

BACKGROUND DETAIL - COUNCIL APPOINTMENTS TO OUTSIDE BODIES**1. INTRODUCTION**

The following note summarises key points from Report 131/22 relating to appointment to Outside Bodies and implications for individual elected members of being appointed to outside bodies. 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 locally agreed 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.

2. DEFINITIONS

For the purposes of the locally agreed Policy, Outside Bodies are 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. ROLE OF ELECTED MEMBER ON OUTSIDE BODIES

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.

4. THE ROLE OF “CHAMPIONS”

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. In respect of the Equalities Champion, equalities is embedded in the Council’s organisational policies and practices as a legal requirement.

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. The role involves 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 Veteran’s 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.

5. IMPLICATIONS OF BEING APPOINTED TO OUTSIDE BODIES

Section 5 of the local Policy for Appointments to Outside Bodies 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.

6. CONFLICTS OF INTEREST

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.

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: -

- a) quasi-judicial or regulatory in nature; and
- b) where the outside body has an interest; or
- c) 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. The guidance to the Councillors' Code of Conduct provides further advice on such matters. <https://www.standardscommissionscotland.org.uk/uploads/files/1652180496220502CouncillorsCodeGuidance2022v1.pdf>

The Standards Commission provide an advice note on arm's length external organisations.

<https://www.standardscommissionscotland.org.uk/uploads/files/1638361910211201AAdviceNoteCouncillorsALEOsv1.pdf>

7. NOTES ON PERSONAL LIABILITY

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 the Monitoring Officer or their team before accepting that appointment.

It is important to note that there may be a conflict of interest once a member has accepted an appointment, as such, 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 a member wish to obtain such advice.