



Northumberland

County Council

REPORT TO CABINET

DATE: 7 June 2022

STATUTORY REPORT OF THE CHIEF FINANCE OFFICER – S.114A LOCAL GOVERNMENT FINANCE ACT 1988

Report of Leader and Deputy Leader (Portfolio Holder for Finance, Governance and Corporate Services)

Cabinet Member: Cllr Glen Sanderson and Cllr Richard Wearmouth

Purpose of report

The Chief Finance Officer of the Council, appointed under S.151 of the Local Government Act 1972, issued a formal report to members of the Council on 23 May 2022. The report identified two related areas of unlawful expenditure. The first, relating to participation in the Northumbria International Alliance consultancy business, is an executive function. The other, relating to an allowance paid to the Chief Executive, is a non-executive matter as it relates to staff.

Where the unlawful expenditure relates to an executive function of the Council, a report under S114A is addressed to and must be considered by the Cabinet. In accordance with the relevant legislation, the Cabinet must meet and consider the report within 21 days of it being sent to members. We should note that these types of statutory reports are very unusual and plainly reveal a very concerning lack of governance and compliance.

The purpose of this report is to formally place the Chief Finance Officer's report before the Cabinet and to invite the Cabinet to accept both the contents and the recommendations made in the report, which is now attached as Appendix 1.

The report does highlight that there is no wider issue with the solvency of the Council or its medium-term financial strategy. Nor is it suggested that the Council incurred a significant loss in relation to the NIA. We simply do not know whether or, to what extent, it was a profitable undertaking as separate management accounts were not kept. What is certain is that the Council incurred substantial expenditure in relation to NIA, and whilst that may have been offset by income, it was nevertheless unlawful as the commercial trading activity did not take place through a company, as required by law.

The purpose of a report under Ss 114 and 114A is to notify members of the fact that unlawful expenditure has taken place. Its purpose is not to determine why it was allowed to take place, or whether there was any failure by any current or former employee of the Council, or by any Elected Member, in permitting this state of affairs to take place over such a significant period of time. However, the Council and the public are entitled to know

how this happened and who, if anyone, was responsible for it happening. This report therefore, recommends a referral to the Employment (Appeals) Committee inviting them to consider who knew what when, and why the Council continued to trade otherwise than through a company when there appears to have been clear external professional advice provided to the Council's officers in 2019, that a company was required to trade in this way. Nor does it appear that there were adequate or indeed any formal reports to Cabinet or delegated decision notices issued to support the involvement of the County Council over this period. It is not suggested that the administration did not know what was happening, through Informal Cabinet briefings. However, these do not constitute decisions and without the clarity of who took decisions and why, set out in formal reports, there is less opportunity for scrutiny or accountability.

At a meeting of 8th June 2022, full Council is due to receive a report on Corporate Governance, which Cllr Wearmouth commissioned on behalf of the Cabinet. We expect there will be recommendations in that report which will lead to a thorough review of the way in which decisions are taken, recorded, and published. Cabinet is therefore, asked to support a further recommendation that the Monitoring Officer and Chief Finance Officer ensure issues of transparency and accountability in executive decision-taking are picked up in the actions arising from the 'Caller Review' and, a report be brought back to Cabinet to revise the Executive Scheme of Delegation, by no later than 1 September 2022.

Recommendations

The Cabinet is invited to:

1. Receive the Statutory Report (dated 23 May 2022) under S114A of the Local Government Finance Act 1988 and confirms that it agrees with its contents in relation to executive functions of the Council, attached as Appendix 1 to this report.
2. Confirm the recommendations set out in section 6.1 of the Statutory Report attached at appendix 1.
3. Delegate to the Monitoring Officer and Chief Finance Officer responsibility to review and formulate a scheme of executive delegation to ensure openness, transparency, and accountability for executive functions of the Council and to present a report to Cabinet setting out proposals to achieve this by no later than September 2022
4. Refer to the Employment (Appeals) Committee (EAC) of the Council the question of who knew what, when and why the professional advice received in 2019 to form a company was not acted upon. It will be for the EAC to form a view as to whether there is any question of discipline or capability relating to any officer (or former officer) of the Council which requires investigation, disciplinary or other action. Should the EAC determine that there may have been misconduct by any member of the Council, it will be for the EAC to make an appropriate reference under the Member Code of Conduct, in accordance with the Council's arrangements.

Key Issues

The key issues and statutory obligations are set out in the body of the Statutory Report. In so far as the Report relates to the executive functions of the Council (the participation in the Northumbria International Alliance), it is necessary for the Cabinet to determine

whether it agrees with the content of the Statutory Report and to determine what action should be taken as a result.

The interim Executive Director of Finance has set out her recommended actions at paragraph 6.1 of the Statutory Report.

Background

The legislative background and factual account is set out in the body of the Statutory Report. Recommendation 4 set out above asks the Cabinet to refer to the EAC the question of determining who knew what, when and why the external professional advice was not followed, and the trading company was not formed until 2021.

Implications

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| Policy | The Council is obliged to act within its powers and to ensure that there is transparency and accountability in all that it does. |
| Finance and value for money | These are set out in the Statutory Report. |
| Legal | The Monitoring Officer's comments on the statutory consultation are set out in Appendix B of the statutory report. Cabinet is asked to note that the Monitoring Officer has overlapping statutory responsibilities relating to reporting to Cabinet unlawful actions. Having regard to the contents of the report, and Leading Counsel's opinion, the Monitoring Officer has concluded that the purpose of such a report is achieved in supporting the publication of a report under S114A and that there is therefore no requirement for a separate statutory report to be presented at this time. |
| Procurement | N/A |
| Human Resources | Staffing matters are reserved to the full Council under the Local Authorities (Functions and Responsibilities) Regulations 2000. As such, further investigation into which officers knew what and when and any decision to initiate any formal capability or disciplinary action against staff must be discharged by the Council, a committee, or an officer of the Council and not by the Cabinet. Any investigation relating to an allegation of a breach of the member Code of Conduct must be dealt with in accordance with the local arrangements approved by the County Council. |
| Property | N/A |
| Equalities | N/A |
| Risk Assessment | Ensuring the Council acts within the law is a key requirement. There is a significant risk that the external auditor will find it necessary to act in accordance with his statutory responsibilities. Maintaining confidence in the administration of the Council's functions and finances is a key requirement. |
| Crime & | N/A |

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| Disorder | |
| Customer Consideration | N/A |
| Carbon reduction | N/A |
| Health and Wellbeing | N/A |
| Wards | N/A |

Report sign off.

Authors must ensure that officers and members have agreed the content of the report:

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| | Full Name of Officer |
| Monitoring Officer/Legal | Suki Binjal |
| Executive Director of Finance & S151 Officer | Jan Willis |
| Relevant Executive Director | N/A |
| Deputy Chief Executive (OBO Chief Executive) | Rick O'Farrell |
| Portfolio Holder(s) | Cllrs Glen Sanderson and Richard Wearmouth |

Author and Contact Details

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Appendix 1 – Report of Chief Finance Officer 23 May 2022