

## **Audit and Governance Committee**

**Monday 11 October 2021**

### **PRESENT:**

Councillor Bingley, in the Chair.

Councillor Evans OBE, Vice Chair.

Councillors Mrs Aspinall (substitute for Councillor Laing), Morris (substitute for Councillor Lowry), Mrs Pengelly (substitute for Councillor Dr Mahony) and Shayer.

Independent Member: Mrs Annette Benny

Apologies for absence: Councillors Dr Mahony, Laing and Lowry, and Mr Shipperley (Independent Member).

Also in attendance: Brendan Arnold (Service Director for Finance), Geri Daly (Grant Thornton), Paul Dossett (Grant Thornton), Rob Hutchins (Devon Audit Partnership), Carolyn Haynes (Financial Controller), Peter Honeywell (Transformation Architecture Manager), (Ken Johnson (Counter Fraud Services Manager), Paul Looby (Head of Financial Planning and Reporting), Andrew Loton (Head of Governance, Risk and Performance), Councillor Riley (Cabinet Member for Governance, HR, IT & Community Safety), Rob Sowden (Senior Performance Advisor), and Helen Rickman (Democratic Advisor).

The meeting started at 2.00 pm and finished at 5.05 pm.

*Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.*

### 17. **Appointment of Chair and Vice Chair**

Andrew Loton (Head of Governance, Risk and Performance) advised Members that both the Chair, Councillor Dr Mahony, and the Vice Chair, Councillor Lowry, had submitted their apologies for the meeting therefore a new Chair and Vice Chair were to be appointed for the meeting.

It was agreed that Councillor Bingley is appointed as Chair, and Councillor Evans is appointed as Vice Chair for this meeting.

Under this item it was queried as to why Audit and Governance Committee meetings weren't streamed to the Council's website, especially as the committee dealt with the oversight of tens of millions of pounds of taxpayers money. It was responded that public access to meetings was allowed in the Council House however the request to live stream to the website could be accommodated.

It was agreed that the live streaming of Audit and Governance Committee meetings would be investigated and progressed.

18. **Declarations of Interest**

The following declarations of interest were made by councillors in accordance with the code of conduct in respect of items under consideration at the meeting -

<b>Name</b>	<b>Minute Number</b>	<b>Reason</b>	<b>Interest</b>
Mrs Annette Benny (Independent Member)	All	Her daughter is a Member of the Liberal Democrats.	Personal
Councillor Shayer	All	Director of Four Greens Trust	Personal

19. **Minutes**

The minutes of 26 July 2021 were agreed as an accurate record of the meeting.

20. **Tracking Resolutions**

The Chair introduced the Tracking Resolutions document; Members discussed an action from the previous meeting which took place on 26 July 2021 (minute 11.2) which read:

“recommend that Ken Johnson meets with the relevant Cabinet Member to discuss the report, specifically with regards to how fraud awareness should be publicised”

It was queried if this action had progressed; in response Members were advised that Ken Johnson (Counter Fraud Services Manager) had not yet had an opportunity to meet with the Leader or other Cabinet Members and would discuss with Brendan Arnold (Service Director for Finance) how this would be prioritised.

It was agreed that Brendan Arnold (Service Director for Finance) would liaise with Ken Johnson (Counter Fraud Services Manager) regarding the action to meet with the relevant Cabinet Member to discuss the Fraud report, specifically with regards to how fraud awareness should be publicised; this would be prioritised.

21. **Chair's Urgent Business**

There were no items of Chair's urgent business.

22. **Grant Thornton Progress Report and Indicative Plan 2020/21 and sector update**

Geri Daly (Grant Thornton) presented the Grant Thornton Progress Report and Indicative Plan 2020/21 and Sector Update. Members were advised that the detailed audit testing of the Council's 2019/20 accounts was complete however there was a number of areas that needed to be finalised prior to Grant Thornton issuing their audit opinion which included the resolution of the lawful accounting treatment for the Miel Ltd transaction. An update was also provided on the governance review which was an amendment to the audit plan which concentrated on the two financial transactions entered into by the Council, the Financial Statements for 2020/21 and the areas of focus and the new Code of Audit Practice and the introduction of the Auditor's Annual Report.

Members raised questions and observations in the following key areas:

- (a) where was the report required to be published and when was it likely to be available?
- (b) when was the audit for the 19/20 financial year likely to be finished?
- (c) there were concerns that the Council needed certainty from the auditors otherwise alternative arrangements would need to be made resulting in a potential impact and substantial cost to the taxpayers;
- (d) the delay in the external auditor not signing off the 2019/20 accounts was considered to have a detrimental impact upon the budget setting process and would affect the ability of the new administration to deliver a sound budget;
- (e) there was a commitment from Grant Thornton to complete investigations on the matter of the 2019/20 accounts by the end of October 2021; was this achievable?
- (f) it was hoped that any delays in responding to the Council would be provided to the Chief Executive in writing outlining details;
- (g) there was a concern from Members that further delays to the external auditor responding to the Council on the 2019/20 accounts would have an impact on the ability of the administration to set a budget.

Paul Dossett (Grant Thornton) confirmed that the report would be published on the Council's website and the auditor's annual report would be presented to full council – this was a new development for the 2020/21 audit as the Audit Office had identified that not all Members of the Council were always fully informed of the audit process. In terms of the 2019/20 accounts, the job of the external auditor was to give an opinion on the accounts to confirm that they were true and fair – there was a requirement to either agree with the Council's approach to accounting, or not. Clarity would be provided to the Council by the end of the month as to the external auditor's position; this would be provided in writing. It was highlighted by Brendan Arnold (Service Director for Finance) that the external auditors had at all times throughout the process committed to finalising the accounts however this was an enormously complicated process.

It was agreed that the Audit and Governance Committee note the Progress Report and Indicative Plan 2020/21.

## 23. **Executive Decision Governance Route**

Andrew Loton (Head of Governance, Risk and Performance) presented the Executive Decision Governance Route report. Members were advised that the guidance had been produced in line with one of the recommendations from the Grant Thornton Governance Review:

“The Council should further improve its governance arrangements so that the number of key decisions are made outside of formal elected member meetings is limited, thereby enhancing openness and transparency”

The report was written in an advisory tone without wanting to inhibit decision making; a flow chart contained within the report set out what criteria needed to be met for key decisions and the best route to take in order to enhance transparency.

Key areas of questioning and concern from Members included the following:

- (a) who was the guardian of the guidance?
- (b) there was concern that this was a solution in search of a problem and the fact it was guidance meant it had no real force. It could also be considered as taking away authority from elected Councillors and giving it instead to unelected officers who were reliant on exercising their judgement. The advice and guidance provided could vary from one member of staff to another, increasing variation. It could be judged as clipping the wings of the Leader of the Council;
- (c) was this guidance for key decisions and not urgent decisions?
- (d) Members were uncertain of the legal status of the guidance; why was the report written to suggest that guidance was the best approach as it could be ignored;
- (e) when discretion was referred to in the report, there was no mention of recording in writing the decision process – an audit trail would benefit openness and transparency;
- (f) where did the guidance originate from?
- (g) it was viewed by one Member as enhancing the decision making process and was instead a list of points to protect the decision maker from accusations; it was important that decisions were robust and transparent and this guidance would aid that. If something different was required in the report then what should that look like? If this report was sent back for reconsideration, then Members should be clear as to what they wanted officers to produce;
- (h) would requesting for an amended report or further consideration of the report negatively affect progress?
- (i) there seemed to be a crossover between bureaucracy and politics.

Some Councillors raised concerns that the guidance appeared to work against the strong Leader and Cabinet model adopted by the Council and the report suggested that the Leader should not exercise the delegated authority for key decisions which was their right to do so. In response it was clarified by officers that the requirement to consider how key decisions were taken in order to aid openness and transparency was as a result of the external auditor's governance review; the Council had previously undertaken two significant transactions whereby the governance around them wasn't considered as effective as it could have been. This recommendation from the external auditor was accepted by the Council and steps were taken to address this. Members were

encouraged to endorse the guidance for Executive Decision Governance Route as it was a measured proposal and sought to guide other than regulate how decisions were made and was prepared under officer advice in good faith. Members accepted the concerns of the external auditors and the resulting recommendations contained within the governance review report which led to this piece of guidance being written, however considered it was their role as a committee to consider the information presented to them and be satisfied with it.

The Committee raised several concerns, most principally its perceived curtailment of elected member decision-making powers. The committee collectively requested that its present content be reviewed/amended until it was again brought forward for consideration. Guidance was provided by the committee in that the amendment should emphasise, underline and strengthen the Executive Leader and Cabinet model.

It was agreed that the Executive Decision Governance Route report would be revisited in order to consider the impact of the guidance on key decisions upon Councillors, Portfolio Holders, the Leader and decision making within the authority so as not to undermine the strategic leadership or accountability of the Council, and resubmitted to the Committee for discussion.

24. **Internal Audit Progress Report 2021/22**

Rob Hutchins (Devon Audit Partnership) presented the Internal Audit Progress Report 2021/22. Members were advised that the report set out the position statement on the audit work carried out since April 2021 highlighting key areas of work undertaken and summarising the main findings and audit opinions. Overall, good progress had been made against the plan agreed with management for the 2021/22 financial year and all final audit reports included an action plan which identified responsible officers and target dates to address control issues.

It was questioned, in relation to the Disclosure and Barring Service (DBS) checks, why the requirement for all Councillors to have DBS checks was stopped and if this would be rolled out again? Councillors were concerned that the requirement for all Elected Members to have a DBS check had ceased, and could not recall a decision being made as to why this stopped when it was intended to protect. It was highlighted by Members of the committee that all 57 Councillors were corporate parents, and that the nature of their job could bring them into contact with children or vulnerable people when undertaking their duties. It was also highlighted that a DBS check did not make that individual infallible, and that the requirement for enhanced training would benefit Councillors.

The Audit & Governance Committee agreed –

1. that a request is made to the responsible officer/department, that DBS checks for all Councillors is reinstated;
2. to note the findings within the Internal Audit Progress Report 2021/22.

25. **Updated Whistleblowing Policy**

Rob Hutchins (Devon Audit Partnership) presented the Updated Whistleblowing Policy. Members were advised that the policy was last approved by the committee in 2018, and that it had been subject to a further refresh. The report itself highlighted in colour where changes had been made and specific reference was made to clarify if an individual had cause to suspect modern slavery, this was within the scope of the Whistleblowing Policy.

The following key areas of questioning was highlighted:

- (a) was the term employees now, other than staff?
- (b) there were concerns regarding the practice of whistleblowing, other than the policy itself as evidenced by a recent incident whereby a complainant felt that she was being interrogated and this discouraged people to whistleblow; *Rob Hutchins confirmed he would happily speak to the person involved outside of the meeting so the issue could be discussed;*
- (c) it would be useful to have specific reference in the policy to racism, misogyny, violence against women and girls, physical intimidation and violence at work;
- (d) how often this was presented to the committee for discussion/approval;
- (e) was there evidence that the policy was successful?

It was agreed that –

- 1. all protected characteristics, as set out by law, would be contained within the Whistleblowing Policy;
- 2. a revised document, including the practical application of the Whistleblowing Policy and its success and assurance as to how the policy was applied in practice, would be submitted to the committee;
- 3. the Whistleblowing Policy would be presented to the Audit & Governance Committee on an annual basis;
- 4. the Audit & Governance Committee note the changes and approve the updated Whistleblowing Policy.

26. **Updated Anti-Fraud, Bribery and Corruption Policy and Updated Anti-Fraud, Bribery and Corruption Strategy and Response Plan**

Ken Johnson (Counter Fraud Services Manager) presented the Updated Anti-Fraud, Bribery and Corruption Policy and Updated Anti-Fraud, Bribery and Corruption Strategy and Response Plan. Members were advised that both documents were subject to minor updates to reflect changes in statistical information and also to reflect the latest Fighting Fraud and Corruption Locally strategy.

It was questioned if hospitality forms were still required to be completed by Councillors and were new Councillors aware of the requirement to complete a form if they received a gift or hospitality in excess of £25?

It was agreed that –

- 1. gifts and hospitality forms would be circulated to Councillors every 6 months;
- 2. the committee agree the changes to the Updated Anti-Fraud, Bribery and

Corruption Policy and Updated Anti-Fraud, Bribery and Corruption Strategy and Response Plan to support the Council's ongoing commitment in reducing fraud to the lowest possible levels.

27. **Annual Governance Statement (AGS) 2020/21**

Andrew Loton (Head of Governance, Risk and Performance) presented the Annual Governance Statement (AGS) 2020/21. Members were advised that the report provided information on the Council's internal control and risk management processes and highlighted challenges faced by the Council and various actions taken or being taken to address these. The Annual Governance Statement was required by the Accounts and Audit Regulations to sit alongside the Statement of Accounts.

In response to a question raised it was clarified that the Annual Governance Statement described a system of control and wasn't a judgement either good or bad upon the Council; it was a statement of how controls were exercised and the purpose was to give the Audit and Governance Committee assurance that issues could be dealt with suitably to aid the auditor in establishing an opinion on the going concern of the Council.

It was agreed that the Audit and Governance Committee approve the Annual Governance Statement, alongside the Statement of Accounts, prior to signature by the Leader, Chief Executive and Service Director for Finance (S.151 Officer).

28. **Performance and Accountability System - Approach to Performance Management**

Rob Sowden (Senior Performance Advisor) presented the Performance and Accountability System - Approach to Performance Management report. Members were advised that the presentation contained within the report outlined the Council's approach to performance management, how performance was monitored and reported and how target setting was approached and identified.

Key areas of questioning/ observation from Members related to:

- (a) it was highlighted that Councillors would benefit from training on the Council's performance data and how to understand it;
- (b) did the data that would have made it into the 2019/20 annual report still exist and would there be a brief summary in the next annual report referring to this information?
- (c) what was the one thing that should be celebrated, and one thing that was considered a worst nightmare in the performance report?
- (d) how could members, specifically newer Councillors improve their functionality with the performance data?

It was agreed that –

- I. data from the 2019/20 annual report would be summarised in the next annual report;

2. Officers would investigate how information on performance data could be incorporated into the Members Induction Programme/ welcome pack for new Councillors, and how training for all Councillors on performance data could be provided;
3. the Audit and Governance Committee note the Performance and Accountability Framework.

29. **Local Government Ombudsman Review 2020/21**

Pete Honeywell (Transformation Architecture Manager) presented the Local Government Ombudsman Review 2020/21. Members were advised that all complaints were listed in the report, and where the LGO had noted a learning opportunity this was also included. The ability to compare to last years' data against prior performance was difficult as some services weren't in operation during the Covid 19 pandemic in order for them to receive complaints about; the report therefore focused upon the learning and themes. Appendix D of the report listed the four common themes for why complaints were upheld, these included communication and expectation management, absence of accurate record keeping, equality and diversity, and awareness of policy.

The following key areas of questioning was highlighted:

- (a) the year 2018/2019 was missing from the charts included in the agenda pack; could this information be provided to Members?
- (b) how was the learning from complaints followed up and monitored?
- (c) regarding adult care services and planning development, more decisions had been made than complaints, how?

It was agreed that –

1. missing data on the graphs in the report relating to 2018/2019 would be redeveloped and redistributed to Members;
2. the Audit & Governance Committee note the analytical findings into complaints received by the LGO relating to Plymouth.

30. **Audit Actions Review**

Brendan Arnold (Service Director for Finance) presented the Audit Actions Review report. Members were advised that the report had two facets to it, firstly to update the committee to where the Council had reached in implementing actions of the governance report, and secondly to provide a periodic update on the audit recommendations by Devon Audit Partnership. Work had continued since the publication of the report in the agenda and all actions had been completed at officer level with the exception of one, which would be reported upon at a later date. The actions had been completed in line with the set timeline and the aim was to sign the actions off at the next meeting. In terms of the periodic update, the pie graph described the state of play – one ambition was to prepare trends and comparative information in order to inform Members of the recommendations and work in progress.

The following key areas of questioning was highlighted by Members:

- (a) this report referred to NFA (no further action) – how was it decided that no further action was required without actions being fully implemented?
- (b) there were more partially implemented and outstanding issues than fully implemented issues – over what period did that refer to and were timescales being met?
- (c) with regards to special guardianship orders, 22 were partially completed out of 37 – what were the implications of this and where would they be reported and picked up?

It was agreed that:

- 1. future Audit Actions Review reports would include a brief summary explaining why actions were marked as NFA (No Further Action);
- 2. the Audit and Governance Committee note the content of the report.

31. **Statement of Accounts 2020/21**

Brendan Arnold (Service Director for Finance) presented the Statement of Accounts 2020/21. Members were advised that the statement of accounts was a key part of the governance in the financial accounting of the Council. The experience of officers in the finance department was emphasised, along with the good working relationship with the Council's external auditor's Grant Thornton. It was acknowledged that the report was detailed and complicated however it was hoped that the developing training programme for Members would assist them in understanding it.

The following key areas of questioning were highlighted:

- (a) in terms of the revaluations chart in the report, it had increased from £61,000 to £427,000 – why was there such a leap?
- (b) in terms of the balance of recurring and non-recurring savings – did it have a high level of risk going forward?
- (c) had the Leader of the Council seen the report and what were his views?
- (d) was the Covid pandemic having an effect on the budget in terms of the revenue of the Council?
- (e) in terms of the Council's outstanding technical accounting, what was the worst case scenario and how would it impact the accounts?
- (f) the impact of the Statement of Accounts for 2019/20 not being signed off upon these accounts;
- (g) the deadline for the publication of the final audited accounts moved from July to September – had this been completed?

Officers confirmed that the Council had undertaken work to provide more assurance on the valuation on the property portfolio in order to avoid having incorrect valuations; this was also a major focus for the external auditor and commentary would be provided from them during the audit regarding their judgement and the estimates made. In terms of its savings, the Council had maximised on recurring savings in order to avoid financial pressure in following years however had also taken one off savings when appropriate. In terms of the Miele transaction, the Council had sought advice and it was hoped that the transaction could be considered revenue other than capital and to be accounted for over a period of time – a final position on this transaction would be provided shortly. A proposed approach had been sent to the external auditor in draft and a responses was expected by the end of the month.

It was agreed that the Audit & Governance Committee –

1. would receive a brief note from the Service Director for Finance on the information contained within the table on page 188 of the agenda on the revenue resources available to the Council providing more detail regarding the impact of non-recurring savings and the potential future risk to the budget;
2. amend the recommendation in the report to refer to the delegation of the approval to the Vice Chair as well as the Chair of the Audit & Governance Committee, as detailed below:
3. approve the Statement of Accounts for 2020/21 attached as Appendix B with the understanding that they are currently being audited by GTUK. Should any issues be identified during the GTUK audit Members are asked to delegate the approval of the Statement of Accounts to the Chairperson and Vice Chair of the Audit and Governance Committee, in consultation with the Service Director for Finance.
  - a. Reason: Statutory Requirement, the Accounts and Audit Regulations 2015 require the accounts to be:
    - i. Considered by committee;
    - ii. Approved by committee resolution;
    - iii. Signed and dated by the person presiding at the committee.

## 32. **Work Programme**

Andrew Loton (Head of Governance, Risk and Performance) advised Members of a new addition to the work programme since the last committee meeting in July 2021: the Working Group Update - Terms of Reference Review had been added to the 29 November 2021 Audit and Governance Committee following discussions with the Chair and Vice Chair who had agreed that a cross party working group would be scheduled and for initial findings to be brought back for discussion.

The reasons for the review, as well as the implications were queried by Members, and if substantial change was expected to take place, specifically regarding the reversal of the decision to amalgamate the Audit Committee and the Constitutional Review Group (where governance issues were previously discussed) therefore creating the Audit and Governance Committee.

It was highlighted by Andrew Loton that the Audit & Governance Committee could currently be considered problematic due to the number of items included on the agendas and the volume of work – the remit of the working group would therefore focus upon potential options for the how the committee could function in the future, how its workload could be managed and what the remit of the committee should be.

There was concern from Members that the potential to uncouple audit from governance would increase the number of meetings as two separate committees would be required, and that instead better management of the agenda might be the best solution. It was encouraged that current Members of the Audit & Governance Committee were included in the discussion of any potential changes before any plans were finalised.

The working group was encouraged to look at the best practice from CIPFA when considering the terms of reference review.

Members agreed to note the work programme.

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