

Report

Democratic Services Committee

Part 1

Date: 29th April 2021

Item: 4

Subject **Audit Committee – changes to title and terms of reference**

Purpose To advise Committee about the changes to the title and terms of reference of Audit Committee made by the Local Government & Elections (Wales) Act 2021 and to recommend to Council that the relevant parts of the Constitution are amended accordingly.

Author Head of Law and Regulation

Ward All Wards

Summary Sections 115-118 of the Local Government (Wales) Measure 2011 extend the role of Audit Committees and re-name them Governance and Audit Committees. In addition to their existing functions, Audit Committees will be required to scrutinise the Council's governance and performance arrangements, considering and making recommendations about the Council's self-assessment report, and its response to panel performance assessment and special inspection reports. Lay membership requirements will also be strengthened, so that one third of members would be required to be lay members.

These changes came into effects as from 1st April 2021 and, therefore, amendments will need to be made to the current terms of reference within the Council's constitution to reflect the legislative requirements. The provisions relating to the appointment of additional lay members and the performance self-assessment arrangements will need to be implemented from May 2022.

Proposal **To note the report and recommend to Council that:-**

(a) Audit Committee is re-named Governance and Audit Committee;

(b) The terms of reference of the Governance and Audit Committee is changed to include additional responsibility for,

- **reviewing performance assessment**
- **review and assess the authority's ability to handle complaints effectively;**
- **make reports and recommendations in relation to the authority's ability to handle complaints effectively**

Action by Head of Law and Regulation

Timetable Immediate

This report was prepared after consultation with:

- Chief Officers
- Head of Finance
- Head of People and Business Change

Background

1. The Local Government & Elections (Wales) Act 2021 (“the Act”) received Royal Assent on 20th January 2021 and the various sections of the new legislation will be brought into force on a phased basis through a series of commencement orders, with secondary legislation and guidance provided by Welsh Government.
2. Sections 115-118 of the Act amend the Local Government (Wales) Measure 2011 to extend the role of Audit Committees and to re-name them Governance and Audit Committees. In addition to their existing functions, Audit Committees will be required to scrutinise the Council’s governance and performance arrangements, considering and making recommendations about the Council’s self-assessment report, and its response to panel performance assessment and special inspection reports. Lay membership requirements will also be strengthened, so that one third of members would be required to be lay members. The Chair would also be required to be a lay member.
3. The Council will continue to determine other details of its Governance and Audit Committees as appropriate, including the size of the committee and the frequency with which it meets.
4. Audit Committee provide important checks and balances to the Council’s governance arrangements, as required by the 2011 Measure. The Council has a statutory duty to establish an Audit Committee to review and scrutinise its financial affairs, risk management, internal control and corporate governance arrangements.
5. Although Audit Committee is a committee of the Council, in order to provide effective scrutiny, they are required to be independent from the Executive. Under the Measure, at least one member is required to be a ‘lay member’, a financially competent, independent member who is not an officer or member of the Council. Currently, the Council only has the statutory minimum of one lay member, who is also the independent Chair of Audit Committee. However, the Act will increase the requirement for additional lay membership to bring an extended range of skills, perspectives, and experiences, in order to strengthen the scrutiny that an Audit Committee can provide.
6. The purpose of the new legislation is to expand the functions of the Governance and Audit Committee to strengthen corporate governance and assurance and increase the lay membership to strengthen their ability to provide robust and independent scrutiny.
7. The additional powers relating to performance arrangements, considering and making recommendations about the Council’s self-assessment report, and any response to panel performance assessment and special inspection reports, relate to the new provisions introduced by the Act for performance self-assessment. These provisions will replace the continuous improvement requirements set out in the Local Government Wales Measure 2009 and the need for Annual Improvement Reports and Audit certificates of compliance. The new stream-lined approach to performance assessment will require the Council to produce an annual self-assessment report and undertake a peer review by an independent panel. Governance and Audit and Performance Scrutiny Committees will have a role to play in the annual performance self-assessment process. The first self-assessment reports will have to be produced for 2022/23.

Commencement

8. Section 115 of the Act was brought into force by Commencement Order No.2 with effect from **1st April 2021**. As from that date, the following changes have been introduced
 - (a) Audit Committees are re-named Governance and Audit Committees;
 - (b) The statutory terms of reference of Governance and Audit Committees (under the 2011 Measure) are amended to include

- (i) reviewing performance assessment
 - (ii) review and assess the authority's ability to handle complaints effectively;
 - (iii) make reports and recommendations in relation to the authority's ability to handle complaints effectively
9. The remaining sections of the Act relating to membership and proceedings of the Governance and Audit Committee will be brought into force with effect from **5th May 2022**, following the next local government elections. By that time,
- (a) the Chair of the Governance and Audit Committee must be a lay member;
 - (b) One third of the members of the Governance and Audit Committee must be lay persons
 - (c) The Deputy Chair must not be a member of the Council's Executive or an assistant to its executive

Changes to Constitution

10. The current terms of reference of Audit Committee, as set out in Part 3 of the Council's Constitution are attached at [Appendix 1](#) to this report.
11. It is recommended that the terms of reference are amended to rename the Committee "Governance and Audit Committee" and to include the additional responsibilities set out in section 115 of the Act in relation to reviewing performance assessment, reviewing and assessing the Council's ability to handle complaints effectively and making reports and recommendations. The proposed amended terms of reference are set out in [Appendix 2](#). No further amendments are required to comply with the legislation and the current allocation of additional functions by the Council is considered to be sufficient for the purposes of adequate controls and independent oversight.
12. The membership of the new Governance and Audit Committee will also need to be reviewed in due course, and prior to May 2022. The Committee currently comprises 9 members, including 1 lay representative and 8 elected members (politically balanced). There is only one lay member of the Committee, who acts as the independent Chair. The Chair must be appointed by the Committee itself. The statutory guidance recommends that councils follow a public recruitment exercise, similar to that used to appoint members of standards committees, to recruit their lay members. It is recommended that a lay member should not be appointed for more than two full terms of a local authority. Any lay member with voting rights is subject to the provisions of the authority's Code of Conduct for Members.
13. The current Chair will have served two terms of office by May 2022 and, therefore, a recruitment process will need to be undertaken to appoint a replacement. In addition, at least one-third of the Committee will need to be lay members. If the membership remains at 9 members, then that will require three lay members, including the Chair, and therefore additional independent members will also have to be recruited. The remaining 6 seats will then have to be allocated to the political groups in proportion to their representation on the new council.
14. The Act will also require the appointment of a Deputy Chair of Governance and Audit Committee. The Deputy Chair does not need to be a lay member but cannot be a member of the Council's executive. Again, it will be for the Committee to make the appointment. If it is an elected member, then no senior salary will be payable.
15. The WLGA are developing revised role descriptions for the Chair, Deputy Chair and members of Governance and Audit Committees, and copies are attached at [Appendix 3](#). The Committee and Council have previously agreed to adopt these role descriptions for elected and co-opted members of the authority and it is recommended that these revised role descriptions are adopted and included within the new Constitution, once they are finalised.

Financial Summary

16. The only financial implications for the Council are the additional costs of paying the extra 2 lay members for their allowances. Lay Chairs are entitled to a daily attendance allowance of £268 (£134 for a half-day meeting) and other lay members an attendance allowance of £210 (£105 for a half day meeting). Based on the current number of meetings, this would amount to an additional cost of approximately £2,400, which would be met from the members' allowances budget. There would be one-off costs of recruitment, but the Council would be required to advertise and recruit for a new lay Chair in any event and, therefore, any additional costs would be marginal

Risks

17. Failure to adopt the legislative changes would leave the Council open to challenge in terms of its governance processes.

Links to Council Policies and Priorities

18. The principles of good corporate governance, which underpin these legislative changes, are enshrined in the Council's well-being plan and objectives under the Well-being of Future Generations (Wales) Act.

Proposal

19. That Standards Committee note the report and recommend to Council that:-
 - (a) Audit Committee is re-named Governance and Audit Committee;
 - (b) The terms of reference of the Governance and Audit Committee is changed to include additional responsibility for,
 - reviewing performance assessment
 - review and assess the authority's ability to handle complaints effectively;
 - make reports and recommendations in relation to the authority's ability to handle complaints effectively

Comments of Chief Financial Officer

The financial implications are set out above.

Comments of Monitoring Officer

Included in the report.

Staffing Implications: Comments of Head of People and Business Change

There are no specific staffing implications or policy implications.

Background Papers

None.

Dated: 22nd April 2021

Appendix 1

Constitution

Part 3: Responsibility for Functions

Appendix 1: Terms of Reference

4. Audit Committee

The Local Government (Wales) Measure 2011 (The Measure) requires the local authority to appoint an audit committee. The Measure prescribes the functions of the audit committee as:

- (a) Reviewing and scrutinising the authority's financial affairs;
- (b) Making reports and recommendations in relation to the Council's financial affairs
- (c) Reviewing and assessing the risk management, internal control and corporate governance arrangements of the authority
- (d) Making reports and recommendations to the authority on the adequacy and effectiveness of those arrangements
- (e) Oversee the council's internal and external audit arrangements and
- (f) Review the financial statements prepared by the authority

4.1 Terms of Reference

To exercise the following functions and take the following resolved decisions, under delegated powers:

- (a) To appoint the Chair of the Audit Committee
- (b) To receive and approve the Council's Annual Statement of Accounts in accordance with the Accounts and Audit Regulations
- (c) To receive and approve the Annual Internal Audit Report from the Chief Internal Auditor
- (d) To receive and approve the Annual Internal Audit Plan
- (e) To review and approve the annual programme for internal audits, the audit priorities and effectiveness of the programme in providing adequate assurance in respect of the Council's main business risks
- (f) To review and monitor the effectiveness of the Council's system of internal control and the proper administration of its financial affairs, including corporate governance and risk management arrangements, the control environment and associated anti-fraud and anti-corruption arrangements
- (g) To engage with external auditors and inspection agencies and other relevant bodies to ensure that there are effective relationships between external and internal audit.

To exercise the following functions and make recommendations, where appropriate

- (h) To monitor and oversee the implementation and outcomes of the internal audit programme and, where necessary, review and make recommendations regarding unsatisfactory audit reports
- (i) To review the adequacy of the Council's internal audit resources and to make recommendations, where necessary
- (j) To seek assurances on the adequacy of Cabinet, Cabinet Member and/or management responses to internal audit advice, findings and recommendations and monitor implementation and compliance with agreed action plans
- (k) To consider the Annual Audit and Inspection Letter, make any recommendations to Cabinet and to monitor the Council's response to individual risks or areas of concern identified in the Letter
- (l) To consider the Annual Report on Treasury Management and Prudential Indicators and make recommendations to Council
- (m) To receive and consider inspection reports from external regulators and inspectors and to make recommendations and, where necessary, monitor implementation and compliance with agreed action plans
- (n) To monitor and review decisions to waive Contracts Standing Orders and urgent executive decisions taken without consultation and to make recommendations where appropriate.
- (o) To make recommendations to the Head of Finance and Monitoring Officer in relation to the Financial Procedures and Regulations set out in the Council's Constitution
- (p) To recommend to the Council the appointment of further lay members, where appropriate

Appendix 2

Proposed New Terms of Reference

4. Governance and Audit Committee

The Local Government (Wales) Measure 2011 (The Measure) (as amended by the Local government & Elections (Wales) Act 2021) requires the Council to appoint a Governance and Audit Committee. The Measure (as amended) prescribes the functions of the Governance and Audit Committee as:

- (a) Reviewing and scrutinising the authority's financial affairs;
- (b) Making reports and recommendations in relation to the authority's financial affairs
- (c) Reviewing and assessing the risk management, internal control, performance assessment and corporate governance arrangements of the authority
- (d) Making reports and recommendations to the authority on the adequacy and effectiveness of those arrangements
- (e) review and assess the authority's ability to handle complaints effectively
- (f) make reports and recommendations in relation to the authority's ability to handle complaints effectively
- (g) Oversee the council's internal and external audit arrangements and
- (h) Review the financial statements prepared by the authority

4.1 Terms of Reference

To exercise the following functions and take the following resolved decisions, under delegated powers:

- (i) To appoint the Chair and Deputy Chair of the Governance and Audit Committee
- (j) To receive and approve the Council's Annual Statement of Accounts in accordance with the Accounts and Audit Regulations
- (k) To receive and approve the Annual Internal Audit Report from the Chief Internal Auditor
- (l) To receive and approve the Annual Internal Audit Plan
- (m) To review and approve the annual programme for internal audits, the audit priorities and effectiveness of the programme in providing adequate assurance in respect of the Council's main business risks
- (n) To review and monitor the effectiveness of the Council's system of internal control and the proper administration of its financial affairs, including corporate governance and risk management arrangements, the control environment and associated anti-fraud and anti-corruption arrangements
- (o) To engage with external auditors and inspection agencies and other relevant bodies to ensure that there are effective relationships between external and internal audit.

To exercise the following functions and make recommendations, where appropriate

- (p) To monitor and oversee the implementation and outcomes of the internal audit programme and, where necessary, review and make recommendations regarding unsatisfactory audit reports
- (q) To review the adequacy of the Council's internal audit resources and to make recommendations, where necessary
- (r) To seek assurances on the adequacy of Cabinet, Cabinet Member and/or management responses to internal audit advice, findings and recommendations and monitor implementation and compliance with agreed action plans
- (s) To consider the Annual Audit and Inspection Letter, make any recommendations to Cabinet and to monitor the Council's response to individual risks or areas of concern identified in the Letter
- (t) To consider the Annual Report on Treasury Management and Prudential Indicators and make recommendations to Council
- (u) To receive and consider inspection reports from external regulators and inspectors and to make recommendations and, where necessary, monitor implementation and compliance with agreed action plans
- (v) To monitor and review decisions to waive Contracts Standing Orders and urgent executive decisions taken without consultation and to make recommendations where appropriate.
- (w) To make recommendations to the Head of Finance and Monitoring Officer in relation to the Financial Procedures and Regulations set out in the Council's Constitution
- (x) To recommend to the Council the appointment of further lay members, where appropriate

Appendix 3

Draft WLGA Chair of Governance and Audit Committee Role Description 2021

1. Accountabilities

To Full Council

2. Role Purpose and Activity

Providing leadership and direction

- To demonstrate independence, integrity, and impartiality in decision making according to legal, constitutional and policy requirements
- To provide confident and effective management of meetings to facilitate inclusivity, participation and clear decision making
- To comply with the authority's Code of Conduct
- To work according to the Terms of Reference for the Committee
- To work with senior officers of the authority including the Chief Financial Officer and Head of Internal Audit (or equivalent), to agree the forward work programme and to set agendas for the Committee.
- To work with other members of the authority to ensure that the work of the Committee is communicated to and aligns with that of the Cabinet, Standards and Scrutiny functions whilst maintaining appropriate independence.
- To promote the role of the committee within the authority.
- To report as required to Council
- To participate in and contribute to training and development required for the role
- To support committee members to develop the skills required for the role.
- To lead the committee in responding to any recommendations made by the Auditor General for Wales

Leading the Committee in its role in reviewing and scrutinising the authority's financial affairs

- Make reports and recommendations in relation to the authority's financial affairs
- Oversee the authority's internal and external audit arrangements
- Work with internal and external auditors
- Review the financial statements prepared by the authority and approve them when powers are delegated including making relevant reports and recommendations

Leading the Committee in its role in contributing to the effective performance of the authority

- Review the draft report of the authority's annual self-assessment. Make recommendations for changes to the conclusions or actions that the authority intends to take
- Make recommendations in response to the draft report of the authority's Panel Assessment (commissioned once per term **from May 2022**)
- Review and assess the authority's ability to handle complaints effectively.
- Make reports and recommendations to the authority about the authority's ability to handle complaints effectively.

Leading the Committee in its role in Reviewing and assessing the Governance, Risk Management and Control of the authority

- Review and assess the risk management, internal control, and corporate governance arrangements of the authority
- Make reports and recommendations to the authority on the adequacy and effectiveness of those arrangements
- Review and assess the financial risks associated with corporate governance, and be satisfied that the authority's assurance statements including the annual governance statement reflect the risk environment and any activities required to improve it

3. Values

To be committed to the values of the council and the following values in public office:

Openness and transparency

Honesty and integrity

Tolerance and respect

Equality and fairness

Appreciation of cultural differences

Sustainability

Draft WLGA Governance and Audit Committee Member Role Description 2021

1 Accountabilities

To Full Council
To the Chair of the Committee

2. Role purpose and activity

Participating in meetings of the committee and making decisions

- To demonstrate independence, integrity, and impartiality in decision making according to legal, constitutional and policy requirements.
- To have regard to the requirements of the Chair of the Committee and the professional advice of senior officers of the authority including the Chief Financial Officer and Head of Internal Audit (or equivalent)
- To Comply with the authority's Code of Conduct
- To work according to the Terms of Reference for the Committee
- To contribute to the development of the forward work programme for the Committee.
- To promote the role of the committee within the authority
- To report as required to Council
- To respond to any recommendations made by the Auditor General for Wales
- To participate in any training and development required for the role

Contributing to the work of the Committee in its role in:

Reviewing and scrutinising the authority's financial affairs

- Make reports and recommendations in relation to the authority's financial affairs
- Oversee the authority's internal and external audit arrangements
- Work with internal and external auditors
- Review the financial statements prepared by the authority and approve them when powers are delegated including making relevant reports and recommendations.

Contributing to the effective performance of the authority

- Review the draft report of the authority's annual self-assessment and make recommendations for changes to the conclusions or actions that the authority intends to take
- Make recommendations in response to the draft report of the authority's Panel Assessment (commissioned once per term **from May 2022**)
- Review and assess the authority's ability to handle complaints effectively.
- Make reports and recommendations in relation to the authority's ability to handle complaints effectively.

Reviewing and assessing the Governance, Risk Management and Control of the authority

- Review and assess the risk management, internal control, and corporate governance arrangements of the authority
- Make reports and recommendations to the authority on the adequacy and effectiveness of those arrangements
- Review and Assess the financial risks associated with corporate governance, and be satisfied that the authority's assurance statements, including the annual governance statement, reflects the risk environment and any activities required to improve it

3. Values

To be committed to the values of the Council and the following values in public office:

Openness and transparency
Honesty and integrity
Tolerance and respect
Equality and fairness
Appreciation of cultural differences
Sustainability