



# Northumberland

## County Council

### REPORT TO COUNCIL

**DATE: 8 June 2022**

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### STATUTORY REPORT UNDER SECTIONS 114 AND 114A

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

**Cabinet Members:** Cllr Glen Sanderson and Cllr Richard Wearmouth

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#### **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. Legislation requires the County Council formally to consider the report within 21 days of it being sent to members. For a Council to receive such a report is very unusual and plainly a matter of great significance.

The purpose of this report is to formally place the Chief Finance Officer's report before the Council and to invite the Council to accept its contents and recommendations. The statutory report is attached at Appendix 1.

The publication of the Statutory Report automatically stopped the continuing unlawful payments in relation to the International Allowance. The recommendations included in the report include that the payment must remain suspended as there is no lawful authorisation, or basis, for the allowance to be paid. The Staff and Appointments Committee will be tasked to examine that issue and consider whether the Council should take steps to recover the monies paid without lawful authorisation over the past 5 years.

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.

It is the Administration's view that the Council must determine who knew what and when, and whether any current or former officer should, or should have been, subject to any capability or disciplinary action arising from the contents of the Statutory S114/114A Report.

We therefore recommend that in addition to those measures proposed by the Chief Finance Officer in section 6.2 of her report, the Employment (Appeals) Committee (EAC) is asked to consider whether any capability, disciplinary or other investigation should take place in relation to any officer of the Council. Were this to relate to any officer below

deputy chief officer, then it would be a matter for the Head of Paid Service or her nominee, to determine. The EAC has delegated functions in relation to senior officers. Were the EAC to take a view that a former officer(s) of the council had erred, then it could consider whether a reference is made to the current employer(s) (if any) or to any regulator or agency.

In relation to Elected Members, it would be necessary for the EAC to make a reference under the local arrangements agreed by the Council, for consideration of any breach of the Member Code of Conduct. It is advised that a single set of Members with an overview of the whole situation should be in a position to make such referrals or initiate action in this way.

## **Recommendations**

That the County Council:

1. Receives the Statutory Report of the Chief Finance Officer made under S114 of the Local Government Finance Act 1988 dated 23rd May 2022.
2. Agrees the contents of the Statutory Report addressed to the Council under S.114 (in relation to the non-executive functions of the Council).
3. Notes the resolutions of the Cabinet at its meeting on 7 June 2022 in relation to those matters subject to a Statutory Report under S.114A of the Local Government Finance Act 1988.
4. Agrees the recommendations to the County Council set out paragraph 6.2 of the Statutory Report dated the 23<sup>rd</sup> May 2022.
5. Convenes a meeting of the Staff and Appointments Committee to take place within 14 days, to consider the contents of the Statutory Report in relation to the payment of the International Allowance and the matters referred to it in the recommendations of the Chief Finance Officer.
6. Convenes a meeting of the Employment (Appeals) Committee (EAC) to take place within 14 days, to commence consideration of who knew what, when and whether any grounds exist to take disciplinary, capability or other action in relation to any officer or former officer of the Council, or whether there are circumstances relating to Elected Members to be referred for consideration under the Council's Code of Conduct for Members arising from the circumstances set out in the Statutory Report.

## **Key Issues**

The key issues and statutory obligations are set out in the body of the S114 report. It is for the Council to determine what response it wishes to make to those matters which relate to the non-executive functions of the Council.

Compliance with the Council's legal obligations and acting within its legal powers and ensuring public confidence in the administration of its affairs and the expenditure of public money is a key issue for the Council.

## **Background**

The contents of the statutory report of the Chief Finance Officer are self-explanatory. The Cabinet is meeting on 7 June to consider those parts of the Statutory Report addressed to it and the Leader will confirm actions taken by Cabinet to the meeting.

In relation to the non-executive functions, including the payment of the International Allowance, the Statutory Report is addressed to the County Council. The Council has delegated staffing matters to the Staff and Appointments Committee and in accordance with the recommendations of the report, that committee must now convene to consider issues relating to the allowance, and whether any recovery of unlawful payments should take place.

The Council and the public will want to know how this happened, and who knew what, when. It is for this reason that the EAC is asked to conduct a review of that, and to consider any actions that lie within its terms of reference. Where there are other recommendations, in relation to junior officers, former officers or Elected Members, the EAC is asked to make relevant recommendations to the appropriate person or body.

## **Legal issues**

The statutory provisions relating to the S114 Report are set out in the body of that report, and the legal advice appended to it. As will be seen from the consultation responses, the Monitoring Officer was consulted and agreed the contents of that report and the recommendations contained in it for the reasons set out. The Monitoring Officer, as Director of Governance, has been consulted as part of the statutory process leading up to the publication of the S114 report. In the course of that consultation, the Monitoring Officer has considered whether her statutory reporting duty, under S5 of the Local Government and Housing Act 1989 was also triggered by the facts and matters referred to in the S.114 Report.

The Monitoring Officer, having the benefit of Leading Counsel's Opinion, concluded that, whilst her statutory reporting duty was triggered, the purpose of such a report, namely, to bring matters to Members' attention and for the Council to have an opportunity to consider the report and determine its course of action, was achieved through the issue of a S114 report. This being so, the Monitoring Officer is satisfied that her reporting duty is discharged and that no separate report is required at this time.

In relation to the conduct of Members, whilst any action under the Code of Conduct is exclusively to be dealt with in accordance with the local arrangements agreed by the

County Council under the Standards Regime, it is appropriate for one set of members to have an overview and recommend any action to be considered in relation to both Members and officers.

## **Human Resources**

Chief Officers are subject to the Northumberland Senior Staff Conditions of Service. The Head of Paid Service, Chief Finance Officer and Monitoring Officer have additional statutory protections regarding any potential disciplinary action and all three have identical disciplinary provisions set out in their respective contractual arrangements. The terms of reference of the Employment (Appeals) Committee incorporate the exercise of the Council's disciplinary functions in relation to Chief Officers. Were it found that disciplinary investigation or disciplinary action was required in relation to a more junior employee, then it would be a function delegated to the Chief Executive (or in her absence / conflict of interests) to the Deputy Chief Executive to determine.

It is not possible to take disciplinary action in relation to a former member of staff. However, in appropriate circumstances, consideration can be given to referring matters to their current employer, to a regulator or professional body, or to the Police, if there is information which is relevant to the remit of that organisation.

Given the history of disciplinary action relating to the Head of Paid Service in the Council, it is recommended that external legal advice is taken for the Employment (Appeals) Committee.

## **Implications**

<b>Policy</b>	It is key to the Council to act within the law and to comply with all its legal obligations.
<b>Finance and value for money</b>	These are set out in the body of the Statutory Report. Plainly, further costs will be incurred in obtaining legal advice and completing the investigatory processes referred to and these will be met from within existing departmental budgets. The SAC (Staff and Appointments Committee) will need to determine the issue of recovery of any unlawful expenditure made to an individual, having regard to the external legal advice.
<b>Legal</b>	These are set out in Counsel's opinion, the body of the S.114 Report and this covering report. Council should note in particular, the consultation response from the Monitoring Officer regarding her overlapping reporting obligations.
<b>Procurement</b>	N/A
<b>Human Resources</b>	This is covered above
<b>Property</b>	N/A

<b>Equalities</b>	N/A
<b>Risk Assessment</b>	This is covered in the reports. There is a high risk of further action being taken by the external auditor, to bring the Council into compliance with its legal obligations if the recommendations set out in the S.114 report are not followed.
<b>Crime &amp; Disorder</b>	N/A
<b>Customer Consideration</b>	N/A
<b>Carbon reduction</b>	N/A
<b>Health and Wellbeing</b>	N/A
<b>Wards</b>	N/A

**Report sign off.**

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

	Full Name of Officer
Monitoring Officer/Legal	Suki Binjal
Executive Director of Finance & S151 Officer	Jan Willis
Relevant Executive Director	
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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