

# Public Document Pack



Date: 5 May 2009  
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## CONSTITUTIONAL REVIEW WORKING PARTY

14 MAY 2009

A meeting of the Constitutional Review Working Party will be held at **2.00pm on Thursday, 14 May 2009** in the Chairman's Office, Cecil Street, Margate, Kent.

### Membership:

Independent Members: Mr R Hills and Mrs J Sterndale (Chairman);

Councillors: D Green, Gregory, Harrison, Peppiatt and Mrs Sheldrick

## A G E N D A

Item  
No

Subject

1. **APOLOGIES FOR ABSENCE**

2. **DECLARATIONS OF INTEREST**

To receive any declarations of interest. Members are advised to consider the extract from the Standard Board Code of Conduct for Members, which forms part of the Declaration of Interest Form at the back of this Agenda. If a Member declares an interest, they should complete that Form and hand it to the Officer clerking the meeting.

3. **MINUTES OF PREVIOUS MEETING** (Pages 1 - 6)

To approve the Minutes of the Constitutional Review Working Party meeting held on 23 February 2009, copy attached.

4. **GOVERNANCE AND AUDIT COMMITTEE TERMS OF REFERENCE** (Pages 7 - 12)

**Declaration of Interest form - back of agenda**

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# Agenda Item 3

## CONSTITUTIONAL REVIEW WORKING PARTY

Minutes of the meeting held on 23 February 2009 at 4.30 pm at Council Chamber, Cecil Street, Margate, Kent.

**Present:** Mrs Jennifer Sterndale (Chairman); Councillors Goodwin, D Green, Harrison, Mr R Hills (Independent Member) and Mrs Sheldrick

### 1. APOLOGIES FOR ABSENCE

Apologies were received from Councillor Gregory and Councillor Peppiatt.

### 2. MINUTES OF PREVIOUS MEETING

The minutes of the meeting of the Constitutional Review Working Party held on 10 April 2008 were agreed subject to the inclusion of Mr Hills in the list of attendees, and signed by the Chairman.

Some Members were concerned that the new Planning Protocol regarding public speaking at site visits was in need of further consideration, as the procedure was not satisfactory. There was also concern about late amendments to planning applications.

It was agreed that these issues would be included in the forthcoming review of the Planning Protocols.

### 3. DECLARATIONS OF INTEREST

No Declarations of Interest were made.

### 4. CONTRACT STANDING ORDERS AND PURCHASING GUIDE

Members considered the report of the Procurement and Facilities Manager which set out the principles for the replacement of current Contract Procedure Rules with new Kent standardised Contract Standing Orders, to become part of the Constitution for Thanet District Council.

Moved by Councillor Harrison and seconded by Councillor Mrs Sheldrick that:

“Members agree the following recommendations:

that the Constitutional Review Working Party approve and recommend to Standards Committee and Council the adoption of the revised Contract Standing Orders and Purchasing Guide”

MOTION ADOPTED.

### 5. EXECUTIVE STRUCTURE - CABINET AND CABINET PORTFOLIOS

Members considered the report of the Interim Head of Legal and Democratic Services as Monitoring Officer which asks Members to note the changes to the Constitution following the Leader of the Council's decision to amend Cabinet portfolios and appoint an additional Cabinet Member. It was noted that the Leader had made these arrangements to align the portfolios with the new Directorate structure.

Moved by Councillor Mrs Sheldrick and seconded by Mr Hills that:

“Members agree the following recommendations:

that the report of the Monitoring Officer be received

and

the proposed amendments to the Members’ Allowances Scheme for 2008/09, set out in Annex 2 of the report, be recommended to Council for approval.”

MOTION ADOPTED.

**6. EXECUTIVE STRUCTURE - LEAD MEMBERS**

Members considered the report of the Interim Head of Legal and Democratic Services as Monitoring Officer with recommendations from the Leader and the Council that the Council’s Constitution should be amended by the inclusion of provisions for the appointment of Lead Members to support Cabinet Members.

Each of the five portfolio holders (but not the Leader or Deputy Leader) would be supported by two Lead members. Each Lead member would ‘work to’ their Cabinet member and, amongst other matters, would lead on specific areas of policy development and deputise for the Cabinet Member in their representative and community engagement roles.

Some Members had concerns that this would increase the ‘Special Responsibility Allowance’ budget and in addition, that it could see Members of the majority group receiving more information than the opposition group and receiving this information far earlier.

The budget figures for the additional Special Responsibility Allowance are included in the agenda for the annual meeting of Council in April 2009.

Moved by Councillor Mrs Sheldrick and seconded by Councillor Harrison that::

“Members agree the following recommendations:

to approve the amendment to the Constitution set out in Annex 1 of the report

and

to approve for recommendation to Council the proposed amendments to the Members’ Allowances Scheme for 2008/09”

MOTION ADOPTED.

**7. ESSENTIAL TRAINING FOR MEMBERS OF THE STANDARDS COMMITTEE**

Members considered the report of the Interim Head of Legal and Democratic Services as Monitoring Officer on the recommendation by the Standards Committee that only members trained in the local assessment of complaints should become full members of the Standards Committee. On 18 December 2008 Council referred the matter to this Working Party for consideration.

Some Members had concerns that training should be compulsory and suggested that ‘good conduct’ and understanding the ‘Code of Conduct’ was common-sense and

therefore training was unnecessary. In addition that there was a principle involved and although training was not an issue the fact that it was compulsory made it so.

The Chairman of the Working Party was concerned that some Members did not understand the 'Code of Conduct' and were unsure of when to declare a personal and prejudicial interest. The Chairman added that it was unacceptable to expect a Member of a Standards Committee to make important decisions about individuals unless they were trained.

The Chairman of the Working Party felt that Members who did not take part in the training in the Code of Conduct did not want the Council to receive an excellent category when the CPA takes place and that this was very sad.

The Interim Head of Legal and Democratic Services as Monitoring Officer informed the Working Party that this was the way forward and the view of the Standards Committee. In terms of Corporate Governance inspection regimes, this could be subject to scrutiny and the Council could be found wanting if Members Training and Development was not taken seriously.

Moved by Councillor Mrs Sheldrick and seconded by Councillor D Green that::

"Members agree the following recommendations with the amendment to the wording at 2.3 (d):

- a. That Members who have not completed training on the Code of Conduct that includes coverage of the local determination of complaints should not be able to serve on the Standards Committee after the Annual Council meeting on 21 May 2009.
- b. As far as any new Member of the Committee is concerned they will allow a three month grace period, from the first appointment to the Committee, so that a Member can undertake relevant training. Whilst undergoing such training, a Member may serve on the Standards Committee but not any Sub-Committee of the Standards Committee.
- c. If at the end of that three month period, a Member of the Standards Committee has not attended relevant training to the satisfaction of the Monitoring Officer, that Member will cease to be a member of the Committee and a replacement member of the Committee will be appointed by the Council.
- d. "relevant training" means adequate training on the standards regime which must include the local assessment and hearing processes.

MOTION ADOPTED.

## 8. **STANDARDS COMMITTEE - REVIEW OF ARRANGEMENTS**

Members considered the report of the Interim Head of Legal and Democratic Services as Monitoring Officer to review the Standards Committee's arrangements for determining allegations that members have failed to comply with the Council's Code of Conduct.

***In addition to its responsibility for the promotion and development of the local ethical framework and oversight of the local determination arrangements, the Standards Committee now has very specific responsibilities in accordance with the statutory framework for the assessment, review of assessment,***

**consideration following investigation and hearing of complaints. To undertake these responsibilities it has to make some use of sub-committees.**

**As the Working Party will recall, the statutory process has four stages: -**

**Stage One. Assessment**  
**(Is there a case to answer?)**

**Stage Two. Review of Assessment**  
**(Appeal by complainant against Stage One decision to take no action)**

**Stage Three. Consideration of Investigation Report**  
**(Accepts investigation finding of no failure, or refers for full hearing)**

Stage Four. Hearing  
(Where the investigation has found a failure to comply)

Moved by Councillor Harrison and seconded by Councillor Mrs Sheldrick that::

“Members agree the following Sub- Committee arrangements:

**Stage One Assessment - Standards Assessment and Consideration Sub-Committee**

**Stage Two Review of Assessment -Standards Review Sub-Committee**

**Stage Three Consideration of Investigation Report - Standards Assessment and Review Sub-Committee (with a report after the conclusion of the matter to the Standards Committee)**

StageFour Hearing - Standards Referral and Hearings Sub Committee

MOTION ADOPTED.

## **9. ESTABLISHMENT OF A GENERAL PURPOSES COMMITTEE**

Members considered the report of the Interim Head of Legal and Democratic Services as Monitoring Officer to consider a recommendation to establish a non-executive Council Committee with delegated responsibility to deal with any non-executive matter not delegated to another committee or reserved to the Council.

The Interim Head of Legal and Democratic Services as Monitoring Officer added that the Council did not at this time have anywhere to deal with non-executive matters not delegated elsewhere and that a committee was needed to give the Chief Executive somewhere to report to on matters relating to senior officers. The committee would be politically proportional.

Moved by Councillor Green and seconded by Councillor Harrison that::

“the committee when established should elect a Chairman and Vice-Chairman from their number to serve for the length of the Council

and

approve the amendment to the Constitution set out in Annex 1 (below)

**Amendments to  
Constitution for Governance of Thanet District Council**

**Part 2 Articles of the Constitution  
Article 8 – Regulatory and other Committees**

8.01 Regulatory and other Committees

**Add:**

9. *General Purposes Committee – 8 Members*

Part 3 Responsibility for Functions

Section 2 Responsibility for Council Functions

(which cannot be the responsibility of the Cabinet)

**Add:**

*Decision Making Body: General Purposes Committee  
Membership: 8 Members of the authority*

*Functions:*

*To exercise any function of the Council, which by statute or regulation is a function not to be the responsibility of an authority's executive, and which is not delegated to another committee or reserved to the Council by statute, regulations or the Council's Constitution.*

and

to approve an amendment to the Scheme of Allowances as set out in paragraph 3.3 of the report that:

the Committee would be convened as, and when required and not included in the calendar of meetings. A membership of eight would be appropriate and it is recommended that Special Responsibility Allowances should be paid to the Chairman and Vice Chairman at the lower level of those currently paid (i.e. £1216 and £279 respectively)”

MOTION ADOPTED.

Meeting concluded : 6.40 pm

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## GOVERNANCE AND AUDIT COMMITTEE – REVIEW OF TERMS OF REFERENCE

To: **CONSTITUTIONAL REVIEW WORKING PARTY – 14 MAY 2009**

Main Portfolio Area: **FINANCE AND CORPORATE SERVICES**

By: **CORPORATE GOVERNANCE OFFICER**

Classification: **Unrestricted**

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**Summary:** To bring before Constitutional Review Working Party the Terms of Reference for the Governance and Audit Committee which have undergone their annual review.

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### **1.0 Introduction and Background**

1.1 The formation of a Governance and Audit Committee was agreed by Cabinet on the 23 March 2006 and adopted by Council on the 11 May 2006, and then re-constituted by Council in May 2007 and May 2008.

### **2.0 The Current Situation**

2.1 The Council needs to demonstrate that it is effectively delivering the core functions of an Audit Committee, as identified in the Chartered Institute of Public Finance and Accountancy (CIPFA) guidance.

2.2 The current Terms of Reference are in line with the CIPFA guidance document but need to be reviewed regularly to ensure that they are fit for purpose. This process has been undertaken and attached at Annex I are the revised Terms of Reference, with track changes to show Members where the changes have taken place.

2.3 The reviewed Terms of Reference have been agreed by Standards at its meeting on the 5 March 2009 and also Governance and Audit Committee on the 17 March 2009.

### **3.0 Options**

3.1 To approve the revised Terms of Reference and recommend that they are passed onto Council on the 21 May 2009 to be formally adopted as part of the Council's Constitution.

3.2 To not accept the revised Terms of Reference. This is not recommended as the Governance and Audit Committee Terms of Reference would not reflect the processes that the Governance and Audit Committee need to undertake.

### **4.0 Corporate Implications**

#### **4.1 Financial Implications**

4.1.1 There are no financial implications arising directly from this report.

#### **4.2 Legal**

4.2.1 There are no legal implications arising directly from this report.

### **4.3 Corporate**

- 4.3.1 The Council decided to place additional emphasis on governance by the establishment of this committee. These reviewed Terms of Reference are a key part of providing assurance that the authority is effectively delivering the core functions of an audit committee.

### **4.4 Equity and Equality**

- 4.4.1 None

### **5.0 Recommendation**

- 5.1 That Members approve the reviewed Governance and Audit Committee Terms of Reference, and then recommend they are passed onto Council on the 21 May 2009 to be formally adopted as part of the Council's Constitution.**

### **6.0 Decision Making Process**

- 6.1 This recommendation does not involve the making of a key decision.

Contact Officer : Nikki Morris, Corporate Governance Officer

Extension 7625

### ***Background Papers***

Governance and Audit Committee Terms of Reference (as approved by Council 11 May 2006)

# Governance & Audit Committee

Terms of Reference

September 2007  
Revised May 2008  
Revised May 2009



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The quorum for the group is 50% as agreed by the Constitutional Review Working Party, Standards and Council.

# Terms of Reference

## Audit Activity

- To consider the annual report and opinion of the East Kent Audit Partnership, and a summary of audit activity (actual and proposed) and the level of assurance it can give over the Council's governance arrangements;
- To consider summaries of specific internal audit reports as requested;
- To consider reports dealing with the management and performance of the providers of internal audit services;
- To consider a report from internal audit on agreed recommendations not implemented within a reasonable timescale;
- To consider the external auditor's annual letter, relevant reports and the report to those charged with governance;
- To consider specific reports as agreed with the external auditor;
- To comment on the scope and depth of external audit work and to ensure it gives value for money;
- To liaise with the Audit Commission over the appointment of the Council's external auditor;
- To commission work from internal and external audit.

## Regulatory Framework

- To review any issue referred to it by the Chief Executive or a Director, or any Council body;
- To monitor the effective development and operation of risk management and governance in the Council;
- To overview the Council policies on Whistleblowing and anti-fraud and corruption;
- To oversee the production of the Authority's Governance Statement (formerly Statement on Internal Control (SIC)) and to recommend its adoption;
- To consider the Council's arrangements for governance and agreeing necessary actions to ensure compliance with best practice;
- To review the Council's arrangements for ensuring adequate Data Quality;
- To consider the Council's compliance with its own and other published standards and controls.

## Accounts

- To approve the annual Statement of Accounts. Specifically, to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statement or from the audit that need to be brought to the attention of the Council;
- To consider the external auditor's report to those charged with governance on issues from the audit of the accounts.

Deleted: review

## Document History

Version	Date	Agreed by	Minute ref
V1	27 Sep 2007 6 Dec 2007 18 Dec 2007	Governance and Audit Committee Standards Committee Council	R113 R173 59
V2	10 April 2008 22 April 2008 8 May 2008	Constitutional Working Party Standards Council	CRWP10 R314 17
V3	5 March 2009 17 March 2009 14 May 2009 21 May 2009	Standards Committee Governance & Audit Committee Constitutional Review Working Party Council	

## THANET DISTRICT COUNCIL DECLARATION OF INTEREST FORM

### Do I have a personal interest?

You have a **personal interest** in any business of your authority where it relates to or is likely to affect:

- a) An interest you must **register**.
- b) An interest that is not on your register, but where the well-being or financial position or you, members of your family (spouse; partner; parents; in laws; step/children; nieces and nephews), or people with whom you have a close association (friends; colleagues; business associates and social contacts that can be friendly and unfriendly) is likely to be affected by the business of your authority more than it would affect the majority of:
  - Inhabitants of the ward or electoral division affected by the decision (in the case of the authorities with electoral divisions or wards.)
  - Inhabitants of the authority's area (in all other cases)

These two categories of personal interests are explained in this section. If you declare a personal interest you can remain in the meeting, speak and vote on the matter, unless your personal interest is also a prejudicial interest.

### Effect of having a personal interest in a matter

You must declare that you have a personal interest, **and the nature of that interest**, before the matter is discussed or as soon as it becomes apparent to you except in limited circumstances. Even if your interest is on the register of interests, you must declare it in the meetings where matters relating to that interest are discussed, unless an exemption applies.

### When an exemption may be applied

An exemption applies where your interest arises solely from your Membership of, or position of control or management on:

1. Any other body to which you were appointed or nominated by the authority.
2. Any other body exercising functions of a public nature (e.g. another local authority)

### Is my personal interest also a prejudicial interest?

Your personal interest will also be a **prejudicial interest** in a matter if all of the following conditions are met:

- a) The matter does not fall within one of the **exempt categories** of decisions
- b) The matter affects **your financial interests** or relates to a **licensing or regulatory matter**.
- c) A member of public, who knows the relevant facts, would **reasonably think your personal interest is so significant** that it is likely to prejudice your judgement of the public interest.

### What action do I take if I have a prejudicial interest?

- a) If you have a **prejudicial interest** in a matter being discussed at a meeting, you must declare that you have a prejudicial interest as the nature of that interest becomes apparent to you.
- b) You should then leave the room, **unless members of the public are allowed to make representations, give evidence or answer questions about the matter**, by statutory right or otherwise. If that is case, you can also attend the meeting for that purpose.
- c) However, you must immediately leave the room once you have finished or when the meeting decides that you have finished (if that is earlier). You cannot remain in the public gallery to observe the vote on the matter.

d) In addition you must not seek to **improperly influence** a decision in which you have a prejudicial interest.

**This rule is similar to your general obligation not to use your position as a Member improperly to your or someone else's advantage or disadvantage.**

**What if I am unsure?**

If you are in any doubt, Members are strongly advised to seek advice from the Monitoring Officer or the Democratic Services Manager well in advance of the meeting.

**DECLARATION OF PERSONAL AND, PERSONAL AND PREJUDICIAL INTERESTS**

**MEETING** .....

**DATE**..... **AGENDA ITEM** .....

**IS YOUR INTEREST:**

**PERSONAL**

**PERSONAL AND PREJUDICIAL**

**NATURE OF INTEREST:**

.....  
.....  
.....

**NAME (PRINT):** .....

**SIGNATURE:** .....

Please detach and hand this form to the Committee Clerk when you are asked to declare any interests.