

SELECTION AND MEMBER SERVICES COMMITTEE

Thursday, 4 September, 2025

2:30pm

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





AGENDA

SELECTION AND MEMBER SERVICES COMMITTEE

Thursday, 4 September 2025, at 2:30pm
Council Chamber, Sessions House, County
Hall, Maidstone

Ask for: **Ruth Emberley**
Telephone: **03000 416892**

Membership (9)

Reform UK (5): Ms L Kemkaran, Mr B Collins, Mr M Harrison, Ms G Foster, Mr M Brown

Liberal Democrat (1): Mr T Prater

Conservative (1): Mr A Kennedy

Green Party (1): Rich Lehmann

Labour (1): Ms C Nolan

Webcasting Notice

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UNRESTRICTED ITEMS

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

- 1 The Election of the Chair
- 2 Apologies and Substitutes

- 3 Declarations of Interests by Members in items on the agenda for this meeting
- 4 Minutes of the meeting held on the 27 February 2025 (Pages 1 - 4)
- 5 Induction Update (verbal)
- 6 Standards Independent Person Appointment (Pages 5 - 10)
- 7 Outside Bodies Member Appointments (Pages 11 - 28)

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)

Wednesday 27 August 2025

Benjamin Watts
General Counsel
03000 416814

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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, 27 February 2025.

PRESENT: Mr N J Collor (Chairman), Mr A Brady, Mr R W Gough, Rich Lehmann, Mr D Jeffrey, Miss S J Carey and Mr H Rayner

IN ATTENDANCE: Mr B Watts (General Counsel), Mr T Godfrey (Senior Governance Manager) Mrs K Goldsmith (Scrutiny Research Officer), Ms K Reynolds (Governance Advisor) and Miss R Emberley (Democratic Services).

UNRESTRICTED ITEMS

8. Apologies and Substitutes

(Item 1)

Apologies were received from Mr Hook, Mr Simkins and Mr Dance.

Mr Rayner was in attendance as a substitute for Mr Simkins and Miss Carey was in attendance as a substitute for Mr Dance.

9. Declarations of Interest

(Item 2)

Mr Brady confirmed that he was a Member of the Governance and Audit Committee.

10. Minutes of Previous Meeting

(Item 3)

RESOLVED that the minutes of the meeting held on 13 December 2024 were correctly recorded and that a paper copy be signed by the Chair.

11. Revisions to the Terms of Reference of the Kent and Medway NHS Joint Overview and Scrutiny Committee

(Item 4)

1. The report was presented by Scrutiny Research Officer, Kay Goldsmith.
2. Some of the key points highlighted were as follows:
 - a) When the Medway Health Scrutiny Committee and the Kent Health Overview and Scrutiny Committee (HOSC) determine that an NHS proposal for change is substantial, the matter is passed to the Kent and

Medway Joint Health Overview and Scrutiny Committee (JHOSC) for consideration.

- b) Changes to health scrutiny regulations required the current Terms of Reference for JHOSC be amended in two ways:
 - To reflect who will make a call-in request, if this route is chosen.
 - Establish who will make representations to the Secretary of State, in the event a call-in is requested.
 - c) The options available were set out in the report and Members were directed to the Appendix which demonstrated how the Terms of Reference would look, if the Committee adopted the recommendations put forward by HOSC.
 - d) Kent County Council and Medway Council both needed to agree the Terms of Reference before they were updated and therefore no changes to the Constitution could be made until a similar paper was presented to Medway Council.
3. In answer to comments and questions raised by Members, the following was said:
- a) Further context could be included in the report delivered at full Council, which would set out the changes made to the existing JHOSC Terms of Reference clearly.
 - b) It was confirmed that the call-in request was available to everyone, including individuals. Previously, only HOSC could refer a proposal to the Secretary of State.
 - c) When considering a call-in request, the Secretary of State may factor in the views of the local HOSC as part of their decision making.
4. RESOLVED that:
- Members discussed and commented on the report.
 - Members recommend to the County Council that the changes to the Terms of Reference be adopted and the Constitution updated accordingly.

12. Governance and Audit Committee Terms of Reference Update *(Item 5)*

- 1. The report was presented by Governance Advisor, Katy Reynolds
- 2) Some of the key points highlighted were as follows:

- a) The report had been produced in response to the findings of the Annual Review of Effectiveness of the Governance and Audit Committee, carried out in December 2024.
 - b) The Terms of Reference were reviewed and the proposed updates contained in the report aimed to ensure that the Governance and Audit Committee was properly constituted and had a clear remit.
 - c) Members were directed to Appendix A and Appendix B of the report, which had clear tracked changes for comparison.
- 3) In answer to questions and comments from Members, the following was said:
- a) It was considered best practice to exclude the Chair of the Scrutiny Committee from sitting on Governance and Audit Committee, however, the previous Terms of Reference had taken a more restrictive approach by excluding all committee chairs from Governance and Audit Committee membership. This had significantly reduced the pool of eligible Members and substitutes for the Committee.
 - b) The May 2025 election needed to be considered; there may be several Members with relevant expertise who could provide valuable support to the Governance and Audit Committee but may already be Chairs for other Committees (or in other positions of responsibility). It was explained that without the proposed changes to the Terms of Reference, there was the risk that there might not be sufficient capacity of Members after the election.
 - c) It was clarified that in central government, the Office of Budget Responsibility reviewed public statements; this was not in the remit of the Governance and Audit Committee.
 - d) It was confirmed that the Whistleblowing Policy and the Bribery Act Policy were still included in the Terms of Reference.
 - e) The survey contained in the Annual Review of Effectiveness of the Governance and Audit Committee was used to gain an understanding of where improvements could be made, as well as looking broadly at the operation of the Committee.
 - f) It was confirmed that newly elected Members to the Governance and Audit Committee would receive training focused on the Council's budget and Governance framework, as well as the role of the Committee, to ensure they were able to start quickly and effectively.
 - g) A further meeting of the Selection and Member Service Committee would be arranged before the full Council meeting to update Members on the Governance Working Party developments.
- 4) RESOLVED that the Selection and Member Services Committee

recommend the proposed changes to the Governance and Audit Committee's terms of reference to County Council for agreement and for the Constitution to be updated accordingly.

From: Ben Watts, General Counsel

To: Selection and Member Services Committee – 4 September 2025

Subject: Independent Person (Standards) Recruitment

Classification: Unrestricted

1. Introduction

- a. The Localism Act 2011 requires that the County Council appoint an Independent Person from whom the Monitoring Officer can seek advice when they are in receipt of an alleged breach of the Kent Member Code of Conduct.
- b. The legislation came into operation on 1 July 2012 just a few days after it was published. Therefore, the County Council approved at its meeting in October 2012 the appointment of Mr Michael George retrospectively for a four-year term expiring 30 June 2016. Mr George has subsequently been reappointed, most recently on 18 July 2024. His current term ends on 30 June 2027.
- c. As set out in the report to County Council recommending the reappointment of Mr George, the intention is to recruit a second Independent Person and appoint them to a 4-year term. A second Independent Person will provide resilience to the ethical framework of the Council and, with a term end date after that of Mr George, ensure that the Council is not left without an Independent Person.
- d. To provide additional resilience, appointing two Independent Persons as part of the proposed recruitment exercise can be considered.

2. The Role of the Independent Person

- a. The job description (including person specification) is set out in the Appendix. In sum, the role of the Independent Person is as follows:
 - i. To advise KCC on any allegation of breaches of the Member Code of Conduct by elected or co-opted Members that it has decided to investigate.
 - ii. If required, to be consulted by either authority in respect of allegations in other circumstances.
 - iii. If required, to be consulted by any elected or co-opted Member of either authority who is the subject of an allegation.

3. Recruitment of a Second Independent Member

- a. Under its terms of reference, this Committee is responsible for arranging the selection Panel for the Independent Person. As with the recruitment of the Member Remuneration Panel, it is important to ensure to keep a separation between Members and the recruitment of an individual who may be asked to comment on matters relating to the Code of Conduct.

- b. It is therefore being recommended that the Committee delegate responsibility for the recruitment process to the Monitoring Officer.
- c. It is a County Council responsibility to formally appoint any Independent Person. The recruitment process overseen by the Monitoring Officer will result in recommendations for appointment being placed before full Council for decision.
- d. The remuneration for this post is a £500 annual retainer (payable over 12 months) plus a daily rate of £100 (pro rata for part of a day) when required to undertake any duties, and travel expenses at the same rate as for elected Members (currently 45p per mile). This may be reviewed by the Member Remuneration Panel as part of their current review of the Members' Allowances Scheme.

4. Kent and Medway Fire and Rescue Authority

- a. The Committee is reminded that the County Council works in co-operation with the Kent and Medway Fire and Rescue Authority. Where either authority requires an Independent Person's advice but the one they have appointed is unavailable, our reciprocal arrangement is that the Independent Person of the other authority may be consulted. The Kent and Medway Fire and Rescue Authority has adopted the same Member Code of Conduct as the Council.

5. Recommendation

The Selection and Member Services Committee is asked to delegate to the Monitoring Officer the authority, in consultation with the Leaders of the Political Groups, to carry out a recruitment exercise for up to two Independent Persons, and make recommendations for appointment to County Council.

6. Background Documents

None.

7. Report Author and Relevant Director

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Tristan Godfrey, Senior Governance Manager
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Appendix

Kent County Council (KCC)/ Kent and Medway Fire and Rescue Authority (KMFRA) Job Description: Independent Person (Standards)

Directorate:	Governance, Law and Democracy
Unit/Section:	Democratic Services
Location:	Maidstone
Remuneration:	£500 per annum plus £100 per day (plus travel expenses)
Responsible to:	The Kent County Council (KCC) & Kent and Medway Fire and Rescue Authority (KMFRA)

Purpose of the Job:

Help promote and maintain high standards of conduct by elected and co-opted Members of KCC and KMFRA, in accordance with the provisions in the Localism Act 2011 and the two authorities' jointly-adopted Member Code of Conduct.

In accordance with Section 28(7) of the Localism Act, to fulfil the following statutory responsibilities:

- To advise KCC and/or KMFRA on any allegation of breaches of the Member Code of Conduct by elected or co-opted Members that it has decided to investigate.
- If required, to be consulted by either authority in respect of allegations in other circumstances.
- If required, to be consulted by any elected or co-opted Member of either authority who is the subject of an allegation.

NB: The recruitment is being carried out by Kent County Council. However, there is a reciprocal arrangement in place whereby the Independent Person of the Council may be consulted by the KMFRA when their Independent Person is unavailable.

Main duties and responsibilities:

1. The role of the Independent Persons appointed by KCC and KMFRA will be:
 - a) To assist KCC and KMFRA generally in discharging their duty to promote and maintain high standards of conduct by their Elected Members and Co-opted Members.
 - b) To advise the Monitoring Officer in connection with the assessment and post investigation stage of complaints against Elected and Co-opted Members.
 - c) To advise KCC's Standards Committee and KMFRA's Audit and Governance Committee in connection with complaints and potential sanctions where a failure to comply with a code of conduct has been established.
 - d) To provide their view, where sought, to an Elected or Co-Opted Member who is the subject of an allegation that their behaviour has breached a Code of Conduct.
 - e) To reach balanced and reasoned conclusions having considered complex material and applied an impartial and fair approach to all of the written and oral material provided.

- f) To undertake any training arranged by the Monitoring Officer (or authorised representative) to enable the Independent Persons to perform their role effectively.
- 2. It is envisaged that the views of the Independent Persons will normally be sought by the authorities (through the Monitoring Officer or authorised representative) in writing, usually email, or at a meeting organised for the purpose of seeking such views. Where the Independent Persons' views have been sought in writing, it is expected that the response will be provided in the same way. However, advice may be sought by telephone from time to time.
- 3. The Independent Persons should not give advice to Members of KCC or KMFRA, in circumstances where no complaint about a Member's conduct has been received. Where such advice is required, it should be sought by Members from, or via, the Monitoring Officer or their authorised representative.

Person Specification:

- 4. Persons appointed as an Independent Person must:
 - a. Be committed to the need for high standards in public life.
 - b. Have the ability to critically assess written and oral evidence to reach a balanced and objective decision.
 - c. Demonstrate tact, diplomacy and impartiality.
 - d. Be able to demonstrate a good understanding of ethics and probity in public services.
 - e. Be able to provide advice when requested in a timely manner consistent with KCC or KMFRA's procedure for handling complaints, sometimes at short notice.
 - f. Have experience of serving in or working for local or national government, the legal system, tribunals or other quasi-judicial bodies.
 - g. Have experience of dealing with issues of ethical conduct in employment or public service.
- 5. The Independent Persons will be expected to undertake training in procedures and processes, especially monitoring and ensuring compliance with Codes of Conduct, Complaints Procedures, etc. and where appropriate including case studies.
- 6. To attend meetings of KCC and KMFRA when required. Meetings are normally held in the daytime.
- 7. To participate in any forum established for Independent Persons.
- 8. KCC and KMFRA will meet travel and subsistence expenses in accordance with set rates. The provision of any other allowance is subject to further discussion.
- 9. The Independent Persons MUST NOT be:

- a. A Member, Co-opted Member or Officer of KCC or KMFRA, or have been such during the last five years, although this restriction does not apply to those who have served as Independent Persons of either authority's Standards Committee; or
- b. A relative or a close friend of a member, co-opted member or officer of KCC or KMFRA. (See section 12).

10. A person is defined by the Localism Act 2011 as a relative if they are:

- a. The spouse or civil partner or living as if they were a spouse or civil partner;
- b. A grandparent;
- c. A lineal descendant of a grandparent;
- d. A parent, sibling or child;
- e. The spouse or civil partner of a grandparent, lineal descendant of a grandparent, or a parent, sibling or child; or
- f. Living with a grandparent, lineal descendant of a grandparent, or a parent, sibling or child as if they were a spouse or civil partner. of a member, co-opted member or officer of KCC or KMFRA.

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From: Ben Watts, General Counsel

To: Selection and Member Service Committee, 4 September 2025

Subject: Outside Bodies: Appointments

Status: Unrestricted

1. Introduction

- a) This Committee is charged with making appointments to specific outside bodies on behalf of the County Council. The Local Government and Housing Act 1989 political proportionality principles do not apply to these appointments in most cases, but in recent years it has been the County Council's convention that appointments should be shared between the Political Groups on, so far as possible, a proportional basis.
- b) These Outside Bodies are set out in Appendix 1.
- c) On 30 November 2023, this Committee agreed an Outside Bodies Protocol to provide a framework around the activities of the Committee in this area. It was also intended to be a useful reference for individuals nominated and/or nominated. The Protocol is set out at Appendix 2 and contains guidance on:
 1. The reasons why an organisation may be on the outside bodies list.
 2. How this Committee will go about updating and reviewing the list.
 3. Principles underlying nominations and appointments.
 4. Information of the different kinds of roles and responsibilities an appointee may be asked to undertake.
 5. Information on indemnity.
 6. Information on conflicts of interest.
- d) The Protocol and this Committee's powers of appointment do not extend to the appointments made by the Leader.

2. Outside Bodies: Updates

- a) The appointments to the four Local Government Association groups listed in Appendix 1 are different in that they are usually politically proportional and as such members of these are to be nominated by the Political Groups. The details and numbers of these appointments are being confirmed and this Committee will be provided with an update once the details have been made and confirmed with the relevant Groups.
- b) The Aylesham and District Community Workshop Trust have updated the Terms of Reference to provide for the removal of the requirement for Kent County Council to appoint a Member. This has been approved by the Trustees who will propose to adopt the changes at the forthcoming AGM, scheduled for the 25 November 2025. The Trust has therefore been removed from the list.
- c) The Rochester Bridge Trust is currently reviewing their Constitution. The Trust intends under their current proposal to remove one of the positions for Kent

County Council. There are currently 2 posts nominated by KCC, one of which is currently vacant. The Trust intends to delete the post currently held by Ms Sarah Hohler at the end of her term on 31 May 2026. This Committee is asked to nominate someone to fill the vacancy for the remainder of the term to 31 May 2027 at which point an appointment to a 4-year term will be requested from KCC.

- d) Clarity is currently being sought as to whether appointments are required for the Duke of York Military School and Committee will be updated in due course.
- e) Some Members have already expressed interest in being considered for nomination to Gatwick Airport Consultative Committee and the Southern Regional Flood and Coastal Committee. These would be subject to the appointment process set out in the next section.

3. The Appointment Process

- a) Section 3 of the Protocol sets out the procedure to be followed when making appointments. Each Outside Body is unique and the reasons for the appointment being made differ – for some, the purpose is to represent the Council in some fashion, for others the purpose is to act for the best interests of the Outside Body. In most cases the appointment needs to be a KCC Member, or occasionally an Officer. However, there are a few where the appointment need not be an Officer or Member and the term of office may not align with the Council term (for example, the Rochester Bridge Trust).
- b) 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.
- c) All nominations/appointments are subject to confirmation of acceptance by the appointee/nominee and are only provisional until this is received. All nominees will be provided with a copy of the Protocol.

4. Recommendation

The Selection and Member Services Committee is asked to:

a. Make the following nominations:

- i. Bensted's Charity (2 nominees)
- ii. Biggin Hill Consultative Committee (1 nominee)
- iii. Gabriel Richards Charity (1 nominee)
- iv. Gatwick Airport Consultative Committee (1 nominee)
- v. Headcorn Aerodrome Consultative Committee (1 nominee)
- vi. High Weald AONB Joint Advisory Committee (1 nominee)
- vii. Industrial Communities Alliance (2 nominees)
- viii. John Wallis Academy (1 nominee)
- ix. Kent Association of Local Council (1 nominee)
- x. Kent Downs National Landscape Joint Advisory Committee (JAC)(1 nominee)
- xi. Kent Music Board of Directors (2 nominees)

- xii. Medway NHS Foundation Trust (1 nominee)
- xiii. Nuclear Restoration Services Dungeness A Site) (1 nominee)
- xiv. PATROL Joint Committee / Bus Lane Adjudication Service Joint Committee (1 nominee)
- xv. Rochester Airport Consultative Committee (RACC) (1 nominee)
- xvi. Southern Regional Flood and Coastal Committee (3 nominees)
- xvii. Vinters Valley Park Trust (1 nominee)

- b. Request that the Monitoring Officer notify nominees and delegate authority to the Monitoring Officer to confirm appointments, once the nominee has confirmed their acceptance.
- c. Ask that an update be prepared for the next meeting of this Committee along with information of which appointments still remain to be made.

5. Appendices

Appendix 1 - Summary Information of Outside Bodies for SMS Nomination / Appointment.

Appendix 2 – Outside Bodies Protocol.

6. Background Documents

None.

7. Report Author and Relevant Director

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Appendix 1 - Summary Information of Outside Bodies for SMS Nomination / Appointment

OB = Outside Body

KCC = Kent County Council

Body	Summary	Website	Appointee Role	To represent:
Bensted's Charity.	Bensted's Charity provides grants for the relief of distress and sickness, and support for social welfare, recreation, and education for the residents of the twenty-four parishes east of Teynham within the Swale Borough Council area.	https://benstedscharity.org.uk/	Trustee	OB
Biggin Hill Consultative Committee.	The role of the Consultative Committee is to help provide a forum for discussing airport-related issues with those who may be affected.	https://bigginhillairport.com/community/airport-consultative-committee/	Member of Consultative Committee.	KCC
Gabriel Richards Charity.	For the provision of affordable housing for persons over the age of 55 years of age in Goodnestone, Nr Canterbury, Kent.	NA	Trustee	OB
Gatwick Airport Consultative Committee.	The Gatwick Airport Consultative Committee (GATCOM) is constituted to meet the requirements of Section 35 of the Civil Aviation Act 1982 for an airport "to provide adequate facilities for consultation with respect to any matter concerning the management or administration of the airport which affects the interests of users of the airport, local authorities and any other organisation representing the interests of persons concerned with the locality in which the airport is situated."	https://www.gatcom.org.uk	Member of Consultative Committee.	KCC
Headcorn Aerodrome Consultative Committee.	To facilitate communications between the aerodrome and the businesses on the site and local residents via their elected Parish, Borough and County Council representatives.	https://headcornaerodrome.co.uk/	Member of Consultative Committee.	KCC
High Weald AONB Joint Advisory Committee.	The High Weald Joint Advisory Committee (JAC) champions the High Weald AONB.	https://highweald.org/about-us/joint-advisory-committee/	JAC Member	KCC (Local authority function).

Industrial Communities Alliance.	Campaigning to support the social, economic, and environmental regeneration of older industrial areas.	www.industrialcommunitiesalliance.org.uk	Representative	KCC
John Wallis CE Academy.	Church of England (Secondary) Academy School.	https://www.thejohnwallisacademy.org/54/governors	Governor	KCC (representing KCC as a sponsor)
Kent Association of Local Councils.	KALC a membership organisation that represents Towns and Parishes across Kent.	https://www.kentalc.gov.uk/	Executive committee member.	KCC
Kent Downs National Landscape Joint Advisory Committee (JAC).	An area as large and varied as the Kent Downs relies on many stakeholders who have a role in managing the landscape, supporting local business and communities, and enabling quiet recreation. The Joint Advisory Committee plays a pivotal role in helping realise the strategic vision for the Kent Downs AONB and oversee the Management Plan.	https://kentdowns.org.uk/about-us/who-we-are/joint-advisory-committee/	JAC member.	KCC (Local authority function).
Kent Music Board of Directors.	Kent Music provides creative and inspiring music education opportunities to children, young people, adults, and teachers across Kent, including music lessons, orchestras and choirs, and working with schools. We are the lead partner for the Music Education Hub in Kent.	https://www.kent-music.com/kent-music-board-trustees/	Trustee	OB
Local Government Association: Children and Young People Board.	The Children and Young People Board has responsibility for Local Government Association (LGA) activity on the wellbeing of children and young people, including education, social care, health and early years.	https://lga.moderngov.co.uk/mgCommitteeDetails.aspx?ID=159	Board member	KCC
Local Government Association: County Councils Network.	Established in 1997, the County Councils Network is a cross-party special interest group of the Local Government Association, representing England's county local authorities.	https://www.countycouncilsnetwork.org.uk/	CCN Council member	KCC

Local Government Association: General Assembly.	The LGA's General Assembly meets once a year, and is the only LGA decision making forum which all authorities in full membership are eligible to attend and to vote on behalf of local government.	https://www.local.gov.uk/about/our-meetings-and-leadership/lga-general-assembly	Member Authority Representative	KCC
Local Government Association: Public Transport Consortium.	The Public Transport Consortium (PTC) is a Special Interest Group within the Local Government Association. The group promotes public transport issues on behalf of local authorities outside of metropolitan areas, supporting effective local decisions on public transport for the benefit of local citizens	https://publictransportconsortium.org.uk/	Member Authority Representative.	KCC
Medway NHS Foundation Trust.	Medway NHS Foundation Trust operates a single-site hospital based in Gillingham, Medway Maritime Hospital, which serves a population of more than 424,000 across Medway and Swale.	https://www.medway.nhs.uk/membership/partner-governors.htm	Partner Governor	KCC
Nuclear Restoration Services Dungeness A Site Shared Stakeholder Group	SSGs or their equivalents are the forum for open and transparent communication between local communities near nuclear licensed sites, the NDA, the site operator, and regulators such as the Environment Agency, Natural Resources Wales, the Scottish Environment Protection Agency and the Office for Nuclear Regulation.	https://magnoxstakeholdergroups.com/	Group member	KCC
PATROL Joint Committee / Bus Lane Adjudication Service Joint Committee.	<p>Local authorities who undertake civil traffic enforcement are required by statute to make provision for independent adjudication. The relationship between the adjudicators and the Joint Committee is derived from and governed by the Traffic Management Act 2004.</p> <p>Over 300 local authorities in England (outside London) and Wales are members of the PATROL (Parking and Traffic Regulations Outside London) Adjudication Joint Committee to exercise this function jointly.</p>	https://www.patrol.gov.uk/about-the-joint-committee/	Member of Joint Committee.	KCC (Local authority function).

Rochester Airport Consultative Committee (RACC).	All aerodromes, to which section 35 of the Civil Aviation Act 1982 applies, provide facilities for consultation and Rochester Airport has done this through establishing the RACC.	https://rochesterairport.co.uk/racc/who-are-we.html	Member of consultative committee	KCC
Rochester Bridge Trust.	The Charity is established for the maintenance and improvement of the two adjacent bridges known as the Rochester Bridge and of the Medway Tunnel, and for purposes connected with the River Medway.	https://rbt.org.uk/about-us/wardens-and-assistants/the-role/	Assistant Warden (Trustee)	OB
Southern Regional Flood and Coastal Committee.	The Regional Flood and Coastal Committee (RFCC) is a committee established by the Environment Agency under the Flood and Water Management Act 2010. It brings together members appointed by Lead Local Flood Authorities (LLFAs) and independent members with relevant experience.	https://www.gov.uk/government/groups/southern-regional-flood-and-coastal-committee	Committee member	KCC
Vinters Valley Park Trust.	<p>The Trusts principal aims are to:</p> <ul style="list-style-type: none"> Preserve a valuable wildlife habitat Preserve threatened species Provide an education source for local schools and community groups Provide a peaceful and tranquil site for members of the local community and beyond. 	https://vintersvalley.co.uk/	Trustee	OB

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 17.39 (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 exercised should involve relevant consultation with the Chair of Selection and Member Services Committee and 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.

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