

Council

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Audit Committee – Review of Terms of Reference including the Appointment of an Independent Member

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Summary

This report seeks approval to amend the Audit Committee's terms of reference including the appointment of an Independent Member, as recommended by the Audit Committee.

1. Recommendation

- 1.1. The Council is asked to approve the revised terms of reference for the Audit Committee, as set out in Appendix 2 to the report, including the provision for an Independent Member to be appointed by the Audit Committee on a fully non-voting basis and on a term not exceeding 4 years (renewable once).

2. Budget and policy framework

- 2.1. Changes to the Audit Committee's terms of reference, including the addition of an Independent Member in its membership, is a matter for Full Council.
- 2.2. Similarly, payment of allowances is a matter for Full Council, having considered the comments and recommendations of the Independent Remuneration Panel.

3. Background

- 3.1. The Audit Committee undertook its annual review of its Terms of Reference (TOR) on 29 June 2023. The TOR are based on the Position Statement on Local Government Audit Committees issued by CIPFA. Although the Position Statement and associated guidance are not statutory, this review has been structured around the latest version of the Position Statement, which was

published in 2022 (Appendix 1), where it is noted that there is an expectation that *'all local government bodies should make their best efforts to adopt the principles, aiming for effective audit committee arrangements'*.

- 3.2. While there are no fundamental changes to the Position Statement published in 2018, the revised 2022 Statement does make its position clearer in relation to a number of aspects, such as membership of the committee and its outputs.
- 3.3. The Position Statement is broken down into key areas:
 - The purpose of the Audit Committee:
 - Independent and Effective Model.
 - Core Functions
 - Maintenance of governance, risk, and control arrangements
 - Financial and governance reporting
 - Establishing appropriate and effective arrangements for audit and assurance
 - Audit committee membership
 - Engagement and outputs
 - Impact

and the changes to the TOR proposed following the desk top review, which are all aimed at better demonstrating adoption of the CIPFA principles, are summarised below.

- 3.4. The Membership details in the TOR previously stated that the Chair of the Committee should be free from Executive or Scrutiny responsibilities. However, it is felt that based on the Position Statement, all Members should be free of Executive responsibilities. Membership of Scrutiny Committees is not felt to represent any conflict.
- 3.5. The functions section of the TOR has been restructured to better align with the 'Core Functions' outlined in the Position Statement, although the titles have not been adopted. These changes group the functions of the Committee into the key areas of responsibility.
- 3.6. An 'Engagements and Outputs' section has been introduced to make the expectations and rights of the Committee clear. The majority of the actions for the Committee that are listed in this section, with the exception of an annual report, have always been in place but have not been explicitly expressed in the TOR.
- 3.7. While previous statements have made reference to an annual report from the Chair of the Committee, the latest update is much clearer on the expectation. The report is expected to outline *'how the committee has complied with the position statement, discharged its responsibilities, and include an assessment of its performance'*.

- 3.8. Previous statements have also made reference to Co-opted members being part of the Committee. The inclusion of an independent member was considered by the Committee in 2021 but not taken forward at the time (minute no. 115/2021 refers).
- 3.9. The Independent and Effective Model section of the Statement now states that *'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'*. This is now more explicitly clear than in previous statements and the Committee was advised to give the matter further consideration.
- 3.10. The Audit Committee, on 29 June 2023, agreed and recommended adoption by Full Council of the revised TOR following consideration of a report of the Audit Committee to consider the appointment of an Independent Member to the Committee (minute no. 83/2023 refers).
- 3.11. The Audit Committee received a report regarding the appointment of an Independent Member on 29 November 2023 (see section 4 below).

4. Law and Guidance on Audit Committees and Independent Members

- 4.1. As outlined in section 3 of the report, 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 was reviewed and updated in the report to the Audit Committee in November 2023.

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)

4.11. The Audit Committee, having considered and debated the issues, agreed the following:

4.11.1 The Committee recommended to Council an Independent Member be appointed to serve on the Committee on a fully non-voting basis;

4.11.2 The Committee recommended 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;

4.11.3 The Committee agreed 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.

5. Independent Remuneration Panel

5.1. With reference to the Audit Committee's recommendation regarding the payment of allowances (paragraph 4.11.2 above), Members are advised that the Independent Remuneration Panel was already in place when the Audit Committee met in November 2023, therefore, the Independent Remuneration Panel decided to consider the issue of the payment of allowances to an Independent Member of the Audit Committee in the interests of administrative efficiency, i.e. the Panel was already established and considering the issue of Members' Allowances.

5.2. The report of the Independent Remuneration Panel (IRP) is included elsewhere on this Agenda for consideration and approval. That report includes a section on the payment of allowances for an Independent Member on the Audit Committee. The IRP report states the following on this matter:

5.2.1 "The Panel were made aware that proposals are being considered by the Council to appoint an Independent Person to the Audit Committee in line with guidance issued by the Chartered Institute for Public Finance (CIPFA). The role of this person is to give technical advice and guidance to the Committee, and it is for the Council to agree if the person should be paid an allowance.

5.2.2 Having reviewed the allowances paid by other authorities who have appointed an Independent Person to their Audit Committee there is a wide range – between £300 and £2034 with an average of £713. After some consideration

of the nature of the role and the comparison of that to the rest of the SRAs, the Panel took the view that if the Council decides to appoint an Independent Person it would recommend they are paid an annual allowance on the basis of 10% of the basic allowance. On the current rate that would be £1147.40 per annum. This will uplift each time the basic allowance is uplifted.”

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
Lack of regular reviews of the Audit Committee's terms of reference	Terms of reference are no longer fit for purpose	Continue to review on a regular basis, at least annually.	DIV
Likelihood		Impact:	
A Very likely		I Catastrophic	
B Likely		II Major	
C Unlikely		III Moderate	
D Rare		IV Minor	

7. Conclusion

7.1. 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. The Audit Committee was advised that should they support the idea of appointing an Independent Member to the Committee, it was 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.
- 7.3. Whilst the Audit Committee did not formally recommend to Council that the Independent Member be appointed on a term not exceeding 4 years (renewable once), it seems prudent to seek Council approval to this, for the avoidance of doubt.
- 7.4. Subject to Council's decision to agree to the inclusion of an Independent Member within the Audit Committee's terms of reference, a further report will be taken to the next meeting of the Audit Committee proposing a specification for an Independent Member and a proposed recruitment process. The Audit Committee will be responsible for agreeing this process and appointing the Independent Member, having followed the process.
- 7.5. The Independent Remuneration Panel has considered the issue of payment of allowances to the Independent Member alongside its consideration of Members' Allowances and this is set out in the report on the Members' Allowances Scheme elsewhere on this Agenda. Members are asked to consider the inclusion of an annual allowance to an Independent Member under that report.

8. Financial implications

- 8.1. The Audit Committee has oversight of the council's governance and internal control arrangements, as well as the arrangements for financial reporting and statutory statement of accounts.
- 8.2. The costs involved in recruiting an Independent Member would be minimal. The Independent Remuneration Panel has recommended to the Council that an Independent Member be paid an annual allowance on the basis of 10% of the basic allowance. On the current rate that would be £1147.40 per annum. This will uplift each time the basic allowance is uplifted. The specific financial implications are set out in the report on the Members' Allowances Scheme elsewhere on this Agenda.

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.

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Appendices

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

Appendix 2: Revised Audit Committee terms of reference

Background papers

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

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