

Appointment of Elected Members to Outside Bodies Policy

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1 Why does the Council need this Policy?

- 1.1 This policy sets out the criteria that will inform recommendations to the Council in respect of appointments or nominations of Elected Members to Outside Bodies. The policy also sets out the process to be followed in making appointments or nominations and the roles and responsibilities of Elected Members once appointed to an Outside Body.
- 1.2 In recommending appointments or nominations of Elected Members to Outside Bodies, the Council needs to manage the following risks which are mitigated through this policy:
 - failure to apply criteria for appointments to Outside Bodies;
 - lack of understanding of roles and responsibilities and conflicts of interest;
 - non-compliance with the process for appointments or nominations; and
 - indemnities and insurance for Elected Members.
- 1.3 The Council also has a duty to secure best value, under section 1 of the Local Government in Scotland Act 2003. As demands on the Council and Elected Members increase, it is essential that the Council keep all of its activities under review to ensure that it is securing best value.
- 1.4 Although this policy refers to the appointment of Elected Members to Outside Bodies, it should be clarified that, for certain Outside Bodies, the Council will nominate an Elected Member, who will then in turn be appointed by the Outside Body. For example, the Council may *nominate* an Elected Member to be a Director on the board of a company. However, the decision on whether or not to *appoint* the Elected Member to the board of the company may rest with the company itself.

2 Application and Scope Statement

- 2.1 This policy is applied when the Council appoints or nominates Elected Members to Outside Bodies, as defined in section 13.
- 2.2 The capacity in which Elected Members serve on Outside Bodies will mainly depend on:
 - what legal form each Outside Body takes, and in particular whether it is incorporated as a separate legal entity or not;
 - whether the appointment is to the main body or to a particular committee, sub-committee, group or forum of the Outside Body; and
 - whether the Elected Member is acting as a voting or non-voting member.
- 2.3 Depending on the terms of the appointment, Elected Members may serve as either:
 - a board, executive or management committee member (voting);
 - a committee or sub-committee member (voting);
 - an ordinary member (voting only at the AGM);
 - a company director (voting);

- a charity trustee (voting);
- an observer (non-voting); or
- a member of a discussion or liaison forum (where voting may not apply).

3 Responsibilities

- 3.1 The Chief Officer – Governance is responsible for this policy. This includes ensuring that it is applied during the appointment or nomination of any Elected Member to an Outside Body and during the term of appointment.
- 3.2 Council will make appointments or nominations to Outside Bodies in accordance with this policy.
- 3.3 Officers within Governance will advise the Chief Officer of any feedback on the policy or required amendments.

4 Supporting Procedures and Documentation

- 4.1 This policy is supported by a questionnaire which is issued by Council officers to each Outside Body prior to any appointment or nomination being made by the Council to that body – unless the Outside Body has completed such a questionnaire within the previous two years and the Chief Officer – Governance is satisfied that circumstances are unlikely to have changed significantly since then. Questionnaire returns will be assessed by the Committee Lead to inform recommendations to Council. During each Council term, outside bodies will be required to complete the questionnaire twice, at approximately two-yearly intervals.
- 4.2 Council officers will retain a record of all appointments and nominations made by Council in accordance with this Policy.

5 About this Policy

- 5.1 Elected Member appointments or nominations to Outside Bodies will only be made if there are clear strategic or policy benefits from this arrangement for either the Council or local communities. This is managed through applying criteria for appointments or nominations to be made, establishing the process to be followed when appointing or nominating, and defining the roles and responsibilities of an Elected Member depending on the type of Outside Body to which they are appointed. This policy also addresses matters such as insurance, indemnity and conflicts of interest. This policy also refers to the Councillors' Code of Conduct which took effect on 7 December 2021. The Code was issued by the Scottish Ministers, with the approval of the Scottish Parliament, as required by the Ethical Standards in Public Life etc. (Scotland) Act 2000.

Criteria

- 5.2 Outside Bodies seeking appointments or nominations of Elected Members, with the exception of statutory appointments, will be asked to complete a questionnaire. This will allow officers to make recommendations to Council based on an assessment of the information provided against the following criteria:
- a) the Outside Body has appropriate and transparent governance arrangements in place, dependent on its size and type;
 - b) the Outside Body has adequate liability insurance in place, appropriate to its size, purpose and type;
 - c) the Outside Body provides appropriate training on the Elected Members' duties and obligations under the appointment; and
 - d) there are clear arrangements in place for Elected Members to exit from the Outside Body.
- 5.3 In addition to 5.2, if the Outside Body requests an Elected Member to act in a decision-making capacity it will provide the Council with their:
- a) most recent accounts prepared and audited in accordance with the requirements of the Companies Act 2006, the Charities Accounts (Scotland) Regulations 2006 or other applicable legislation; and
 - b) 1 year business plan and three year summary business plan if their annual budget exceeds £10,000; or details of the income and expenditure requirements for the forthcoming year if their budget is less than £10,000.
- 5.4 Appointments or nominations to Outside Bodies will not normally be recommended if, in the judgment of the Chief Officer – Governance (following consultation, if appropriate, with the Chief Officer – Finance):
- a) the Outside Body has significant outstanding disputes or liabilities which are likely to impact on its future viability or solvency;
 - b) the Outside Body has not met for more than 1 year without good reason;
 - c) the appointment of an Elected Member is not the best way of achieving the aims of the Outside Body;
 - d) the anticipated time commitment of the Elected Member is not justified by the likely contribution towards meeting the strategic objectives of the Council.

Process

- 5.5 All prospective appointments or nominations of Elected Members will be considered on an individual case-by-case basis, taking into account the size and legal status of the Outside Body.
- 5.6 The Chief Officer - Governance will, after review of completed questionnaires, and taking into account all of the information provided to him or her, recommend to Council on

whether or not Elected Members should be appointed or nominated to an Outside Body. It should be noted also that the Chief Officer – Governance has the following delegated power in the Council’s Powers Delegated to Officers:

To finalise appointments to outside bodies, where compositions have been agreed by Council or committee, upon notification of names from members, and notify outside bodies accordingly; this shall include making changes to appointments to outside bodies upon notification from members providing the agreed composition does not change. This shall not apply where named appointments are required to be made by Council.

- 5.7 Elected Members should be aware that, if they are recommended by the Chief Officer – Governance for appointment or nomination, the final decision on whether or not they accept the appointment or nomination is their own. Once appointed, the Elected Member is responsible for their role on the Outside Body.
- 5.8 Committee Services will maintain a Register of Outside Bodies, which will be reviewed on a regular basis, on behalf of the Chief Officer - Governance. Any new requests for appointments or nominations of Elected Members should be sent to Committee Services. If any Outside Body should cease to exist or no longer require Elected Member support, notifications should also be sent to Committee Services.

Roles and Responsibilities

- 5.9 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 on 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 of conduct and governing documents, whilst contributing their knowledge and experience as an Elected Member;
 - (d) satisfy themselves that the Outside Body has transparent governance arrangements; regularly reports on its activities and has 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 the Councillors’ Code of Conduct. The Councillor’s Code of Conduct requires Elected Members to continue to observe the rules of that Code when carrying out the duties of the Outside Body;

- (i) not gain, nor seek to gain, from their appointment any benefit or remuneration (beyond any travel 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 in relation to 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 advice from the Chief Officer - Governance or other relevant Council officer if they have concerns about the running of the body.

5.11 Elected Members shall cease being a member of the Outside Body when they cease to be an Elected Member. In circumstances where an Outside Body's constitution provides otherwise, the Outside Body should ask the Elected Member to voluntarily resign their membership of the Outside Body when they cease to be an Elected Member.

5.12 The types of organisation to which the Council makes appointments or nominations are diverse. The circumstances will vary widely from one Outside Body to another, but for convenience they have been divided below between corporate and unincorporated bodies.

Corporate Bodies

5.13 A corporate body has its own legal personality and is responsible for its own governance arrangements, finances and contractual responsibilities. The body itself will incur direct liability for its actions or inactions. Individual members who are acting within any mandate given to them by that body will usually be protected by limited liability if it becomes insolvent (except in the case of wrongful or fraudulent trading).

5.14 An Elected Member appointed to a corporate body must, when attending meetings of the body, act in that body's best interests, which may not necessarily be the same as the Council's best interests. Elected Members may of course bring to bear their own experience and knowledge as an Elected Member but have a duty to exercise independent judgement when making decisions. Elected Members should not act (nor claim to act nor give the impression that they are acting) under a Council instruction.

5.15 Elected members appointed to Outside Bodies are responsible for identifying, and taking advice on, any conflicts of interest that may arise between the Outside Body and the Council. In the event of a conflict of interest, the Elected Member should consider whether it is:

- (a) a conflict that can be effectively managed - e.g. by declaring an interest and withdrawing from either the Outside Body's meeting or the Council's meeting, or
- (b) so frequent or significant that it prevents the Elected Member from effectively fulfilling their responsibilities towards the Outside Body, in which case resignation from the body should be considered.

5.16 Corporate bodies include:

- statutory or chartered corporations (including local authorities, non-departmental public bodies, NHS trusts, colleges and community, foundation or voluntary schools);
- companies limited by shares;
- companies limited by guarantee (not-for-profit, including incorporated charities where liability is normally limited to a nominal £1);
- industrial and provident societies (not-for-profit, including most housing associations); and
- limited liability partnerships.

In many cases the body will have accountability requirements to a regulator such as Audit Scotland, another inspectorate or government department, or Companies House.

Registered Companies

- 5.17 An Elected Member appointed to a registered company may, depending on the approach taken by that Outside Body, be expected to become a company director rather than an observer. If appointed as a company director, the Elected Member will be acting on behalf of the body itself, not as a 'representative' of the local authority, even though the Council may have appointed or nominated them. Company directors must have their appointment filed with Companies House and must abide by the company's own Memorandum and Articles of Association.

Under the Companies Act 2006, a company director has duties:

- (a) to act within the company's powers;
- (b) to promote the success of the company;
- (c) to exercise independent judgement;
- (d) to exercise reasonable care, skill and diligence;
- (e) to avoid conflicts of interest;
- (f) not to accept benefits from third parties; and
- (g) to declare any interests in a proposed transaction or arrangement with the company.

Statutory Bodies

- 5.18 In some cases an Elected Member will be acting as the Council's representative on a board, committee or body that is exercising specific statutory functions which are distinct from the Council's own functions and where Council membership is required by law. These would include, amongst others, the NHS Grampian Health Board, the Grampian Valuation Joint Board, the Aberdeen City Integration Joint Board, and the Aberdeen Airport Consultative Committee.
- 5.19 While each body will have its own purpose and constitutional arrangements, in general an appointed Elected Member can be expected to play their part in supporting the body's work, whilst also taking account of the Council's interests and those of its communities. There may be some potential for conflicts of interest where there is a financial relationship

(such as a levy) between the body and the Council.

Unincorporated Bodies

5.20 An unincorporated body or association has no separate legal personality¹ and is in effect a collection of individuals who will usually be acting together under a formal structure such as a constitution, rules or terms of reference that have been agreed among the members.

Advisory, Consultative or Liaison Bodies

5.21 In many cases Elected Members will be appointed to an advisory, consultative or liaison body of some kind. It could take the form of a joint committee, partnership arrangement or discussion forum between the local authority and one or more other public and/or private or third sector organisations². Again, the Elected Member appointed will be acting as the Council's representative and contributing to that body's purposes while taking account of the interests of the Council, the city and its residents.

5.22 Examples would include local government forums such as Aberdeen Outdoor Access Forum and key partnerships such as the North East Scotland Fisheries Development Partnership. The potential for incurring liabilities or conflicts of interest as a result of membership of these bodies is likely to be lower.

5.23 In other cases the 'body' will be more of an informal discussion group, acting as a forum for the exchange of views and information and inter-agency consultation, often on quite local issues. Council appointments have previously been made to groups, forums, advisory groups and community partnerships or working groups. With no decision-making powers, the scope for liabilities or conflicts of interest arising should again be lower. An exception would be where, for example, such Outside Bodies make representations in respect of planning or licensing applications.

Registered Charities

5.24 A charity in Scotland is an organisation registered with the Office of the Scottish Charity Regulator (OSCR), having met the charity test. To meet the charity test, an organisation must have only charitable purposes and must provide public benefit in Scotland or elsewhere.

5.25 When appointed to a charity, Elected Members will be acting as 'Charity trustees'. Charity Trustees are defined as people having the general control and management of the

¹ Legal Personality: Independent existence under the law, especially in the context of a company being separate and distinct from its owners. One of the main advantages of the company structure is the limitation of liability that the separate legal personality gives to the members.

² 'Third sector organisations' is a term used to describe the range of organisations that are neither public sector nor private sector. It includes voluntary and community organisations (both registered charities and other organisations such as associations, self-help groups and community groups), social enterprises, and co-operatives. (www.nao.org.uk)

administration of a charity. Charity trustees can also sometimes be known as committee members, directors or board members. Charity trustees are not only responsible for their own actions, they are also responsible for the actions and decisions taken by the charity trustees when acting together

5.26 Charities and charitable trusts can be conveniently subdivided into:

(a) endowed grant-making trusts

- Trustees' duties are:
 - primarily to protect the trust's assets; and
 - ensure the charity is well-managed in accordance with its stated purposes (including disbursement of its funds, for instance as small educational or welfare grants).

(b) voluntary organisations and community associations

- These exist to provide some kind of local service;
- can present more risks particularly if they have charge of annual budgets and/or financial reserves, or contractual obligations towards staff, property or suppliers; and
- for this reason most of those voluntary or community groups to which the Council has made appointments have already incorporated themselves as companies limited by guarantee, a form which presents less risk to individual members.

5.27 Where the Outside Body is a registered charity, trustees are required to always act in accordance with the charity's stated purposes (set out in its charity registration and constitution or trust deed) and to submit an annual report and accounts. The Office of the Scottish Charity Regulator (OSCR) regulates these matters.

Other Unincorporated Associations

5.28 An unincorporated association, having no separate legal existence, is no more than a group of individuals who agree to pursue a common purpose. Elected Members may be asked to make a financial contribution, for example in the form of a subscription, and to sign a membership agreement which can include an agreement to contribute to liabilities incurred by other members.

5.29 When a member acts on behalf of the unincorporated association, for example in buying equipment to be used by the association, he/she incurs a personal liability for the cost of that equipment and then seeks to recover that expenditure from the funds of the association or from the other members of the association. In particular cases, the association may be regarded in law as a partnership in which case each member may be personally liable for any debts incurred by any member of the association.

5.30 Due to this potential liability the Council should not appoint voting members to unincorporated associations such as local community associations or sports clubs where there is a significant risk of personal liability.

Indemnity and Insurance Cover

- 5.31 The Council's indemnity for Elected Members and officers provides cover in connection with any liability the Elected Member may incur by reason of any action, or failure to act, which has been authorised by the Council or which forms part of, or arises from, any duties or functions placed upon the Elected Member. This includes functions arising from the Elected Member's service on an Outside Body, where the Elected Member has been officially appointed or nominated by the Council and the Outside Body itself does not provide its own cover. Insurance cover is only provided by the Council, however, when either the Elected Member is sitting on the Outside Body purely to represent the Council, or the body on which the Elected Member sits is acting only in the interests of the Council.
- 5.32 This means that the Council's insurance-backed indemnity would extend to:
- membership of statutory bodies, where the Elected Member would be acting as the Council's representative (in situations where the body did not provide its own cover);
 - membership of the many advisory, consultative or liaison bodies of which the Council is a member; and
 - situations where the Council's representative was appointed purely as a non-voting observer on a company or other incorporated body.
- 5.33 Insurance cover will not be provided, however, where the Elected Member was appointed or nominated by the Council to serve as either a company director or a charity trustee, where their primary obligations would be to that body rather than to the Council. In this situation the Outside Body should be expected to provide its own indemnity, to avoid any potential liability falling back upon the Council.
- 5.34 **For the avoidance of doubt**, the Council's insurance will not cover Elected Members acting in a decision-making capacity on an Outside Body such as a company or trust, as the Elected Member will not be acting in the normal course of their duties. Decisions made for these types of Outside Body are made solely in the interests of that Outside Body and not the Council. Elected Members should ensure that the Outside Body has adequate insurance arrangements in place, or should arrange their own insurance cover.
- 5.35 As a matter of principle, Council nominations or appointments should not be made, other than as non-voting observers, to companies or charities which have not provided their own insurance-backed indemnities to appointed Elected Members, nor to any unincorporated association where there is a significant risk of personal liability.
- 5.36 To avoid any potential liability, non-voting observers sitting on registered companies should take care not to exercise undue influence over the decision-making processes of those companies.
- 5.37 In no circumstances will the Council's indemnity/insurance cover Elected Members who are serving on an Outside Body in a personal capacity (i.e. by their own choice rather than by formal Council appointment or nomination).

Conflicts of Interest

- 5.38 As set out above, Elected Members appointed or nominated 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.
- 5.39 The Councillors' Code of Conduct addresses areas such as potential Conflicts of Interest between Elected Members' roles on Outside Bodies and their roles as Council Members.
- 5.40 Where an Elected Member has an interest as a member of an Outside Body, such an Elected Member may be obliged to declare the interest under section 5 (Declaration of Interests) of the Code when matters arise concerning the Outside Body to which he or she has been nominated or appointed. Elected Members should familiarise themselves with the 3-stage approach (Connection – Interest – Participation) set out in section 5 of the Code. Elected Members will also require under section 4 (Registration of Interests) of the Code to register their appointments to Outside Bodies on the Register of Interests.
- 5.41 Elected Members should familiarise themselves with the provisions of the Councillors' Code of Conduct, and the accompanying Guidance and Advice Notes from the Standards Commission for Scotland. Officers within Governance can offer advice on whether or not they have a declarable interest.
- 5.42 The Standards Commission also provide advice on the Councillors' Code of Conduct and, in particular, have provided an "Advice Note on Arm's Length External Organisations" (<http://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>).

6 Risk

- 6.1 This policy and its supporting documentation will act as controls to ensure the following risks are managed over the term of Elected Member appointments to Outside Bodies:
- **Compliance Risks** – the risks of appointees or nominees failing to comply with statutory duties is managed by the provisions set out in section 5 above. Any risk of financial liability is managed by this policy requiring consideration on whether appointees or nominees to Outside Bodies are adequately covered by insurance arrangements.
 - **Reputational Risks** - the risk of an Elected Member failing to comply with the Councillors' Code of Conduct is managed by referring above to the Code and, in particular, its requirements around conflicts of interest.

- **Strategic Risks** – the risk that the appointment of Elected Members to Outside Bodies does not support or contribute to the achievement of outcomes is managed by applying criteria for outside body appointments.

6.2 The Chief Officer – Governance will monitor these risks and the use of the policy as a control, being the point of escalation for any non-compliance or control failure (as referred to in section 8 below).

6.3 The Council will inform and advise Elected Members of their Roles and Responsibilities under different types of appointments, and will provide training so that Elected Members are aware of what is expected of them before they accept an appointment. Ongoing advice and training, where appropriate, will also be available to Elected Members.

7 Environmental Considerations

7.1 This policy has no detrimental impact on the environment, directly or indirectly.

8 Policy Performance

8.1 The policy will be used to manage appointments or nominations of Elected Members to Outside Bodies and to ensure that the associated risks are managed effectively. Any failure in the management of those risks or failure to appoint or nominate members according to the policy should be reported to the Chief Officer – Governance to enable a review of the circumstances. This will ensure that the policy achieves its intended purpose.

9 Design and Delivery

9.1 This policy supports the delivery of the Council's strategic outcomes by ensuring that the Outside Bodies on which the Council is represented understand how their activities are supporting the corporate priorities. Elected Member appointments also help support the delivery of the outcomes of each Outside Body.

10 Housekeeping and Maintenance

10.1 The policy will be reviewed towards the end of each election term to ensure it remains fit for purpose. However, the Chief Officer – Governance may determine that revisions are required at other times in order to manage the risks, process and criteria effectively. In such cases, the policy may be presented to the Full Council or relevant committee where such changes cannot be addressed under delegated powers.

10.2 The policy updates the previous version dated 2017.

11 Communication and Distribution

- 11.1 This policy will be shared electronically with Elected Members and with any Outside Bodies to which the Council makes appointments or nominations. It will also be published externally on the Council's website.
- 11.2 Elected Members will also receive training on the policy as part of their election induction.

12 Information Management

- 12.1 The information generated by the application of the policy will be managed in accordance with the Council's Corporate Information Policy and supporting Procedures.

13 Definitions and Understanding this Policy

- 13.1 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. 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/or to the delivery of local services
- 13.2 The term encompasses a diverse range of organisational purposes and structures and is in effect a "label of convenience" rather than an exact description. We have categorised Outside Bodies as follows:

Statutory	An organisation to which the Council is required by statute to make appointments and where not doing so would affect the Council's ability to properly discharge its functions and obligations.
National/ International	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.
Arms-Length External Organisation (ALEO)	A body that is formally separate from a council but is subject to its control and influence. ALEOs are bodies 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.

Local	<p>A local organisation or group, falling within one or more ward boundaries, which seeks the Council's assistance in meeting local needs. For example, a voluntary/community organisation which receives funding from the Council and Elected Member representation and provides a valuable mechanism for the exchange of information and views; or 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 Aberdeen.</p>
Trusts	<p>A trust is usually set up where assets (e.g. property, investments) are given by one person (the donor) to others (the trustees) with the intention that the assets be applied for the benefit of a third party or the public (the beneficiary). The trustees own the assets but can only apply them in accordance with the trust for the benefit of the beneficiaries.</p> <p>A trust is not regulated by an external regulator (unless it is a charitable trust), but is subject to legislation, e.g. Trusts (Scotland) Act 1921 and Trusts (Scotland) Act 1961. If it is charitable, it will be subject to charity law and regulated by the Office of the Scottish Charity Regulator (OSCR).</p>
Observer	<p>A person who is not a member of the Outside Body but is invited to attend meetings of that body in order to give the body the benefit of the Council's views and to keep the Council informed of the body's activities.</p>