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Date: 21 February 2014
Our ref: Extra Governance & Audit Committee/Agenda
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GOVERNANCE AND AUDIT COMMITTEE

26 FEBRUARY 2014

A meeting of the Governance and Audit Committee will be held at **7.00 pm on Wednesday, 26 February 2014** in the Pugin & Rossetti Rooms, First Floor, Council Offices, Cecil Street, Margate.

Membership:

Councillor Worrow (Chairman); Councillors: Lodge-Pritchard (Vice-Chairman), Binks, Campbell, Day, Moore, D Saunders, W Scobie and S Tomlinson

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 advice contained within the Declaration of Interest Form attached 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 and then take the prescribed course of action.'

3. **DISTRICT AUDITOR'S REPORT** (Pages 1 - 16)

Declaration of Interests Form

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TRANSEUROPA – AUDITOR'S REPORT

To: **Extraordinary Governance and Audit Committee – 26 February 2014**

Main Portfolio Area: **Financial Services**

By: **Financial Services Manager**

Classification: **Unrestricted**

Ward: **All**

Summary: **To present Members with the auditor's findings to the objections to the 2012/13 accounts in respect of the Transeuropa debt and to present the Council's response to the auditor's recommendations**

For Decision

1.0 Introduction and Background

1.1 The Council's auditors, Grant Thornton, received objections from three local electors to the 2012/13 accounts. The objections were as follows:

- The Council acted unlawfully in making a fees and charges agreement with Transeuropa (TEF) and its associated companies, which is contrary to Article 107 of the consolidated Treaty on the functioning of the European Union.
- The Council failed to recognise expenditure relating to TEF in the 2012/13 accounts.
- The Council has failed to achieve value for money in its dealings with TEF. In particular:
 - The payment deferral and repayment arrangements are not supported by contractual agreements;
 - The Council failed to undertake an assessment of the risk of deferring harbour duties and related charges to TEF;
 - The Council's section 151 officer failed to provide an adequate response to Councillors on the robustness of estimates made in the 2012/13 budget;
 - The Council has incurred a financial loss by allowing a large debt to build up unnecessarily and by failing to secure a charge on the assets of the company.
- The Council has failed in its corporate governance/transparency in that
 - There was a lack of transparency throughout the decision making process, with decision taking limited to a small group of officers, the Leader and the Portfolio Holder;
 - The debt deferral and repayment agreements with TEF had significant financial implications and should have been reported to Members as a Key Decision;
 - Significant budget variations should have been reported to Members.

- 1.2 The auditor was asked to:
- Apply to the court for a declaration that the Council has incurred unlawful expenditure by making a fees and charges agreement with TEF;
 - Issue a report in the public interest regarding the failure of the Council to account for the expenditure in respect of TEF;
 - Issue a report in the public interest regarding the failure of the Council to achieve value for money.
- 1.3 The auditor has reviewed the written submissions and representations from the objectors; reviewed internal reports taken to Management Team or Cabinet; reviewed correspondence between the Council and TEF; made enquires of relevant officers and sought legal advice. The auditor's findings are attached at Annex 1.
- 1.4 The auditor has concluded that he does not think that the items of account were unlawful and does not intend to issue a report in the public interest. However, some specific recommendations for the Council have been highlighted within the report. These recommendations have been considered by senior managers and their comments on the report are detailed below.

2.0 Response to Auditors Recommendations

2.1 Overall, the Council considers the auditor's report to be fair and balanced.

2.2 The following comments are made in respect of the report:

'Decision to Defer Payment was Key Decision'

2.2.1 The auditor has concluded that the Council failed to comply with the requirements of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 because the decision to defer the payment from TEF of harbour dues was a key decision and the Council should therefore have notified the Chair of the Overview and Scrutiny Panel. A 'Key Decision' is defined in the Regulations as an executive decision which is likely:

- (a) *To result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates; or*
- (b) *To be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.*

However, the Council's view is that this was not a key decision for three reasons:

- Firstly, the decision at the time it was made could not have resulted in the making of significant savings or the incurring of significant expenditure, thus failing to satisfy the 'financial' test. The auditor agrees with this in his response.
- Secondly, at the time the decision was taken, it was unlikely to have had a significant effect on communities living or working in two or more wards, thus failing the 'community impact' test. In this regard the auditor concluded that the decision would have had a significant impact due to 'the value that the cross-channel ferry operator added to the district in terms of supporting local employment and the supply chain benefits that it brought.' However, as the Port of Ostend was the home port for TEF and the boats were crewed by foreign nationals, the TEF ferry service did not as a matter of fact support significant local employment in any ward thus failing the

requirement to have a significant effect on communities living or working in two or more wards in the district. This view is supported by creditor information derived from the receivers of TEF which show that the principal supply chain beneficiaries were Belgium companies located in and around the Port of Ostend.

- Thirdly, the proposals on the fee structure were to preserve an existing situation rather than to propose a change that would have a significant impact on the local economy.

The Council's view, therefore, is that this was not a key decision and therefore the Council was not under a specific duty to notify the Chair of the Overview and Scrutiny Panel

'Contemporaneous Notes of Key Decisions with Commercial Partners to be kept'

'Notes of key discussions between senior management team and members of the executive to be kept'

- 2.2.2 Commercially sensitive discussions need to be held confidentially in order for these to be meaningful and allow proposals to be discussed fully. Potentially such discussions can have significant financial consequences for the Council and therefore the auditor has recommended that contemporaneous notes of key discussions with commercial partners and between the senior management team and members of the executive are kept. The Council agrees with this and formal notes are now being taken at key meetings. However, with respect to the TEF discussions, the meetings themselves were followed up with considerable contact with TEF setting out the agreed action and having meeting notes would not have changed the approach taken or the position the Council now finds itself in with regard to the recovery of the debt.

'Raising Confidence in the Maintenance of Confidentiality'

- 2.2.3 It was the view of the Chief Executive and the Leader that sharing this decision more widely would have compromised commercial confidentiality resulting in serious harm to the commercial interest of both the Council and TEF. The Auditor has therefore recommended that the Council considers the steps it could take to improve confidence in its ability to maintain commercial confidentiality, thus enabling decisions to be shared more widely with key members.
- 2.2.4 The Council fully support this sentiment in principle, but the fact remains that all too often commercially sensitive and/or confidential information finds its way into the public domain not because of any inherent weaknesses in the Council's decision making and reporting processes (which are fit for purpose) but by human agency. In this regard, if there was evidence that the person leaking such information was a Council officer then formal action would be instituted under the Council's disciplinary procedures, which could result in the dismissal of the officer in question. However, if there was evidence to show that the leak was by an elected member that would be referred to the Standards Committee as an alleged breach of the Members Code of Conduct. In this respect the Auditor's attention is drawn to the fact the Standards Committee currently lacks the power to apply any meaningful sanctions if a councillor is in breach of the Members Code of Conduct discloses commercially sensitive or confidential information. Indeed one councillor has gone on record to make it clear that he intends to disclose confidential or commercially sensitive information that comes into his possessions if he considers that it is in the public interest to do so.
- 2.2.5 This is the real world context in which the Council has to try to maintain confidences and protect commercially sensitive information from disclosure. Consequently, the Council will continue on a case by case basis to balance the need to preserve commercial confidentiality against the risk of compromising that objective by sharing such information

more widely internally. However, doubts are likely to continue to be resolved in favour of the preservation of commercial confidentiality given the potential financial and legal implications of the Council fails to do so.

- 2.2.6 The Council proposed action plan in response to the recommendations made within the auditor's report is shown at Annex 2 to this report.

3.0 Corporate Implications

3.1 Financial

- 3.1.1 As a consequence of the auditor undertaking this review in response to the three objectors, an additional audit fee of £15,000 has been incurred by the Council.

3.2 Legal

- 3.2.1 The council's position with regard to the application of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 is set out in paragraph 2.1.3 above.

3.3 Corporate

- 3.3.1 The findings of the audit report will assist in the revision and development of more robust governance arrangements for consulting on, and recording decisions taken.

3.4 Equity and Equalities

- 3.4.1 There are no equity and equalities implications.

4.0 Recommendation

- 4.1 **That Governance and Audit accept the auditor's report.**

- 4.2 **That Governance and Audit approve the action plan at Annex 2 to this report and note the action already taken.**

Contact Officer:	Sarah Martin, Financial Services Manager & Deputy S151
Reporting to:	Sue McGonigal, Chief Executive & S151

Annex List

Annex 1	Auditor's report
Annex 2	Action plan

Corporate Consultation

Legal	Harvey Patterson, Corporate and Legal Services Manager
Finance	Sarah Martin, Financial Services Manager and Deputy S.151 Officer

Councillor John Worrow
Chair of Governance and Audit Committee
Thanet District Council
P.O. Box 9
Cecil Street
Margate
Kent CT9 1XZ

28 January 2014

Dear Councillor Worrow

Thanet District Council: audit response to objection on the 2012/13 accounts in respect of Transeuropa Ferry Service

During the audit of the 2012/13 financial statements, we received objections on the accounts from three local electors in respect of Transeuropa Ferry Service and associated companies (TEF). Whilst we were satisfied that the issue did not impact on our opinion on the accounts or value for money conclusion, we did need to hold open the certificate of closure on the audit pending completion of our review.

We have now concluded our work and issued our formal statement of reasons. This letter sets out for you the results of our work as well as the recommendations arising.

The objection

We received objections to the accounts from the following local electors:

- Councillor I Driver: 12 August and 9 September 2013
- Mr M Kirkaldie: 17 August 2013
- Mr P Miles: 4 September 2013

For simplicity and ease of reference, we have considered all the objections raised within this letter. The following assertions have been made by the three local electors:

- The Council acted unlawfully in making a fees and charges agreement with TEF and associated companies, which is contrary to Article 107 of the Consolidated Treaty on the functioning of the European Union.
- The Council failed to recognise expenditure relating to TEF in the 2012/13 accounts.
- The Council has failed to achieve value for money in its dealings with TEF. In particular:
 - the payment deferral and repayment arrangements are not supported by contractual agreements;
 - the Council failed to undertake an assessment of the risk of deferring harbour duties and related charges to TEF;

- the Council's section 151 officer failed to provide an adequate response to Councillors on the robustness of estimates made in the 2012/13 budget;
- the Council has incurred a financial loss by allowing a large debt to build up unnecessarily and by failing to secure a charge on the assets of the company.
- The Council has failed in its corporate governance/transparency in that
 - there was a lack of transparency throughout the decision making process, with decision taking limited to a small group of officers, the Leader and the Portfolio Holder;
 - the debt deferral and repayment agreements with TEF had significant financial implications and should have been reported to Members as a Key Decision;
 - significant budget variations should have been reported to Members.

They asked us to:

- apply to the court for a declaration that the Council has incurred unlawful expenditure by making a fees and charges agreement with TEF;
- issue a report in the public interest regarding the failure of the Council to account for the expenditure in respect of TEF;
- issue a report in the public interest regarding the failure of the Council to achieve value for money.

Background

On 25 April 2013 the Council received notification of the collapse of TEF following the seizure of two vessels in Ostend, forcing the company to file for bankruptcy.

TEF had traded with both Thanet and the Port of Ostend for over fifteen years. For most of this period the business had been a profitable one and the company was regarded as a valuable partner by the Council. However since 2010 the cross channel ferry business had become much more difficult, with significant fuel price increases and what appeared to be predatory pricing from competitors.

In November 2010 TEF alerted the Council to its financial difficulties. The two parties began a series of discussions intended to share an understanding of the current position, and the actions which TEF proposed to return to profitable trading.

Over the next two and a half years, whilst the company explored a range of options for recovery including potential new investment, it remained in trading difficulties. In December 2012 the company succeeded in bringing a new vessel into service, and in January 2013 it agreed revised 'Heads of Terms' (a trading agreement) with the Council.

Unfortunately TEF was unable to secure the full planned investment and in April 2013 the company went into liquidation. At the time of its demise TEF owed the Council £3.4 million. The Council is taking legal action to attempt to recover the debt. It made a provision in full for the debt in its 2012/13 accounts.

Work carried out

We have undertaken the following work:

- We reviewed the written submissions from local electors
- We reviewed internal Council reports taken to Management Team or Cabinet;
- We reviewed correspondence between the Council and TEF;
- We made some enquiries of the Council.

We also took our own legal advice.

Findings

Our conclusion is that we do not consider that the items of account were unlawful and we have decided not to issue a report in the public interest. We do however have some specific recommendations for the Council, which we set out at the end of this letter.

We have set out our reasons for this view and our response to the detailed issues the electors have raised below:

- a) The electors assert that the Council acted unlawfully in making a fees and charges agreement with TEF, which is contrary to Article 107 of the Consolidated Treaty on the functioning of the European Union.

In making a fees and charges agreement, the Council deferred the timescale for repayment of the debt. It did not however waive any of the debt. We consider this is an important distinction, as deferring the timescale for repayment of debt is often used by both public and private sector bodies as a means of increasing the chances of repayment, for example by reducing the likelihood of a company going into liquidation. In this sense, debt deferral is very different from deficit funding, which could be construed in some circumstances as unlawful. From our review of contemporaneous papers, including the reports to the Council's Management Team of 22 and 29 March 2011, lawful debt deferral would clearly appear to be the intent in this instance.

We are aware that a submission has been made by a number of individuals to the European Commission (EC), arguing that the payments to the company represented State Aid. At the date of this letter, no decision has been made by the EC although we are aware of a provisional decision that it is not considered to be contrary to the State Aid rules. You will see from the conclusions below that we have decided not to take any further formal audit action. Whether or not the fees and charges agreement is contrary to State Aid rules and whether or not this gives rise to an item of account contrary to law, we would not be seeking a declaration from the court/issuing a public interest report. In our view, this particular aspect may subsequently and definitively be ruled upon by the EC and this presents an alternative route for the objectors. Given the expense involved in the auditor pursuing this particular aspect (which ultimately falls on local tax payers), and given the EC engagement, we do not propose to take this particular issue any further.

- b) The electors assert that the Council failed to recognise expenditure relating to TEF in the 2012/13 accounts.

As part of our year end accounts audit, we specifically considered the transactions relating to TEF. In our view expenditure has been properly recorded in the 2012/13 financial statements. We note that:

- The Council maintains a Maritime Debtor account where all income and expenditure relating to the port is recorded.
- Outstanding debt with TEF was disclosed in full in the Explanatory Foreword to the financial statements
- The balance due in respect of TEF was included in full within the Balance Sheet, under the 'Short Term Debtors' heading
- The balance was also provided for in full within the Balance Sheet within the 'Impairment Provision.'

We therefore disagree with the assertion made.

- c) The electors assert that the Council has failed to achieve value for money in its dealings with TEF. In particular that:
- the payment deferral and repayment arrangements are not supported by contractual agreements;
 - the council failed to undertake an assessment of the risk of deferring harbour duties and related charges to TEF;
 - the Council's section 151 officer failed to provide an adequate response to Councillors on the robustness of estimates made in the 2012/13 budget;
 - the Council has incurred a financial loss by allowing a large debt to build up unnecessarily and by failing to secure a charge on the assets of the company.

We consider each of these issues in turn below:

Assertion: The payment deferral and repayment arrangements are not supported by contractual agreements.

Finding: Transactions with TEF were subject to a contractual agreement. Under this agreement, TEF was charged for the use of the port in line with the Council's standard tariff rate.

Once TEF got into financial difficulties, a number of meetings were held by the Council with TEF and its representatives, and revised arrangements for repayment were agreed. These did not result in any reduction in payment due to the Council, but rather adjustments to the timing of the payments made. The terms of the revised repayment arrangements are set out in, amongst others, a letter from the Director of Regeneration to TEF on 11 April 2011 and the letter of 9 January 2013 containing Heads of Terms.

We therefore conclude that whilst a separate contractual agreement was not drawn up, revised repayment arrangements ('Heads of Terms') were agreed. In our view this was a reasonable approach for the Council to take and we do not propose to issue a report in the public interest on this matter. In the course of our review we did however note that full minutes have not been kept of the meetings with TEF. Given the sensitivity of the issue, we would have expected a better record to be kept of these discussions and we will make a specific recommendation to the Council on this point.

Assertion: The council failed to undertake an assessment of the risk of deferring harbour duties and related charges to TEF. The Council's section 151 officer failed to provide an adequate response to Councillors on the robustness of estimates made in the 2012/13 budget.

Finding: Section 25 of the Local Government Act 2003 places a statutory obligation on the Section 151 Officer at budget setting time to report on the robustness of the estimates used for calculating the budget.

We have reviewed the 2012/13 budget report submitted to the extraordinary council meeting on 9 January 2012 and are satisfied that it sets out adequately the Council's arrangements to ensure the robustness of estimates. We note that the detailed calculations include allowance for the risk of bankruptcy of a major customer, and the Council added this risk to its risk register. TEF was not separately identified in the report for reasons of commercial sensitivity, but the report did highlight the broader risk of the failure of a major customer. In our view there has been no breach of section 25 of the Local Government Act 2003. We do not therefore propose to issue a report in the public interest on this matter.

Assertion: The Council has incurred a financial loss by allowing a large debt to build up unnecessarily and by failing to secure a charge on the assets of the company.

Finding: Our review of the documentation provided by the Council shows that there were ongoing discussions from the point when TEF first got into financial difficulties in November 2010 through to its collapse in April 2013. The Council's internal reports – such as for example the report to Corporate Management Team of 22 and 29 March 2011 – demonstrate that the Council considered a range of alternative options, including cessation of the service. Overriding considerations were judged to be the regular contribution from the service to the Council of £1.2 million a year, and the difficulty of finding immediate replacements or alternative operators. This latter point is demonstrated by the fact that no alternative supplier has yet been found, nearly nine months after TEF's demise.

During 2012, our review of the documentation provided by the Council shows that the Council continued its regular dialogue with TEF and a potential new group of investors. In July 2012 TEF began making repayments to the Council of £85,000 per month and in December 2012 it acquired a new vessel (the Ostend Spirit) which the Council believed to be a positive sign of the firm's potential future viability. We consider this a reasonable judgement to have reached.

The Chief Executive and Monitoring Officer state that they did consider options such as taking a charge on or seizing the assets of TEF. They argue that a consequence of doing so would have been the likely liquidation of the company, with impact on jobs and future income stream. As above, we believe this is a reasonable position to take, especially as debts would be required to be linked to specific ships, meaning that the amount the Council could claim back from seizing one ship would be limited. In this regard we have taken into account the report to Transeuropa Debt Review TFG dated 20 January 2014, which whilst confirming that the Council is unlikely to recover the debt owed to the Council by Transeuropa creditors does not change our view that the Council acted reasonably in its dealings with this matter.

We therefore consider overall that the Council has taken reasonable action in this area and we do not propose to issue a report in the public interest on this matter. We note however that, given the magnitude of the transactions involved, and the complex nature of the discussions, the Council's in house resources will have been stretched by having to deal with the issue. With the benefit of hindsight, there would have been merit in the Council obtaining specialist external legal advice sooner than it did on this issue, although we accept that had it done so it would not necessarily have taken any different steps. This would however have provided further assurance in terms of the appropriateness of the Council's actions. We will make a recommendation to this effect to the Council.

d) The electors have asserted that the Council failed in its corporate governance/transparency in that:

- there was a lack of transparency throughout the decision making process, with decision taking limited to a small group officers, the Leader and the Portfolio Holder;
- the debt deferral and repayment agreements with TEF had significant financial implications and should have been reported to Members as a Key Decision;
- significant budget variations should have been reported to Members.

These are considered in turn:

Assertion: There was a lack of transparency throughout the decision making process, with decision taking limited to a small group officers, the Leader and the Portfolio Holder.

Finding: Regular meetings were held by the Council's senior management with the Leader and Portfolio Holder throughout the discussions with TEF. Formal reports were also considered for example at Corporate Management Team on 22 and 29 March 2011 and at a joint Cabinet/ Senior Management Team meeting on 11 October 2011. Detailed reports were not however put in the public domain, either via Cabinet or Council, and TEF was not specifically identified on the Council's risk register. The report to Corporate Management Team of 22 March 2011 notes the 'huge commercial confidentiality' of the issue, with both officers and Cabinet members being of the view that putting the discussions in the public domain could jeopardise TEF's chances of commercial recovery. The most relevant decision for the purposes of this objection in our view, is that taken by the Director of Corporate Services on and communicated to TEF in the letter dated 9 January 2013 enclosing the Heads of Terms of the deferred fees and charges contract variation.

The high sensitivity and commercial confidentiality of this matter and its significance to the Council and local taxpayers were negative publicity to have jeopardised TEF's continued operation must be considered here. In this context, in our view it was reasonable, subject to the paragraphs below with regard to Overview and Scrutiny, for the decision making to be at senior officer level and member involvement to be limited to the Leader and Executive. The letter from TEF of 11 March 2011 highlights the importance to TEF of commercial confidentiality.

Assertion: The debt deferral and repayment agreements with TEF had significant financial implications and should have been reported to Members as a Key Decision.

Finding: We note the assertion that the discussions with TEF should have been treated as a 'Key Decision' and therefore reported to full Council. The relevant debt deferral and

repayment agreement in the 2012/13 period was, as noted above, made in January 2013, following a meeting with TEF and investors in October 2012. As such, the relevant rules on 'Key Decisions' in this instance are governed by the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, SI 2012/2089 ("the 2012 Regulations"), which replaced the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272 ("the 2000 Regulations") on 10 September 2012. It should be noted that, unlike the 2000 Regulations, the 2012 Regulations contain no requirement to include Key Decisions in a forward plan.

Under Regulation 8(1) of the 2012 Regulations (which is materially similar to Regulation 8 of the 2000 Regulations), a 'Key Decision' means an executive decision, which is likely:

- (a) to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority's budget for the service or function to which the decision relates; or*
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.*

The Council's Executive and Management Team did not consider the issue to fall into (a), as the debt deferral did not result in any reduction in the amount owed by TEF, but rather extended the period for repayment. Regardless of the merits of this argument, given the value that the cross-channel ferry operation added to the district in terms of supporting local employment and the supply chain benefits that it brought, it seems likely that the decision would fall into (b). In this regard, we have taken into account Article 13 of the Council's constitution, which covers decision making. It seems to us that this contract variation was designed to sustain TEF's ability to continue with the contractual arrangements with the Council and thereby to safeguard the significant local employment and income both locally and to the Council itself. The impact of the decision should have been measured against the alternative, that is the potential failure of TEF if the contract variation was not pursued.

Under Regulation 9 of the 2012 Regulations, there are publication requirements before Key Decisions may be made, providing the details set out in Regulation 9(1). Although provisions are made in respect of confidentiality in Regulations 9(3) and 20, and exceptions to the requirement of publication are provided for in Regulation 10 (where publication is impracticable) and Regulation 11 (cases of special urgency), the Executive and Management Team did not consider that this was a Key Decision at all. We accept that the matters under consideration were highly sensitive and in all likelihood commercially confidential. Thus, it may well be the case that the net effect of regulations 9(3), 10(1) and 20 are that no publication was required; it appears to us however that this is likely to have been a "Key" decision which at least required that the Chair of the Overview and Scrutiny Committee was informed in accordance with regulation 10(1) before the decision was taken. This did not happen. Indeed, given that Councillor Driver was at the relevant time the Chair of the Overview and Scrutiny Committee, we do understand why he has raised concerns.

The consequences of failing to treat a decision as a Key Decision are set out in Regulation 18 of the 2012 Regulations. Where the relevant Overview and Scrutiny Committee are of the opinion that the decision should have been treated as a Key Decision, that Committee may require the Executive which is responsible for the decision to submit a report to the relevant local authority within such reasonable period as the Committee may specify. We do not consider that failure to comply with the requirements of regulations 9 and 10 in and of itself renders the decisions taken unlawful.

As such, we do not propose to seek a declaration under section 17 or, given the amount of public information in relation to this matter already in the public domain, to issue a report in the Public Interest on this matter. We do however make recommendations in this regard below.

Finally under this heading, in the course of our review, we noted that the minting of discussions between the senior management team and members of the Executive was limited. Given the sensitivity of the issue, we would have expected a better record to be kept of these discussions and we will make a specific recommendation to the Council on this point.

Assertion: Significant budget variations should have been reported to Members

Finding: Until September 2013 the Council had no requirement within its Financial Procedure rules for the reporting of large outstanding debts to Council. In our view, the rescheduling of the debt did not amount to a budget variation that required, in accounting terms or under any provision of the Council's constitution, reporting to full Council. In this regard, we have considered all those provisions mentioned in paragraph 6 of Councillor Driver's letter of 12 August 2013. In particular, we have accepted the Council's assertion that whether or not something does amount to a budget variation is a question of fact for the Council. In the event, we agree with the Council's view of this matter such that it was not obliged to report the contract variation to Council.

In a report to Governance and Audit Committee the Council acknowledged the need to strengthen its regulations in respect of aged debts. It has introduced revised Financial Procedures requiring the reporting of aged debts over £150,000 to Council.

In our view, the strengthening of the reporting requirements through the revision of the Financial Procedures to require the reporting of aged debts over £150,000 to Council is both necessary and appropriate. We are satisfied that now that the Council has taken action to strengthen its debt reporting requirements, little or no purpose would be served by us issuing a report in the public interest on this matter.

We note however that had these reporting requirements been in place during 2012/13, the Council would have had to judge whether the commercial sensitivity of the debt outweighed the importance of keeping Members informed about significant financial matters. We recommend that the Council explores ways to share commercially sensitive information with Members without confidentiality being breached. This may require, for example, the increased use of confidentiality clauses for sensitive information. It will also require all Members to respect the sensitive nature of the information they have been given, and not to use the information provided for political purposes.

Conclusion

In summary, we do not consider that the items of account were unlawful and we do not intend to issue a report in the public interest. We do however have some specific recommendations for the Council which are set out below.

Application to the Court

We do not propose to seek a declaration under section 17 of the Audit Commission Act. As explained above, there is an alternative route for this issue to be determined.

Report in the Public Interest

Whether or not to issue a report in the public interest is a matter for us in the exercise of our discretion. We have decided not to issue such a report because:

- we do not consider that the Council failed to account properly for the transactions relating to TEF;
- we have no concerns about the processes followed by the Council which are significant enough to require us to issue a report in the public interest.

We do however have some recommendations for the Council which we are reporting to you as the Chair of the Council's Governance and Audit Committee. Specifically these are in respect of:

- the need to ensure that the 2012 Regulations are complied with, in particular the notification to the Chair of Overview and Scrutiny even where a Key Decision is confidential in nature;
- the need to keep contemporaneous notes of key discussions with commercial partners;
- the need to keep notes of key discussions between the senior management team and members of the executive;
- the need to consider the use of external advice for complex or specialist legal areas.

We are concerned that the deferred fees and charges contract variation was not brought to the attention of the Overview and Scrutiny Committee, either through its Chair or its members. It may be that there was concern that confidentiality would be difficult to maintain and for this reason Member scrutiny was constrained. We have some sympathy for this position given the high sensitivity and commercial confidentiality in this matter and that there have been recent examples at the Council of confidential matters being leaked to the media. This may be a matter of wider concern that the Council should consider as the requirements for Council reporting, Overview and Scrutiny and consideration of matters in the private part of meetings are extremely important aspects of ensuring good corporate governance and appropriate accountability. We recommend therefore more generally:

- that the Council considers ways in which it may raise confidence in the maintenance of confidentiality within its decision making and reporting structures.

Yours sincerely

Grant Thornton UK LLP

cc

Dr Sue McGonigal, Chief Executive, Thanet District Council

Mr Harvey Patterson, Monitoring Officer, Thanet District Council

ACTION PLAN

Audit recommendation	Agreed action	Timescale
Chair of Overview and Scrutiny to be notified of key decisions, even where confidential in nature	With regard to the TEF debt, it is the Council's view that this was not a key decision within the terms of the 2012 Regulations. Moving forward, the Chair will be notified of all key decisions, even where issues are confidential. The Council has already adopted a policy in 2013 following the failure of TEF of reporting debts over £150,000.	Immediately
Contemporaneous notes of key decisions with commercial partners to be kept	Notes are now being taken of all key meetings.	Actioned
Notes of key discussions between senior management team and members of the executive to be kept	Notes are now being taken of all key meetings.	Actioned
External advice to be considered for complex or specialist legal areas	External advice will continue to be sought based on the balance of benefit, cost and risk.	Immediately
Consideration of ways in which the Council may raise confidence in the maintenance of confidentiality within its decision making and reporting structures	Sharing of key commercially sensitive material will be judged on a case by case basis. Whilst the regular release of this confidential material to third parties is still occurring, decisions on the sharing of material will favour the restriction of information, unless its confidentiality can be guaranteed by other means.	Immediately

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THANET DISTRICT COUNCIL DECLARATION OF INTEREST FORM

Do I have a Disclosable Pecuniary Interest and if so what action should I take?

Your Disclosable Pecuniary Interests (DPI) are those interests that are, or should be, listed on your Register of Interest Form.

If you are at a meeting and the subject relating to one of your DPIs is to be discussed, in so far as you are aware of the DPI, you **must** declare the existence **and** explain the nature of the DPI during the declarations of interest agenda item, at the commencement of the item under discussion, or when the interest has become apparent

Once you have declared that you have a DPI (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must:-**

1. Not speak or vote on the matter;
2. Withdraw from the meeting room during the consideration of the matter;
3. Not seek to improperly influence the decision on the matter.

Do I have a significant interest and if so what action should I take?

A significant interest is an interest (other than a DPI or an interest in an Authority Function) which:

1. Affects the financial position of yourself and/or an associated person; or
Relates to the determination of your application for any approval, consent, licence, permission or registration made by, or on your behalf of, you and/or an associated person;
2. And which, in either case, a member of the public with knowledge of the relevant facts would reasonably regard as being so significant that it is likely to prejudice your judgment of the public interest.

An associated person is defined as:

- A family member or any other person with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- Any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
- Any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000;
- Any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
- any body in respect of which you are in a position of general control or management and which:
 - exercises functions of a public nature; or
 - is directed to charitable purposes; or
 - has as its principal purpose or one of its principal purposes the influence of public opinion or policy (including any political party or trade union)

An Authority Function is defined as: -

- Housing - where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease; or
- Any allowance, payment or indemnity given to members of the Council;
- Any ceremonial honour given to members of the Council
- Setting the Council Tax or a precept under the Local Government Finance Act 1992

If you are at a meeting and you think that you have a significant interest then you **must** declare the existence **and** nature of the significant interest at the commencement of the

matter, or when the interest has become apparent, or the declarations of interest agenda item.

Once you have declared that you have a significant interest (unless you have been granted a dispensation by the Standards Committee or the Monitoring Officer, for which you will have applied to the Monitoring Officer prior to the meeting) you **must**:-

1. Not speak or vote (unless the public have speaking rights, or you are present to make representations, answer questions or to give evidence relating to the business being discussed in which case you can speak only)
2. Withdraw from the meeting during consideration of the matter or immediately after speaking.
3. Not seek to improperly influence the decision.

Gifts, Benefits and Hospitality

Councillors must declare at meetings any gift, benefit or hospitality with an estimated value (or cumulative value if a series of gifts etc.) of £100 or more. You **must**, at the commencement of the meeting or when the interest becomes apparent, disclose the existence and nature of the gift, benefit or hospitality, the identity of the donor and how the business under consideration relates to that person or body. However you can stay in the meeting unless it constitutes a significant interest, in which case it should be declared as outlined above.

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 and Scrutiny Manager well in advance of the meeting.

DECLARATION OF DISCLOSABLE PECUNIARY INTERESTS, SIGNIFICANT INTERESTS AND GIFTS, BENEFITS AND HOSPITALITY

MEETING.....

DATE..... AGENDA ITEM

DISCRETIONARY PECUNIARY INTEREST ☐

SIGNIFICANT INTEREST ☐

GIFTS, BENEFITS AND HOSPITALITY ☐

THE NATURE OF THE INTEREST, GIFT, BENEFITS OR HOSPITALITY:

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

NAME (PRINT):

SIGNATURE:

Please detach and hand this form to the Democratic Services Officer when you are asked to declare any interests.