

Cheltenham Borough Council

Cabinet – 19 June 2012

Council – 25 June 2012

Nominations to Outside Bodies

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| Accountable member | Leader, Councillor Steve Jordan |
| Accountable officer | Director of Commissioning, Jane Griffiths |
| Accountable scrutiny committee | O&S |
| Ward(s) affected | All |
| Key Decision | No |
| Executive summary | 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 2. |
| Recommendations | <p>Cabinet make nominations/appointments to the bodies in Appendix 2 respectively in accordance with the following principles:</p> <ul style="list-style-type: none">• 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 |
| Financial implications | <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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| Legal implications | <p>See body of the report.</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.</p> <p>Contact officer: Peter Lewis E-mail: peter.lewis@tewkesbury.gov.uk Tel no: 01684 272012</p> |
| HR implications (including learning and organisational development) | <p>None</p> <p>Contact officer: Julie McCarthy , HR Operations Manager julie.mccarthy@cheltenham.gov.uk, 01242 26 4355</p> |
| Key risks | <p>Members appointed should be aware of their roles and responsibilities.</p> |
| Corporate and community plan Implications | <p>Supports all the community priorities and supports community engagement.</p> |
| Environmental and climate change implications | <p>None</p> |

1. Background

- 1.1** 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.
- 1.2** 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.

2. Legal issues

- 2.1** 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 revised Executive functions set out in Part 3E and Appendix A of the Council's constitution, the Leader has the power to make appointments to outside bodies where they relate to an Executive function provided there is Group Leader agreement to the appointments. The Leader exercised these powers and has already taken decisions on the appointments to Cheltenham Borough Homes, the Cheltenham Development Task Force and other bodies where the nomination is normally the Cabinet Member with the appropriate portfolio. These are included in Appendix A for completeness, shaded in blue but are not the subject of the decision in this report.

3. Nomination/appointment of external persons

- 3.1** 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.
- 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 all these outside bodies.

5. Alternative options considered

5.1 None

6. Consultation and feedback

6.1 Appendix 2 was circulated to Group Leaders on 21 May 2012 with a request for nominations by Friday 8 June 2012.

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| Report author | Rosalind Reeves, Democratic Services Manager, 01242 774937, Rosalind.reeves@cheltenham.gov.uk |
| Appendices | <ol style="list-style-type: none">1. Risk Assessment2. List of outside Bodies |
| Background information | <ol style="list-style-type: none">1. Exec decision made on 21 May for appointments to CBH and 29 May 2012 for other appointments to outside bodies.2. 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 | | 1/06/2012 | 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 Manager | |
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| <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> | | | | | | | | | | | |