

MINUTES of the meeting of Audit and Governance Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford, HR1 1SH on Tuesday 19 February 2013 at 10.00 am

Present: Councillor J Stone (Chairman)
Councillor JW Millar (Vice-Chairman)

Councillors: CNH Attwood, EMK Chave, PGH Cutter, TM James, Brig P Jones CBE, PJ McCaull and C Nicholls

In attendance: J Bharier and DR Stevens MBE, Independent Persons

43. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor AJ Hempton-Smith. Apologies had also been received from Councillor A Seldon, Chairman of General Overview and Scrutiny Committee.

44. NAMED SUBSTITUTES (IF ANY)

In accordance with paragraph 4.1.23 of the Council's Constitution, Councillors* C Nicholls attended the meeting as a substitute member for Councillor AJ Hempton-Smith.

The Chairman welcomed the following to the meeting, alongside the expected Councillors and officers: Phil Jones and Terry Tobin (external audit, Grant Thornton) in respect of agenda items 5 and 6 (minutes 47 and 48 below), Mukhtar Khangura (internal audit, KPMG) for item 7 (minute 49), and Jake Bharier and David Stevens MBE (Independent Persons) for item 8 (minute 50 below).

45. DECLARATIONS OF INTEREST

No declarations of interest were made.

46. MINUTES

The Head of Governance / Monitoring Officer drew attention to minute 41 (Standards Panel Report - 22 November 2012) and, to reflect the intention of the Committee to report the outcome to Council, recommended the following amendments to the resolution:

- 'That:
- (a) The report of the Standards Panel meeting on 22 November 2012 be ~~approved~~ *noted*; and
 - (b) The *following* recommendations of the Independent Person be approved:
 - 1) *the Audit and Governance Committee present a report on the consideration of the investigation of the complaint to Council*; and
 - 2) the Monitoring Officer be requested to arrange training for the subject member, to be undertaken by the subject member within three months of the date of this meeting.'

RESOLVED: That subject to the above amendments, the minutes of the meeting held on 5 December 2012 be approved as a correct record and signed by the Chairman.

47. ANNUAL AUDIT FEE LETTER

The Chief Officer Finance and Commercial confirmed that Grant Thornton had been appointed as the external auditors to the Council. The representatives from Grant Thornton were invited to present the report and comment on the Annual Audit Fee Letter. The key considerations were identified as follows:

- i. The scale fee for the Council for 2012/13 was £164,803 which compared to the audit fee of £274,672 for 2011/12, a reduction of 40%. It was emphasised that the reduced fee would not diminish the quality of the audit work.
- ii. Attention was drawn to the outline audit timetable which included the timing of the final accounts audit and value for money conclusion.
- iii. In view of the demanding financial context, the authority would need robust policies to cope with the scale of the savings required.

In response to a question about reference to 'a composite indicative fee', Mr. Jones of Grant Thornton explained that this related specifically to the certification of grant claims and returns. He added that the composite indicative fee had been adjusted to reflect a reduction in the number of schemes and, at £10,600, was a small proportion of the total audit fee.

Committee Members welcomed the reduction in the audit fees but further clarification was sought about arrangements for additional work. It was reported that each additional piece of work would be separately agreed and a detailed project specification and fee agreed with the Council. Committee Members suggested that consideration be given to the associated financial implications and risks. In response to a question, Mr. Tobin of Grant Thornton confirmed that the £274,672 was the actual figure for 2011/12.

The Chairman drew attention to paragraph 15.2 of the report which stated that 'Certain assumptions are included such as Hoople providing appropriate access and working papers of the required standard'. Mr. Tobin said that the position was within the control of the Council and he was encouraged by the improvements discussed with Hoople.

A Committee Member commented that any contract could appear to be good value superficially and it was critical that the auditors had the means to identify flaws and waste. Mr. Jones said that auditors could not look at every contract and relied on a systematic approach which focused on the main risks. Previewing the following agenda item, he said that Grant Thornton would be seeking assurances from the Council that appropriate systems were in place.

RESOLVED: That

- (a) **Audit and Governance Committee notes the content of Grant Thornton's Annual Fee letter; and**
- (b) **Audit and Governance Committee notes* the planned outputs.**

48. COMMUNICATION WITH THE AUDIT AND GOVERNANCE COMMITTEE

The Committee received a report which outlined the process to ensure that there is effective two-way communication between the Audit and Governance Committee and the external auditor.

Mr. Tobin advised that the external auditor was required to ask 'those charged with governance' (the Audit and Governance Committee, supported by the Council's officers) how responsibilities were discharged in the following areas: fraud; laws and regulations; going concern; related party transactions; and accounting for estimates. Attention was drawn to the 'Auditing Standards - Communication with the Audit Committee' document appended to the report which set out a series of questions from the external auditor and the corresponding management responses. It was noted that the questions also related to important aspects of the Terms of Reference of the Committee.

A Committee Member said that the document was logical and provided context to the role of the Committee. In response to a question, Mr. Tobin advised that the process conformed to International Standards on Auditing at a high level but it also sought to identify what happens specifically at this Council. It was noted that the document would be updated in due course to reflect experiences gained by Grant Thornton in working with other authorities.

The Vice-Chairman said that the Committee should not lose sight of the document and Mr. Tobin advised that the content would be revisited alongside the Letter of Representation. He added that any significant changes in the interim would be notified to the Committee through the normal reporting mechanism.

The Chairman suggested that Members review the document again in advance of the informal meeting with the auditors following the Committee meeting on 15 March 2013.

Referring to the 'Hereford Futures Governance Update' received by the General Overview and Scrutiny Committee (minute 27 of 14 January 2013 refers), a Committee Member commented that the Audit and Governance Committee should receive reports about *the governance of* related parties. The Chief Officer Finance and Commercial noted that the membership details of partner organisations had been circulated to Committee Members previously and said that this could be refreshed. Committee Members expressed a wish to receive reports at future meetings.

A Committee Member suggested that the report title be reviewed and a dating method utilised to enable comparison with previous years in the future.

RESOLVED: That the Audit and Governance Committee notes the content of Grant Thornton's report as attached as Appendix A to the report.

49. INTERNAL AUDIT PROGRESS 2012/13

The Committee received an update on the progress of internal audit work and internal control issues arising from work recently completed. The principal points covered by Mr. Khangura included:

1. To date, seven audit reviews had been finalised and nine reviews were being completed by Audit Services, with draft reports issued in four areas.
2. Two areas had been graded as providing 'limited assurance', these being Income Collection - Industrial Lets and Public Health - Food Licensing. These areas would be reviewed as part of the 2013/14 audit work to ensure that recommendations had been implemented.
3. In respect of Industrial Lets, it was reported that the Council needed to establish a clear framework of control, undertake reconciliation, and tighten processes. Furthermore, Audit Services had identified incorrect commercial lets which meant that some income had not been received in 2012/13 but this was being rectified.

4. In terms of Food Licensing, the Council needed to develop the function's controls in a number of areas, including documentation associated with food hygiene inspections, follow up inspection visits, and staff training.
5. Two areas had been graded as providing 'Substantial Assurance', these being Treasury Management and Council Tax/National Non-Domestic Rates.
6. A number of reviews were currently being completed by Audit Services and any significant issues arising from these areas would be reported to future meetings of the Committee.
7. Audit Services had received very positive feedback to date in response to an audit satisfaction questionnaire circulated to key service managers involved in the audit process so far.

A Committee Member commented that the contamination of beef products with horsemeat was entirely unrelated to the audit review of Food Licensing, nevertheless the authority needed to be aware of the implications and potential reputational risks associated with recent international developments.

The Chairman proposed that an update on the implementation of recommendations in respect of Food Licensing be made at the next, or a subsequent, Committee meeting. A Committee Member noted the statement that 'reporting to the Regulatory Committee required further development' and said that clarity was needed about the appropriate route to progress this element and for a level of assurance to be provided regarding the effectiveness of the process. Another Committee Member commented on potential consumer confusion about the award of 'stars' for food hygiene inspections.

With reference to the audit review of IT systems, it was requested that information be shared with both the General Overview and Scrutiny Committee and the Health and Social Care Overview and Scrutiny Committee to assist imminent work in relation to IT.

A Committee Member, using the example of the Yazor Brook flood alleviation scheme, commented on the need for assurance that appropriate systems were in place in respect of procurement and the monitoring of contracts. Mr. Khangura outlined the approach for the audit review of procurement, including the sampling of some contracts. In response to comments by Committee Members, the Chief Officer Finance and Commercial explained that an allocation had been made in the budget in respect of remedial works associated with the Yazor Brook flood alleviation scheme but actual costs would depend on the solution and liability determinations. The Vice-Chairman noted that the focus of the Committee should be on outcomes rather than on the details of specific contracts.

Committee Members were concerned about the position with Industrial Lets, particularly given the potential impact of accumulated arrears on business finances. The Chief Officer Finance and Commercial commented on the need to keep industrial assets fully occupied, particularly given the implications of the business rates retention scheme that commences in April 2013, and said that the authority would continue to look carefully at particular circumstances with individual businesses. A Committee Member said that Herefordshire needed to be 'open for business', the county could not afford to lose employers, and the regular collection of rental charges assisted with financial management.

In response to a question from a Committee Member, Mr. Khangura explained that Audit Services, rather than Council managers, selected samples and he briefly outlined audit sampling methodology.

Concerns were expressed about the management of licences and tenancy issues at Hereford Butter Market and the Chief Officer Finance and Commercial said that he would refer the matter to the Director for Places and Communities.

Committee Members commented on the challenging economic conditions for local businesses and the wider economy. The Chief Officer Finance and Commercial said that the Council did all it could to support businesses, such as small business rate relief, but trading conditions had the biggest influence on commercial viability.

A Committee Member said that income collection was a fundamental task and was alarmed at the situation with Industrial Lets. The Chief Officer Finance and Commercial concurred and said that the situation had arisen against a backdrop of organisational change, with the loss of corporate knowledge and the fragmentation of responsibilities between the Council and Hoople. It was noted that the matters were being resolved, alongside a broader review of collection procedures. It was re-iterated that the audit opinion of 'Substantial Assurance' had been given in terms of Council Tax/National Non-Domestic Rates.

A Committee Member said that, in light of the findings of the Robert Francis Inquiry report into Mid-Staffordshire NHS Foundation Trust and the financial challenges identified in the Council's Budget 2013/14 and Medium Term Financial Strategy, the authority would need to be mindful of accountabilities and the deliverability of objectives when considering workforce capacity going forward.

The Chairman noted the wide range of audit activity being undertaken and thanked Audit Services for the report.

RESOLVED: That the report be noted.

50. POWERS AND RESPONSIBILITIES IN RELATION TO STANDARDS COMPLAINTS

The Head of Governance / Monitoring Officer submitted a report which explained the powers and responsibilities of the Audit and Governance Committee and other bodies in relation to standards complaints against Councillors.

The Committee was advised that, in view of the comments made during the discussion at the Committee on 12 November 2012 and at Council on 4 January 2013 in respect of the report 'Breach of the Members' Code of Conduct by Councillor Mark Hubbard', this report sought to clarify the process adopted by Council in relation to standards matters within a single document.

It was noted that the Localism Act 2011 had removed the standards regime which had been in place since 2001, thereby requiring local authorities to introduce local processes to handle standards complaints. Consequently, Council approved a new Code of Conduct and a system to implement the provisions of the Act at its meeting on 20 July 2012 (minute 31). The report set out the related functions of the Audit and Governance Committee, Council, the Monitoring Officer, Independent Persons, and the Standards Panel.

In relation to the complaints about Councillor Hubbard, a Committee Member said that new material had been brought to the attention of Council which had not been available to the Committee when making its decision on the case. Another Committee Member commented that a Councillor had obtained this information through a Freedom of Information request. The Head of Governance / Monitoring Officer said that he had not been the Monitoring Officer when the complaints were considered by the Standards Panel and by the Committee and he was not aware of the advice provided at that time. He noted that the complaints had commenced under the previous standards regime and

he outlined the new process for dealing with complaints. The Committee was advised that the new system focused on improving standards and this was reflected in the limited scope of the sanctions: the Council could not fine, suspend or disqualify a member from membership of the authority.

The Head of Governance / Monitoring Officer said that the Independent Person, in consultation with the Standards Panel, considered substantial amounts of material to inform the recommendations but the Committee could request further detail if required.

Councillor EMK Chave asked that her comments ~~to~~* be recorded, these included: it was difficult to assess the effectiveness of the new system at this stage given the few cases to date but the process should be monitored carefully; if the intention was a 'light touch approach', the treatment of the Councillor Hubbard case at Council had been disproportionate, with some comments perhaps appearing slightly malicious; clarity was sought about the time taken to deal with the recent cases and whether any complaints about other Councillors were still outstanding; and the value of apologies sought from subject members was queried.

The Head of Governance / Monitoring Officer advised that the handling of the complaints involving Councillor GA Powell and Councillor MAF Hubbard had been subject to delays, in part resulting from the transition to the new arrangements.

A Committee Member said that very serious complaints had been made and Councillor Hubbard did not dispute the facts. It was commented that, in view of the information *that** had come to light, the extent of the sanctions available did not seem sufficient.

Another Committee Member suggested that, to avoid unwarranted criticism, Council should be reminded about the limitations of the new standards system, the status of the Independent Person and the expectations of the role of the Committee, and the constraints in terms of sanctions. Nevertheless, it was critical that the Committee received adequate briefing about the cases before it, particularly if anyone could access full papers through Freedom of Information requests.

Referring to Appendix A to the report 'Audit and Governance Committee - Procedure to be followed when considering standards complaints', it was suggested that the following amendment be made 'The Chairman states that the general ~~attitude~~ *premise* of the Committee is to accept the findings of the Independent Person...'.
~~attitude~~

Other Members spoke in support of continuing with the system in its present form and, through experience, improve upon it. However, it was also recognised that further consideration would need to be given to achieving the right balance in terms of the level of detail provided to the Committee.

A Committee Member commented that the satisfactory resolution of complaints was important to the integrity of the Council. It was also commented that the sanctions recommended to the Committee needed to be clear; for example, to specify who would provide training and what it would be about.

The Vice-Chairman said that the Independent Person, in consultation with the Standards Panel, had been appointed to consider all the information relating to complaints and the Committee should not second-guess their findings. It was the duty of the Committee, prior to making a decision, to gain assurance that due process had been followed, consider any new evidence, and receive representations on the sanctions proposed. Referring to the examples of possible action in Appendix B, 'How the Council deals with complaints about member conduct', the Vice-Chairman expressed concern about the gap between lighter touch and heavier sanctions and felt that the examples given might appear to be too simplistic. He suggested the inclusion of a paragraph (h) to the effect

that 'further or alternative actions may be considered subject to Monitoring Officer advice'.

The Chairman invited the Independent Persons present to address the Committee. Some of the key points raised by the Independent Persons are summarised below.

David Stevens MBE

- i. The former Standards Committee had been empowered to deal with complaints and had the respect of Councillors. Whereas the Localism Act only required that an Independent Person's 'views are to be sought, and taken into account'.
- ii. The new system was principally about improving governance, not implementing punishments for misconduct.
- iii. The transition had inevitably extended the time taken to deal with some complaints, compounded by delays in receiving external investigation reports in certain cases.
- iv. Both Mr. Bharier and Mr. Stevens had accrued significant experience of the complaints process but, as former independent members of the Standards Committee, would be required to stand down before 1 July 2013; Mr. Rob Cook would remain as an Independent Person and additional appointments would be made in coming months.
- v. The value of independent perspectives on Councillors' conduct was emphasised.

Jake Bharier

1. Faced with a difficult piece of legislation in the Localism Act, a new standards system had been produced for Herefordshire, involving not just Herefordshire Council but also town/parish councils. It was acknowledged that the details of the system would need to be improved as experience was gained of managing the system.
2. Although the former Standards Committee had a more formal status within the Council, the Standards Panel provided a useful forum for the Independent Person to consider wider perspectives, as it involved both an advisor from the Council and an advisor from the town/parish councils.
3. In law, the Council must have arrangements for investigating allegations against Councillors and making decisions about allegations. However, there had been early recognition that it would not be appropriate to debate complaints on the floor of full Council. Consequently, these arrangements had been delegated to the Monitoring Officer and the Audit and Governance Committee, informed by the views of the Independent Person, assisted by the Standards Panel.
4. The Standards Panel provided an opportunity to explore good governance, in line with the 'Nolan principles', and to coax full disclosure from all parties involved in complaints.
5. On the whole, the process had worked well so far, with a number of complaints dealt with over the past seven months and referred to the relevant decision maker.
6. In terms of the amount of information presented to Councillors, the Committee was advised that the complaint against Councillor GA Powell (minute 41 of 5 December 2012 refers) involved three large boxes of paperwork and it was

suggested that it might not be an efficient use of time or resources to circulate all the material in every case. The level of detail provided was a matter of judgement but Councillors should be assured that the Independent Person would carefully consider all available information and representations.

7. It was commented that the fundamentals in the Councillor Hubbard case had been included in the Independent Person's report provided to the Audit and Governance Committee (minute 34 of 12 November 2012 refers).
8. The powers available to the authority in terms of sanctions were limited; it was the duty of the police to investigate any potential criminal activity reported to it.
9. Experience had shown that it was sometimes difficult to extract meaningful apologies, as a sanction, to the satisfaction of all parties.
10. It had been considered that the recent cases were sufficiently serious to warrant notification to Council for information. It was recommended by the Independent Persons that a statement should be provided in such cases to indicate to Council what action they were permitted to take in such cases.
11. A typographical error was noted in Appendix B, with the following amendment suggested 'cannot ... ~~suspect~~ suspend' in respect town/parish councils.
12. The Independent Person was detached from the political arena and provided independent assurance that complaints were being dealt with properly.
13. There had been three cases unresolved from the previous standards regime which had required consideration under the new system, and these had all been concluded.

Some Committee Members maintained that the full nature of the allegations about Councillor Hubbard's conduct had not been brought to the attention of the Committee when it considered the complaints. It was acknowledged that the Committee should not examine the minutiae of cases but the full facts of the breaches should be disclosed prior to making a decision on possible actions.

The Head of Governance / Monitoring Officer made a number of comments arising from the discussion on this item, including:

- i. He welcomed the comments from Members that the new system should be allowed to bed down.
- ii. An overview was provided of the role of the police in dealing with any allegations of criminal activity.
- iii. The length of time taken to receive the report about Councillor Hubbard at Council was unfortunate; it was initially delayed because of time constraints at Council and subsequently by the introduction of *material** at the meeting by a member of ~~material*~~, a report by an independent investigator, that had been considered fully by the Standards Panel but which had not been made available to all members.
- iv. A commitment was provided that level of detail reported to the Committee would be reviewed.
- v. Certain cases were notified to Council as a form of sanction, to give a degree of publicity to instances of misconduct, or to impose certain sanctions but it should not be the function of Council to deal with the cases again.

A Committee Member commented that Councillors would need all the relevant documentary evidence if the outcomes were to be determined by Council. If it was agreed that Council was not an appropriate forum for a quasi-disciplinary process, however, then clarity was needed about the procedure and the rules of debate at Council.

The Head of Governance / Monitoring Officer confirmed that there was no appeal mechanism within the new system, although procedural irregularity could be challenged through the courts. He also provided further details about the process undertaken by the Monitoring Officer, in consultation with the Independent Person, following the receipt of a complaint.

The complaints against Councillor Hubbard were further discussed in the context of the information received by the Committee. It was re-iterated that all pertinent material needed to be considered by the Committee to enable it to make reasoned decisions. It was commented that confidence in the system could be undermined if serious misconduct received the same level of sanction as relatively minor incidents.

A Committee Member questioned whether a breach of confidentiality could be established where material should have entered the public domain or if it was clearly in the wider public interest.

The Head of Governance / Monitoring Officer said that, informed by the comments of the Committee, the report be provided to Group Leaders, for subsequent circulation to all Councillors.

RESOLVED: That

- (a) **the report be noted;**
- (b) **subject to the matters raised above, the Committee endorses its procedures for dealing with Standards complaints at meetings, and within the Council's adopted process; and**
- (c) **a report be provided to Group Leaders, for subsequent circulation to all Councillors.**

51. DISPENSATIONS

The Committee received a report which noted the grant of dispensations to all Members of the Council to enable them to take part in meetings of the Council that would consider the Budget for 2013/14 and set Council Tax for the same period.

RESOLVED: That the report be noted.

52. DATE OF NEXT MEETING

The next scheduled meeting was to be held on Friday 15 March 2013, this would be followed by an informal meeting for Committee Members with the internal and external auditors.

It was recommended that the meeting scheduled for Friday 6 September 2013 be moved to Friday 13 September 2013 to ensure sufficient preparation time for the accounts.

[Note: * Refers to amendments made to the minutes at the meeting of the Audit and Governance Committee on 15 March 2013.]

The meeting ended at 12.35 pm

CHAIRMAN