

MIDDLESBROUGH COUNCIL	
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Report of:	The Chief Executive, Director of Finance and Director of Legal and Governance Services
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Submitted to:	Council
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Date:	18 September 2023
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Title:	Section 24 Report – statutory recommendations from the Council’s External Auditors, EY
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Report for:	Decision
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Status:	Public
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Strategic priority:	All
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Key decision:	Not applicable
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Why:	Not applicable
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Urgent:	Not applicable
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Why:	Not applicable
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Executive summary

This report sets out the statutory recommendations that have been issued to the Council, by its External Auditors Ernst & Young LLP (EY), exercising their powers under Section 24, Schedule 7(2) of the Local Audit and Accountability Act 2014.

The recommendations and the assessment upon which they are based is set out in the External Auditor’s report which is attached at Appendix 1.

The Council’s response and action plan in response to those recommendations is set out at Appendix 2.

Purpose

1. The purpose of this report is to set out the statutory recommendations that have been issued to the Council, by its External Auditors, exercising their powers under Section 24, Schedule 7(2) of the Local Audit and Accountability Act 2014.

Background and relevant information

2. On 21 August 2023, the External Auditor issued a report to update on the Council's Value for Money arrangements and issued 11 statutory recommendations in relation to required improvement in the Council's governance arrangements. This is the culmination of the review of the Council's progress since the External Auditor initially made 7 non-statutory recommendations within their 2020/21 Audit Results Report which was considered by Corporate Affairs and Audit Committee in July 2022.
3. At the July 2022 meeting, the Council's three statutory officers (Chief Executive, Director of Legal and Governance Services and Director of Finance) submitted a report entitled 'Commencing a Corporate Governance Improvement Journey' that set out how the Council intended to respond to those concerns.
4. In November 2022, EY issued a progress report, assessing delivery against the non-statutory recommendations. At that time, EY judged that steps taken at that time were in line with expectations and the future actions identified to date appeared to be appropriate steps towards addressing both the depth and breadth of cultural and governance issues at the Council. However, they had some concerns about whether the actions would create a real positive cultural change within the organisation.
5. Since November 2022, while progress has continued to be made, the Council's External Auditors have assessed that while there are signs of improvement in the pace at which the Council is addressing the significant cultural and governance weaknesses, the Council has not made the overall progress that it expected to see since November 2022. The report reflects the auditor's view of the entire period from November 2022 to August 2023.
6. In addition, three further significant weaknesses have been identified, in relation to financial sustainability, contracting and procurement and Middlesbrough Development Company.
7. It is recommended that Council accepts all of the recommendations and agrees the draft response and actions which specifically address the statutory recommendations as set out at Appendix 2.

What decision(s) are being recommended?

8. That Council agrees the:
 - recommendations made by the Council's External Auditors, EY
 - proposed response and action plan, attached to this report at Appendix 2.

Rationale for the recommended decision(s)

9. The Council must respond effectively and at pace to the statutory recommendations if it is to meet its Best Value duty and return to a stable and financially sustainable organisation that meets the needs of the citizens of Middlesbrough.
10. All Members of the Council and its officers must work in unison to meet this challenge through collaboration, constructive challenge and engagement.
11. Failure to deliver against the statutory recommendations could result in the External Auditor exercising their further powers with the potential for Public Interest Report
12. This could then lead to a further escalation of intervention by the Department for Levelling Up Homes and Communities (DLUHC) who have the ultimate sanction of appointing independent Commissioners to run the Council which may include the suspension of the democratic processes of the Council which would remove the decision-making role of all elected members.

Other potential decision(s) and why these have not been recommended

13. Not applicable.

Impact(s) of the recommended decision(s)

Legal

14. Schedule 7 of the Local Audit and Accountability Act 2014 requires the following actions:
 - The Council must consider the recommendation at a meeting held before the end of the period of one month beginning with the day on which it was sent to the Council.
 - At that public meeting the Council must decide:
 - whether the recommendations are to be accepted; and
 - what, if any, action to take in response to these recommendations.
15. Schedule 7 specifies the meeting publication requirements that the Council must comply with.

Strategic priorities and risks

16. If the Council fails to respond effectively to the recommendations of its External Auditors, EY, this will have a negative impact on the following strategic risks:
 - Failure to meet a balanced budget.
 - Risk of an unlawful decision by the Council.
 - Corporate governance is not fit for purpose.

Human Rights, Equality and Data Protection

17. Not applicable.

Financial

18. The development and implementation of the action plans will be delivered through a combination of existing staff resources and additional capacity as indicated within the action plan.
19. In particular, the development and implementation of a transformation programme to return the Council to a position of financial stability and sustainability will require substantial investment. The investment will be quantified as an integral part of the 2024/25 Council Plan, budget setting and MTFP process as individual service transformation plans are developed.
20. This investment is anticipated to be funded through the rationalisation of Council assets to generate capital receipts from asset sales that will be required to fund the transformation. These will be applied through an updated Flexible Use of Capital Receipts Policy that will require Council approval. It is also possible that the Council will need to seek exceptional financial support from DLUHC in order to support the delivery of transformation plans to meet any short-term timing difference between the required investment and the realisation of the required level of capital receipts.
21. In order to ensure that appropriate value for money and financial governance is achieved within the Council, face to face training will be delivered on the updated finance and contract procedure rules. The aim will be to ensure that anyone who has either financial decision making, or support duties has the appropriate knowledge and awareness as part of their role. Compliance with these rules will be mandatory for all staff and any exceptions will be reported to Chief Officers.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
Delivery of the S24 response action plan at Appendix 2.	Chief Executive	30/12/2024

Appendices

1	Middlesbrough Council - Value for Money Update and Issuance of Recommendations Under Section 24 Schedule 7(2) of the Local Audit and Accountability Act 2014 – Report of the External Auditor
2	Middlesbrough Council Action Plan – response to statutory recommendations

Background papers

Body	Report title	Date
Corporate Affairs and Audit Committee	Lessons Learnt: Best Value Inspection of Liverpool City Council	5 Aug 2021
Corporate Affairs and Audit Committee	Boho X: Draft findings from internal audit and proposed management response	6 Apr 2022

Corporate Affairs and Audit Committee	Audit Results Report 2020/21	22 Jul 2022
Corporate Affairs and Audit Committee	Statement of Accounts 2020/21	22 Jul 2022
Corporate Affairs and Audit Committee	Lessons learned: Best Value and external assurance within other councils.	22 Jul 2022
Corporate Affairs and Audit Committee	Commencing a corporate governance improvement journey	22 Jul 2022
Council	Corporate Governance Improvement Journey: CIPFA findings and next steps	19 Oct 2022
Council	Corporate Governance Improvement Plan and progress update	30 Nov 2022
Corporate Affairs and Audit Committee	External Audit: Value for Money Governance Update	5 Dec 2022
Council	Corporate Governance Improvement Plan and progress update	18 Jan 2023
Corporate Affairs and Audit Committee	Statement of Accounts 2020/2021	28 April 2023
Corporate Affairs and Audit Committee	Auditor's Annual Report – Year Ended 31 March 2021	29 June 2023
Council	Corporate Governance Improvement Next Steps	5 July 2023

Contact:

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- Charlotte Benjamin, Director of Legal and Governance Services (Monitoring Officer)
- Debbie Middleton, Interim Director of Finance (Section 151 Officer)