

**CONFLICT OF INTERESTS – PERSONS NOMINATED BY  
LEE VALLEY REGIONAL PARK AUTHORITY TO  
LEE VALLEY LEISURE TRUST LTD**

Presented by the Director of Corporate Services

**SUMMARY**

In agreeing the levy and revenue budget for 2018/19 (Paper A/4252/18) Members sought further clarification as to potential conflict of interests for Members and/or Deputy Members appointed by the Authority as Trustees of Lee Valley Leisure Trust Ltd in light of the forthcoming competitive procurement of the Leisure Services Contract which expires on 31 March 2020.

This report considers the potential areas for conflict of interests for Members and Deputy Members who are appointed by the Authority to Lee Valley Leisure Trust Ltd and sets out a Conflict of Interests/Loyalties Protocol.

**RECOMMENDATION**

Members Approve: (1) adoption of a Conflicts of Interests/Loyalties Protocol.

**BACKGROUND**

- 1 Under the Lee Valley Regional Park Act 1966 the Authority is able to deliver services directly or arrange for those services to be delivered by any company, body or person that it makes arrangements with.
- 2 The Authority received advice from Counsel that it has sufficiently wide powers to create a separate entity and then contract direct with the entity (subject to public procurement) to deliver the services that it requires to be delivered.
- 3 The Authority set up Lee Valley Leisure Trust Ltd (the Trust) in December 2013 (a registered society under the Co-operative and Community Benefit Societies Act 2014) and entered into a Leisure Services Contract (LSC) with the Trust following a non-competitive procurement procedure and the publication of a Contract Award Notice. It should be noted that the Trust is an independent entity and not controlled by the Authority.

- 4 The rules of the Trust provide that up to 3 Board Members may be nominated by the Authority for a period of 3 years. The Trust rules state that Trustees to the Board will not automatically have a conflict of interest because they are also Members of the Authority.
- 5 The Authority appointed 3 founding Trustees to the Trust to perform the early task of setting up the Trust. Given that the role of the 3 founding trustees was simply to do what is necessary to establish the Trust vehicle there were no implications for those individuals as Members of the Authority Board as there was commonality of interests between the Authority and the Trust at that time.
- 6 Following establishment of the Trust, recruitment to the Trustee Board and the fact that negotiations on the current LSC with the Trust would shortly be commencing 2 of the founding Trustees resigned.
- 7 The Authority has made subsequent appointments to the Trust from within its membership but decided, in light of the forthcoming competitive procurement of a new LSC, for the current appointments that appointees should be persons who are not Members of the Authority but persons who were known or connected to the Authority.
- 8 In making the current appointments to the Trust it was agreed that in the case of any appointment of a Deputy Member the Authority would not allow the appointed Member (who the Deputy sits under) to be a member of the Executive Committee and/or to substitute for any Member at that Committee. The effect of this is that the Deputy who is nominated by the Authority as Trustee would not then be able to sit on the Executive Committee in the absence of their appointed Member. The Authority would serve notice to terminate the appointment of a Trustee who is a Deputy Member if they subsequently become a full Member of the Authority.
- 9 The Authority also agreed that in addition any Deputy Member who is appointed as Trustee will not receive any Authority papers (including that of committees or working groups) which include issues relating to the competitive procurement of the new LSC, the management fee or other external procurements where the Trust have submitted or are considering submitting a bid/proposal. In practice though the actual Authority Member will receive a full set of papers for any Authority meeting or relevant committee meeting that they are entitled to and in addition any briefing notes that may concern Trust business which all other full Authority Members receive. There is no ability for the Authority to control whether these papers are sent from the full Authority Member to the Deputy. Documentation could be inadvertently passed across from the Council's democratic services department when they know that a Deputy is attending a meeting.
- 10 The Authority's LSC with the Trust ends on 31 March 2020 and the Authority has started to commence work on procurement of a new LSC to commence in Autumn this year. Members have therefore requested further clarification as to potential conflict of interests for Members and/or Deputy Members nominated by the Authority to the Trust.

**POTENTIAL CONFLICT OF INTERESTS FOR PERSONS APPOINTED TO LEE VALLEY LEISURE TRUST LTD BY THE AUTHORITY**

- 11 Authority Members are "twin-hatted" in the first instance as they sit as elected

Members on their own Council and are appointed to represent their Council on the Authority 28 Member Board. It is also recognised that it has become increasingly common for Members to be "twin-hatted", taking into account the need for some to sit on Housing ALMOs/Local Authority companies. Again, Members should note that the issues here are different to those companies set up by local authorities which are often 100% owned and controlled by the Council under particular legislation. The Trust, whilst set up by the Authority, is an independent entity and being a charitable body both organisations need to ensure a degree of independence.

- 12 The legal requirement for Members to declare an interest is recognised equally across all bodies they are appointed to.
- 13 Appointment of Members to the Trust Board (following non-competitive procurement) has worked well during the transition and early part of the LSC and the Trust has valued their input. However, the Trust is now expected to make a competitive bid for the new LSC and therefore there could be potential conflict of interest for persons appointed by the Authority to the Trust.
- 14 In procuring a new LSC the Authority has to comply with the Public Contract Regulations where the Authority is under an obligation to follow a fair, transparent and objective procurement procedure and address any conflicts of interest to ensure equal treatment of all bidders. This will include any interest which may be perceived to compromise the impartiality and independence of the procurement procedure.
- 15 This potential conflict of interest was identified in Counsel's advice on setting up the Trust in that conflict of interests for Members appointed by the Authority to the Trust would occur when:
  - competitive procurement of the LSC begins;
  - negotiations on the Management Contract and specification/details of the Management Fee commence; and/or
  - any competitive procurement matters where the Trust is considering the submission of a bid.

#### **COUNSEL'S ADVICE**

- 16 Counsel has advised that the general approach should be that:
  - i) any relevant interest must be disclosed in accordance with disclosure rules;
  - ii) nonetheless, there will still be a potential conflict;
  - iii) this is because the Member has –
    - a duty to further the interests of the Authority when wearing his/her Authority hat, and
    - a duty to further the interests of the Trust when wearing his/her Trust hat;
  - iv) In general the safest course to prevent the conflict arising is (absent dispensation) for the "dual" Member not to –
    - participate at all in any discussions, and
    - a fortiori, not to vote at Authority on any matter in which the Trust has an interest.
- 17 Counsel provided further guidance to Members of the Authority who are appointed to the Trust in that they:

- i) should add the Trust appointment to their list of registered interests;
- ii) declare any interest at meetings of the Authority where anything pertaining to the Trust is to be considered, such as the lease to the Trust, the Management Contract and the Management Fee;
- iii) although registration and declaration of the interest satisfies transparency it does not remove the inherent tension between loyalties and in general the Member should recuse themselves from meetings as in each body duties are owed exclusively to that body and when that would produce a conflict, or perception of conflict, the conflict, or appearance of it, cannot be resolved or managed by prioritisation.

### **CONFLICTS OF INTERESTS/LOYALTIES PROTOCOL**

- 18 Conflicts of interest can occur naturally as a product of the way a system is designed. Providing services via third parties increases the potential for conflicts of interest as organisations act as both commissioner and provider of related services. A clear approach to managing these conflicts is necessary to counter concerns about lack of transparency and the view that conflicts of interest are influencing decisions.
- 19 Therefore to aid Members and to ensure that the Authority seeks to manage any interest that arises, or could reasonably be perceived to arise, it is proposed that a Conflicts of Interests/Loyalties Protocol be adopted, see Appendix A to this report.

### **ENVIRONMENTAL IMPLICATIONS**

- 20 There are no environmental implications arising directly from the recommendations in this report.

### **FINANCIAL IMPLICATIONS**

- 21 There are no financial implications arising directly from the recommendations in this report.

### **HUMAN RESOURCE IMPLICATIONS**

- 22 There are no human resource implications arising directly from the recommendations in this report.

### **LEGAL IMPLICATIONS**

- 23 Standing Order 79 (Interests and Conduct of Members) provides that when dealing with Authority business, whether in a meeting or otherwise, Members "are covered by the terms of the Code of Conduct adopted by their appointing councils/organisations".
- 24 Members must make declarations of interests at each meeting to ensure probity and transparency. This is balanced against the business needs and decision making of each body/organisation they are appointed to.
- 25 Standing Order 80 provides for a Record of Members Interests and appointment to the Trust is a relevant interest and should be declared at Authority meetings where anything pertaining to the Trust is to be considered.

- 26 Therefore in relation to matters which concern deliberations connected with the Transfer of Property, the Management Fee and negotiations relating to the LSC the general advice which would be given to Members and Deputy Members who are also Trustees would be that they should not participate in the discussion or debate when a decision of the Authority is going to be taken whether or not that is at the Executive Committee or the full Authority.
- 27 The more challenging element arises from the juxtaposition of three key elements (1) the need to administer a fair, transparent and objective procurement process (2) the need for Authority Members to approve the key elements of the procurement process e.g. the scope of the procurement and the award criteria (3) the need to treat the Trust on the same basis as any other competing bidder in relation to the procurement information provided to it and in the evaluation of its bid. The performance of each of these elements is a legal requirement arising from the Public Contract Regulations 2015. It is the overlapping position of Members/Deputy Members and Trustees in the Authority and Trust Boards in each of the three elements that gives rise to potential conflicts of interest which this paper seeks to address.

#### **RISK MANAGEMENT IMPLICATIONS**

- 28 Failure to comply with the Public Contract Regulations, such as perceived conflict of interests or unequal treatment of bidders, will compromise impartiality and independence of the procurement process for the new LSC and could result in financial loss if unsuccessful bidders seek redress through legal action.

#### **EQUALITY IMPLICATIONS**

- 29 There are no equality implications arising directly from the recommendations in this report.

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#### **BACKGROUND REPORTS**

None

#### **LIST OF ABBREVIATIONS**

the Trust	Lee Valley Leisure Trust Ltd (trading as Vibrant Partnerships)
LSC	Leisure Services Contract

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## Conflict of Interests/Loyalties Protocol

Serving on outside bodies has always been an established part of a Member's role. The Authority encourages Members to participate in the wider community to use their knowledge and skills to help the organisation to which they are appointed. It brings the benefit of enabling the Authority to participate in partner organisations and also means that Members can bring back knowledge and experience which are of value to the Authority.

The Authority is now increasingly working in partnership with outside bodies and clarity and understanding of the roles that Members play is important. This guidance note aims to help you understand the main implications of such arrangements. For more detailed advice you can contact Beryl Foster, Director of Corporate Services.

When dealing with Authority business Members are bound by their own Authority's Code of Conduct (SO79) and statutory legislation, such as the Localism Act 2011 (which amended the way in which Members interests need to be registered and declared). Members are also required to complete a Register of Interests declaration on an annual basis (SO80) and this is reviewed annually by the external auditors.

Appointment by the Authority as a Trustee of Lee Valley Leisure Trust should be included on the Register as for other Authority appointments to outside bodies.

### Potential areas of conflict

These conflicts arise because although the Member does not stand to gain any benefit, the Member's decision making at the Authority could be influenced by their other interest, i.e. an Authority appointed Trustee's loyalty to the Trust could conflict with their loyalty to the Authority.

*Conflict of interest:* is a set of circumstances that creates a risk that an individual's ability to apply judgement or act in one role is, or could be, impaired or influenced by a secondary interest. The perception of competing interests, impaired judgement or undue influence can also be a conflict of interest.

*Conflict of loyalty:* is when a Member's loyalty or duty to another person or organisation could compete with or prevent them from making a decision only in the best interests of the Authority.

Conflicts of interest can occur naturally as a product of the way a system is designed. Providing services via third parties increases the potential for conflicts of interest as organisations act as both commissioner and provider of related services. A clear approach to managing these conflicts is necessary to counter concerns about lack of transparency and the view that conflicts of interest are influencing decisions.

It is important to recognise the risk of conflicts of interest and their impact on how decisions and operations are perceived. A failure to recognise a conflict of interest can give the impression that the organisation or individual is not acting in the public interest and could potentially lead to a decision being subject to challenge. This can damage reputations and undermine confidence in organisations.

Lee Valley Leisure Trust Ltd

In setting up the Lee Valley Leisure Trust Ltd it was recognised that there was a commonality of interests between the Authority and the Trust in the initial phases and that there was no conflict of interest at this stage. The rules of the Trust also set out that Authority appointed Trustees will not automatically have a conflict of interest because they are also Members of the Authority. However, going forward and taking into account that the Trust is a separate and independent entity, it is recognised that there is potential for conflict because those Members (including Deputy Members) who may be nominated as a Trustee have:

- (i) a duty to further the interests of the Authority when undertaking Authority business; and
- (ii) a duty to further the interests of the Trust when undertaking Trust business.

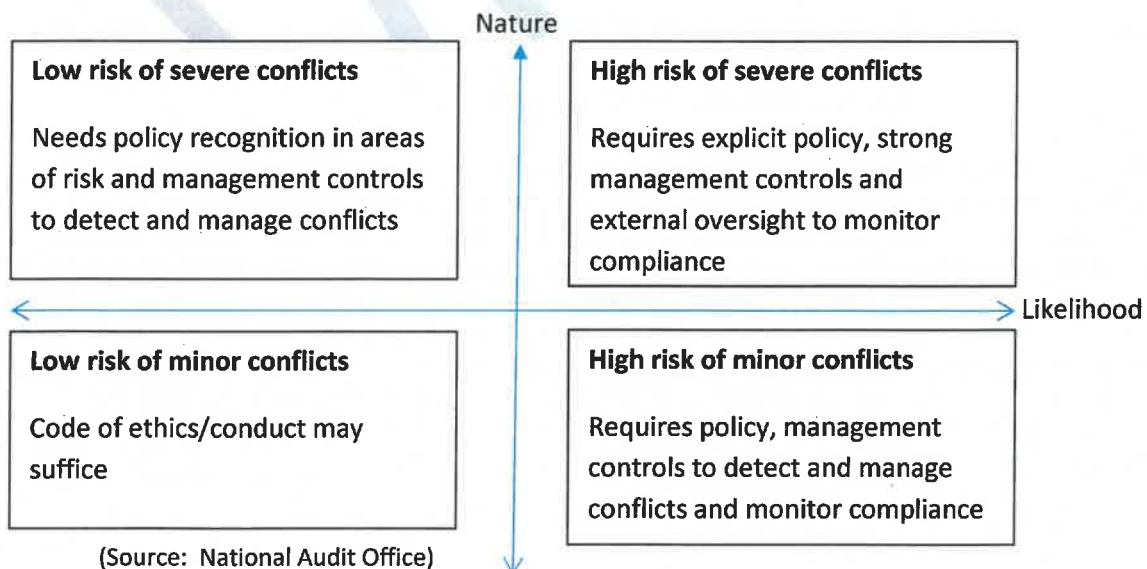
When Members undertake Authority business they must comply with their own Council's Code of Conduct, but Trustees must also be aware of the specific responsibilities placed on them by the Charities Commission, i.e.,

- to act in accordance with the charity's trust deed or governing document;
- to act in good faith and only in the Trust's interests;
- make sure you are sufficiently informed, taking advice when needed;
- take account of all relevant factors;
- manage conflicts of interest;
- to comply with Charities Acts and other relevant legislation.

When a Trustee is appointed by the Authority they must act only in the best interests of the charity in carrying out their Trustee role.

The test is always that there is a conflict of interest if the Members' other interest could, or could be seen to, interfere with the Member's ability to decide an issue only in the best interests of the Authority, independently of any competing interest. Where Members decide that a conflict of loyalty poses no risk or a low risk to decision making in the best interests of the Authority, the affected Member, having declared their other interest, can participate in decision making.

Taking a proportionate approach to managing conflicts





**Protocol for Authority Members (including Deputy Members) appointed as Trustees**

- Authority Members (including Deputy Members) appointed as Trustees should declare an interest at Authority meetings where anything pertaining to the Trust is to be considered. (The Trust may also require you to declare an interest as an Authority Member at meetings of the Trust.)
- In relation to matters which concern deliberations connected with the transfer of property, the management fee and negotiations relating to the contract between the Authority and the Trust, Authority appointed Trustees should not participate in the discussion or debate when an Authority decision is going to be taken and must absent themselves from the meeting.
- Authority appointed Trustees are advised to consider recusing themselves from any Authority meetings (committees and working groups) for discussion of matters related to the Trust (in addition to the transfer of property, the management fee and negotiations relating to the contract) because of the inherent tension between loyalties. Consideration should include all the circumstances of the particular decision, but with the guiding principle that at Authority meetings the best interests of the Authority, independent of any competing interest, are paramount and the importance of how matters may appear to a fair-minded and well-informed observer.
- Where you might be inclined to the view that you have no disclosable pecuniary interest, your duties as Trustee may well be regarded, on an objective appraisal, as giving rise to a legitimate fear of lack of impartiality, especially having regard to the desirability of maintaining public confidence. Participation in decision making at the Authority by a Member who is biased potentially lays the decision open to challenge.
- In almost all circumstances, when making decisions at the body to which you have been appointed, you will owe a duty to act in the best interests of that body. It is permissible to take account of the Authority's wishes, but in any conflict, you must act in the best interests of the outside body. This is especially important for Trust Board meetings, in accordance with the Charity Commission guidelines, and the Authority recognises this in appointing you.
- Where there is a decision at the Trust which also affects the Authority (the appointing body), the similarity of purpose between the two organisations means that conflicts of loyalty which do crop up often present only low risk. However the Member should decide in each case how the conflict of loyalty should be handled and should ensure that they can demonstrate that any decision was taken only in the best interests of the Trust.
- Failure to act properly where there is a conflict of interest is a breach of the Members responsibilities. A decision affected by a conflict of interest could be challenged. In some circumstances the decision may be unsafe and capable of being invalidated or, in the worst case, might be void from the start. If this situation arises then the Authority will consider making a complaint to the Member's home Council and requesting that the matter be referred to the relevant Councillor's Conduct Committee.

Confidentiality

- All agendas, reports, minutes or other documents and all proceedings of the Authority and its appointed bodies shall be treated as confidential until they are made public by the Authority (SO102).
- Trustees cannot use information obtained at the Trust for their own benefit or that of another organisation including the Authority if it has been obtained in confidence or has special value such as commercial sensitivity.

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