
Report of the City Solicitor and Chief Officer Democratic and Central Services

Report to: Member Management Committee

Date: 1st July 2011

Subject: Appointments to Outside Bodies in receipt of grants

Electoral Wards Affected:

Specific Implications For:

Ethnic minorities

Women

Disabled people

Narrowing the Gap

Executive Summary

This report provides an update to Member Management Committee (MMC) on the current position on the implementation of the Committee's resolution of January 2011 relating to the appointment of Elected Members to outside bodies in receipt of grants from the Council.

A key element of the resolution was the idea that there should be a direct relationship between the amount of the grant and the number of seats on the relevant board and that this should be made a condition of the grants.

The report provides advice from the City Solicitor on the constraints affecting the implementation of the resolution. Implementation would require the agreement of Executive Board to the amendment of grant conditions to reflect the requirement for seats. In consultation Leader Management Team determined that it did not wish to proceed with the proposals to link seats on boards of outside bodies to levels of Council grants.

Without the change to grant conditions it would still be possible to identify organisations where MMC feels it would be of benefit to the Council and the organisation to consider additional seats for Elected Members.

Recommendations

Member Management Committee is asked to note the advice given in the report and to indicate whether it wishes to consider requesting additional places on the boards of particular outside bodies.

1.0 Purpose of this Report

- 1.1 To highlight the constraints that will affect the ability of the Council to require external organisations in receipt of Council grants to appoint a fixed number of representatives on the organisation's management board in proportion to the level of grant.
- 1.2 To update Member Management Committee on the current position on the implementation of the Committee's resolution of January 2011 relating to the appointment of Elected Members to outside bodies in receipt of grants from the Council.

2.0 Background Information

2.1 The Council grant aids a number of external organisations. The fiduciary duty that the Council owes to its Council Tax payers means that there is a clear need to ensure that the grant is being used appropriately and for the purpose that the Council intended it should be used for. One way of achieving this outcome is by appointing a Council representative to the board of the organisation. With this in mind the Council's Member Management Committee (MMC) resolved as follows in January 2011:

- (a) A requirement should be included in the 2011\12 grant making process for successful organisations to offer elected Members seats on their Board in proportion to the grant size approved, as follows:
 - (i) All organisations that receive a grant from the Council of £500,000 and over must offer 3 seats on their Board to Leeds City Councillors; and
 - (ii) All organisations that receive a grant from the Council between £499,000 and £100,000 must offer 2 seats on their Board to Leeds City Councillors;
- (b) The above requirements should not apply to an organisation if they would give the Council control or influence over the organisation under the provisions of the Local Government and Housing Act 1989;
- (c) Organisations should not be asked to reduce the number of seats offered, if they currently offer more than the required number;
- (d) For all organisations in receipt of a grant of £100,000 or more, the nominated lead officer should report to the Committee in the event of any concerns regarding governance arrangements;
- (e) The Committee may wish to place the same requirement in respect of additional organisations which fall below this threshold but which the Committee considers to have a significant impact on one or more wards;
- (f) Further information be sought from the Assistant Chief Executive (Corporate Governance) regarding indemnities for Members on outside bodies.

2.2 The constraints which mean that it will not always be possible to achieve the preferred ratio of Council representatives to grant are considered below.

3.0 Main issues

3.1 Constitutional Constraints

3.1.1 There are two potential constraints which are related to the constitution of the organisation and the Council.

3.1.2 The first potential constraint is the limitation on the ability of the recipient organisation to appoint additional representatives without a change to their constitutions. The second is the potential for appointing additional council representatives resulting in companies becoming regulated companies for the purposes of the Local Government and Housing Act 1989.

3.1.3 On the first point, the organisations that the Council grant aids include a number of charitable trusts and companies. A requirement to admit additional Council representatives will, in some cases, require amendments to the constitutional documents of the organisation. Any such amendment may also require approval by the Charity Commission if the Constitutional documentation requires the approval of the Commission (this was a common requirement for charities which were established pre 1982).

3.1.4 For example, Opera North (a charitable company) has already indicated that to appoint additional Council representatives may only be achieved by an amendment to their Memorandum and Articles of Association which would require approval by a General Meeting of the Members of the company. Opera North have confirmed that they are currently reviewing the structure, make up and size of their Board. One of their objectives is to reduce the number of Trustees from the current 17 to, say 10. Accordingly, and given that Opera North already offer attendance at Board Meetings to a Council observer, the addition of an additional 3 members from one stakeholder may well be resisted.

3.1.5 The second constitutional constraint is the need to avoid the recipient body from becoming a local authority controlled or (as is more likely) an influenced company as the result of any increase in voting rights of the Council. This constraint is reflected in paragraph b) of the MMC resolution. Under pt V of the 1989 Act an influenced company is defined as a company in which associated persons connected with the authority hold between 20 and 50% of the voting power (either at board or member level) and there is a 'business relationship' between the authority and the company with more than 50% of its turnover or total assets from payments, grants or loans from the authority or the company is using council land at less than market value. Influenced companies and controlled companies (or 'regulated companies') are made subject to the local authority capital finance regime and to propriety controls designed to mirror controls on the activities of councillors carrying out council business.

3.2 Probity Constraints

3.2.1 The first point to note is that whilst an Elected Member who is a Director of an external body owes a duty of care to that organisation, this is not incompatible with a general requirement to ensure that the Council grant is being used properly. Directors are under a statutory duty to act in the way they consider, in good faith,

would be most likely to promote the success of the company for the benefit of its members as a whole. However, in doing so they must have regard to specified considerations such as *'the impact of the company's operations on the community and the environment'* and *'the need to foster the company's business relationships with suppliers' customers and others'*. Making sure that the grant is being used for its intended purpose is compatible with these specific duties.

- 3.2.2 Having said this, it is important to distinguish situations where the Council is grant aiding an external body from situations where the external body is providing a service to the Council following a procurement exercise. It is in the latter case where probity issues can cause difficulties for Elected Members. For example, Adult Social Care are changing their funding from a grant aid approach to a contract or commissioning process. Applying the requirement to add Elected Members to the Board of such an organisation can give rise to difficulties for Elected Members pursuant to the current Member Code of Conduct and in particular having regard to the need to avoid the accusation that an Elected Member is using his or her position to confer an advantage to the contracting organisation. There have been situations where Elected Members have resigned as board members because of this difficulty (notably in the case of the Leeds Society for the Deaf and the Blind where two Elected Members resigned at the start of a procurement exercise where the company was bidding for Council business to the tune of £1m).

4.0 Other Safeguards on the Use of the Grant

- 4.1 Board representation is one way to ensure that the grant is being used for its intended purpose. Other safeguards can be built into the grant agreement which can require the grant recipient to provide evidence of how the monies are being spent.
- 4.2 There are a number of good examples where safeguards and monitoring are already built in to the grants process. The Chief Officer, Libraries, Arts and Heritage has advised that there is currently a robust monitoring process for activity and spend on arts related grants and it is anticipated that this will be further developed in partnership with the Arts Council over this next year. In addition the Executive Member holds half yearly meetings with the larger organisations to discuss performance relating to grants.

5.0 Decision Making Responsibilities

- 5.1 MMC's responsibility under the Council's constitution is for the appointment of Members to Outside bodies but decisions relating to the determination of grants and the application of grant conditions are a matter for Executive Board. The MMC resolution would require an amendment to grant conditions to include the requirement to offer Elected Member seats on boards. This would require a decision by Executive Board.
- 5.2 Accordingly the matter was reviewed at Leader Management Team. In the light of the issues referred to at Sections 2 to 4 of this report Leader Management Team determined that it did not wish to proceed with proposals to link seats on boards to the levels of Council grants.
- 5.3 In the absence of Executive Board support to change grant conditions it would not be possible to implement most of the MMC resolution. However, if MMC wished to identify particular Outside Bodies where it felt that additional seats on the Board

would benefit both the Council and the organisation then it would be possible for relevant Officers to enter in to discussions with those organisations.

6.0 Corporate governance considerations

6.1 Risk Management

6.1.1 There are no significant risks attached to the content of this report

6.2 Public Interest Test

6.2.1 The report contains no exempt or confidential information

6.3 Forward Plan

6.3.1 This report is not proposing a key decision be taken and is not included in the Forward Plan

6.4 Scrutiny process: Call-In

6.4.1 This report is not proposing a key or major decision and is not subject to call-in

6.5 Constitution and legal matters

6.5.1 Issues relating to the terms of reference of Member Management Committee and Executive Board are covered in section 5 of the report

6.5.2 The report contains the advice of the City Solicitor in sections 2 to 4

6.6 Financial and resource implications

6.6.1 There are no significant financial implications.

6.7 Equality and Diversity and Cohesion and Integration

6.7.1 There are no significant equality and diversity implications.

6.8 Council policies and City priorities

6.8.1 There are no major implications for Council policies or the city priorities.

6.9 Consultation

6.9.1 The matter has been discussed on a number of occasions at past meetings of MMC.

6.9.2 Leader Management Team has been consulted on the proposal to amend grant conditions.

6.9.3 Relevant Chief Officers in those service areas where grants over £100,000 are provided by the Council have been consulted.

7.0 Recommendations

7.1 Member Management Committee is asked:

- (a) To note advice given by the City Solicitor on the constraints that will affect the ability of the Council to require external organisations in receipt of Council grants to appoint a fixed number of representatives on the organisation's management.
- (b) To note the views of Leader Management Team regarding a change to grant conditions which would facilitate the MMC resolution.
- (c) To indicate whether it wishes to consider requesting additional places on the boards of particular outside bodies.

8.0 Background documents

- 8.1 Report to MMC 23rd November 2010 Member Involvement in Grant Funded Organisations.
- 8.2 Report to MMC 12th January 2011 Member Involvement in Grant Funded Organisations