



North Devon Council

Report Date: Thursday, 18 May 2023

Topic: Appointments to Outside Bodies

Report by: Head of Governance

1. INTRODUCTION

- 1.1. The purpose of this report is to seek the appointment of representatives to Outside Bodies for which the Council currently appoints to.
- 1.2. The report also highlights the legal and insurance position of the Council and clarifies the expectations of appointees to Outside Bodies.

2. RECOMMENDATIONS

- 2.1. To appoint Members of Council to the Outside Bodies listed in Appendix A of the report for the life of Council and that attendance at meetings be an approved duty.
- 2.2. To appoint Members of the Council who would be required to act as Directors of the companies for the life of Council as follows:
 - 2.2.1. North Devon + - 2 Members
 - 2.2.2. One Ilfracombe – 1 Member
- 2.3. That all appointees to Outside Bodies be required to report back to Council at appropriate levels, usually annually.
- 2.4. That Council consider whether to re-appoint to the following organisations:
 - 2.4.1. Devon Rail Forum
 - 2.4.2. Ilfracombe and District Business Tourism Association

3. REASONS FOR RECOMMENDATIONS

- 3.1. To safeguard the interests of both the Council and the appointees.
- 3.2. To clarify the Council's expectations of appointees to outside bodies.
- 3.3. To improve the Council's knowledge of and communications with outside bodies by requiring reports from appointees.

4. REPORT

4.1. Legal Position

- 4.1.1. Members acting as the Council's representatives on other bodies must comply with the Code of Conduct for Members as you are acting in your official capacity as a Member of the Council when sitting on an outside body. The only exception to this would be where there is a conflict between a legal duty you hold to the body to which you are appointed and the interests of the Council, see para 4.1.2 below for more information.
- 4.1.2. The legal obligation of the appointed Member differs according to the type of appointment:

- a) **Directors of Limited Companies** – a Director has a fiduciary duty to act in the best interests of the company. The Director is under a duty to exercise independent judgment; it is not acceptable to simply vote in accordance with a Council mandate. To do so would breach the legal duty owed to the company and expose the Member to personal liability. In the event of a conflict between the interests of the company and the interest of the Council the proposed course of action is for the Member to resign from one or other, further advice can be sought depending on the circumstances of the case.
- b) **Charitable Trustees** – can be personally liable to third parties because as a trust (unlike a company), the charity has no separate legal identity. Trustees are, however, entitled to an indemnity from the charity if they have acted properly in incurring the liability. Trustees remain personally liable when they retired and should therefore seek an indemnity from their successors.
- c) **Unincorporated associations** – examples are clubs and residents associations. These unincorporated associations have no separate legal identity from their members. Therefore, a Council appointee who sits on a management committee will have joint and several liability with other members. If the body has insufficient funds they will be liable for any shortfall.
- d) **Consultative or advisory bodies** – examples are external committees or statutory partnerships which advise the Council on various issues. Nationally there have been national difficulties when an elected Member champions a position taken by the body. This may result in Council decisions being subject to the risk of successful challenge.

4.2. Insurance Position

4.2.1. The Council's insurance covers appointees to a certain extent. It covers the Council's: "Business which is held to include...activities of employees and Members approved by the insured in connection with outside organisations but only where the insured is legally entitled to: (i) approve such activities and (ii) indemnify such employees and Members in respect of such activity".

4.2.2. The extent to which the Council is legally entitled to indemnify a Member who is acting in the best interest of another organisation is limited and will vary from case to case.

4.2.3. Therefore a Member appointed by the Council is not allowed to act in the interest of the Council because of the duty they give to the body they were appointed to and the appointee can become personally liable.

4.3. **Appointments to Outside Bodies** - in order to safeguard the interests of both the Council and the appointed Councillor:

4.3.1. The Council will only expect appointees to act as advisors and communication links to the outside body. The Council will not ask appointees to become Directors of companies or trustees of charities. Nor will the Council expose Councillors to personal liability by asking them to be committee members of unincorporated associations (This paragraph is subject to 4.3.3 below).

4.3.2. The Council will only appoint Councillors or officers to outside bodies. Other people will not be considered for appointment. (This paragraph is subject to 4.3.3. below).

4.3.3. There might be instances in which the Council goes against 4.3.1 and 4.3.2 above such as appointments of Councillors to act as Directors to North Devon+ and One Ilfracombe. If this occurs they will be specifically identified for exceptional cases. The Council's expectations of the appointee will be clearly explained in writing to the appointee.

4.3.4. All appointees will be expected to report back to Council at appropriate intervals, usually annually in March/April. This will be made clear in the letter of appointment.

4.3.5. It should be noted that these measures do not stop appointees exceeding the brief given them by the Council, by for example becoming a Director or a Trustee. However this will be in a purely personal capacity and they will not be acting as representatives of the Council.

4.4. Although the previous member appointed to the Ilfracombe and District Business Tourism Association did not consider the appointment to be relevant to North Devon Council, the Association has confirmed that they would still wish the Council to make an appointment. It is for Council to decide if it wishes to do so.

4.5. The previously appointed member to Devon Rail Forum also did not consider the appointment to be relevant to North Devon but again it is for Council to decide whether it wishes to do so..

5. RESOURCE IMPLICATIONS

5.1. Attendance at meetings of outside bodies are approved duties and therefore Councillors are eligible to claim allowances in accordance with the Scheme of Members Allowances.

6. EQUALITIES ASSESSMENT

6.1. Not applicable. All Councillors are eligible to be appointed as Council representatives on Outside Bodies.

7. ENVIRONMENTAL ASSESSMENT

7.1. There are no environmental implications arising from this report.



8. CORPORATE PRIORITIES

8.1. What impact, positive or negative, does the subject of this report have on:

8.1.1. The commercialisation agenda: Not applicable

8.1.2. Improving customer focus and/or: Not applicable

8.1.3. Regeneration or economic development: Not applicable

9. CONSTITUTIONAL CONTEXT

9.1. Article 4.5.7, Council Procedure Rules, Part 4, paragraph 1.2.7

10. STATEMENT OF CONFIDENTIALITY

This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

11. BACKGROUND PAPERS

The following background papers were used in the preparation of this report: (The background papers are available for inspection and kept by the author of the report).

Report to Council on 16 May 2019 and report to Council on 15 March 2023.

12. STATEMENT OF INTERNAL ADVICE

The author (below) confirms that advice has been taken from all appropriate Councillors and Officers: Head of Governance, Chief Executive, Senior Solicitor and Monitoring Officer.