

## **MEETING OF GOVERNANCE WORKING GROUP**

Wednesday, 19th September, 2012

Members present: Councillor Mallon (Chairman) and  
Councillor Maskey.

In attendance: Mr. C. Quigley, Town Solicitor and  
Assistant Chief Executive;  
Mr. S. McCrory, Democratic Services Manager;  
Mr. R. Connelly, Strategic Planning and Policy Officer;  
Mr. K. Heaney, Strategic Planning and Policy Officer;  
Mr. J. Hanna, Senior Democratic Services Officer; and  
Mr. B. Flynn, Democratic Services Officer.

### **Apologies**

Apologies were reported from Aldermen Browne and Smyth and  
Councillor Hendron.

### **Minutes**

The minutes of the meeting of 20th June were taken as read and signed  
as correct.

### **Declarations of Interest**

No declarations of interest were reported.

### **Membership of Working Group**

The Democratic Services Manager informed the Members that he had been  
advised that Councillor Hussey had replaced Councillor Reynolds as the Democratic  
Unionist Party's representative on the Working Group.

Noted.

### **Council Constitution and Code of Governance**

The Town Solicitor and Assistant Chief Executive reminded the Working Group  
that, at its meeting on 20th June, it had agreed that the draft Council Constitution be  
referred to the Political Parties for comment, following which the document would be  
presented for consideration by the Strategic Policy and Resources Committee. In  
addition, he outlined for the Members' information the principal aspects of the Council  
Code of Governance which, he reported, had been approved by the Audit Panel at its  
meeting on 12th June. He reported that no comments had been received from the  
political parties in relation to draft Constitution and he recommended that both it and the  
Code of Governance be submitted to the Strategic Policy and Resources Committee for  
consideration at its meeting on 19th October.

After discussion, the Working Group adopted the recommendation.

**Council Representation on Outside Bodies / Declarations of Interest Policy**

The Working Group considered the undernoted report:

**“1      Relevant Background Information**

**1.1      Members will recall that the Strategic Policy & Resources Committee, in December 2011, adopted a Conflicts of Interest Policy for Councillors. At that time, it was pointed out that a further report would be prepared to give advice on declarations of interest, where the interest arose due to a Councillors membership of an outside organisation to which they had been appointed by the Council.**

**1.2      One of the associated issues in considering this matter is that of the indemnity of Members when serving on such outside bodies. The Department of the Environment has recently published its response to an earlier consultation on the development of the Local Government (Indemnities for Members and Officers) Order (NI) 2012, The Department intends to introduce this Order in the near future.**

**1.3      It is considered that the time is now right to bring an initial report to the Working Group on the overall issue of Members appointment to outside bodies, the conflicts of interest which may arise from such membership and the indemnity which the Council will be able to offer to Members when the Order is commenced.**

**2      Key Issues**

**2.1      Appointment of Members to Outside Organisations**

**2.1.1      The Council appoints Members to sit on a wide range of outside organisations. The most common type of body would be what is legally referred to as an ‘unincorporated association’, which is where a group of individuals combine to carry out a specific task. These types of bodies aren’t legal entities in their own right, and are typically governed by a Constitution or a set of rules.**

**2.1.2      The second most common type of body is known as a limited company. These are almost exclusively what are known as ‘companies limited by guarantee’, which simply means that they are non-profit making bodies. Members can be asked to sit on companies in a number of scenarios. Sometimes the Council has had a part in the establishment of the company. Examples of this are the Belfast Visitor and Convention Bureau and Belfast City Centre Management. In other cases the constitutional documents of the company itself may require a Member to be on the Board. An example is the Board of the Ulster Orchestra Society.**

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- 2.1.3** Whilst the two categories above will cover the vast majority of outside bodies on which Members sit, there are other, rarer types of body. Arc21 is what is known as an 'incorporated joint committee', and functions very much like any council. The Belfast Harbour Commissioners, like the Council, is a statutory body, and the Statute establishing it requires the presence of Members on its board.
- 2.1.4** The most basic question which requires to be addressed is that of who a Member is representing when sitting on an outside body to which they have been appointed. Do they represent the Council, their district electoral area, their political party or the public interest?
- 2.1.5** The second question which requires to be considered is that of whether or not the Council should always appoint a Member to an organisation simply upon request by that organisation. At the moment, there does not seem to be any analysis carried out as to whether or not it is in the interests of the City, the Council or the individual Member to make such appointments.
- 2.1.6** The Council makes most of the appointments to outside bodies immediately following the local elections every 4 years on the basis of the d'Hondt system of proportionality so that the political parties on the Council are allocated the number of places which their strength on the Council dictates. In that way, the appointments reflect the views of the electorate as expressed at the election. Several of the appointments are made through the Committees and are reserved for the Chairman and the Deputy Chairman of the appropriate Committee. Those appointments are, therefore, not based upon the system of proportionality.

**2.2** **Indemnity of Members Serving on Outside Bodies**

- 2.2.1** At the moment, there is no authority for the Council to provide any indemnity for Members serving on outside bodies. This issue has been highlighted to the Department of the Environment by a number of Councils and the Department intends make the Local Government (Indemnities for Members and Officers) Order (Northern Ireland) 2012 which should be in place by December 2012.
- 2.2.2** The Department has confirmed that the provisions contained within the draft Local Government (Indemnities for Members and Officers) Order (Northern Ireland) 2010 will be identical to the provisions contained within the Local Government (Indemnities for Members and Officers) Order (Northern Ireland) 2012.

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- 2.2.3** The 2010 Order provides for circumstances in which a council may provide indemnities to any of its Members or officers. These powers are in addition to any existing powers that councils may have.
- 2.2.4** Article 3 enables a council to provide an indemnity by means of the council securing the provision of an insurance policy for its Members or officers.
- 2.2.5** Article 4 sets out the cases in which indemnities (including those provided by insurance) may be provided. This Article restricts the power to cases in which the Member or officer in question is carrying on any function at the request of, with the approval of, or for the purposes of, the council. It extends to cases where, when exercising the function in question, the Member or officer does so in a capacity other than that of a Member or officer of the council.
- 2.2.6** Article 5 prevents the provision of an indemnity (or securing of insurance) in relation to criminal acts, any other intentional wrongdoing, fraud, recklessness, or in relation to the bringing of (but not the defence of) any action in defamation.
- 2.2.7** Article 6 gives a limited power to provide an indemnity (including an indemnity provided by insurance) where the action or inaction in question is outside the powers of the council itself or outside the powers of the Member or officer who acts. It also covers cases in which a Member or officer makes a statement that certain steps have been taken or requirements fulfilled but it later becomes clear that this is not the case. This provision is limited to cases in which the person indemnified:
- reasonably believed that the matter in question was not outside those powers, or
  - where a document has been issued containing an untrue statement as to the council's powers, or as to the steps taken or requirements fulfilled, reasonably believed that the statement was true when it was issued or authorised.
- 2.2.8** Article 7 provides that the terms of any indemnity (including insurance secured) may be such as a council shall agree. The terms must include provision for re-payment of sums expended by the council or insurer in cases in which a Member or officer has been convicted of a criminal offence (if the indemnity or insurance policy would otherwise cover the proceedings leading to that conviction). Any sums recoverable may be recovered as a civil debt.

**2.2.9** The proposed Order identifies that Councils should, in order to ensure that there is not duplication of cover, consult with the outside organisations which they make appointments to. This provides the Council with the opportunity to send a pro-forma questionnaire to each of the outside organisations asking them to identify the indemnity cover which they hold for Members serving on their Boards. It would also provide the opportunity for the questionnaire to pose additional questions as to the aims and objectives of the organisation. These responses could help inform the larger debate about whether or not the Council should establish a process for assessing whether a request for Member appointment by an outside organisation should be agreed to.

**2.2.10** A report on the final details of the Order will be submitted to the Working Group or the Strategic Policy and Resources Committee when it is published.

**2.3** **Declarations of Interest Arising from Membership of an Outside Organisation**

**2.3.1** The Declarations of Interest Policy for Councillors makes it clear that material interests which arise due to a Councillor's membership of an outside organisation (to which they have been appointed in a private capacity) should be declared following the agreed protocols.

**2.3.2** However, the issue becomes more complicated when the membership arises from a Council appointment to an outside organisation. Members have quite rightly asked questions as to whether their membership of those types of organisations gives rise to the same requirements under the Conflicts of Interests policy or whether there is a material difference.

**2.3.3** Officers will continue to work on this issue and a draft policy will be brought back to the Working Group for early consideration.

**3** **Resource Implications**

**3.1** There may be some costs associated with expert advice in the development of the policy. These can be met from within existing budgets.

**5** **Recommendations**

**5.1** The Working Group is recommended to:

- 1.** Authorise the development of a questionnaire to be issued to all outside organisations to which the Council appoints Members dealing with the issue of the indemnity of Members and the aims and objectives of the organisation.

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2. **Note that a further report on Part 2 of the Conflicts of Interest Policy for Councillors will be submitted to the Working Group for consideration.”**

The Working Group adopted the recommendations.

**Protocol on Member/Officer Meetings outside Formal Decision-Making Structures**

The Working Group considered a report in relation to the development of a protocol on Member / Officer meetings outside the formal decision-making structures.

The Democratic Services Manager stated that this was an issue which would be required to be considered by the individual political parties in the first instance, in order to ensure that any protocol was ‘fit for purpose’ and would not necessarily impinge upon Members’ ability to undertake their representative roles whilst providing officers with adequate protection from claims of acting in a party-political manner.

The Working Group agreed that, in the first instance, the individual political parties would consider the matter and provide feedback to the Democratic Services Manager who would report back to the Working Group in due course.

Chairman