

10.00am, Thursday, 2 June 2016

## Outside Bodies

Item number	8.4
Report number	
Executive/routine	
Wards	

### Executive Summary

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This report outlines the risks and outstanding issues surrounding the outside bodies which the Council has appointed elected members to. Future work and immediate actions to be taken are recommended in regard to unincorporated organisations and charitable trusts in particular.

### Links

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[Coalition Pledges](#)  
[Council Priorities](#)  
[Single Outcome Agreement](#)

## Outside Bodies

### 1. Recommendations

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- 1.1 To note the potential personal liability for elected members in serving on the management committee of unincorporated associations.
- 1.2 To note that elected members would best be protected from personal liability by resigning from the management committees of unincorporated organisations.
- 1.3 In the light of their potential personal liability, to invite elected members to consider their position in relation to the unincorporated associations listed in appendix one.
- 1.4 To note the further work to be carried out exploring the type and liabilities of outside organisations.
- 1.5 To agree to carry out the work exploring the liability of the charitable trusts outlined in appendix two.
- 1.6 To agree the new governance process for managing the appointment of elected members to outside organisations outlined in appendix three.
- 1.7 To agree that further work should be carried out before the Local Government Elections in 2017 to ascertain the relevancy to the Council of the organisations in the outside bodies list.
- 1.8 To appoint Councillor Barrie as a replacement for Councillor Ross as the Council's representative on Business Loan Funds (Scotland) Ltd.

### 2. Background

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- 2.1 The Council currently appoints a number of elected members to outside bodies. They are agreed at either the first or second Council meeting following local government elections and are, subject to statute, usually for the life of the Council. Appointments are also made throughout the term of the Council due to resignations and requests by new organisations for elected member representation.
- 2.2 The appointment of elected members to serve on any outside body is a matter reserved to Council in accordance with the Committee Terms of Reference and Delegated Functions.
- 2.3 The organisations range from Council-owned companies to local groups that operate in a particular ward or locality of the city. Elected members sit on these

organisations in a number of different roles. Examples of this are as a director on a board of a company, a trustee or as a member of a committee.

- 2.4 On 17 March 2016 The Finance and Resources Committee delegated authority to the Chief Executive and the Acting Director of Resources to take action as required to minimise any risks and deal with any potential claims as a result of elected members having being appointed to any unincorporated associations by the Council. This was not a permanent solution to the risks facing the Council and individual elected members and a further report was scheduled to be submitted to Council.

### **3. Main report**

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- 3.1 This report considers the types of organisations on the outside body list and examines what steps are necessary to mitigate the identified risk with unincorporated associations and any further risks to the Council and elected members. Consideration will also be given to how the Council can better manage new approaches by outside bodies for elected member representation.
- 3.2 It is recognised that elected members may be personally approached to sit on boards or attend meetings of a variety of organisations. If elected members accept these positions they do so in their personal capacity rather than as a councillor, and must make this clear to the organisation when accepting the position. This report only covers those appointments made formally and approved by the Council and does not take account of elected members who are on outside organisations in a personal capacity.
- 3.3 The most common examples of the types of outside bodies in which members become involved are:
- 3.3.1 Companies limited by shares;
  - 3.3.2 Companies limited by guarantee;
  - 3.3.3 Charitable trusts; and
  - 3.3.4 Unincorporated associations.

#### **Arms Length External Organisations**

- 3.4 The Council has a number of Arms Length External Organisations (ALEOs) which deliver a range of services for the Council. A review by Internal Audit has recently been undertaken on ALEOs. This will be reported to the Governance, Risk and Best Value Committee on 23 June 2016. In the meantime it is recommended that elected member representation on these bodies remains unchanged.

#### **Organisations limited by shares or guarantee**

- 3.5 A number of organisations on the outside bodies list are companies limited by shares or by guarantee. Companies limited by shares are widely used for commercial enterprises and directors have duties under the Companies Act and

other associated legislation. Personal liability is limited with certain exceptions such as when a director is engaged in wrongful trading.

- 3.6 Companies limited by guarantee are widely used for not-for-profit organisations such as clubs and community enterprises. Again directors have duties under the Companies Act and likewise personal liability is limited with certain exceptions. An example of this type of organisation on the outside bodies list is Edinburgh International Festival Council.
- 3.7 It is recommended that elected members continue to be represented on these organisations as the financial risk is likely to be limited.

### **Charitable trusts**

- 3.8 Charitable trusts are widely used by charities and most director duties apply to trustees. Personal liability for trustees varies for each trust but individual personal liability may be more likely to apply than for other organisations. The Council is not aware of the full extent of the current exposure to personal liability for its elected member representatives as trustees on nine of these organisations. To ascertain this information each trust deed would have to be examined. Given the specialist nature of this work it is therefore recommended that this essential work is carried out by external legal specialists. If any general or specific issues arise out of this external review, the results would be reported to Council.

### **Unincorporated Associations**

- 3.9 There are 11 unincorporated associations which currently have councillors as members, of which there are 17 cross-party councillor appointments.
- 3.10 The law in relation to unincorporated associations is both complex and unclear. The Scottish Law Commission has produced a paper recommending reform of this type of organisation but this has yet to be implemented. An unincorporated association is one of the most common legal forms adopted by members' clubs, sports clubs, charities and other not for profit organisations.
- 3.11 Unincorporated associations have no legal status, which means contracts cannot be entered into by the organisation and must be entered into in the name of its members (in practice usually its committee members). Personal liability of the members of management committees can arise due to the lack of legal status of the association. This means that members of committees may be personally liable for payments due under contracts that have been entered into on behalf of the association in the event of non-payment, and for any sums outstanding on insolvency.
- 3.12 The status of unincorporated associations creates an unknown and unquantifiable risk for the Council, and in particular for those elected members and officers who are members of these organisations at the Council's behest. There is a potential for these members to be liable on a joint and several basis. It may also be difficult for a person sued to recover from the other members of the management committee.

- 3.13 There is an instance where an elected member sits on an unincorporated association as an observer. If the elected member merely observes and is not a member of the management committee or the organisation than it is likely that liability will be limited. It is recommended that if the relevant elected member has concerns than discussions should be held with officers.
- 3.14 Discussions could take place with these organisations on changing their form to provide greater protection for its members regarding liability. However, this decision is one entirely for the organisation. Due to the risk of unlimited liability, it is recommended that elected members should consider resigning from the unincorporated associations outlined in appendix one.

### **Organisations still to be determined**

- 3.15 There are 14 outside organisations on the outside body list where the Council does not yet have full clarity on their structure or the liability for elected members. Further work is required to be undertaken to research these organisations to ascertain the level of risk. However, it is not anticipated that these organisations are high risk or expose elected members to unlimited liability. A small project team from Strategy and Insight will be created to examine this further and report to Council if any issues are identified.

### **Process - New Requests**

- 3.16 At present there is no defined procedure for organisations who request an elected member to join as a member/director or observer. This could result in the Council and/or elected members being exposed to unnecessary risk. This could depending on the organisation and the role include a possible conflict of interest which hinders Council business, financial and/or reputational risks.
- 3.17 Conflicts of interest will inevitably arise between duties owed to the outside body and duties owed to the Council. The Councillors' Code of Conduct is clear on these conflicts and states:

*“3.17 - You may be appointed or nominated by the Council as a member of another body or organisation. If so, you will be bound by the rules of conduct of these organisations and your responsibility for any actions taken by you as a member of such an organisation will be to the organisation in question. You must also continue to observe the rules of this Code in carrying out the duties of that body.*

*3.18 - If you become a director of a company as a nominee of the Council you will assume personal responsibilities under the Companies Acts. It is possible that a conflict of interest may arise for you between the company and the Council. In such cases it is your responsibility to take advice on your responsibilities to the Council and to the Company. This will include questions of declarations of interest.”*

- 3.18 Linked to the financial risks outlined earlier in the report on liability and the potential reputational risks that could arise, the consequence of conflicts of interest requires an improvement in the overarching governance in relation to these appointments. A procedure has been outlined that seeks to address concerns while clarifying both

responsibility and accountability. The procedure requires that Council officials explore all relevant risks and undertake appropriate diligence before making recommendations to the Council on any appointment. This aims to provide elected members with the best possible guidance on whether to join the organisation.

- 3.19 The responsibility for the relationship between the Council and the outside organisation remains with the relevant executive director, dependent on the services the outside organisation delivers. There should be an identified officer from that service area who can outline the Council's relationship with this body and monitor the situation in case new risks or issues arise.

### **Next Steps**

- 3.20 The number of outside bodies on the list is significant with elected members from all groups represented on over 100 bodies. The Council has a current interest in many of these bodies but there are some where the link with the Council is longstanding with historic roots. It is recommended that a full review of all such organisations is undertaken prior to the May 2017 Local Government Elections. This review will be able to more fully explore the risks to the Council (other than financial) that may currently exist.
- 3.21 Consultation with elected members will be key to ascertaining whether Council representation should continue. A full consultation exercise will be done with elected members exploring outside organisations generally and also focussing on each individual organisation with the relevant elected member.

### **Business Loans Fund (Scotland) Ltd**

- 3.22 At its meeting on 28 April 2016 the Council made a number of changes to representation on outside bodies arising from Councillor Barrie's appointment as Economy Committee Convener. Following from this, Council is also asked to appoint Councillor Barrie in place of Councillor Ross as the Council's representative on Business Loan Funds (Scotland) Ltd.

## **4. Measures of success**

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- 4.1 To mitigate the risks, in particular financial risk, to the Council and elected members of membership of outside organisations.

## **5. Financial impact**

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- 5.1 All work outlined in this report will be contained within existing revenue budgets.

## 6. Risk, policy, compliance and governance impact

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- 6.1 The governance surrounding the appointment of elected members to outside organisations requires to be strengthened. The measures in this report should assist in building a more robust approach.

## 7. Equalities impact

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- 7.1 There are no equalities issues as a result of this report.

## 8. Sustainability impact

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- 8.1 There are no sustainability issues as a result of this report.

## 9. Consultation and engagement

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- 9.1 Thorough consultation will take place with elected members on any review of outside bodies prior to the Local Government Elections in 2017.

## 10. Background reading/external references

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[Scottish Law Commission Report on Unincorporated Associations, November 2009](#)

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## 11. Links

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**Coalition Pledges**

**Council Priorities**

**Single Outcome  
Agreement**

**Appendices -**

Appendix one – List of unincorporated associations

Appendix two – List of charitable trusts

Appendix three - governance process for managing the  
appointment of elected members to outside organisations

## Appendix one

### Unincorporated Organisations

	<b>Organisation</b>	<b>Description</b>	<b>Council Appointments for 2012/17</b>	<b>Lead Directorate(s)</b>
1.	The BIG Project – Management Committee	Provider of services and support for children and young people aged 5-16 living in the Broomhouse area of Edinburgh.	Councillor Dixon (SNP)	Communities and Families
2.	Kirk of Greyfriars Society of Friends	A church community in the heart of Edinburgh which welcomes visitors and tourists.	Councillor Mowat (C)	City Strategy and Economy
3.	Police Aided Clothing Scheme - Directors	Provides clothing to children aged 5-18 from underprivileged backgrounds.	Lord Provost (ex-officio)  Councillor Rose (C)	Communities and Families
4.	Scottish Accident Prevention Council	Brings together a range of bodies to formulate and enhance the worth of accident prevention.	Councillor Dixon (SNP)	Chief Executive
5.	Citadel Youth Centre	Community based youth work in Leith offering local children and young people opportunities for learning, leisure, friendship and other help and support.	Councillor Munro (L) Councillor McVey (SNP) (Ward 13 – Leith)	Communities and Families

	<b>Organisation</b>	<b>Description</b>	<b>Council Appointments for 2012/17</b>	<b>Lead Directorate(s)</b>
6.	Community One Stop Shop, Broomhouse – Management Committee		Councillor Fullerton	Resources
7.	Corstorphine Youth and Community Centre	An independent and inclusive community hub providing a range of opportunities including playgroup, keep fit, sports and other activities for all age groups.	Councillor Edie (SLD) (Ward 6 – Corstorphine/ Murrayfield)	Communities and Families
8.	Gorgie/Dalry Community Association - Director	Provides community facilities to promote education, health, social welfare, recreation and leisure to improve the condition of life for all participants.	Councillor Milligan (L) Councillor Fullerton (SNP) (Ward 7 – Sighthill/Gorgie)	Communities and Families
9.	Gorgie Memorial Hall Management Committee		Lord Provost Councillor Milligan (L) Councillor Dixon (SNP) Councillor Fullerton (SNP)	Resources

	<b>Organisation</b>	<b>Description</b>	<b>Council Appointments for 2012/17</b>	<b>Lead Directorate(s)</b>
10.	Granton Information Centre	Provides free, impartial and confidential expert advice, information and representation to the residents of North Edinburgh on a range of issues and by a variety of methods.	Councillor Day (L) (Ward 4 – Forth)	Edinburgh Health and Social Care Partnership
11.	Pilton Central Association/West Pilton Neighbourhood Centre - observer	A community managed organisation that aims to maximise community influence, address poverty and bring economic and community benefits to the North Edinburgh area. West Pilton Neighbourhood Centre provides a varied programme of educational and recreational activities to meet the needs of the community.	Councillor Cardownie (SNP) (Ward 4 – Forth)	Communities and Families

**Appendix 2**  
**Charitable Trusts**

	<b>Organisation</b>	<b>Description</b>	<b>Appointments made for 2012/17</b>	<b>Lead Directorate(s)</b>
1.	Dean Orphanage and Cauvin's Trust - Board	Works to keep young people from living on the streets and provides a continuum of care to young people aged 15-21 as they make the transition from being looked after and accommodated to living independently in the community.	Councillor Keil (L)	Communities and Families
2.	Fettes Trust (The Governors of) - Director	Administers Fettes College.	Councillor Paterson (C)	Communities and Families
3.	George Heriot's Trust	Governs George Heriot's School.	Councillor Rose (C) Kate Cherry (A person with experience in education)	Communities and Families
4.	Lothian Homes Trust - Directors	Promotes the education of young people under the age of 22 who are in need of care or are living in deprived circumstances or otherwise require assistance to become adjusted to living independent lives.	Councillor Day (L) Councillor Key (SNP) Councillor Balfour (C) Vacancy	Communities and Families

	<b>Organisation</b>	<b>Description</b>	<b>Appointments made for 2012/17</b>	<b>Lead Directorate(s)</b>
5.	John Wilson/Robert Christie Bequest Fund Board of Management - Director	A fund for people over 60 who are in need, live in Edinburgh or Midlothian and have an acutely painful disease.	Councillor Aitken (C)	Resources
6.	Airth Benefaction Trust	Grants provided to people in need who are incapable of gaining a livelihood.	Councillor Redpath (L) (Ward 4 – Forth)	Resources
7.	John Watt's Trust	Grants to people over 55 who have the name Watt and who live in the parish of South Leith or have done so for at least ten years prior to application. People in need who have lived or are living in the City of Edinburgh or Midlothian can apply.	Councillor Munro (L) (Ward 13 – Leith)	Communities and Families
8.	Leith Industrial School Trust	Gives grants to organisers of groups providing play or holiday activities for the benefit of children living in Leith.	Councillor Munro (L) Councillor Booth (G) (Ward 13 – Leith)	Communities and Families
9.	William Brown Nimmo Charitable Trust	Provides grants to older women on a low income who were born and live in Leith or Edinburgh.	Lord Provost (ex officio) Councillor Munro (L)	Communities and Families

## Elected Member representation on Outside Bodies process

Request made to Council for Elected Member representation

Request passed to Head of Strategy and Insight

Governance Team assesses request and passes to relevant services to consider risks to the Council

### Conflict of Interest

Relevant service area to ascertain if there are any issues

### Liability

Legal services to ascertain if there are any issues (If the body is a trust then external lawyers require to be employed)

### Reputational

Communications to ascertain if any potential reputational risk to Council

Governance Team collates and analyses information and report to Head of Strategy and Insight

Report to Council recommending approval of elected member representation

Organisation not recommended for approval and no further action from Council

Committee Services informs outside body of Elected Member appointment

Elected member adds organisation to Registration of Interests

Elected member can choose to join organisation in a personal capacity

Committee Services informs outside body