answers to the questions it raised. It is clear as quoted above that the former Section 151 Officer did receive information concerning the financial position of the Club.

- (vi) **Has any evaluation been done on the performance of the council representatives, with a view to improving how the council handles these matters in the future?**

Unless Members are being watched and evaluated as they attend outside meetings it is impossible to give a view about their performance. However, and in the case of all members, areas for improvement would clearly be specific training on their role as Directors, appointment of an officer support / advisor and a requirement for reporting back regularly as stated above.

- (vii) **What was the total cost to the council of having the Councillors on the Board of Whitehaven Rugby League Football Club?**

No expense claims have been made by either Councillor in respect of their Directorships.

3. Main Findings / Lessons Learned

- 3.1 The main finding is that although there are clearly lessons to be learned by the Council there is no evidence of improper conduct by Members that has led to any financial loss for Copeland Borough Council.
- 3.2 There are however a number of lessons to be learned for the future and these are set out in the recommendations below. A number of the

improvements have already been put in place e.g. the risk monitoring section of Executive reports, a tightening up of the use of Urgent Action process, a review of the grant monitoring process is underway, and responsibility for actions agreed at the Executive.

4. Recommendations

The Recommendations arising from this review are:

- (i) The Guidance attached at Appendix A should be updated where appropriate and re-issued to Members.
- (ii) The reporting back procedures for Members agreed by Council in April 2004 (attached at Appendix B) should be reviewed and updated by Overview and Scrutiny Committee with a view to implementing them as quickly as possible.
- (iii) Members nominated to outside bodies should be required to fill in the annual reporting back return referred to above, as updated by Overview and Scrutiny Committee, by end of April 2011. Following this a review of Member appointments should be carried out by the Chief Executive in consultation with the Leader of the Council, to consider in particular the benefits to both the Council and Outside Body and to identify any potential conflicts of interest. This should be an annual process.
- (iv) Members should ensure they update the Register of Members Interests as and when appropriate.
- (v) Specific training be provided to Councillors to serve as refresher training on their duties as Councillors, including when serving on outside bodies, when to declare interests etc. This should also be included in future new Member induction programmes. The Member Development Group should be involved in defining the programme.
- (vi) A specific officer nominee will be made to support and advise members in their role. Officers' role as advisors should be clearly set out to ensure they do not have a conflict with their principal role to support the interest of Copeland Borough Council.
- (vii) The checklist for Executive Decisions now includes a Risk Management section so the risk of all future decisions is formally recorded and monitored. It should be clearly stated in this section both what the risk is and who has responsibility for monitoring and reporting back (if necessary).

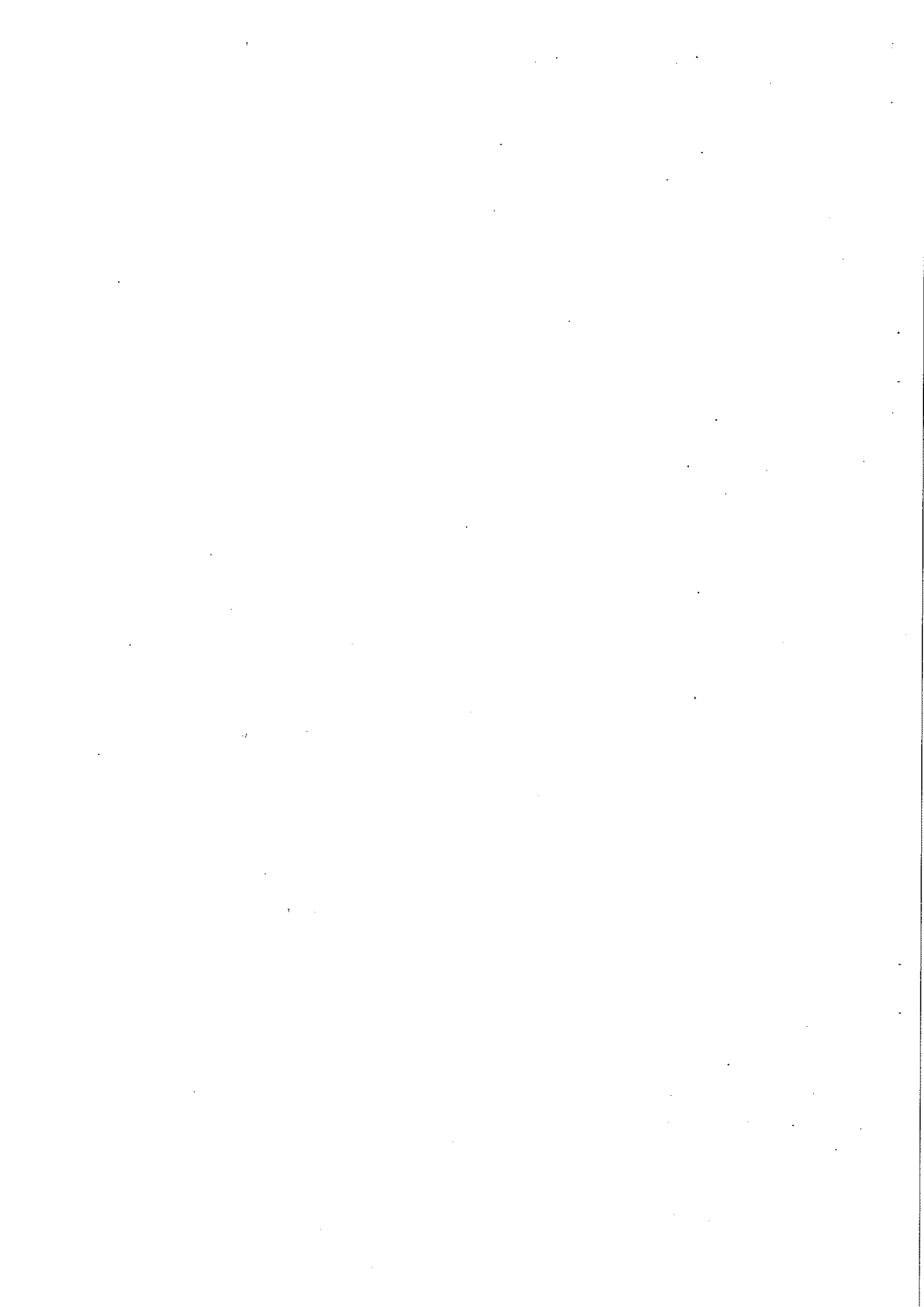
- (vii) There are a number of internal administrative processes which have proven to be in need of review, some of which have already been enacted. The Chief Executive is asked to review any internal administrative procedures identified in the report which remain to be addressed.

Appendix A – Current guidance to Councillors on their responsibilities as Members of Outside Bodies

(Appendix B – Overview and Scrutiny Committee Protocol for Members serving on outside bodies agreed 2004

Appendix C – Report from Cllr Giel to Council, 24th Feb 2009

Consultees: West Cumbria Development Fund, CBC Officers and Members, Whitehaven Rugby League Football Club, Whitehaven Rugby League Football Club Bank, RSM Tenon (Administrators).



COPELAND BOROUGH COUNCIL

**GUIDANCE TO COUNCILLORS ON THEIR
RESPONSIBILITIES AS MEMBERS OF OUTSIDE BODIES**

1. WHAT ACCEPTING AN APPOINTMENT MEANS

- Acting according to the rules, constitution and framework set by the outside body;
- Making independent and personal judgements in line with your duty of care to the outside body;
- Reporting back at least annually to the Council;
- Liaising with the officer appointed to advise you;
- Behaving ethically and following the Member Code of Conduct;
- A commitment of time and taking an active and informed role in the affairs of the outside body.

2. WHAT ACCEPTING AN APPOINTMENT DOES NOT MEAN

- Representing the political party to which you owe your political loyalty;
- A watching role, avoiding taking part in the outside body's discussions and decisions;
- Looking at things from the Council's point of view alone;
- Being there to make up the numbers.

3. GENERAL DUTIES

- Read all the papers carefully;
- Attend meetings whenever possible (absence from meetings will not necessarily protect you if things go wrong);
- Question officers or other members of the outside body if you do not believe you have been given all or sufficient information or if you have concerns;
- Ensure you understand you have other responsibilities;
- Ensure the outside body takes professional advice when necessary;
- Ensure that proper minutes are taken of meetings;
- Ensure that if you have a contrary view your vote is recorded together with your reasons for taking that decision;

- Ensure you report back at least every 6 months to the Council, Executive or appropriate Overview and Scrutiny Committee. Democratic Services will advise you further on this.
- If you can no longer participate in the outside body, you should resign immediately.

4. SPECIFIC RESPONSIBILITIES

As well as the general duties set out above, the status of your appointment will determine whether there are specific responsibilities which fall to you. Outside bodies can be loosely grouped into 5 categories:

- Informal groups which are consultative or information sharing. These groups will not hold funds or generally be decision making. You will usually be putting forward the Council's position and hearing that of other groups;
- Local Government Association or local authority groups. You will be representing the Council and putting its views forward;
- Companies limited by shares or guarantee;
- Charities and Charitable Trusts;

The specific responsibilities of the last two groups are set out below.

5. COMPANIES

Companies are often created, to make the administration of an organisation easier. Companies are separate legal entities, which can enter into contracts, and employ staff. They can also sue and be sued, and this *may* protect the members of the organisation from individual, personal liability. It should be noted, however, that in some cases, directors can still personally liable, as detailed below.

There are several forms of company with which Councillors may be involved. The two most common forms are:-

- Companies Limited by Shares
- Companies Limited by Guarantee

Companies Limited by Shares

This type of company will have a share capital, and the company allocates the shares to its members (the shareholders). In the event that the company is wound up, each shareholder is liable to pay the amount equivalent to the nominal value of his or her shareholding.

In return for this, shareholders share the ownership of the company, and its profits. This is normally done by the company paying a dividend to its shareholders. The dividend is usually declared on the basis of an amount of money per share held. In this type of company, the day to day management of the company is usually vested in the directors. The members ultimately control the company by electing the directors, and deciding major issues at general meetings.

Most high street companies are companies limited by shares, paying dividends to their shareholders (members).

Companies Limited by Guarantee

Companies limited by guarantee also have members, who control the activities of the company in the same way (ie. electing directors, and making decisions in general meetings). However, these companies do not normally seek to make a profit, and do not therefore pay dividends to their members. In the event of the company being wound up, the members guarantee to make a payment to the level of their guarantee (although this is usually a nominal sum, eg. £1). This type of company is more commonly used for voluntary and public bodies, especially where charitable status is sought (a company limited by shares cannot normally fulfil the criteria for registration as a charity).

General Company Matters

Whether a company is limited by shares, or limited by guarantee, the company is controlled by reference to its "constitution", which is contained in the memorandum and articles of association. These documents will set out the powers of the company, and the rules by which it is to be managed.

Any act carried out by the company that is outside the powers set out in the memorandum will be unlawful, and a director involved in such an act may be personally liable for any resulting losses.

The articles of association will usually provide for the business of the company to be decided by the members of the company, acting in general meeting. At such meetings, the members would elect a board of directors, who would then deal with the day to day management of the company. In some cases, the articles may provide for the Board to elect further directors, in certain specified circumstances.

In some situations, the Council nominates Councillors to act as "observers" on the Board of Directors of a company. Although such observers would not be classed as directors for most purposes, Councillors should be aware that if

an observer's involvement increases, to such an extent that it could be said that there is an active engagement in the management of the company, he or she may be deemed to be a "shadow director" which may entail liability for losses, etc.

Once elected to the Board, a director has a number of duties and liabilities, under general company law. The fact that a director is appointed to the board as a representative of the Council does not diminish these duties. The director will be an agent of the company, whose prime duties and liabilities are as follows:

Duties

- A "fiduciary" duty to the company (not individual shareholders) to act honestly and in good faith and in the best interests of the company as a whole. This duty is akin to that owed by Councillors to the council tax payers of the district.
- A general duty of to take reasonable care and skill in acting in the company's affairs, including seeking professional advice where this is necessary.
- A duty to exercise independent judgement when dealing with the company's affairs, rather than blindly voting in accordance with a direction from another body represented by the director (such as the Council in the case of a director nominated by the Council). A director representing another body may take into account the views of that body, but cannot allow them to rule against the *company's* best interests.
- A duty to avoid conflicts of interests. The interests of the Council and the company may conflict, but the director's primary duty is the company, not the organisation he or she is representing.
- A duty not to make a private profit from their position. Directors must therefore disclose any interests they or their family may have in relation to the company's contracts, and only take further part in discussions to the extent which the governing articles permit.
- A duty to ensure that the legislation contained in the Companies Act is complied with, eg. Submission of accounts and returns, etc. Failure to do so can lead to disqualification as a director.

Liabilities

- Personal liability where a company acts outside its powers, and the director knowingly causes or permits the company to so act.
- Liability to members of the company for breach of trust, if he/she misapplies the money or property of the company. Directors may also be liable if they fail to take action to prevent the breach of a co-director of which they are aware.

- Liability to the company for any losses sustained where a director abuses his position in some way, or fails to act in the best interests of the company.
- Liability for losses caused by a director who fails to exercise the requisite level of skill and care (and fails to seek appropriate advice).
- Liability to contribute towards a company's assets where a director knows or ought to know that there is no reasonable prospect of the company avoiding liquidation, but allows the company to continue to trade ("wrongful trading"). A director should alert his fellow directors and the company's position, and seek advice as necessary.
- Liability for fraudulent trading ie. where a company deals with the intent of defrauding creditors or others. As well as a fine, a director may be disqualified from acting as a director in another company.
- Liability to a fine and/or making good losses, where cheques and other documents do not bear the name of the company.
- Liability to pay damages where the director deals with an individual or another company, who believes that the director is authorised to so act, when in fact he or she has no such power.

Companies of all types, (guarantee or shares) can purchase insurance for their directors against claims for negligence, breaches of trust, etc., (subject to the company's powers permitting this). Directors should ensure that such insurance is in place, and that the provision of insurance is within the powers of the company.

Local Authority Companies

Legislation is in force, which seeks to restrict and control companies which have a connection with local authorities, either because of the level of interest owned by the Council, or because of the degree of business and involvement between the Council and the company. "Company" includes:-

- Companies limited by shares;
- Companies limited by guarantee;
- Industrial and Provident Societies (including therefore most Housing Associations).

There are three types of local authority companies which are affected by the legislation. These are controlled, influenced and minority companies.

In general terms, companies are "controlled" by a local authority where there are more than 50% local authority interests.

Companies are "influenced" companies where there is at least 20% local authority interest plus a business relationship with the company accounting

for over 50% of the company's turnover and/or the company was located on local authority land leased or sold for less than best consideration.

Regulated companies (ie. companies which are either "controlled" or "influenced" companies), will be under the effective control of the local authority, and under the legislation, will be subject to the capital finance regime which applies to local authorities, as well as other special propriety controls.

Minority companies are companies where the Council's interest is less than 20%. This type of company is not treated as part of the local authority, and is able to act with more freedom (subject to the other provisions affecting companies in general).

For this reason, the Council usually ensures that any involvement it has in companies is kept below 20%, ie that less than 20% of voting rights/directors are associated with the Council. Councillors are requested to seek advice from the Head of Legal and Democratic Services if they consider that this limit may be exceeded at any time.

A person is "associated" with the Council if he or she is a current member or officer of the Council, or of a regulated company under the Council's control, or has been a member of the Council at any time within the preceding four years.

Councillors who are directors of regulated companies to which they have been nominated by the Council are under the following obligations.

- To ensure that the remuneration they receive from the company should not exceed prescribed limits, and should be declared;
- To give information to Councillors about their activities as required by the local authority (save for confidential information); and
- To cease to be a director immediately upon disqualification as a Councillor.

6. CHARITIES AND CHARITABLE TRUSTS

A Charitable organisation is one which is formed for one or more of the following charitable purposes:-

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

An organisation that falls within the definition of a charity must be registered with the Charity Commissioners. The Commissioners oversee the operations of all charities, and grant consent to various transactions involving charities, where the law requires this.

Because of the nature of sharing profits with shareholders, a company limited by shares cannot be a charity.

To register as a charity the organisation must submit its governing instrument (ie. the Trust Deed (in the case of a trust) the Memorandum and Articles of Association (of a company limited by guarantee) or the constitution (unincorporated association) to the Charity Commissioners for approval. If they are satisfied that the organisation is charitable it will be registered as such.

The law relating to charities imposes a number of duties and liabilities on those controlling the organisation. They are normally referred to as "trustees" which will include the Directors (of a company limited by guarantee) and the management committee of an unincorporated association.

Trustees' Duties

Trustees have the following duties:-

- A duty to act accordance with the Trust Deed and to protect the charity's assets;
- A duty to comply with the Charities Acts and other legislation affecting the charity;
- A duty not to make a private profit from their position;
- A duty to act with the standard of care which an ordinary, prudent business person would show. Higher standards are required of professional, and in relation to investment matters;
- A duty to ensure that the information relating to the trust and trustees is registered and the Charity Commissioners and that annual accounts and returns are completed and sent;
- (where charitable income exceeds £5,000) a duty to ensure that letters, adverts, cheques etc bear a statement that the organisation is a registered charity.

Trustees Liabilities

Trustees have the following liabilities:-

- A liability to make good any deficiency where trust property has been used for a trustee's own purposes, or for purposes not in accordance with the purposes of the trust
- Personal liability for losses or claims where a trustee has acted outside the scope of the trust deed
- Personal liability where the trustee has not shown the required standard of care

Unlike a limited company, a trust has no separate identity from the trustees. Trustees are therefore personally liable for losses on contracts or claims by third parties although trustees are entitled to an indemnity from the trust assets, provided they act properly in incurring the liability.

For example, in the case of a trust set up to run a community transport scheme, the trustees will be liable personally for a claim from a pedestrian injured by one of the drivers, although the trust's insurance arrangements will indemnify the trustees against the claim.

Trustees remain personally liable once they retire (eg. If they have entered into a contract on behalf of the trust) and should therefore seek an indemnity from their successors. If the charity is a company however the trustees for the time being will be responsible.

Trustees may be liable to fines if they do not comply with the duty to make returns etc.

Trustees Indemnities

An indemnity may be given from the trust fund provided the trustee has acted properly and within his/her 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.

7. COMMITTEES OF MANAGEMENT

Groups which are not charities, or charitable trusts or companies are "unincorporated associations" and have no separate legal identity from their members. The rules governing members' duties and liability will usually be set out in a constitution which is simply an agreement between the members as to how the organisation will operate. Usually the constitution provides for a management committee to be responsible for the everyday running of the organisation. Often unincorporated associations will be charitable and there are benefits to such organisations if they register as a charity.

Any property held by unincorporated associations eg. leases and licences of accommodation has to be held by individuals as the organisation does not have an existence of its own.

Broadly speaking, Management Committee Members must act within the constitution and must take reasonable care in exercising their powers. They should follow the guidance above as if they were Trustees.

Generally, the Management Committee Members are personally liable for the acts of the organisation, but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there are not enough funds, the Committee Members are personally liable for the shortfall.

If one person is appointed by the constitution to act as the agent of the organisation for certain purposes, then that person acts as agent of all the members of the organisation, who all have joint liability for the agent's actions.

Members of the Committee of Management will have personal liability if they act outside the authority given to them or if they do not comply with statute eg. the payment of tax and national insurance for employees.

Members of Management Committees will be entitled to an indemnity if they act in accordance with the constitution and are not at fault. It is possible to obtain insurance but if the organisation is to pay the premium, it must be permitted by the constitution.

8. COUNCIL INDEMNITIES

Since November 2004, it has been possible for an indemnity to be provided in relation to any action of, or failure to act by, a Councillor, which is authorised by the Council or where the Councillor is carrying on any functions at the request of, or with the approval of, or for purposes of, the Council. However, it does not extend to situations where the Councillor acts other than as a Councillor.

9. INTERESTS

There are a number of rules which Councillors must be aware of, which may limit the extent to which they are able to take part in debates or votes on issues. These rules extend to matters involving outside bodies of which Councillors are members or representatives.

The Member Code of Conduct, adopted by the Council requires Councillors to register their involvement in various organisations. This involvement may

also require them to declare interests when matters concerning the organisation are being discussed at a Council meeting. In some cases, Councillors may have to leave the meeting and refrain from taking part in discussion.

For further details Councillors should refer to the Member Code of Conduct to be found at the back of their copies of the Constitution.

Appendix B

Extract from Report to Overview and Scrutiny Report on Reporting Back Arrangements for Members Serving on Outside Bodies – 20/04/04

OUTSIDE BODIES QUARTERLY/ANNUAL REPORT

Your name: A:

On which body to do you sit: A:

How many times in the past quarter/year has the body met? A:

How many hours, including meeting preparation and travel time, have you spent (approx) A:

What rewards has membership of the Outside Body brought to the Council? (include any issues for follow-up action) A:

How do you feel you have been able to contribute? A:

Does representation on this body still meet with the Council's key goals (listed over): A:

Have there been any changes in administration of the Outside Body of which you are aware (ie address, phone no etc)? A:

Have you continued to received officer support from Copeland Borough Council, and if so, have there been any changes? A:

Improving Job Opportunities

A sustainable, competitive and diverse economy through Copeland, providing a good range of employment opportunities for all sections of the community.

- Unemployment in Copeland at or below the regional average by 2010.
- At least 28,300 full-time equivalent jobs are maintained in the Copeland economy year on year.

Health and Community Safety

Levels of health, wealth and community safety which are at least as good as the regional average in all of Copeland's wards.

Making Copeland a better place to live and work

Copeland recognised as having an above average quality of life so that people choose to live, work and spend their leisure time in the Borough.

- the annual net loss in population, particularly in the 15-24 year age group, is halted by 2005.

Improving and protecting our environment

Rural and urban environments that can be enjoyed by all people, now and for generations to come, and which contribute towards their health and quality of life and economic prospects:

An accountable, efficient, effective Council

To make the most efficient and effective use of all the resources available to the council, and those of partner organisations over which the Council has as influence, including people, money, capital assets and information.

Achieving Transformation Councillor Cath Giel – Deputy Leader

Councillor Norman Williams – Portfolio Holder

Whitehaven Rugby League Football Club

Members have followed with interest the situation at the Whitehaven Rugby League Football Club and have asked for a progress report since the Authority took its place on the newly formed Board of Directors on 15/01/08. The new Board is now in place and meets on a fortnightly basis with a programme of activities established to ensure that Governance arrangements and business planning is carried out to a high standard.

To date the Board have:-

- Agreed individual board member responsibilities for key areas including financial management, marketing, administration and rugby development.
- Interviewed a number of applicants for the post of General Manager and appointed Nigel Beatty to the post with effect from 10 March 2009.
- Negotiated with Sellafield Ltd for a management secondee to work at the club for 6 months – it is anticipated that the secondee will be in place mid April.
- Formalised relationships with the rugby football league to ensure that club activities are compliant with the rules of the Governing Body
- Submitted a draft expression of interest to the RLF Facilities Trust for grant aid towards improvements to facilities at the club. A further more detailed submission will be made which will be considered by the RFL in May 2009
- Established a training programme for the Board members and staff so that they have a full understanding and knowledge of Health and Safety requirements.
- Formalised relationships with volunteer workers at the club particularly with those involved in hosting and developing sponsors.
- Agreed a protocol for Board Members to act as Match Day Directors on a rota basis.
- Agreed a payment plan to ensure that Creditor payments are being made on a regular basis with historic outstanding debts being brought up to date.

- The Company is working within its agreed Bank overdraft facility.
- Initiated arrangements to strengthen the financial management systems thus ensuring that all Income and Expenditure is properly accounted for.

In addition the Board are working on:-

- The Accounts for the Year Ended 31 December 2008.
-
- Preparing a Business/Financial Plan for 2009. This will be provided to CBC, the Rugby Football League and Barclays Bank in the near future.
- In preparation for the shareholders AGM which will take place at a date to be set in April 2009.

Whitehaven Public Realm Priority Projects

Members should recall that the overall strategy for the development of Whitehaven Town Centre is based on creating clusters of development focused on new public spaces of high quality. The aim is to reinforce and strengthen the existing or emerging character of these areas to create distinctive urban 'quarters'. In an attempt to deliver this strategy we are progressing three key projects:

- Whitehaven Civic Quarter – the public engagement and exhibition that was showing in the Civic Hall has now finished. The detailed design has been completed and a planning application has been submitted. An advert has been placed in both local and national press for a contractor for the works. It is hoped they will commence works in June 2009.
- Mount Pleasant – This is the most visible link between the Harbour and the Haig Zone of the Whitehaven Coast. The proposed public realm investment of £433,000 will deliver a high quality accessible area incorporating new lighting, surfacing and arts spaces. Contractors Gillespies have produced three concept options which will be part of the public exhibition to be held in The Beacon starting on 19th March 2009.
- The Conservation Management Plan for Whitehaven – This plan was used to inform the submitted bid for the Whitehaven Townscape Heritage Initiative (THI), which is being finalised during March 2009. Consultation activities on the Whitehaven Plan are scheduled to take place during May and June. The Heritage Lottery Fund will be announcing successful stage one THI bids in April 2009.

Whitehaven Rugby League Football Club – Review of the Role of Council Members – by OSC1 22nd November 2010

Addendum to report regarding Pow Beck Scheme.

1. At the above meeting information was provided regarding financial support given from the West Cumbria Development Fund (WCDF). It was clarified at the meeting that the Whitehaven Rugby League Football Club (WRLFC) had not received all of the money from the WCDF and a full breakdown of the expenditure was requested. OSC also requested further information on the nature of the SPV.

The text from the original report is reproduced in paragraph 2 with further information requested detailed in paragraph 3.

2. **Financial Support from West Cumbria Development Fund (WCDF)**

The following information was provided from WCDF in answer to questions raised by Councillor Norwood, and was included in the original report to OSC on 22nd October:

- **What funds have been paid to Whitehaven Rugby League Club over the last 10 years?**

West Cumbria Development Found has not paid any funds directly to the Whitehaven Rugby League Club in the past ten years.

- **Have any monies been via'd through West Cumbria Development Fund to the Whitehaven Rugby League?**

- (i) In March 2008 Copeland Borough Council took out a £75,000 loan from West Cumbria Development Fund “for the purpose of assisting Whitehaven Rugby League Football Club develop a sustainable business plan to satisfy the necessary funding conditions to start the Pow Beck Valley regeneration programme”. This loan is due to be repaid by Copeland Borough Council by 31.03.11.
- (ii) In March 2008 BNFL Enterprises transferred £500,000 to West Cumbria Development Fund which was “...assigned to the development of the Whitehaven Rugby League stadium provided it supports West Lakes Renaissance and Copeland Borough Council’s economic development plans for the Pow Beck Valley area of Whitehaven”.

This £500,000 has been held by West Cumbria Development Fund and is released under joint instruction from West Lakes Renaissance (now Britain's Energy Coast-West Cumbria) and Copeland Borough Council.

There have been two withdrawals to date:

£100,000 was released in May 2009 "to progress the development of a joint stadium to be shared by Whitehaven Rugby League FC and Whitehaven Amateurs Football Club. Agreement in principle has now been reached with both clubs to form a Special Purpose Vehicle to develop the new stadium".

£44,530 was released in June 2010 "to be used by Whitehaven Rugby League Football Club for essential activities required for the transition to a Special Purpose Vehicle and the new stadium".

- **What monies are held by the Fund for the Whitehaven Rugby League?**

West Cumbria Development Fund is still holding £355,470 of the original BNFL Enterprises £500,000.

3. Further information Provided

At the meeting of OSC on 22nd October various queries were raised regarding the financial support from WCDF to the Pow Beck Scheme, and the following information is provided:

- (i) The decision by WCDF to provide a loan of £75,000 to assist Copeland Borough Council (CBC) in the effort to secure the immediate future of Whitehaven RLFC was taken by the WCDF board on 12.03.08. The CBC Chief Executive came to the Board and personally presented the case to the WCDF directors at the beginning of the meeting and departed after his presentation. There is no record to indicate that any of the eight directors present dissented from the decision so, whilst there is equally no record stating whether Councillor Giel made a declaration of interest or declined to vote on the matter during the board meeting, the outcome would have been the same. A register of directors' interests was included in the WCDF board papers that were circulated for the 12.03.08 board meeting and this would have made it clear to the board members that Councillor Giel was Copeland Borough Council's nominated director on the WCDF board.
- (ii) To clarify the original response provided by WCDF in paragraph 2, it should be noted that the WCDF have not paid any funds directly to the WRLFC from their own funds. The BNFL monies

for the Pow Beck Sports Valley development is held and processed by WCDF. This is accounted for separately from the WCDF money that the WCDF Board make allocation decisions on.

- (iii) Furthermore, WCDF is not holding any funding for the WRLFC. There was an allocation for 2011/12 within the original BNFL £500,000 for the development of the Pow Beck Valley but with the WRLFC going into administration this is no longer valid. WCDF is however still holding £355,470 for the Pow Beck Valley Scheme.

- (iv) The WCDF board was apprised of the transfer of the £500,000 from BNFL Enterprises for “the Development of the Pow Beck Valley” in March 2008 and the conditions for its release. The WCDF board, however, has had no direct involvement in the release of two tranches of money to date. Both of these releases were overseen by the WCDF officers who ensured that they were in accordance with the prescribed conditions i.e. written authorisation from both Copeland Borough Council and West Lakes Renaissance / Britain’s Energy Coast – West Cumbria. The officers have kept the WCDF board advised of the releases after the event within subsequent WCDF board reports. Letters were received authorising the release of £100,000 in May 2009 and £100,000 in June 2010 (only £44,530 of the latter has been drawn down). The West Cumbria Development Fund is simply acting as banker for the £500,000 and the WCDF officers effectively only ensure that the conditions that were applied to the release of the money awarded by BNFL are adhered to (i.e. formal authorisation from both Copeland Borough Council and West lakes Renaissance/Britain’s Energy Coast – West Cumbria for the purpose for which it was provided).

- (v) The WRLFC were an independent private business. Their move into administration has resulted in a new private company successfully bidding to take on the assets of the WRLFC. This new company, Whitehaven 2010 Rugby Club, has the full support of the National Rugby Football League (RFL) and both the new company running the Whitehaven Club and the RFL have committed to the Pow Beck Sports Valley and have joined the Special Purpose Vehicle board grouping. Negotiations with all stakeholders necessary to facilitate a community stadium as the first phase of the sports valley at Pow Beck are ongoing. Whitehaven 2010 Rugby Club continues to be an important partner in the stadium development.

- (vi) The BNFL money for Pow Beck does need to be allocated, but not spent, by December 2010 which fits with the timetable for Britain's Energy Coast allocation. The decision on spending the remaining balance of the former BNFL monies will be taken by the Council's Executive and will be subject to scrutiny in the usual way. It must be emphasised however that this decision must also be approved by Britain's Energy Coast who have joint authority with the Council regarding this funding source. All Executive decisions are required to be in accordance with the policy framework set by the Council. Options are currently being reviewed regarding the Stadium development which will be appraised by the BEC Board on 16 December. If the project viability is supported by BEC an in principle intention to allocate the remaining BNFL to the scheme will be made to WCDF before the funding expiry date for this purpose of 31 December 2010. The Council's Executive will make a decision on this at its January 2011 meeting.
- (vii) The SPV is Whitehaven Multi-Sports Stadium Ltd was incorporated on 15 June 2009 as a Special Purpose Vehicle (SPV) with the objective of bringing forward the delivery of a new shared Stadium at Pow Beck Valley. The Partners involved in the SPV are Copeland Borough Council, West Lakes Renaissance Ltd, Whitehaven Amateur Football Club and Whitehaven Rugby Football League Club Ltd with the intention that each Partner would own 25% of the shareholding. In view of the impending demise of the North West Development Agency and therefore West Lakes Renaissance Ltd it has not been possible to complete the formalities of the SPV which will now be subject to further deliberations between the current Partners and bodies.
- (viii) Regarding the £144, 530, this can be broken down as follows:

Financial year	Expenditure item	Amount
2009/10	£18,000 was paid to WRLFC towards a total cost of £58,450 + VAT in respect of a variety of facility improvements to the Recreation Ground. These improvements comprised of repairing external fabric, removing existing bars and replacing with a single bar and refurbishing toilets.	£18,000
2009/10	Cost incurred in setting up a special purpose vehicle and in establishing full details of land ownership to move the Sports Valley Stadium forward	£10,228
2009/10	Payment to Whitehaven Amateur FC for football stand and club house improvements	£62,445

2009/10	Payment to consultants in connection with special purpose vehicle	£738
2009/10	Unspent but carried forward for the purpose of facilitating the creation of the special purpose vehicle	£8,589
2010/11	Payment to WRLFC in connection with their new lease of land to the Miners' Welfare	£15,500 paid by WCDF direct to WRLFC
2010/11	Payment to WRLFC in respect of three severance payments	£6,000 paid by WCDF direct to WRLFC
2010/11	Payment to WRLFC in respect of a new digital scoreboard which can be used by any new club	£11,726 paid by WCDF direct to WRLFC
2010/11	Payment to WRLFC for new gymnasium equipment which can be used by any new club	£11,304 paid by WCDF direct to WRLFC

- (ix) With regards to authorisation of the spend, an urgent action was made on 28 May 2009 for £80,445 (ie is £62,445 to Whitehaven Amateurs Football Club and £18,000 to WRLFC) from the BNFL allocation for Pow Beck Valley development. This urgent action was then reported to the Executive on 30 June 2009. Consultation on this decision was led by the Director of Development, Acting Chief Executive at the time, with the Leader, Portfolio Holder for Regeneration and Britain's Energy Coast. The Pow Beck partners were part of the discussion on development requirements. There are accounts available for the full £100,000 spend which includes legal support to develop the sports valley and partnership special purpose vehicle. There is still an underspend of £8,589 from this allocation which is allocated for the cost of the eventual setting up of the legal company as the Multi Sports Stadium special purpose vehicle when all the partners are ready and authorised to formally commit. With regards to the £44,530, payments were verified by the Councils delegated project manager. Invoices or other evidence to substantiate the spend are held by the Administrators of the former WRLFC.