

Audit Committee

29 November 2023

Appointment of an Independent Member(s)

Report from: Bhupinder Gill, Assistant Director, Legal and Governance
Phil Watts, Chief Operating Officer
Author: Wayne Hemingway, Head of Democratic Services
Michael Turner, Principal Democratic Services Officer

Summary

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

1. Recommendations

- 1.1. The Committee is asked to decide whether they wish to recommend to Council that an Independent Member(s) 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.
- 1.2. The Committee is 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.
- 1.3. Subject to the above, the Committee is asked to agree that a further report on the recruitment process for an Independent Member(s) be submitted to the next meeting, once Council has approved the principle of appointing an Independent Member to the Committee.

2. Budget and policy framework

- 2.1. 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.
- 2.2. The appointment of an Independent Member to the Committee would therefore be a Council decision and require a change to the Constitution.

3. Background

- 3.1. At the June 2021 meeting the Committee considered a report on proposals for the appointment of an independent member to the Committee. The decision of the Committee was to not proceed with the appointment of an independent member (minute no. 115/2021 refers).
- 3.2. In 2022 the Chartered Institute for Public Finance and Accountancy (CIPFA) issued a position statement strengthening their advice for co-opted independent membership on Audit Committees. At the June 2023 meeting the Committee reviewed its terms of reference and recommended adoption by Full Council following consideration of a report to the Committee to consider the appointment of an independent member to the Committee.

4. Law and Guidance on Audit Committees and Independent Members

- 4.1. In 2022 the Chartered Institute for Public Finance and Accountancy (CIPFA) issued a position statement: Audit Committees in Local Authorities and Police 2022 setting out the purpose, model, core functions and membership of the audit committee. This represents CIPFA's view on the audit committee practice and principles that local government bodies in the UK should adopt.
- 4.2. The position statement from CIPFA states: "The audit committees of local authorities should include co-opted independent members in accordance with the appropriate legislation. Where there is no legislative direction to include co-opted independent members, CIPFA recommends that each authority audit committee should include at least two co-opted independent members to provide appropriate technical expertise."
- 4.3. The position statement goes on to say: "The appointment of co-opted independent members on the committee should consider the overall knowledge and expertise of the existing members"
- 4.4. This position statement provides stronger advice than the National Audit Office (NAO) "Local authority Governance" report published in 2019 which stated 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.
- 4.5. 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.

- 4.6. 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.
- 4.7. 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 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.
- 4.8. 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 4.7 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.
- 4.9. Where Councils have appointed 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. This information was originally provided in the report to Audit Committee in June 2021 and has now been reviewed and update to reflect the current position.

Authority	
Bolton	No Independent Member
Bradford	No Independent Member
Bury	No Independent Member
Calderdale	1 Independent Member, planned to add a second (Not paid)
Derby	4 Co-opted Members (paid 10% of Basic Allowance)
Dudley	No Independent Member
Kirklees	1 Independent Member NB – the remit of the Council’s Committee is wider than Medway’s

Plymouth	3 Independent Members NB – the remit of the Council's Committee is wider than Medway's
Rochdale	1 Co-opted Member (no payment made to any co-opted Members)
Stockport	1 Co-opted Member (paid an allowance £320pa)
Stockton-on-Tees	No Independent Member
Swindon	No Independent Member
Tameside	No Independent Member
Telford and Wrekin	No Independent Member
Wigan	2 Independent Members paid an allowance of £1254.60. p.a. NB – the remit of the Council's Committee is wider than Medway's

- 4.10. The table below lists the position across the Kent local authorities. However, the 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.

Authority	
Ashford District Council	No Independent Member, though the Committee has the ability to appoint one if it so wishes.
Canterbury City Council	No Independent Member
Dartford Borough Council	One Independent Member (paid an allowance of £840pa)
Dover District Council	No Independent Member
Folkstone and Hythe District Council	One Independent Member NB – the remit of the Council's Committee is wider than Medway's
Gravesham Borough Council	No Independent Member
Kent County Council	One Independent Member
Maidstone Borough Council	One Independent Member NB – the remit of the Council's Committee is wider than Medway's
Sevenoaks District Council	Two Independent Members (paid an allowance of £800 pa)
Swale Borough Council	No Independent Member
Thanet District Council	No Independent Member
Tonbridge and Malling Borough Council	No Independent Member
Tunbridge Wells Borough Council	Two Independent Members NB – the remit of the Council's Committee is wider than Medway's (paid an allowance of £800pa)

5. Options

- 5.1. 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.
- 5.2. 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.

6. Risk management

- 6.1. 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.	DIV
Likelihood		Impact:	
A Very likely B Likely C Unlikely D Rare		I Catastrophic II Major III Moderate IV Minor	

7. Conclusion

- 7.1. Ultimately whilst it is a decision for Council whether there should be an Independent Member of the Audit Committee, the Audit Committee can decide whether or not to recommend such a course of action in the first place. Whilst not all audit committees in local government have an independent member, many authorities have at least one and this practice is recommended by CIPFA as well as highlighted by the National Audit Office and recommended in the Redmond review.
- 7.2. 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(s) 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.

8. Financial implications

- 8.1. 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.

9. Legal implications

- 9.1. 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.
- 9.2. 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.
- 9.3. 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.
- 9.4. 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.

- 9.5. 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.
- 9.6. 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.

Lead officer contact

Wayne Hemingway, Head of Democratic Services
T: 01634 332509
E: wayne.hemingway@medway.gov.uk

Appendices

Appendix 1: CIPFA's Position Statement: Audit Committees in Local Authorities and Police 2022

Background papers

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

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