

AUDIT COMMITTEE

A meeting of the Audit Committee was held on Thursday 14 March 2024.

PRESENT: Councillors J Ewan (Chair), J Kabuye (Vice-Chair), I Blades, D Coupe, B Hubbard, I Morrish (as substitute for Councillor S Platt) and M Storey

PRESENT BY INVITATION: Councillor N Walker, Executive Member for Finance and Governance

ALSO IN ATTENDANCE: C Cooke, Elected Mayor, Councillor P Storey, Deputy Mayor
P Jeffrey (Internal Auditor) (Veritau), M Thomas (Internal Auditor) (Veritau),
M Rutter (External Auditor) (Ernst Young),
M Kirkham (External Auditor), (Mazars)

R Tebbs (External Auditor) (Ernst Young) - Virtual Attendance

OFFICERS: C Benjamin, G Cooper, N Finnegan, A Glover, L Grabham, C Heaphy, A Johnstone, S Lightwing and D Middleton

APOLOGIES FOR ABSENCE: were submitted on behalf of Councillor S Platt

23/26 **WELCOME AND EVACUATION PROCEDURE**

The Chair welcomed all present to the meeting and read out the Building Evacuation procedure.

23/27 **DECLARATIONS OF INTEREST**

There were no declarations of interest received at this point in the meeting.

23/28 **MINUTES - AUDIT COMMITTEE - 1 FEBRUARY 2024**

The minutes of the Audit Committee meeting held on 1 February 2024 were submitted and approved as a correct record.

23/29 **CORPORATE GOVERNANCE IMPROVEMENT PLAN AND SECTION 24 ACTION PLAN PROGRESS REPORT**

A report of the Mayor was presented that set out the key activities, progress and impact of the Corporate Governance Improvement Plan and activity in response to the Section 24 recommendations made by the Council's External Auditors, since the last report to Audit Committee.

The activities in the improvement plan comprised ten workstreams, each with a milestone delivery plan which was monitored and reported monthly to the Leadership Team, the Independent Improvement Advisory Board and at each full Council meeting.

97% of planned activity had either been delivered or was on-track for delivery in relation to the Corporate Governance Improvement Plan, with seven planned activities measuring as off-track.

94% of activity in relation to the Section 24 delivery plan was on-track or had been delivered, with six activities showing as off-track.

The report set out the detail of the delivery plan activity, alongside supporting measures of success that were in place to assess the impact of activity.

Reference was made to a request from a Committee Member for copies of minutes of Middlesbrough Development Company Board Meetings.

AGREED as follows that:

1. The information provided was received and noted.
2. Audit Committee noted the progress against the Corporate Governance Improvement Plan and Section 24 Action Plan.
3. Copies of minutes of Middlesbrough Development Company Board Meetings would be circulated to Committee Members.

23/30

BEST VALUE NOTICE - UPDATE

A joint report of the Chief Executive, Director of Finance and Director of Legal and Governance Services was presented, the purpose of which was set out the content of the 'Best Value Notice' issued on 30 January 2024, following the expiry of the existing Notice which had been issued for a period of 12 months in January 2023.

Since September 2022, the Council has had both a Corporate Governance Improvement Plan and a Section 24 action plan in place to address the range of governance issues identified in both plans. In January 2023, government issued a 'Best Value Notice' on a non-statutory footing, which set out government's concerns in relation to the Council's governance. That notice was in place for 12 months, with clear expectations that should the Council fail to respond positively to it, intervention would be moved to a statutory footing.

Following the local and Mayoral Elections held in May 2023, the Council's approach to improvement was refreshed and in September 2023 that revised improvement plan was presented to Council, alongside the establishment of an Independent Improvement Advisory Board which had been put in place to provide guidance and support to the Council on its improvement journey, as well as provision of an independent view on progress made to date to Government. Alongside this, there had been regular engagement with government.

The above had resulted in the Council being able to work effectively with the Department for Levelling Up, Housing and Communities for the last 12 months to provide it with assurance around the range of improvement measures it had put in place. This progress had been acknowledged by government and reflected in the wording of the refreshed 'Best Value Notice' which would continue to operate on a non-statutory footing for the next 6 months. The notice set out that government expected the Council to:

- "Continue to work with the Independent Improvement Board established in Middlesbrough to support the council to deliver the council's locally lead improvement strategies, organisational transformation and to monitor progress of the application of the improvement board recommendations and delivery of improvements against the serious concerns highlighted by the external auditor, published in July 2022, around governance arrangements, and cultural and governance issues further investigated in the CIPFA review published in September 2022.
- Continue in your efforts to deliver against your agreed action plan, accepted at full Council on 30 November 2022, at pace and to meet the set milestones and success measures established.
- Continue in your efforts to implement cultural change, particularly in relation to the relationships between officers and members, and that this will be an important continuing focus of the Independent Improvement Board.
- Work with the Department as you deliver on your Best Value requirement to secure the financial recovery and return to financial sustainability through setting a balanced 3-year MTFP over the period to 2026/27."

In relation to transformation, the Chief Executive explained that he would be writing to Members within the next few weeks and a series of briefings would be held over the next month. The language used was often complex and it was vital to ensure a full understanding of the programme and what it was trying to achieve. Transformation was a big issue and defining services that could be delivered in a different way. Sometimes using better process and technology would give a better outcome for residents at a better cost. The Department of Levelling Up, Housing and Communities (DLUHC) had indicated that the Council needed to work on areas and initiatives cross-party, and aim to get a more unanimous approach to budget setting next year.

AGREED as follows that the:

1. information provided was received and noted.
2. revised 'Best Value Notice' that had been issued by government, following the expiration of the previous notice that was issued in January 2023 was noted.

23/31

REVIEW OF CONTRACTS AWARDED UNDER EXEMPTION FROM CONTRACT PROCEDURE RULES

A report of the Director of Finance was presented, the purpose of which was to provide the Committee with assurance in relation to the Council's compliance with the Public Contract Regulations 2015 specifically in relation to those contracts that had been awarded subject to an exemption from the Council's Contract Procedure Rules (CPRs)/Standing Orders (SOs).

Exemptions were allowed under specific circumstances as set out in the CPRs/SOs in exceptional circumstances, details of which were provided at paragraph 4.7 below. The report provided a summary of the Council's activity in regard to exemptions submitted and approved under the Council's standing Order rule 5 (in accordance with the previous contract procedure rules). To report on the current status of those exemptions and any issues arising from their approval.

In compliance with the section 24 recommendation made by EY in August 2023, a full review of live contracts that had been awarded subject to an exemption from CPRs has been undertaken. This identified the status of those contracts and sought to provide assurance to the Committee that the Council's procurement practices were in accordance with Contract Procedure rules and compliant with the Public Contract Regulations.

Details of the number of contracts awarded subject to exemptions from CPRs since April 2021, and any contracts awarded with exemptions prior to that date which were still live were included in a table in the submitted report at paragraph 5.1. The table indicated that 4% of exemptions received were in query by the Procurement service as a result of this process. The detail concerning those exemptions was outlined in Appendix 1 to the submitted report, along with the issue and resulting actions. None of the exemptions in query breached the Public Contract Regulations 2015 in terms of the total value of expenditure exceeding the financial limits within the regulations.

In addition, with regard to the two contracts that were let subject to an exemption which had subsequently been subject to a contract extension, the financial values had been checked and the total amount fell below the Public Contracts Regulations 2015. The review concluded that all contracts that had been awarded subject to an exemption were compliant with the financial thresholds determined under the Public Contract regulations 2015. Members could therefore be assured that the contract procedure rules in relation to letting contracts subject to exemptions were robust and compliant with legislative requirements.

Notwithstanding the assurance provided by the review, the Procurement Service had sought to deliver further improvement to strengthen the governance arrangements around procurement.

The contract procedures rules were refreshed and approved by Council as part of the Constitution in September 2023. As a result, authorisation on exemptions had been strengthened as follows:

- Requests for exemptions up to full contract value of £150,000 would be authorised by Head of Strategic Commissioning and Procurement.
- Request for exemptions in excess of £150,000 would be authorised by Head of Strategic Commissioning and Procurement, and the Director of Finance (Section 151 Officer).
- Request to extend a contract that is subject to an exemption will be signed by Head of Strategic Commissioning & Procurement, Director of Finance and Director of Legal and Governance (Monitoring Officer).

The authorisation process assured additional due diligence for any extension requests to an original exemption. No extensions were permitted if the contract values would exceed the

thresholds set out in the Public Contract Regulations. In addition the guidance stipulated that exemptions should be for no more than two years, unless there was a defined case which could demonstrate the value for money for a longer time period.

A clear process had been established for referencing, as prior to submission for signature a procurement officer would explore all feasible options including the potential for call off from frameworks, variation of existing contracts etc.

Mandatory training had been provided to all budget holders in which exemptions had been covered, and the case for exemption to be the exception, rather than the rule, had been reiterated to the staff base. Finally, guidance on the staff intranet had been updated in regard to submission of appropriate forms and associated guidance.

AGREED that the report was received and noted.

23/32

PROGRAMME AND PROJECT MANAGEMENT FRAMEWORK ASSURANCE

A report of the Director of Legal and Governance Services was presented, the purpose of which was to outline the Council's approach to Programme and Project Management (PPM) and summarise activity in the past two years and planned developments for 2024 and beyond, to provide the Committee with assurance that the Council had robust arrangements in place to support the delivery of its strategic aims and priorities.

The Portfolio Management Office (PMO) had responsibility for the strategic oversight of the Council's portfolio of programmes and projects that were managed within the corporate Programme and Project Management Framework (PPMF), which was in place to provide a consistent approach to PPM governance and documentation.

Currently, the PMO had oversight of the corporate portfolio comprising 21 projects, all of which support the achievement of strategic priorities and which continued to further embed the PPM framework across the Council, ensuring compliance through monthly project health checks.

Projects managed within the portfolio were categorised as either Level 1 (the most complex projects) or Level 2, and their performance was assessed and reported using Red, Amber, and Green (RAG) indicators that measured how well the project was delivering against expectations.

The table at paragraph 7 of the submitted report showed a positive increase in the overall performance status of projects to date (end February 2024) in the last 12 months.

An internal audit of project management arrangements in 2023, determined that a sound system of governance, risk management and control existed, with internal controls operating effectively and being consistently applied to support the achievement of objectives in the area audited. The overall opinion of the controls within the system was 'Substantial Assurance' in relation to project governance arrangements in place to support the Council's strategic objectives, with a strong commitment to the PPM framework within the Council.

The PPM Framework and documentation had recently been reviewed and refined with the following minor amendments made to ensure the framework remains fit for purpose:

- Lowering the financial benefits thresholds in the Benefit Complexity Matrix tool, to ensure any projects delivering savings were prioritised and were given the highest level of governance and scrutiny.
- A revised and simplified Programme Definition document to ensure a more appropriate and proportionate level of detail was captured.
- A revised and simplified Level One Business Case to ensure a more appropriate and proportionate level of detail was captured.
- The development and implementation of 'An introduction to the Council's PPM Methodology' online training module.
- The introduction of monthly project health checks.

A copy of the updated Portfolio, Programme and Project Management Framework: 2024-27 was attached at Appendix 1 to the submitted report.

The Council was currently mid-way through a corporate governance improvement journey and was subject to a Best Value notice issued in January 2023, from the Department of Levelling Up, Housing and Communities (DLUHC).

To respond effectively to the wider governance challenges facing the Council, the Corporate Governance Improvement Plan was refreshed in September 2023 around two specific themes: cultural transformation and financial resilience.

An Independent Improvement Advisory Board was established to provide expertise, challenge, and advice against delivery of the revised governance improvement plan. Progress against the plan (including the Section 24 improvements), was reported at Board meetings, as well as each meeting of full Council and Audit Committee. Whilst Government recognised progress made, due to the seriousness and extent of the issues identified, the Best Value Notice had been extended for a further six months. Within this timeframe, there was an expectation to demonstrate traction and progress on development and delivery of the corporate transformation portfolio.

Successful Council-wide transformation of the organisation was integral to delivering the Council Plan 2024-27, its Medium-Term Financial Plan, and removal of the Best Value Notice through development of new approaches to the design of service delivery, driving of improved controls and efficiencies, and implementation of effective demand management measures as part of the wider governance improvement arrangements.

The scope, scale and pace of change required over the course of the MTFP would require building upon these foundations, refining governance and delivery approaches, applying best practice programme and project management principles in a pragmatic and proportional manner, and ensuring the PMO had the capability and capacity to deliver effectively. The Portfolio Management Office (PMO) would play a vital enabling role in the successful delivery of the Council's Transformation Portfolio, and existing priority business as usual programmes and projects, both directly linked to the achievement of a balanced budget over the next three years.

A proposal to strengthen the capability and capacity of the PMO was currently under consideration. To ensure the existing priority projects continued without disruption, it was proposed that the PMO Manager continued to focus on oversight, assurance and support of the existing Operational Portfolio, and that additional capacity was created dedicated to the Council's emerging Transformation Portfolio. A proposed structure was included at paragraph 21 of the submitted report. Once new transformation capability and capacity was implemented and embedded, a review of the PMO structure would be appropriate in consideration of the Council's longer-term requirements.

In response to a query from a Member it was clarified that the delivery resource required for the PMO would be identified in the transformation report to Council.

AGREED as follows that the Audit Committee:

- Approved the revised Programme and Project Management Framework (PPMF) 2024-27.
- Noted internal audit opinion that robust arrangements were in place to govern programme and project management within the Council.
- Noted project delivery performance over the past year.
- Noted the plans to increase PMO capability and capacity to support delivery of the Council's strategic priorities, aims and emerging Transformation Programme.

23/33

HR ASSURANCE PRESENTATION

The Head of Human Resources gave the annual HR Assurance Presentation and provided information in relation to:

- Employee Health and Wellbeing 2023/24
- Health and Wellbeing Work to Date
- Better Health at Work Award
- Employee Network Groups
- Staff Networks and Support Group

- Absence Management
- Turnover

With regard to the People Strategy, Health and Wellbeing and Recruitment and Retention, all the information on the intranet and staff portal would be refreshed.

Members requested further information in relation to sickness absence and the Head of HR agreed to provide a breakdown of long term and short term absences and reasons for absence by Directorate.

AGREED as follows that:

1. the information provided was received and noted.
2. further statistical data in relation to employee sickness absence would be provided to the Committee.

23/34

WHISTLEBLOWING POLICY

A report of the Director of Legal and Governance was presented to provide the Audit Committee with details of the updated Whistleblowing Policy and Procedure. A copy of the updated document was attached at Appendix 1 to the submitted report.

The Whistleblowing Policy provided a framework for employees and contractors to raise concerns in a confidential manner about issues happening at the Council. For example, health and safety risks, criminal or unlawful activity, or activities that could damage the environment. It set out how concerns could be raised and the protection that people working for the Council had if they raised an issue.

The existing whistleblowing Policy required review every three years and this policy was the result of the most recent review. The policy had been reviewed in conjunction with Veritau and had been developed using their model policy.

Along with the updated policy a dedicated email address had been launched as another avenue for concerns to be raised. Along with the updated policy a dedicated email address had been launched as another avenue for concerns to be raised. For those employees who did not have internet access, a toolbox talk was being developed to deliver the content in a briefing session. Veritau was also providing some training sessions for managers and an e-learning module.

AGREED that the updated Whistleblowing Policy and Procedure was received and noted.

23/35

LESSONS LEARNED - CORPORATE GOVERNANCE LEARNING FROM STANDARDS INVESTIGATIONS

A joint report of the Chief Executive and Directors of Finance and Legal and Governance Services was presented to inform Members of the Audit Committee of the outcome of an exercise to ensure the Council took the opportunity to learn lessons from standards complaints that had involved corporate governance issues. These issues arose from complaints investigations that had not completed by the end of the previous administration in relation to Elected Members who were not returned to office.

The report identified actions to strengthen Middlesbrough Council's corporate governance arrangements. The findings in the report were reflective of the governance concerns identified within the draft Annual Governance Statement 2020/21 and the External Auditor's Value for Money judgement for the same period.

On 3 July 2023, the Council's Standards Committee considered its quarterly report on code of conduct complaints. During the life of the last political administration 142 complaints were received. Ten of these complaints, had not reached a conclusion as at the 2023 local elections and related to Members who were not re-elected into office.

The report set out the themes of the lessons that had been learned and the action taken as follows:

Member Induction and Training

The Council delivered an induction programme offer to members in 2019 that covered the key corporate governance processes, the differences in roles between officers and members and member obligations in relation to conduct. This training approach had been scaled back during austerity to a detailed guide and a series of briefings held in the first few months of election. While there was, and is, a member training budget, this was relatively small and had to be used on occasion to cover other costs. The result of this was that levels of knowledge around processes and roles and responsibilities differed across the cohort of members in office during that time. The Democratic Services team did not have the capacity to be able to proactively engage with Members to ensure they attended training, gather meaningful feedback on training and put in place a wider programme of training on a cyclical basis to ensure learning was retained.

As a result of learning from this and as part of the Corporate Governance Improvement Plan, there had been significant involvement from the Council's Organisational Development (OD) team, who were training specialists. The OD team worked with Democratic Services, Members and other officers to agree a revised approach to training for those members who were inducted following the May 2023 local elections.

Additional resourcing had also been identified to fund training and development going forward to ensure the improved offer was delivered on a cyclical basis. This was agreed by Executive on 19 July 2023.

This issue was identified by the Council's External auditors in the 2020/21 Audit Results report, considered by the Committee on 22 July 2022. Annual Governance Statement actions and delivery of the Corporate Governance Improvement Plan had included actions to strengthen training of officers and members on a range of topics.

Adherence to roles and responsibilities

Linked to the induction and training issues, a number of the standards complaints alleged that individuals had not adhered to the remit of their role, either allegedly taking decisions that exceeded their authority or not followed a proper governance route in order to take a decision that they had the authority to take.

Improving understanding of roles and responsibilities and the roles and responsibilities of officers had been a key theme that underpinned the revised member induction programme and would continue through the delivery of additional training on corporate governance good practice during 2023/24. There was a detailed Corporate Governance programme in place which was being delivered to officers. All training materials had also been made available to Members through the Council's online training portal and included:

- Principles, Values and the Constitution.
- Procurement Procedure Rules.
- Financial Procedure Rules.
- Programme and Project Management.
- Risk Management.
- Consultation and Engagement.
- Committee Report Writing.
- Decision Making.
- GDPR and Information Governance.

Declarations of Interest

A number of complaints both within the outstanding complaints, and closed complaints during the last administration related to declarations of interest. Compliance with declarations of interest was also identified as an issue by the Council's External Auditors (EY). Since July 2022, Democratic Services team have conducted regular checks of declarations within meetings against declarations of interests forms as part of steps to support Members in compliance with their legal obligations. This had also included cross checking declared information with Companies House published information. In addition, Members' induction

training following the May 2023 elections included refreshed content on the declarations of interest process.

Member and Officer Relationships

There was a theme in the outstanding complaints around Member and officer relationships and allegations of poor behaviour. This was an area of concern in the 2020/21 and 2021/22 Annual Governance Statements and also in the 2020/21 Audit Results Report.

Action to address this was undertaken within the Corporate Governance Improvement Plan that was developed in 2022/23. The refreshed approach to this work, set out in the report to Council on 5 July 2023, included a programme of work to continue to address the cultural transformation within the Council across Member to Member and Member to officer relationships.

AGREED as follows that Audit Committee noted the:

- outcome of lessons to be learned the outstanding code of conduct complaints.
- crossover between issues identified in this report and the Annual Governance Statements for 2020/21 and 2021/22 (draft), the External Auditors Value for Money judgement 2020/21 and reports Council has considered on the Corporate Governance improvement journey.

23/36

TEESSIDE PENSION FUND AUDIT - UPDATE

The External Auditor provided a verbal update on the status of the Teesside Pension Fund Audit and the reset of local government audit timelines. It was anticipated that the 2021/2022 audit would be finalised within the next month and the majority of work on 2022/2023 was completed.

In relation to the Government reset, EY had set three priorities: to focus on Value for Money, to provide timely information and to ensure that Pension Fund Audits were progressed to conclusion. If audits were not finished, they could be disclaimed in September 2024 under current Government guidance. The Value for Money work would be included in the commentary for the above audits. Potentially EY could issue a disclaimer on the Council's audit, although this was not a final decision.

The Value for Money work was contained within the Statutory Recommendations Report and this would be included in the commentary for the two audits. This would be issued by the end of April 2024.

Members voiced concern regarding the potential for EY not to finish the outstanding audits, especially with a new External Auditor incoming. The Auditor stated that due to the national reset only 9% of audits had been completed on time. The Government Minister had implemented backstops and EY were working within the framework and getting 2023/2024 audits on track. The current process was based on past experience and unrelated to the fact that EY was not continuing as the Council's Auditor.

AGREED that the information provided was received and noted.

23/37

INTERNAL AUDIT AND COUNTER FRAUD PROGRESS REPORT

The Head of Internal Audit presented a report to provide the Audit Committee with an update on the internal audit and counter fraud work undertaken and information on the outcome of Veritau's recent external quality assessment.

The internal audit progress report was at Appendix 1 to the submitted report and included a summary of current work in progress, internal audit priorities for the year, completed work, and follow-up of previously agreed audit actions.

Two audits had reached draft report stage since the last progress report to Committee in December 2023. The findings were currently being discussed with management in order to agree actions to address the issues identified. Four audits had been finalised since the last report to Committee. The findings from three of the audits were summarised in Annex C to the

submitted report. A copy of the audit report on the Council's acquisition of the former Crown public house was attached at Appendix 2 to the submitted report.

In relation to counter fraud, the team continued to focus on prevention measures and training, to ensure employees were alert to the risks and if they suspected fraud, to report it to Veritau. Between 1 April 2023 and 31 January 2024, the counter fraud team received 93 referrals of suspected fraud. These referrals covered potential council tax fraud, council tax reduction fraud, internal fraud, blue badge fraud, and debt evasion issues and were made by members of staff, the NFI, and the public. Thirty-one investigations had been completed this year and there were currently twenty cases under investigation. One person had been successfully prosecuted and four people have received formal warnings for fraud involving the council tax reduction scheme and council tax discounts.

Investigative work in 2023/24 had identified £55k of loss due to fraud and error. The counter fraud team supported the Council to recover losses identified as part of investigations. Counter fraud savings were also tracked by monitoring repayments to the Council and calculating the value of stopping ongoing frauds. To date £39k of counter fraud savings had been identified.

The team also supported legal proceedings taken by the Council to recover £300k of outstanding business rates from a company with substantial commercial property holdings within Middlesbrough. The case was currently going through the court process.

In relation to the report on acquisition of the former Crown public house the Auditor commented that the report looked back at events from the previous year and there were a number of recommendations to assist the Council to learn lessons and put appropriate processes in place.

Members discussed the issues raised in the report and sought assurance in relation to responsibility and accountability. The Chief Executive commented that Councillors should be able to place reliance on the system of internal control. The Council had a duty to ensure that taxpayers' money was spent appropriately and that policies for acquisition and disposal of assets were adhered to.

AGREED that the information provided was received and noted.

23/38

ANY OTHER URGENT ITEMS WHICH IN THE OPINION OF THE CHAIR, MAY BE CONSIDERED.

None.