

**TO: GOVERNANCE AND AUDIT COMMITTEE
27 JUNE 2018**

**GOVERNANCE: BRACKNELL FOREST COUNCIL AND THE VOLUNTARY SECTOR
(Director of Resources)**

1 Purpose of the Report

- 1.1 For the Governance and Audit Committee to review the Council's future role in the governance of voluntary sector organisations that may or may not be in receipt of revenue grant aid from the authority.

2. Recommendations

- 2.1 That the Council continues to support the voluntary sector and recognises the important role Members play in its continued success;**
- 2.2 That with immediate effect, in order to protect Members from the potential risk of legal liabilities, the Council will no longer agree nominations to any voluntary sector organisation where that role is as a Trustee, Director or member of the management board/committee**
- 2.3 The Council may continue to nominate Members to voluntary sector organisations as representatives in a non management capacity with no role in the governance of the organisation. Such roles will be limited to Members being nominated to act as conduits for communication between the Council and the organisation or as observers at its meetings.**
- 2.4 Where a Member is nominated as a representative pursuant to 2.4 above, they may not subsequently accept a role on the organisation's board as a Trustee/Director or in any other management capacity such a Treasurer.**
- 2.5 Save in respect of 2.3 above, the term "Voluntary Sector Organisations" for the purposes of this report expressly excludes Council owned companies, all maintained, VA and VC schools (including academies) and local authority consortiums**

3 Reasons For Recommendations

- 3.1 Best governance practice highlights that a local authority should not have undue influence in any voluntary sector organisation it is involved with, and it is therefore appropriate that Members review its relationships now to inform how it positions its involvement in the future.
The Council places Members in a difficult position when they are nominated to external organisations as Trustees, Directors or members of a management committee as their duty to the external organisation has the potential to bring them into conflict with the Council. This may be particularly onerous when the organisation concerned is in receipt of financial support from the Council.
- 3.2 The recommendations in this report are predicated on a desire not to place Members at potential risk of legal liability to which their status on a decision making Board of an organisation could give rise. Whilst they do not prohibit Members from acting in a personal capacity they should nonetheless exercise care when doing so in situations

of potential conflict with their Council obligations.

4 Alternative Options Considered

- 4.1 Given the potential conflicts of interest, it was felt appropriate to undertake a review and consider alternatives to the current arrangements.

5 Supporting Information

- 5.1 The transformation review of South Hill Park highlighted that the governance arrangements operated by the SHP Trust were not as effective as they could be in supporting the organisation moving forward in what are much more challenging financial times, and a review of its own governance was initiated by the Board at South Hill Park. Bracknell Forest Council previously had nomination rights to 4 places on the Board and, while supporting the Trust was always a popular commitment undertaken by Members over many years, advice from the Council's consultants, Activist, was that as well as the sheer number of nominations to the Board being excessive, this arrangement was not helpful to the Trust in moving forward because it could not guarantee that Council nominees had the right blend of skills and knowledge to support the Trust. Upon reflection, the Council agreed with this assessment and subsequently informed the Board at South Hill Park Trust that in any governance review there should no longer be any nomination rights for Bracknell Forest Council. The Trust has accepted this and the Charity Commission has agreed a new memorandum of association for South Hill Park Trust which cements these changes.
- 5.2 One of the key drivers behind the Council concluding that there should be no nomination rights to the Board of South Hill Park was the potential for a conflict of interest of Council members acting in their role as trustees and acting in the role of an elected member. While the law is very clear that Board members, as trustees, must place the interests of the Trust above all others there was real concern that it was difficult to avoid the perception of conflict from normal members of the public hence the decision to cut any formal ties between BFC elected members and the Board and the current position to a large extent achieves this.
- 5.3 However, the review of the governance at South Hill Park and the position adopted by the Council also brought into sharp focus the Council's governance arrangements with five other voluntary sector organisations also in receipt of significant amounts of revenue grant aid from the Council. These are Citizen's Advice Bureau, Involve, Shopmobility, Keep Mobile and Age Concern. The level of grant and the constitutional arrangements for these organisations in so far as they related to the Council are described in the following paragraphs.
- 5.4 Citizen's Advice Bureau:
2017/18 core grant of £167,250. 1 Council representative who is not a trustee - Cllr Sarah Peacey is the current Council representative. CAB currently has trustee vacancies, including the Chair. They require a minimum of three trustees and can have a maximum of twelve.
- 5.5 Involve:
2017/18 core grant of £106,900 Their constitution states that they must have a minimum of 3 trustees, there is no maximum number. There is one Council representative at Involve, currently, Cllr Dale Birch.

- 5.6 Shopmobility:
2017/18 core grant of £29,500. Shopmobility is set up as a Company Limited by Guarantee. Their rules state that they can have no more than six Directors. Currently they have five Directors none of which are BFC Councillors), (Cllrs Jan Angell and Isabel Mattick recently resigned from their roles)
- 5.7 Keep Mobile:
The Council provides a grant of £85,000 per year to Keep Mobile to support the provision of dial-a-ride trips and group transport for Bracknell Forest residents. There are no Bracknell Forest councillors on the board of six Trustees which govern Keep Mobile, but there is a councillor on the nine-strong Management Committee - Cllr Dr Barnard.
- 5.8 Age Concern:
£32k grant for running a day centre. 1 Council trustee, currently Cllr Thompson. Requires 3 – 12 trustees, currently 5.

Trustee/Director

- 5.9 The Council nominates representatives to over 70 organisations but a very small proportion are nominations to the role of Trustee/Director. These include: Keep Mobile (as detailed above); Berkshire Maestros which used to be in receipt of grant aid but the financing arrangements are now changed; and Age Concern (as above)
- 5.10 While it is difficult to speculate, where a Member is nominated on to a board of an organisation as a Trustee/Director this is likely to be because the Council at the time wanted to have some form of formal authority on the board or perhaps the organisation itself wanted formal representation in the belief that the elected member could sway some advantage in its dealings with the Council. Whatever the historic reasons behind the decision to nominate Trustees/Directors, this legal link between the Council and a voluntary sector organisation is unusual and would benefit from review.
- 5.11 The decision to not nominate elected members on to the Board at South Hill Park was in large part a concern about the perception of a conflict of interest and consequently members of the public could reasonably arrive at the same conclusion with the organisations where the Council has representatives who are Trustees/Directors. It is difficult to see what advantage there is to the Council in nominating to the position of a trustee/Director since the individual must act in the interests of the board anyway Their primary responsibility will be to the organisation itself, to advance its interests, as opposed to acting as a representative of the Council. In all likelihood, a “member Trustee/Director” is likely to be a disadvantage to the organisation since the member will not easily be able to give advice and guidance to the board in terms of Council interests and intent. A critical question therefore is whether the Council should nominate any Member on to the board of a voluntary organisation in the role of Trustee/Director, whether or not they are in receipt of financial support. The view of the Corporate Management Team, having carefully considered the issues, is that it should not.
- 5.12 In reaching this conclusion the Corporate Management Team had particular regard to the protection of Members from liabilities that could arise under either Charity Law (as Trustees) or Company Law (as Directors) when acting in such capacity.

Management roles on unincorporated associations

- 5.13 In addition to Members being nominated to Charities/Companies as Trustees/Directors it is also possible for nominations to be made to the management committees of unincorporated associations. In such instances the external organisation has no separate legal entity and any liabilities will fall upon the members personally.(ie if the organisation is sued , the members personal assets are at risk- they cannot stand behind the veil of a corporate entity to give them some protection). Recommendation 2.2 therefore extends the proposed prohibition of nominations beyond that of Trustees and Directors to include such roles.

Other forms of representation

- 5.13 CMT consider the issue of public perception of undue influence by Members acting in the role of a representative on a voluntary sector organisation is not as problematic from a conflict perspective as the more formal roles referenced above .

Local lottery

- 5.14 to the Executive has agreed to introduce a local lottery and the proceeds of that are intended to be distributed to the voluntary sector within the borough. So in the future it is entirely possible that virtually every local voluntary organisation could be eligible for one-off grant aid and in these circumstances it will be vital that any award is transparent and seen to be fair. Grant aid always involves choices for the council and it may be difficult to avoid a negative public perception of bias if grant aid is awarded to a voluntary sector organisation where a councillor is in a senior position on the committee and a refusal was issued to another organisation with no such representation. The allocation procedure will therefore be carefully structured to ensure that awards cannot be challenged on the basis of bias.

Conclusion

- 5.15 There is little doubt that the active involvement of elected members in our community is high and welcomed. However, it is important to protect members in these roles and also create the opportunity where elected members can advocate effectively for the voluntary sector organisation they are supporting without that giving rise to the perception of a conflict of interest to a member of the general public. It is considered that these objectives can be best met by modifying the type of relationships members may have with the voluntary sector they wish to serve.

6 Borough Solicitor's Comments

- 6.1 The Borough Solicitor is the joint author of this report.

7 Borough Treasurer's Comments

- 7.1 The Borough Treasurer has advised of the plans to introduce a local lottery to fund the voluntary sector and that this would make it even more important that Members were not seen to be able to influence future decisions.

8 Equalities Impact Assessment

- 8.1 Not applicable

9 Strategic Risk Management Issues

9.1 To be addressed as part of the discussion

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