



Cyngor Castell-nedd Port Talbot  
Neath Port Talbot Council

## **NEATH PORT TALBOT COUNTY BOROUGH COUNCIL**

### **CABINET**

**17 September 2020**

**Report of Assistant Chief Executive and Chief Digital Officer – Mrs K Jones  
and Head of Legal Services – Mr C Griffiths**

#### **Matter for Decision**

**Wards Affected:** All Wards

#### **Report Title:**

1. Council representation on outside bodies

#### **Executive Summary**

2. The participation by Members in bodies to which they have been appointed by their local authority is governed by a number of areas of law.
3. Many appointments to outside bodies are made because there is a specific legal requirement to do so. However, in the case of a small number of local organisations, member involvement is voluntary and can be changed if considered appropriate.
4. This report is intended to provide advice about the current and future appointment of Members to boards of organisations where participation is voluntary and where Neath Port Talbot County Borough Council (“the Council”) provides funding via core funding or other grant agreements.

5. The report discusses the benefits and drawbacks of maintaining these arrangements and explains how the Council could put in place alternatives to voluntary board membership which would mitigate the conflicts of interest that arise from the current arrangements.

### **Purpose of the Report:**

6. The purpose of this report is to consider the benefits and drawbacks of Members being formally part of the voluntary boards of the following Organisations and to propose alternatives to this arrangement to protect members against the conflicts of interest that arise in relation to continuing with the current arrangements. The organisations that are within the scope of this review include:

- Neath Port Talbot Council for Voluntary Services (“CVS”)
- The Neath Business Improvement District (“Neath BID”)
- The Port Talbot Business Improvement District (“Port Talbot BID”)
- Neath Port Talbot Care and Repair (“Care and Repair”)
- The Neath Port Talbot Black and Minority Ethnic Community Association (“BME”)

(collectively referred to as “the Organisations”)

### **Background:**

#### Introduction

7. The Council has appointed Member and Officer representatives to the Organisations for a number of years.

8. The Organisations are also recipients of grant funding from the Council in a number of areas and also the recipients of service level agreements for certain functions and also contractual relationships.
9. The Council's outside body representation was reviewed several years ago and at that time the Council's voluntary participation in the boards of a number of organisations was brought to an end. The Council now nominates representatives to sit on a relatively small number of local organisations. There have been several instances where officers and members serving on those bodies have found themselves with conflicts of interest arising from the fact that they have to legally consider the interests of the outside body when serving on the boards, rather than acting in the interests of the Council. There are other ways in which the Council could continue to support those organisations which would deal with the conflict of interest issue which are discussed below.

### Conflict of Interest and Code of Conduct Concerns

10. If the Council appoints a Member to serve on an outside body, this may have consequences for participation by that Member in considering Council business relating to that outside body. The basic rules are found in the Code of Conduct for members of local authorities in Wales that must, by law, be adopted by every local authority in Wales ("the Code").
11. The Code defines "personal interests" which must be declared in conducting Council business, but also a narrower sub-category of interests that are also "prejudicial interests". Generally, where the Member has a personal interest that is also a prejudicial interest, he or she must declare but also refrain from participating in any Council business that relates to that interest. However, there are particular rules where the interest relates to a body to which the Member has been appointed by the Council.
12. Paragraph 10 of the Code indicates that a Member has a personal interest in any business of the Council when a decision relates to or is likely to

affect any body to which the member has been elected, appointed or nominated by the Council. Therefore, a Member must declare a personal interest whenever an item of business comes before the Member that relates to the body to which the Council has appointed them.

13. However, Paragraph 12 (2) provides that a member will not have a prejudicial interest if the item of business falls within one of a number of exemptions that includes business relating to a body to which the member has been elected, appointed or nominated by the Council. This exemption will not apply where the item of business concerns the determination of any approval, consent, license or regulation. Guidance issued by the Public Services Ombudsman for Wales expresses the view that this refers to a narrow category of decisions, such as granting planning consent and licensing decisions.
14. However, there will be circumstances where there is actually a straight conflict of interest which is impossible for the Member to resolve within the terms of the Code, for example, whether the Council should continue to support an outside body in preference to an alternative course of action and as part of this consideration, the terms on which this support is offered (for example, the content and length of any contract and/or leases) or perhaps scrutinising the governance of such bodies.
15. It is and always has been clear that when Members are appointed to outside bodies their prime duty is to that body. In addition, it is clear that they do not represent the Council in meetings of those bodies.
16. Accordingly, anyone who exercises powers in relation to the governance of such an organisation is bound to act solely in the interest of that organisation. Whilst it may be possible to deal with a conflict of interest by requiring the conflicted Member to withdraw from discussion and refrain from voting on matters giving rise to a conflict of interest, if there is a substantial and recurring conflict of interest, it may be necessary in the interests of the Member in question to stand down on the voluntary board all together in favour of someone not subject to conflict of interest.

17. Because of this, Members cannot participate in any of the discussions about the business plan or operation of the Organisations referenced, as it is inextricably interconnected in some cases with the grant agreements or contractual arrangements that the organisation has with the Council.
18. The issue of confidentiality is also important. A member appointed to the voluntary board should not disclose discussions at the board of these Organisations to the Council. This advice is consistent with the statutory and common law responsibilities of a company director in general. A board member owes duties of fidelity and confidence to the organisation and has a primary requirement to support and promote the interests and success of the organisation to which they are appointed. This opportunity creates an unsolvable dilemma for Members because they will be aware of information from their appointment to the voluntary board that reflect on their Council role but would also have an obligation not to reveal it.

### Proposal

19. It is proposed that the Council no longer nominates members to sit on the boards of outside bodies where the Council provides funding to the body and participation is voluntary. The use of the funding provided by the Council is already covered by formal mechanisms such as grant agreements and other contractual mechanisms. The outcome of monitoring is reported into the governance of the Council in accordance with the Council's policies and procedures. Discussions between the Council and the body in relation to future funding arrangements would take place within the context of the financial and performance monitoring arrangements that are linked to the funding arrangements.
20. In terms of the way in which the Council would work with such bodies on a more strategic footing, there are other mechanisms that facilitate partnership working such as the Voluntary Sector Liaison Committee and associated Compact. In relation to the two BIDs, the Public Services Board is to establish a local economic forum to address the impacts from Covid-19. Consequently, changes to Council representation on these outside

bodies should not be read as the Council withdrawing support from the Organisations but as an exercise in establishing better governance.

21. Where there are continuing financial and service relationships between the Council and these Organisations these will continue to be governed by officer business meetings and referred to Members as appropriate.
22. Members will continue to participate in the Voluntary Sector Liaison Forum where the Council holds bi-lateral discussions about the relationship between the Council and the third sector. Members are of course also afforded the option to invite representatives of these Organisations to any scrutiny committees that they might wish.
23. It should be noted however that this principle will not apply to Members who choose to sit on the Organisations in a personal capacity and not as a representative of the Council. In the event Members choose to sit in a personal capacity they can continue to do so but will continue to be required to declare a prejudicial interest in respect of any matter that is before Council/Cabinet/Committees. This report only seeks to deal with Council appointed Members.

#### **Financial Impacts:**

24. There are no financial impacts associated with this report.

#### **Integrated Impact Assessment:**

25. A first stage impact assessment has been undertaken to assist the Council in discharging its legislative duties (under the Equality Act, the Welsh Language Standards (No.1) Regulations 2015, the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016. The first stage assessment, attached at appendix 1 has indicated that a more in-depth assessment is not required.

#### **Valleys Communities Impacts:**

26. There are no valley community impacts associated with this report.

**Workforce Impacts:**

27. There are no workforce impacts associated with this report.

**Legal Impacts:**

28. The obligations on Members in the Code are identified in paragraphs 14-16 of this report.

29. The grant agreements or the memorandum of understanding between the Council and referenced Organisations will govern the relationship between the Council and these Organisations from here on in and the Council will be able to actively work with these Organisations via these mechanisms as an alternative to board oversight

**Risk Management Impacts:**

30. Failure to address the inherent conflict of interest that may arise could result in operational difficulties for the members appointed to the Organisations referenced preventing them from actively pursuing a role in either these Organisations or the Council. Without actions, officers and Members will continue to have unnecessary conflicts of interest limiting their ability to participate in the Council's decision making arrangements concerning those outside bodies when there are already other mechanisms in place that govern the Council's funding arrangements of those organisations and alternative mechanism to support wider partnership working exist without creating those same conflicts of interest.

### **Consultation:**

31. There is no requirement for external consultation on this item.

### **Recommendations:**

32. It is recommended that Neath Port Talbot County Borough Council no longer nominates representatives to the boards of organisations funded by the Council and where participation in the boards of those organisations is voluntary.
33. That Neath Port Talbot Council for Voluntary Services, Neath Port Talbot Care and Repair, Neath Business Improvement District, Port Talbot Business Improvement District and The Neath Port Talbot Black and Ethnic Minority Community Association are notified that, subject to recommendation 1 being agreed, that the current Council appointees wish to resign from these Organisations and from the date of such resignation, Neath Port Talbot County Borough Council no longer propose to appoint elected member representatives to these Organisations.

### **Reasons for Proposed Decision**

34. To ensure that suitable governance arrangements are in place in respect of the Council's relationship with its funded Organisations and to prevent member appointments being placed in a position of conflict between their duties as members of these Organisations and elected members of the Council.

### **Implementation of Decision:**

35. This report subject to implementation after the three day call in period.

### **Appendices:**



36. Appendix 1 – Integrated Impact Screening Assessment

**List of Background Papers:**

37. None

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