

SELECTION AND MEMBER SERVICES COMMITTEE

Thursday, 30th November, 2023

2.30 pm

**Council Chamber, Sessions House, County Hall,
Maidstone**





AGENDA

SELECTION AND MEMBER SERVICES COMMITTEE

Thursday, 30 November 2023, at 2.30 pm Ask for: **Joel Cook**
Council Chamber, Sessions House, County Telephone: **03000 416892**
Hall, Maidstone

Membership (8)

Conservative (5): Mr N J Collor (Chairman), Mr M C Dance, Mr R W Gough,
Mr C Simkins and Mr D Jeffrey

Liberal Democrat (1): Mr A J Hook

Labour (1): Dr L Sullivan

Green and
Independent (1): Rich Lehmann

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

- 1 Apologies and Substitutes
- 2 Declarations of Interests by Members in items on the Agenda for this meeting.
- 3 Minutes (Pages 1 - 6)
- 4 Outside Bodies: Protocol (Pages 7 - 18)
- 5 Petition Scheme Review (Pages 19 - 28)
- 6 Governance Update - to follow

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Benjamin Watts
General Counsel
03000 416814

Wednesday, 22 November 2023

KENT COUNTY COUNCIL

SELECTION AND MEMBER SERVICES COMMITTEE

MINUTES of a meeting of the Selection and Member Services Committee held in the Council Chamber, Sessions House, County Hall, Maidstone on Thursday, 19 October 2023.

PRESENT: Mr N J Collor (Chairman), Mr M C Dance, Mr R W Gough, Rich Lehmann, Mr C Simkins, Dr L Sullivan and Mr D Jeffrey

ALSO PRESENT: Mr. P Oakford (Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services), Mr. H Rayner (Deputy Cabinet Member for Finance)

IN ATTENDANCE: Mr J Cook (Democratic Services Manager), Mr T Godfrey (Senior Governance Manager), Mrs J Kennedy-Smith (Operational Delivery Team Manager), Miss K Reynolds (Democratic Services Officer), Mr O Streatfield (Member Hub Supervisor), Ms L Tricker (Democratic Services Officer), Mr B Watts (General Counsel)

UNRESTRICTED ITEMS

8. Declarations of Interest

(Item)

There were no interests declared.

9. Minutes

(Item 3)

Mr Watts provided an update on the previous minutes and explained that there had been delays to other services, which meant meetings could only be webcast from the Council Chamber but informal meetings could continue to be held in the Darent Room.

RESOLVED that the minutes of the meeting held on 29 June 2023 were an accurate record and that they be signed by the Chair.

10. Petition Scheme Review - to follow

(Item 4)

1. Mr Cook introduced the report and stated that since June 2023 the team had undertaken a review of the Council's petition scheme and had completed research on comparable council's petition schemes. KCC's petition scheme was in line with many other comparable councils, and if the petition limit was reduced to 2000, this could increase the number of County Council debates. It was explained that the Committee needed to make a choice, as residents needed to be encouraged to submit petitions, but KCC was the strategic upper-tier

authority.

2. A Member raised a question regarding the research undertaken into comparable councils' and the threshold needed to trigger a Full Council debate. Mr Cook explained that although some authorities, such as Hertfordshire County Council, had lower thresholds for County Council debates, Kent remained in line with most comparators.
3. Members raised concerns regarding the threshold for Joint Transportation Board (JTB) petitions, and it was confirmed that if petitions did not meet the threshold they could still be added to the agenda through the agenda-setting process.
4. Members discussed lowering the threshold of County Council and Cabinet Committee petitions to encourage resident engagement with the Council and the democratic process.
5. Members queried how signatures on petitions were checked to confirm eligibility, and if the team could check eligible signatures on the electoral role. It was confirmed that people under 18, or who studied or worked in the borough could sign petitions and may not appear on the electoral role. The team could undertake dip sampling to check petition signatures, but a process and procedure note would need to be agreed before this could begin. A paper could be brought back to the committee to confirm criteria eligibility and the verification process.
6. Members agreed for officers to consider all options before coming back to committee and presenting the options for the petition scheme, along with the eligibility criteria for signing a petition and how this would be verified.

RESOLVED to bring an update back to the next meeting to clarify which changes should be progressed.

11. Outside Bodies: Outcome of Review *(Item 5)*

1. Miss Reynolds introduced the report and stated that in June 2023 the Committee had agreed to review the Outside Bodies scheme, and this paper outlined the outcome of this review.
2. A Member raised a concern with recommendation C and asked for inclusion of the word 'relevant' to ensure that the process for appointing to an Outside Body remained streamlined and effective. This amendment was seconded and agreed by the Committee.
3. A Member highlighted that KCC representatives on Outside Bodies should keep KCC informed of any changes to that organisation. Mr Watts agreed that a Protocol would be created to centralise the Outside Body process and clarify the relationship between KCC and outside bodies, as well as what support, if any, needed to be provided

by officers so the process was clear for Members.

4. Members clarified that some changes to the Outside Body list in the report needed to be made, and officers confirmed that the list would be updated.

RESOLVED to:

- a. Agree to remove the outside bodies listed in section 2d from the list of outside bodies.
- b. Agree to confirm the current list of outside bodies as set out in section 2c.
- c. Delegate to the Monitoring Officer the authority to make nominations and appointments to outside bodies where there is a vacancy, after consultation with the relevant Chair of the Committee and relevant Group Leader.

12. Member Development Sub-Committee: Annual Report

(Item 6)

1. Mr Jeffrey introduced the report and thanked officers and Members for their hard work on the report, both formally and informally. He explained that a survey on key issues such as the role of the Executive and Member training had been distributed amongst KCC Members and 70% had responded. Following the survey, the team had begun to put together a plan of action, which included mandatory training for Planning Committee Members and media training for Cabinet Members, Chairs, and opposition leaders. More training would be held in future, for example risk management training, and comments and feedback on the report would continue to be welcomed.
2. The Chair asked what the next steps of the project would be and if this would include training on mod.gov. It was confirmed that mod.gov training could be provided.
3. Members requested the team consider external training for Members, for example training from the LGA for backbench Members.
4. Mr Watts explained that the report considered varied positions and viewpoints from Members, which would feed into the Annual Governance Statement. Members had different needs and needed diverse levels and types of support and training. Member hub would be available to assist with any queries regarding training or accessing papers online.

RESOLVED to:

- a. Note and discuss Member Development to provide contribution to the key findings.
- b. Provide a view on the budget arrangements for Learning and Development allocations.
- c. Provide feedback on Appendix A.

13. KCC Combined Member Grants

(Item 7)

1. Mr Jeffrey introduced the report and stated that it outlined how Combined Member Grants (CMGs) had been spent by Members in the previous financial year. There remained a problem in reporting as some Members, according to the report, had not spent their CMG but in actuality were saving for larger highways projects or had already allocated this spending to a project, but this had not yet been completed. The team were considering a different way of reporting, which would include categories for monies allocated but not yet spent.
2. Members agreed that reporting should be updated to show where monies had been allocated but not spent, or where the money had been spent but projects delayed.
3. Mr Watts explained that the report provided a year-end snapshot, but CMG expenditure was closely monitored by the team. The team were considering presenting monthly updates to Members on CMGs and were currently considering how best to share this information, including a Member webpage to show real time grant spend. It was agreed that the public document should remain reflective and not be a live document. Mr Watts confirmed that options on how CMGs were presented would be considered, and a caveat would be included when published online to explain that the report provided a year-end snapshot.

RESOLVED to:

- a. Note the grant recipient list for the Combined Member Grants 2022/23.
- b. Note the COVID-19 Local Recovery Fund Grants 2021/22.
- c. Approve the upload to the KCC website, including an explanation that the report provided a 2022/23 year-end snapshot and was not a live document.

14. Kent Flood Risk Management Committee: Terms of Reference Review (Item 8)

1. Mr Cook introduced the report and explained that the review had been prompted by the Kent Flood Risk Management (KFRM) Committee Chair to ensure the name of the Committee was up-to-date and accurately reflected the work of the Committee, which had expanded to include the work of the water companies and climate change. No substantive change to the Committee was being proposed.
2. A Member raised a concern as the KFRM Committee was technically an Overview and Scrutiny Committee, which meant that Cabinet Members or Deputy Cabinet Members could not sit on the Committee. It was confirmed that the Committee scrutinised the work of other bodies, and did not scrutinise KCC, but constitutional amendments were being considered.
3. A Member highlighted that the Cabinet Member titles in the Terms of Reference were out of date and needed to be updated.

RESOLVED, subject to Cabinet Member titles being updated in the Terms of Reference, to recommend to County Council that the:

- a. Name of the Kent Flood Risk Management Committee be changed to Kent Flood Risk and Water Management Committee
- b. Amendments to the Terms of Reference of the Kent Flood Risk Management Committee as set out in the report be approved.

15. Monitoring Officer: Verbal Update

(Item 9)

1. Mr Watts, General Counsel updated the Committee and explained that a more substantive update would be provided once the outcomes from the Annual Governance Statement were known, including proposed changes to the Constitution which would be presented to Committee. There were also conversations ongoing regarding changing the structure of meetings, which would be presented to the Committee in late 2023 or early 2024, to ensure that resources were targeted, and Members fully supported. Mr Watts summarised and explained that this remained a pressurised time for local councils, including KCC, but officers remained committed to providing the best service for residents.

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From: Tristan Godfrey, Senior Governance Manager

To: Selection and Member Services Committee, 30 November 2023

Subject: Outside Bodies: Protocol.

Status: Unrestricted

1. Introduction

- a. As per its terms of reference, this Committee is responsible for making nominations / appointments to a specific set of outside bodies. These are made on behalf of the Council and exclude those relating to Executive functions.
- b. As reported previously to the Committee, a review of this function has been undertaken by Officers. At the meeting of 19 October 2023, the Committee agreed a revised list of outside bodies to which it makes appointments. This brought the information up to date and removed those outside bodies where appointments were no longer needed.
- c. To better support this Committee in its role in relation to outside bodies, the Committee also agreed to request that Officers work on a draft protocol for discussion / agreement at a future meeting. This is set out in the Appendix and discussed further below.

2. Outside Bodies Protocol

- a. The term 'outside bodies' refers to a diverse range of organisations. The nature of the roles to which nominations and appointments are made is also varied. Each one comes with different roles, responsibilities and, potentially, liabilities. While acknowledging this variety, the protocol is intended to provide a framework around the activities of the Committee in this area. It is also intended to be a useful reference document for individuals nominated and/or appointed.
- b. The protocol sets out guidance on the following:
 - The reasons why an organisation may be on the outside bodies list.
 - How this Committee will go about updating and reviewing the list.
 - Principles underlying nominations and appointments.
 - Information of the different kinds of roles and responsibilities an appointee may be asked to undertake.
 - Information on indemnity.
 - Information on conflicts of interest.
- c. This Committee would be responsible for reviewing the protocol from time to time to ensure it remains fit for purpose.

3. Recommendation

The Selection and Member Services Committee is asked to:

- a. approve the outside bodies protocol; and
- b. agree that this Committee's activity in connection to its power of appointment to outside bodies will be undertaken in line with the protocol.

4. Background Documents

None.

5. Report Authors and Relevant Director

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Outside Bodies Protocol for Kent County Council

Part One - General

1. Introduction

- a) This protocol has been produced to support the Selection and Member Services (SMS) Committee in its responsibility for “making appointments and nominations on behalf of the Council to serve on outside bodies (except those needing to be made by the Leader in connection with a delegation by them of their functions, the list of those appointments to be agreed between the Leader and the Committee from time to time)” (section 17.37(j) of the Constitution).
- b) The list of outside bodies to which this responsibility applies, and covered by this protocol, are set out in the Appendix. This list will change from time to time and the Clerk of the SMS Committee should be contacted for the current list.
- c) The nature of the role, responsibilities and potential liabilities of appointees will depend upon the legal nature of the outside body concerned, as well as the role to which they have been appointed. Failure to act in a proper manner may give rise to personal liability or liability for the Council.
- d) It is not meant to be a comprehensive guide. If Members or Officers have queries, then they should contact the Monitoring Officer for advice.

2. The List of Outside Bodies

- a) There are different reasons an organisation may be on the outside bodies list, including:
 - The organisation has made the request for a nomination or appointment.
 - There is a requirement under statute for the Council to make an appointment.
 - The Council is a member of the organisation and has the power to make appointments.
 - The organisation is under a duty to consult/engage with the Council.
 - The outside body was established as a means for undertaking a statutory duty involving the Council.
- b) It is not necessarily the case that the Council knows in detail the organisation of the outside bodies to which the Committee makes appointment/nominations, as these are independent bodies of varied types.
- c) Each year the SMS Committee will review the list of outside bodies and the appointments. Where appointments are made annually to an outside body, this will provide the opportunity to confirm/change these appointments.

- d) Where the Council has discretion in adding or removing an organisation from the list of outside bodies, the SMS Committee will consider the following before making a final determination:
- i. Whether the proposed appointment would be consistent with the Council's strategic objectives.
 - ii. Whether the proposed appointment would add value to the Council's activities.
 - iii. The time commitment of the proposed appointment.
 - iv. The cumulative impact of the number of outside bodies on Member time and Council resources.

3. Appointments and Nominations

- a) Depending on the organisation, the SMS Committee may be asked to appoint the following:
1. A currently elected Member.
 2. An Officer of KCC.
 3. An individual who is neither an elected Member, nor a KCC Officer.
- b) Where there is to be an Officer appointment, the relevant Director or Corporate Director will make a recommendation to the Committee.
- c) An individual who is neither an elected Member nor a KCC Officer may only be nominated/appointed when the following all apply:
- i. The role is to represent the best interests of the outside body solely and is in no way a representative of the Council.
 - ii. There is no bar to such an appointment, i.e., through statute, articles of association, etc.
 - iii. The outside body has been contacted prior to the nomination/appointment and they have confirmed that they are content.
- d) With both elected Member and Officer appointments, the appointment will cease as soon as the appointee ceases to be an elected member or employed as an Officer as applicable. An Honorary Alderman may not be nominated in place of a Member.
- e) All nominations/appointments are subject to confirmation of acceptance by the appointee/nominee and are only provisional until this is received.
- f) Where an appointed individual chooses to resign from an outside body appointment, they will notify the relevant outside body and also inform the Clerk of the SMS Committee. The Committee will then be able to make a replacement

appointment where there is a vacancy at the next appropriate meeting of the Committee (unless a delegation is in place – see section 4).

- g) Before accepting any appointment, all individuals are responsible for ensuring they are fully aware of the nature and role of the organisation and understand the obligations and responsibilities they are being asked to take on.

4. Authority and Delegations

- a) The authority for making these nominations/appointments rests with the Committee. This includes making changes to appointments. In other words, while a Member is entitled to resign from any appointed position, a replacement cannot be appointed without a decision from the Committee, unless there is a delegation in place.
- b) The Committee may choose to delegate the authority to make one or more nominations/appointments to the Monitoring Officer, or another appropriate Officer, including replacements where there is a vacancy. All instances of this delegated authority being used will be reported to the Committee at the following meeting.

Part Two – Responsibilities and Indemnity

5. Introduction

- a) It should not be assumed by any appointee that their involvement with an outside body will be covered by the indemnity offered by KCC to Members and Officers. The liability offered is subject to limitations and will only apply in some circumstances. See section 7 for more on indemnity.
- b) Individuals who are appointed to outside bodies may be indemnified in relation to liabilities they incur in that capacity by that body, though this is subject to certain limitations, depending on the nature of the organisation and the role. See section 7 for more on indemnity.
- c) Where the appointed individual is neither a Member nor an Officer, they will not be covered in any way by the indemnity offered by KCC to Members and Officers.

6. Duties and Responsibilities

- a) The following is a summary of the main duties and responsibilities of Councillors who are nominated by the Council to the most common types of outside body. The main principles of the obligations applying to company directors also apply to trustees and members of management committees. If a nominee is in doubt about their duties and responsibilities, they may seek advice from the Monitoring

Officer. In many cases, however, it will be more appropriate to seek advice from the advisers to the body involved, as they will have access to the rules and protocols of the body.

6a. Companies

- a) A company is a separate legal entity which can hold property in its own right, enter into contracts, employ staff and sue and be sued in its own name. The company is distinct from its members, who may be either shareholders or guarantors. The Council itself may be a member of the company, either a shareholder or guarantor.
- b) The duties of a company director are set out in the Companies Act 2006, which codifies the existing common law and equitable principles. The management of a company is usually the responsibility of the Board of Directors. Directors' powers are usually set out in the company's Articles of Association. Another important document is the Memorandum of Association, which sets out the Company's objectives and powers.
- c) The duties of a company director are not the same as the responsibilities as a Member or Officer. Basically, when involved in company business, the company must come first. Directors must act in the interests of the company, and not in the interests of other parties, including shareholders.
- d) Directors' Responsibilities are:
 - i. To promote the success of the company, A director's primary duty is to act in good faith, in the best interests of the organisation and its objects. All directors owe a fiduciary duty to their company, which means they owe loyalty to the company and a duty of care to act in the best interests of the company, having regard to the interests of the members or shareholders of the company, the company's employees, and creditors. This includes having regard to the likely long-term consequences of decisions, the interests of employees, fostering relationships with suppliers and customers and others, the impact of operations on the community and environment, maintaining a reputation for high standards of business conduct, and acting fairly between members of the company.
 - ii. To exercise care, diligence, and skill, using one's own knowledge, skill and experience, together with the care, skill and diligence which may reasonably be expected of a person who is carrying out the functions of a director. So, a director with significant experience must exercise the appropriate level of diligence in exercising their duties in line with their higher level of expertise. Although directors are not bound to attend all meetings of directors, attendance should be as frequent as possible, and directors should ensure that they are reasonably informed at all times.

- iii. Not to exceed powers. A company director must act in accordance with the company's constitution, and exercise powers for the purposes for which they were given.
 - iv. To comply with the Companies Acts in relation to the keeping of accounts and ensure that the relevant returns are made to the Registrar of Companies. Failure to do so will incur fines and persistent default can lead to disqualification as a director.
 - v. To avoid conflicts of interest. A director must avoid a situation in which they have, or may have, a direct or indirect interest which conflicts, or could conflict, with the interests of the company. This duty applies particularly to transactions between a director and a third party in relation to the exploitation of any property, information, or opportunity.
 - vi. To exercise independent judgement. A director nominated by the Council cannot, for example, simply vote in accordance with the Council's instructions. To do so would be a breach of duty. The director must act in the company's interests.
 - vii. Not to accept benefits from third parties. A company director must not accept any benefit from a third party (whether monetary or otherwise) which has been conferred because they are a director. This is based on the established principle that a director must not make a secret profit as a result of being a director. This duty applies unless the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
 - viii. To declare an interest in a proposed transaction or arrangement with the company. A company director who has either a direct or an indirect interest in a proposed transaction or arrangement with the company must declare the 'nature and extent' of that interest to the other directors before the company enters into the transaction.
- e) Directors' Liabilities: If a director fails to carry out their duties, action can be brought for breach of duty, either by the company itself, or by a liquidator if the company goes into liquidation, or with the consent of the court, by a shareholder. Such actions are unlikely where the company is properly controlled by the directors.

6b. Unincorporated Associations

- f) "Unincorporated associations" have no separate identity from their members. The rules governing the members' duties and liability will be set out in a constitution, which is simply an agreement between the members as to how the organisation will operate. Usually, the constitution will provide for a management committee to be responsible for the everyday running of the organisation. Management committee members must act within the constitution and must take reasonable care in exercising their powers. An unincorporated organisation may be charitable and may register as a charity.
- g) If an appointee is involved in a decision-making capacity or have a position of general control or management on an unincorporated body, as the body has no

separate corporate status, any liabilities will fall upon them personally. Councillors appointed to such bodies should familiarise themselves with the association's constitution to understand the nature of their role, responsibilities, and liabilities, and should assess the risk of personal liability, and the extent to which it has been covered by insurance.

6c. Charities

- a) A charity is an organisation which operates for the public benefit and exclusively charitable purposes, either:
- the relief of poverty and human suffering,
 - the advancement of education,
 - the advancement of religion, or
 - another purpose for the benefit of the community.
- b) Those who are responsible for the control and administration of a charity are referred to as its trustees, even where the organisation is a company limited by guarantee and even though they are not strictly trustees. A charity may also be unincorporated.
- c) Trustees of a charity retain personal liability and can only delegate to the extent that the charity's constitution authorises them so to do.
- d) Charitable Trustees' Responsibilities are:
- i. To act in accordance with the charity's trust deed or governing document.
 - ii. To protect the charity's assets.
 - iii. To comply with the Charities Acts, and the Trustee Act 2000.
 - iv. Trustees must not make a private profit from their position. They cannot receive remuneration without the sanction of the Charity Commission.
 - v. To perform their duty with the standard of care which an ordinary, prudent business person would show. Higher standards are required of professionals, and in relation to investment matters.
 - vi. Charitable trustees must ensure that the information relating to the charity and trustees is registered with the Charity Commissioners and that annual accounts, reports and returns are completed and sent.
 - vii. Trustees are under a duty to ensure compliance with all relevant legislation (e.g., in relation to tax and land matters).
- e) Charitable Trustees' Liabilities: Generally, a trustee may incur personal liability if they:
- act outside the scope of the trust deed,
 - fall below the required standard of care,
 - act otherwise than in the best interests of the charity, in a way which causes loss to the charity fund, or

- makes a personal profit from the trust assets.
- f) In such circumstances the trustee will be in breach of trust and will incur personal liability for losses incurred. If in doubt, trustees should always consult the Charity Commissioners.
- g) Trustees can incur personal liabilities for contracts they enter into in the name of the charity. They will normally be entitled to be reimbursed from charitable funds for liabilities and expenses properly incurred by them. If the charity is a company, the trustees will be protected from liabilities incurred in the day-to-day running of the charity in the normal course of events but will be personally liable if they commit a breach of trust, as stated above.

7. Indemnity

- a) Councillors who participate in external bodies may be indemnified in relation to liabilities they incur in that capacity, though this is subject to certain limitations.
- b) Indemnity by the outside body:
1. **Directors:** Directors cannot be indemnified by the company against liability for negligence, default, breach of duty and trust. Companies can however purchase insurance to protect directors against claims of negligence, default, breach of duty and trust. Those appointed as directors should ensure that appropriate insurance is in place. Companies can, if their Articles of Association allow, provide for directors to be indemnified for the costs of defending such a claim if they are granted relief by the court or acquitted.
 2. **Trustees:** Provided a charitable trustee acts properly, and within their powers, indemnity can be given from the trust fund. Trustees can take out insurance to protect themselves from personal liabilities, but not for criminal acts such as fraud. If the premiums are to be paid out of the charitable funds, the consent of the Charity Commissioners will be needed.
 3. **Unincorporated Associations:** Members may be entitled to an indemnity if they act in accordance with the constitution of the association, and are not at fault. However, regard must be had to the terms of the constitution. The constitution will determine whether insurance can be paid for by the organisation.
- c) Indemnity by the Council: The Council may provide an indemnity where Members or Officers are acting on an outside body at the request of the Council, subject to d below.
- d) The indemnity the Council can provide is subject to limitations. In general terms, if a Member or Officer is acting properly, within their powers and in good faith,

the Council will consider on a case by case basis giving an indemnity, providing that Member has complied with this protocol and undertaken the relevant training offered by the Council. However, the Council cannot, for example, provide an indemnity in relation to any action or failure by any Member/Officer which constitutes a criminal offence, or for any action or failure by any Member/Officer which is the result of fraud, or other deliberate wrongdoing or recklessness on the part of the Member or where they have not acted reasonably or in the Council's best interests. When a Member or Officer is serving on an outside body, the Council's indemnity will only apply after any indemnity or insurance from the body itself. There are further limitations and it is advisable to be clear about the scope of the Council indemnity that may be available.

- e) Each case is different, and all individuals are strongly advised to understand their potential liabilities before accepting any appointment to an outside body.
- f) Training in relation to the different types of role and the resulting liabilities is essential and before appointment, Members are strongly advised to obtain bespoke training organised by the Monitoring Officer to inform their decision who will also clarify the likelihood and extent of any indemnity in writing.

8. Conflicts of Interest and Codes of Conduct

- a) Members and Officers are reminded of the requirements of their respective Codes of Conduct.
- b) A Member appointed to an outside body is likely to have a declarable interest if they attend a council meeting where a matter relating to that body is included or arises. In that situation, they should disclose to that meeting the existence and nature of their interest at the commencement of the consideration of the matter; or as soon as the existence of the interest becomes apparent to them. Depending on the nature of the matter, the Member's interest may require them in addition to leave the meeting room without further participating in the discussion or in voting.
- c) Where there is no prejudicial interest in a matter, a Member's duties as a director or trustee or a member of a management committee may still mean that they should not participate in a decision because of a legitimate fear of lack of impartiality, or bias, which could potentially invalidate the decision. Bias will not be assumed merely on the basis of the Member's membership of an outside body. However, where the outside body has an approach which is being advocated by the Member, it is quite possible that, in the context of a legal challenge to the council's decision, the Court would find the Member had been biased on the issue. Therefore, the Member should consider very carefully whether to take part in a discussion or decision at a Council meeting on that matter. In such circumstances, it would be appropriate to seek advice from the Monitoring Officer, or other appropriate/legal governance Officer.

- d) Where an Officer has been appointed to an outside body by the Council and a conflict of interest arises, this should always be disclosed to the officer's immediate manager who should, in appropriate cases, seek advice from the Council's Monitoring Officer, or other appropriate /legal governance Officer.

Appendix – List of Current Outside Bodies for SMS Appointments

- Aylesham and District Community Workshop Trust.
- Bensted's Charity.
- Biggin Hill Consultative Committee.
- Gabriel Richards Charity.
- Gatwick Airport Consultative Committee.
- Headcorn Aerodrome Consultative Committee.
- High Weald Area of Outstanding Natural Beauty Joint Advisory Committee.
- Industrial Communities Alliance.
- John Wallis CE Academy.
- Kent Association of Local Councils.
- Kent Downs AONB Joint Advisory Committee.
- Kent Music Board of Directors.
- Local Government Association:
 - Children and Young People Board.
 - County Councils Network.
 - General Assembly.
 - Public Transport Consortium.
- Lydd Airport Consultative Committee.
- Magnox Ltd - Dungeness A Site Shared Stakeholder Group.
- Medway NHS Foundation Trust.
- PATROL Joint Committee/Bus Lane Adjudication Service Joint Committee.
- Rochester Airport Consultative Committee.
- Rochester Bridge Trust.

- Sandwich and Pegwell Bay National Nature Reserve Steering Group.
- South East Employers.
- Southern Regional Flood and Coastal Committee.
- The Duke of York's Royal Military School.
- Vinters Valley Park Trust.
- Robert Thompson Charities.
- Yalding Educational Foundation.

DRAFT

From: Joel Cook – Democratic Services Manager
To: Selection and Member Services Committee – 30 November 2023
Subject: Petition Scheme Review
Status: Unrestricted

1 Introduction

- 1.1 The County Council has had a petitions scheme since 1 September 2010. It was established, as was the case for all Councils, in response to specific legal requirements to put in place a scheme or policy that confirmed how a Local Authority would manage any submitted petition. However, the Localism Act 2011 repealed the relevant sections of the 2009 Local Democracy, Economic Development and Construction Act (LDED&C 2009) and the associated statutory guidance, removing the legal requirements for Local Authorities to maintain relevant petition schemes or policies for petitions relating to normal council business. Like the majority of Councils, Kent opted to maintain a Petition Scheme despite the lack of legal requirement (confirmed 2012 during last scheme update). For reference, the now repealed legislation and associated guidance is still referred to and drawn from in this review as they informed the development of the current scheme.
- 1.2 The petition scheme is an important tool in the Council's governance to manage and respond to public views and concerns. However, it should not be viewed in isolation and must be considered alongside the role of local Members, consultation activity, resident engagement and the Overview and Scrutiny functions already set up across the Council. There is also an expectation management aspect to be considered in that any change or review or indeed use of the petition scheme should be caveated with an understanding that no petition may bind the Council or relevant decision-maker to enact any requested activity. The purpose of any petition scheme is to promote debate and further consideration of issues, either directly by the decision-maker or by the wider elected membership on relevant committees or boards, with any recommendations being presented to decision-makers.
- 1.3 The scheme reviewed by this Committee in April 2014. The last change made to the Petition Scheme was in 2012, when the number of signatures required for a petition debate at County Council was reduced to 10,000 and a requirement for a debate at a Cabinet Committee if over 2,500 signatures were received. A copy of the current scheme is shown at **Appendix 1**.
- 1.4 At a meeting of the [Selection and Member Services Committee on Thursday, 29th June, 2023](#), Members were invited to consider the petition scheme generally, explore any areas requiring review and to provide Officers with a steer on the necessary review activity and related research. In particular, the Committee was asked to consider the merits and implications of changes to the petition thresholds, recognising that specific reductions in signature threshold numbers had been suggested by the Green & Independents Group earlier in the year.

1.5 The comments from the discussion were collated and a report was presented to a meeting of the [Selection and Member Services Committee on Thursday, 19th October, 2023](#), setting out the merits and implications of the proposed changes to the Petition Scheme, along with a number options for consideration. Those options were as follows:

1.5.1 Option 1:

Agree that no changes be made to the Petition Scheme;

1.5.2 Option 2:

(SMS may recommend one or more of the following changes to the Scheme)

- a) Recommend that the eligibility criteria be amended, only permitting signatories who reside in Kent.
- b) Recommend that 'live, work or study in Kent' be maintained as the eligibility criteria but require a specific Kent postcode to evidence the Kent link.
- c) Recommend that the threshold for a petition to be debated at County Council be reduced from 10,000 to one of the following options:
 - 8000 signatures
 - 5000 signatures
 - 2000 signatures
- d) Recommend that the Cabinet Committee debate threshold be reduced from 2500 to one of the following:
 - 2000 signatures
 - 1500 signatures

1.6 The Selection and Member Services Committee were broadly in agreement with the principle of reducing the signature thresholds to encourage resident engagement with the Council and the democratic process. However, prior to agreement, Members sought further assurance on the eligibility criteria of signatories and the verification process adopted by Kent County Council resolving any firm recommendations to Full Council.

1.7 This report sets out the steps undertaken by Democratic Services to review the verification process and the actions required should any changes take effect.

2. Eligibility Criteria and Verification arrangements

2.1 The eligibility criteria continues to reflect the original arrangements set up in response to Chapter the 2009 Act "to make a scheme for the handling of petitions made to the authority by people who live, work or study in the authority's area." The repeal of the Act allows for this to be broadened or limited.

2.2 Democratic Services carried out a review of Kent County Council verification process against the verification process adopted by other Councils. The results of the review identified that all Councils' Petition Schemes are in line with Kent County Council's Petition Scheme in that:

2.2.1 The eligibility criteria for those submitting or signing a petition must either live, work or study in the area with the exception of Leicester whereby the City Mayor

may exercise their discretion to take the views of stakeholders outside the city should the matter have a significant impact beyond the city boundary.

2.2.2 E-Petitions:

- 2.2.3 Those submitting an e-petition must provide their name, address (residential, work or study) and contact details
- 2.2.4 Those signing an e-petition must provide their name and address (residential, work or study)
- 2.2.5 Should a postcode be provided which cannot be verified the entry is discounted – this relies on either manual checks or a technical solution depending on the council approach and available resources.
- 2.2.6 Some Councils use an online petition management system which can manipulate data and filter out addresses which are not within the area subject to relevant postcode data being available within the system.
- 2.2.7 In East Sussex, the Council has also included non-mandatory tick boxes asking the member of the public to confirm if they live in the area, work in the area or study in the area. The registering person can tick none, one, or several of the boxes.
- 2.2.8 There is no systematic way of validating the signatures as such, they are accepted providing the conditions are met.
- 2.2.9 Should the petition threshold appear to be in the realm of triggering a debate, either at Cabinet Committee or Full Council, a Governance and Democracy Officer would carry out a check of names and addresses to look for any obvious anomalies such as obviously counterfeit names or people living, working or studying outside of the area. It would otherwise not be an efficient use of officer time to check and verify that amount of data.

2.2.10 Paper Petitions:

The approach is broadly similar but without the opportunities to use technical solutions to sift postcode or petitioner identity data.

3. Risk Based Approach

- 3.1 Without incorporating a detailed data set containing significant amounts of personal data, which would not have been collected for the purpose of identity verification to support a petition scheme, it would be difficult to verify with absolute certainty that a member of the public is indeed eligible to sign a petition. Given that the purpose of a petition scheme is to promote public engagement in the activity and decision-making of the Council, the Council has consistently adopted a risk-based approach in the acceptance of information provided on the basis that they meet the conditions of the Scheme.
- 3.2 It should be noted that there is limited scope to apply significant verification processes to confirm signatory eligibility – any substantive change to this approach would require additional resourcing and technical solutions. In addition, privacy

considerations relating to requiring any submission of evidence may be disproportionate to the petition scheme purpose, as noted above.

3.3 It could be viable, however, to require a Kent Postcode to be provided with any signature – if the Committee were minded to recommend a restriction to only those living in Kent, the scheme could stipulate a home address in Kent. If ‘work and study’ remain acceptable standards for eligibility then the provision of a relevant Kent postcode for place of work or place of study could be made requirements at the point of signing a petition (online or paper). There is the further option to include non-mandatory tick boxes asking the member of the public to confirm if they live in the area, work in the area or study in the area. The registering person can tick none, one, or several of the boxes. These technical arrangements may be managed at an operational level outside of the Scheme itself but are flagged to the Committees attention to outline some of the practical changes Democratic Services have been exploring to support any final shape the Petition Scheme takes following Committee and Full Council consideration.

3.4 Further considerations include the need for greater resourcing for managing the scheme due to increased checks and this would offer limited benefit to the Council if the purpose of the review is to encourage and facilitate increased public engagement or debate of relevant issues.

4 Key considerations:

4.1 Having explored the mechanisms and technical arrangements for verification adopted by other Councils in comparison to the processes used by Kent County Council, it is evident that not only do our procedures align, but our resource capacity and limited historical experience of fraudulent signatures would suggest that there would be very little merit in applying additional substantive verification processes in view of the additional resourcing or technical solution investment required to deliver these. This reasoning would still stand should Members agree to reduce the signature threshold and is not material that consideration.

4.2 An operational adaptation to the process which is viable is clarifying the existing processes to require signatories to provide Kent postcode that evidences their direct link to Kent, be that a residence, place of work or place of study. There remains, however, a challenge to applying any substantive verification process which seeks to confirm through identity checks whether a signatory is eligible because such a check would require access to data not intended for this purpose. Further operational level work will be undertaken separate to the Scheme review to explore options and opportunities to develop or identify usable data sets to assist in these processes in future.

4.3 The following points are highlighted for consideration prior to the committee resolving any recommendations:

- a) Whether the eligibility criteria should be amended, only permitting signatories who reside in Kent.
- b) Whether ‘live, work or study in Kent’ should be maintained as the eligibility criteria.

- c) Consider whether any of the of the above points regarding eligibility and the limited scope for substantive verification checks prompt reconsideration of the desired petition signature threshold levels.
- d) Note the data impact and potential equality impact implications on the application of significant verification systems to petition signatures.
- e) Note the continued use of paper petitions on significant issues, involving high numbers of signatures and the resource implications of manual checking to verify signatory eligibility.

4. Conclusion

2.1 The eligibility criteria continues to reflect the original arrangements set up in response to Chapter the 2009 Act “to make a scheme for the handling of petitions made to the authority by people who live, work or study in the authority’s area.” The repeal of the Act allows for this to be broadened or limited.

2.2 In conclusion, it is suggested that limiting or restricting the eligibility criteria of the petition and the introduction of substantive additional verification checks may have a detrimental impact on the operations and accessibility of the scheme, risking a perception of disenfranchising key stakeholders. The Petition Scheme is a mechanism used by the local authority to actively encourage participation and engagement in public matters.

2.3 Furthermore, the review of the mechanisms and technical arrangements for verification adopted by other Councils shows that KCC is broadly in line with their arrangements in terms of current processes and this is viewed, at an operational level as reasonable. The data risk implications around using external data sets to undertake identity verification are significant and create an imbalance between paper or externally hosted online petitions and those managed through KCC’s own petitions system in terms of how far any verification could be automated. In addition, the application of additional manual checking of petitions beyond that already undertaken would have significant resource implications that could not be met within current arrangements.

2.4 However, Democratic Services will continue to explore, at an operational level, the most cost-effective and appropriate systems and mechanisms to facilitate the petitions scheme. The Committee may be reassured that the practical experience of supporting the petitions scheme since its inception and the engagement with other relevant Councils indicates that the verification issues has not proved to be a significant concern or issue and therefore should not be a major factor in determining the key points of the formal Petition Scheme.

5. Recommendation

Selection and Member Services is asked to:

1. Note the further investigation into and update on verification processes.
2. Confirm the recommendation to Council for the petition thresholds:

2. Determine any changes to the eligibility criteria

6. Appendices

Appendix 1 – current Petition Scheme

7. Background Documents

Agenda Item, Petitions Review, Selection and Member Services, 19th October 2023
[Selection and Member Services Committee on Thursday, 19th October, 2023](#)

Agenda Item, Petitions Review, Selection and Member Services meeting, 29 June 2023
[Agenda for Selection and Member Services Committee on Thursday, 29th June, 2023, 2.30 pm](#)

Agenda Item, Petition Scheme Review, Selection and Member Services meeting 25 April 2014, [Agenda for Selection and Member Services Committee on Friday, 25th April, 2014, 2.30 pm \(kent.gov.uk\)](#)

Agenda Item, Petition Scheme Review, Selection and Member Services meeting 10 July 2012, [Agenda for Selection and Member Services Committee on Tuesday, 10th July, 2012, 11.00 am \(kent.gov.uk\)](#)

Agenda item, Proposed changes to the Constitution (a) Adoption of a Petition Scheme, County Council meeting 22 July 2010, [Agenda for County Council on Thursday, 22nd July, 2010, 10.00 am \(kent.gov.uk\)](#)

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Kent County Council - Petition Scheme

1. All petitions under this scheme should relate to the work, functions or responsibilities of the Council, including the Executive. It excludes the following as other procedures apply:
 - (a) petitions relating to a planning application,
 - (b) matters where there is already an existing right of appeal (such as Council tax banding or non-domestic rates),
 - (c) statutory petitions (such as requesting a referendum on having an elected mayor).
2. Petitions will not be considered if they do not comply with the requirements of this scheme or are vexatious, abusive or otherwise inappropriate.
3. If the petition is about something over which the County Council has no direct control (for example the local railway or hospital) the Council will consider making representations on behalf of the community to the relevant body.
4. Petitions may be submitted on paper or by using the e-petition facility available through the Council website.
5. All accepted petitions will receive a response from the relevant Cabinet Member, to be sent to the petition organiser and published on the website. At all further stages, the petition organiser will receive updates and this information will be published.
6. The following thresholds apply for further action on the petition:
 - (a) Where the petition relates to a County Council matter that relates to a specific District Council area and contains at least 1,000 signatures it will be debated at the most appropriate local meeting (e.g. Joint Transportation Board).
 - (b) Between 2500 and 9999 signatures, the petition will be debated at the appropriate Cabinet Committee.
 - (c) 10,000 signatures or more, the petition will be debated at County Council.

Paper Petitions

7. Petitions submitted to the County Council must include:
 - (a) a clear and concise statement covering the subject of the petition. It should state what action the petitioners wish the County Council to take,

(b) the name, address and contact details of the petition organiser (this is the person the Council will contact to explain how it will respond to the petition), and

(c) the name and address and signature of any person supporting the petition.

8. Where a petition has passed the threshold for debate at either Cabinet Committee or Council, the petition must be submitted to Democratic Services at least 14 days before the next relevant meeting to enable consideration to be given to its eligibility for inclusion on the agenda.

E-petitions

9. The requirements under paragraph 8 above for paper petitions also apply for e-petitions and this information will be gathered through the e-petition creation and signing process. In addition, the petition organiser will be asked to decide how long the petition will be open for. The default is 3 months, but a different timescale can be agreed with the organiser.
10. Publication of an e-petition created online can take up to ten days. The organiser will be contacted if the petition cannot be published and ten days will be given to make any changes. Where a petition is not accepted, or appropriate changes not made, the reasons for rejection will be published on the website.

Receipt of the Petition

11. Receipt of a paper petition will be acknowledged within 5 days, or within 5 days of a e-petition closing.
12. The decision as to how the Council will proceed will be communicated to the petition organiser within 20 working days.

Petition Debates

13. Where a petition is accepted for debate at Council or Cabinet Committee, the procedure set out below will be followed.
14. Where a petition is eligible for discussion at a full Council or Committee meeting these rules apply, excepting that the County Council or Cabinet Committee will not debate a petition on the same decision/issue as one debated by it within the previous six months.
15. The total time for a single debate shall be 45 minutes.
16. The petition organiser, or their named representative, will be invited to attend the meeting and to submit a written statement of no more than 500 words, which should be sent to the Democratic Services Unit (preferably by e-mail to petitions@kent.gov.uk) to arrive by 5:00pm on the Monday of the week before the County Council or Cabinet Committee meeting. The relevant Directorate

should also submit a brief position statement/briefing note by the same deadline. The Clerk shall also prepare a short report containing the full text of the petition and the number of signatures.

17. At the meeting of the County Council or Cabinet Committee the petition organiser, or their named representative, will be given five minutes to present the petition at the meeting and the petition will then be discussed by Members. The relevant Cabinet Member will be invited to speak for up to five minutes on the Petition. If the petition organiser or their named representative are not present, then the petition will be debated in their absence.
18. The County Council or Cabinet Committee will decide how to respond to the petition at this meeting. Where it has the authority to do so, it may take the action the petition requests, or may choose not to for reasons put forward during the debate. It may commission further investigation into the matter, for example by the relevant Cabinet Member or Committee. Where the issue is one on which the Executive is required to make the final decision, the County Council or Cabinet Committee will decide whether to make recommendations to inform that decision.
19. The petition organiser will receive written confirmation of the Council or Cabinet Committee's decision, which will also be published.

Other Provisions

20. The petition organiser has the right to request that the steps that the County Council has taken in response to their petition are reviewed. All reviews will be considered by the Selection and Member Services Committee.
21. The petition organiser will be asked to provide a short explanation of the reasons why the County Council's response is not considered to be adequate.
22. The Selection and Member Services Committee will consider the request to review at the next appropriate meeting.
23. Once any appeal has been considered, the petition organiser will be informed of the results within 5 working days. The results of any review will also be published on our website.

Please email petitions@kent.gov.uk with any questions.

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