

**ANGUS COUNCIL**

**ANGUS COUNCIL – 26 MAY 2022**

**COUNCIL APPOINTMENTS TO OUTSIDE BODIES**

**REPORT BY THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES**

**ABSTRACT**

The purpose of this report is to detail a list of outside bodies for which appointments will require to be made at this meeting of the Council (“the Statutory Meeting”), to detail those Outside Bodies where it is recommended that no appointments are made and also to propose a policy framework for appointments to all outside bodies, going forward.

**1. RECOMMENDATIONS**

The Council is asked to:

- (i) approve the Policy for Appointments to Outside Bodies, attached as **Appendix 1** to this Report;
- (ii) note the definition of an outside body which captures a requirement that the outside body contributes to the overall aims and objectives of the Council;
- (iii) note the implications for individual elected members of being appointed to outside bodies;
- (iv) make appointments, in accordance with the provisions of Standing Order 20, to the Outside Bodies listed in **Appendix 2** to this report, which comprise those bodies that the Council has an obligation to appoint to, and in doing so, pay due regard to the principle of improving the diversity of public sector bodies;
- (v) Agree that no appointments are made to those Outside Bodies listed in **Appendix 3**, noting the justification for this position and noting that elected members are free to seek involvement with or membership of such bodies directly;
- (vi) note the potential for further appointments to be made, in accordance with the provisions of Standing Order 20, following the return and scrutiny of the required questionnaires and relevant documents from outside bodies detailed in **Appendix 4**
- (vii) note that a further Report will be submitted to the meeting of full Council in September 2022 following receipt and officer scrutiny of the returned questionnaires and relevant documents referred to in recommendation (vi); and
- (viii) determine whether the three current “Champions” roles for Equalities, Older People and Veterans held by elected members will be retained and, if so, make appointments to these roles.

**2. ALIGNMENT TO THE COUNCIL PLAN**

- 2.1 This Report contributes to the achievement of our priority that the council is efficient and effective as detailed in our Council Plan for 2012-2025.

**3. BACKGROUND**

- 3.1 The Council has in the past made appointments to a range of outside bodies. It is proposed

that Council approves a Policy for Appointments to Outside Bodies (attached as Appendix 1) to ensure that elected members are only appointed to outside bodies where it is essential and where the outside body contributes to the overall aims and objectives of the Council.

3.2 It is also proposed that Council makes appointments, in accordance with the provisions of Standing Order 20, to the Outside Bodies listed in **Appendix 2** to this report, which comprise those bodies that the Council has an obligation to appoint to. There are listed bodies under the Equality Act 2010, Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, and the Gender Representation on Public Boards (Scotland) Act 2018 which have a duty to promote greater diversity of board membership, in particular gender balance. Elected members are asked to pay due regard to the principle of improving the diversity of public sector boards and bodies, although this should not outweigh relevant member responsibilities, skills and experience, when making any appointments to them.

3.3 An Outside Body can be either a corporate or an unincorporated body which is not part of the Council's own governance structure but whose work helps the Council to fulfil its own responsibilities. In terms of the proposed policy, it is a body whose functions make a substantial contribution to the achievement of the Council's overall aims and objectives, as set out in its approved policies, plans and strategies, and to the delivery of essential local services. For the purposes of the proposed policy, Outside Bodies have been categorised as follows:

#### **1) Statutory Body**

An organisation to which the Council is required by statute to make appointments to and where not doing so would affect the Council's ability to properly discharge its functions and obligations.

#### **2) National Body**

An organisation which directly or indirectly represents local government (or aspects of its work) at regional, national or international level and whose membership comprises representatives of some or all local authorities.

#### **3) ALEO**

A body through which councils seek to carry out some of their functions, other than on a straightforward contractual basis. They are often used by councils as an efficient and cost-effective way of delivering public services including services relating to leisure, arts, culture, employment, economic development and urban regeneration, waste management, property development and social care. ALEOs usually take the form of companies or trusts and some can register as charities (provided they have a wholly charitable purpose) or as limited liability partnerships. Currently Angus Council's only ALEO is Angus Alive.

#### **4) Local**

A local organisation or group, falling within one or more ward boundaries, which seeks the Council's assistance in meeting local needs.

#### **5) A voluntary/community organisation**

A voluntary/community organisation which receives funding from the Council and Elected Member representation will provide a valuable mechanism for the exchange of information and views. An organisation or discussion/liaison group where Council representation will in some other way provide clear 'added value' to either the Council or local communities in Angus.

## 6) Trusts

A trust is usually set up where assets (e.g. property, investments) are given by one person (the Donor) to another (the Trustees) with the intention that it should be applied for the benefit of a third party or the public (the Beneficiary). Once this occurs, the trustees own the asset, but can only apply it in accordance with the trust for the benefit of the beneficiaries.

- 3.4 There will often be a legal requirement for a Councillor to be appointed as a “Decision-Maker” (as a director, trustee or executive of the organisation, that is as a full member of the organisation with voting and decision-making powers). Sometimes, Councillors can serve on these bodies as an “Observer”, with no voting rights or decision-making powers and simply advise on the Council’s position. In some instances, Council can decide which type of role it would like a member to take up.
- 3.5 A proposed policy for appointments to outside bodies is being brought forward for a number of reasons: -
- it is important that outside bodies contribute to the overall aims and objectives of the Council.
  - it is important that elected members are aware of the implications of such appointments. As detailed above, there are two types of appointments: - 1) a Decision-Maker, where the elected member becomes a member of the outside body; and 2) An “Observer” where the elected member attends the meetings of the outside body in their capacity as an elected member. The former generally carries significantly more responsibility, including the potential for personal liability. It is important, therefore, that any such nominations are, in particular, given careful consideration with relevant information provided and an appropriate process is put in place prior to any decision being taken on elected member involvement.
  - In addition, as demands on the Council and elected members increase, it is essential that the Council keeps all of its activities under review to ensure that it is securing best value. The policy proposes that an elected members will not be nominated to an Outside Body unless it is deemed essential.
- 3.6 It is also proposed that no appointments are made to the list of Outside Bodies detailed in Appendix 3 to this Report. The rationale for this is detailed in that Appendix. Elected members are free, of course, to seek involvement with or membership of such bodies, directly, should they have a particular interest in doing so.
- 3.7 Members should note that there is scope for further appointments to be made, however this will only be done following officer scrutiny of returned information from those Outside Bodies listed in Appendix 4 to the Report. It is intended that officers will make contact with these bodies asking that they complete the questionnaire in accordance with the policy. Following officer review of the returned information, a Report will be brought to the meeting of Full Council in September 2022, which may include further recommendations on appointments.

### 3.8 The Role of “Champions”

Members will be aware that the Council has previously identified and appointed 3 elected members to act as “Champions” in specific matters. These have the following purposes: -

#### 1. Equalities Champion

To champion all equality issues/act as spokesperson on behalf of elected members.

Members should note that in respect of the Equalities Champion, equalities is very much embedded in the Council’s policies and practices as a legal requirement. In addition, an Equality Impact Assessment is completed for committee reports, where applicable.

## **2. Older People's Champion**

The Older People's Champion is a position which Age Concern and SOPA (Scottish Older People's Assembly) asked Councils to adopt. There are now about 23 Older People's Champions in Scotland. The role is about meeting with and listening to older people regarding their concerns and raising them at every opportunity in either council meetings or unofficially.

## **3. Veteran's Champion**

Where possible, the Veterans Champion should be a veteran who has served in the Armed forces. The Champion is the focal point for all veterans' issues including helping with housing, welfare issues, schools, medical etc.

Members are asked if they wish to continue with these "Champions" roles.

- 3.9 In making appointments to outside bodies, members should also be aware of the provisions of Standing Order 20, as detailed below:-

### **"Voting in the case of vacancies and appointments**

- (1) In the filling of vacancies in the membership of any Committee or Sub-Committee and the making of appointments of members of the Council to any body, where more than one candidate has been nominated and seconded, members shall be entitled to vote for up to as many candidates as there are places to be filled. Candidates shall be appointed in the order of number of votes received until all vacant places have been filled.
- (2) In the event of two or more candidates tying with the lowest number of votes to fill the last vacant place, a further vote shall be taken between or among those candidates, each member having one vote, and in the event of a further tie, the appointment shall be determined by lot."

## **4. IMPLICATIONS OF BEING APPOINTED TO OUTSIDE BODIES**

- 4.1 Section 5 of the Policy (Appendix 1) provides details of the implications of being appointed to outside bodies to elected members. The main points are summarised below:-

In general, Elected Members who are appointed to Outside Bodies should:

- a. understand clearly the Outside Body's purposes and main objectives and their own role in the Outside Body;
- b. attend meetings regularly and take an active, informed and supportive role in the body's affairs;
- c. take care always to act in the best interests of the Outside Body and in accordance with its rules or governing document, while contributing their knowledge and experience as an Elected Member;
- d. satisfy themselves that the Outside Body has transparent governance arrangements, regular reports on its activities and sound financial management, with accounts regularly monitored; and that annual reports and accounts are submitted in timely fashion;
- e. seek to protect the body's assets and manage its affairs prudently;
- f. be aware of the main risks the body faces (including funding risks) and the steps to be taken to deal with them;

- g. ensure it maintains its membership, so that the work of running the Outside Body and any financial obligations continue to be shared by a reasonable number of people;
  - h. behave ethically in accordance with the Outside Body's own code of conduct, if they have one and also the Councillors' Code of Conduct;
  - i. not gain or seek to gain from their appointment any benefit or remuneration (beyond any travel, remuneration or other allowances formally approved by the body);
  - j. ensure the Outside Body has appropriate health and safety and equal opportunities policies and adequate insurance arrangements;
  - k. seek to safeguard the Council's interests on those bodies which are funded by or through the Council, to the extent that this does not conflict with their duties towards the Outside Body; and
  - l. seek appropriate advice if they have concerns about the running of the body about what to do.
- 4.2 Elected Members appointed by the Council to an Outside Body will, when sitting on that body, often have duties to the Outside Body which take precedence over their duties to the Council. This will depend on the type of Outside Body on which they serve. Elected Members will therefore wish to consider, at any time when it appears that the Outside Body's interests may conflict with the Council's interests, whether that conflict prevents them from taking part in decision-making either at the Outside Body's meeting or at the Council's meeting.
- 4.3 The Councillors' Code of Conduct provides guidance to Elected Members on specific areas such as potential Conflicts of Interest between their role on Outside Bodies and their role as a Council Member and whether a declaration of interest will be required.

In terms of Section 5.4 (c) of the revised Code, membership of an Outside Body, (where a member has been appointed by the Council), would not normally be considered as a connection that requires a member to declare an interest and not take part in any decision-making e.g. before considering a matter at Council or Committee.

However, in terms of paragraph 5.4(c)(1) of the Code, this is **not** the case and there is a requirement to declare an interest and not take part in the decision-making where the matter being discussed by the Council, or at one of its committees or a sub-committee is: -

- quasi-judicial or regulatory in nature; and
- where the outside body has an interest; or
- the elected member has a personal conflict by reason of their actions, connections or legal obligations.

Examples of the types of matters which involve quasi-judicial or regulatory decisions are outlined in Section 7 of the Code (Taking Decisions on Quasi-Judicial or Regulatory Applications) and include planning and licensing applications. Also, the guidance to the Councillors' Code of Conduct provides further advice on such matters. <https://www.standardscommissionscotland.org.uk/uploads/files/1652180496220502CouncillorsCodeGuidance2022v1.pdf>

In addition, the Standards Commission provide an advice note on arm's length external organisations.

<https://www.standardscommissionscotland.org.uk/uploads/files/1638361910211201AdviceNoteCouncillorsALEOsv1.pdf>

#### 4.4 Personal Liability

As outlined in paragraph 3.3 above, an Outside Body can be either a corporate or an unincorporated body.

The main difference is that a corporate body has a distinct legal persona, separate from that of its members, whereas an unincorporated body is not a separate entity from that of its members.

Unincorporated bodies cannot enter into contracts or own property in their own right, whereas Incorporated bodies can.

Where an elected member is appointed as a Director of a corporate body, then they are generally protected from any personal liability that may arise. A corporate body has limited liability.

As the corporate body is a separate legal entity then the body's debt belongs to the body. However, there are some exceptions to this rule, depending on the specific circumstances of the matter.

Conversely, an unincorporated body does not have limited liability. Clubs, trusts and charities are often constituted as unincorporated bodies. The members of a management committee of a charity that is formed as an unincorporated association are likely to be charity trustees which also carry certain legal obligations.

In these circumstances, Members may be personally liable should there be a breach of their trustee duties, resulting in a loss to the trust. Trustee liability is an obligation upon the trustee to restore the trust fund to the position it would have been in had the breach not occurred. The trustee may be personally liable to account to the trust for loss that occurs as a result of their breach of trust.

Should members have any queries around accepting an appointment to an outside body, then they should seek advice from Legal and Democratic services before accepting that appointment.

It is important to note that there may be a conflict of interest once a member has accepted an appointment, which means that legal advice would not be available to the member after the appointment has been accepted. Legal advice should therefore be sought in advance of being appointed, should the member wish to obtain advice.

## **5. FINANCIAL IMPLICATIONS**

- 5.1 There are no direct financial implications arising from this report but the recommendations are intended to ensure that elected member time is used to best effect given the many demands which come with the role. Elected member involvement in only those Outside Bodies considered essential is also likely to mean less resource being required from Council officers.

## **6. EQUALITY IMPACT ASSESSMENT**

- 6.1 An equalities impact assessment is not required as the report recommendations have no differential impact on people with protected characteristics.

**NOTE:** No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

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List of Appendices:

Appendix 1 – Policy on Appointments of Elected Members to Outside Bodies

Appendix 2 – Outside Bodies for Appointment

Appendix 3 – Outside Bodies – No Appointments Recommended

Appendix 4 – Outside Bodies – For Further Review