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23 September 2013

Dear Councillor

I am now able to enclose, for consideration at the meeting of the **GOVERNANCE COMMITTEE** on Thursday 26 September 2013 at 6.00 pm, the following reports that were unavailable when the agenda was printed.

6 **REVIEW OF THE CONSTITUTION** (Pages 2 - 8)

To consider the report of the Director of Governance.

Yours sincerely

A handwritten signature in black ink, appearing to read "Nicky", is written over a horizontal line. The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Chief Executive

Subject:	REVIEW OF THE CONSTITUTION
Meeting and Date:	Governance Committee – 26 September 2013 Council – 27 November 2013
Report of:	Dave Randall, Director of Governance
Classification:	Unrestricted

Purpose of the report: To determine the remuneration arrangements and other matters for the Independent Person and Substitute Independent Person.

Recommendation: *That it be recommended to Council that subject to receiving the views of the East Kent Joint Independent Remuneration Panel:*

1. That the Independent Person be paid an allowance of £927 per annum and be entitled to claim travel and subsistence at the same rates as if s/he were a member of the authority.
2. That the Substitute Independent Person be paid an allowance of £232 per annum and be entitled to claim travel and subsistence at the same rate as if s/he were a member of the authority.

1. Summary

In undertaking the Review of the Constitution there are several reports that have to be considered prior to bringing the final draft of version 18 before Members. The majority of these have now been considered and approved by Council and/or Cabinet but the remaining key areas are:

- The East Kent Joint Independent Remuneration Panel’s Review of Member Allowances. This will be completed prior to the next meeting of the Governance Committee and will be subject to a separate report.
- The report defining the training specification for members as this will involve changes to Article 13 of the Constitution. This will be considered by the Governance Committee at its meeting held on 26 September 2013.
- The determination of arrangements for the Independent Person and Substitute Independent Person, which this report seeks to address.

It is ultimately for the Council to determine such terms as to the remuneration and expenses of the Independent Person and Substitute Independent Person as it sees fit, taking into consideration the views of the Governance Committee and the East Kent Joint Independent Remuneration Panel.

The revised Constitution will be submitted to Members for consideration by Council at its meeting to be held on 26 November 2013. If required an additional Governance Committee meeting can be held prior to that date to consider the draft version.

2. Introduction and Background

- 2.1 A new Code of Conduct was approved by the Council at its meeting on 25 June 2012 which came into effect on 1 July. The Localism Act 2011 abolished not only the previous statutory Code of Conduct but the statutory regime that went with it. The District Council had to replace this with new arrangements which were required under Section 27 of the Localism Act to include the appointment of an Independent Person. The Council also appointed a Substitute Independent Person to ensure a continuous provision in the event of the Independent Person being unavailable.
- 2.2 The Independent Person is Mr B P S Dowley. The substitute Independent Person, is Mr A M Hayes
- 2.3 The role of the Independent Person is set out in detail at Appendix 1 to this report.
- 2.4 In summary, the Independent Person must be consulted by the authority before it makes a decision on an allegation that it has decided to investigate. In addition, the views of the independent person, may be sought in relation to an allegation in any other circumstances or by a member or co-opted member of either the Council or a parish council if that person's behaviour is the subject of an allegation.
- 2.5 The Independent Persons is not a member of the Standards Committee and may not be co-opted onto it. This does not however prevent the independent persons from attending meetings of the Standards Committee as an observer as can any member of the public, or, from being invited to attend meetings by the Standards Committee itself
- 2.6 The presence of independent members on the Standards Committee was well established and Dover District Council's Standards Committee was chaired by an independent member prior to it becoming a statutory requirement. However, unlike the old independent members who acted in a decision-making capacity the Independent Person is not charged with decision making but rather as an advisor to the Monitoring Officer in his decision making and as a consultee for members who are the subject of a complaint.
- 2.7 The new Code of Conduct has seen a small but significant increase in the volume of complaints. For the part year 1 July – 31 March the Monitoring Officer in consultation with the Independent Person considered 33 complaints. Since 1 April 2013, there have been 16 complaints considered. In contrast 29 complaints were considered in the last year of operation of the previous regime with the workload spread between five independent members.
- 2.8 The small increase in the number of complaints is not in itself significant in terms of the workload of the Independent Person. However, the local arrangements for dealing with complaints afford the subject member the facility to make representations to the Monitoring Officer before he decides what action to take in relation to the complaint, whereas the previous arrangements did not.. This has led to a very significant increase in the amount of documentation which the Monitoring Officer and the Independent person need to read, understand and consider in reaching a deciding what course of action to take. To put this in context, subject members have, on occasions, submitted very voluminous bundles of documents taking many hours to read – this has not just been a case of reading 2 or 3 sheets of A4. This is not an untypical situation.

2.9 As the independent person is not a Member he or she would not automatically have benefited from the indemnities which District Council Members have. As part of the arrangements to establish the position of Independent Person, the Council agreed to confer a specific indemnity and arrange any necessary insurance.

3. Identification of Options

3.1 Option 1: To recommend to Council That the Independent Person be paid an allowance of £927 per annum, plus travel expenses at the same rate as councillors and the Substitute Independent Person be paid an allowance of £232 per annum plus travel expenses at the same rate as councillors.

3.2 The Council has to have an Independent Person. While the option to pay nothing is available, some form of remuneration is likely to improve the retention of qualified members and the recruitment of suitable new members at the end of the current terms of office.

3.3 The recommended levels are the same as those previously paid to the Independent Chairman and Vice-Chairman of the Standards Committee under the previous Code of Conduct arrangements.

3.4 The Team Leader – Democratic Support has raised the matter of remuneration for the Independent Person and Substitute Independent Person as part of the review of members allowances. The Panel has provisionally indicated that it is minded to recommend an allowance in accordance with this option.

3.5 Option 2: To recommend to Council That the Independent Person and Substitute Independent Person only be paid travel expenses.

3.6 This is not the recommended option as it does not adequately remunerate the Independent Person for their time commitment and out of pocket expenses.

3.7 Option 3: To recommend to Council That the Independent Person and Substitute Independent Person not be paid an allowance or travel expenses.

3.8 This is not the recommended option as it does not adequately remunerate the Independent Person for their time commitment and out of pocket expenses.

3.9 Option 4: To recommend to Council an alternative level of allowance for the Independent Person and Substitute Independent Person.

3.10 As the Council only has to be mindful of the views of the East Kent Joint Independent Remuneration Panel. However, in recommending an alternative allowance, members' are reminded that the level of remuneration will impact either beneficially or adversely on the retention of qualified members and the recruitment of suitable new members at the end of the current terms of office.

4. Evaluation of Options

4.1 The report advises that an allowance be paid, preferably at the levels set out in Option 1. Allowances were paid to independent members of the Standards Committee under the old arrangements in recognition of their responsibilities and their time commitment and it is suggested that this position be continued.

5. **Resource Implications**

- 5.1 There would be a notional additional cost of £1,159.00 per annum plus any travel expenses agreed under the Members' Allowances Scheme. However, due to the restrictions on the number of Special Responsibility Allowances that a Member can claim this should be fundable from within the headroom within the budget for the existing Members Allowance Scheme.

6. **Corporate Implications**

- 6.1 Comment from the Solicitor to the Council: The Solicitor to the Council has been consulted in the preparation of this report and has no further comments to make.

7. **Appendices**

Appendix 1 – Independent Person Job Description

8. **Background Papers**

Localism Act 2011

Contact Officer: Rebecca Brough, Team Leader – Democratic Support



Dover District Council

Standards Committee – Independent Person

Job Description

Introduction

In accordance with Section 28(7) of the Localism Act 2011 the Council is required to appoint up at least one Independent Person.

Descriptions of Duties and Functions

The role of the Independent Person(s) appointed by the Council will be:

1. To assist the Council generally in discharging its duty to promote and maintain high standards of conduct by Elected Members and Co-opted Members of Dover District Council and the Town and Parish Councils in its area.
2. To advise the Monitoring Officer in connection with the assessment and post-investigation stage of complaints against Elected and Co-opted members.
3. To advise the Standards Committee [or equivalent body] in connection with complaints and potential sanctions where a failure to comply with a code of conduct has been established.
4. To advise their view, where sought, to an Elected or Co-Opted Member of Dover District Council or a Town and Parish Council partially or wholly within its area who is the subject of an allegation that their behaviour has breached a Code of Conduct.
5. To reach balanced and reasoned conclusions having considered complex material and applied an impartial and fair approach to all of the written and oral material provided.
6. To advise the Council on any future adoption/revision of a Members' Code of Conduct.
7. To undertake any training arranged by the Monitoring Officer (or authorised representative) to enable the Independent Person(s) to perform their role effectively.
8. It is envisaged that the views of the Independent Person will normally be sought by the Council (through the Monitoring Officer or authorised representative) in writing, either by letter or email, or at a meeting organised for the purpose of seeking such views. Where the Independent Person's views have been sought in writing, either by letter or email, it is expected that the response will be provided in the same way. However, advice may be sought by telephone from time to time.
9. In reference to paragraph 4, the Independent Person(s) should not give advice to Members of the Council, or of the Town and Parish Councils, in circumstances where no complaint about a Member's conduct has been received. Where such advice is

required, it should be sought by the Members of the Council, or of the Parish Councils, from, or via, the Monitoring Officer or his/her authorised representative.

10. The Independent Person will be selected from a list of appointees prepared following public advertisement; those persons will be expected to add the necessary element of independence and objectivity to the Committee's functions.
 11. The person appointed as an Independent Person must:
 - be committed to the need for high standards in public life
 - demonstrate that they can remain independent in their thinking and decision making
 - be able to make judgements based on evidence or information presented
 - have questioning skills
 - be assertive
 - be able to work within an area of public life which is open and transparent
 12. The Independent Person will be expected to undertake some training by the Council in procedures and processes, especially monitoring and ensuring compliance with Codes of Conduct, Complaints Procedures, etc and where appropriate including case studies.
 13. It is envisaged that meetings will normally be held in the daytime.
 - (a) The Council will meet travel and subsistence expenses in accordance with its set rates. The provision of any other allowance is subject to review by the East Kent Joint Independent Remuneration Panel.
 - (b) The Independent Person MUST NOT^[1]
 - (i) Be, or have been during the last 5 years, a member, co-opted member or officer of Dover District Council or a Town or Parish Council within the district; or
 - (ii) A relative or a close friend of a member, co-opted member or officer of Dover District Council or a Town or Parish Council within the district.
 - (iii) A person is defined by the Localism Act 2011 as a relative if they are:
 - The spouse or civil partner or living as if they were a spouse or civil partner;
 - A grandparent;
 - A lineal descendant of a grandparent;
 - A parent, sibling or child;
 - The spouse or civil partner of a grandparent, lineal descendant of a grandparent, or a parent, sibling or child; or
 - Living with a grandparent, lineal descendant of a grandparent, or a parent, sibling or child as if they were a spouse or civil partner.
- of a member, co-opted member or officer of Dover District Council or a Town or Parish Council within the district.

^[1] This paragraph must be read subject to the provisions of The Localism Act 2011 (Commencement No.6 and Transitional Savings and Transitory Provisions Order 2012 [SI 2012 No.1463] which permit the appointment of a person as an independent person notwithstanding that he has been an member or co-opted member of a standards committee at any time during the 5 years ending on 30 June 2012, provided that he is not a member or co-opted member of a standards committee on 1 July 2012. The exemption provided by the Order only applies to appointments made before 1 July 2013.