

# **AUDIT AND GOVERNANCE COMMITTEE COUNCIL REFERRAL WORKING GROUP MEETING NOTES 30 SEPTEMBER 2019**

The meeting commenced at 5.00 pm in the Civic Centre, Hartlepool.

**Present:**

Independent Chair: Ms Clare Wilson.

Councillors: Ged Hall, Lesley Hamilton, Brenda Harrison, Marjorie James and Brenda Loynes.

Councillors: Bob Buchan, Lee Cartwright, Shane Moore, Tony Richardson and Leisa Smith.

Officers: Gill Alexander, Chief Executive  
Chris Little, Director of Finance and Policy  
Noel Adamson, Head of Audit and Governance  
Hayley Martin, Chief Solicitor  
Joan Stevens, Statutory Scrutiny Manager  
Angela Armstrong, Scrutiny and Legal Support Officer  
David Cosgrove, Democratic Services Team

## **5. Apologies for Absence**

None.

## **6. Declarations of Interest**

None.

## **7. Notes of the meeting held on 3 September 2019**

Deferred for consideration at a later meeting.

## **8. Allowances Paid to the Chair and Vice Chair of Council – Verbal Progress Update** *(Chief Executive)*

The Chief Executive provided an update on the review being undertaken and highlighted that there was a significant amount of historical information to be included within this review. It was noted that due to the volume of work involved in collating this information, a report would be submitted to

the next meeting of the Working Group scheduled to take place on Wednesday 2 October at 5.00pm.

## **Recommended**

The verbal update was noted and a report would be submitted to the next meeting of the Working Group on 2 October.

### **9. Council Referral - Funding of any Organisation to Which an Elected Member is Affiliated** (*Statutory Scrutiny Manager*)

The Director of Finance and Policy presented a detailed and comprehensive report that provided the background to the review along with the process for undertaking the review.

The Working Group were reassured by the Council's statutory Officers that the Council had robust and effective arrangements in place for managing the use of public monies. The most recent report from the Council's external auditors, Mazars, which covered 2018/19 gave unqualified opinions on the Council's Statement of Account and Value for Money for conclusion. Members noted that the Council's statutory officers will, on the basis of evidence identified by Council Officers, or evidence presented by third parties, fully investigate all allegations of potential financial irregularity or potential fraud and where appropriate refer to the relevant authorities.

The report identified areas where existing processes and procedures could be further improved and during the discussions that followed, Members identified the following amendments and additions for inclusion within those recommendations:

**Recommendation 1** – That a clearer form be designed for the Authority's Register of Elected Members/Co-opted Members Interests for use after the May 2020 election including clarification on the publication arrangements in relation to declarations where Members were employees of an organisation which contracts with the Council. Guidance and training to be provided to new and existing Members.

**Recommendation 2, 3** – No amendments/additions.

**Recommendation 4** – That the independently produced financial statements and governance information received from organisations applying for/award a social value rent reduction be reviewed annually.

**Recommendation 5, 6, 7** – No amendments/additions.

**Recommendation 8** – That the quarterly returns reported to Audit and Governance Committee include details of amounts paid and what had been delivered.

**Additional recommendation** – That where social value lettings are in place, the policy and criteria for the letting of rooms by organisation be reviewed.

During the discussions that followed, the Chief Executive, Director of Finance and Policy and Head of Audit and Governance responded to a number of questions from both Elected Members and the public with further responses to be provided at the next meeting.

**Recommended**

That the above amendments/additions to the recommendations be incorporated into the report for consideration at the next meeting.

## **10. Meeting Adjournment**

The meeting was adjourned to be reconvened on Wednesday 2 October 2019 at 5.00pm in the Civic Centre.

The meeting was adjourned at 5.45 pm.

CHAIR

# **AUDIT AND GOVERNANCE COMMITTEE COUNCIL REFERRAL WORKING GROUP MEETING NOTES 3 SEPTEMBER 2019**

The meeting commenced at 3.30 pm in the Civic Centre, Hartlepool.

**Present:**

Independent Chair: Ms Clare Wilson.

Councillors: Ged Hall, Lesley Hamilton, Brenda Harrison and Brenda Loynes.

Also Present: In accordance with Council Procedure Rule 5.2,  
Councillor Marjorie James was in attendance as substitute for  
Councillor Stephen Akers-Belcher.

Councillors: Christopher Akers-Belcher, Bob Buchan, Paddy Brown,  
Lee Cartwright, Jim Lindridge, Sue Little, Ann Marshall, Shane Moore,  
Tony Richardson and Mike Young.

Officers: Gill Alexander, Chief Executive  
Chris Little, Director of Finance and Policy  
Hayley Martin, Chief Solicitor  
Joan Stevens, Statutory Scrutiny Manager  
David Cosgrove, Democratic Services Team

## **1. Apologies for Absence**

Apologies for absence were received from Stephen Akers-Belcher,  
James Black and Barbara Ward.

## **2. Declarations of Interest**

None.

## **3. Council Referral - Funding of any Organisation to Which an Elected Member is Affiliated** (*Statutory Scrutiny Manager*)

The Statutory Scrutiny Officer submitted a report setting out the  
background to the establishment of the Working Group, the process for  
consideration of the Council referral and the timetable for the  
investigation. The time table included, at this time, three further  
meetings to be held on 30 September at 2.00 pm, 2 October at 5.00 pm,

and 3 October at 3.00 pm. An additional meeting of the Audit and Governance Committee had been scheduled on 24 October at 2.00 pm to consider the final report of the Working Group with the potential for an Extraordinary Meeting of Council in November to consider the Working Group's report.

### **Recommended**

1. That the report and the timetable for consideration of the referral be noted.
2. That the Working Group's response to the referral be submitted to Council following endorsement by the Audit and Governance Committee (as the Working Group's parent Committee).

## **4. Allowances Paid to the Chair and Vice Chair of Council** *(Director of Finance and Policy)*

The Director of Finance and Policy submitted a report setting out a review of historic documents, some dating back to 1998, relating to the allowances paid to the Chair and Vice-Chair of Council up to 2011/12. The report set out some background information relating to the governance arrangements applicable at the time.

A Member initially questioned the role of the Constitution and its position as the 'bible by which we managed the Council'. The Chief Solicitor stated that it was to some extent for political processes but a Constitution did not set out everything that happened within an Authority.

The Director of Finance and Policy went on to outline the key points within his report and attached appendices, highlighting the historic nature of some of the information dating back to a Policy Plenary Committee meeting in May 1998.

Questions were raised around the last Independent Remuneration Panel (IRP) benchmarking exercise in 2017/18 and the allocations of Special Responsibility Allowances (SRAs) and the questions that had been raised around additional allowances paid to the Chair of Council.

It was confirmed that between 2004 and 2012 the Chair of Council had also received a Special Responsibility Allowance (SRA) as Chair of Council, which was in addition to the separate 'Chair of Council Allowance'. The separate 'Chair of Council Allowance' was not an SRA recommended by the Independent Remuneration Panel (IRP).

It was confirmed that between 1998 and May 2012 the Chair and Vice Chair of Council had received an allowance calculated in accordance with a decision made by the Policy Plenary Committee and that these

allowances had been grossed for income tax and national insurance to retain the net value.

It was confirmed that arrangements for the payment of the separate Chair and Vice Chair of Council Allowance had not been carried forward into the Council Constitution adopted in 2002 as part of the new governance arrangements (Elected Mayoral system). It was also noted that whilst the 2002 Allowance Scheme did restrict Members to one SRA, it was 'silent' on the payment of a separate 'Chair of Council Allowance' and the allowance had continued until its removal in 2011/12.

Concern was expressed that the 2002 Constitution should have superseded any previous arrangements for the payment of allowances and the separate Chair and Vice Chair of Council Allowance should have either been included in the Members Allowance Scheme or have ceased in 2002. On this basis, a view was expressed that these payments had been unconstitutional and should not have been paid.

There was debate around the fact that a 'Member Allowance' had been increased in order to ensure that tax and national insurance didn't reduce the amount of allowance paid and how appropriate such a decision had been. The Working Group was informed that arrangements around taxation with HMRC were different in the 1990's to those that applied now.

A Member referred to the 2002 Constitution and indicated that this should have been circulated to the Working Group to show that the payments were unconstitutional. There was an adjournment while copies of the relevant sections of the 2002 Constitution were made for those present.

When reconvened the Chief Executive stated that Members had to acknowledge that the information being discussed was historic and had not been straight forward to recover. It was clear that prior to 2002 there had been a Mayoral Allowance and the only decision that could be found in relation to that was the 1998 Policy Plenary decision when there was a debate around taxation. The 2002 Constitution was silent on that matter. It was also the first Constitution developed under the elected mayor model of governance. The Constitution has always been a document under constant development and revision. The current Constitution is much more robust on issues such as allowances. The Chief Executive also commented that it was also difficult to measure decisions from the past against how they are made now. The Chief Executive also clarified the differing roles of the past Mayor and the Elected Mayor and the Chair of Council.

A Member questioned the annual auditing of accounts and whether such a matter should have been picked up at audit. The Director of Finance and Policy stated that the auditors did not check every payment but did

measure risk across the Authority. Whilst not being able to speak for the Auditors, the Director stated that he would have expected them to undertake the checks they thought proper.

Whilst there were concerns regarding awareness of the separate Chair and Vice Chair of Council Allowance, it was highlighted that:

- Arrangements in Hartlepool for the disclosure of paid allowances go beyond statutory requirements;
- Arrangements in terms of the payment of the additional Chair's Allowance were historic and would not occur under new arrangements; and
- The Council's Constitution was now robust and reviewed on a regular basis.

In concluding the meeting the Chief Executive stated that notes of the meeting would come forward to the next meeting of the Working Group and at that meeting some conclusions based on the discussions at this meeting would need to be drawn for the report. What was clear was that the lessons of the past had been learned and that Chief Executive and the Chief Solicitor were confident that similar decision making could not happen now as the processes in place were much more robust and open. There were obviously clear differences of opinion on the decisions made in the past and we could only learn from them.

### **Recommended**

That the report and discussions be noted for the development of the final report and conclusions of the Working Group.

That the dates and times of the future meetings of the Working Group be agreed.

The meeting concluded at 5.45 pm.

CHAIR

# **AUDIT AND GOVERNANCE COMMITTEE WORKING GROUP**

**30<sup>th</sup> September 2019  
(Reconvened on the 2<sup>nd</sup> October 2019)**



**Report of:** Chief Executive, Director of Finance and Policy, and  
Chief Solicitor

**Subject:** **ALLOWANCES PAID TO THE CHAIR AND VICE  
CHAIR OF COUNCIL**

**AND REFERRAL FROM FULL COUNCIL –  
FUNDING TO ANY ORGANISATION TO WHICH AN  
ELECTED MEMBER IS AFFILIATED**

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## **1. PURPOSE OF REPORT**

- 1.1 To enable the Working Group to conclude the review of the work they have undertaken and to approve the recommendations to be referred to the Audit and Governance Committee.

## **2. BASIS FOR PREPARING REPORT**

- 2.1 The report reflects consideration of the detailed reports considered by the Working Group in relation to the issues as summarised in the following sections.

## **3. ALLOWANCES PAID TO THE CHAIR AND VICE CHAIR OF COUNCIL**

- 3.1 Based on the information detailed in the report considered on 3<sup>rd</sup> September 2019 it can be concluded that:
- Up until 2011/12 the Chair and Vice Chair of Council received an allowance which was gross up for taxation and national insurance, in line with the decision of the Policy Plenary Committee in 1998;
  - The allowances paid to the Chair and Vice Chair of Council were removed as part of the 2011/12 budget. It is therefore clear that the payment of these allowances were known to Members of Council and it is also to be noted that the decision to remove the allowances was based on the need to save money and not in response to issues of probity;
  - The 2002 Constitution was 'silent' on both the Chair and Vice Chair allowances;



- The Chair also received a separate Special Responsibility Allowance;
  - Following consideration of a report from Scrutiny Co-ordinating Committee by full Council detailed disclosure arrangements were adopted for Members Allowances and expenses, which significantly exceeded the minimum statutory requirements. For the period 2008/09 to 2011/12 this disclosure showed all allowances paid to the Chair and Vice Chair within the audited statement of accounts. The Council continues to provide this level of disclosure in the statement of accounts;
  - The Council now has in place a robust Constitution that ensures the issue cannot be repeated in the future.
- 3.2 With the benefit of hindsight it can be concluded that the 2002 Constitution was 'silent' on the issue of the separate allowances paid to the Chair and Vice Chair. However, these allowances continued to be paid until 2011/12 and were disclosed in the Council's statement of accounts for the period 2008/09 to 2010/12.
- 3.3 Whilst, it has not been possible to ascertain the rationale for continuing to pay these allowances, it is clear that they were authorised by the relevant chief officer and it is not unreasonable to conclude that those relied upon the decision of the Policy Plenary Committee in 1998. Equally, it is not unreasonable to conclude that given that the payments were authorised by officers the Members who received these allowances acted in good faith in accepting these payments. Therefore, from a legal perspective there are no grounds to seek to recover these payments, which were made in and received in good faith despite the fact that the Constitution was silent on the payment of these payment. In any event such recovery is time-barred.
- 3.4 It is important to highlight **the Council now has in place a robust Constitution that ensures the issue cannot be repeated in the future.** Additionally, it is appropriate to highlight that the annual cost of the Committee System in 2018/19 was £326,000, compared to an annual cost in excess of £440,000 for the Mayoral system over the period 2008/09 to 2011/12.
4. **REFERRAL FROM COUNCIL – FUNDING TO ANY ORGANISATION TO WHICH AN ELECTED MEMBER IS AFFILIATED**
- 4.1 Based on the information reported on 30<sup>th</sup> September and verbal assurances provided by the Council's statutory officers (namely the Chief Executive, Director of Finance and Policy, and the Chief Solicitor) and the Head of Audit and Governance it is clear that the Council has robust and effective arrangements for managing the use of public monies. Further assurance is also provided from the Council's external auditors, Mazars, as their most recent audit report covering 2018/19 gave unqualified opinions on the Council's Statement of Account and Value for Money conclusion. For the avoidance of doubt 'unqualified' opinions are the desired outcome as a 'qualified' opinion would identify where an external auditor was not satisfied with the Council's arrangements and corrective action was required.

- 4.2 The Working Group noted that the Council's three statutory officers will, on the basis of evidence identified by council officers, or evidence presented by third parties, fully investigate all allegations of potential financial irregularity or potential fraud and if appropriate refer issues at an appropriate stage to the relevant authorities, including the police. The referral of issues to the police needs careful management to ensure any initial investigation undertaken by Council Officers does not inadvertently jeopardise the ability of the police and the Crown Prosecution Service (CPS) to pursue prosecution. The Working Group noted that the initial investigation of former Councillor A Wilcox by Council Officers resulted in the police then undertaking a detailed investigation and the CPS securing a successful prosecution. The Working Group also noted that Council Officers cannot investigate rumours of potential financial irregularity or potential fraud as they need some initial evidence to provide grounds for carrying out an investigation.
- 4.3 **Appendix A** provides information in relation to questions asked at the Working Group meeting on 30<sup>th</sup> September 2019.
- 4.4 The detailed report considered by the Working Group identified areas where existing processes and procedures can be improved further. The Committee considered the draft recommendations detailed in the report and the final recommendations, which include amendments and additions from the Working Group are set out below:
- (i) **Recommendation 1** – In order to provide greater clarity, the form to record Members declarations of interest in the Authority's Register of Elected Members/Co-opted Members Interests should be reviewed and a clearer form designed for use after the May 2020 election. The revised form and publication arrangements to be clearer in relation to declaration where Members are employees of an organisation which he Council contracts with. Guidance / training on its completion should then provided to new and existing Members. Members comply with the Councils constitution and register information about registerable personal interests by giving written notice to the Monitoring Officer, who maintains the Register, within 28 days of appointment as a member of the Authority and when any change takes place in registerable personal interests.
  - (ii) **Recommendation 2** – The Council receives a full set of independently produced financial statements and governance information, such as Trustee/Board/Governance details, from any organisation applying for a grant where members have made a declaration of interests.
  - (iii) **Recommendation 3** – the Council receives a full set of independently produced financial statements and governance information, such as Trustee/Board/Governance details, from any organisation awarded a contract, regardless of value, where members have made a declaration of interests.
  - (iv) **Recommendation 4** – The Council receives (and reviews annually) a full set of independently produced financial statements and governance information, such as Trustee/Board/Governance details, from any

organisation applying for / awarded a social value rent reduction. The Council develops a Social Value Policy that communicates how the Council will meet its responsibilities under the Public Services (Social Value) Act 2012.

- (v) **Recommendation 5** – That where social value lettings are in place, the policy and criteria for the letting of rooms by organisation be reviewed.
- (vi) **Recommendation 6** – expenditure/funding over £1000 to organisations where Members have made a declaration are subject to the new procedures outlined below.
- (vii) **Recommendation 7** – where expenditure is likely to exceed £1000 for organisations where a Members declaration has been made, those organisations are required to submit full accounts, prepared and audited by an independent qualified accountant to Hartlepool Borough Council at the end of each financial year within which local authority funds have been received.
- (viii) **Recommendation 8** – on a quarterly basis all departments complete an analysis and report it to Corporate Management Team outlining how, on expenditure over £1000 where Members have declared an interest, is achieving 'value for money'.
- (ix) **Recommendation 9** – on an annual basis all quarterly returns reported to Corporate Management Team are collated and reported to the Audit and Governance Committee (including details of amounts paid and what has been delivered) in order to ensure independent scrutiny and to make public the results of all such evaluations.

## 5. CONCLUSION

- 5.1 The Working Group has considered comprehensive reports on the issues summarised in this report and questioned officers on these issues.
- 5.2 In relation to allowances previously paid to the Chair and the Vice Chair the historic information available indicates these allowances were authorised by Officers and paid and received in good faith. Therefore, there is no legal basis to seek to recover payments made to individuals who previously received the Chair or Vice Chair allowances.
- 5.3 As these allowances were removed in 2011/12 and it is clear that the Council now has more robust procedures for managing allowances paid to Councillors that the previous situation cannot be repeated. Therefore, there are no recommendations in relation to this issue.
- 5.4 With regard to the issues reviewed in section 4 the working group has concluded that the Council has well established procedures and policies in place that set out how decisions are made in relation to the expenditure of Council funds with no suggestion of inappropriate decision making. Some areas for further improvement, which should help address public perceptions, are detailed in the recommendations detailed in section 4.

## **6. RECOMMENDATIONS**

- 6.1 It is recommended that this report is referred to the Audit and Governance Committee to:-
- i) Endorse the conclusion that the allowances paid up to 2011/12 to the Chair and Vice Chairs were paid / received in good faith and there is no legal basis to seek recovering from the individual members who received these allowances. To recognise that this situation cannot arise again as these allowances were removed in 2011/12;
  - ii) Endorse the detailed recommendations detailed in paragraph 4.5.

## **7. REASONS FOR RECOMMENDATIONS**

- 7.1 To enable the Working Group to determine the recommendations they wish to refer to full Audit and Governance Committee.

## **8. CONTACT OFFICER**

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**Appendix A**

**Questions raised at Audit and Governance Working Group – 30.9.19**

<b>Question</b>	<b>Answer</b>	<b>Proposed Action</b>
What does “Other” mean on Members Declaration Form?	Guidance on form states “you should give the names of any other body you are a member or in a position of general control or management”.	To clarify as part of redesign of Members Declaration Form. (Included as part of recommendation 1)
What training is provided to members on declarations of interest?	New members provided advice and guidance.	To provide training to all Members at the time of launch of new declaration form. (Included as part of recommendation 1)
Cllr James declaration regarding Suez waste contract not included in analysis.	HBC makes payments to MBC, who manage this contract on behalf of Tees Valley Authorities, therefore this payment had not been picked up. Payments made: 2016/17: £1,860,515 - Waste Disposal Contract. 2017/18: £2,110,092 - Waste Disposal Contract. 2018/19: £1,892,449 - Waste Disposal Contract.	Process to be put in place to identify third party arrangements such as this moving forward. Future payment details for Suez to be published.
Why difference in discounts on percentage of social value reductions in rents for different organisations?	Social value policy allows discount to be awarded across the following criteria: Health and Wellbeing – 25% Family Poverty – 25% Community Safety – 25%	None.
Why variances in amounts paid to Healthwatch over the three year period analysed?	The Council acts as a payroll bureau for Healthwatch, in 16/17 and 17/18 the figures were shown net of wages reclaimed, in 18/19 this error was rectified and gross figure was reported. Amounts for 16/17 and 17/18 should have been £129,056.00	Continue to publish gross figures.
Do we receive accounts and governance arrangements on an ongoing basis for organisations receiving a social value discount?	Recommendation 4 proposes to receive accounts and governance arrangements on application for social value discount.	Included as part of recommendation 4 requesting accounts and governance information on an annual basis

Question	Answer	Proposed Action
Do Members need to declare an interest when considering the Local Council Tax Support scheme?	<p>Any payment of, or liability to pay, council tax does not create a disclosable pecuniary interest as defined in the national rules; hence being a council tax payer does not mean that a councillor needs a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support. If a councillor is a homeowner or tenant in the area of your council you will have registered, in accordance with the national rules, that beneficial interest in land.</p> <p>However, this disclosable pecuniary interest is not a disclosable pecuniary interest in the matter of setting the council tax or precept since decisions on the council tax or precept do not materially affect your interest in the land. For example, it does not materially affect the value of your home, your prospects of selling that home, or how you might use or enjoy that land.</p> <p>Accordingly, councillors will not need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support, which is in any event a decision affecting the generality of the public in the area of your council, rather than you as an individual.</p>	None