

CABINET

21 JULY 2023

REPORT OF MONITORING OFFICER

A.7 EXTERNAL AUDIT DELAYS CAUSING DELAYS TO THE PUBLICATION OF CERTIFIED ACCOUNTS FOR 2022/23

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To inform Members of a breach of a statutory reporting deadline along with the associated circumstances and the actions being taken in response.

EXECUTIVE SUMMARY

This is a report issued under Section 5 of the Local Government and Housing Act 1989 to formally inform Members that the Council has, for reasons beyond its control, failed to publish its certified draft accounts for the 2022/23 financial year by the statutory deadline of 1 June 2023. The Council is required by law to consider this report and decide what action (if any) to take in response. This report is being presented to Cabinet and will also be presented to Full Council.

The Chief Executive and the Assistant Director (Finance & IT) & Section 151 Officer have both been consulted on this report, as required by the legislation.

As set out later on in this report, it is proposed to publish the certified Statement of Accounts for 2022/23 by the end of July 2023 regardless of whether the External Auditor has completed their work on the 2020/21 and 2021/22 Statement of Accounts.

Once published, the public inspection period can commence which addresses the breach of the Account and Audit Regulations 2015 highlighted above, albeit at a later date later than set out within those regulations.

RECOMMENDATION(S)

It is recommended that:

- a) Cabinet receives and considers the Monitoring Officer's report and the response of the Council's Statutory Officers including the Section 151 Officer's aim to publish the 2022/23 Statement of Accounts by the 31 July 2023 and start the period of public inspection as soon as possible thereafter;**
- b) subject to a) it is noted that this report will be presented to the next meeting of Full Council;**
- c) the matter set out in this report is included within the Annual Governance Statement 2023, which will reviewed by the Audit Committee as part of their work programme;**

- d) Officers be requested to provide an update to the next meeting of Cabinet;
- e) Officers continue to work with partners and all relevant organisations to support a satisfactory resolution to the ongoing External Audit delays;
- f) the Chief Executive be requested to write to the Chief Executive of our External Auditor to express Cabinet’s regret at the on-going audit delays; and
- g) the Council’s Finance Team be thanked for working to their continuing high standards, particularly given the current difficult circumstances with audit delays.

REASON(S) FOR THE RECOMMENDATION(S)

In order to formally receive the Section 5 report from the Council’s Monitoring Officer and to recommend its contents and response onto Full Council.

ALTERNATIVE OPTIONS CONSIDERED

As the Council has failed to publish its Annual Statement of Accounts for 2022/23 to enable the period of public inspection to commence by the statutory deadline, a formal Section 5 report provides a necessary and proportionate response to this governance issue.

It is understood that some Councils are actively considering exploring what action can be taken against External Auditors to investigate whether their failures could amount to a breach of statutory duty entitling a claim for damages to be made. This will be kept under on-going review.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

As set out elsewhere in this report, the publication of the certified Statement of Accounts is a key element of the Council’s financial stewardship responsibilities.

The Accounts along with the Annual Governance Statement and Use of Resources commentary provided by the External Audit as part of their work, supports the Council to develop its financial and governance plans.

OUTCOME OF CONSULTATION AND ENGAGEMENT

Internal consultation has been highlighted within this report.

The Council, along with other Essex Authorities has engaged with the Government, CIPFA, Public Sector Audit Appointments Limited (PSAA) and the FRC to raise the impact that the continuing external delays are having on local authorities. It is understood, the Government (at Ministerial level) are considering a number of options in response to this worsening issue, with an announcement expected shortly.

LEGAL REQUIREMENTS (including legislation & constitutional powers)

Is the recommendation a Key Decision	YES/NO	If Yes, indicate which by which criteria it is a Key Decision	<input type="checkbox"/> Significant effect on two or more wards <input type="checkbox"/> Involves £100,000
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(see the criteria stated here)			expenditure/income <input type="checkbox"/> Is otherwise significant for the service budget
		And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)	n/a

This is a report issued under Section 5A of the Local Government and Housing Act 1989, which states that a duty of a relevant authority's Monitoring Officer shall be to prepare a report, if it at any time appears to them that any proposal, decision or omission by the authority, by any committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any joint committee on which the authority are represented constitutes, has given rise to or is likely to or would give rise to—

- (a) a contravention by the authority, by any committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any such joint committee of any enactment or rule of law or of any code of practice made or approved by or under any enactment; or
- (b) any such maladministration or failure as is mentioned in Part 3 of the Local Government Act 1974 (Local Commissioners).

The Accounts and Audit Regulations 2015 require Local Authorities in England to publish unaudited but certified Statement of Accounts to enable a 30-day period for the exercise of the public right to inspect those accounts, with that period covering the first 10 days of June.

Before the period starts, the Council has to publish its draft accounts and a certificate by the Section 151 Officer confirming that they are satisfied that the Statement of Accounts presents a true and fair view of—

- (a) the financial position of the authority at the end of the relevant financial year; and
- (b) that authority's income and expenditure for that financial year.

The failure to start the period for the exercise of public rights places the Council in breach of its statutory duty under regulation 15 of the Accounts and Audit Regulations 2015. This has led to the Council having to place a notice on its website to explain the breach and it has led to this report.

The Council's current External Auditors were appointed by Public Sector Audit Appointments Limited (PSAA), a company established by the Local Government Association to collectively procure auditors without authorities having to go through the extremely technical and legally complex statutory process of appointing their own auditor. This means that only PSAA can remove / replace our auditor. The Council has raised the continuing external audit delays with Department Levelling Up Housing Communities (DLUHC), PSAA, CIPFA and the FRC. At the present time, Local Authorities are waiting for the Government to make an announcement on their proposals to resolve this worsening national issue.

It should be noted that our current auditor's engagement as the Council's auditor ends with the audit of the 2022/23 accounts. The Council has appointed KPMG as our External Auditor for the 2023/24 financial year. It is unlikely that KPMG will be able to commence its audit until our current auditors have completed their work. It should also be noted, our current auditors are understood to have withdrawn from Local Government audit work, at least for the short term.

The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:

The Monitoring Officer is the author of the Report.

FINANCE AND OTHER RESOURCE IMPLICATIONS

The continuing delays to the External Audit of the Statement of Accounts is having adverse capacity issues within the Council, especially within the Finance Service. This is becoming increasingly more difficult to manage, especially as it diverts resources away from other important issues, not least the work required to support the Council's on-going financial sustainability in future years as part of developing the financial forecast process.

As set out elsewhere in this report, it is hoped that the Government are able to put in place the necessary actions that will enable the External Audit backlog to be addressed as soon as possible with the reporting and external audit timetable recovering from the audit of the 2022/23 accounts onwards.

Yes **The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:**

Over the last two years, the deadline to publish the Statement of Accounts was extended to 31 July. Although this was largely due to the impact of the COVID 19 pandemic, it provided a reasonable / practical deadline for Councils to complete the necessary work, which has increased over time with additional requirements emerging from the associated code.

It was disappointing that the Government did not extend the deadline again for 2022/23 even though it understood many of the respondents to the associated consultation expressed concerns of retaining the end of May 2023 deadline given the on-going workload within Local Authorities.

It is currently scheduled to publish the certified Statement of Accounts for 2022/23 by the end of July 2023, which would mean that they have been published within the same timescales as the last two years, which has not had a detrimental impact on the Council being able to adequately fulfil its financial stewardship role. Once certified and published, it is proposed to commence the 30 public inspection period from 1 August 2023.

USE OF RESOURCES AND VALUE FOR MONEY

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	N/A
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B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	The purpose of this Section 5 Report is to formally report the current position to Cabinet and onto Council and the plans in place to resolve the breach identified.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	N/A
MILESTONES AND DELIVERY	
These are broadly set out elsewhere in this report.	
ASSOCIATED RISKS AND MITIGATION	
These are broadly set out elsewhere in this report.	
EQUALITY IMPLICATIONS	
None	
SOCIAL VALUE CONSIDERATIONS	
None	
IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030	
None	
OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS	
<p>Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.</p> <p>As set out elsewhere in this report, the importance of publishing its Statement of Accounts and Annual Governance Statement is a key element of being able to demonstrate its financial stewardship and governance responsibilities. With this in mind, the Council has to balance the need to ensure that the accounts provide a true and fair view of the Council's financial position with the timeliness of publishing this required information.</p>	
Crime and Disorder	n/a
Health Inequalities	
Area or Ward affected	

PART 3 – SUPPORTING INFORMATION

BACKGROUND AND CURRENT POSITION

This is a report issued under Section 5 of the Local Government and Housing Act 1989 to formally inform members that the Council has, for reasons beyond its control, failed to publish its certified draft accounts for the 2022/23 financial year by the statutory deadline of 1 June 2023. The Council is required by law to consider this report and decide what action (if any) to take in response.

As set out within the legal section above, the Council's Section 151 Officer has to certify that

the draft accounts for 2022/23 represent a true and fair view of the Council's financial position at the end of March 2023 before publishing.

The Council's Statement of Accounts for previous years (2020/21 and 2021/22) at the present time, remain subject to being 'signed off' by the Council's External Auditor. The backlog of audits is a national issues which is estimated to reach 1,000 across the country by the end of 2023 and the current situation has been described as a crisis in the External Audit of Local Authorities that risks escalating even further without urgent and decisive action by the Government. I understand that the Government remain committed to exploring options in response to this national issue. The delays highlighted above are a well-publicised issue and in no way reflects any wrong doing by those Councils adversely affected.

In terms of the 'sign-off' of the 2020/21 accounts, the External Auditor has confirmed that they will not be able to formally complete this process until September 2023 at the earliest. At the present time it is unable when they will be able to commence the audit of the 2021/22 accounts.

Although the external audit delays do not necessarily prevent the Section 151 Officer from certifying and publishing the accounts for 2022/23, given there are now two years of accounts still waiting to be 'signed off' by the External Auditor, it does start to significantly compromise the ability to do so, as set out below.

I understand from the Council's Section 151 Officer that:

- The delays in the external audit of the accounts highlighted above have also had direct and secondary impacts on the ability for Councils to meet the 31 May publication deadline for 2022/23.
- In terms of the direct impact, a number of issues relating to 2020/21 and 2021/22 remain subject to the external audit process, and based on current information it is very likely that a number of figures in the 2020/21 and/or 2021/22 accounts will be subject to amendment with the potential 'knock-on' impact in 2022/23. It is also important to highlight that some financial balances from 2021/22, that will need to be brought forward into the 2022/23 accounts are also likely to change.
- In terms of the secondary impact, the Council is still working with the External Auditor on the 2020/21 accounts which in turn has an adverse impact on the capacity of Officers in preparing the 2022/23 accounts.
- Taking the above into account, the Council took the difficult but pragmatic decision to delay the publication of its 2022/23 accounts.
- The Council will endeavour to publish its certified accounts and commence the required period of public inspection as soon as possible, with the scheduled date being the end of July 2023.
- The proposed delay should not impact on the ability for the public to inspect the Council's accounts or to raise questions directly with our External Auditor. However, it is acknowledged that any delay is undesirable and the rights become less meaningful and relevant as the delay lengthens.

- The Council's decision to delay the publication of the accounts should be seen as a practical response to matters outside of its control, rather than a reflection on the Council's important financial stewardship role. However to provide additional assurance in the interim period, the External Auditor has provided a positive Draft Audit Completion Report for 2020/21 which was considered by the Council's Audit Committee in March 2023, with no significant weakness identified to date in terms of the Council's use of resources.

In respect of the 5th bullet point above, it is recognised that the 2020/21 accounts will not be signed off until September 2023 at the earliest. However, the impact from the continuing External Delays needs to be balanced with the need for the Council to be able to adequately demonstrate its financial stewardship and governance role, which includes the right of the public to inspect the certified accounts in a timely manner.

With the above in mind it is proposed to certify and publish the 2022/23 accounts as soon as possible regardless of the 2020/21 accounts not being potentially signed off until the end of September 2023 and the 2021/22 accounts remaining subject to the external audit process.

In this regard the Council's Section 151 Officer has confirmed:

- They are able to certify that the 2022/23 provide a true and fair view of the Council's financial position given this largely reflects the confirmation that the accounts have been prepared in accordance with the associated code of practice and that the financial transactions have been recorded and presented correctly;
- the Council is aware of the external audit issues still outstanding for 2020/21, which are not expected to have a material impact on the 2022/23 position.
- the accounts are published 'subject to audit';
- the 2021/22 certified Draft Statement of Accounts were certified for publication ahead of the 2020/21 accounts being 'signed-off' by the External Auditor;
- the Narrative Statement within the Statement of Accounts will highlight the External Auditor delays for prior years' accounts and the risk of the potential impact on the 2022/23 position;
- the Annual Governance Statement will highlight the need to publish this Section 5A report.

PREVIOUS RELEVANT DECISIONS

None

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

None

APPENDICES

None

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