

Agenda Item No: 5
Report To: Selection & Constitutional Review Committee
Date of Meeting: 13th July 2017
Report Title: Review of Appointments to Outside Bodies
Report Author & Job Title: Sarah Hartles
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Portfolio Holder: The Leader, Cllr Clarkson



Summary: A review has been carried out of the nature of the appointments made by the Council to outside organisations. Specific issues have arisen in relation to charities and this report proposes a change to the nature of the appointment that the Council makes.

This report also sets out the appointments to be made for the municipal year 2017/18.

Key Decision: NO

Significantly Affected Wards: All

Recommendations: **The Committee is recommended to:-**

1. Approve the change in nature of the Council's appointment to those charities set out in Appendix 1 and approve the appointment of the Liaison Members identified in Appendix 1;
2. Approve the appointment of the Trustees for the charities set out in Appendix 2;
3. Approve the appointment of the representatives to the organisations set out in Appendix 3; and
4. Note the attendance and reviews provided for the year 2016/17.

Policy Overview: None

Financial Implications: None

Legal Implications: None

Equalities Impact Assessment See Attached

Other Material Implications: None

Exempt from Publication: **NO**

Background Papers: None

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Report Title: Review of Appointments to Outside Bodies

Introduction and Background

1. The Council makes 41 appointments to outside organisations each year. These organisations are different legal entities and as a result the nature of each appointment is slightly different.
2. Where a Councillor is appointed to an organisation that is a charity or a registered company, the Councillor is made a trustee and/or director of that organisation when they are appointed. As a director or charity trustee, an individual is under a legal obligation to act in the best interests of that organisation at all times and to take decisions that are in the best interests of that organisation. This is regardless of whether or not the decision being taken is also in the best interests of the Council.
3. As a result of this, conflicts of interest can arise for Councillors who are appointed to those organisations that the Council is negotiating or contracting with.
4. Where these conflicts arise, the Councillor cannot take part in the discussions and can have no part in the decision making process of the organisation as to whether to enter into a contract with the Council or not.
5. In some circumstances it is felt that this conflict can lead to the Councillor feeling hampered in able to act in the best interests of the Council and the organisation, and the organisation being without the valuable input of the Councillor.

Proposal/Current Position

6. To prevent these conflicts arising, it is proposed that the Council appoints Councillors as Liaison Members for the various organisations, rather than as Trustees or Directors.
7. As a Liaison Member, Councillors would attend board or committee meetings with the permission of the board or committee, but would not be able to vote on any decisions and would not be registered at the Charity Commission or Companies House as a director or trustee.
8. Liaison Members would still be able to bring their invaluable experience and contacts, both within the Council and within the community, to the benefit of the organisation, but would not be hampered by possible conflicts of interest.
9. A list of proposed Liaison Members is set out at Appendix 1.
10. There are three exceptions to the above proposal. These are the appointments to St Mary's Arts Trust, the new Community Trust for

Chilmington Green, and the newly formed Repton Community Trust. Details of the appointments to these organisations are set out in Appendix 2.

11. For both the Community Trust for Chilmington Green and Repton Community Trust, appointing a Trustee and Director at this early stage will help get both organisations off to a strong start and support the Council's continuing close relationships and engagement with both areas.
12. A trustee has to be appointed to St Mary's Arts Trust as it is written into their constitution, as a result of the arrangements that we came to with the Parochial Church Council at the time of the re-ordering of the Church in 2012.
13. There are some organisations where the Council's appointment is either statutory or the organisation is not a registered charity, and we have written to them asking them to provide us with details of the previous appointee's attendance and if they still require a representative. Some of them have not responded, which we have taken to mean that they do not wish to continue having an appointee.
14. If, following this report, an organisation contacts us and requests that an appointment is made, then of course we will bring a proposed appointment back to this Committee.
15. Details of the appointments to those committees and other organisations that have requested appointments are set out in Appendix 3.
16. Finally, we have included details of the appointed Councillors' attendances and annual reports for 2016/17 at Appendix 4 for information.

Implications and Risk Assessment

17. The implications of this proposed change are legally technical rather than practical. The majority of the appointments that the Council makes are already to committees of organisations that are not charities. For the 8 charities that will be affected, hopefully they will find that the change in nature of appointment works to their benefit.
18. If the charities find that they are reliant on a Council appointed trustee, then they can contact us and request that the nature of the appointment is changed. This will then be presented to the Committee in the usual manner.

Equalities Impact Assessment

19. Members are referred to the attached Assessment.

Consultation Undertaken

20. The affected charities have been advised of the proposed change. Some feedback has been received and this is set out in the Equalities Impact Assessment.

Other Options Considered

21. The other options are to not make any appointments what so ever, but it is recognised that Councillors have a big part to play in local charities and are well placed to play an active and involved part in them. It was felt that neither Councillors nor the charities would wish this to cease altogether.
22. Continuing with the status quo is also an option, but it was felt that conflicts of interest are more likely to arise in the future and it was best to address this issue at this stage.

Reasons for Supporting Option Recommended

23. The proposal hopefully will provide both the charitable organisation and the Councillor with some clarity and support regarding the sometimes tricky issue of conflicts of interest.

Next Steps in Process

24. The next step is to advise those charitable organisations identified in Appendix 1 of who their Liaison Member is and to advise all of the other organisations who their appointed representative is.

Conclusion

25. The proposals should assist both Councillors appointed to charities and the charities themselves.

Portfolio Holder's Views

26.

27.

Contact and Email

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29. Danny Sheppard, Senior Member Services Officer, danny.sheppard@ashford.gov.uk

Appendix 1 Liaison Member Appointments

Appointments are made to the following charities where the Council's representative would previously have been a charitable trustee and a director of the Company and will now be a Liaison Member.

Name of Organisation	Appointment
Action with Communities in Rural Kent	NO RESPONSE
Ashford Leisure Trust	
Tenterden Leisure Trust	
Ashford Volunteer Centre	
Ashford Almshouses & Parochial Charities	
Kennington Parochial Charities	
Sandyacres Trust	
Wye Rural Museum Trust	

Appendix 2 Trustee Appointments

The following appointments are made to the following charities.

Name of Organisation	Appointment
Community Trust for Chilmington Green	
Repton Community Trust	
St Mary's Arts Trust	

Appendix 3 Representative Appointments to Committees of Outside Bodies

The following appointments are made to the following committees of outside bodies.

Name of Organisation	Appointment
Ashford College Business Advisory Council	
Ashford Community Safety Partnership	
Ashford Federation of the Arts	NO RESPONSE
Ashford Mediation Service	
Ashford Museum Committee	
Ashford Youth Forum Trustees	NO RESPONSE – need to talk to Simon Harris
Chilmington Green CMO Partnership Working Group	
Citizens' Advice Bureau Ashford Branch Management Committee	
Dungeness Power Station Site Stakeholder Group	
Headcorn Aerodrome Consultative Committee	
High Weald (AONB) Joint Advisory Group	

Home-Start, Ashford: Management Committee	
Kent & Medway Police & Crime Panel	
Kent Downs (AONB) Joint Advisory Committee	NO RESPONSE
Kent Downs and Marshes Leader Project	
Kent Invicta Chamber – Ashford Economic Development Group	NO RESPONSE
Local Government Association General Assembly	NO RESPONSE
Marshlink Steering Group	
Mid Kent Downs Steering Group	NO RESPONSE
National Council on Inland Transport – Executive Committee	NO RESPONSE
PATROL – Joint Committee	NO RESPONSE
River Stour Internal Drainage Board	
Romney Marshes Area Internal Drainage Board	
Singleton Environment Centre Management Advisory Board	NO RESPONSE
Tenterden Folk Day Trust	
Tenterden Town Council – Tourism & Business Committee	
Willesborough Windmill Trust	NO RESPONSE

Appendix 4

Feedback on appointments for 2016/17

Name	2016/17 Appointee	Attendance	Feedback Received
Action With Communities in Rural Kent	Cllr Burgess, Substitute Cllr Mrs Blandford	NO RESPONSE RECEIVED	
Ashford Almshouses & Parochial Charities	Cllr Krause, Cllr Apps (d'cd), Cllr Galpin, Cllr Heyes New Member for Victoria Ward (Cllr Suddards) recommended for appointment in May 2017	2/3 for Cllrs Galpin & Heyes, 1/3 for Cllr Krause	
Ashford College Business Advisory Council	Cllr Clokie	2/2	We appreciate having a representative from the Ashford Borough Council at these meetings and welcome their input.
Ashford Community Safety Partnership	Portfolio Holder for Health, Parking and Community Safety	4/4 for both members	
Ashford Federation of the Arts	Cllr Mrs Blanford	NO RESPONSE RECEIVED	
Ashford Leisure Trust	Cllr Sims	7/8	
Ashford Mediation Service	Cllr Krause	2/3	
Ashford Museum Committee	Cllr Apps (d'cd) Cllr Bennett recommended for appointment in May	None but attended events.	

	2017		
Ashford Volunteer Centre	Cllr Feacey	Cllr Feacey - 100%, Cllr Sims - resigned in Sept, 3/3 up to then	
Ashford Youth Forum Trustees	Cllr W Howard, Cllr Chilton		
Chilmington Green CMO Partnership Working Group	Cllr Shorter, Cllr Mrs Blanford	Cllr Shorter 6/6, Cllr Mrs Blanford 4/4	Wish to keep same Cllrs.
Citizens' Advice Bureau Ashford Branch Management Committee	Cllr Hicks, Cllr Clokie	Cllr Clokie 4/6 Cllr Hicks 2/2	
Dungeness Power Station Site Stakeholder Group	Cllr Burgess	1/3	They like Cllr Burgess.
Headcorn Aerodrome Consultative Committee	Member from Weald North Ward (Cllr Mrs Dyer)	0/2	Cllr Dyer did attend in March 2016, they keep Cllr Marsh up to date as he has requested them to.
High Weald (AONB) Joint Advisory Group	Cllr Pickering	2/2	
Home Improvement Agency Support Group	No Appointment	No current nomination - staff go instead	
Home-Start, Ashford: Management Committee	Cllr Mrs Webb	4/4 extremley valued member of the committee.	
Kennington Parochial Charities	Cllr Buchanan, Cllr Sims	Both 3/4	
Kent & Medway Police & Crime Panel	Cllr Clokie Cllr Bradford recommended for appointment in May 2017	5/5	
Kent County Playing Fields Association	Portfolio Holder for Culture, Leisure, Environment & Heritage	0/1	No one has attended since 2011.

Kent Downs (AONB) Joint Advisory Committee	Cllr Dehnel	NO RESPONSE RECEIVED	
Kent Downs and Marshes Leader Project	Cllr Burgess	6/7	
Kent Invicta Chamber – Ashford Economic Development Group	Cllr Galpin	NO RESPONSE RECEIVED	
Local Government Association General Assembly	Cllr Galpin	NO RESPONSE RECEIVED	
Marshlink Steering Group	Cllr Burgess	Both 4/4	Valuable input and help.
Mid Kent Downs Steering Group	Cllr Mrs Blanford	NO RESPONSE RECEIVED	
National Council on Inland Transport – Executive Committee	Cllr Burgess	NO RESPONSE RECEIVED	
PATROL – Joint Committee	Portfolio Holder for Health, Parking and Community Safety	NO RESPONSE RECEIVED	
Repton Community Trust			
River Stour Internal Drainage Board	Cllr Burgess, Cllr Hicks, Cllr Mrs Martin, Cllr Sims, Cllr Smith	Cllr Burgess - 4/5, Cllr Hicks - 7/9, Cllr Mrs Martin - 7/10, Cllr Sims - 5/7, Cllr Smith - 6/6	ABC's appointed Members are fully engaged in IDB activities and their connections to other Councillors, Council officers and local community groups are invaluable.
Romney Marshes Area Internal Drainage Board	Cllr Burgess	2/3	
Sandyacres Trust	Cllr Michael	3 plus operational meetings	
Singleton Environment Centre Management	Member for Singleton South Ward (Cllr Barrett)	NO RESPONSE RECEIVED	

Advisory Board			
South Ashford Youth Club – Management Committee	Cllr W Howard	No meetings held in time period	Representative not needed as good relations with officers.
South East Employers	Cllr Shorter	None	Work directly with Michelle in future
St Mary's Arts Trust	Cllr Apps (d'cd) Cllr Smith recommended for appointment in May 2017	Invited to 6 meetings per year	
SWAN Site Management Committee	None	No current nomination - run by John Murray, not needed.	
Tenterden Folk Day Trust	Cllr Link	3/6	
Tenterden Leisure Centre Trust	Cllr Bennett Cllr Knowles recommended for appointment in May 2017	5/6	
Tenterden Town Council – Tourism & Business Committee	Portfolio Holder for Public Interaction & Borough Presentation Portfolio Holder for Culture recommended for appointment in May 2017	Cllr Bell - 6/9, Cllr Galpin - 2/9	
Willesborough Windmill Trust	Cllr Koowaree	NO RESPONSE RECEIVED	
Wye Rural Museum Trust	Cllr W Howard	0/3	

Equality Impact Assessment

1. An Equality Impact Assessment (EIA) is a document that summarises how the council has had due regard to the public sector equality duty (Equality Act 2010) in its decision-making. Although there is no legal duty to produce an EIA, the Council must have **due regard** to the equality duty and an EIA is recognised as the best method of fulfilling that duty. It can assist the Council in making a judgment as to whether a policy or other decision will have unintended negative consequences for certain people and help maximise the positive impacts of policy change. An EIA can lead to one of four consequences:

- (a) No major change – the policy or other decision is robust with no potential for discrimination or adverse impact. Opportunities to promote equality have been taken;
- (b) Adjust the policy or decision to remove barriers or better promote equality as identified in the EIA;
- (c) Continue the policy – if the EIA identifies potential for adverse impact, set out compelling justification for continuing;
- (d) Stop and remove the policy where actual or potential unlawful discrimination is identified.

Public sector equality duty

2. The Equality Act 2010 places a duty on the council, when exercising public functions, to have due regard to the need to:

- (a) Eliminate discrimination, harassment and victimisation;
- (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it (ie tackling prejudice and promoting understanding between people from different groups).

3. These are known as the three aims of the general equality duty.

Protected characteristics

4. The Equality Act 2010 sets out nine protected characteristics for the purpose of the equality duty:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership*
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

Due regard

5. Having 'due regard' is about using good equality information and analysis at the right time as part of decision-making procedures.

6. To 'have due regard' means that in making decisions and in its other day-to-day activities the council must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations. This can involve:

- removing or minimising disadvantages suffered by people due to their protected characteristics.
- taking steps to meet the needs of people with certain protected characteristics when these are different from the needs of other people.
- encouraging people with certain protected characteristics to participate in public life or in other activities where it is disproportionately low.

7. How much regard is 'due' will depend on the circumstances. The greater the potential impact, the higher the regard required by the duty. Examples of functions and decisions likely to engage the duty include: policy decisions, budget decisions, public appointments, service provision, statutory discretion, decisions on individuals, employing staff and procurement of goods and services.
 8. In terms of timing:
 - Having 'due regard' should be considered at the inception of any decision or proposed policy or service development or change.
 - Due regard should be considered throughout development of a decision. Notes shall be taken and kept on file as to how due regard has been had to the equality duty in research, meetings, project teams, consultations etc.
 - The completion of the EIA is a way of effectively summarising this and it should inform final decision-making.
- The duty is a non-delegable one. The duty will always remain the responsibility of the public authority.
 - The duty is a continuing one so that it needs to be considered not only when a policy, for example, is being developed and agreed but also when it is implemented.
 - It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.
 - A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
 - A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

Case law principles

9. A number of principles have been established by the courts in relation to the equality duty and due regard:
 - Decision-makers in public authorities must be aware of their duty to have 'due regard' to the equality duty and so EIA's must be attached to any relevant committee reports.
 - Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.

The Equality and Human Rights Commission has produced helpful guidance on "Meeting the Equality Duty in Policy and Decision-Making" (October 2014). It is available on the following link and report authors should read and follow this when developing or reporting on proposals for policy or service development or change and other decisions likely to engage the equality duty. [Equality Duty in decision-making](#)

Lead officer:	Sarah Hartles
Decision maker:	Selection and Constitutional Review Committee
Decision: <ul style="list-style-type: none"> • Policy, project, service, contract • Review, change, new, stop 	Review of appointments to outside bodies policy, with a change to the nature of the appointments for some charitable organisations.
Date of decision: The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	
Summary of the proposed decision: <ul style="list-style-type: none"> • Aims and objectives • Key actions • Expected outcomes • Who will be affected and how? • How many people will be affected? 	To change the nature of the appointment of Council representatives to charitable outside bodies. Instead of being appointed as a Trustee or a Director, Council representatives will now be appointed as Liaison Members. The outcome will be that the Liaison Member will be able to attend committee meetings of the organisation with the express permission of the organisation, but not be able to vote. The people affected will be the committees of the charities and the Council representatives.
Information and research: <ul style="list-style-type: none"> • Outline the information and research that has informed the decision. • Include sources and key findings. 	Discussions have taken place with Councillor's who have had difficulties arise with conflicts of interest arising.
Consultation: <ul style="list-style-type: none"> • What specific consultation has occurred on this decision? • What were the results of the consultation? • Did the consultation analysis reveal any difference in views across the protected characteristics? • What conclusions can be drawn from the analysis on how the decision will affect people with different protected characteristics? 	The 8 charities affected were informed of the alternative form of appointment and some have provided feedback on the proposals. <u><i>Tenterden Leisure Trust – Chair, Chris Cheesman</i></u> <i>I have to say that we value a council member joining us at our meetings and have appreciated Mike Bennett's attendance as a trustee. The Trust look to work closely with other stakeholders to the mutual benefit of the local community and meeting the objects of the trust. We will therefore continue to welcome a council representative to our meetings albeit with a change in title for the avoidance of conflicts of interest. I will await to hear from you as to who is being assigned to TLCT.</i> <u><i>Sandyacres Trust – Chair, Cllr Michael</i></u> <i>Under the Trust Deed ABC can appoint one Trustee to the Trust. Since the previous appointee failed to attend meetings and respond to correspondence I was appointed as the ABC Trustee following my becoming the Councillor for Boughton Aluph and Eastwell. I have been Chairman of the Trust for the past 3 years. I see no conflicts with my position as a Councillor</i>

because the objectives of the Trust present no such challenge and all decisions require a quorate of at least 3 Trustees.

Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.

When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.

Protected characteristic	Relevance to Decision High/Medium/Low/None	Impact of Decision Positive (Major/Minor) Negative (Major/Minor) Neutral
<u>AGE</u> Elderly	Low	Neutral
Middle age	Low	Neutral
Young adult	Low	Neutral
Children	Low	Neutral
<u>DISABILITY</u> Physical	Low	Neutral
Mental	Low	Neutral
Sensory	Low	Neutral
<u>GENDER RE-ASSIGNMENT</u>	Low	Neutral
<u>MARRIAGE/CIVIL PARTNERSHIP</u>	Low	Neutral
<u>PREGNANCY/MATERNITY</u>	Low	Neutral
<u>RACE</u>	Low	Neutral
<u>RELIGION OR BELIEF</u>	Low	Neutral
<u>SEX</u> Men	Low	Neutral
Women	Low	Neutral
<u>SEXUAL ORIENTATION</u>	Low	Neutral

Mitigating negative impact: Any negative impact is mitigated by the fact that the Council will

Where any negative impact has been identified, outline the measures taken to mitigate against it.	make appointments to these charitable organisations, it is the nature of the appointment that is changing. If an organisation finds that it cannot operate without a Council appointed Trustee or Director then they will be able to approach us and request one and consideration will be given to each request.
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<p>Is the decision relevant to the aims of the equality duty?</p> <p>Guidance on the aims can be found in the EHRC's Essential Guide, alongside fuller PSED Technical Guidance.</p>	
Aim	Yes / No / N/A
1) Eliminate discrimination, harassment and victimisation	N/A
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	N/A
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	N/A

<p>Conclusion:</p> <ul style="list-style-type: none"> Consider how due regard has been had to the equality duty, from start to finish. There should be no unlawful discrimination arising from the decision (see guidance above). Advise on whether the proposal meets the aims of the equality duty or whether adjustments have been made or need to be made or whether any residual impacts are justified. How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported? 	<p>Consideration has been given to how this change in the nature of the Council's appointment will affect the organisations that it works with. There is and has been no discrimination and all of the organisations have been treated the same.</p> <p>The impact of the change will be monitored each year by the Selection and Constitutional Review Committee, as part of the annual process of reviewing the appointments and making new appointments.</p>
EIA completion date:	2 nd June 2017