



SHEFFIELD CITY COUNCIL Report to Audit Committee

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Report of: Director of Modern Governance

Date: 26 September 2012

Subject: Appointments to External Organisations:
New Council Guidance

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Summary:

Sheffield City Council regularly appoints, or nominates for appointment, Members and Officers to serve on a wide variety of external bodies. Officers in Legal Services have prepared new guidance about this process which is presented to Audit Committee for approval.

Reasons for Recommendations:

Compliance with this guidance will help to ensure that the Council approaches the issue of appointing or nominating Members and Officers to external organisations in a more consistent, structured way. The legal nature of the appointments, and the implications of these for the Council and the appointees, will be better understood and managed from the outset.

Recommendations:

Audit Committee is recommended to approve the draft guidance document attached to this report entitled 'Appointments to External Organisations: What, Why, Who and How?' which has been prepared by Legal Services, and to confirm its view that the provisions of the guidance should be adhered to.

Background Papers: None

Category of Report: OPEN

Statutory and Council Policy Checklist

Financial Implications
YES/NO Cleared by: Tricia Philipson
Legal Implications
YES Cleared by: Andrew Bullock
Equality of Opportunity Implications
YES Cleared by: Adele Robinson
Tackling Health Inequalities Implications
NO
Human rights Implications
NO:
Environmental and Sustainability implications
NO
Economic impact
NO
Community safety implications
NO
Human resources implications
NO
Property implications
NO
Area(s) affected
N/A
Relevant Cabinet Portfolio
N/A
Relevant Scrutiny Committee if decision called in
N/A
Is the item a matter which is reserved for approval by the City Council?
NO
Press release
NO

Appointments to External Organisations: New Council Guidance

1.0 SUMMARY

- 1.1 Sheffield City Council regularly appoints, or nominates for appointment, Members and Officers to serve on a wide variety of external bodies.
- 1.2 Officers in Legal Services have prepared new guidance about this process which is presented to Audit Committee for approval.

2.0 WHAT DOES THIS MEAN FOR SHEFFIELD PEOPLE

- 2.1 Adopting this new guidance will not have a significant direct impact on the people of Sheffield. However, by making appointments to external bodies the Council contributes to the running of many local organisations. It is in the interests of everyone that this is approached in a consistent manner, and in a way that equips the appointees to discharge their responsibilities appropriately and seeks to minimise the possibility of these appointments resulting in the unplanned expenditure of public funds.

3.0 OUTCOME AND SUSTAINABILITY

- 3.1 The guidance is intended to result in improvements in the way in which appointments of Members and Officers to serve on external organisations are made and managed. Adherence to the guidance will ensure that the Council only makes such appointments where there are sound reasons for doing so.

4.0 BACKGROUND

- 4.1 At its meeting on 15 May 2012 Audit Committee resolved that "the Deputy Chief Executive be requested to review the role of Councillors on all Trust Boards". As part of this exercise the Director of Modern Governance asked the Director of Legal Services to produce some guidance notes about issues to consider whenever an appointment or nomination of a Councillor to serve on an external organisation is contemplated by the Council.
- 4.2 A final draft of the resulting guidance forms Appendix A to this report. It is titled '*Appointments to External Organisations: What, Why, Who and How?*', and has been prepared for both Members and Officers involved in the appointment of Members or Officers to serve on external organisations. This includes those considering the making of such appointments and the appointees themselves. It also includes the Officers who are required to implement decisions to appoint, and arrange

ongoing support for appointees. It sets out some fundamental issues that must be considered whenever such an appointment is contemplated.

4.3 Appendix B to this report is a short guidance note titled “*Serving on External Bodies - What every Member needs to know!*” which is referred to in the new guidance.

4.4 The draft guidance has been considered and approved by Executive Management Team. The Director of Modern Governance has also circulated it for consultation purposes to the leaders of the three political groupings on the Council. No comments have been received from them.

5.0 LEGAL AND FINANCIAL IMPLICATIONS

5.1 There are no legal or financial implications arising directly from the adoption of this new guidance. However, the disciplined approach to external appointments advocated in the guidance will help to reduce the risk of the Council or the appointees themselves incurring financial or other liabilities as a consequence of an appointment.

6.0 EQUALITIES IMPLICATIONS

6.1 Section 149(3) of the Equality Act 2010 provides that the duty imposed on the Council of having due regard to the need to advance equality of opportunity between persons who share a relevant ‘protected characteristic’ and persons who do not share it involves in particular, having due regard to the need to encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

6.2 Therefore, whenever appointments are being contemplated due regard should be had to the Council’s Equality, Diversity and Inclusion Policy and to the commitment that the Council should focus attention on “strengthening civic participation through representation on boards in line with the city population e.g. for women, disabled, black and minority ethnic people and lesbian, gay, and bisexual and trans people etc”.

7.0 REASONS FOR RECOMMENDATIONS

7.1 Compliance with this guidance will help to ensure that the Council approaches the issue of appointing or nominating Members and Officers to external organisations in a more consistent, structured way. The legal nature of the appointments, and the implications of these for the Council and the appointees, will be better understood and managed from the outset.

8.0 RECOMMENDATIONS

- 8.1 Audit Committee is recommended to approve the draft guidance document attached to this report entitled 'Appointments to External Organisations: What, Why, Who and How?' which has been prepared by Legal Services, and to confirm its view that the provisions of the guidance should be adhered to.

Alistair Griggs
Director of Modern Governance

Sheffield City Council

Appointments to External Organisations: What, Why, Who and How?

1. Introduction

This guidance has been prepared for both Members and Officers involved in the appointment of Members or Officers to serve on external organisations. This includes those considering the making of such appointments and the appointees themselves. It also includes the Officers who are required to implement decisions to appoint, and arrange ongoing support for appointees. It sets out some fundamental issues that must be considered whenever such an appointment is contemplated.

All Members are strongly recommended to read this guidance.

All Executive Directors and members of the Council's Directors' Group must read this guidance.

2. What do we mean by an 'external organisation'?

This means a body set up and functioning in its own right outside the Council. It does not mean a forum in which different organisations and their representatives simply come together to discuss matters of common interest or concern and decide on joint courses of action. Nor does it mean a joint committee set up with another council.

It means a body to which those responsible for its management or control owe legal duties, such as those of good faith, and skill and care.

The range of external organisations in which the Council is or may become involved through appointing Members or Officers to positions of control or management within them is quite broad. It includes by way of example:

- companies (limited by guarantee or limited by shares, including 'community interest companies')
- registered industrial and provident societies
- statutory corporations (e.g. NHS Trusts)

- limited liability partnerships
- unincorporated associations
- trusts
- school governing bodies (potentially including Academies' governing bodies)

Many of the types of organisation referred to above could potentially have charitable status. Where this is the case, the organisation and those concerned in its management are required to comply with charity law **as well as** the rules generally relating to that type of organisation.

3. What do we mean by an 'appointment'?

In some cases the Council has the **right** to appoint one or more individuals to serve on an external organisation, either because of rights enshrined in the organisation's constitution or because of a contractual right, e.g. a provision in a funding agreement.

In other cases an organisation might voluntarily invite the Council to nominate someone to be appointed by the organisation.

The same considerations apply to both situations. In this guidance the term 'appointment' is used to refer to both appointments and nominations by the Council.

Care must be taken to distinguish between situations where an individual is appointed to a position in an external organisation (e.g. as a director of a company) and instances where an individual attends meetings simply as an observer, or as an invitee representing the Council in discussions with the organisation. In these latter circumstances, no external appointment is being made, but it is very important that there is complete clarity of roles on all sides.

It is also very important for any Member or Officer serving in an external organisation to be clear whether their involvement is:-

- **an official Council appointment; or**
- **unofficial, in a purely personal, private capacity rather than as a Council appointee.**

In some cases a Member may be invited to take up a position on an organisation's management committee because they are an elected councillor. This would still constitute a private appointment unless formally made by the Council via the appropriate process.

In other cases a Member might be appointed to an external organisation by the Council, but then be appointed **by that organisation** to serve on another body. In such a case, without formal Council approval the subsequent appointment would **not** be an official Council appointment.

4. Why might the Council make an appointment to an external organisation?

Appointees to external organisations of the type envisaged above are required by law to exercise their decision-making powers in what they consider to be the best interests of the organisation. Failure to do so could expose the appointee to a personal financial liability. As a particular example, company directors are required to exercise independent judgment in discharging their powers, and must act in the best interests of the company. They cannot be instructed by their appointors to act in a particular way.

It follows, therefore, that making such appointments must **not** be seen as a way of ensuring that the Council's interests are represented within an organisation. Although the expression 'representative' to describe a person appointed by the Council to serve on an external organisation is a common one, it is really something of a misnomer. Such persons must not be regarded as delegates of the Council, simply mandated to pursue the Council 'line'.

It is equally important that the organisation itself understands this. Occasionally an organisation's management meetings involving Council appointees may become in effect a meeting between the Council (in the form of its appointees) and the organisation (in the form of the other members of its management body). This is entirely wrong.

Therefore, **it is very important to make clear in writing whenever an appointment is made that:-**

- **in making the appointment the Council's intention is that the appointee's role will be to contribute to the decision making process of the organisation and to undertake other functions appropriate to their position in the organisation; and**

- **the appointee does not have any authority as a Council appointee to commit the Council to any particular course of action, and their role is not to represent the Council in discussions or negotiations with the organisation.**

So why would the Council make an appointment to an external organisation?

Possible reasons for making an appointment might include:-

- To exercise control of the body;
- Where the organisation has been set up to deliver a jointly developed project;
- To work in partnership with other public authorities/voluntary sector;
- To raise the image of the Council;
- To contribute expertise;
- Where insight into the Council's political or policy direction would benefit the organisation;
- Where the Council has a vested interest in the effective management of an organisation and thinks it can make a practical contribution to this;
- Where the Council has itself been instrumental in establishing bodies and drawing together their boards etc. such that withdrawal of Council involvement might seem inconsistent or actually threaten the cohesion of the organisation.

However, it needs to be recognised that there is a number of potential risks or disadvantages associated with making such appointments. For example:-

- Organisations may run in to financial difficulties or their decision making may leave them liable to expensive litigation and liabilities. (If you have any concerns about an organisation's financial situation or decision making process you should seek the advice of your Council support officer if you are a Member or of a senior officer.)
- Appointees may incur personal liability. Furthermore this might rebound on the Council if the appointee were to be indemnified by the Council or the Council were otherwise to be held responsible for their actions. Personal liability might extend in certain circumstances to criminal liability.
- Appointments can result in an individual facing a conflict of interests between their Council and external roles. In some circumstances the existence of such a situation can constitute a breach of duty to the organisation. (See Schedule 1.)
- Holding an appointment may hinder a Member or Officer from participating in the making of related Council decisions, and can in some circumstances give rise to a Member having a 'disclosable pecuniary interest'.
- Even if the Council did not itself incur expense from, e.g. the failure of an external organisation, it could still attract adverse publicity and criticism caused by its links on a 'guilt by association' basis.
- The presence of Council appointees within an organisation may blur the boundaries between the two bodies (see previous point), and where the Council also has a contractual relationship with the organisation may make enforcement more awkward than when there is a true arm's length relationship.
- As mentioned above, there may be confusion about an appointee's role on the part of the appointee and/or the organisation.
- Appointments generate additional work both for the appointee and others, e.g. Members' support officers ('buddies') and/or 'owning directors'.

Many of these pitfalls can be avoided or mitigated, but any remaining risks or disadvantages should be weighed against the perceived benefits of an appointment before deciding whether to make the appointment. It follows, therefore, that these benefits need to be considered before an appointment is proposed.

Making an appointment is not the only way of showing support for an organisation. **It is recommended that the presumption should be against making an external appointment as a gesture of support unless this is outweighed by other considerations.** It is recognised though that in many cases making an appointment is entirely appropriate, and indeed that in some circumstances it would be inappropriate **not** to make an appointment.

5. Who should be appointed?

The principal issue is whether the appointee should be a Member or an Officer.

The answer will depend on the circumstances of each particular case. However, some general points can be made.

Where the principal aim of an appointment is the expression of SCC support, or a desire to contribute political insight or an awareness of Council policy direction, or where public or political accountability is the main objective, this will tend to point towards appointment of a Member.

Where the appointee is expected to provide technical input, or where the organisation has been set up to implement a Council developed project appointment of an Officer would probably be more appropriate.

Appointing an Officer may also help to separate involvement in the organisation's management from decision makers in the Council, but it must be remembered that many Council decisions are taken by Officers exercising delegated powers.

Whenever an Officer is appointed, this must be different from the person charged with managing the Council's relationship with the organisation, and safeguarding the Council's interests in relation to it.

This approach will do much to reduce the risk of actual or perceived conflicts of interest and will help to protect the positions of both the Council and the organisation itself.

Given their particular roles, **the Council's Monitoring Officer and its Section 151 Officer (Executive Director, Resources) should be specifically excluded from serving on the governing body of any external organisation.** This gives Members assurance that these officers act solely and transparently in the Council's interest and are in a position of independence to comment on potential conflicts of interest involving other Officers or Members.

Cabinet members face almost inevitable conflicts of interest if appointed to external organisations, particularly when the appointment relates to their portfolio. As well as causing potential problems in relation to their duties to the organisation, this may also inhibit their ability to take part in Cabinet decision-making where this relates to the organisation. This situation has been exacerbated by the introduction of Individual Cabinet Member decision-making.

Therefore, it is very strongly recommended that Cabinet members should not be appointed to serve on the kinds of external organisations envisaged above.

6. How are appointments made?

Under the Council's constitution authorising appointments of Members to external organisations is a 'non-executive' function which is exercised by Full Council.

Authorising Officer appointments is an 'executive' function to be carried out as prescribed from time to time in the Leader's Scheme of Delegation. Currently this is delegated to individual EMT members.

Every Member appointment must be 'owned' by a member of the Council's Directors' Group. These 'owning' Directors have responsibility for liaising with the external body concerned over the appointment, and ensuring that the appointed Member is adequately supported and, in particular, that an appropriate support officer is designated in relation to each appointment. They must ensure that the Council's register of appointments is kept up to date.

Where the appointment is to an organisation in whose interests the appointee will be expected to act (as opposed to situations where the appointee can truly be regarded as a representative of the Council), i.e. the type of external organisation to which this guidance relates, **the 'owning' Director must complete a pre-appointment checklist and send this to Legal Services.** The point of this is to make sure that before an appointment is finalised the Council and the proposed appointee are aware of and have considered key issues such as:-

- The legal nature of the organisation
- The position to which the appointment is being made
- The purpose of the appointment

- The organisation's financial position
- The organisation's insurance arrangements
- The organisation's relationship with the Council
- The Officer who will be responsible for overseeing the Council's ongoing relationship with the organisation and safeguarding the Council's interests in relation to it (who must **not** be the appointee)

It is particularly important that the legal nature of the appointment, and the scope for the appointee incurring personal liability as a result of the appointment, are fully understood, together with any arrangements to mitigate this, e.g. insurance.

The 'owning' Director must also send an appropriate letter of appointment to the organisation concerned. This may need to be tailored to the particular circumstances, but should follow guidance already issued by Legal Services.

The support officer system for briefing and supporting Members was originally agreed by Cabinet on 8th July 2009. The report and appendices explaining the system can be accessed on the internet via this link:-

<http://www.sheffield.gov.uk/your-city-council/council-meetings/cabinet/agendas-2009/agenda-8th-july-2009>

Part of the support officer system is ensuring feedback from meetings. 'Owning' Directors are responsible for ensuring feedback is received by them and logged within their service area in relation to those appointments which they own.

7. Further sources of assistance

Further advice on the issues raised in this guidance can be obtained from:-

Lynne Bird, Director of Legal Services
Tel. (0114) 27 34018
lynne.bird@sheffield.gov.uk

or

Andrew Bullock, Solicitor
Tel. (0114) 27 36261
andrew.bullock@sheffield.gov.uk

This includes specific advice on involvement with different kinds of organisation, the details of which are beyond the scope of this guidance.

All Members (and Officers) so appointed to external organisations should familiarise themselves with the paper produced by Legal Services entitled '*Serving on External Bodies - What every Member needs to know!*' available at:-

[\[link to be inserted\]](#)

In particular, they must ensure they are fully aware of their responsibilities, and that they receive appropriate training and support.

Director of Legal Services

31st August 2012

Ref: AJB

Schedule 1

Some Notes on Conflicts of Interests or Duty

All Members and Officers serving on outside bodies must remain continually alert to the possibility of them having a conflict of interests or a conflict of duty arising from such involvement.

It is most important that they are familiar with and conform to:-

- the organisation's own rules regarding such conflicts, which will usually be found in its governing document (e.g. its constitution, articles of association, trust deed etc.); and
- the applicable legal requirements, the details of which are beyond the scope of this note.

Without being prescriptive about the circumstances when conflicts of interest or duty might arise, examples include:-

- The organisation and the Council might have different and incompatible aims or goals in a particular matter. E.g. The Council may wish to see the delivery of a service delivered by the organisation in a particular area rationalised and reorganised across the city.
- The organisation and the Council might be separate parties to a single transaction. E.g. The organisation might be negotiating the lease of a building from the Council, or the terms of a funding agreement.
- The organisation might be tendering to provide services to the Council.
- The organisation and the Council might be in competition with each other. E.g. They might both be bidding for funds from a limited central government pot.
- The organisation and the Council might be in dispute with each other, which in an extreme case might involve legal action in the Courts.

It is important to note that such conflicts may arise not simply in relation to the organisation and the Council. The private interests of an appointee, or their role in relation to another body, may also give rise to a conflict of interests or duties in relation to the organisation.

A conflict of interest or duty does not automatically mean that an appointment cannot be made or must be brought to an end, although in some situations this may be the case. However, whenever a conflict becomes apparent it **must** be addressed and dealt with in accordance with the organisation's rules and any applicable law. If in any particular case a Member or Officer is unclear as to what is required they should initially seek advice from the Director of Legal Services and her staff.

In addition, Members need to be mindful of the importance of observing their legal obligations in relation to 'Disclosable Pecuniary Interests' and the Council's Code of Conduct.

Serving on External Bodies

What every Member needs to know!

Sheffield City Council is a major provider of services in its own right, but many of its activities involve partnerships with other organisations or individuals. In this context the term 'partnership' encompasses a wide variety of different arrangements where the Council comes together with others in some formal way to take forward a common agenda. Examples include the members of the Sheffield First local strategic partnership, area based regeneration boards, limited companies, trusts, joint authority committees and unincorporated associations.

As part of your role as a councillor it is likely that you will be asked to serve on an external body in some capacity. You may be formally nominated or appointed by the Council to such a role, or you might be approached directly by an organisation, e.g. because it is based in your ward.



If you accept such an appointment you need to be aware of your role and responsibilities, and how the work of the partnership fits into the 'bigger picture'.

In particular you need to know:-

- Is your involvement on behalf of the Council (in which case it is covered by the Council's *Protocol to Assist Members and Officers Serving on External Organisations*), or in a purely private capacity (in which case the *Sheffield City Council Code of Conduct* may require action on your part)?
- What is the legal status of the organisation you are joining? Make sure you have a current copy of its constitution and have read this.
- Is the organisation a charity?
- Has your appointment been properly authorised by the Council, and has a pre-appointment checklist been completed where necessary?
- Has your appointment been properly formalised with the organisation in accordance with its own rules and procedures, and any other legal requirements (e.g. notifying Companies House of an appointment as a company director).
- How does the work of the organisation relate to the Council's activities?

- Are you clearly there to represent the Council, or does the law require you to act in the best interests of the organisation?
- What are the legal duties and responsibilities which come with your role?
- What is the scope for you incurring personal liability?
- What insurance arrangements are in place?
- How sound are the organisation's finances?
- Who is your designated 'Sheffield City Council support officer' and what are the arrangements for briefing you and for you to report back to the Council?



Whilst serving on the external body:-

- Familiarise yourself with the other members of the partnership and their aims.
- Act in accordance with the *Sheffield City Council Code of Conduct*, and with the organisation's own constitution and rules of conduct.
- Watch out for conflicts of interest between your Council and organisation roles.
- Make use of any training opportunities offered by the Council to develop your partnership working skills.
- When your appointment comes to an end, make sure it is properly terminated.

Sources of help

Remember that Officers are here to help you to navigate your way through these issues.

Your 'support officer' should be able to assist you. If you are unsure who this is, the relevant Executive Director / Director should be able to help, or please ask the Head of Democratic Services – Paul Robinson (Council and Members) Tel: 27 34029 and Jason Dietsch (Executive and Mayoral), Tel: 27 34117.

Legal Services have produced a number of guidance documents which are available on the Council's Intranet.

For more specific advice (including 'signposting' to other sources of information), or simply to discuss any of the issues raised above, please contact:-

Lynne Bird, Director of Legal Services
 Room G18, Town Hall
 Tel. 27 34018
lynne.bird@sheffield.gov.uk

Andrew Bullock, Lawyer
 Floor 3, West Wing, Moorfoot Building
 Tel. 27 36261
andrew.bullock@sheffield.gov.uk