

## Appendix 1: Protocol on Outside Bodies

### Version Control

Version No.	Reviewer	Date
DRAFTV6	Sara Turnbull	18 April 2016

*This Protocol covers the following information:*

- 1. The Appointment Process**
- 2. Role Profile for Council representatives on outside bodies**
- 3. Types of appointments**
- 4. Personal Liability**
- 5. Member Interests**
- 6. Annual Cycle for Member Appointments & Feedback**
- 7. Checklist for new Council Appointees**

### **1. The Appointment Process**

The Council makes appointments to outside bodies that have organisational objectives that the Council supports and where there are areas of mutual interest. The purpose of the appointments is to assist these organisations and support effective communications with the Council.

As outlined in the Council's Constitution, appointments to outside bodies are made by the Council's executive by the Leader. Currently, these appointments are delegated to the Deputy Leader. A key decision is required for all appointments. Normally this key decision will be annually for all outside bodies, however where changes are needed in-year then a separate key decision may be made.

In making the appointments the Deputy Leader will have regard to the following:

- Where applicable, the contribution made by the existing Council appointee over the course of the previous year.
- To only put forward the names of Council Appointee with the agreement of those proposed.
- To minimise the potential for conflicts of interest arising via consideration of existing Member interests – for example Cabinet Members who will be taking commissioning decisions will not be appointed to sit on the board of a provider organisation.
- To only put forward names of Council Appointee who have the potential to meet the requirements for the role as outlined in the role profile.



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## **2. Role Profile of a Council Appointee on an Outside Body**

The Council makes appointments to sit on outside bodies based on merit. Appointees are not expected to 'represent' the County Council but are rather appointed based on an expectation that they will apply their skills and experience in the best interests of the group to which they are appointed to.

Whilst each outside body is unique, the following role description is applicable to all appointees of the Council on outside bodies:

- To champion the interests of the people of Buckinghamshire on the outside body.
- To attend, generally, all meetings of the outside body as required.
- To understand, underpinned by appropriate experience or knowledge, the purpose and work of the outside body.
- To annually report on the work of the outside body to all Members of Council, as well as throughout the year as required to Committees and Members.
- To understand the procedure for dealing with conflicts between their own interests, those of the Council and those of the outside body.
- To have an appropriate understanding of any regulatory framework that affects the outside body, operating within the rules of the outside body at all times.
- To have or gain the skills needed to properly fulfil his or her role in the outside body.
- To behave ethically and follow the Council's Member Code of Conduct.
- To inform Member Services if they wish to resign from their role on the outside body.

## **3. Types of Appointments**

There are different types of organisations that the Council makes appointments to. The types of appointments are:

- a) **Companies**
- b) **Charity Trusts**
- c) **Unincorporated Associations**
- d) **Other (Steering/Partnership Groups/Committees)**

The sections below describe the key duties in relation to different types of appointments.

### **a) Appointments as Directors of Limited Liability Companies**

#### **Legal Status**

1. Upon incorporation a company becomes a separate legal entity, which can hold property in its own right, enter into contracts and sue and be sued in its own name.

2. Companies limited by shares are those which have a share capital e.g. 1000 shares of £1 each. Each member holds shares and receives a share in the profits made by the company in the form of a dividend. Shares can be sold. Liability in the event of a winding-up is limited to any amount unpaid on the shares held.

3. Companies limited by guarantee do not have shares. Instead, each member agrees that in the event of the company being wound up they will agree to pay an agreed amount e.g. £1. This is most common in the public and voluntary sector, particularly where charitable status is sought.

### **Directors' Duties**

4. The council should not nominate a councillor for appointment as a director of a company where there is a realistic possibility that the interests of the company may come into conflict with those of the council and, in the event of such a conflict the director should seek independent legal advice.

5. A councillor should not accept nomination to be a director of a company where there is a realistic possibility that the interests of the company may conflict with those of the council and the councillor would not feel able, in those circumstances, to act in the interest of the company rather than the council.

6. The role of a councillor who has been appointed as a director will depend upon the company's constitution. A company's constitution will vest most of its powers in the board of directors and the board will exercise these either directly or through managers appointed by the board. Directors must understand the requirements of the Company's constitution and the law in order to fulfil their responsibilities properly.

7. Directors will need to be aware of the requirements of the UK Corporate Governance Code published by the Financial Reporting Council to the extent that this has been adopted by the company, including general management of the company, rules on directors' remuneration, internal financial and operational controls and risk management.

8. Directors must:

- act in good faith in what they believe to be in the best interests of the company (not the Council);
- act with reasonable care, diligence and skill;
- exercise their powers reasonably and for the purpose for which they are given;
- keep an open mind when making decisions on company business, in particular a councillor director must exercise independent judgment and not simply follow Council policy when voting on company matters;
- avoid placing themselves in a position where their private interests or their position as a councillor conflict with their duties to the company;
- be aware of the company's financial position through attendance at board meetings and reading the accounts, agendas and minutes, it is not sufficient to assume that the other directors are doing a good job.

9. Some directors may be given special responsibilities under the company's constitution, for instance a managing director or finance director. Those with special roles will be expected to have the personal and technical skills to perform the duties associated with that role, which may be onerous.

10. The above duties apply to non-executive directors as well as executive directors.

11. There are other statutory requirements which may be relevant depending on the company's business. Directors will need to be familiar with these. For example, if the company is an investment vehicle which engages in fundraising activity, financial services legislation will apply.

## **b) Charity Trusts Appointments**

### **Legal Status**

1. The role and responsibilities of a trustee will depend upon the provisions of the trust's governing documents, and the general law relating to trusts and charities. A trust's governing document can be a trust deed or a scheme made by the charity commission.

2. It is quite common for companies to be set up by trusts with charitable objects. Councillors involved with charitable companies should ensure that they understand the capacity in which they have been appointed.

### **Duties**

3. The role of a trustee is generally to fulfil the objects of the trust and apply the income and, if appropriate the capital of the trust in accordance with the provisions of its governing documents

4. Trustees are subject to various duties, including the duty to:

- act for the benefit of the charity and its beneficiaries;
- make sure income is spent only on the things authorized in the governing documents;
- invest the capital only in authorized investments, having first taken professional advice;
- produce annual accounts;
- act with reasonable care and skill in administering the trust, and
- to act unanimously (unless the trust deed allows majority decisions);
- comply with the Charities Acts and other legislation affecting the charity.

5. The Charity Commission's website – [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk) – contains useful guidance in particular Publication CC3. -'The Essential Trustee' which outlines the basic principles that should guide trustees when administering their charity:

- the income and property of the charity must be applied for the purposes set out in the governing document and for no other purposes;
- the trustees must act reasonably and prudently in all matters relating to the charity and must always bear in mind the interests of the charity. They should not let their personal views or prejudice affect their conduct as trustees;
- trustees should exercise the same degree of care in dealing with the administration of their charity as a prudent businessman would exercise in managing his or her own affairs or those of somebody else for whom he or she was responsible, and

- where trustees are required to make a decision which affects a personal interest of one of their members that person should not be present at any discussion or vote on the matter.

### **c) Unincorporated Associations Appointments**

#### **Legal Status**

1. Most societies, clubs and similar organizations (other than companies and trusts), are unincorporated associations. This is an informal organisation which may arise where several people join together, with the intention of creating legal relations, to carry out a mutual purpose otherwise than for profit.

2. There is no statutory definition of an unincorporated association but it has been described by the court as 'an association of persons bound together by identifiable rules and having an identifiable membership'. Unlike a company it does not have a separate legal status distinct from its members.

3. Because unincorporated associations are not set up under a particular legislation, their structures may vary. However, the rules of an unincorporated association are usually found in its constitution, which sets out the roles and responsibilities of its members.

#### **Duties**

4. An unincorporated association will typically have an executive or management committee with its powers and composition defined by the constitution. Key decisions will usually be made by the members at general meetings. The day to day administration of an association is usually undertaken by the officers and members of the executive or management committee.

5. Broadly, executive or management committee members must act within the constitution and must take reasonable care in exercising their powers.

6. Where an unincorporated association is a registered charity the members of the executive or management committee may also be charity trustees. As such, their role and responsibilities will be determined not only by the association's constitution but also by the general law relating to trusts and charities, as set out Appendix D.

#### **Other (Steering/Partnership Groups/Committees) Appointments**

1. The responsibilities of a councillor who is appointed as a member of any of these bodies will be determined by the terms of reference, constitution or partnership agreement under which they are established and governed.

2. It is necessary to ensure that the councillor's role on the body is clear, and, in particular, whether they are acting as a delegate or representative of the Council to further the interests of the Council, or whether they are expected to exercise independent judgment in the best interests of the body concerned.

#### **4. Personal Liability**

The County Council has in place an Indemnity Policy which covers all County Councillors and Council staff who are appointed by the County Council onto outside bodies. This means that those appointees will not be personally liable for actions that they take in the capacity of representing the Council.

The Council's Indemnity Policy does not extend to appointees who are not County Councillors or BCC employees. Where appointments of this nature are made it is advised that the individual appointee contacts the outside body to enquire if Indemnity Insurance is in place as needed.

#### **5. Member Interests**

Where Councillors serve as members or directors of outside bodies, it is inevitable that conflicts will arise, from time to time, between the duties they owe to the outside body, and the duties they owe to the Council. Conflicting interests should be declared on every occasion. It will be a matter for the individual judgement of the Councillor as to whether he or she participates in discussion of, and votes on, the particular item of business, whether at a meeting of the outside body, the Council or a Council committee. Decisions will be required to be made against the background of the Code of Conduct and the rules applicable to the outside body and, where appropriate, any advice be sought and obtained from the Monitoring Officer.

Provided Members are sensitive to the possibility of conflicts of interest, there is no reason why they should not express a "Council" view when acting on an outside body. However, they should make clear that they do not represent the Council on the outside body, and so cannot bind the Council by what they say. In many cases Members will be able to act as valuable links between outside bodies and the Council.

## **6: Appointments & Feedback Annual Cycle**

<b>Timing</b>	<b>Process Step</b>	<b>Actions</b>
March annually	Feedback request	Request feedback from Members who serve on outside bodies
May annually	Council AGM - Feedback from previous year	Publish an Information Report for Council (28 April) with feedback provided from Members
May annually	CM Key Decision on appointments (Deputy Leader), Immediately following Council	List of <b><i>proposed</i></b> appointments circulated to all Members & BUs with request to notify Member Services if a Member wishes to not take up the opportunity.
June annually	Take up new roles	Confirmation of appointments provided to all appointees; Managing Directors; contact officers in outside bodies  Appointees arrange their own introductory meetings & information on their outside bodies
June-April subsequent year	Appointees undertake roles	Any proposed changes in membership reported to Member Services Email: <a href="mailto:democracy@buckscc.gov.uk">democracy@buckscc.gov.uk</a>  Feedback by Members on outside bodies encouraged via use of personal websites; update reports to Cabinet Members and others as needed.

## **7: Checklist for newly appointed Members on outside bodies**

Prior to commencing any duties relevant to the membership of an outside body organisation, Members need to ensure that they take the following steps:

- ✓ Arrange an introductory meeting with the relevant officers on the outside body (this is the responsibility of each member to arrange).
- ✓ Confirm what meetings attendance is needed at and include these in your diary.
- ✓ Obtain a copy of the outside bodies' Constitution/Articles etc...
- ✓ Read last year's annual report & financial accounts.

Each outside bodies is normally clerked by the relevant external organisation, and not the Council's Member Services team, therefore all appointees should liaise directly with the relevant external organisation for administrative arrangements such as checking meeting dates and times.

## Appendix 2: Current County Council Appointments

### Community Engagement Portfolio Area

Name of Organisation	Appointee	Type of Organisation	Type of Appointment
AV Multicultural Centre Executive Committee*	Brian Roberts	Unincorporated Association	Board member
Buckingham Partnership*	Warren Whyte	Other	Committee member
Buckinghamshire & Milton Keynes Association of Local Councils (BMKALC)	David Martin	Unincorporated Association	Board member
Buckinghamshire County Show Management Committee	Bill Chapple OBE	Other	Committee member
Bucks County Museum Trust	Bill Chapple OBE	Charity/Trust	Trustee
Buckinghamshire Scout Council	David Watson	Charity/Trust	Trustee
Chiltern Open Air Museum Advisory Council	David Martin Tim Butcher	Charity/Trust	Trustee
Evreham Sports Centre Management Committee*	Ruth Vigor-Hedderly Trevor Egleton	Unincorporated Association	Committee member
Healthy Communities Partnership	Martin Phillips	Other	Committee member
Joint Trading Standards Committee	Martin Phillips Margaret Aston	Other	Committee members
Kederminster Library Trust*	Ruth Vigor-Hedderly Bruce Allen (non-Member appointment)	Charity/Trust	Trustee
Marlow Community Forum*	Richard Scott	Other	Forum member
Milton's Cottage Trust	Tim Butcher	Charity/Trust	Trustee
National Paralympic Heritage Trust	Martin Phillips Phil Dart	Charity/Trust	Trustee
Safer and Stronger Bucks Partnership Board	Martin Phillips	Other	Board member
SE Reserve Forces & Cadets Association	Richard Pushman (non-Member/Officer appointment)	Unincorporated Association	Committee member
Stoke Mandeville Stadium Management Committee	Andy Huxley	Unincorporated Association	Committee member

\*Organisations where appointments by the Council will not be made for 2016/17 onwards.



## Deputy Leader Portfolio

William Harding's Charity	Bill Chapple OBE	Charity/Trust	Trustee
Thames Valley Police & Crime Panel	Patricia Birchley	Other	Committee Member
Bucks & MK Fire Authority ( <i>approved by Council on 21 May 2015</i> )	Adrian Busby Bill Bendyshe-Brown Lesley Clarke OBE Netta Glover Phil Gomm Andy Huxley Steven Lambert Wendy Mallen Roger Reed David Schofield Ruth Vigor-Hedderly David Watson	Other	Committee Members

## Health & Wellbeing Portfolio

Oxford Health Trust Board	Mike Appleyard	Trust	Committee Member (not on the Executive Board)
Carers Bucks	Margaret Aston	Charity/Trust	Trustee
Frimley Hospital NHS Foundation Trust	Trevor Egleton	Charity/Trust	Committee Member (not on the Executive Board)
Relate Mid Thames and Bucks	Vacancy	Charity/Trust	Trustee
SECASC (South East Councils Adult Social Care)	Mike Appleyard	Unincorporated Association	Committee member

## Education and Skills Portfolio

Adventure Learning Trust	Mike Appleyard Bill Chappell	Company Company	Director Director
South East Councils for Education	Zahir Mohammed	Unincorporated Association	Committee member
University of Buckingham Governing Body	Warren Whyte Mike Appleyard	Company	Committee member (Governing Body not executive board)
Roger's Education Trust*	John Chilver	Charity/Trust	Trustee
Bucks University Technical College (UTC) Governing Body	Mike Appleyard	Charity/Trust	Committee Member
Aylesbury Vale Academy*	2 Vacancies	Charity/Trust	Trustee
BLT Board	4 Vacancies	Charity/Trust	Trustee
Connexions Bucks	Noel Brown	Charity/Trust	Trustee
Faith Beaumont Charity*	Paul Irwin	Charity/Trust	Trustee
Frogmoor Foundation (checking)*	Zahir Mohammed Julia Wassell 2 Vacancies	Charity/Trust	Trustee
SACRE	David Watson Marion Clayton (non-Member appointment) Anne Beaton (Non-member)	Unincorporated Association	Committee member
School Governance Consultative Board	Zahir Mohammed	Unincorporated Association	Committee member

## Children's Services Portfolio

No outside bodies	N/A	N/A	N/A
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\*Organisations where appointments by the Council will not be made for 2016/17 onwards.

## Planning & Environment Portfolio

Buckinghamshire Historic Buildings Trust	Warren Whyte Bill Chapple OBE	Charity/Trust	Trustees
Buckinghamshire Historic Environment Forum	Warren Whyte Bill Chapple OBE	Unincorporated Association	Committee Members
Bucks Local Access Forum	Warren Whyte Janet Blake Netta Glover	Other	Committee Members
Aylesbury Town Centre Partnership	Bill Chapple OBE	Other	Committee Members
Chiltern Woodlands Project	Richard Pushman (non-Member appointment)	Charity/Trust	Trustee
Chilterns Conservation Board	Bill Bendyshe-Brown	Other	Committee Members
Colne Valley Park CIC	David Martin	Company	Company Director
Groundwork South Local Area Board for Thames Valley	David Martin	Unincorporated Association	Committee Members
Joint Waste Committee	Warren Whyte Netta Glover	Other	Committee Members
River Thames Alliance	Richard Scott	Other	Committee Members
Regional Flood and Coastal Committee – Anglian Region	Warren Whyte	Other	Committee Members
Regional Flood and Coastal Committee – Thames Region	Warren Whyte	Other	Committee Members
Natural Environment Partnership Board	Warren Whyte Netta Glover	Other	Committee Members

## Resources Portfolio

South East Employers	Vacancy	Other	Committee Members
iESE Ltd Board (Improvement and Efficiency South East)	John Chilver	Company	Company Director
LHC	David Martin John Chilver	Other	Committee Members

## Leader Portfolio

Aylesbury Vale Advantage Legacy (LEP body)	Martin Tett	Other (Legacy Company under LEP)	Company Director
Bucks Advantage	Martin Tett Neil Gibson	Company	Company Director (NG) Member Body Committee Member (MT)
Bucks Thames Valley Local Enterprise Partnership (LEP)	Martin Tett	Other	Committee Members
Bucks Business First	Martin Tett Mike Appleyard John Chilver Warren Whyte	Company	Committee Members (Reference Group not on the Company Board of Directors)
Bucks Skills Sub-Committee (LEP)	Mike Appleyard (new)	Other	Committee Member
CCN (County Council Network)	Mike Appleyard Warren Whyte Martin Tett Martin Phillips Avril Davies	Other	Committee Members
LGA General Assembly	Mike Appleyard Martin Tett John Chilver Lin Hazell Avril Davies	Other	Committee Members
LGA Economy, Environment, Housing & Transport	Martin Tett	Other	Committee Members
South East Strategic Leaders	Martin Tett	Other	Committee Members

## Transportation Portfolio

East West Rail Western Section Delivery Board	Mark Shaw	Other	Committee Members
Strategic Aviation Special Interest Group	Mark Shaw	Other	Committee Members
London-Luton Airport Consultative Committee	Netta Glover Avril Davies	Other	Committee Members
PATROL Adjudication Joint Committee	Mark Shaw/ Ruth Vigor- Hedderly	Other	Committee Members

**Appendix 3 – Template Annual Feedback Form for Appointees on Outside Bodies**

<b>Elected Member</b>	
<b>Date Completing this form</b>	
<b>Name of Outside Body</b>	
<b>Role and responsibility of the Council Appointee (For example – Trustee; Company Director etc..)</b>	
<b>What activity have you undertaken through this role?</b>	
<b>What have you achieved through this role?</b>	
<b>Are there any issues relating to the work of the outside body that you would like to report to full Council?*</b>	

\*Please note that the contents provided will be published and therefore should not include any confidential information.