

Draft Code of Best Practice for Governance of Companies

The scope of the best practice is based primarily on the UK Corporate Governance Code published by the Financial Conduct Authority together with best practice identified from other local authorities. The following additional sources of best practice have been reviewed and contribute to the summary proposals below.

Local Authority Companies Best Practice

Norse Group

Norse Group: Shareholder Committee TOR

Grant Thornton: Birmingham Group Governance

Birmingham City Council: Group Shareholder Committee TOR

Bristol City Council Companies

South Holland District Council

York City Council

Other Governance Best Practice

FRC: UK Corporate Governance Code

FRC: UK Stewardship Code

NAO Report: Companies in Government

HM Treasury: Managing Public Money

Grant Thornton white papers

The future of governance :One small step

All Aboard

Working in tandem

A slow burner

Creating & protecting value

Spreading their wings

Responding to the challenge: alternative delivery models in local government

Concepts

Types of Company

The companies owned by Nottingham City Council are

- Private company limited by guarantee. The liability of the owners (members) on winding up the company is limited to the (usually nominal) amount stated in the company's articles. It is commonly used for not-for-profit companies;
- Private company limited by shares. The liability of its owners (the shareholders) is limited to the amount, if any, unpaid on the shares which cannot be publicly traded.

Ownership and Control

Companies wholly or partially owned are generally companies limited by shares where Nottingham City Council owns all or some of the shares. The Council is able to exert control by

- being able to appoint, approve or remove directors;
- providing funding, with rights of control over how that funding is spent;

- owning a share conferring special rights; or
- being able to set or constrain corporate policy.

Definition of a company

A company is a voluntary association of individuals incorporated by registration, usually created to conduct business, to become a separate legal entity from its owners. It has the full legal powers of an individual, for example to enter into contracts, raise funds, incur liabilities and employ staff. It is accountable to its owners but their liability for what the company does is limited.

Power to Trade

Under both the Local Government Act 2003 and Localism Act 2011, the power to trade must be exercised through a company.

Section 95 of the 2003 Act can be used to trade in any ordinary function of the authority including well-being (as long as the primary purpose is not revenue raising and no charges are made for mandatory services). A business case and risk analysis is required.

The General Power of Competence (GPC) within the Localism Act 2011 states that: “A local authority has power to do anything that individuals generally may do” without reference to its ordinary functions. It enables local authorities to do things:

- anywhere in the UK or elsewhere
- for a commercial purpose or otherwise, or for a charge or without charge
- for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.

But does not

- provide local authorities with any new power to raise tax or precepts, or to borrow
- enable councils to set charges for services where the authority has a statutory duty to provide the service to that individual,
- enable councils to impose fines or create offences or byelaws affecting the rights of others, over and above existing powers to do so.

Formation

The Council’s constitution requires as part of Financial Regulations that

B.10 The Chief Finance Officer is responsible for providing guidance on setting up Companies.

The Chief Finance Officer will from time to time set out and communicate updates and amendments to the key requirements for setting up Companies.

The company will be provided with the freedoms to achieve its commercial and operational objectives.

Information will flow between NCC and the company to ensure that mutual understanding and shareholder / company objectives are maintained.

Any interests (including competing interests between the Council and Company, or between Group companies) will be formally recognised and controlled according to the Code of Conduct and Company rules, providing for:

- Stewardship of assets
- Upholding legal duties
- Understanding Company performance
- Understanding of the external environment
- Effective Governance of the Company
- Effective Governance of the NCC group

Topic	NCC as Shareholder	Company Management or Board
Company Formation	<p>Defined process for approval Executive Board approval setting out objectives and monitoring requirements^M Approval criteria Set Articles of Association (AA) – reserved matters, delegations including</p> <ul style="list-style-type: none"> • Consider voting rights and golden shares • Consider proportionate NCC councillor and officer representation on the Company Board <p>Agree Memorandum of Understanding (MOU)</p> <ul style="list-style-type: none"> • Objectives • Resource Needs Assessment 	<p>Agree MOU Prepare and implement Business Plan which complies with AA and MOU</p> <p>Agree KPIs & SLAs (including</p>

^M - Mandatory

Topic	NCC as Shareholder	Company Management or Board
	<ul style="list-style-type: none"> Staffing including key roles and training Working Capital, Assets & Investment plan including investment cycle and its impact on returns, Retained profits (for reinvestment and contingency – minimum and profit share) Financing (over medium to long term) Assurance framework <ul style="list-style-type: none"> Internal Audit External Audit Risk Management Operational Management Intervention criteria* <p>Agree KPIs & SLAs (including timescale and process for transition)</p>	<p>timescale and process for transition)</p>
External & Internal Reviews	<p>Appointment of External and Internal Audit & other external review agency^M Agree the scope of Internal Audit work^M Timetable for External and Internal Audit^M</p>	<p>Meet shareholder requirements for external audit and company reviews Influence Internal Audit Plan An objective is to have an unqualified external audit report</p>
Monitoring of Companies	<p>Corporate Register of Companies & Associates^M NCC shareholder board to advise companies and executive^M Meetings with Company</p> <ul style="list-style-type: none"> Clear roles for NCC representatives Agenda and minutes Non-disclosure agreement <p>Funding / Loans</p> <ul style="list-style-type: none"> Clear processes with commercial timescale Associated additional information requirements clearly communicated <p>Monitoring resource (proportionality / risk driven)</p> <ul style="list-style-type: none"> Staffing (CFO allocation) Guidance on monitoring process Training and expertise for monitoring process Incorporated in Appraisal <p>Monitoring content</p> <ul style="list-style-type: none"> Assurance Framework based <ul style="list-style-type: none"> Incorporate view of regulator / assurance providers Shared risks Understand business – its unit costs and key KPIs, project / deliverables pipeline, contribution to the group NCC project officer opinion based on an 	<p>Annual report to NCC as shareholder^M Monthly and quarterly finance reporting pack for NCC shareholder board^M</p> <ul style="list-style-type: none"> Objectives Management Accounts Cash flow implications KPIs Could also include these items (see **) <p>Assurance framework</p> <ul style="list-style-type: none"> Review of regulators and assurance providers reports^M Monitoring of actions to respond to regulators, assurance providers, and key internally identified issues / risks^M Management and Finance reporting on objectives, risks and their assurance frameworks^M Incorporate sustainability factors, KPIs and data^M e.g. <ul style="list-style-type: none"> Performance against customer and environmental

^M - Mandatory

Topic	NCC as Shareholder	Company Management or Board
	<p>assurance framework^M on</p> <ul style="list-style-type: none"> ○ Objectives ○ Agreed KPIs ○ Finance and other statutory / regulatory matters <ul style="list-style-type: none"> • Regulators / Assurance providers • Finance <ul style="list-style-type: none"> ○ Funding (**) ○ Cashflow (**) ○ Profitability (**) ○ Payback / ROI (**) ○ Teckal exemption where applicable (**) ○ S151 opinion on Finance Reporting Pack • Guidelines for escalation* • Annual report on LT viability <p>Monitoring timeline</p> <ul style="list-style-type: none"> • Quarterly / 6 monthly • Programme of Triennial Reviews / Annual reviews - these will reassess the business case / business plan and performance <p>Triennial reviews - independent</p> <ul style="list-style-type: none"> • Business plan • Long term viability and structure • Continue / Stop / Reorganise decisions 	<p>targets</p> <ul style="list-style-type: none"> • Internal control systems^M • Reporting & Escalation rules^M • Finance & Insurance including cashflow^M • Teckal exemption where applicable^M <p>Shared risks^M e.g. Data Protection, Finance^M</p> <p>Dialogue with shareholder(s)^M</p> <ul style="list-style-type: none"> • Communicate needs commercial timescales and sensitivities
Board meetings	<p>Support</p> <p>Monitor for compliance with CGC</p> <p>Mandatory attendance by NCC Finance and Project Officers^M</p> <p>Meet commercial decision timescales</p>	<p>Frequency – sufficiently regularly to discharge duties (minimum quarterly)</p> <p>Board meetings align with (quarterly) MI timetables</p> <p>Chair – Independence</p> <p>Role of board complies with UK Corporate Governance Code</p> <p>Conflicts of Interests actively managed</p> <p>Access to advice</p>
Board Composition	<p>Mandatory training for councillors / colleagues prior to appointment.^M</p> <p>Conflicts of Interests actively managed</p>	<p>NEDs</p> <p>Skills Audit & Appointments – Engage appropriate external expertise</p>

Topic	NCC as Shareholder	Company Management or Board
	Managed progress towards more NED board chairs Number of councillor directors limited in each company (with appropriate voting arrangements to maintain Teckal exemptions if necessary) Assessed councillor development programme including commercial board skills Maximum number of councillor directors per board proportionate with voting rights. Councillors with the assessed skill to be eligible to be placed on company boards	Evaluation (triennially independently facilitated) Mandatory training for directors Induction & annual training programme Job specification T&Cs Conflicts of Interests actively managed

The above requirements are suggestions and the exact requirements will be proportionate to the size and scale of the company and the City Council's involvement.

Suggested terms of reference for a Nottingham City Council shareholder board are attached at Appendix 1 to the Code.

The form of a model shareholder agreement is set out at Appendix 2 to the Code.

A guidance note for Directors of Council owned companies is set out at appendix 3 to the Code.

Role

To ensure that the Council's strategic objectives are met across the group and to support the development of the Group in line with the Council's regulations and ambitions. Commercially sensitive information provided to the board will not be available for publishing.

Responsibilities

Board responsibilities include:

- Supporting the development of entities and the Group
- Ensuring that the legal and commercial interests of the Council as shareholder are considered and protected through formal structures such as shareholder agreements and loan agreements
- Making proposals to the Executive on the formation / disposal / dissolution of companies and matters, such as varying Articles of Association, varying ownership and structure and varying share rights
- Holding entity boards and Senior Managers to account for their performance with the necessary powers to make and drive immediate change through the Boards

In fulfilling its responsibilities the board will:

- Receive reports on the performance of the Companies and Group, against their Business Plans including Annual Shareholder Reports.
- Receive analysis of the business of the Companies and Group including
 - o Management accounts
 - o Key commercial and legal risks
 - o KPIs in the business plans
 - o Investment analytics
- Identify entities' business support requirements
- Provide entities with clear direction and support in its role as shareholder
- Evaluate effectiveness of entity board governance structure and processes and recommend changes as required

- Review business plans and strategies of the entities to ensure alignment with the Council's strategic direction
- Oversee compliance
 - o to ensure that taxation, legal and financial interests of the Council are consideration and protected
 - o with procurement regulations
 - o with appropriate business ethics including in respect of potential conflicts of interest
- Ensure that risk relating to the entities is at a suitable level for the Council to bear
- Receive updates and training in respect of best practice for company governance and associated matters

The shareholders' agreement will contain specific, important and practical rules relating to the company and the relationship between the shareholders.

The agreement will:

- Set out the shareholders' rights and obligations;
- Regulate the sale of shares in the company - Issuing shares and transferring shares – including provisions to prevent unwanted third parties acquiring shares and how a shareholder can sell shares.
- Providing some protection to holders of less than 50% of the shares – including requiring certain decisions to be agreed by all shareholders.
- Running the company – including appointing, removing and paying directors, deciding on the company's business, making large capital outlays, providing management information to shareholders, banking arrangements and financing the company.
- Paying dividends.
- Competition restrictions.
- Dispute resolution procedures.

Schedules to the agreement will include

- Shareholder Consent Matters
- Operational Matters
- Business Plan
- Company Covenants

Guide to Directors' Conflicts of Interest and Declarations of Interest following implementation of the Companies Act 2006

CONTENTS

Clause	Heading
1	Introduction
2	The duty to avoid conflicts of interest
3	The duty to declare a personal interest arising in relation to a transaction or arrangement between the director and the company
4	The duty not to accept benefits from third parties
5	Authorisation of situational conflicts and management of conflicts of interests
6	Declarations of interest
Appendix A	Directors' General Duties under the Companies Act 2006
Appendix B	Connected persons and interests
Appendix C	Pro forma Declaration of Interests [and Authority]

Guide to Directors' Conflicts of Interest and Declarations of Interest following implementation of the Companies Act 2006

1 Introduction

This guide is to help directors understand their duties, with effect from 1 October 2008, under Companies Act 2006 ("Act") to:

- avoid conflicts of interest;
- declare their interest in existing and proposed transactions or arrangements with the company; and
- not accept benefits from third parties.

Appendix A summarises all of the codified directors' duties brought into force by the Act, including those in relation to conflicts of interest and acceptance of benefits.

Please read the contents of this guide carefully and complete the declaration of interests and authority attached as Appendix C and return it to the Company Secretary

2 The duty to avoid conflicts of interest

From 1 October 2008, a director has a duty under section 175 of the Act to avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company of which he is a director unless:

- the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- the matter is authorised in advance by other directors who do not have a similar conflict of interest.

This duty to avoid a situation in which a director has or possibly may have a conflict of interest ("situational conflict") does not apply to a conflict of interest arising in relation to a transaction or arrangement between the director and the company ("transactional conflict"), to which different rules apply (see section 2 below).

A conflict of interest includes a conflict between a director's personal interest and his duty as a director, as well as a conflict between the duties he owes to different companies of which he is a director.

The duty to avoid situational conflicts applies in particular to the exploitation by the director of any property, any information or an opportunity which either belongs to the company or is in the company's normal line of business, regardless of whether or not the company could have taken advantage of it.

It is not necessary for the director to have any control or management influence over a particular situation for a situational conflict to arise.

A personal interest of a director may include indirect interests arising from the interests of a range of persons who are deemed by the Act to be connected with the director. Appendix B lists the categories of "connected persons" and gives guidance on identifying an interest.

A director must disclose a situational conflict and obtain board authorisation before he allows it to arise.

Failure to disclose a situational conflict is not a criminal offence but may give rise to a civil claim by the company against a director to account to the company for any profit made by

him or his connected persons or for any loss suffered by the company, in either case as a result of the undisclosed situational conflict.

In the case of a private company incorporated before 1 October 2008 directors may only authorise a situational conflict if an ordinary shareholder resolution is passed authorising them to do so. In the case of a public company, directors can only authorise a situational conflict if its articles of association specifically allow for authorisation of conflicts by the board (and, if necessary, have been altered by special shareholder resolution in order to do so). The process for identifying, disclosing and, possibly, authorising situational conflicts is not intended to be a substitute for managing an actual conflict of interest if one arises, for example, by excluding the conflicted director from board meetings and discussions and not sending him certain board papers (see section 5 below for further information on authorisation of situational conflicts and management of conflicts of interest).

Examples of where situational conflicts may arise are:

- if a director of the company is a competitor of the company;
- if a director of the company is a major shareholder in the company;
- if a director of the company is a customer of, or a supplier to, the company;
- if a director of the company owns property adjacent to the company's property, the value of which could be affected by the activities of the company;
- if a director of the company has an advisory relationship (for example, financial or legal) with the company or a competitor of the company;
- if a director of the company is a director of the company's pension trustee company;
- if a director of the company is interested in taking up an opportunity that had been offered to, but declined by, the company;
- if a director of the company is appointed as a director of another company which competes with, is a major shareholder in, is a customer of or a supplier to, owns property adjacent to, or has an advisory relationship with the company;
- if a director of the company is appointed as a director of another company that is interested in taking up an opportunity that had been offered to but declined by the company;
- if a director of the company is a shareholder in a competing company or a company that is customer of or a supplier to the company;
- if a director of the company is nominated to represent the company on the board of a joint venture company in which the company has invested;
- if a director of the company sits on the board of a statutory or non-statutory body which has a relationship with or advises the company or one of its subsidiaries;
- if a director of the company is in a situation where he can make a profit as a result of his directorship, whether or not he discloses this to the company; or
- if a director of the company is a director of another company which the company is proposing to acquire or which is proposing to make an offer for the company.

In each example, reference to a "director" includes the director's connected persons (see further Appendix B below).

3 The duty to declare a personal interest arising in relation to a transaction or arrangement between the director and the company

Conflicts arising in these circumstances are covered by two separate provisions of the Act:

- under section 177, a director has a duty to declare an interest, either direct or indirect, in a proposed transaction or arrangement with the company (a transactional conflict); and
- under section 182, a director must declare an interest, either direct or indirect, in an existing transaction or arrangement with the company, unless he has already declared that interest under section 177,

unless, in either case, the interest cannot reasonably be regarded as likely to give rise to a conflict of interest or if, and to the extent that, the other directors are already aware of it or ought reasonably to be aware of it.

Failure to declare a transactional interest may give rise to a civil claim against a director of the same kind as described in section 1 above. In addition, failure to declare an interest in an existing contract under section 182 is a criminal offence punishable by a fine.

A situation in which a director has or possibly may have a conflict of interest that initially falls within section 175 (a situational conflict) may evolve into a matter falling within section 177 (a transactional conflict), in which case section 175 will no longer apply. For example, if a director of the company is also on the company's list of preferred suppliers, that relationship may fall within section 175, but the proposed entry into of a supply contract between the company and the director would then fall within section 177.

The declaration of an interest in a proposed transaction (governed by section 177) must be made in advance of the transaction being entered into, whereas the declaration of an interest in an existing transaction or arrangement (governed by section 182) must be declared as soon as reasonably practicable, in both cases to the other directors, either at a board meeting or by a written notice. Care may be needed if a declaration is made at a meeting where not all other directors are present; written notice to absent directors may be required (possibly in the form of board minutes). Notice may be given by email to directors who have agreed to receive notices in this way.

The interested director will need to provide the other directors with sufficient details of the nature and extent of his personal interest as are necessary for them to assess and to decide how to address the matter.

4 The duty not to accept benefits from third parties

Under section 176 of the Act a director must not accept a benefit from a third party conferred by reason of his being a director or his doing, or not doing, anything as a director, unless the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

A third party means a person other than the company of which he is a director and any other company within the company's group.

The acceptance of a benefit which would breach a director's duty under section 176 cannot be authorised by the company's board of directors.

If a director is in any doubt whether a benefit is permitted he should [refer to the company's entertainment policy and/or] [seek guidance from [the Company Secretary]].

5 Authorisation of situational conflicts and management of conflicts of interests

Board authorisation of a situational conflict under section 175 is required before it can be allowed to arise. There is no statutory requirement for authorisation or approval of an interest in a transaction or arrangement declared by a director under sections 177 or 182, although the board will usually want to consider the implications of a declaration and take appropriate steps to manage any actual conflict of interest which is apparent from it.

In the following circumstances, board authorisation of a situational conflict will not be possible:

- in the case of a public company, because its articles of associations do not permit it or, in the case of a private company incorporated before 1 October 2008, because a shareholder resolution has not yet been passed to allow board authorisations (see section 2 above);
- if a director has already allowed a situational conflict to arise in breach of section 175 as retrospective board authorisation is not permitted by the Act; or
- if there are insufficient non-conflicted directors to convene a quorate board meeting to consider authorisation of the conflict.

In those circumstances, if the company wishes to approve the conflict situation, it must pass a shareholder ordinary resolution to do so. Neither the conflicted director nor his connected persons will be able to vote any shares in the company held by them in favour of such an approval resolution.

The following matters should be considered by a board when considering authorising a situational conflict:

- only non-conflicted directors can count towards the quorum and vote on any resolution giving the authorisation; although the task of reviewing authorisations and making recommendations may be delegated to a committee, authorisations should be granted at a quorate meeting of the full board;
- in taking the decision on whether or not to authorise a conflict the directors must exercise independent judgment and act in a way they consider, in good faith, will be most likely to promote the company's success for the benefit of its members as a whole; and
- the interested director(s) should normally be excluded from all discussions concerning the situational conflict and all related voting.

If it is decided to authorise a conflict, then a board should also consider if it is appropriate to attach any limits or conditions to the authorisation. Matters that may be relevant are:

- where the director is connected with a third party, an acknowledgement that where he obtains information that is confidential to that third party, he will not be obliged to disclose that information to the company or use it in relation to the company's affairs in circumstances where to do so would amount to a breach of that confidence;
- confirmation from the director that any confidential information of the company relating to the situational conflict will not be disclosed to any third party;
- an acknowledgement that the interested director will not be in breach of duty when the relevant situation arises due to his being a director, secretary or shareholder of any group company of the company; and
- where the interested director takes mitigating action when the actual relevant situation arises by agreeing not to receive related board papers or other information and not to attend board discussions (or participate in votes on the relevant matter) he will not be in breach of duty in respect of the relevant situation.

6 Declarations of interest

Each board of directors will need to consider the situation of each of its directors to determine if there are:

- any actual or potential situational conflicts that need to be disclosed to and authorised by that board; and/or
- any direct or indirect interests in proposed or existing transactions with the company.

Directors will therefore be requested to complete declaration of interest [and authority] forms and return them to the [Company Secretary]. The forms will be in three parts:

Part 1 will list the directorships and other relevant situations of which the company is already aware.

Part 2 is for the director to add any directorships and other relevant situations not listed in Part 1, including the nature and extent of any direct and indirect interest and any background information that the director considers may be relevant to the board's assessment.

Part 3 is for the director to notify of any direct or indirect interests in proposed or existing transactions with the company. This can be a general notice that the director is also a director or shareholder in another organisation or otherwise is directly or indirectly interested in it, and should be regarded as interested in any transaction or arrangement with that organisation. Again, the director should give details of the nature and extent of the interest.

A personal interest of a director may include an indirect interest arising from the interest of a connected person (see section 2 below).

Directors will need to consider carefully whether any of their connected persons hold positions of which they are aware that:

- (a) conflict or possibly may conflict with the interests of the the company leading to them being in breach of section 175 of the Act, unless declared to and authorised by the board; or
- (b) mean that the director is directly or indirectly interested in a proposed transaction or arrangement which must be declared to the directors in accordance with section 177 of the Act before such transaction or arrangement is entered into; or
- (c) mean that the director is directly or indirectly interested in an existing transaction or arrangement which must be declared to the directors in accordance with section 182 of the Act as soon as reasonably practicable.

Appendix B contains guidance to assist directors in identifying connected persons and interests.

If a director is in doubt as to whether an interest needs to be included he should seek guidance from the [Company Secretary].

DRAFT CONSULTATION DOCUMENT

Appendix A

Directors' General Duties under the Companies Act 2006

s.171 Duty to act within powers (in accordance with company's constitution)

s.172 Duty to promote the success of the Company

A director must act in a way he considers in good faith, would most likely promote the success of the Company for the benefit of its members as a whole, and in doing so have regard to:

- (a) the likely consequences of any decision in the long term;
- (b) the interests of the Company's employees;
- (c) the need to foster the company's business relationships with suppliers, customers and others
- (d) the impact of the company's operations on the community and the environment
- (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
- (f) the need to act fairly as between members of the company.

s.173 Duty to exercise independent judgment.

s.174 Duty to exercise reasonable care, skill and diligence.

s.175 Duty to avoid a conflict of interest.

s.176 Duty not to accept benefits from third parties.

s.177 Duty to declare interest in proposed transaction or arrangements.

s.182 Duty to declare interests in existing transactions or arrangements.

The section 175, 176, 177 and 182 duties are not infringed if the interest, or in the case of section 176 the acceptance of the benefit, cannot reasonably be regarded as likely to give rise to a conflict of interest.

Appendix B

Connected persons and interests

Persons connected with a director

- the director's spouse
- the director's civil partner
- any other person (a "Partner"), whether of a different sex or the same sex, with whom the director lives as partner in an enduring family relationship (but not grandparents, grandchildren, siblings, aunts, uncles, nieces or nephews)
- the director's children or step-children (including adults)
- the children or step-children of a Partner if they live with the director and are under the age of 18
- the director's parents
- a company if the director and his connected persons together can exercise more than 20 % of the voting power at a general meeting of the company
- a person acting in his capacity as a trustee of a trust the beneficiaries of which include the director, his family members or a connected company (excluding a trust for employees' share scheme or pension scheme)
- a person acting in his capacity as a trustee of a trust the terms of which confer a power on the trustee that may be exercised for the benefit of the director, his family members or a connected company (excluding a trust for employees' share scheme or pension scheme)
- a person acting in his capacity as partner of the director, his family member, a connected company or a connected trustee
- a firm which is a legal person and in which a partner is the director, his family member, a connected company or a connected trustee
- a firm which is a legal person and in which a partner of that firm is itself a firm in which the director (or his family member or a connected company or a connected trustee) is a partner.
- Are you in a position such that you (or another company you are a director or material shareholder of) could make a profit as a result of your directorship of the company of which you are a director?
- Do you know of any other circumstances that could give rise to a potential or actual conflict of interest or duties?

Matters to take into account

There is no breach of duty when a situation cannot reasonably be regarded as likely to give rise to a conflict of interest. To identify situational conflicts, directors may find it helpful to ask themselves the following questions:

- Is your role/connection with the third party likely to prevent you, when acting as a director of the company of which you are a director, from giving sole consideration to the interests of that company?
- Is your role/connection with the other party likely to involve consideration of actions that could be adverse to the interests the company of which you are a director or to

put you in a position where information that you know as a result of being a director of the third party would be relevant to the decision to be taken?

- Are you part of the decision making process of the third party?
- Particularly in relation to any perceived conflict, what is the justification for the company of which you are a director to authorise it?
- Do the interests of the two companies compete, either in their product markets or in relation to strategic opportunities?
- Would the activities undertaken in one role be likely to have a material impact on the other?

DRAFT CONSULTATION DOCUMENT

Appendix C

Pro forma Declaration of Interests [and Authority]

In order to assist you in complying with sections 175, 177 and 182 of Companies Act 2006 please list any existing interests in the declaration form below and return to us

Part 1 – Direct or indirect interests which conflict or possibly may conflict with the interests of the proposed Company to assume the activities of Company

Name of entity	Nature and extent of conflict/possible conflict (e.g. yours or connected persons' directorship/shareholdings etc.)

Part 2 - Directorships and other relevant situations not listed in Part 1

Name of entity	Nature and extent of Interest (position e.g. yours or connected persons' directorship/shareholdings etc.)

Part 3 – Direct or indirect interests in existing transactions or arrangements

Existing or proposed transaction or arrangement with the Company	Nature and extent of Interest (position e.g. yours or connected persons' directorship/shareholding etc.)

I acknowledge that as at the date entered below, the above interests exist and that I will inform the Secretary in the event that there is any change in my circumstances which mean that the declarations above become inaccurate or incomplete.

I also acknowledge that it is my duty to avoid a situation that could conflict with the interests of the companies of which I am a director. Should I become aware of any additional interest(s) that may possibly conflict with the company/companies of which I am a director, I will disclose that interest or interests and seek prior authorisation from my fellow directors.

In relation to declarations of interest by other directors of companies of which I am a director made by notice in writing to me in accordance with section 184 Companies Act 2006 I hereby irrevocably:

- agree to receive such notices by electronic means at (or such other email address as I shall notify to the Company Secretary in writing from time to time); and
- authorise the Company Secretary to receive such declarations on my behalf, on the understanding that copies will be forwarded to me in due course.

Signed:

.....

Print Name:

.....

Date:

.....

DRAFT CONSULTATION DOCUMENT

Appendix 4 Proposed Template Letter from Chief Finance Officer to NCC Company

The text overleaf is an example of how a template (for amendment as appropriate) sets out the Council's financial requirements under the proposed code of practice.

My Ref: Click once and delete or type 'My Ref'
Your Ref: Click once and delete or type 'Your Ref'
Contact: Laura Pattman
Email: Laura.Pattman@nottinghamcity.gov.uk

(Amend as appropriate for company)

Click once and type section here

Click once and type department here

Click once and type address here

Click once and type address here

Tel: 0115 876 3342

www.nottinghamcity.gov.uk

Click once and type date here

Dear Click once and type name here,

Nottingham City Council (NCC) Chief Finance Officer Requirements for NCC Owned Companies

As Chief Finance Officer (CFO) for Nottingham City Council I lead the promotion and delivery of good financial management for the Council, so that public money is safeguarded at all times and used appropriately, economically, efficiently, and effectively.

The statutory role of the CFO does not stop at the boundaries of the Council but extends into its partnerships, devolved arrangements, joint ventures and the companies in which the authority has an interest. To help me ensure that I meet the requirements of this role I will need you to regularly supply me with various information set out below and from time to time with additional information and explanations.

From 1 April 2018 can I have:

(Amend as appropriate for company)

On a Monthly basis

- Management accounts explaining any variances from budget
- Updated Cashflow and Profit forecasts
- KPIs with links to Company Objectives
- Significant spending or deliverables proposed in the next period
- Board reports on Corporate Governance matters

Quarterly or Half yearly

- Significant variations from business plan or budget
- Significant spending or deliverables proposed in the next six months and any commercial timescales and sensitivities
- Audit committee or equivalent agenda and associated reports including exempt items.
- Strategic Risks Register

Annually

External Audit workplan and timetable, ensuring company deadlines meet City Council Audit requirements.

External Audit Management Letter and associated improvement plans

Audited Statement of Accounts

Internal Audit Plan

Head of Internal Audit's Annual Opinion

Regulator's reports on the Company

A schedule of recommendations from providers of assurance and company assurance activities with tracked actions and outcomes

Insurance arrangements

Company assurance framework

Annual Governance Statement questionnaire duly completed by the City Council deadline

On a significant change of business plan or significant event

The nature of the significant change or event

The impact of the significant change or event on the Company and NCC as shareholder

I appreciate you may already be sending some of the above information, but I would like these arrangements to be formalised as we continue to develop our company governance arrangements. Please do not hesitate to contact me if you want to discuss the above.

Yours sincerely,

Laura Pattman

Strategic Director of Finance

Nottingham City Council

Direct line ☎: 0115 876 3342