

CHESHIRE EAST COUNCIL

REPORT TO: OUTSIDE ORGANISATIONS SUB-COMMITTEE

Date of Meeting:	2 March 2011
Report of:	Democratic Services Manager
Subject/Title:	Outside Organisations – Various Matters

1.0 Report Summary

- 1.1 The report invites the Sub-Committee:
- (a) to remove from the schedule of outside organisations three organisations which are currently listed and refer them to Council for appointment on the basis that they are internal, or shared services committees/panels;
 - (b) to consider appointments to casual vacancies;
 - (c) to review the Casual Vacancies Procedure which was approved by the former Governance and Constitution Committee;
 - (d) to review the appointments criteria and make any amendments necessary;
 - (e) to recommend to the Constitution Committee a procedure for adding new requests to the list of approved outside organisations;
 - (f) to consider two new requests;
 - (g) to note that the Guidance for Members Appointed to Outside Organisations has been finalised by Legal Services and issued to all Members;
 - (h) to note progress in respect of Officer representation on outside organisations;
 - (j) to note the update in respect of monitoring of effectiveness of representation on outside organisations; and
 - (k) to approve the procedure for making appointments for 2011-2012.

2.0 Recommendation

- 2.1 That the Constitution Committee be recommended –
- (a) to refer to Annual Council, the appointment of representatives to the Adoption Panel, Cheshire Admissions Forum and the Fostering Panel;
 - (b) to appoint one Member to the Crewe and Nantwich Twinning Association to serve for the remainder of the Municipal Year;
 - (c) to Appoint Councillor S Wilkinson to the Standing Advisory Council for Religious Education (SACRE) to serve for the remainder of the Municipal Year;

- (d) to decline to appoint to Dial-a-Ride at the present time, pending the outcome of the Portfolio Holder's review of the arrangements for appointments to this organisation;
- (e) to adopt the revised Casual Vacancies Procedure and commend it to Cabinet for application to all Category 1 organisations;
- (f) to review the appointments criteria and recommend any changes to the Constitution Committee;
- (g) to recommend the adoption of the procedure for dealing with new requests for representation on outside organisations;
- (h) to recommend the inclusion of Sandbach Town Plan Steering Group as a Category 2 outside organisation and the appointment of Councillor B Moran as the Council's representative;
- (j) to recommend the inclusion of the Holmes Chapel Partnership as a Category 2 outside organisation and the appointment of one Member to it;
- (k) to note that the Guide for Members Appointed to Outside Organisations has been finalised and issued to all Members;
- (l) to note progress in respect of Officer representation on outside organisations;
- (m) to note the update on the monitoring of effectiveness of representation on outside organisations; and
- (n) to approve arrangements for the appointments process for 2011-2012.

3.0 Reasons for Recommendation

- 3.1 It is important for the Council to appoint to outside organisations to ensure that it continues to represent the interests of both the Authority and the wider community.
- 3.2 The revision to the Casual Vacancies Procedure has been designed to give maximum efficiency when casual vacancies occur between annual appointments. The procedure is in line with the practice adopted when casual vacancies occur on Council Committees.
- 3.3 The recently revised legal guidance will ensure that Members are made fully aware of their legal responsibilities and liabilities when taking up an appointment to an outside organisation.
- 3.4 The introduction of a procedure for adding to the list of outside organisations will provide transparency to the process.

4.0 Wards Affected

4.1 Not applicable.

5.0 Local Ward Members

5.1 Not applicable.

6.0 Policy Implications

6.1 None identified.

7.0 Financial Implications

7.1 None identified.

8.0 Legal Implications

8.1 Whilst membership of outside bodies carries with it the potential for personal liability for elected Members undertaking such roles as ancillary to their status as a Councillor, particularly in respect of trusteeships, Cheshire East Borough Council has already resolved to put in place for elected Members the maximum indemnity which is allowed by law.

9.0 Risk Management

9.1 None identified other than in respect of Dial-a-Ride and Community Transport (Paragraph 10.5 below).

Both these organisations have requested two Members to be appointed to each. At present, Councillors Cannon and Thwaite are carrying the burden of four Councillors as the only two representatives, pending the outcome of a review by the Portfolio Holder for Prosperity. The additional workload may become too onerous and one or both may choose to resign from these two organisations.

10.0 Background and Options

10.1 An Officer review of the schedule of outside organisations has been undertaken. As a consequence of that review, three organisations have been identified as not falling within the category of “outside organisation” and it would be more appropriate for Council to make appointments to these as part of the annual Committee appointments process. The organisations are as follows and each is managed/administered by Children’s Services. For this reason, they ought not to be regarded as outside organisations:

- Adoption Panel
- Cheshire Admissions Forum
- Fostering Panel

10.2 Adoption Panel

The Adoption Panel considers in detail all aspects of a plan for a “Looked After” child to be adopted and makes a recommendation as to whether or not the child should be adopted. In addition, the Panel considers the suitability of any families who apply to become adopters, and whether or not to recommend that they are suitable to adopt; and finally, it considers the placement of any child with a particular adopter. The elected Member is a full member of the Panel. Under the performance objectives of the Panel, each member is asked to attend 75% of the meetings, which are held monthly, and in addition is asked to attend any training events and induction events that are held at least annually, and undergo an annual appraisal.

The role of the Adoption Panel and the appointment of elected Members are governed by the Adoption Agency Regulations 2005, Adoption and Children Act 2002.

The Adoption Panel comprises the following –

- Chair
- Medical Adviser
- Agency Members
- Social Workers (2)
- Elected Member (1)
- Independent members (3)
- Additional members (2)

10.3 Cheshire Admissions Forum

There is a statutory duty on the local authority to have in place an Admissions Forum.

Section 85 of the School Standards and Framework Act 1998 requires all local authorities to establish an Admissions Forum. Forums provide a means by which admission authorities and other key parties can discuss the effectiveness of local admissions arrangements, consider how to deal with difficult admissions issues and advise all admissions authorities on ways in which their arrangements can be improved. Forums also have a key role in ensuring a fair admissions system that promotes social equality, does not disadvantage one child compared with another and is straightforward and easy for parents to understand.

The Forum core membership comprises 14 members as follows –

- Local Education Authority Members (2)
- Schools (Community) (3)
- Schools (Voluntary Controlled) (1)
- School (Foundation) (2)
- Schools (Voluntary Aided) (2)

- Schools (Academies) (1)
- Diocesan Board Church of England Representative (1)
- Roman Catholic Diocese Representative (1)
- Parent Governor Representative (1)

10.4 Fostering Panel

The Panel considers and advises on the suitability of persons who apply to be foster carers for children who are “looked after” by the local authority. It states what its recommendations are in respect of a particular child or children and clarifies whether the prospective carers are to be approved for certain ages or categories of children.

It considers the continuing approval of foster carers following their annual carer’s review or other significant changes in their circumstances and advises on any other matter relating to the fostering service.

The Panel holds monthly meetings which are held in private.

As with the Adoption Panel and the Cheshire Admissions Forum, the Fostering Panel is administered by Cheshire East Children’s Services and, as such, is not an outside organisation.

10.5 Appointments to Casual Vacancies

- Crewe and Nantwich Twinning Association (CANTA)

Councillor E Howell (Liberal Democrat) who was appointed to CANTA in April 2009 has resigned. In accordance with the casual vacancies procedure, the Liberal Democrat Group has nominated Councillor (to be named at the meeting) to replace her and the Sub-Committee is asked to recommend this appointment to the Committee.

- Standing Advisory Council for Religious Education (SACRE)

To report that on 15 November 2010, Cabinet accepted the Constitution Committee’s recommendation that SACRE be re-designated as a Category 2 organisation to which the Constitution Committee would make all future appointments.

The current representatives are –

Councillor H Gaddum (appointed 15 November 2010 to replace
Councillor M A Martin)
Councillor S Jones
Councillor F Keegan

It transpires that Councillor Keegan has not attended any meetings of SACRE since September 2009 and has asked Councillor S Wilkinson to take his place on the body. No formal notification of the vacancy has been received, although Councillor Wilkinson has attended SACRE meetings.

ever since. To regularise this arrangement, the Sub-Committee is invited to recommend that the Constitution Committee confirm the nomination of Councillor S Wilkinson as the replacement for Councillor F Keegan on SACRE.

- (1) Dial-a-Ride (DAR) and (2) Community Transport

Councillors D N Bebbington, D J Cannon and A Thwaite, were appointed to DAR and Community Transport in March 2009. At that time, it was understood that these two organisations were actually one organisation with two branches. However, following the appointments, it transpired that the organisations were in fact two separately operated and funded organisations operating in Cheshire East. Dial-a-Ride covers Crewe, Nantwich and Congleton; and Community Transport covers Macclesfield.

The organisations advised that they would each prefer to have two elected Members appointed to them. This was accepted by the Governance and Constitution Committee on 30 September 2009, at which time, the Committee agreed to recommend to Cabinet that both schemes be re-designated as Category 1 on the basis that they were top-level strategic organisations which informed the Local Transport Plan. The Committee also commented that the two representatives on each organisation should comprise one Cabinet Member and one Local Member.

Councillor Bebbington has now resigned from Dial-a-Ride, and this leaves Councillors D J Cannon and A Thwaite as the only two representatives, both of whom are representing the Council on both Dial-a-Ride and Community Transport. Although Cabinet has yet to make a decision on this matter, Councillor J Macrae, as the Portfolio Holder, is reviewing the situation. It is suggested, therefore, that no action be taken to fill the casual vacancy, pending the outcome of that review and to notify Members and the organisations accordingly.

10.6 Casual Vacancies Procedure

On 9 March 2010, the former Governance and Constitution Committee approved a Procedure for Dealing with Casual Vacancies on outside organisations. This applied to all appointments not made by the Cabinet.

When a casual vacancy occurs between annual appointments, it is for the Committee (now the Constitution Committee) to approve replacements. The Committee meets bi-monthly and this can cause delays of two months or more. The following revised procedure follows the practice adopted for dealing with casual vacancies on Council Committees and avoids the need to seek the approval of the Constitution Committee each time a vacancy occurs.

The blue text indicates the changes proposed.

In the event of places becoming vacant on the Category 2 list, between annual appointments, the following procedure shall apply -

- (i) *When a place becomes vacant, the Democratic Services Manager, as the appropriate Officer, would be notified.*
- (ii) *The Group Whip of the appropriate political group would be invited to nominate a replacement from within the same group.*
- (ii) *A target date for notification of the name of a representative would be agreed.*
- (iii) *The replacement Councillor would take up the vacancy; the outside organisation would be notified of the change; the outside bodies list would be updated on the website; and the Constitution Committee would be notified, for information, at the next available meeting.***
- (iv) *In cases where the relevant political group is unable to appoint to a particular organisation (or chooses not to appoint, for whatever reason), the Democratic Services Manager would be notified and each of the remaining political groups would then be invited to submit a nomination. **Where only one nomination is received for one vacancy within the time allowed, the Councillor would be “slotted in”. Where there is competition for places, the matter would be considered by the Constitution Committee at the next available meeting.***

The Sub-Committee is asked to recommend the adoption of the revised Casual Vacancies Procedure for application in respect of Category 2 organisations.

The Cabinet does not have a procedure for dealing with casual vacancies. When a casual vacancy occurs, this is usually dealt with by the appropriate Portfolio Holder, each of which has the power to appoint to outside bodies falling within their remit. The Sub-Committee is invited to commend the procedure, appropriately amended, to Cabinet for application to Category 1 organisations.

10.7 Review of Appointments Criteria

The following are the criteria which have been adopted for deciding if an organisation should be considered for inclusion on the list of outside organisations.

The Sub-Committee is invited to review the criteria and recommend any changes considered appropriate.

It is suggested that (a) and (b) organisations would fall within Category 1. Other requests would need to be judged on their merits and could be either category.

1. Criteria for making appointments

(a) The Appointment is a Statutory Requirement

There will be a limited number of bodies to which the Authority is required to appoint but statutory requirement should be included as a criterion. Examples include the Police Authority and Fire Authority.

(b) The Appointment Allows the Authority to Influence Policy at National or Regional Level

This will apply to those organisations which give the authority a voice at national or regional level and enables it to influence high-level policy decisions. Examples will include the Local Government Association, and the North-West Employers Organisation.

(c) The Appointment Assists the Authority to Deliver its Strategic Objectives and Priorities

This is a key part of any appointment system, where it can be demonstrated that the appointment will make a direct or significant contribution to the authority's strategic objectives, in particular the Corporate Plan.

(d) The Appointment is to an Organisation which Receives Major Funding from the Authority or Provides Key Public Services

Representation will help to ensure that the organisation uses its funding properly and develops in a way which the authority considers appropriate.

Those organisations which provide key public services, for example Housing Trusts, are often created by a local authority which reserves the right to place Members on its Board.

(e) Where an approved organisation is ward-specific, the Member appointed should be from the appropriate Ward.

Given that some wards are represented by more than one political group, the Sub-Committee will wish to consider a method of deciding which Ward Member should be appointed.

2. Criteria for declining to make appointment

In some cases, it may not be appropriate to appoint to an outside organisation; for example, where there are significant cost or resource implications for the Authority when balanced against any potential benefits. These will be determined by the Committee as and when the situation arises.

3. Issues for Consideration in Making Appointments

In addition to applying the approved criteria, the following should be taken into account -

- **Political Proportionality**

When making appointments to outside organisations, there is no requirement to adopt the rules of proportionality, but there are some organisations where it is appropriate for the leading political group to take the places. These will, for the most part, be those organisations identified as Category 1.

- **Continuity/Members' Interests**

Continuity of representation can be important to outside organisations. Even where the term of office is 12 months only, the representative can build up expertise and experience which can be a loss to that organisation if a new representative is appointed after expiry of the term of office. For this reason, where possible, and provided the representative is willing to continue to serve, consideration should be given to re-appointing the same Member, if appropriate. This could depend on, for example, where elections may change the political balance or it may be appropriate to provide opportunities for newly-elected councillors to serve on organisations which reflect their interests.

- **Term of Office**

The term of office for each Councillor appointed to an outside organisation should, in general, be commensurate with the requirements of the organisation.

- **Responsibilities of Members**

Members will need to consider, when being appointed, that in taking up a formal position with an incorporated body - as director or trustee – the Member will be under a legal duty to act in the best interests of that outside body, notwithstanding the fact that he or she is there as a representative of the Authority. That duty will override a Member's duties to the Authority or the Council-tax payers he or she serves. It is also worth noting that where a matter is raised by the outside organisation relating to its relationship with the Authority, it is likely to give rise to a conflict of interest for the Member representative who will usually be required to make a declaration of a personal and prejudicial interest, under the Code of Conduct, and absent him/herself from the meeting during the discussion.

- **Appointments Made in Accordance with Criterion 1 (d) Above**

Members will need to consider, when being appointed, that in taking up a formal position within an incorporated body - as director or trustee – the Member will be under a legal duty to act in the best interests of that outside body, notwithstanding the fact that he/she is there as a representative of the Authority. That duty will override a Member's duties to the Authority or the Council-tax payers it serves. It is also worth noting that where a matter is raised by the outside organisation relating to its relationship with the Authority, it is likely to give rise to a conflict of interest for the Member representative who will usually be required to absent him/herself from the meeting during the discussion. A dual-mandated role may therefore be problematic and out-weigh any perceived benefits for either the organisation or the Authority.

10.8 Procedure for Adding Organisations to the Approved List

The decision as to whether an outside organisation should be included on either of the approved schedules (Category 1 or 2) is made in accordance with the appointments criteria (see paragraph 10.7), approved by the former Governance and Constitution Committee at its meeting held on 9 March 2009. The criteria are intended to form the basis of an objective, rational and open appointments process.

During the transitional year, it was the role of the Task Group (Outside Organisations) (set up by the former Governance and Constitution Committee in July 2008) to consider new additions to the approved list and make recommendations to the Committee, having applied the approved criteria in each case. An informal part of that process was consultation with the shadow Cabinet. Prior to submission of the final list to the Committee, Cabinet Members selected those organisations which they considered should be reserved to the Cabinet for appointment. The list of outside organisations was then divided into two separate lists: one for appointment by Cabinet and the other for appointment by the Committee.

Since 1 April 2009, there have been a number of new requests, by or on behalf of outside organisations, for Council representation and whilst the criteria have not been specifically applied on these occasions, Legal Services has considered the legal implications associated with each request. Most of the requests have been received from Members. Where a request came from a Cabinet Member, it was treated as a Category 1 organisation and Cabinet dealt with the appointment(s). Where requests were received from other Members, these were regarded as Category 2 and the Constitution Committee made the appointment(s).

There is no formal procedure enabling the Outside Organisations Sub-Committee (as successor to the Task Group) to consider each new request for representation. It is suggested that, in the interests of clarity and consistency, the following procedure be adopted:

- (i) All new requests for representation on an outside organisation would be considered by the Sub-Committee which would apply the appointments criteria to decide whether or not the organisation should be added to the list of approved organisations.
- (ii) If the organisation is considered appropriate for inclusion, the Sub-Committee would then decide which category is the most appropriate, again by applying the approved criteria. (Category 1 comprises those organisations which are regarded as top level strategic bodies to which the Cabinet appoints and Category 2 comprises those to which the Constitution Committee appoints.)
- (iii) If the Sub-Committee determines that it should be a Category 1 organisation, the Constitution Committee would be recommended to refer the organisation to Cabinet which would (a) decide whether it wished to add the organisation to the list of Category 1 organisations; (b) if so, determine the Council's representation on the organisation as appropriate; or (c) if not, refer the organisation back to the Constitution Committee to consider for inclusion as a Category 2, or for rejection.
- (iv) If the Sub-Committee determines that it should be a Category 2 organisation, the Sub-Committee would recommend the organisation's inclusion on that list of approved organisations and would submit nominations for consideration by the Constitution Committee.

The Sub-Committee is asked to recommend this procedure to the Constitution Committee for adoption.

10.9 Sandbach Town Plan Steering Group

The Chairman of the Sandbach Plan Steering Group has written to the Chief Executive of Cheshire East Council requesting that a councillor be appointed to the Steering Group which has been established to produce a town plan for Sandbach.

Councillor Barry Moran has played an active role in the process to date and the Group has requested that he be appointed as the Council's representative.

The Sub-Committee is invited to consider the request and if appropriate, to recommend the inclusion of Sandbach Town Plan Steering Group on the Category 2 list of outside organisations and to recommend the appointment of Councillor Barry Moran as the Council's representative.

10.10 Holmes Chapel Partnership

Holmes Chapel Partnership has been established to enable the Holmes Chapel community to create an improved environment for those who live and work in the area. It is independent of any political party, religious organisation or local council. The Partnership has requested that one representative of Cheshire East Council be appointed; the appointee would become a member of the Executive Committee.

The Partnership has provided a copy of its constitution which is currently being inspected by Legal Services.

The Sub-Committee is asked to consider the request and if appropriate, to recommend the inclusion of the Partnership on the Category 2 list of outside organisations, subject to identification of the legal implications, and to recommend the appointment of one Member.

10.11 Guidance for Members Appointed to Outside Organisations

The Sub-Committee (and the former Task Group) recognised the need for a guidance document for Members appointed to outside organisations. Members have previously considered a number of drafts, the last one of which was edited by Legal Services and delivered to Members in the form of a training session on 17 November 2010. Legal Services has now reviewed the document and is satisfied that it represents an appropriate guidance for Members.

The revised document has now been issued to all Members.

10.12 Officer Representation on Outside Bodies

Members of the former Task Group had requested a list of Officers appointed to outside organisations. This was provided for Members and the Task Group asked for further information to confirm that the named Officers attended meetings of those organisations. The work is not yet complete. An update will be provided at the April meeting of the Sub-Committee.

10.13 Monitoring Effectiveness/Appropriateness of Representation

As part of the review to inform the appointments for 2011-2012, monitoring forms were issued to all Members appointed to outside organisations. To date, 21 Councillors have returned these forms. Additional forms have been sent to non-responders with a request that the forms be completed in time to inform the appointments process for the Municipal Year 2011-2012. An update will be provided at the April meeting of the Sub-Committee.

10.14 Appointments Process – 2011-2012

Members are reminded that appointments for 2011-2012 will be made by the Constitution Committee at its meeting to be held on 2 June 2011. It is suggested that the Sub-Committee meets again in April to -

- Review the current list of Category 2 outside organisations and decide if there should be any deletions.
- Consider the appointments criteria, using political proportionality as a starting point, and allocate individual places to each political group.

Following the establishment of the political proportionality of the Council after the elections on 5 May, Group Whips will be asked to submit nominations for places and it will be for the Constitution Committee to make those appointments.

Category 1 Organisations

Cabinet will be asked to make appointments to the Category 1 organisations at its meeting to be held on 6 June 2011.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer. There are no specific background documents.

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