

# Individual Decision

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The attached report will be taken as Individual Portfolio Member Decision on:

**Monday, 24th June, 2019**

<b>Ref:</b>	<b>Title</b>	<b>Portfolio Member</b>	<b>Page No.</b>
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## Individual Executive Member Decision

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### Nominations for Representation to Outside Bodies

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**Committee considering report:** Individual Executive Member Decision

**Date ID to be signed:** 24 June 2019

**Portfolio Member:** Councillor Lynne Doherty

**Forward Plan Ref:** ID3684

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#### 1. Purpose of the Report

1.1 To appoint representatives to a range of Outside Bodies.

#### 2. Recommendation(s)

2.1 The Leader is asked to consider the nominees put forward by the Conservative, Liberal Democrat and Green Party Groups to represent the Council on a range of Outside Bodies and to appoint the requisite number of Members to each of those bodies in accordance with the requirements of those organisations.

#### 3. Implications

3.1 **Financial:** West Berkshire Council Members are not paid to attend Outside Body meetings but any costs associated with meeting attendance will be met from within existing Members Allowances budget, where the Outside Body does not pay these costs

3.2 **Policy:** Appointments will be made in accordance with Part 13 Appendix J (Protocol for Council Representation on Outside Bodies) of the Council's Constitution

3.3 **Personnel:** None

3.4 **Legal:** None

3.5 **Risk Management:** None

3.6 **Property:** None

3.7 **Other:** None

#### 4. Consultation Responses

##### Members:

**Leader of Council:** Councillor Lynne Doherty has been emailed a list of the outside bodies and any information received from them.

**Overview & Scrutiny** Councillor Alan law to be consulted through the Conservative

## Nominations for Representation to Outside Bodies

**Management** Group

**Commission Chairman:**

**Ward Members:** Not applicable

**Opposition** Councillor Lee Dillon and Carlyne Culver have been emailed  
**Spokesperson:** a list of the outside bodies and any information received from them

**Local Stakeholders:** All outside bodies have been written to see if they still require representation from the Council. Where they have not responded it is assumed that representation is no longer required.

**Officers Consulted:** Tess Ethelston and Olivia Lewis

**Trade Union:** Not applicable

### 5. Other options considered

5.1 Not to appoint representatives.

### 6. Introduction/Background

6.1 The Council is required to appoint representatives to the Outside Bodies listed in Appendix C. In order to standardise the timetable for appointments the Council makes to Outside Bodies the majority of appointments are made for four years to coincide with the electoral cycle. The Leader of the Council will, however, have the opportunity to review any of these appointments during the term of office should it be deemed necessary.

6.2 The appointments are being made in accordance with Appendix J (Protocol for Council Representation on Outside Bodies) of Part 13 (Codes and Protocols) of the Constitution. (see Appendix D)

6.3 To assist Members all organisations have been asked to provide information relating to the group's constitution, governance arrangements, financial etc. Where it has been provided this information is available from Legal and Strategic Support should Members wish to view it. Due to the size of these documents we are not able to reproduce these documents for all Members.

6.4 Before accepting the appointment Members should establish:

- the time commitment required by the role and whether or not they have the time and capacity to take on the responsibility;
- what the nature of the organisation is as this will affect their role and help with identifying the potential risks involved;
- in what capacity they are being asked to serve on the Outside Body;
- what the body has been set up to do;
- the governance arrangements of the organisation; and
- the financial position of the organisation.

6.5 The Council representatives are also advised to:

- consider if there is likely to be any significant conflict of interest between their role in the outside organisation and their Council role before accepting the office;
- clarify the insurance arrangements and if no insurance exists this must be weighed up in the decision to accept the appointment;
- ask about any specific legal responsibilities attached to the membership of the organisation;
- read the constitution of the organisation and be aware of its powers, duties and objectives;
- attend meetings regularly and present apologies in good time when they are unable to attend;
- satisfy themselves that they receive regular reports on the activities of the organisation and its financial position;
- satisfy themselves that the organisation has adequate Health and Safety and Equalities Policies;
- obtain a copy of the annual report and accounts to ensure that funds are spent on agreed objectives where the organisation is funded by or through the Council; and
- seek advice from the appropriate Council Officers in the event of any doubt or concerns about the running of the organisation.

6.6 Members are asked to submit an annual report to the Head of Legal and Strategic Support on the activity of the Outside Body using the prescribed form (see Appendix E). Members will be asked to report back by the 01<sup>st</sup> May each year, i.e. the first report will be required by the 01 May 2020. The reports will then be circulated to all Members. Where there is more than one Member appointed to an outside body a joint submission should be made.

6.7 There are a number of organisations to which the Council appoints Members where more regular feedback from Members would be appropriate. In these circumstances Members or Officers attending the meeting should provide a brief summary for circulation to all Members. These summaries should be sent to the Democratic and Electoral Services Manager.

6.8 Relationships between the Council, Outside Bodies and the Council's representative can be complex. In any case of dispute or difficulty, Members should seek advice from the Secretary or Clerk to the Outside Body, who can then take advice from professional advisors where necessary.

6.9 If Members are concerned about the position they find themselves in as a Councillor on an Outside Body, they should contact the Monitoring Officer for further advice.

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**Background Papers:**

Information provided by the Outside Bodies – Where information has been provided the organisation is shown as green on the list of bodies.

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**Subject to Call-In:**

Yes:  No:

Delays in implementation could compromise the Council's position



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**Wards affected:**

All

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**Strategic Aims and Priorities Supported:**

The proposals will help achieve the following Council Strategy aim:

- BEC – Better educated communities**
- P&S – Protect and support those who need it**
- MEC – Become an even more effective Council**

The proposals contained in this report will help to achieve the following Council Strategy priority:

- MEC1 – Become an even more effective Council**

The proposals contained in this report will help to achieve the above Council Strategy aims and priorities by \*(add text)

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**Officer details:**

Name: Moira Fraser  
Job Title: Democratic and electoral Services Manager  
Tel No: 01635 519045  
E-mail Address: moira.fraser@westberks.gov.uk

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## 7. Appendices

- 7.1 Appendix A – Data Protection Impact Assessment
- 7.2 Appendix B – Equalities Impact Assessment
- 7.3 Appendix C – List of Outside Bodies
- 7.4 Appendix D – Appendix J (Protocol for Council Representation on Outside Bodies) of Part 13 (Codes and Protocols) of the Constitution.
- 7.5 Appendix E – Prescribed Form

**Appendix A****Data Protection Impact Assessment – Stage One**

The General Data Protection Regulations require a Data Protection Impact Assessment (DPIA) for certain projects that have a significant impact on the rights of data subjects.

Should you require additional guidance in completing this assessment, please refer to the Information Management Officer via [dp@westberks.gov.uk](mailto:dp@westberks.gov.uk)

Directorate:	Resources
Service:	Legal and Strategic Support
Team:	Democratic and Electoral Services
Lead Officer:	Moira Fraser
Title of Project/System:	Appointment of Representatives to Outside Bodies
Date of Assessment:	14 June 2019

**Do you need to do a Data Protection Impact Assessment (DPIA)?**

	Yes	No
<p><b>Will you be processing SENSITIVE or “special category” personal data?</b></p> <p>Note – sensitive personal data is described as “<i>data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation</i>”</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Will you be processing data on a large scale?</b></p> <p>Note – Large scale might apply to the number of individuals affected OR the volume of data you are processing OR both</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Will your project or system have a “social media” dimension?</b></p> <p>Note – will it have an interactive element which allows users to communicate directly with one another?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Will any decisions be automated?</b></p> <p>Note – does your system or process involve circumstances where an individual’s input is “scored” or assessed without intervention/review/checking by a human being? Will there be any “profiling” of data subjects?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Will your project/system involve CCTV or monitoring of an area accessible to the public?</b></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Will you be using the data you collect to match or cross-reference against another existing set of data?</b></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Will you be using any novel, or technologically advanced systems or processes?</b></p> <p>Note – this could include biometrics, “internet of things” connectivity or anything that is currently not widely utilised</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**If you answer “Yes” to any of the above, you will probably need to complete [Data Protection Impact Assessment - Stage Two](#). If you are unsure, please consult with the Information Management Officer before proceeding.**



## Appendix A

### Equality Impact Assessment - Stage One

We need to ensure that our strategies, policies, functions and services, current and proposed have given due regard to equality and diversity as set out in the Public Sector Equality Duty (Section 149 of the Equality Act), which states:

- “(1) A public authority must, in the exercise of its functions, have due regard to the need to:**
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;**
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; This includes the need to:**
    - (i) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;**
    - (ii) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;**
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, with due regard, in particular, to the need to be aware that compliance with the duties in this section may involve treating some persons more favourably than others.**
- (2) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.**
- (3) Compliance with the duties in this section may involve treating some persons more favourably than others.”**

The following list of questions may help to establish whether the decision is relevant to equality:

- Does the decision affect service users, employees or the wider community?
- (The relevance of a decision to equality depends not just on the number of those affected but on the significance of the impact on them)
- Is it likely to affect people with particular protected characteristics differently?
- Is it a major policy, or a major change to an existing policy, significantly affecting how functions are delivered?
- Will the decision have a significant impact on how other organisations operate in terms of equality?
- Does the decision relate to functions that engagement has identified as being important to people with particular protected characteristics?
- Does the decision relate to an area with known inequalities?
- Does the decision relate to any equality objectives that have been set by the council?

Please complete the following questions to determine whether a full Stage Two, Equality Impact Assessment is required.

<b>What is the proposed decision that you are asking the Executive to make:</b>	To appoint Council Representatives to a range of Outside Bodies
<b>Summary of relevant legislation:</b>	N/a
<b>Does the proposed decision conflict with any of the Council's key strategy priorities?</b>	No
<b>Name of assessor:</b>	Moira Fraser
<b>Date of assessment:</b>	14 June 2019

Is this a:		Is this:	
Policy	No	New or proposed	No
Strategy	No	Already exists and is being reviewed	Yes
Function	Yes	Is it changing	No
Service	No		

<b>1 What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?</b>	
<b>Aims:</b>	To appoint representatives to a range of Outside Bodies
<b>Objectives:</b>	To ensure that the Council is represented
<b>Outcomes:</b>	To ensure that the Council is represented
<b>Benefits:</b>	The Council works with its communities to further mutually agreeable aims

<b>2 Note which groups may be affected by the proposed decision. Consider how they may be affected, whether it is positively or negatively and what sources of information have been used to determine this.</b> (Please demonstrate consideration of all strands – Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation.)		
Group Affected	What might be the effect?	Information to support this
Age		
Disability		
Gender		

Reassignment		
Marriage and Civil Partnership		
Pregnancy and Maternity		
Race		
Religion or Belief		
Sex		
Sexual Orientation		
<b>Further Comments relating to the item: None</b>		

<b>3 Result</b>	
<b>Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?</b>	<b>Yes</b>
<b>Please provide an explanation for your answer:</b>	
<b>Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?</b>	<b>Yes</b>
<b>Please provide an explanation for your answer:</b>	

If your answers to question 2 have identified potential adverse impacts and you have answered 'yes' to either of the sections at question 3, or you are unsure about the impact, then you should carry out a Stage Two Equality Impact Assessment.

If a Stage Two Equality Impact Assessment is required, before proceeding you should discuss the scope of the Assessment with service managers in your area. You will also need to refer to the [Equality Impact Assessment guidance and Stage Two template](#).

<b>4 Identify next steps as appropriate:</b>	
<b>Stage Two required</b>	No
<b>Owner of Stage Two assessment:</b>	N/a
<b>Timescale for Stage Two assessment:</b>	N/a

Name: Moira Fraser

Date: 14 June 2019

Please now forward this completed form to Rachel Craggs, Principal Policy Officer (Equality and Diversity) ([rachel.craggs@westberks.gov.uk](mailto:rachel.craggs@westberks.gov.uk)), for publication on the WBC website.

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Nominations to Outside Bodies 2019

<b>Ref No</b>	<b>Body</b>	<b>Purpose of Group</b>	<b>No of Reps &amp; Comments</b>	<b>Conservative Nominees</b>	<b>Lib Dem Nominees</b>	<b>Green Party Nominees</b>
1	AWE Local Liaison Committee	The AWE Local Liaison Committee provides a forum between the Company and the local community in the vicinity of AWE Aldermaston and Burghfield	3 Members of Council Preference is that they are Members for Aldermaston and Burghfield Areas			
2	Berkshire Healthcare NHS Foundation Trust	The Trust provides specialist mental health and community health services to a population of around 900,000 within Berkshire. The Trust operates from more than 100 sites across the county, including its community hospitals, Prospect Park Hospital, clinics and WestCall Out of Hours Service. The Trust also provides health care and therapy to people in their own homes.	1 Member of Council			
3	Berkshire Local Transport Body	Local Transport Bodies are voluntary partnerships between Local Authorities, Local Enterprise Partnerships (LEP) and others to allocate devolved funding for major local transport schemes. The Berkshire Local	1 Member of Council and 1 Nominated Deputy			

		Transport Body (BLTB) is a partnership of the six Berkshire authorities plus the LEP. Slough is the accountable body.				
4	Berkshire Pension Fund Advisory Panel	The Royal Borough of Windsor and Maidenhead acts as the administrating authority for the Berkshire Pension Fund that covers all Local Government Pension Scheme employees.	1 Member of Council			
5	Bus Lane Adjudication Service Joint Committee	It is mandatory for the authorities operating Bus Lane Enforcement to provide a Councillor nomination (a named substitute is desirable!) to the BLASJC	1 Member of Council and 1 Nominated Deputy			
6	Beedon Educational and Vocational Foundation	To fund from the foundation income the educational needs of children and young people resident in the civil parish of Pangbourne.	1 Member preferably from the Pangbourne Area			
7	Bucklebury Common Advisory Committee	Bucklebury Common is managed by Bucklebury Estate with support from Bucklebury Heathland Conservation Group and Berks, Bucks & Oxon Wildlife Trust (BBOWT) who attend Advisory Committee	1 Member of Council			

		meetings. A Council representative is required to ensure that the Council's interests, and those of the community, are maintained.				
8	Clarke's Educational Foundation	Charitable trust which awards grants for educational purposes (subject to its terms of reference)	1 Member The Foundation feel that it would be useful for the rep to be a ward member for Stratfield Mortimer area. Former Councillor Mollie Lock has fulfilled role for many years and they would be happy for her to continue to do if no other members come forward .			
9	Domestic Abuse Strategy Group	Overseeing Domestic Abuse Strategy	1 Member preferably the Portfolio Holder with responsibility for Communities			
10	Donnington Hospital Trust	Provision of alms houses in Berkshire and Oxfordshire	1 Member of Council			
11	Greenham	Established under the	2 Members of			

	and Crookham Commons Commission	Greenham and Crookham Commons Act 2002. This is a statutory body whose duties are set out under Schedule 8 of the Act 2002. Constitution defined in the Act.	Council appointed by the Leader and one community rep appointed by the volunteers annually			
12	Henwick Worthy Joint Management Committee	To discuss issues of policy relating to the sports and recreational centres. NB Wbc representation changed to 3 substantive reps and 2 substitute reps.	3 Members and 2 Nominated Substitutes			
13	Committee of Clinical Commissioning Group (Berkshire West CCG)	CCG is required to invite a Health and Wellbeing Board representative to join its Primary Care Commissioning Committee in accordance with the Delegation Agreement under which it commissions primary care on NHS England's behalf. They also welcome Health and Wellbeing Board input to support joined up planning of primary care services.	1 rep from the Health and Wellbeing Board			
14	Mary Hare School	Mary Hare is a national charity. Mary Hare School is a non-maintained special school providing for profoundly and	1 Preferably a Member of Council Former Councillor			



		severely deaf children and young people from all over the UK. Pupils' fees are paid for by the Local Education Authority where they live.	James Podger was the rep on this group and they have indicated that they would be very happy for him to continue in this role			
15	Mid and West Berkshire Countryside Local Access Forum	The Mid and West Berkshire Local Access Forum (LAF) is a statutory body which advises the local authorities on improvements to countryside access and access in general. See Countryside and Rights of Way Act 2000. This LAF acts for West Berkshire, Reading and Wokingham. The statute ways that each authority may have member representation on the LAF.	1 Member of Council			
16	North Wessex Downs Council of Partners Board	North Wessex Downs Council of Partners is the governing body that steers the delivery of the Statutory Management Plan as required under the Countryside & Rights of Way Act 2000 to conserve and enhance the natural beauty of the protected landscape of the North Wessex Downs.	1 Member of Council			

17	Padworth Common Advisory Committee	The Advisory Committee comprises members of the public, the Council and an officer from the Berks, Bucks & Oxon Wildlife Trust (BBOWT). This body helps provide a structure for the management of the Common and Country Park for its recreational, conservation and ecological importance.	1 Member of Council and 1 nominated Sub			
18	Parking and Traffic Regulations Outside London Joint Committee Adjudication Joint Committee	See PATROL introduction	1 Member of Council and 1 Nominated Sub			
19	Readibus	An alternative fully accessible bus service for people with restricted mobility who cannot or have great difficulty in using ordinary mainstream public transport.	1 Member of Council			
20	Magnox - Harwell Site Stakeholder	The Harwell Site Stakeholder Group is a regular meeting which is part of the formal	1 Member of Council			

	Group	arrangements for the interface between the Nuclear Decommissioning Authority (NDA) the site licence company (RSRL) and stakeholders including the local community and the wider Harwell Oxford campus. The SSG will not have a role in the formal decision making in respect of the site activities, but it will be responsible for reflecting local views by inputting advice, expressing views and commenting on the progress of work on site. Campus organisations are invited to provide information about new development and operations on the campus.				
21	Royal Berkshire Hospital NHS Foundation Trust Council of Governors	The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.	1 Member of Council			
22	Saunders Wynne & Coventry	To provide the independent review of the way the charity is conducted	1 Council Members and it would be useful for it to be the			

	Educational Foundation		Ward Member for Chaddleworth			
23	Snelsmore Common Advisory Committee	Overseeing the management of Snelsmore Commons and the work that the Council is doing. Active involvement by several volunteer wardens	1 Member of Council and 1 Nominated Sub			
24	South East Employers (SEEMP)	The Councillor representatives set the strategic direction of the organisation and ensure we have a vital councillor contact back to you as a member council.	2 Members of Council and 2 Nominated Subs			
25	South East Reserve Forces and Cadets Association	The Association is an arms length Government Body constituted to support the Reserve and Cadet Forces in the South East through the provision and maintenance of the Volunteer Estate, engaging with employers, provision of a permanent staff for the Army Cadet Force and recruitment support.	1 Member of Council ideally the armed forces champion			
26	St Bartholomew's School Charitable	The Foundation's object is to advance the education of pupils attending St Bartholomew's School. This is done by the	3 Council Members who have local community knowledge, links to			

	Foundation	funding of annual prizes and making grants for specific projects.	St Bart's, trustee experience, commitment and time.			
27	Standing Conference on Archives	<p>The Standing Conference on Archives is a stakeholder body set up under the terms of the Berkshire joint agreement for archives. It receives reports and other updates on the work of the joint archives service.</p> <p>Membership consists of one elected member and one officer representative from each Berkshire district, together with representatives of the county historical societies and key archive depositors.</p>	1 Member of Council			
28	Volunteer Centre West Berkshire	<p>To promote any charitable purpose (charitable under English Law) for the benefit of the community in the area of West Berkshire and Hampshire as the trustees see fit, in particular, but not exclusively by the following means.</p> <p>(a) Promoting, encouraging and supporting volunteering</p>	WBC is invited to put one rep forward which the Centre can chose to accept or not			

		(b) Providing opportunities for individuals to volunteer (c) Providing assistance and training for volunteers (2) To relieve the charitable needs of people in the area of West Berkshire and Hampshire by the provision of advice and services calculated to relieve such needs.				
29	West Berkshire Citizens Advice Bureau	The CAB offers free confidential, impartial and independent advice on a wide range of issues that people face. We also campaign to change policies and practices that affect our clients unfairly.	1 Member of Council			
30	Building Communities Together Partnership	The Building Communities Together Partnership will oversee and guide multi-agency partnership work contributing to achieving the Health and Wellbeing Strategy Aim to: 'build a thriving and sustainable environment in which communities can flourish'	3 Councillors Portfolio Holder Shadow Portfolio Holder and the Police and Crime Panel Rep			
31	Wokefield Common Advisory Committee	Wokefield Common is managed by the landowner in partnership with Berks, Bucks and Oxon Wildlife Trust (BBOWT) who	1 Member of Council			

		attend Advisory Committee meetings. A Council representative is required to ensure that the Council's interests, and those of the community, are maintained.				
32	West Berkshire Fostering Panel	<p>In-house Fostering Panel consisting of a range of in-house and external professionals and members of the public (Independent social worker Chair, in-house social workers, in-house Education service representative and independent members (care leaver and other Local Authority foster carer).</p> <p>The Panel considers applications for the approval of new foster carers, extension to temporary approvals and full approvals for “connected person” (“family and friends” carers), foster carer annual reviews and other matters requiring scrutiny eg issues of concern.</p>	1 Member of Council			

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# Protocol for Council Representation on Outside Bodies

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## 1. Introduction

- 1.1 Elected Members are appointed by West Berkshire Council to serve on a range of Outside Bodies. In the context of this Protocol, an “Outside Body” covers organisations such as Trusts, Voluntary Bodies, Charities, Community Associations and Companies etc.
- 1.2 Service on Outside Bodies has always been an established part of a Councillor’s role. A Member appointed to an external body will be able to use their knowledge and skills both as a Council Member, and as a representative of their communities, to assist the organisation to which they are appointed, as well as the Council which they represent.
- 1.3 This Protocol is designed to provide guidance as to the roles, experience and responsibilities as well as the liabilities that Members may attract in connection with their involvement with these organisations. Councils are increasingly working in partnership with external organisations. This means that it is important that everyone is clear exactly what the role of Councillors appointed to these bodies is. Questions of accountability and governance are likely to arise particularly as more funding may be channelled through the Council to these Outside Bodies.
- 1.4 Membership of an Outside Body brings into play different considerations to those which relate to Council membership. As members of Outside Bodies, elected Members will have different duties, obligations and liabilities depending upon the type of organisation involved. Members’ roles on these Outside Bodies may appear to conflict, sometimes with each other, and sometimes with their position as a West Berkshire Councillor. This can be eased by giving clear guidance, which is what this document aims to do. Paragraphs 9 and 10 of this Protocol provides information on registering interest and information on dealing with conflicts of interest are set out in paragraph 11.
- 1.5 Depending on the legal nature of the body and the role fulfilled by the Member they may attract personal responsibility for decisions and actions of the body. It is a Members’ responsibility to ensure that they are aware of their liabilities and any insurance arrangements that are in place where they participate in Outside Bodies. Officers will strive to ensure that Members are provided with as much information as possible prior to their appointment. Paragraphs 4 and 5 of the Protocol set out the general roles and responsibilities for Members on Outside Bodies.
- 1.6 To aid Members further, this Protocol sets out the different types of bodies and responsibilities. Members with any doubts or questions should consult the Head of Legal and Strategic Support at the earliest opportunity for help and advice. More detailed information, relating to Limited Companies, Charitable

Trusts, Partnerships and Unincorporated Organisations, is set out in paragraphs 12 to 15.

- 1.7 The Council will indemnify Members representing the Council on Outside Bodies in many circumstances. There are however specific statutory limitations as to the extent of indemnification the Council is able to provide. These are set out in paragraph 16 of the Protocol.
- 1.8 Members can serve on Outside Bodies in their personal capacity provided that there is no conflict of interest with their duties as a Member of West Berkshire Council. Again, legal advice is available to help Members assess their position.

## **2. How are Appointments made?**

- 2.1 In accordance with the Council's Constitution authority to appoint Members as representatives on Outside Bodies has been delegated to the Executive. With the exception of appointments to regulatory bodies i.e. Police and Fire Authorities appointments to Outside Bodies have been further delegated to the Leader of the Council or the relevant Portfolio Holder to make as an Individual Decision. The authority to appoint School Governors has been delegated to the Head of Education.
- 2.2 The majority of appointments are aligned to the electoral cycle and representatives are appointed for four years. A small number of appointments, most notably those to the regulatory bodies, are made on an annual basis. The majority of the appointments are made as early in the Municipal Year as is practicably possible.
- 2.3 The choice of the most appropriate representative will depend on the nature of the Outside Body, the interests and experience of the prospective representative, and why the Council wishes to be involved with that body.
- 2.4 The legal and Strategic Support team is responsible for maintaining a database setting out details of the appointment and information relating to the Outside Bodies.

## **3. Before Accepting the Appointment**

- 3.1 Before accepting the appointment Members should establish:
  - the time commitment required by the role and whether or not they have the time and capacity to take on the responsibility;
  - what the nature of the organisation is as this will affect their role and help with identifying the potential risks involved. One of the most important things is to find out if the organisation is a separate legal organisation (i.e. a body which has an identity of its own such as a company) or whether it is simply a group of people coming together with a common purpose (an unincorporated organisation). An unincorporated organisation generally poses a more significant risk to those involved in it because if something goes wrong, personal legal action can be taken against everyone managing it.
  - in what capacity they are being asked to serve on the Outside Body:
    - as a member of an Outside Body where they represent the Council's position as a 'member' of the Outside Body but take no

part in its management or governance other than to attend and vote at annual or general meetings. Here they will be mainly concerned with representing the Council and will not have responsibilities for governance of the body; or

- as a member of the management committee, board of directors or committee of trustees of the Outside Body. Whilst the Member may have been appointed to the body by the Council, their primary responsibility will be to the body itself, to advance the interests of the body or of the beneficiaries of the trust, as opposed to acting as a representative of the Council. They will have detailed responsibilities which are outlined further in this guidance
- what the body has been set up to do;
- the governance arrangements of the organisation; and
- the financial position of the organisation.

### 3.2 The Council representatives are also advised to:

- consider if there is likely to be any significant conflict of interest between their role in the outside organisation and their Council role before accepting the office;
- clarify the insurance arrangements (does it cover the key risks of the organisation as well as the Member and is the liability limited or unlimited) and assess the possibility of any implications on themselves as individuals (specifically consider the nature and function of the body and the amount of money it deals with – always be aware of the added risk where the organisation employs staff);
- if no insurance exists this must be weighed up in the decision to accept the appointment;
- ask about any specific legal responsibilities attached to the membership of the organisation;
- read the constitution of the organisation and be aware of its powers, duties and objectives;
- attend meetings regularly and present apologies in good time when they are unable to attend;
- satisfy themselves that they receive regular reports on the activities of the organisation and its financial position;
- satisfy themselves that the organisation has adequate Health and Safety and Equalities Policies;
- obtain a copy of the annual report and accounts to ensure that funds are spent on agreed objectives where the organisation is funded by or through the Council; and
- seek advice from the appropriate Council Officers in the event of any doubt or concerns about the running of the organisation.

## **4. The Responsibilities of the Councillor**

4.1 In carrying out the role of a representative on the Outside Body, Councillors act both as individuals and as representatives of the Council:

4.2 Members should:

- act according to the rules, constitution and framework set by the Outside Body;
- take an active and informed role in the Outside Body's affairs;
- make independent and personal judgements in line with their duty of care to the Outside Body;
- report back to West Berkshire Council annually (by the 1st May ) using the prescribed form;
- promote equality as an integral part of the role and to treat everyone with fairness and dignity;
- from time to time it is possible that a conflict of interest may arise between the role of the Councillor and the role they are undertaking on an Outside Body. Members are referred to in paragraph 11. Members are advised to seek legal advice before setting off on a course of action;
- behave ethically and follow as far as applicable the Code of Conduct for Members; and
- wherever possible approach the lead officer for the Outside Body for a briefing on agenda items before attending meetings of the Outside Body.

4.3 Members should not:

- represent the political party to which the Councillor is aligned;
- consider matters purely from the Council's perspective;
- commit the Council to any expenditure; (In accordance with the Council's Financial Rules of Procedure any additional expenditure requests must be authorised by the appropriate person or body).

4.4 More Specific information pertaining to Limited Companies, Charitable Trusts, Partnerships, and Unincorporated Organisations is set out in Appendices A2, A3, A4 and A5 of this Protocol.

## **5. The Role of the Councillor**

5.1 The role of Council representatives on Outside Bodies will vary but essentially the role will be:

- to help to secure any objectives of the Council in participating in the organisation;
- to help the organisation to achieve its aims and objectives legally, properly and effectively;
- to meet any specific legal responsibilities attached to membership of the organisation; and

- to safeguard the Council's interest on those organisations which are funded by or through the Council.

5.2 More Specific information pertaining to Limited Companies, Charitable Trusts, Partnerships, and Unincorporated Organisations is set out in Appendices A2, A3, A4 and A5 of this Protocol.

## **6. Expenses, Remuneration and Benefits**

6.1 As a general rule Members should not benefit personally from their appointment to outside organisations.

6.2 Travel and subsistence expenses should be claimed through the organisation if available otherwise through the Council in accordance with Part 14 of the Constitution (Members' Allowances Scheme).

6.3 Any Councillors offered any gift or hospitality, in their capacity as Members must treat the offer in accordance with Appendix D (Gifts and Hospitality: A Code of Conduct for Councillors) to Part 13 (Codes and Protocols) of the Constitution.

6.4 Free access to a Company's facilities should only be accepted where it is necessary to discharge duties and responsibilities as a Director and should be declared to the Council.

6.5 The Code of Conduct should be followed at all times.

## **7. Representatives Reporting Back**

7.1 Councillors are under a specific obligation as a result of the 1995 Local Authorities (Companies) Order to report back to the Council on their involvement in outside companies to which they have been nominated by the Council. Where the Council provides financial assistance to a charity or voluntary organisation of over £2,000 per annum then the body is under an obligation to state in writing to the Council how the funding has been used (s137A Local Government Act 1972).

7.2 While the law now makes this a requirement for involvement in outside companies, it is self evident that the requirement to report back should apply to involvement in all Outside Bodies. It is important that anyone who is appointed to an Outside Body provides appropriate information on what the organisation is doing. Members are not required to disclose information which is commercially confidential to the body.

7.3 Accordingly Members are required to submit their annual report to the Head of legal and Strategic Support using the attached form by the 1st May each year. The reports will then be circulated to all Members. Where there is more than one Member appointed to an outside body a joint submission should be made.

7.4 There are a number of organisations to which the Council appoints Members where more regular feedback from Members would be appropriate. In these circumstances Members or Officers attending the meeting should provide a brief summary for dissemination to all Members and relevant Officers.

## **8. Further Advice**

8.1 Relationships between the Council, Outside Bodies and the Council's representative can be complex. In any case of dispute or difficulty, Members

should seek advice from the Secretary or Clerk to the Outside Body, who can then take advice from professional advisors where necessary.

- 8.2 If Members are concerned about the position they find themselves in as a Councillor on an Outside Body, they should contact the Monitoring Officer for further advice.

## **9. Interests**

- 9.1 Members are required to register interests in line with section 5. (Interests, Dispensations, Sensitive Interests and Bias) of Appendix H (Code of Conduct) to Part 13 (Codes and Protocols) of the Council's Constitution.

## **10. Council's Code of Conduct – General Provisions**

- 10.1 The Council Code of Conduct requires that a Member must observe the Code of Conduct whenever the Member is acting as a representative of the authority.

## **11. Conflicts of Interest**

- 11.1 Appointment to an Outside Body can take various forms, and before taking up active membership it is advisable to establish exactly in what capacity the Member is being appointed.
- 11.2 If Members are appointed to an Outside Body they will have a personal interest in that body and will need to consider their position when they sit on Council, the Executive, a Council committee or other decision-making body which is considering a matter which relates to that body.
- 11.3 If Members attend a meeting where there is an item of business which relates to or affects the Outside Body, they will need to disclose the interest at the meeting, regardless of whether or not they were appointed onto the Outside Body by the Council, or by the Outside Body itself. This may not be a report which specifically mentions the body, but will affect it. For example, the budget setting meeting of Full Council can have implications for council funding of voluntary organisations.
- 11.4 The next issue is to consider whether they also have a Disclosable Pecuniary Interest (DPI) which would require them not only to disclose it but also to withdraw from consideration of that item of business.
- 11.5 If a Member does decide that they have a DPI, they must disclose this and leave the meeting room and not influence the debate or decision in any way. If the Council body making the decision has a policy of allowing members of the public to speak, Members can use this avenue legitimately to speak to the meeting but they must follow the rules of the public speaking session and then leave the room as soon as they have spoken on the matter.
- 11.6 Members should take advice from the Monitoring Officer if any situation arises where they think they might have a problem with an interest arising from their involvement with the Outside Body.
- 11.7 Whilst a failure by a Member to disclose a personal interest, or to disclose and withdraw for a DPI, may lead to sanctions against the individual Councillor, it will not of itself invalidate the decision of the authority in which the Councillor participated. However, where there is a real possibility that the decision of the Council might have been affected by bias or predetermination on the part of

one or more Councillor, that decision can be held by a Court of Law to be invalid. Members therefore need also to be careful about the possibility of bias and predetermination when they are dealing with matters involving an Outside Body on which they serve.

- 11.8 Any Councillor who is about to take part in a decision, either collectively with other Councillors or via Individual Decision, must not allow themselves to be unduly influenced by their allegiance to any Outside Body or individual, nor should they give the impression that they might be influenced by it. That is bias and apparent bias. It arises because of a connection to an Outside Body or person.
- 11.9 It also follows that, whilst a Councillor may have preferences and predispositions, they must not finish the decision-making process until they have received and considered all the relevant information relating to the matter. To do so would be predetermination. Whilst it is accepted that Councillors live in the real world and will discuss matters with colleagues and constituents, and bring the benefit of those discussions to the Committee Room, they must still listen to the arguments and be prepared to change their mind if the evidence presented requires it.
- 11.10 From this it will be apparent that particular difficulties arise where a Councillor is a member of an Outside Body such as a pressure group, which is seeking to influence the authority's decision on a particular matter, as such membership can readily be taken as evidence of bias and/or predetermination. On occasion, and particularly in respect of local, single-issue pressure groups, a Member may have to choose whether to be a campaigning Councillor, participating in a pressure group, or to remain outside the campaign but be able to vote on the issue when it comes before the Council.
- 11.11 In some instances a Member may also find that they are unable to properly carry out their functions as a Member of the Council and a Member of the Outside Body. In these instances the Member may consider resigning from one body or another. Members should seek advice from the Monitoring Officer before taking such action.

## **12. Limited Company**

- 12.1 A company has a separate legal personality to its shareholders (also described as company members or subscribers). One of the main advantages of acting through a limited company is that shareholders can claim the benefit of limited liability. In the case of a company limited by shares this means that they will not be liable for the debts of the company if the company makes losses over and above the amount which they have pledged to pay the company for their shares. In a company limited by guarantee this means that the shareholders 'guarantee' to contribute a specified sum if called upon to do so (usually a nominal amount of £1) in the event that the company goes into insolvent liquidation.
- 12.2 An appointment as a director of a company needs to be confirmed by the completion of a form (known as '288') which needs to be signed and submitted to Companies House. The secretary of the Outside Body should assist you with this.

- 12.3 The Directorship should also be recorded in the Council's Register of Members' Interests (within 28 days of the appointment). Directors take responsibility for all the main decisions in relation to the operation of the company, including entering into contracts.
- 12.4 The position of Council Members acting as Company Directors is that although Members have been appointed by the Council they have a duty to act in the best interest of the Company.
- 12.5 Although Members are advised to consider the specific rules pertaining to the Company they have been appointed to, the general legal responsibilities of Company Directors are:
- to ensure that the Company acts within its legal powers;
  - to act honestly and in good faith in the best interests of the Company;
  - not to make a personal profit and to take proper care of the assets;
  - to avoid conflicts of interest and not to allow personal interest to influence action as a Director;
  - to record personal interests in the Company's Register of Director's Interests;
  - to act with reasonable competence and care;
  - to exercise reasonable skill and care (this is a subjective test based upon the individual's own knowledge and experience); and
  - not knowingly allow the Company to trade fraudulently, recklessly or in an insolvent position.
- 12.6 Council appointed Directors are advised to:
- clarify the insurance arrangements and assess the possibilities of any implications on themselves as individuals;
  - to be familiar with the Articles and Memorandum of Association of the Company;
  - to ensure that their interests are registered with the Company;
  - to attend Board meetings regularly, read the agenda in advance and seek a briefing from officers where necessary;
  - to ensure that the Company has proper procedures for reporting performance and financial information to board members at each meeting;
  - to take an interest in the appointment of the management of the Company to ensure that suitable qualified and experienced managers are in place;
  - to ensure that the Company has adequate Health and Safety and Equalities Policies; and
  - to seek advice from the appropriate Council Officers if in any doubt about the financial viability of the Company or any aspect of its operation.



- 12.7 Members need to be particularly careful when acting as a Company Director if there is any prospect of the company becoming insolvent i.e. not having sufficient assets to pay its debts. When a company becomes insolvent, or it is foreseeable that it will be insolvent, directors of the company have a higher duty of competence and attention to company business than when the company is still solvent. If they fail to take every possible step to minimise the company's debts, they may be personally liable for any additional losses suffered by creditors of the company ("wrongful trading"). A director may be found guilty of fraudulent trading (a criminal offence) if they allow the company to trade with an intent to defraud creditors.
- 12.8 If you become a Company Director there are some useful guidance documents to assist you on the websites of the [Institute of Directors](#) and [Companies House](#).
- 12.9 There may be occasions where conflicts of interest arise between the Council and the Company. Some examples are:
- contracts between the two;
  - negotiations on agreements, such as terms of leases;
  - applications for Council permission, e.g. planning consent.
- 12.10 This may mean that the primary responsibility to the Company could conflict with the Council's interest.
- 12.11 In these circumstances, Members are advised to declare a DPI at any Council meetings or discussions and should withdraw from the decision making process.

### **13. Charitable Trustees**

- 13.1 To be a Charity an organisation must operate for one of the four charitable purposes, namely:
- the relief of poverty and human suffering;
  - the advancement of education;
  - the advancement of religion; and
  - another purpose for the benefit of the community.
- 13.2 It must operate for the public benefit and have exclusively charitable purposes. An organisation which operates for political purposes will not qualify for charitable status.
- 13.3 Trustees duties include:
- the need to act in accordance with the constitution of the Charity;
  - not making a private profit from their position;
  - acting honestly and in good faith in the best interests of the Charity;
  - ensuring that information relating to the charity and trustees is registered with the Charity Commissioners and annual accounts, reports and returns are completed and sent;
  - Ensuring that the body acts in accordance with the overriding duty to the beneficiaries of the Trust;

- ensuring compliance with all relevant legislation (e.g. in relation to tax and land matters); and
- Council representatives are advised to clarify the insurance arrangements and assess the possibilities of any implications on themselves as individuals.

13.4 There is now a statutory duty of care under the Trustee Act 2000 which applies when a Trustee is:

- exercising a general power of investment or any specific power of investment arising from the Trust;
- making investments in line with the Standard Investment Criteria under section 4 of the Act or taking independent advice on investments under section 5;
- exercising the power to acquire land or deal in land;
- appointing agents, custodians or nominees or in reviewing their obligations;
- compounding liabilities under section 15 of the Trustee Act 1925;
- Insuring Trust property; and
- Dealing with reversionary interests, valuations or audits.

13.5 The standards of care expected of Trustees is that which is reasonable in the circumstances, taking into account any particular skills or competencies possessed by the individual. Additional information relating to the responsibilities for charitable directors and trustees is available on the Charity commission's website <http://www.charity-commission.gov.uk>.

## **14. Partnerships**

14.1 The Council representatives on partnerships have three main roles:

- to promote the Council's objectives in participating in the partnership;
- to ensure that the Partnership delivers its own objectives;
- to safeguard the Council's interests within the partnership, particularly where the Council is a funding partner or the accountable body for External Funding.

14.2 Council representatives on partnerships are advised to:

- be clear on the Council's own objectives in participating in the partnership;
- read the Constitution of the Partnership and be aware of its objectives and powers;
- attend Partnership meetings regularly, read the agendas in advance and seek briefing from Officers where necessary;
- ensure that the Partnership has proper procedures for reporting progress and financial information; and
- take an interest in the appointment of key staff.

## **1. Unincorporated Organisations**

- 15.1 Groups which are not charitable trusts or limited companies are 'unincorporated associations' and have no separate legal identity from their members. The rules governing the Members' duties and liability will be set out in a constitution, which is simply an agreement between the members as to how the organisation will operate. Usually the constitution will provide for Management Committees to be responsible for the everyday running of the organisation. An unincorporated organisation may be charitable and therefore register as a charity.
- 15.2 Management Committee Members must act within the Constitution of that Outside Body and must take reasonable care when exercising their powers.
- 15.3 If Members become involved in the administration of an unincorporated body, they need to be aware that, as the body has no separate corporate status, any liabilities will fall upon the members personally. This means that if something goes wrong and the organisation is sued, the members/owners personal assets are at risk – they cannot stand behind a company or other body which gives them some protection.
- 15.4 If Members take on personal responsibilities for the organisation, such as buying equipment or renting premises, they are personally liable for the entire cost, and can only recover those costs from the organisation to the extent that it actually has the money to reimburse them, or from the other members of the organisation to the extent that the membership agreement gives them the right to be reimbursed by each of them.
- 15.5 Members need to be very careful about the risk of personal liability and the extent to which this has been covered by insurance arrangements (either arranged by the organisation itself or by the Council or by indemnities).

## **16. Indemnity for Members**

- 16.1 The Council may only indemnify Members in certain circumstances as prescribed by the Local Authorities (Indemnity for Members and Officers) Order 2004.
- 16.2 The Council will provide an indemnity in relation to any action or failure to act by any Member which:
- is authorised by the Council;
  - forms part of, or arises from, any powers conferred, or duties placed, upon that Member at the request, or with the approval of the authority including acting as the Council's representative on an Outside Body;
  - arises in respect of the cost of defending any claim for an allegation of defamation by a Member acting in an official capacity (but not in respect of any punitive or exemplary damages or arising from malicious or injurious falsehood);
  - is in respect of any investigation, hearing or other proceedings for an alleged failure to comply with the Code of Conduct for Members but, if the Member is found to have breached the Code of Conduct, and where an appeal is unsuccessful, then that Member shall reimburse the

authority or the insurer for their costs incurred in relation to those proceedings;

- 16.3 The indemnity includes an act or omission subsequently found to be beyond the powers of the Member in question, but only to the extent that the Member reasonably and genuinely believed that the act or omission was within their powers at the time they acted.
- 16.4 The indemnity does not apply to the defence of any criminal proceedings brought against a Member unless specifically approved by the Council and then only on a similar basis to that relating to proceedings for breaches of the Code of Conduct.
- 16.5 It is possible in some circumstances for the Council to indemnify (i.e. stand behind the Councillor and pick up any personal legal liabilities/costs/damages which the Councillor incurs as a result of his/her appointment to an Outside Body). The Council currently has Officials Indemnity insurance cover in place which covers Members on Outside Bodies but it may be necessary to consider issues on a case by case basis. Please speak to the Monitoring Officer if you have any cause for concern that an Outside Body with whom you are involved is getting into difficulty or you have any indication that you might be getting involved in potential personal liability.

## West Berkshire Council

### Appointment to Outside Bodies Annual Feedback Form

Name of Organisation	
Name of Member	
Period of review	
Number of Meetings called to attend	
Number of Meetings attended	
Reasons for not attending, if appropriate	
Please give a brief synopsis of the key areas covered by the outside body during the past Municipal Year.	

What background/briefing information did you receive from the organisation on its constitution, aims, objectives etc and was it sufficient to enable you to carry out your appointed role? What additional information do you require?

Please indicate how effective you think the organisation is (has it met or contributed to the Council's Key Priorities?) and give examples to illustrate your reply.

Do you think the Council should continue to be represented on this organisation?

Yes / No

If No, please state why:

Please provide any additional information that fellow Members might find useful.

Councillor .....

**Signed** .....

**Dated** .....

Return completed forms to:

Moira Fraser, Legal and Strategic Support, Market Street Offices, Newbury, RG14 5LD or email: [moira.fraser@westberks.gov.uk](mailto:moira.fraser@westberks.gov.uk)

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