

Cheltenham Borough Council

Cabinet – 13 July 2021

Council- 19 July 2021

Nominations to Outside Bodies

Accountable member	Leader, Councillor Rowena Hay
Accountable officer	Chief Executive, Gareth Edmundson
Ward(s) affected	None directly
Key Decision	No
Executive summary	<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.</p> <p>It is proposed that on this occasion the appointments are made for one year, with a return to two yearly appointments in 2022 and in subsequent election years. This is due to changes to the election cycle as a result of the Covid 19 pandemic.</p> <p>Cabinet is due to meet on 13 July 2021 to nominate Members to outside bodies as outlined in the appendices. There is one appointment where consensus has to date not been achieved between the political groups and therefore this is likely to be referred to Council as set out in paragraph 2.2 of the report.</p> <p>Council is asked to make the appointment as set out in the appendix.</p>
Recommendations	<p>Cabinet recommend to Council THAT</p> <ol style="list-style-type: none">1. a person be nominated to the observer role on the Everyman Theatre Board

Financial implications	<p>There are no financial implications associated with this report.</p> <p>Contact officer: Gemma Bell, gemma.bell@cheltenham.gov.uk, 01242 264365</p>
Legal implications	<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>Contact officer: Legal Services, legal.services@tewkesbury.gov.uk</p>
HR implications (including learning and organisational development)	<p>No HR implications arising for the report</p> <p>Contact officer: Julie McCarthy , HR Manager – Operations, julie.mccarthy@publicagroup.uk</p>
Key risks	<p>Members appointed should be aware of their roles and responsibilities.</p>
Corporate and community plan Implications	<p>The nomination of representatives of Cheltenham Borough Council to the identified outside bodies helps develop valuable links between the council and community-based organisations supporting community priorities and community engagement</p> <p>Contact officer: Richard Gibson, Strategy and Engagement Manager, richard.gibson@cheltenham.gov.uk</p>
Environmental and climate change implications	<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.
- 1.3 It is proposed that the appointments are made for one year, with a return to two yearly appointments in 2022 and in subsequent election years. This is due to changes to the election cycle as a result of the Covid 19 pandemic.

2. Legal context

- 2.1 Although nominations/appointments to outside bodies 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. In these circumstances members must apply independent judgement in respect of the body to which they are appointed.
- 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.

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.

The Leader has chosen to refer the decisions on appointment to Cabinet. The Leader has however the power in Part 3E of the Constitution to appoint or nominate individuals to outside bodies in respect of Executive Functions and revoke or withdraw such appointment or nomination provided all Group Leaders agree.

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 outside bodies.

5. Alternative options considered

5.1 None

6. Consultation and feedback

6.1 The appendices were circulated to Group Leaders in May 2021.

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Appendices	1. Risk Assessment 2. Appendix
Background information	1. Constitution Part 5G – Guidance for Councillors appointed to represent the Council on Outside Bodies

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		June 2021	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	
<p>Explanatory notes</p> <p>Impact – 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>Likelihood – 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>Control - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											