

## **AUDIT COMMITTEE**

**24 JUNE 2021**

### **APPOINTMENT OF INDEPENDENT MEMBER**

Report from: Jan Guyler, Interim Assistant Director, Legal and Governance  
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#### Summary

This report seeks Members' views on the appointment of an Independent Member to the Audit Committee.

1. Budget and policy framework
  - 1.1 The membership of the Audit Committee is a matter for Full Council. Chapter 3, Part 2 of the Constitution (Responsibility for Council Functions) stipulates that the Committee will comprise up to 5 members of the Council, chaired by a Member free from other executive or scrutiny responsibilities.
  - 1.2 The appointment of an Independent Member to the Committee would therefore be a Council decision and require a change to the Constitution.
2. Background
  - 2.1 At the March 2021 meeting the previous Chairman advised that a report would be brought forward to this meeting on proposals for the appointment of an independent member to the Committee.
3. Law and Guidance on Audit Committees and Independent Members
  - 3.1 In July 2020 Members considered a self-assessment of the Committee's terms of reference against the Chartered Institute for Public Finance and Accountancy (CIPFA) guidance for Audit Committee in Local Government. Members asked for the possibility of an Independent Members joining the Committee to be explored.

3.2 CIPFA Guidance <sup>1</sup> acknowledges that there are no statutory requirements requiring local authorities such as Medway to appoint Independent co-opted Members to the Audit Committee. CIPFA do highlight though that such appointments are a requirement for police audit committees, English combined authorities and for local authorities in Wales, and it is usual practice for non-executives to be committee members in health and central government audit committees. CIPFA recommend that those authorities for whom it is not a requirement to include an Independent Member on the Audit Committee should “actively explore the appointment of an independent member to the committee”.

3.3 The guidance from CIPFA goes on to say:

*The injection of an external view can often bring a new approach to committee discussions. Authorities that have chosen to recruit independent members have done so for a number of reasons:*

- *to bring additional knowledge and expertise to the committee*
- *to reinforce the political neutrality and independence of the committee*
- *to maintain continuity of committee membership where membership is affected by the electoral cycle.*

*There are some potential pitfalls to the use of independent members which should also be borne in mind:*

- *over-reliance on the independent members by other committee members can lead to a lack of engagement across the full committee*
- *lack of organisational knowledge or ‘context’ among the independent members when considering risk registers or audit reports*
- *effort is required from both independent members and officers/staff to establish an effective working relationship and establish appropriate protocols for briefings and access to information.*

*These factors should be taken into account when developing the committee structure and plans put in place to provide an appropriate level of support to the audit committee member.*

3.4 Under Section 102(3) of the Local Government Act 1972, the Council can appoint co-opted members to Committees “other than a committee for regulating and controlling the finance of the local authority or of their area”. The Audit Committee is responsible for approving the annual accounts.

3.5 CIPFA acknowledge this limitation and recommend that local authorities should have regard to Section 13 of the Local Government and Housing Act 1989 which relates to the voting rights of non-elected committee members. Their view is that where an audit committee is operating as an advisory committee under the Local Government Act 1972, making recommendations rather than policy, then all members of the committee (including any co-opted

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<sup>1</sup> 1 Practical Guidance for Local Authorities and Police 2018 Edition

members) should be able to vote on those recommendations. However, where a council has delegated decisions to the committee, for example the adoption of the financial statements, then independent members will not be able to vote on those matters for decision.

- 3.6 Whilst the Local Government Act 1972 would, on the face of it, appear to prevent the Council from appointing an Independent Member on the Audit Committee, this should be seen in the context that the Audit Committee has not been established for the sole purpose of approving the annual accounts and also the CIPFA guidance referred to in paragraph 3.5 which points out that the later Local Government and Housing Act 1989 allows for voting co-opted members to be appointed to advisory committees and non-voting co-opted members to non-advisory committees. In this case the Audit Committee is both advisory and non-advisory in nature and therefore any Independent Member should not have a vote on any matter which involves the control or regulation of the Council's finances.
- 3.7 A recent publication from The National Audit Office (NAO) "Local authority Governance" reported that focus groups of internal and external auditors had stressed the benefits to audit committee effectiveness of having independent committee members. The same report identified (from the NAO's review of local authority websites) that 33% of local authority audit committees have an independent member. The report recommended that the Government should work with local authorities and stakeholders to assess the implications of, and possible responses to, the various governance issues identified, including the effectiveness of audit committees, and how to increase the use of independent members.
- 3.8 A review published in September 2020 by Sir Tony Redmond (Independent Review into the Oversight of Local Audit and the Transparency of Local Authority Financial Reporting) also recommended that Councils should review their governance arrangements and, amongst other things, consider appointing at least one independent member, suitably qualified, to the Audit Committee.
- 3.9 Where Councils have appointed an Independent Members, some have agreed to pay an allowance. The table below lists Medway's CIPFA comparator authorities and shows whether or not an allowance has been paid and, if so, at what level.

| Authority          |   |
|--------------------|---|
| Calderdale         | No Independent Member   |
| Bury               | No Independent Member   |
| Kirklees           | No Independent Member   |
| Derby              | No Independent Member   |
| Swindon            | No Independent Member   |
| Bolton             | No Independent Member   |
| Telford and Wrekin | No Independent Member   |
| Plymouth           | 3 Independent Members NB – the remit of the Council's Audit and |

|                  |   |
|------------------|---|
|                  | Governance Committee is wider than Medway's |
| Wigan            | 1 - £1,185 p.a.                             |
| Stockton-on-Tees | No Independent Member                       |
| Tameside         | No Independent Member                       |
| Dudley           | No Independent Member                       |
| Stockport        | No Independent Member                       |
| Rochdale         | 1 – no payment made to any co-opted Members |
| Bradford         | No Independent Member                       |

3.10 A review of the position across the fourteen Kent local authorities identified four authorities that have appointed independent, non-voting members to their audit committees and in three cases these independent members receive an allowance. However, three of the four councils who have appointed an independent member have audit committees which also deal with Member code of conduct matters. It may be that the presence of an independent member is a consequence of that. Before the Localism Act introduced the current standards regime it had been a requirement to appoint independent members to a standards committee.

#### 4. Options

4.1 The Committee can choose to recommend to Full Council that the Constitution is amended to allow a co-opted Member to serve on the Committee or could decide to leave the membership of the Committee unchanged.

4.2 If Members decide to recommend this change to Council then there is the further option of recommending that the Independent Member is able to vote on all matters except those involving the regulation and control of the Council's finances **or** that the position should be entirely non-voting.

#### 5. Risk management

5.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

| Risk                                    | Description                     | Action to avoid or mitigate risk   | Risk rating                            |
|---|---------------------------------|--|--|
| Unable to appoint an Independent Member | Lack of good quality applicants | Ensure specification for the role is fit for purpose and attractive and recruitment process is robust. | DIII (Likelihood low; Impact moderate) |

## 6. Conclusion

6.1 It is a decision for Council whether there should be an Independent Member of the Audit Committee. Whilst not all audit committees in local government have an independent member, about one third have at least one and this practice is strongly encouraged by CIPFA as well as highlighted by the National Audit Office and recommended in the recent Redmond review.

6.2 Should Members support the idea of appointing an Independent Member to the Committee, it is proposed that:

- Council be recommended to amend Chapter 3, Part 2 of the Constitution (Responsibility for Council Functions) to provide for an Independent Member to be appointed by the Committee on a term not exceeding 4 years (renewable once).
- a further report be brought to the next meeting proposing a specification for an Independent Member and a proposed recruitment process.
- The Independent Remuneration Panel be invited to advise the Council of an appropriate rate of remuneration for the role.

## 7. Financial implications

7.1 The costs involved in recruiting an Independent Member would be minimal. Subject to the views of the Independent Remuneration Panel, the Council could decide to pay an allowance, for which there is currently no budgetary provision. Whilst any allowances, should it be agreed that they be payable, could be built into the budget setting process for future financial years, if any allowances are payable this year, these would have to be met from within existing resources.

## 8. Legal implications

8.1 The Council's ability to co-opt members onto an Audit Committee derives from the Local Government Act 1972, as amended by the Local Government and Housing Act 1989. The latter Act establishes that members of committees appointed under the 1972 Act and who are not elected members of the Council do not generally have voting rights, with some exceptions such as Advisory Committees or Church and parent governor members of overview and scrutiny in respect of education matters.

8.2 The Local Government Act 1972 allows Councils to set up Committees which may either discharge the functions of the Council or advise the Council on the discharge of its functions.

8.3 Section 13 (1) of the Local Government and Housing Act 1989 says that a co-opted member of a committee established under Section 102 of the Local Government Act 1972 (i.e. a committee discharging the functions of the Council) must be a non-voting member. It is, however, possible to appoint a

co-opted member with voting rights to certain other committees, including an advisory committee appointed under Section 102(4) of the Local Government Act 1972. It is then for the Council to decide on the term of office of any such co-opted member.

- 8.4 Section 102 (3) of the 1972 Act stipulates that a committee which discharges a function of the Council can include co-opted Members, except where it is a committee set up to regulate and control the finance of the local authority.
- 8.5 A person who is disqualified under the Local Government Act 1972 for being elected or being a member of a local authority is also disqualified for being a member of a committee of that authority.
- 8.6 The Local Authorities (Members' Allowances) (England) Regulations 2003 permit the Council to pay an allowance to a co-opted Member of a Committee. This would require the Members' Allowances Scheme to be amended to provide for this. The Scheme can only be amended by Full Council, which must first take into account a report from the Independent Remuneration panel on such a proposal.

## 9. Recommendations

- 9.1 Members are asked to decide whether they wish to recommend to Council that an Independent Member be appointed to serve on the Committee and whether this should be on a fully non-voting basis or with a vote except on any matter which involves the control or regulation of the Council's finances.
- 9.2 Members are asked to consider whether to recommend Full Council to ask the Independent Remuneration Panel to consider whether payment of an allowance to an Independent Member would be appropriate and if so, at what level and to make recommendations back to the Council on this matter.
- 9.3 Subject to the above, Members are asked to agree that a further report on the recruitment process for an Independent Member be submitted to the next meeting, once Council has approved the principle of appointing an Independent Member to the Committee.

## Lead officer contact

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## Appendices

None

## Background papers

CIPfA - Practical Guidance for Local Authorities and Police 2018 Edition

[National Audit Office – Local Authority Governance](#)

[Independent Review into the Oversight of Local Audit and the Transparency of Local Authority Financial Reporting](#)