

By: Ben Watts, General Counsel (Monitoring Officer)

To: Governance and Audit Committee – September 22nd 2021

Subject: Code of Corporate Governance

Classification: Unrestricted

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Summary: This report provides an update and overview of plans to amend the Code of Corporate Governance and seeks Member views before that work progresses.

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## 1. Introduction

- a) Although not mandatory, Kent County Council has a Code of Corporate Governance based on guidance from CIPFA. Many authorities have included it in their formal constitution like KCC, but again practice varies. The current version of KCC's Code of Corporate Governance appears between pages 156 and 162 in our constitution and a copy of this section is appended to this report.
- b) The Head of Internal Audit and the statutory officers (Head of Paid Service, Corporate Director of Finance and Monitoring Officer) have all recognised and advised that it is timely for the Council to review and change the Code of Corporate Governance to reflect CIPFA guidance, best practice and the new strategic and operational realities for the Council.
- c) The Governance and Audit Committee has a key role in considering any changes to the Code of Corporate Governance and the expertise and views of Members will significantly assist in the redesign of the code. This paper is therefore the start of a process to change the code which ultimately concludes with a paper, discussion and recommendations at the County Council.
- d) The two main issues when determining how to approach the Code in relation to the Constitution are:
  - i. The Code is not written as a constitution.
  - ii. The Code has a broader relationship to governance than finance alone.
- e) The challenge of (i) above has become more pronounced for KCC since the restructure of the Constitution. The code itself is a set of principles, normative statements, and references to relevant paperwork rather than the rules-based text that the bulk of the rest of the Constitution is. This is an issue that can be overcome where the introductory text is clear, but work does need to be done as part of this project to bring the code to life for Members and Officers alike. It is unwise to rewrite the Code as a set of rules, which would not capture the principles effectively.

- f) The origins of the Code are in financial governance, and the base document being from CIPFA reinforces the idea that it is of financial relevance. Yet in the local authority context, finance is the key enabler for the work of the council (rather than the business of the council as such). This means that there is nothing in the Code which should not be done, or principles adhered to, in any area of its activity. E.g., “Ensuring that users receive a high quality of service whether directly, or in partnership, or by commissioning.”
- g) Taking this as a preamble, the next two sections set out a couple of short-term actions that should be taken in relation to the Code of Corporate Governance regardless of what happens to the wider refresh – though they can be built into several of the options presented as longer-term options.

## **2. Short-Term Actions**

- a) Ahead of the longer-term substantive work, there are some short-term actions that we would recommend taking. If Members agree these changes, officers will make the necessary amendments and bring the changes back to this Committee.
- b) Firstly, we would recommend updating the Code in line with the principles of the 2016 CIPFA version of “Delivering Good Governance”, which are appended to this report. On 12 July 2018<sup>1</sup>, County Council agreed the adoption of the 2016 Framework (which has seven principles). The Code needs to be restructured along the lines of the seven principles to bring it up to date and this acts as a gateway to the future discussions and work.
- c) Secondly, consideration should be given to the CIPFA Financial Management Code (FM Code). According to CIPFA, “The first full year of compliance will be 2021/22. This reflects the recognition that organisations will need time to reflect on the contents of the code and can use 2020/21 to demonstrate how they are working towards compliance.”<sup>2</sup> There may be a need to make reference to the FM code in the Code (of Corporate Governance) or draw some other connection.

## **3. Longer-Term Options**

- a) Ahead of bringing a more detailed paper to this Committee, there are a range of options structurally as to how the future Code could look. Before that work is completed and brought before Members, it would be helpful to have any relevant thoughts as to how Members might like the Code to operate. The following are some options about how to approach refreshing the Code to assist discussion:
  - i. Minimal – The content of the Code could be updated to reflect the 2016 shift to 7 principles, and a reference to the FM Code made (as needed) as set out above in section 2. No further changes would be made.
  - ii. Separated from Constitution – The financial governance focus of the Code can be acknowledged, and the Code put under the authority of the

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<sup>1</sup> <https://democracy.kent.gov.uk/ieListDocuments.aspx?CId=113&MIId=7888&Ver=4>

<sup>2</sup> <https://www.cipfa.org/policy-and-guidance/publications/f/financial-management-code>

Governance and Audit Committee to approve/update. A section of the Constitution can explain the Code's status and empower Governance and Audit Committee.

- iii. Enhanced version – The Code could be placed in a separate document apart from the Constitution, with an executive summary/contextual introduction. (similarly the separate document is produced but the Code also remains in the Constitution).
- iv. Live document – The Code has an additional column added showing what is being developed to embed/support the principles. These could be reviewed periodically by Governance and Audit Committee and will feed into the AGS. The core version in the Constitution should not have this column as it would change too often.
- v. Inverted relationship – The origins of the Code are in financial governance, but the title and scope are broader. The principles are generic enough so that the whole of governance, including the Constitution, come under it. However, this is challenging legally given the status of the Constitution and would still miss aspects of governance and weaken areas of the Constitution where the fit was less clear.
- vi. Separate spheres – Governance could be recast as having distinct, though connected, spheres, each with a different document as its 'core' as follows:
  - b) From the perspective of the Monitoring Officer, a combination of iii and iv would seem to carry the biggest effect. The rewrite of the Code of Corporate Governance picks up on some of the issues identified within the Annual Governance Statement and could form part of the cultural shift away from an organisation that views governance as tick-box rule-following to get around and instead appreciates it is a broader field where law meets strategy that aims to realise the goals of KCC, not hinder them.

#### **5. Recommendation:**

The Committee is invited to discuss the paper and:

- i. DISCUSS and COMMENT on the proposed programme for changing the Code of Corporate Governance
- ii. AGREE to amending the principles in the Code of Corporate Governance to the latest version from CIPFA/SOLACE framework
- iii. AGREE to making necessary changes to reflect CIPFA Financial Management Code (FM Code)

Ben Watts  
General Counsel  
Tel No: 03000 416814  
e-mail: [benjamin.watts@kent.gov.uk](mailto:benjamin.watts@kent.gov.uk)