

Cheltenham Borough Council

Cabinet – 22 June 2010

Council – 27 June 2010 (if necessary)

Nominations to Outside Bodies

Report of the Cabinet Member Corporate Services

1. Executive summary and recommendation

1.1 Following each Selection Council, and at other times when vacancies arise, the Cabinet takes the opportunity to nominate and, in limited cases, appoint persons to various roles within bodies external to the Council. The current list of outside bodies and nominations is set out in the attached Appendix A.

1.2 In 2008, it was agreed that all nominations/appointments would be made by Cabinet with the proviso that if all political groups on the Council do not agree to a nomination the matter will be referred to full Council for determination. The reason for this change was that all of the bodies referred to related to Cabinet rather than Council functions and therefore it was deemed more appropriate for Cabinet to make the appointments and simplified the whole process.

1.3 I therefore recommend that:

1.3.1 Cabinet make nominations/appointments to the bodies in Appendix A respectively in accordance with the following principles:

- **all nominations are made on the basis that the nominee/appointee is a representative of Cheltenham Borough Council insofar as that is compatible with any overriding legal duty to the outside body; and**
- **Cabinet reserves the right at any time to withdraw/terminate a nomination/appointment which it has made**
- **Cabinet should refer a nomination/appointment to Council for determination where consensus on that nomination/appointment cannot be achieved between all the political groups on the Council**

1.3.2 In making nominations/appointments, Cabinet confirms whether to include external persons and whether to do so on the basis as set out in paragraph 4.3 of this report

1.4 Summary of implications

<p>1.4.1 Financial</p>	<p>There are no financial implications associated with this report.</p> <p>Contact officer: Mark Sheldon E-mail: mark.sheldon@cheltenham.gov.uk Tel no: 01242 264123</p>
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<p>1.4.2 Legal</p>	<p>See body of the report, particularly paragraph 3.</p> <p>Two general powers are relevant to nomination/appointment to outside bodies, these being the 'Well Being' power found in the Local Government Act 2000 and the power of an authority to do anything conducive, incidental to or facilitative of the discharge of any of their functions found in the Local Government Act 1972.</p> <p>Guidance for Members appointed to outside bodies can be found at Part 5G of the Council Constitution. This guidance will be updated shortly particularly to ensure that it accurately reflects the current Code of Members' Conduct.</p> <p>Contact officer: Peter Lewis E-mail: peter.lewis@tewkesbury.gov.uk Tel no: 01242 264216</p>
<p>1.4.3 Other</p>	<p>none</p> <p>Contact officer: E-mail: @cheltenham.gov.uk Tel no: 01242</p>

1.5 Implications on corporate and community plan priorities

1.5.1 Supports all the community priorities and supports community engagement.

1.6 Statement on Risk

1.6.1 Members appointed should be aware of their roles and responsibilities.

2. Background

2.1 The bodies to which nominations/appointments are made comprise a variety of organisations and groups. A traditional distinction can be drawn between incorporated and unincorporated bodies; the former being distinct legal entities such as companies, having a legal personality and a framework imposing obligations upon those who become involved by appointment; the latter being bodies which, albeit without formal legal foundation, play an important role in representing interests within the local community. Involvement in these unincorporated organisations will often carry few or no legal obligations on those appointed.

2.2 In the majority of cases Cheltenham Borough Council decides who to nominate to the body concerned and it is then for that body to decide on whether to accept the nomination and make the appointment. There are some limited exceptions to this, such as Cheltenham Borough Homes and Gloucestershire Airport, where the Council has the right (by virtue of its interests in those companies) to make the appointments to the boards of directors.

3. Legal issues

- 3.1 Table 3 of Part 3A of the Constitution refers to local choice functions (i.e. functions which the Council can exercise through Cabinet or Full Council). Paragraph 19 of table 3 refers to 'the appointment of any individual... (b) to any body other than – (i) the authority.... and the revocation of any such appointment'. Paragraph 19 indicates that the function is to be exercised by the 'The Executive except where any such appointment concerns a council function listed in Table 1 to Part 3A'. i.e. a function which cannot be exercised by the Executive. None of the outside bodies in Appendix A relate to functions listed in Table 1. The power to Cabinet is subject to the proviso that if all political groups on the Council cannot agree a particular nomination/appointment then it will be referred to full Council for determination.
- 3.2 Whilst nominations/appointments are made on the general basis that the nominee/appointee is the Council's representative on the outside body, it is important to note that in many cases the overriding duty is to the outside body. For example, a company director has a primary duty of care towards the company and to act in the best interests of the company as a whole and a trustee must act in accordance with the trust deed and uphold the trust's objectives.
- 3.3 The Council is able to indemnify members (and officers) in the course of their activities on outside bodies provided they are acting within the scope of their authority as Council representatives. Outside bodies, such as companies, that are legal entities in their own right must have their own appropriate insurance arrangements in place. It is important that members (and officers) clarify the position in each particular case.

4. Nomination/appointment of external persons

- 4.1 Historically Cheltenham Borough Council has nominated/appointed external persons to some outside bodies. On 29th June 2006 Council specifically agreed that 'All nominees are elected Members of Cheltenham Borough Council unless there are exceptional reasons justifying the appointment of a non Member'. Relevant examples of outside bodies to whom external persons have been appointed are; Gloucestershire Airport, Pate's Grammar School Foundation. The reasons for these appointments have been the specialist knowledge skills and experience that have been brought to the outside body and/or the lack of Member nomination to that body.
- 4.2 External persons are not, of course, subject to the Code of Members' Conduct nor are they under any general obligation to act in the best interests of the Council or the broader public interest. Also, they are not covered by the Council's insurance. Whilst these factors do not prevent the nomination of external persons they should be borne in mind when considering whether to make such nominations/appointments.
- 4.3 If Cabinet is minded to continue the approach of nominating/appointing external persons to outside bodies then a clear basis for this should be agreed. This could be simply that an external nomination/appointment will be considered in exceptional circumstances where (i) the person concerned has specialist knowledge/ skills/ experience to bring to the outside body and (ii) there is no competing Member nomination for the position. This would, of course, be subject to the in-built proviso that if the political groups are unable to agree a particular nomination/appointment of an external person then the matter would be referred to full Council for determination.

- 4.4 This year there has been a proposal that a councillor who was not re-elected in May should continue to act as the appointed council representative to the Cheltenham Borough Homes Board. The Constitution of the Board is 15 Members with a third of the membership each for Council Members, Tenant Members and Independent Members. Whilst, there is no requirement for Council appointed Board Members to be either Members or Officers of the Authority, there are some provisions which enable actions to be brought about by one third of the Board Members eg: calling a Board Meeting. Members will therefore, need to take this into account in any decision to make an external appointment to the Board.
- 4.5 Similarly there been a request from the Pate's Grammar School Foundation where there are two vacancies in the trustees appointed by the Council following the death of Councillor Buckland and the conclusion of the term of office of Mark Coote. The foundation has suggested that it would be particularly helpful both to the Foundation and also Pate's Grammar School, who of course is a major recipient of the Foundation funds, that a stronger relationship is forged between the Trustees of the Foundation and the Governors of the Grammar School. To that end, they are seeking the council's cooperation in nominating one of the governor's of Pate's Grammar School as a Trustee in order that there is improved liaison at the highest level, particularly as the Grammar School is now close to a substantial Capital Expenditure programme with a significant part of the funding being provided by the Foundation. This is in accordance with their Charitable Scheme which advises, in the case of nominated Trustees that "the person appointed may be but need not be a member of the appointing body".

5. Consultation

- 5.1 Appendix A was circulated to Group Leaders on 24 May 2010.

6. Next steps

- 6.1 The attached table indicate current appointees to outside bodies. Group Leaders are being asked to propose the nominees for 2010 and these will be shown on updated version of the table to be circulated at Cabinet (and Council if appropriate).
- 6.2 The term and tenure of appointment varies between different bodies and so nominees will not necessarily take up appointment immediately. Nominees will be informed as soon as possible as to when the body concerned proposes to confirm/implement their appointment.

Appendices

A Nominations to outside bodies

Background Papers None

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Accountability Councillor Colin Hay, Cabinet Member Corporate
Services

Scrutiny Function All