

**Report for:** Standards Committee 4<sup>th</sup> of October 2022

**Title:** **Information report on Outside bodies 2022/2023**

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**Ward(s) affected:** All

**Report for Key/  
Non-Key Decision:** Non-Key Decisions

## **1. Describe the issue under consideration**

- 1.1 To provide information on Council membership of outside bodies and further set out details collated on the current capacity of Councillors nominated to sit on these bodies. The report also contains a reminder of roles and responsibilities when participating in outside bodies.

## **2. Cabinet Member Introduction**

- 2.1 N/A

## **3. Recommendations**

- 3.1 To note the attached information and provide any comments.

## **4. Background information**

- 4.1 Part 2 of the Constitution, Article 4, paragraph 4.02(o) indicates that full Council will appoint representatives to outside bodies unless the appointment is a Cabinet function or has been delegated by the Council.
- 4.2 Article 10.08 of the Constitution advises that the Council has nomination rights to a large number of different external bodies, referred to as 'organisations'. The practice of making nominations to organisations is a benefit to the Council and the links created contribute to the social well-being of the borough.
- 4.3 These organisations can be categorised as follows:
- A. Association bodies, such as the Local Government Association or Association of London Government joint Committees and panels.

- B. Community or voluntary bodies which cover a very wide spectrum of organisations serving the community, or community groups, in various ways.
  - C. Partnership bodies which will usually involve the Council working with other agencies on local issues or projects.
  - D. Statutory bodies, where the Borough of Haringey needs to be represented by law.
  - E. Trusts and Foundations which generally have more specific and prescribed objectives.
- 4.4 As set out in Article 10.08(b) the nominations to all outside bodies are made and confirmed at each Annual General Meeting. Where there is an association or partnership body exercising executive functions, then nominations of the Cabinet Member will be made by the Leader of the Council, or the Cabinet with the Leader's agreement and recorded in the list approved at the AGM.
- 4.5 The attached appendix 1 provides information on the capacity in which members have been nominated for those bodies which are not executive. This includes the duration of the appointment and any other relevant terms and conditions.
- 4.6 The Constitution continues to advise that future nominations to voluntary or community bodies will generally be in a non – voting, “observer” capacity only, in order to avoid the greater potential for conflicts of interest. Nominated members will not participate in management or decision – making within the organisation. Their role will be to assist in the exchange of information and views between the organisation and the Council.
- 4.7 Nominations to other organisations will generally be in a full voting capacity, that is, the member should participate fully in management and decision making within the organisation. Since, the June Committee meeting, the outside bodies were contacted and have provided some further information about their aims and objectives and clarified the capacity in which Councillors were participating in the outside body.
- 4.8 Where Councillors are appointed by the Council to an outside body, this may be either:
- a) As a member of the management Committee, board of directors, or Committee of trustees of the outside body.** Here, Councillors will not only be representing the interests of the Council, but they will also have duties to the outside body and a role in its governance. If a Councillor serves in a decision-making capacity or has a position of general control or management on the outside body, whether company, trust or other association, they will owe duties and responsibilities to that body which are separate and distinct from Councillor's duties owed to the Council. On occasion, it is likely that duties owed to the outside body and to the Council, will conflict e.g., if a

Councillor is a treasurer of an outside body that has applied to the Council for grant funding, and they would need to seek advice from legal services in advance of any decision making.

- 4.9 **b) As an ‘observer’, or an ordinary member, or undertaking a monitoring role, facilitating exchanges of views or information as an extension of Councillors Council duties, but taking no part in the outside body’s management or governance, other than to attend and vote at annual or general meetings.** In this situation a Councillor will be mainly concerned with representing the Council and will not have responsibilities for governance of the body.

## Companies and Directors

- 4.10 Companies whether limited by guarantee or shares are incorporated and have their own legal personality separate from the Directors or shareholders. Directors however owe personal duties to the company which can result in personal liability if not fulfilled. The Committee should note that most charities are big enough to have paid staff are also companies limited by guarantee. **A Councillor may be called a Trustee or a Management Committee member, but it is very likely they are also a company director.**

- 4.11 There are four broad categories of duties owed to a company by its directors:

- Fiduciary duties (a duty of good faith). These include a duty to act in what a director honestly believes to be in the company's best interests, to take care of its assets and not to use their position in the company for their own personal gain. It is also a director’s fiduciary duty to ensure there is no conflict between their role as Director and other interests they may have.
- A duty of care and skill, but a director requires no greater skill than might reasonably be expected of someone of that individual's particular knowledge and experience. A Director is not deemed to be an expert but is expected to use due diligence and to obtain expert advice if necessary.
- An obligation to comply with legislation, e.g., licensing law and the Companies Acts which includes filing annual returns and accounts, maintaining statutory registers, ensuring independent auditing of accounts.
- Compliance with the internal management rules of the company.

- 4.12 Directors will risk personal liability in the following circumstances:

- Knowingly acting outside the powers of the Company
- Breach of fiduciary duty
- Negligence
- Trading when insolvent (wrongful trading)
- Fraudulent trading
- Failure to comply with Companies’ Acts
- Trading when insolvent - Wrongful trading

4.13 If a Director knew or ought to know that there was no reasonable prospect of the company avoiding liquidation, a Court may require that the Director contribute to the company's assets on liquidation if the company continues to trade. No such order will be made if the Court is satisfied that the Director took all reasonable steps to minimise the loss to the creditors. If a director has concerns about the company's financial position, then they would be well advised to inform the other Directors and seek advice from the company auditors. They should try to ensure that further debts are not incurred.

## **Trusts and Charity Trustees**

4.14 Trustees' prime duties are:

- To act in accordance with the trust deed and to protect the charity's assets.
- To comply with the Charities Acts, including ensuring that the information relating to the trust and trustees is registered with the Charity Commissioners and that annual account and returns are completed and sent.
- Not to make a private profit from their position.
- To perform their duty with the standard of care, which an ordinary, prudent businessperson would show.
- To comply with their statutory duties including those in relation to tax matters

4.17 Trustees must not act in breach of trust, for example, they must not:

- Act outside the scope of the trust deed.
- Fall below the required standard of care.
- Make a personal profit from the trust assets
- Carry out campaigning or political activities in breach of their governing document and must only carry out such activities if they will be an effective means of furthering the purposes of the Charity.

4.18 Where trustees act in breach of trust, they may incur personal liability for losses incurred.

## **Community Associations**

4.19 Other groups, which are not charitable trusts or limited companies, are classified in legal terms as "unincorporated associations". An unincorporated organisation may be charitable and may register as a charity. It has no separate legal identity apart from its members. The rules governing the members' duties and liabilities 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 a management Committee to be responsible for the everyday running of the organisation.

4.20 Management Committee members must act within the constitution and must take reasonable care in exercising their powers. Any individual member of the management Committee who acts outside the authority given to him or her will be personally liable and will not be entitled to an indemnity unless the

action is subsequently ratified by the management Committee or all the members of the organisation.

### **Association and Statutory Bodies**

- 4.21 Most of these are Joint Committees of the Association of London Government or the Local Government Association set up by agreement between the Councils concerned. There are also statutory bodies on which Haringey must be represented like the North London Waste Authority which comprises representatives of 7 constituent Boroughs. These bodies will have their own legal status, constitution, code of conduct and officer support. Members will be appointed in a full voting capacity with power to take decisions on behalf of the body.

### **Partnership Boards**

- 4.22 These may be companies, unincorporated associations or more usually informal groupings without any constitution or other legally enforceable rules. Where they are informal groupings then decision making is usually indicative and dependent on ratification by constituent bodies. In these circumstances, Members or officers on these boards must take care not to pre-empt the Council's decision-making as this could lead to challenges on the basis that the Council's discretion has been fettered.
- 4.23 Being on an outside body can bring many benefits to the Council, the organisation and the community, but it will sometimes create conflicts with work as a Councillor. For Council Members, it would have to be included as an interest in the Members' Register of Interests as set out in the induction process. Members will have a personal interest in Council business referring to it, and sometimes a prejudicial interest where finances or regulatory matters are concerned. Councillors will need to be sure that involvement with the organisation will not prevent them from fully participating in their work as a Councillor. Any concerns would need to be discussed with the political group Chief Whip.
- 4.24 There would need to be consideration of any conflict with the role as a Councillor and as a member of the organisation's management Committee, as a director of a company, or as a trustee where the Council's wishes may conflict with the best interests of the outside body they must nevertheless, if taking decisions for that outside body, act in its best interests.

### **Indemnities**

- 4.25 Councillors who participate in external bodies may be indemnified in relation to liabilities they incur in that capacity, though this is subject to certain limitations. Indemnity by the outside body:
- a) Directors: Directors cannot be indemnified by the company against liability for negligence, default, breach of duty and trust. Companies can however

purchase insurance to protect directors against claims of negligence, default, breach of duty and trust. Those appointed as directors should ensure that appropriate insurance is in place. Companies can, if their Articles of Association allow, provide for directors to be indemnified for the costs of defending such a claim if they are granted relief by the court or acquitted.

b) Trustees: Provided a charitable trustee act properly, and within his/her powers, indemnity can be given from the trust fund. Trustees can take out insurance to protect themselves from personal liabilities, but not for criminal

c) acts such as fraud. If the premiums are to be paid out of the charitable funds, the consent of the Charity Commissioner will be needed

d) Unincorporated Associations: Members may be entitled to an indemnity if they act in accordance with the Constitution of the association and are not at fault.

4.26 However, regard must be had to the terms of the constitution. The constitution will determine whether insurance can be paid for by the organisation.

4.27 Indemnity by the Council: The Council may provide an indemnity were Councillors are acting on an outside body at the request of the Council, and provided:

- the appointment was made by the Council, or
- the nomination was made by the Council, and
- the appointment was specifically approved for the purpose of the indemnity.

4.28 The indemnity the Council can provide is subject to limitations. In general terms, if a Councillor is acting properly, within their powers and in good faith, the power to indemnify will usually apply. However, the Council cannot, for example, provide an indemnity in relation to any action or failure by any Member which constitutes a criminal offence, or for any action or failure by any Member which is the result of fraud, or other deliberate wrongdoing or recklessness on the part of the Member. When a Councillor is serving on an outside body, the Council's indemnity will only apply after any indemnity or insurance from the body itself. There are further limitations, and it is advisable to be clear about the scope of the Council indemnity that may be available, and the Councillor can seek further advice on indemnity from the Monitoring Officer.

### **Code of Conduct – Councillors' Interests**

4.25 All Councillors are subject to the Council's Code of Conduct for Members. Councillors act as representatives of the Council on another authority, they must comply with the other authority's Code of Conduct. However, when Councillors act as the Council's representative on any other sort of outside body, they must comply with the Council's Code of Conduct unless it conflicts with the lawful obligations of the other body. If present at a meeting when an item of business arises which relates to or affects an outside body to which a Councillor has been appointed, they must declare that they have a personal

interest, and the nature of that interest, before the matter is discussed or as soon as it becomes apparent.

- 4.26 An exemption applies where a Councillor's interest arises solely from their membership of, or position of control or management on:
- any other body to which they were appointed or nominated by the authority [www.haringey.gov.uk](http://www.haringey.gov.uk)
  - any other body exercising functions of a public nature (for example another local authority).
- In these exceptional cases, provided that the Councillor does not have a prejudicial interest, they can declare this and speak on the matter.
- 4.27 A Councillor will also have a prejudicial interest in Council business affecting the outside body if:
- the matter being considered affects the financial position of the outside body; or
  - relates to an approval, consent, licence, permission or registration affecting the outside body e.g. an application for planning permission.
- 4.28 If there is prejudicial interest in a matter under discussion, a Councillor must declare and then leave the meeting room, unless members of the public are allowed to make representations, answer questions or give evidence about the matter. If that is the case, a Councillor can make their representations etc., but must leave the room immediately after doing so. The Code of Conduct supports the role of a Councillor as a community advocate and enables, even with a prejudicial interest, a Councillor to represent their community and speak on issues that are important to them.

## **Bias**

- 4.29 Where a Councillor might be inclined to the view that they have no prejudicial interest, their duties as a director, or trustee, or member of a management Committee may well be regarded, on an objective appraisal, as giving rise to a legitimate fear of lack of impartiality, especially having regard to the desirability of maintaining public confidence. Participation in the decision making at a Council Committee meeting by a Councillor who is biased potentially invalidates the decision.
- 4.30 Where membership of the outside body is on an advisory or consultative basis, bias will not be assumed from mere membership. However, once the outside body has a line which is being advocated by the Councillor who is a member of the body, this could potentially be viewed as bias, and the Council's decision on the issue could be vulnerable to challenge if the Councillor participates in those circumstances. It will depend on the facts, and in such circumstances, advice should be sought from the Monitoring Officer.
- 4.31 The appendix attached outlines that there are 11 councillor representatives on community outside bodies. There is no voting capacity on these bodies as set

out in Appendix 1. However, members will need to be mindful of the advice provided at paragraph 4.20.

- 4.32 There are 12 Councillor representatives on partnership bodies and the councillors on these bodies will need to be mindful of advice at paragraph 4.22.
- 4.33 There are 10 councillor representatives on Statutory Bodies and should consider advice at paragraph 4.2, noting that members on the Schools Forum have no voting rights.
- 4.34 There are 14 Councillor representatives on Trusts and they will need to consider advice at paragraph 4.10 to 4.18.

## **5. Use of Appendices**

- 5.1 Appendix 1 – The member appointments to outside bodies 2022-23

## **6. Local Government (Access to Information) Act 1985**

- 6.1 Background documents:
  - Appointments to outside bodies 2021/22
- 6.2 The background papers are located at River Park House, 225 High Road, Wood Green, London N22 8HQ.
- 6.3 To inspect them or to discuss this report further, please contact Ayshe Simsek on 0208 489 2929.