



Oldham
Council

Report to Audit Committee

Update on General Matters

Portfolio Holder: Cllr Abdul Jabbar MBE, Cabinet Member for Finance and Corporate Resources

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Reason for Decision

It is considered appropriate to bring to Member's attention the following:

- a) The outcome of the Best Value Inspection at Thurrock Council following the production of a public report in May 2023 setting out the detailed findings of the Best Value Inspectors. This includes recommendations which if accepted, could impact on the work of this Committee in undertaking its governance role.
 - b) The initial reported findings of the Best Value Commissioners appointed at Woking Borough Council, and the subsequent issuing by the Council of a Section 114 Notice.
 - c) An update on financial issues at other Authorities including Nottingham City Council following the latest report in the public domain highlighting improvements are required in financial administration.
 - d) The report produced by the Public Accounts Committee on the timeliness of External Auditors on delivering an audit opinion on the accounts of Local Authorities by the statutory deadline.
 - e) The requirements of the Department of Levelling Up, Housing and Communities that Councils ensure that their S151 Officers are able to satisfy the role of the Accountable Officer in line with the requirements of the Department on the major grant schemes for the Future High Streets Fund, the Towns Fund and the Levelling Up Fund.
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- f) The creation of the Office for Local Government (Oflog) as an initiative to improve the oversight of Authority's performance and adherence to Best Value legislation and the announcement by the Department for Levelling Up, Housing and Communities about a consultation on the proposed Best Value Standards and Interventions which will be applied to a Local Authority.

Executive Summary

This report sets out six key matters which have the potential to impact on the future work of this Committee in undertaking its governance role within the Council. These are covered in Section 2 of the report as detailed below.

These matters, alongside the plans for change aligned to the creation of the Audit Regulation and Governance Authority (ARGA) which were reported to this Committee on 8 June 2023, highlight that there is a potential for significant changes to the future oversight of governance nationally, including the setting up of Oflog.

In addition, after a significant period of stability in the management of Local Government finances by Local Authorities, there are now some high profile cases where, due to poor financial management, four Authorities are reliant on capitalisation directions from Central Government to enable them to set balanced budgets. As interest rates are increasing it is possible that other Authorities who invested large amounts in the commercialisation agenda compared to their annual revenue budget will require financial support and therefore issue a future Notice under Section 114(3) of the Local Government Act 1988 (a Section 114 Notice) advising that they are unable to manage their finances within the resources available to them. Whilst the Audit Committees in the four Authorities could not have prevented past events, they should have been an important check and balance in providing challenge.

These events and publications have the potential to impact on the work of both the Audit Committee and the Scrutiny Boards in the future and information is therefore included in this report, so Members are as well briefed as possible on matters pertinent to their role.

Recommendation

That Members consider the approach of the Committee to the matters detailed in this report.

Update on General Matters

1 Background

- 1.1 There are six items detailed in this report which need to be brought to the attention of the Audit Committee. These are:
- a) The outcome of the Best Value Inspection at Thurrock Council following the production of a public report in May 2023 on the detailed findings from the Best Value Inspectors. Thurrock Council had previously issued a Notice under Section 114(3) of the Local Government Act 1988 advising that it could not manage its finances with the resources available to it and been given flexibility to increase its Council Tax by 10% for the financial year 2023/24.
 - b) The initial findings of the Best Value Commissioners appointed at Woking Borough Council, and the subsequent issuing by the Council of a Section 114 Notice linked into their overall financial position arising from significant borrowing undertaken which is not supported by corresponding asset values.
 - c) An update on matters affecting certain other Local Authorities including Nottingham City Council following the latest report in the public domain highlighting improvements are required in their financial administration.
 - d) The report produced by the Public Accounts Committee on the timeliness of External Auditors in delivering an audit opinion on the accounts of Local Authorities by the statutory deadline.
 - e) The requirements of the Department of Levelling Up, Housing and Communities (DLUHC) that Councils ensure that their S151 Officers are able to satisfy the role of the Accountable Officer in line with the requirements of for the Department on the major grant schemes for the Future High Streets Fund, the Towns Fund and Levelling Up Fund.
 - f) The creation of the Office for Local Government (Oflog) as an initiative to improve the oversight of Authority's performance and adherence to Best Value legislation. The announcement by the Department for Levelling Up, Housing and Communities about a consultation on the Best Value requirements for a Local Authority is also highlighted for information.
- 1.2 The first two items (a) and (b) above. relate to issues linked into financial administration of two authorities following the appointment of Best Value Inspectors. In part they are of interest to this Committee as there has been a failing in the role of those charged with governance in that they did not, with the benefit of hindsight, provide appropriate challenge to decisions taken within the Authority which had the impact of destabilising the long term financial resilience of the Councils.
- 1.3 The third issue (c) above, informs the Committee that within the financial year 2023/24, further information has identified the poor practices adopted by Nottingham City Council in respect of financial administration. In addition, over the past few years, the Council's External Auditor has produced a report in the Public Interest detailing the failings of a wholly owned energy company.
- 1.4 The Public Accounts Committee has consistently expressed concerns about the failure of External Auditors to issue in a timely manner audited opinions on the Statement of
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Final Accounts produced by Local Authorities. On 23 June 2023, it issued its sixtieth report of Session 2022/23 entitled the “Timeliness of local auditor reporting”. This followed upon a previous report issued in July 2021 and highlighted that the performance in issuing an audited opinion on the accounts for Local Government bodies had further declined.

- 1.5 A feature of recent Government capital grant programmes administered by the DLUHC is that there have been concerns (not detailed in the public domain) about their oversight of capital grant programmes delivered directly by Local Authorities such as the Future High Streets Fund, Towns Fund and Levelling Up Fund. DLUHC has now clarified its expectations and produced some guidance on how these programmes should be overseen including specifying the role of the Section 151 Officer. This places much greater responsibility on the S151 than previous grant regimes.
- 1.6 The creation of Oflog is linked into the need for DLUHC to have appropriate oversight of the performance of Local Government including the need to develop a better early warning of when Local Authorities are experiencing financial stress. Alongside this a revised consultation on Best Value has been announced setting out how DLUHC proposes to exercise this duty where appropriate.

2 External Audit Matters

Thurrock Council

- 2.1 On 2 September 2022 Essex County Council was appointed as the Lead Inspector at Thurrock Council. Thurrock had pursued a commercial strategy that the published report described as “unique within local government” which involved borrowing short term money at a cheap rate from Local Authorities and investing for the longer term in investments which generated (in theory) a return higher than the cost of the short term borrowing. The aim was to increase resources available to fund the general services of the Council.
 - 2.2 Initially this strategy, which was eventually financing 25% of the Council’s annual revenue expenditure, had cross party support. It financed additions to services and kept Council Tax increases low. As concerns began to be reported in the press that some of the investments were not financially secure, there was then some Member challenge, and the matter was discussed at Full Council in 2020. Assurances were given that the investments would be detailed, and no further future investments would be made without appropriate review. The general view was that Council (the perceived way forward not adequately reflected in the minutes) was that any further investments would be paused. This did not happen, and the investments continued to be made. Arlingclose (Treasury Management advisors to several Local Authorities but not Thurrock Council) then issued formal advice to those local authorities it supported not to lend cash to Thurrock Council.
 - 2.3 This resulted in a significant reduction in short term lending to Thurrock to finance its investments. The Authority then had to approach the Public Works Loan Board (PWLB) to finance its borrowing. This occurred at a time when borrowing purely for financial gain was inconsistent with the criteria set by the PWLB, so a special dispensation was required to enable funds to be made available to Thurrock. This led to the appointment of Essex County Council as the Lead Inspector as a condition of agreeing the borrowing.
 - 2.4 The Inspectors have now produced their first formal report on their findings and the events that led to the issuing of the Section 114 Notice. In total, the report makes 9 recommendations. Of these recommendations, numbers 5, 8 and 9 are of direct
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relevance to this Committee. In addition, it is important that the Committee is aware that the situation that Thurrock Council now finds itself in is due to what the report refers to as the Council's "Unique Investment Strategy" related to its Treasury Management Strategy. The oversight from all the Statutory Officers, Statutory functions and Regulatory Committees failed to understand the precarious financial position the Council found itself in.

2.5 Recommendation 5 related to the decision-making power having been concentrated in the hands of a small number of Members and officers. As such it was recommended the Council:

- Take "immediate action to address the weaknesses in governance as they have undermined transparency and effective and informed decision-making, including by making improvements in the taking and recording of formal decisions, reviewing the constitution, and improving the functioning of scrutiny;
- Initiate a programme of work to strengthen members' capability through:
 - the development and delivery of an effective and continuing member development programme - members should be actively involved in the development and delivery of this programme; and
 - the delivery of a programme which actively encourages local residents to participate in local democracy and to consider standing for election."

2.6 Recommendation 8 is to the Secretary of State suggesting the commissioning of a review of external audit for Local Authorities, so the role of external audit is extended to becoming an early warning system where there is a risk of financial failure.

2.7 Recommendation 9 is also to the Secretary of State and is aimed at better supporting the relationship between the three key Statutory Officers and has two points as detailed below:

- "Issuing guidance to strengthen the role of the three statutory officers, requiring them to work together, and in an integrated way, to maintain the integrity of the governance arrangements and the control environment if their authority; and
 - making legislation to strengthen and clarify the role of the Monitoring Officer and head of paid service. This may require parliamentary time but in the short term this should include:
 - amending regulation 4 of the Accounts and Audit Regulations 2015 to introduce a requirement for the Head of Paid Service and the Monitoring Officer to be consulted by the section 151 Officer on any determination on the financial control environment; and
 - amending regulation 6 of the Accounts and Audit Regulations 2015 to require the Head of Paid Service, section 151 Officer and Monitoring Officer to be formally consulted on the contents of the annual governance statement."
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Woking Borough Council

- 2.8 On 7 June 2023 the interim Treasurer at Woking Borough Council issued a Section 114 Notice. The Council had extensive borrowings of which £1.3 billion related to partnerships and it was looking at an impairment in the region of £600m. In addition, the Council had under provided for its Minimum Revenue Provision for a 10 year period and, with a small revenue budget, could not set a balanced budget from 2023/24 without Government support.
- 2.9 The checks and balances devised to detect potential problems within the Council had not worked as well as intended. In advance of issuing the Section 114 Notice, Best Value Commissioners had been appointed and a report was issued detailing the area where financial administration had been poor. The Council's oversight of partnerships including those companies it wholly owned and those with which it was undertaking key regeneration projects was less than satisfactory. Also, key regulators had not always identified the risks. As an example, when the Council was last inspected by a Peer Review Team organised through the Local Government Association, it was praised for the Woking Entrepreneurial Model.
- 2.10 The Council is currently consulting on the levels of service it will provide in the future. It has already been stated that services will need to be reduced and services provided at the statutory minimum. Ironically, 12 months ago it was liaising directly with DLUHC about the poor progress the External Auditor had made in signing off its accounts. There were disputes about the level of provision which should be made for the Minimum Revenue Provision.

Other Councils including Nottingham City Council

- 2.11 Nottingham City Council has had significant financial challenges since the public interest report was issued in relation to the losses it made on its energy company. The latest report in the public domain indicates its overall arrangements for financial administration are less than satisfactory. Given Nottingham is not a small Authority, the fact that there were significant issues in respect of financial administration which prevailed over a long period of time without being addressed, indicates there are significant challenges within the wider environment that Finance Services are now operating within and resolving them in a sustainable manner is proving to be very difficult.
- 2.12 Southampton City Council has commissioned the Chartered Institute of Public Finance and Accountancy (CIPFA) to undertake an independent review of its financial administration. The City Council has balanced its budget over the past few financial years via the use of one-off reserves, although these are now becoming depleted. Its intention in using CIPFA is to avoid the risk of the Council having to issue a Section 114 Notice as its financial resilience declines. It can therefore take recommended actions to address the challenges highlighted. There appears to be a number of Local Authorities in a similar position to Southampton.
- 2.13 Guildford Borough Council has announced it is at risk of having to issue a Section 114 Notice. When the accounts were last signed off in 2019/20, they had significantly more cash backed earmarked reserves than is now the case. The 2020/21 audit carried out in April 2023 had identified a number of adjustments which have reduced cash backed reserves. This is a good example of why the external audit of accounts should be undertaken in a timely manner. In addition, significant efficiencies linked into the implementation of ICT improvements have not materialised causing long term challenges as highlighted in their financial models. Overall Guildford has debt of
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£300m and there are debates with the External Auditor about the funds it needs to set aside as Minimum Revenue Provision.

Public Accounts Committee

- 2.14 This report has made 6 conclusions and recommendations to DLUHC arising out of its work. These conclusions were:
- “The backlog of audit opinions for local government remains unacceptably high, and the Department still does not have a plan to reduce it.”
 - “Delays to the publication of audited accounts for local government bodies increases the risk of governance or financial issues being identified too late and hinders accountability of £100 billion of local government spending.”
 - “Long-term market and workforce development are essential if the Department is to resolve the current problems with local auditor reporting and create a more resilient system for the future.”
 - “Delays to establishing the Auditing, Reporting and Governance (ARGA) and handing over responsibilities for leading local audit to the FRC, risk performance deteriorating further.”
 - “There are no consequences for local government bodies or local auditors failing to deliver audited accounts on time.”
 - “Government, local bodies and standard setters still lack a shared view of how to ensure that local public accounts, and the audit of them are fit for purpose.”
- 2.15 In addition to producing the report the Chair of the Public Accounts Select Committee has also included this issue in the Annual Report which details the serious issues that Government should treat as a priority. Despite this censure, the situation has not improved since the Committee previously reported on the matter in July 2021 and the tone of the report is not expecting matters to improve in the short term, given that there has been a return to pre pandemic deadlines for both submitting the accounts for audit and then the completion of the external audit work to produce an audit opinion.
- 2.16 The Government has until 23 August to respond, and it is unlikely that significant progress is going to be made until some of the legislation relating to the Audit Regulation and Governance Authority is enacted. The indications for the 2022/23 Accounts are that approximately 36% of Authorities submitted their draft accounts for audit by the statutory deadline of 31 May 2023. As Members are aware, Oldham Council was one of those Authorities that complied with the requirement.
- 2.17 The DLUHC Select Committee which is also undertaking a review linked into the external audit process and the timeliness of producing accounts has not yet published its report. The content is likely to be very similar to the points raised by the Public Accounts Select Committee

Guidance Issued by DLUHC on oversight of Grant Programmes

- 2.18 A feature of the capital grant schemes administered by DLUHC has been to request Local Authorities to submit bids (often 2-3 schemes). The grant programme goes through an evaluation process taking a few months before it is agreed resulting in the delivery timetable by the successful Authority being quite challenging to implement. In addition, it has been reported that HM Treasury is requiring enhanced scrutiny in how DLUHC is administering these programmes so is paying attention to the detailed administration.
- 2.19 DLUHC has recently issued guidance to individual Local Authorities on what they expect in their stewardship of these grant schemes. These are based upon the
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principles of the Accountable Officer and effectively nominate the Section 151 as the first line of defence. There is an expectation that the grant programmes will follow due process and be subject to a formal scrutiny review twice a year. When this occurs there maybe issues which need to be considered by this Committee. As more formal links are developed with the Council's Scrutiny Boards, it is important that the work undertaken by the Audit Committee is aligned where possible.

Oflog and Best Value Consultation

Oflog

- 2.20 The Office for Local Government was launched at the Local Government Association Conference. Lord Morse, whose is a former Head of the National Audit Office was appointed as the Chair during January 2023. Josh Goodman who previously worked on the COVID-19 shielding programme was appointed as the interim Director on 23 June 2023.
- 2.21 The aim of Oflog is to provide authoritative and accessible data and analysis about the performance of Local Government, for citizens, local leaders', councils', and Central Government to use. This body is going to concentrate more on performance, whilst ARGAs will be focussed on external audit and overseeing work on the audit process.
- 2.22 Oflog's functions will develop over time in an iterative process, to eventually become a mature organisation. Initial activities, that began at the launch have been announced with four areas upon which it will initially concentrate. These are Waste Management, Adult Social Care, Adult Skills and Finance. Interestingly, Children's Social Care is not at this stage an area of focus. In terms of Finance, the aim of the organisation is to act as an early warning where Councils are at risk of issuing a Section 114 Notice. Over time it is anticipated that this body will influence the work of this Committee and possibly the work of the Internal Audit Team, as performance data could require auditing.

Best Value Consultation

- 2.23 At a similar time as the official announcement was made on the creation of Oflog, on 4 July 2023, a consultation on Best Value was issued by DLUHC. Whenever Inspectors are appointed to an Authority it tends to be because the Council has failed in its Best Value duty. DLUHC, alongside the creation of Oflog is reviewing its processes to ensure it discharges this duty more effectively going forward. The consultation is looking to provide Councils with more clarity on how they should discharge the Best Value Duty and sets out more clearly when Government is likely to appoint Inspectors.

3 Options/Alternatives

- 3.1 N/A.

4 Preferred Option

- 4.1 N/A.

5 Consultation

- 5.1 N/A.
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- 6 **Financial Implications**
- 6.1 N/A.
- 7 **Legal Services Comments**
- 7.1 N/A.
- 8 **Cooperative Agenda**
- 8.1 N/A.
- 9 **Human Resources Comments**
- 9.1 N/A.
- 10 **Risk Assessments**
- 10.1 N/A.
- 11 **IT Implications**
- 11.1 N/A.
- 12 **Property Implications**
- 12.1 N/A.
- 13 **Procurement Implications**
- 13.1 N/A.
- 14 **Environmental and Health & Safety Implications**
- 14.1 N/A.
- 15 **Equality, community cohesion and crime implications**
- 15.1 N/A.
- 16 **Equality Impact Assessment Completed?**
- 16.1 None.
- 17 **Key Decision**
- 17.1 N/A.
- 18 **Forward Plan Reference**
- 18.1 N/A.
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19 Background Papers

19.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act:

File Ref:

Background papers are:

- Thurrock Council Best Value Inspection Report
- Governance, Financial and Commercial Review – Woking Borough Council
- Nottingham City Council Audit Committee 30 June 2023 – Financial Controls Assessment
- Report of the Public Accounts Committee – Timeliness of Local Auditor Reporting
- Information on the Creation of Oflog

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20 Appendices

20.1 None