

Report to: Council



Date of Meeting 19.07.2023

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Review date for release N/A

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## Appointments to Panel's Forums, Joint and Outside Bodies

### Report

At the Annual Council meeting on May 2023, Members invited the Monitoring Officer to bring a report to this Council meeting, regarding the composition of Panel's Forums, Joint and Outside Bodies and whether reference to "members" included portfolio holders, particularly where cabinet members were separately referred to.

This report updates members on both the constitutional requirements and previous custom and practice and invites members to consider whether the current arrangements should be altered. In the event that members are minded to continue with the current arrangements, it also invites the Council to agree changes to the constitution so that the definition of "member" in terms of appointments to Panel's, Forums, Joint and Outside Bodies is clear.

### Is the proposed decision in accordance with:

Budget Yes  No

Policy Framework Yes  No

### Recommendation:

1. To note the content of the report.
2. To consider whether any changes are needed to the constitution and/or current custom and practice.
3. To delegate authority to the monitoring officer to amend the Constitution to include a definition of "member" in terms of appointments to Panel's, Forums, Joint and Outside Bodies, either in line with previous custom and practice or as determined by the Council in 2 above.

### Reason for recommendation:

To ensure that there is clarity in the constitution and that Panels, Forums, Joint and Outside Bodies include sufficient representation.

Officer: Melanie Wellman – Director of Governance and Licensing and Monitoring Officer

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Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance

- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

**Equalities impact** Low Impact

**Climate change** Low Impact

**Risk:** Low Risk;

**Links to background information** None

**Link to [Council Plan](#)**

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

## **Background**

At the Annual Council meeting on May 2023, Members invited the Monitoring Officer to bring back a report to this Council meeting regarding the composition of Panel's Forums, Joint and Outside Bodies to address whether reference to "members" included portfolio holders. Appendix A sets out relevant paragraphs of the Council Constitution in relation to such appointments. Appendix B includes relevant extracts from reports to previous Annual Council meetings.

## **Definition of "member" and whether it includes cabinet members/portfolio holders**

Neither the Constitution nor previous Annual Council reports define the meaning of "member" in the context of appointments to Panels, Forum, Joint and Outside Bodies.

Where there is a separate reference to a cabinet member/portfolio holder, it would be reasonable to interpret it as meaning that cabinet members are being separately identified and subsequent reference to members does not include cabinet members. This interpretation would ensure that there is not a dominance of portfolio holders and that the wider membership (outside of the cabinet) are given the opportunity to sit on these bodies.

However, what is clear from a review of Council reports since 2019, is that custom and practice has been as follows:

1. **Cabinet members only:** Where the membership of a particular body was made up solely of cabinet members, that is clearly stated;
2. **Members only:** Where a particular body is made up of member(s) only, without a reserved seat or role for a cabinet member, all members have been considered for appointment i.e. the definition of member has been interpreted as meaning any member (including cabinet members).
3. **Cabinet Members and Members:** Where the membership of a particular body is made up of cabinet members and members this is stated by identifying how many cabinet members are placed on the body. "Member" has been interpreted as also including, at least in some instances, "portfolio holders", in addition to the cabinet members who have been separately identified.

For example, at the 2019 meeting, a number of cabinet members were appointed to Panels, Forums and Outside Bodies. For clarity, the Portfolio Holders (PFH) that municipal year were: Cllr

Ingham, Cllr Bond, Cllr Thomas, Cllr Blakey, Cllr Armstrong, Cllr Jung, Cllr Bailey, Cllr Millar and Cllr Pook.

Members attention are drawn to the following examples in the minutes:

#### Minute Item 16

#### **Cabinet Members and Members:-**

5. CIL Working Group – Cllr Jung (PFH) was appointed as a Member (in addition to other named cabinet members)
- 14b Greater Exeter Strategic Plan Joint Advisory Forum - Cllr Jung (PFH) was appointed as a Member in addition to the named portfolio holder
21. Sidmouth Beach Management Plan – Cllr Pook (PFH) was appointed as a Member in addition to the named portfolio holder

#### **Members only:**

6. Disciplinary Panel – Cllr Armstrong (PFH) was appointed
15. LED Management Ltd – Cllr J Bailey (PFH) was appointed
- 24 STRATA Joint Scrutiny Committee – Paul Millar (PFH) was appointed

At the same meeting, a number of cabinet members were appointed to Outside Bodies

#### Minute Item 17

#### **Members only:**

2. Devon and Exeter Area Retail Working Party – Cllr Bond (PFH) was appointed
5. East Devon AONB Partnership – Cllr Pook (PFH) was appointed
6. East Devon Citizens Advice Bureau – Cllr Armstrong (PFH) was appointed
8. Action East Devon – Cllr Armstrong (PFH) was appointed
12. Queens Drive Exmouth Community Interest Company Directors – Cllr Millar (PFH) was appointed

#### **Conclusion**

It is clear from the Constitution that:

- Panels or Forums set up by Overview and Scrutiny cannot include Cabinet Members
- Panels or Forums set up by the Cabinet can include Cabinet Members
- The terms of reference and responsibilities of a Panel or Forum will be defined when they are set up and may specify the make-up of the Panel or Forum.

It is clear from previous reports that, in terms of custom and practice at EDDC, :-

- political balance is applied to Panels and Forums “where possible”
- Political balance is not applied to outside bodies
- Where there has been reference to members only (and not cabinet members) the word “member” has been interpreted as including portfolio holders
- Where there has been separate reference to cabinet members and members, members has been interpreted (in a number of instances) as including portfolio holders, despite other portfolio holders having also been appointed as cabinet members.

In the circumstances, the Monitoring Officer is satisfied that the appointments made at Full Council in May 2023 were in accordance with the Constitution and previous custom and practice.

It is believed that the reason for this wide interpretation is due to the difficulties that have been experienced, in some cases, in appointing to Panels and Forums, Joint and Outside Bodies. Leaving the interpretation of “member” wide to include all members (whether portfolio holders or not) ensures that the entire membership are capable of appointment and is less likely, therefore, to lead to vacant positions.

Members are invited to consider the report and determine whether any changes to the constitution or current custom and practice are required and to delegate authority to the monitoring officer to update the constitution so that the definition of member is clear.

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**Financial implications:**

There are no financial implications directing arising from this report.

**Legal implications:**

The legal issues are dealt with in the body of the report.

## Extracts from the Constitution

### 2.11. Panels and Forums

2.11.1 Panels and forums may be either permanent or ad hoc groups set up to assist and advise Cabinet or any of the Overview and Scrutiny Committees to deal with such matters as they may deem necessary within their remit or to deal with matters referred to them by the Cabinet.

2.11.2. Panels and Forums will normally consist of 7 Councillors, with a quorum of 3.

2.11.3. Members of the Cabinet are not permitted to form part of a Panel or Forum appointed by any of the Overview and Scrutiny Committees but may be called upon attend to provide explanation or advice. A Cabinet Member may form part of a Cabinet appointed Panel or Forum.

2.11.4. The terms of reference and responsibilities of a Panel or Forum will be defined when they are set up; there shall be explicit consideration whether any specific restriction in terms of eligibility of Members to sit on the panel or in its terms or reference or operation would be helpful in managing potential conflicts of interest, or public perceptions of conflict of interest.

### Outside bodies

7.1. At the 2012 Annual Council meeting, it was agreed that formal appointment of councillor representatives to outside bodies would only be made where the outside body met one or more of the following criteria:

- a) The Council makes a financial contribution to the outside body;
- b) There is a clear need for the business of the outside body to be reported back to Council;
- c) The Council has a partnership relationship with the outside body.

7.2. Councillors appointed are required to engage with the relevant Portfolio Holder to ensure information is both fed back, and fed into, each outside body, panel and forum that meets the criteria (a-c) above.

### 1. Annual meeting of the Council

1.2. Selection of Councillors on Committees and Outside Bodies.

1.2.1. At the annual meeting, the Council meeting will:

- d. receive nominations of Councillors to serve on each committee and outside body;
- and
- e. appoint to those committees and outside bodies except where appointment to those bodies has been delegated by the Council or is exercisable only by the Cabinet.

**Extract from report to Annual Meeting of the East Devon District Council on 23 May 2012**

**Scope of Sections 15-16 of the 1989 Act**

*The above provisions affect appointments to Committees, Sub-Committees and specified joint bodies. It is not a legal requirement for the political balance rules to apply to the Cabinet.*

*.....**In addition the political balance rules are applied to some advisory panels/forums but not to appointments to outside bodies***

The same wording was used in the May 2013, 2014, 2015, 2017 and 2018 Annual Reports.

**Extract from report to Annual Meeting of the East Devon District Council on 22 May 2019**

**Scope of sections 15-16 of the 1989 Act**

*The above provisions affect appointments to committees, sub-committees and*

*some specified joint bodies. It is not a legal requirement for the political balance rules to apply to the Cabinet. ....*

***In addition, the political balance rules are applied to some advisory panels/forums where possible but not to appointments to outside bodies***