

Report to Audit Committee

Oldham Council Loans Policy and amendment to the Terms of Reference for the Audit Committee

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

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Reason for Decision

There is a requirement for the Audit Committee to consider and comment upon the proposed Loans Policy of Oldham Council.

It is also considered appropriate to amend the current Audit Committee Terms of Reference as discussed at the last Committee meeting on 20 July 2023 to replace reference to the Standards Committee with Scrutiny Boards.

These issues align to the Audit Committee's Terms of Reference which state that:

4.4.2 The Audit Committee shall undertake the following activities in respect of corporate governance:

c) assess the effectiveness of the authority's corporate governance arrangements

Executive Summary

The Council has had an internal procedure setting out the process to be followed in relation to the provision of financial support to organisations who share the Council's Co-operative values. It is considered appropriate to refresh this procedure as the Council's Loan Policy.

Attached at Appendix 1 is the recommended Loans Policy for review by this Committee and subject to agreement it will be presented to Cabinet for formal approval. This refresh is timely given events at other Authorities whereby the granting of loans which have

subsequently not been repaid, has had an impact on their financial resilience. Subject to comments, this Policy will be considered at a future meeting of Cabinet.

At the last meeting of this Committee, Members considered a report on how the Committee had discharged its duties in 2022/23 in accordance with its Terms of Reference as set out in the Constitution. During the scrutiny process, it was suggested that within the Terms of Reference, the wording at 4.4.2(d)(iv) be amended so the Audit Committee liaises with the Scrutiny Boards rather than the Standards Committee. Attached at Appendix 2 is the revised Terms of Reference which are tracked for Members information.

Recommendations

That the Audit Committee:

- a) Comments upon the proposed Loans Policy for Oldham Council.
- b) Endorses the proposed change in the Terms of Reference as set out in this report to Council.

1 Background

- 1.1 The Council has had an internal procedure setting out the process to be followed in relation to the provision of financial support to organisations who share the Council's Co-operative values. It is considered appropriate to refresh this procedure as the Council's Loans Policy as presented in Appendix 1.
- 1.2 At the last meeting of this Committee, Members considered a report which set out how the Committee had discharged its duties in 2022/23 in accordance with its Terms of Reference as set out in the Constitution. During the scrutiny process it was suggested that within the Terms of Reference, the wording at 4.4.2(d)(iv) be amended so the Audit Committee liaises with the Scrutiny Boards rather than the Standards Committee. Appendix 2 details the proposed changes.

2 Loans Policy and Terms of Reference

- 2.1 The proposed Loans Policy is attached at Appendix 1 to this report. It sets out the general principles which will apply when considering the giving of a loan, guidance on the due diligence to be undertaken with an Appendix detailing the alternative types of support the Council will consider prior to determining that the provision of a loan is the appropriate course of action, and a further Appendix setting out an assurance checklist that must be followed before recommending the giving of a loan.
- 2.2 This Policy has been reviewed and refreshed to reflect current best practice, hence its presentation to the Audit Committee for consideration.
- 2.3 There is one recommended change to the Audit Committees Terms of Reference as detailed in Appendix 2. This is presented for approval as at the last meeting of this Committee, Members considered a report on how the Committee had discharged its duties in accordance with its Terms of Reference as set out in the Constitution. During the scrutiny process, it was suggested that within the Terms of Reference, the wording at 4.4.2(d)(iv) be amended so the Audit Committee liaises with the Scrutiny Boards rather than the Standards Committee.

3 Options/Alternatives

- 3.1 There are three options as follows:
- a) Accept the proposed Loans Policy and change to the Terms of Reference.
 - b) Reject the Loans Policy and change to the Terms of Reference.
 - c) Propose an alternative approach to the Loans Policy and Terms of Reference.

4 Preferred Option

- 4.1 Option (a) at 3.1 is the preferred option, that the proposed Loans Policy and change to the Terms of Reference and are accepted.

5 Consultation

- 5.1 There has been internal Council consultation on the Loans Policy and Terms of Reference with officers from the Finance and Internal Audit Teams.

6 Financial Implications

6.1 There are no specific financial implications arising from this report.

7 Legal Services Comments

7.1 There are no direct legal implications arising from the report.

8 Co-operative Agenda

8.1 The suggested Loans Policy and amended Terms of Reference have been prepared to support the Council in its delivery of the cooperative agenda.

9 Human Resources Comments

9.1 There are no specific human resources implications arising from the report.

10 Risk Assessments

10.1 The Council is required to review its Loans Policy on a regular basis to ensure that they reflect current best practice and revised working arrangements within the Council as well as regulatory and legislative changes.

11 IT Implications

11.1 There are no specific IT implications arising from the report.

12 Property Implications

12.1 There are no specific property implications arising from the report.

13 Procurement Implications

13.1 There are no specific procurement implications arising from the report.

14 Environmental and Health & Safety Implications

14.1 There are no Environmental and Health & Safety Implications arising from the report.

15 Equality, community cohesion and crime implications

15.1 There are no specific equality, community cohesion and crime implications arising from the report.

16 Equality Impact Assessment Completed?

16.1 N/A.

17 Key Decision

17.1 No.

18 Key Decision Reference

18.1 N/A

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 contained in Appendices 1 and 2
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20 Appendices

20.1 Appendix 1: Proposed Loans Policy

20.2 Appendix 2: Amendment to Section 4.2.2 of the Audit Committee Terms of Reference

OLDHAM COUNCIL

Loans Policy to provide financial support to organisations who share the Council's Co-operative Values

2023

GENERAL PRINCIPLES

There is evidence of an increasing demand for the Council to consider entering into arrangements whereby it is giving financial support to external organisations, primarily for the purpose of promoting and facilitating the delivery of supporting its co-operative values as detailed in the Corporate Plan.

In order that there is clarity for all parties the key principles which the Council will follow in considering / approving a financial support arrangement are set out below:

- 1) Establishing why direct financial support rather than an alternative method of support is considered appropriate. Alternative options are set out at Appendix 1 of this Policy.
- 2) The Council must be satisfied that:
 - a) It has the appropriate legal powers to provide the financial support – appropriate legal opinion may be sought if considered necessary;
 - b) Providing the financial support is consistent with its co-operative values as presented in the corporate plan and thereby its corporate aims and objectives and in particular its co-operative ambition;
 - c) It is ethical, demonstrates the achievement of social value as well as value for money in the context of an appropriate benefit to the citizens of Oldham;
 - d) Appropriate consultation has taken place and decision making procedures have been followed;
 - e) The organisation receiving the financial support can demonstrate that it has the financial capacity to repay the Council;
 - f) The financial support is consistent with the Council's Treasury Management Strategy;
 - g) The individual financial support is consistent with the risk appetite of the Council;
 - h) It supports key policies such as the Net Zero Agenda and Fair Taxation;
 - i) There are resources available that can be utilised to provide the financial support/loan without significant detriment to the Council.
- 3) A benefits assessment will be undertaken to identify how the awarding of the financial support contributes to the achievement of the Council's co-operative ambition (including social value). The assessment will consider:

- How the support contributes to the achievement of co-operative and corporate priorities;
 - The impact on each of the priorities relative to the value of the support;
 - How measurable are the outcomes of the support.
- 4) The maximum period of the support will be considered in the context of the individual application but in most circumstances will not exceed 10 years.
 - 5) Before approval of any financial support, the Council will expect to review the development / stabilisation plans of the organisation requesting the support, giving full justification for the support and why an approach has been made to the Council for support.
 - 6) The Council will undertake a full due diligence exercise in relation to the organisation to which support is to be made. This exercise may be undertaken by Council officers or a suitable organisation/professional advisor may be engaged to facilitate an independent external review (see section on due diligence for further information). The applicant organisation and all key advisors/ regulators will be expected to co-operate fully with this exercise.
 - 7) In order to protect the Council in the event of a default, the financial support will be secured by a first charge over assets of the organisation receiving the financial support /loan. The Council will generally place a charge on the existing assets of the organisation to the value of at least 110% of the support; however this will be reviewed on a case by case basis. Without having first sought agreement of the Council, the organisation cannot agree to use these assets to secure additional financial support from a third party once the Council has agreed to provide financial support/ a loan.
 - 8) The Council will enter into an appropriate commercial contract with Terms and Conditions as agreed by the Director of Legal Services which sets the Council's detailed requirements in agreeing the financial support thereby as far as possible mitigating future financial or reputational risk to the Council. This will include detailed recovery arrangements in the event of a default on the repayment of the financial support, minimising any risk to the Council but also ensuring that the recipient is given a fair and reasonable chance to sort out its financial affairs so that the agreement / contract can continue. The recovery arrangements will ultimately require the organisation to repay the full amount and associated penalties in the event of a default, or the Council to take control of assets to the value of any outstanding debt.
 - 9) All risks will be professionally evaluated and a risk mitigation strategy drawn up before the formal agreement is signed.
 - 10) On approval of the financial support the recipient organisation will be required to provide:

- a) In advance of each financial year, a 5 year strategic plan including financial information that will outline the financial health of the organisation and any anticipated improvements in financial resilience and stability with a detailed updated business plan setting out the plan for the coming financial year.
 - b) Quarterly financial management accounts within 30 days of the quarter end to provide an early warning of a change to its financial or business plan and risk levels. This may be reported to the Councils Audit Committee to provide an additional level of scrutiny.
 - c) Audited accounts and the auditor's management letter within 3 months of the financial year end.
 - d) An annual certificate confirming the use of the financial support/loan provided by the Council and that the use of the financial support/ loan is compatible with the original purpose.
 - e) Such additional information as the Council sees fit regarding the financial standing and operation of the business in accordance with perceived risk including the opportunity to meet with officers of the organisation as appropriate.
- 11) In line with Subsidy Control requirements, the financial support must be offered at an interest rate to ensure it complies with legislation. The interest rate charged for the financial support / loan will usually be as a minimum at the Public Works Loan Board rate plus a reasonable administration fee/margin to ensure the Council recovers its costs. However, in certain circumstances a mark-up will be applicable, which will be calculated by reference to any due diligence undertaken.
- 12) Using information available, and that provided by the recipient of the financial support / loan, the repayment will be monitored by the Councils Treasury Management Team and the regular Treasury Management reports to the Councils Audit Committee, Cabinet and Council will include relevant information on the usage of the financial support / loan and a risk update.
- 13) There will be appropriate exit arrangements for the Council and financial support recipient in the event of a material change in the situation of either party. These will be clearly specified in the commercial legal agreement and will be prepared so they will not result in a financial detriment to the Council unless it considers it appropriate and fair.
- 14) The Director of Finance will consider the risk of default on these loans at the year-end and only charge to the revenue account a proportion of the repayment deemed insecure.

- 15) Approval for such financial support cumulatively in excess of £400,000 and any subsequent variation will be via a Cabinet report.

Appendix 2 provides a detailed checklist for officers to utilise when appraising an organisation's financial support/ loan request.

Whilst the compliance with the requirements set out above should not be problematic for most commercial organisations, the Council does recognise that some small voluntary / charitable / community organisations seeking assistance from the Council may find it difficult or too costly to provide some of the information, for example, a fully comprehensive 5 year strategic business plan. In such circumstances, on a case by case basis, the Council will consider relaxing some of its requirements but still having regard to minimising the financial risk to the Council. The individual requirements will therefore be agreed in relation to the value of the financial support and the type of organisation that has made the application.

In addition, there may be opportunities for the Council to support the citizens of Oldham by financial support arrangements with a third party lender, in a similar manner to the existing national programme that is in operation for the Local Authority Mortgage Scheme. The Council will undertake a detailed review of such proposals, ensure that the operating arrangements minimise risk to the Council but are in the best interests of Oldham. Approval of such initiatives would also be by means of a Cabinet report.

It should be noted that this procedure is not intended to apply to the awarding of home improvement loans.

DUE DILIGENCE

In undertaking a due diligence exercise to inform decision making about the awarding of financial support, the review will examine matters including:

- 1) Any other applications for financial assistance by an organisation that have been made / refused and the circumstances of any refusal.
- 2) Business plans / development plans setting out the aspirations of the organisation, including investment plans. In particular consideration will be given to:
 - Financial targets and budget setting;
 - Planned new developments and borrowing;
 - Medium to long term cash flow projections;
 - How the organisation will maintain financial viability over the short, medium and long term;
 - The viability of key partners;
 - Financial guarantees from key controlling entities;
 - Any security provided in respect of the loan.
- 3) Governance and management arrangements of the organisation to ensure that:
 - There are effective controls and procedures that are fully documented and evidence of how the controls and procedures are monitored and the level of compliance;
 - There are effective financial systems in place with evidence of monitoring processes and compliance;
 - There is effective and robust business and financial planning that is reported to the appropriate decision making bodies (this will consider how use is made of appropriate assumptions, projections and risk reviews);
 - There is effective monitoring of financial performance and organisational progress;
 - There is an effective risk management strategy in place and this is regularly reviewed and reported via management arrangements;
 - Any identified corrective action is planned, monitored and reviewed to ensure effectiveness;
 - Treasury management activities are carried out in accordance with the approved scheme of delegation and treasury policies;
 - Ethical policies are in place and that these are consistent with the Councils ethical stance;
 - The business structure of the organisation clearly identifies the ultimate owner;

- Discussions with the key regulators of the organisation such as the External Auditor if appropriate and that any recommended actions are initiated and delivered.
- 4) Information about the track record of the organisation in the context of any previous financial support and repayment performance.
 - 5) Any evidence of money laundering and Disclosure and Barring Service (DBS) checks on key personnel.
 - 6) Previous years' business plans / developments and the performance of the organisation in relation to set targets, the reasons for any non-performance, remedial steps taken to get the organisation back on track and the success or otherwise of these remedial actions.
 - 7) The management accounts and bank statements for the current year and previous two years.
 - 8) The annual accounts for at least the past 3 financial years, focussing on key financial ratios (to be specified in the context of the specific loan application) and the financial health of the balance sheet.
 - 9) The on-going financial viability of the organisation reviewing:
 - The balance sheet;
 - Treasury management indicators;
 - Cash flow forecasts;
 - Prospects for maintenance of the current business and growth; and
 - The resilience of the organisation to possible implications of significant change e.g. legislative change.
 - 10) Details of any covenants or restrictions on the applicants assets.
 - 11) The valuation (as appropriate) of the assets of the organisation. The Council will therefore require access to records and the opportunity to meet with officers of the organisation requiring financial support in order to gain appropriate material for the due diligence exercise.

This list is not intended to be exhaustive as there may be a range of different types of organisations and potential circumstances in which the Council may be asked to consider providing financial support.

Appendix 1 – Alternative Types of Support

The Council will have considered supporting an applicant organisation by the following means before determining that providing financial support in the context of promoting the Council's Co-operative values is the appropriate course of action.

Type of Support	Detail	Advantages	Disadvantages
Soft loan	A recipient organisation paying below the market rate for a loan. This must be considered in the context of Subsidy Control rules.	The recipient organisation pays below the market rate of interest, therefore receiving additional support.	Loss of income to the Council. Needs careful review to ensure that Subsidy Control rules are not breached.
Deferred repayment loans	A recipient organisation delays repayment of a loan for an agreed period of time.	The recipient defers making capital repayments, thereby receiving additional support in the early stages of the project being funded, when funds are often at their tightest.	Adverse impact on the Council's cash flow. There is increased financial exposure for the Council, as the sums advanced are outstanding for a longer term.
Grant	The payment of a grant that does not have to be repaid.	Grants are simpler than loans as there is no on-going administration, and given that they do not need to be repaid, the due diligence process could be reduced. More attractive for the recipients, as there is no requirement to repay capital or interest.	More expensive for the Council, as no interest or capital repayments are received. There is also no opportunity to recycle funds to help other organisations. This option needs careful review to ensure that Subsidy Control rules are not breached.
Taking an equity stake	The taking of an equity stake in an organisation thus	Allows the Council to share in the potential	The Council will have more exposure to losses if the recipient

	allowing the Council to take a share in the potential growth of the organisation (and being exposed to risk in the event of business losses).	growth of the organisation, and receive returns via future dividends.	organisation fails, as other creditors are likely to have preference. The Council's would have to take action to protect itself against its own liability to losses.
Guarantees	The provision of a financial guarantee which would expose the Council to the potential risk of the guarantee being called.	May enable organisations to access other sources of funding, without the Council having to use any funds.	Potential exposure to the guarantee being called in if the organisation fails so appropriate resources in the event of such failure need to be available Needs review to understand the legality of the arrangement.
Support in Kind	Provision of for example serviced office space, support from staff.	Potentially inexpensive if utilising existing space resources / capacity at the Council, e.g. providing serviced office space. Supports employment in the Borough.	May not be what an organisation requires. Existing organisations in particular are unlikely to require additional office accommodation. Potentially more suitable for new start-ups, but these organisations are unlikely to have a proven track record, and so are riskier to support.
Payments in advance of normal payment cycles in exceptional circumstances	The advancing of the regular payment cycle for goods/ services to assist with cash flow issues and maintain continuity of service.	A short term and quicker process to ensure continuity of service	Loss of cashflow to the Council. The support maybe a short term solution that defers the financial issue with the supplier. The risk that payment made be made for services that are not delivered.

Appendix 2 – Detailed Assurance Checklist

Assurance	Test	Result
Legality – Subsidy Control	Council Legal Team/ Procurement and Finance to review the Subsidy Control risk and produce a note on how the loan does not breach Subsidy Control.	Move forward through the Due Diligence process if there is no breach.
Corporate Plan	Officers should review the needs of the organisation requesting the financial support/ loan and how the loan will be spent to the five elements of the Council's Corporate Plan – <ul style="list-style-type: none"> • Healthy, safe and well supported residents. • A great start and skills for life • Better jobs and dynamic businesses. • Quality houses for everyone. • A clean and green future. 	Move forward through the Due Diligence process if one or more of the three elements of the Corporate Plan are being addressed. Higher weighting should be given to co-operative elements.
Best Value	Officers should review the needs of the organisation requesting the loan and how the loan will be spent to ensure Best Value in the context of the Council's Corporate Plan and both for any on-going revenue support and/or any initial capital investment.	Move forward through the Due Diligence process if Best Value has been demonstrated for both any revenue support and/or capital investment.
Financial Resilience	Officers should financially appraise the organisation's Business Plan for the investment. <ul style="list-style-type: none"> • How will the investment be repaid? • Can the organisation afford the repayment over the agreed term? Are there any concerns that the organisation will default on payments or request a longer repayment term? • Are there any pressure points in the Business Plan and how are they to be addressed? • Do the organisations accounts for the past three years highlight any issues? • Does the organisation have a corporate risk register? Are there any areas of concern? • Does the organisation have a Treasury Management 	Move forward through the Due Diligence process if financial resilience has been proved.

	<p>Strategy? If yes, is this aligned to the Council's Strategy?</p> <ul style="list-style-type: none"> • What are the organisation's cash flow projections for the next three years? This must include any project for which financial support/loan is sought and must be included within the Business Plan and the Organisation as a whole. • How does the organisation report their financial performance to their Board? Is there sufficient governance and challenge to officers? • What percentage of the total capital investment of the project is being funded via the Council loan? • What is the percentage of this project's income compared to the whole organisation? 	
Views of Regulators	Officers should review where appropriate the views of key regulators such as the External Auditors, key inspectors of the quality of services provided and industry bodies responsible for oversight to ensure the information provided by the body is consistent with their opinion.	Move forward through the Due Diligence process if financial resilience has been proved

4.4.1 The Audit Committee will undertake the following Council (or 'non-executive') function as defined in Schedule 1 to the Local Authorities (Functions and Responsibilities) Regulations 2000 (as amended) –

a) Duty to approve the authority's statement of accounts, income and expenditure and balance sheet, or record of payments and receipts (as the case may be).

4.4.2 The Audit Committee shall, having regard to the CIPFA 'audit committee' guidance. In this regard it will:–

a) be responsible for oversight of the Council's Internal Audit arrangements and will;

(i) approve the Internal Audit Charter, the Annual Audit Plan and performance criteria for the Internal Audit Service;

(ii) review summary findings and the main issues arising from internal audit reports and seek assurance that management action has been taken where necessary;

(iii) review and agree any improvements to the effectiveness of the antifraud and corruption arrangements throughout the authority;

(iv) consider the annual report from the Chief Internal Auditor;

(v) review the activities, processes and procedures of the Council having regard to the demonstration of an economic, efficient and effective use of resources and the delivery of Value for Money to Council Tax payers; and

(vi) review the effectiveness of the system of Internal Audit on an annual basis as per statutory requirements and the outcome of the review of compliance with Public Sector Internal Audit Standards.

(vii) Oversee the implementation of any recommended improvements where appropriate

b) be responsible for oversight of the Council's relationship with the External

Auditor, including consideration of

- (i) the External Audit Plan of Work;
- (ii) the external auditor's Audit Completion Report;
- (iii) relevant reports issued by the External Auditor (with the exception of Public Interest reports and Statutory Recommendation reports made under Section 24 Schedule 7 of the Local Audit and Accountability Act 2014); and
- (iv) issues arising from the audit of the Annual Statement of Accounts.
- (v) Independent reviews undertaken by the Financial Reporting Council

c) review Financial Procedure Rules and Contract Procedure Rules and make recommendations to the Council as to any changes considered necessary to those documents and procedures.

d) undertake the following activities in respect of corporate governance –

- (i) approve the local code of corporate governance;
- (ii) assess the effectiveness of the authority's corporate governance arrangements;

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(iii) review the Annual Governance Statement and the progress made by the Council to address issues identified as risks when the financial statements are prepared;

(iv) liaise, as necessary, with the [Scrutiny Boards](#) on any matter(s) relating to the [effective operation of the Council](#);

(v) review Partnership and Project Governance within the Council;

(vi) monitor compliance with data protection legislation;

(vii) review the annual Treasury Management Strategy and policies and procedures and make recommendations to the responsible body; and

(viii) review Treasury Management reports and make recommendations to the responsible body including update/changes to procedures.

4.4.3 The Audit Committee shall undertake the following activities in respect of Risk

Management –

- a) assess the effectiveness of the Authority's Risk Management arrangements;
- b) review progress on the implementation of Risk Management arrangements throughout the authority; and
- c) consider the Corporate Risk Register on a regular basis to review the level of risk being faced by the Authority, review the progress made by the Council to address the risks identified to minimize the financial, operational and reputational impact to the Council
- d) consider the adequacy of resources available to manage the financial impact of a failure in risk management.

4.4.4 The Audit Committee shall undertake the following activities in respect of Information Governance.

- a. Assess the effectiveness of Information Governance policies and procedures
- b. Receive updates on key issues from the Council's Senior Information Risk Owner