

**Cheltenham Borough Council  
Council – 25 March 2019**

**Nominations to Outside Bodies**

<b>Accountable member</b>	<b>Leader, Councillor Steve Jordan</b>
<b>Accountable officer</b>	<b>Chief Executive, Pat Pratley</b>
<b>Ward(s) affected</b>	<b>None directly</b>
<b>Key Decision</b>	<b>No</b>
<b>Executive summary</b>	<p>Following each Selection Council, and at other times when vacancies arise, the Leader/Cabinet takes the opportunity to nominate and, in limited cases, appoint persons to various roles within bodies external to the Council. Also the opportunity is taken to nominate persons to other bodies such as Joint Committees and other bodies/groups such as the Cheltenham Development Task Force.</p> <p>Following the resignation by Councillor Flynn from Publica on 14 February, Group Leaders were informed of the vacancy for a Non-Executive Director on the Publica board on 15 February 2019 and were invited to submit nominations by 13 March 2019.</p> <p>Two nominations were received for Councillor Babbage and Councillor McCloskey. As consensus was not achieved between the political groups this appointment is referred to Council for determination.</p> <p>Therefore, Council is asked to agree the appointment of a Non-Executive Director to the Publica Board.</p>
<b>Recommendations</b>	<p><b>Council nominate</b></p> <p style="text-align: center;"><b>1. One person to be the Council’s Non-Executive Director on the Publica Board</b></p>
<b>Financial implications</b>	<p>There are no financial implications associated with this report.</p> <p><b>Contact officer: Paul Jones</b>  <b>E-mail: paul.jones@cheltenham.gov.uk</b>  <b>Tel no: 01242 264365</b></p>

<b>Legal implications</b>	<p>See body of the report.</p> <p>Appointments/nominations to outside bodies are made in accordance with the Council Constitution. Guidance for Members appointed to outside bodies can be found at Part 5G of the Constitution.</p> <p><b>Contact officer: Peter Lewis</b>  <b>E-mail: <a href="mailto:peter.lewis@tewkesbury.gov.uk">peter.lewis@tewkesbury.gov.uk</a></b>  <b>Tel no: 01684 272012</b></p>
<b>HR implications (including learning and organisational development)</b>	<p>No HR implications arising for the report</p> <p><b>Contact officer: Julie McCarthy , HR Manager –Operations, Payroll &amp; Support Centre. <a href="mailto:julie.mccarthy@publicagroup.uk">julie.mccarthy@publicagroup.uk</a>, 01242 26 4355</b></p>
<b>Key risks</b>	<p>Members appointed should be aware of their roles and responsibilities.</p>
<b>Corporate and community plan Implications</b>	<p>Supports all the community priorities and supports community engagement.</p>
<b>Environmental and climate change implications</b>	<p>None</p>

## **1. Background**

- 1.1** The external 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.
- 1.2** In the majority of cases the authority decides who to nominate to the outside 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, Gloucestershire Airport, Publica and the Cheltenham Trust where the Council has the right (by virtue of its interests in those companies) to make the nominations/appointments to the boards of directors.

## **2. Legal context**

- 2.1** With regard to outside bodies, 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.
- 2.2** 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.
- 2.3** Under the executive functions set out in Part 3E of the Council's constitution, the Leader has the power to make nominations/appointments to outside bodies where they relate to an executive function or revoke such nominations/appointments provided there is Group Leader agreement. Where there is not group leader agreement the decision is referred to Council.

## **3. Nomination/appointment of external persons**

- 3.1** Historically the 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.
- 3.2** 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. Reasons for recommendations**

4.1 It is in the interests of the council to ensure representation on Publica.

#### **5. Alternative options considered**

5.1 None

#### **6. Consultation and feedback**

6.1 Group Leaders were advised of a vacancy on the Publica Board on 15 February 2019. Two nominations were received and as consensus was not achieved between the political groups this appointment was referred to Council for determination.

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<b>Appendices</b>	1. Risk Assessment
<b>Background information</b>	1. Constitution Part 5G

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If elected members are not aware of their roles and responsibilities they may compromise their position		10 July 2018	3	2	6	Control	Ensure members are aware of guidance set out in Constitution Ensure members understand their role on the outside body and have a copy of relevant constitution or terms of reference of the body concerned		Democratic Services Team Leader	
<b>Explanatory notes</b>											
<p><b>Impact</b> – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p><b>Likelihood</b> – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p><b>Control</b> - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											