

Cyngor Sir CEREDIGION County Council

REPORT TO: Governance and Audit Committee

DATE: 24th January 2024

LOCATION: Remotely via Video Conference

TITLE: **Statutory and non-statutory guidance on democracy within principal councils**

PURPOSE OF REPORT: For information

Background

There has been an amendment to the consolidated statutory and non statutory guidance for principal councils in Wales at Part 2, Section 6.0, paragraph 6.4.

This is statutory guidance issued under section 38 of the Local Government Act 2000, as amended by section 45 of the Local Government and Elections (Wales) Act 2021-
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A local authority must have regard to it.

**The following sections are relevant to the Governance and Audit Committee:
Appendix 1.**

RECOMMENDATION(S):

The Committee is requested to:

- i. Note the contents of this report and the relevant parts of the Guidance;

REASON FOR RECOMMENDATION(S): To note the Statutory and non-statutory guidance within principal councils

Appendices: Statutory and non-statutory guidance on democracy within principal councils **(Part 4-Appendix 1)**

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Date: 24.01.2024

Statutory and Non-Statutory Guidance for Principal Councils in Wales – supporting provisions within the Local Government Act 2000, the Local Government (Wales) Measure 2011 and the Local Government and Elections (Wales) Act 2021 (WG23-23)

June 2023

Extract

14.0 Governance and Audit Committees Statutory Guidance Status of this Guidance

14.1 This is statutory guidance under section 85 of the Local Government (Wales) Measure 2011 (the Measure). It replaces any previous guidance issued under this section.

Purpose of this Guidance

14.2 The purpose of this guidance is to set out the key matters councils must take into consideration when establishing and operating governance and audit committees.

Overview

14.3 Councils must establish a Governance and Audit Committee.

The committee has the following functions (s81, Local Government (Wales) Measure 2011):

- review and scrutinise the authority's financial affairs;
- make reports and recommendations in relation to the authority's financial affairs;
- review and assess the risk management, internal control, performance assessment 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 authority's ability to handle complaints effectively;
- make reports and recommendations in relation to the authority's ability to handle complaints effectively;
- oversee the authority's internal and external audit arrangements, and
- review the financial statements prepared by the authority.

14.4 The Welsh Government's view is that well-functioning governance and audit committees are critical to the effective governance of councils. They should be viewed positively by all council members as part of the improvement and governance system. They also have an important role to play in improving strategic planning and facilitating both scrutiny and constructive challenge within the structures of a council.

14.5 In addition to these statutory functions, a council can confer other functions on the committee which it deems suitable for it. Each governance and audit committee can decide how it wants to carry out its functions, but in doing so it must have regard to this guidance.

14.6 Detailed guidance on the operation of governance and audit committees has been produced by Chartered Institute of Public Finance and Accountancy 122 (CIPFA). In deciding how the Governance and Audit Committee will operate and how it will transact its key tasks, councils and committees themselves should consider the intersection between the formal role of this committee and the role

of other bodies – in particular, the Democratic Services Committee (in respect of corporate governance) and the Overview and Scrutiny Committee(s) (in respect of financial oversight and review of strategic risks).

Membership

14.7 The full council must have regard to this guidance when determining membership. Two thirds of the members of the committee are to be members of the council and one third must be a lay members. Only one member of the executive or assistant to the executive may sit on the committee, and that person must not be the leader (s82, Local Government (Wales) Measure 2011).

14.8 The chair of the committee is to be decided upon by the committee members themselves. However, the chair must be a lay member. The committee must also appoint a deputy chair who must not be a member of the council's executive or an assistant to the executive (section 81, subsections 5A, 5B and 5C of the Measure). All committee members, including lay members, have the right to vote on any issue considered by the committee. Lay members are therefore required by statute to comply with the council's code of conduct made under Part 3 of the Local Government Act 2000 and uphold the highest standards of ethical conduct.

14.9 The rules within section 15 et seq of the Local Government and Housing Act 1989 apply to governance and audit committees. The authority must however decide how many non-councillors should be appointed to the committee, and all members of the committee should display independence of thinking and unbiased attitudes, and must recognise and understand the value of the governance and audit function.

14.10 All new members will need to be provided with induction training. Although it is to be hoped that appointed councillors would have some relevant expertise, this cannot be guaranteed. What will be important, though, is to try and ensure that members do not have any other responsibilities which might conflict with their role on the governance and audit committee. That might be particularly the case in the choice of any executive member or assistant to the executive on the committee.

14.11 It may also mean that the members should not have too many other commitments, in general such as membership of other committees because of the significant commitment which being a member of the governance and audit committee implies. All members should receive adequate training and development.

14.12 The governance and audit committee should try and ensure it appoints a member as chair who will be strong and experienced enough to lead the questioning which the committee will have to perform.

14.13 Whatever recruitment method is employed, lay members should be independent from the council and have no business connection with it, although knowledge of how local government functions would be a definite advantage. In appointing lay members whose political allegiances are well known, local authorities should consider if this compromises the independence and perception of independence from the council a lay member should demonstrate. Councils should 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.

Meetings and Proceedings

14.14 As a committee of the council, the governance and audit committee is subject to normal arrangements of openness. Meetings should be held in public, agendas and reports should be published and available for inspection. The exception to this is where “exempt items” are being considered, which are chiefly matters which involve discussions concerning named individuals or commercial in confidence matters.

14.15 Any officer or member called to attend the governance and audit committee meeting must do so. They must answer any questions asked of them save ones which they could refuse to answer if they were in court. The committee can invite other persons to attend before it, but anyone else so invited to attend is under no compulsion to do so.

14.16 The committee must meet at least once a year and must also meet if the full council so decides, or if at least a third of the committee’s members require that a meeting be held. Beyond these stipulations, the committee can meet whenever it determines. 14.17 The Welsh Government suggests councils consider appropriate publications by relevant professional bodies such as CIPFA when establishing and reviewing their procedures for governance and audit committees.

Functions of a Governance and Audit committee

Reviewing the authority’s financial affairs

14.18 Section 151 of the Local Government Act 1972 requires local authorities to make arrangements for the proper administration of its financial affairs. Putting in place the governance and audit committee and providing it with the duty to keep the authority’s financial affairs under review must be viewed as assisting in the fulfilment of this requirement.

14.19 This is an area which is given close attention by the authority’s external auditors and ties in with the duty of the governance and audit committee to oversee the arrangements for internal and external audit, and also the need to monitor the internal control and risk management arrangements made by the authority.

14.20 Local authorities should make their own arrangements, in their constitution, to provide for clear demarcation between the role of the governance and audit committee and that of a relevant scrutiny committee. The governance and audit committee role should be more to seek assurance that the budgetary control systems (as an internal control) of the council are working, rather than the actual scrutiny of spend. This may serve as acceptable demarcation between the role of the governance and audit committee and that of an overview and scrutiny committee.

Risk management, internal control, performance assessment and corporate governance arrangements of the authority

14.21 The attention to this matter should raise the profile of risk management as a necessary control tool within the authority as a whole. By providing regular review, the governance and audit committee forms a significant part of the authority’s corporate governance system.

14.22 The authority should have a clear ‘Statement of Purpose’ for its governance and audit committee, ensuring the committee has a prime role in ensuring effective corporate governance is central to the organisation’s procedures. As such, the governance and audit committee should review the Annual Governance Statement¹ and Corporate Governance Strategy. An effective and high profile governance and audit committee is critical to engendering public confidence that the authority has a solid approach to its financial and organisational propriety

14.23 The governance and audit committee will need to report on the adequacy of the authority's risk management and internal control arrangements, and comment on their effectiveness. It will also follow up on risks identified by internal and external auditors and require reports as to action taken in response. This means the council must ensure the governance and audit committee is briefed on the contents and recommendations contained in auditor's reports and has access to them. It should also have access to reports from regulators where these have identified risks, failures in internal control or the corporate governance systems of the council. It would be good practice for all reports from auditors and regulators to be shared with the governance and audit committee as a matter of course.

14.24 In addition to these existing duties, the 2021 Act added a new duty to this group of duties which requires the governance and audit committee to review and assess and make reports of the effectiveness of the arrangements the council has put in place for the performance assessments it is required to complete under section 91 of the Local Government and Elections (Wales) Act 2021 in order to fulfil its duty to keep performance under review in section 89 of the 2021 Act. This is not intended to be a repeat of the performance assessment itself but consideration, for example, of the rigour and comprehensive nature of the process. Neither is it intended to duplicate the role of overview and scrutiny committees in holding the council's executive to account in relation to the performance management of the council's services.

14.25 The council must make a draft of its self-assessment report (and panel assessment report when published) available to its governance and audit committee. The committee must review the draft reports and may make recommendations for changes to the conclusions or action the council intends to take. If the council does not make a change recommended by the governance and audit committee, it must set out in the final self-assessment report (or response to a panel assessment report) the recommendation and the reasons why the council did not make the change.

Review and assess the authority's ability to handle complaints effectively

14.25 The way in which an organisation manages its internal and external complaints process for service and organisational complaints (consideration of the complaints process for complaints made under the members' code of conduct is not a function of the Governance and Audit Committee) is an integral part of its corporate governance systems. It is vital that people, communities and other stakeholders have trust and confidence their complaints will be treated with due respect and gravity. It is also important that staff and others internal to the organisation have trust and confidence internal complaints are treated with similar respect.

14.26 The role of the governance and audit committee is not to consider whether individual complaints have been dealt with appropriately but to consider the effectiveness of the complaints process. For example, is the process accessible to everybody in the community, is the council giving proper consideration to its statutory duties in relation to equalities and Welsh language when handling complaints, is there internal learning built into the complaints process to improve systems and services going forward. The Welsh Government expectation is that councils provide the PSOW with an assessment of the arrangements in place for handling complaints and the effectiveness of its approach as part of its regular communication with the PSOW.

Internal and external auditors

14.27 An effective governance and audit committee should provide the authority's chief finance officer with advice which can serve to bolster the work of internal and external auditors. The

committee can ensure that audit reports are kept in the authority's mind, so timing of meetings might be planned so as to effectively follow-up auditors' recommendations.

14.28 The governance and audit committee will expect to input into the planning of internal audit priorities, approving the annual programme of audits and ensuring the internal auditors have the necessary resources to conduct their work effectively. They will want to meet with the Head of Internal Audit and receive their annual report.

14.29 The governance and audit committee should also receive the reports from the external auditors and follow up their recommendations during the year. The committee should have a role in agreeing the authority's response to the auditor's letters or reports as well as being able to meet with the external auditor.

14.30 In addition, the governance and audit committee should receive and consider reports from any regulators or inspectors. In respect of these, the authority will need to ensure there is no unnecessary duplication between the governance and audit committee and any overview and scrutiny committee in considering such reports.

Financial statements

14.31 Before their approval by the authority, the governance and audit committee should consider and comment on the authority's certified draft financial statements. They will want to see to what extent the statements take cognisance of audit reports during the year, and changes in accounting policy and internal control mechanisms. The Committee should also review the external audit

statement and also seek assurance on the management of the council's financial affairs. Any concerns should be reported to the Council. 14.32 Governance and audit committees may approve the financial statements themselves where local authorities have delegated that power to them under regulation 10 of the Accounts and Audit Regulations (Wales) 2014 (as amended).

Governance and Audit Committee Reports and Recommendations

14.33 Reports and recommendations by the governance and audit committee should be considered by full council in particular, as well as the executive. The processes for these considerations should be set out in the council's constitution