



Northumberland

County Council

AUDIT COMMITTEE

27 July 2022

S114 Report by the S151 Officer

Report of Jan Willis, Interim Executive Director of Finance and S151 Officer

Purpose of report

To update the Committee on actions being taken in response to the S114 Report issued by the S151 Officer on 23 May 2022 and seek the Committee's approval of the draft terms of reference for an independent investigation into the circumstances that have given rise to unlawful trading activities.

Recommendations

Audit Committee are asked to

1. Receive and provide comment and, if appropriate, add to the actions, as set out within the body of this report, that are being taken to address the issues raised in the S114 report.
2. Endorse the draft terms of reference for the independent investigation into the circumstances that have given rise to unlawful trading activities and the unlawful payment of an international allowance to the Chief Executive as set out in Appendix 1.

Link to Corporate Plan

This report is relevant to ensuring the best value priority in the Council's Corporate Plan 2021-2024.

Key issues

In discharging its best value duty, the Council must demonstrate that effective and appropriate governance arrangements are in place to support lawfulness, probity and effective stewardship of public funds and that appropriate learning takes place when governance failures are identified.

Background

On 23 May 2022 I issued a report under SS114 and 114A of the Local Government Finance Act 1988 informing members that in my view the Council had incurred items of unlawful expenditure.

The items of unlawful expenditure that were the subject of this report concern the following matters:

First, that the County Council participated (alongside the Northumbria Healthcare NHS Foundation Trust –referred to in this report as ‘the NHCT’) as a principal in the Northumbria International Alliance (NIA). This was an unincorporated partnership established to provide international consultancy services for a commercial purpose. NIA traded commercially from at least 2018 to 2021 and did so otherwise than through a company with all of the related income and expenditure being recorded in the Council’s accounts. This is a breach of Section 4(2) of the Localism Act 2011.

Second, that the County Council made and continues to make payment of a special “international allowance” of £40,000 per annum to the Chief Executive without proper authorisation and in contravention of the Council’s pay policy statements. This is a breach of Section 41 of the Localism Act 2011 and s112(2A) of the Local Government Act 1972.

My report was considered by Cabinet on 7 June 2022 and by County Council on 8 June 2022.

In relation to trading for a commercial purpose, which is an executive matter, the following recommendations were unanimously agreed by Cabinet:

1. Agree that Audit Committee be requested to commission a full, independent investigation into the circumstances that gave rise to the unlawful trading activities.
2. Note that the Chief Finance Officer will revise finance and contract procedure rules to strengthen control and oversight of commercial trading activities and issue updated guidance on the requirements relating to trading accounts for such activities.
3. Note that the chief finance officer in consultation with the Monitoring Officer will undertake a review of the Council’s commercial activities to ensure that they are taking place on a lawful basis and issue further formal guidance as appropriate.
4. Note that the Chief Finance Officer will commission further advice and consult the external auditor with regard to any disclosures and/or adjustments that may be required to the Council’s statement of accounts for 2020/21 and prior years, in respect of income and expenditure relating to international consultancy contracts between 2018 and 2021, or as between the Council and the NHCT.
5. Note that the Chief Finance Officer will consider whether, and if so what, disclosures should be made to HMRC in relation to corporation tax or other liabilities.

Cabinet further resolved to 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, noting that 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 and that 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.

Regarding the payment of the international allowance to the Chief Executive (and previously to the Deputy Chief Executive) from 2017, Council unanimously agreed the following recommendations:

1. Note that payment of the international allowance has been stopped from the date of this report as a result of the prohibition period provisions in the Local Government Finance Act.
2. Agree that payment of the International Allowance will remain suspended pending consideration of further legal advice with regard to potential recovery of unlawful

- payments and any related issues by the Staff and Appointments Committee and any recommendations arising being reported to County Council for consideration.
3. Note that legal and (if necessary) actuarial advice will be taken regarding any potential adjustment of pension contributions made to the Local Government Pension Scheme in relation to the International Allowance.
 4. Note that the Chief Finance Officer will undertake further investigation to establish whether any other unlawful payments have been made to any officers or former officers, including severance payments, which may require further reports under S114 of the Local Government Finance Act 1988.
 5. Instruct the Director of HR in consultation with the Chief Finance Officer and Monitoring Officer to review the Council's pay policy statement to ensure that it is up to date and complies with the requirements of s38 of the Localism Act 2011 and report any required changes to the County Council.

Council further resolved to:

- a) convene 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; and
- B) to convene 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.

Since my report was considered and approved by Cabinet and County Council the following progress has been made in implementing the agreed recommendations:

1. Draft terms of reference for an independent investigation into the circumstances that gave rise to the unlawful trading activities and the unlawful payment of an international allowance to the Chief Executive are attached at Appendix 1. The Committee is invited to endorse these.
2. Revisions to finance and contract procedure rules and updated guidance in respect of commercial trading activities are being drafted by the finance team.
3. A review of commercial trading activities to ensure that they are taking place on a lawful basis is in train.
4. Officers are in discussion with the external auditor regarding disclosures and/or amendments that are required to the 2020/21 accounts and prior years.
5. Further advice is being sought from specialist tax advisers on whether disclosures should be made to HMRC in relation to corporation tax or other liabilities.
6. Payment of the Chief Executive's international allowance remains suspended pending consideration by the Staff and Appointments Committee of further legal advice from Nigel Giffin QC regarding recovery of unlawful payments and related issues.
7. Actuarial advice has been commissioned from AON, actuaries to the Tyne and Wear Pension Fund and revised pension contributions and benefits estimates are being calculated.

8. Internal audit are currently reviewing all exit payments to senior officers and all exit payments over £100k from 2017 onwards.
9. The Pay Policy Statement has been updated to ensure compliance with the requirements of the Localism Act 2011 and will presented to full Council for approval at its September 2022 meeting.
10. In accordance with the resolutions of Cabinet (held on 7th June 2022 and full Council (held on the 8th June 2022), the Council's Employment Appeals Committee (EAC) met on the on the 20th June 2022 to determine next steps in relation to unlawful payments. The Committee resolved to note that in relation to Officers, former Officers and Members, the Audit Committee would be asked to commence a wider investigation and that the EAC will consider the findings of that process and the extent to which if at all, further action within the remit of EAC is required.

The Committee is invited to comment on and, if appropriate, add to the actions being taken to address the issues arising from the S114 report and to note that a further progress report will be brought to the September 2022 meeting.

Implications

Policy	None
Finance and value for money	There will be costs associated with the independent investigation into unlawful trading activities, commissioning of specialist actuarial and tax advice and additional audit capacity. Until the scope of this further work is more clearly defined it is not possible to estimate these costs with any precision, however at this stage they are not expected to exceed £100,000. Contingency funding is available to cover these costs.
Legal	<p>The recommendations fall within the remit and functions of the Audit Committee as per the Council's Constitution.</p> <p>The Council's Chief Finance Officer is appointed under Section 151 of the Local Government Act 1972.</p> <p>Sections 114 and 114A of the Local Government Finance Act 1988 requires, the S151 officer to make a report if it appears to that the authority, a committee of the authority, or any person holding any office or employment under the authority:</p> <p>(a) has made or is about to make a decision which involves or would involve the authority incurring expenditure which is unlawful;</p> <p>(b) has taken or is about to take a course of action which, if pursued to its conclusions, would be unlawful and likely to cause a loss or deficiency on the part of the authority; or</p> <p>(c) is about to enter an item of account the entry of which is unlawful.</p>

	<p>It is the obligation of the Council (and the Cabinet in relation to executive responsibilities) to consider this report within 21 days of the date it is sent to members.</p> <p>Accordingly, Cabinet on the 7th June 2022 on full Council the 8th June 2022, respectively resolved to refer the outcomes of the S114/S114A to be considered by the Council's Audit Committee.</p> <p>In addition to the above, on the 20th June 2022, the Council's Employment Appeals Committee resolved to note that in relation to other Officers, former Officers and Members, the Audit Committee was being asked to commence a wider investigation and that EAC would consider the findings of that process and the extent to which if at all, further action within the remit of that Committee was required.</p>
Procurement	None
Human Resources	None
Property	None
Equalities (Impact Assessment attached) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	Not applicable
Risk Assessment	None
Crime & Disorder	None
Customer Consideration	None
Carbon reduction	None
Health and Wellbeing	None
Wards	All

Background papers:

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	Jan Willis
Chief Executive	Rick O'Farrell
Portfolio Holder(s)	N/A

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