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**COUNCIL**

**26 SEPTEMBER 2023**

**REPORT OF MONITORING OFFICER**

**A.5 EXTERNAL AUDIT DELAYS THAT CAUSED 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 taken in response.

**EXECUTIVE SUMMARY**

This is a report issued under Section 5 of the Local Government and Housing Act 1989 to inform Members that Tendring District Council, 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.

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

A similar report was presented to Cabinet at its meeting held on 21 July 2023 (Minute 27 refers). Cabinet resolved that –

- a) *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 be endorsed;*
- b) *it is noted that this report will be presented to the next meeting of Full Council;*
- c) *the matter set out in this report be 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 in October 2023;*
- 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 this Council's 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.*

Essentially, the Cabinet endorsed the Section 151 Officer's intention to publish the certified Statement of Accounts for 2022/23 by the end of July 2023 regardless of whether the External

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Auditor had completed their work on the 2020/21 and 2021/22 Statement of Accounts.

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

Since Cabinet's meeting on 21 July 2023, a number of actions / events have occurred with a summary as follows:

- The Council's Statement of Accounts for 2022/23 were published by 1 August 2023, with the period for public inspection therefore commencing on that date. This brings to a close the period where the Council remained in breach of the statutory requirement to publish the Accounts by 1 June 2023.
- Reference to this issue was included within the Annual Governance Statement 2023, which forms part of the Statement of Accounts 2022/23.
- The Government have now published their intended response to the on-going audit delays with further details set out later on in this report. Essentially, the aim behind the Government's proposed approach is to set statutory 'back stop' deadlines that require External Auditors to conclude their audit work and publish either qualified or unqualified opinions based on the level of work they have completed by those statutory deadlines.

### **RECOMMENDATION(S)**

**It is recommended that Full Council –**

- (a) notes the contents of the Monitoring Officer's report;**
- (b) notes that the 2022/23 Statement of Accounts was published on 1 August 2023 with the period of public inspection starting on that date and that the matters set out in this report were included within the Council's Annual Governance Statement for 2023;**
- (c) notes and welcomes the Government's proposed response to the on-going External Audit Delays and that where necessary Officers continue to work with partners and all relevant organisations to support this new approach; and**
- (d) formally commends the Council's Finance Team for working to their continuing high standards, particularly given the current difficult circumstances with external 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 consider its contents and Full Council's response thereto.

### **ALTERNATIVE OPTIONS CONSIDERED**

As the Council had 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

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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 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, had 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. Since Cabinet's meeting on 21 July 2023 the Government have announced their proposed response to the continuing External Audit delays with further details set out later on in this report.

#### **LEGAL REQUIREMENTS (including legislation & constitutional powers)**

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 placed the Council in breach of its

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statutory duty under regulation 15 of the Accounts and Audit Regulations 2015. This led to the Council having to place a notice on its website to explain the breach and it led to this report to both Cabinet and the Full Council.

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.

It should be noted that our current auditor's engagement as the Council's external auditor ends with the audit of the 2022/23 accounts and that they have withdrawn from Local Government audit work, at least for the short term. Via associated PSAA arrangements, KPMG have been appointed as the Council's External Auditor from the 2023/24 financial year.

The Council has raised the continuing external audit delays with the Department for Levelling Up, Housing & Communities (DLUHC), PSAA, CIPFA and the FRC. Since Cabinet's meeting on 21 July 2023, the Government have announced their proposals to resolve this worsening national issue, with a summary of the key elements as follows:

- There is a collective responsibility to ensure that the local audit system is in a strong and sustainable footing for the future and that there is a return to timely delivery of high quality financial reporting and external audit in local bodies in order to provide vital accountability and assurance needed for local people and their elected representatives.
- The proposals will need associated changes to relevant codes and standards (and possibly legislation), which are planned to be made in time for implementation to begin by the end of December.
- The National Audit Office (NAO) and DLUHC intend to set a series of statutory deadlines for account preparers and auditors to clear the backlog of delayed audits. Although subject to consultation / confirmation, the Government have indicated the following statutory deadlines:

For Outstanding years up to and including 2019/20 – deadline of 31 December 2023

For Outstanding Years 2020/21 and 2021/22 – deadline of 31 March 2024

For 2022/23 – deadline of 30 September 2024

For 2023/24 – deadline of 31 March 2025

- Auditors would then be required to provide as much assurance as possible for those outstanding years, reporting as normal any significant concerns they have on an organisations financial controls, financial reporting as well as financial resilience, governance and risk.
- It is intended that auditors would need to limit their opinion and make clear to the users of the accounts those aspects or sections of a set of accounts which are not supported by sufficient, appropriate evidence, and which the auditor is unable to provide assurance over.
- Auditors' statutory duty to report on value for money (VfM) arrangements and their statutory audit powers (such as the power to make statutory recommendations or produce Public Interest Reports where necessary) are an important mechanism for assurance and for identifying areas of concern at an early stage, allowing councils to address them. Under the Government's proposals, this will remain a high priority.
- It recognised that the above deadlines might result in qualifications and disclaimers of

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opinion in the short term for a number of local bodies. The Government believe that these steps are necessary to reset the system and to restore the assurance provided by timely annual audits.

- There is a heightened risk of auditors not identifying and reporting on important, more current issues. Collectively they must ensure the capacity of the audit sector be focused on the most recent position as soon as possible.
- Where an auditor has to issue a disclaimer of opinion, there will still be a need to audit the opening balances of the subsequent set of accounts, as the prior year figures will not be covered by an unqualified auditor's opinion. The Government will therefore be considering measures to address any knock-on effects of the proposals, which could affect the audit of opening balances within the accounts for future years and ensure the burden of auditing opening balances does not risk creating further delays.
- CIPFA are expected to set out how Section 151 Officers should approach their responsibilities to certify the accounts in light of potential qualifications or disclaimers, which may result from these proposals.
- In terms audit fees, the guiding principle will be that if auditors have worked in good faith to meet the requirements of the Code of Audit Practice in place at the time the work was conducted, then they are due the appropriate fee for the work done. The audited body is due to pay the applicable fee, including where there is a disclaimer or qualified opinion. Conversely, if an auditor has collected audit fees in part or in full, and a change in requirements means that the total work done represents less than the fee already collected, then the auditor must return the balance and refund the body the appropriate amount – this ensures that audited bodies pay only for work that has been done.
- Section 151 Officers will be expected to work with Audit Committee members (or equivalent) to approve the final accounts by the statutory deadline in order for the audit opinion to be issued at the same time. In addition, Chief Executives, Section 151 Officers, local authority Leaders and Chairs of Audit Committees should alert the auditor to significant organisational risks, critical decisions and changes in financial sustainability, and where they have identified concerns on systems of financial control, financial reporting and capacity and capability to produce high-quality financial reporting on time. Where there are significant resilience risks, they should alert the auditor of the options, choices and alternatives that are being considered.

As part of its announcements, the Government also took the opportunity to look ahead with the aim of avoiding a recurrence of the audit backlog in future. A summary of key elements are as follows:

- Work will progress with a number of organisations including the FRC, the NAO, CIPFA and the LGA to devise an escalated reporting framework for audit firms and local bodies to resolve issues ahead of statutory deadlines.
- The FRC is already leading work across the system to improve competition, capability and supply within the audit market. The FRC, supported by DLUHC, is committed to producing a workforce strategy by the end of the 2023 calendar year, which will identify gaps and barriers across the local audit system that are hindering the development of future capacity and agree actions and solutions to unblock these with stakeholders.
- Work across the local audit system must be sustainable and ensure proportionate financial reporting requirements, auditing requirements and regulatory requirements are in place.
- Local authority financial reporting must balance the need for adherence to financial

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standards against the needs of the users of local authority financial information, including ensuring the accounts are still useful and valuable to the taxpayer.

- Where reporting, auditing and regulatory standards combine to create pressures which delay timely reporting and audit, this should be addressed by responsible organisations across the local audit system. Doing so is vital in ensuring the delicate balance between high-quality financial reporting and user value is maintained.
- There is also a question as to whether the level of work required for the current reporting and disclosures obligations on account preparers, which then require audit and oversight, is proportionate to their value to the user of the accounts, given the potential financial or governance risks are relatively low. All system participants therefore need to consider whether this work is proportionate to risk and a wise use of taxpayers' money, and will do so in the coming months.
- In light of the issues above, the Comptroller & Auditor General (C&AG) is considering changes to the Code of Audit Practice relating to certain balances in the accounts to prevent continued local audit delays while a broader solution is sought.
- CIPFA is exploring changes to the Code of Practice on Local Authority Accounting for the medium and long term, in order to enable a more proportionate approach to the accounting requirements for non-investment assets and pension valuations for a local authority context.
- The Financial Reporting Council has committed to set out annually its planned regulatory programme, areas of focus and how its inspection activity serves the public interest through alignment with the significant financial, accounting and governance risks facing local bodies. As part of this the FRC expects to clearly set out how its inspection activity will review auditors' work on operational assets and pensions valuation, the rationale for doing so and examples of good practice. FRC inspection activity will continue to review compliance with auditing and ethical standards, any revised Code of Audit Practice and associated guidance.

Following the announcement by the Government set out above, practical discussions are now underway within KPMG to see how they can effectively accommodate the work they need to undertake on the 2023/24 Statement of Accounts whilst previous years remain subject to work by the outgoing Auditor. The above is set against the need to publish the audited accounts by the proposed statutory deadline of 31 March 2025, which has yet to be confirmed.

As all of the above actions develop / evolve, updates will be provided to Members as necessary, with overall oversight by the Audit Committee.

<b>X</b>	<b>The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:</b>
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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, the Government have now announced their proposed response with the aim of addressing the External Audit backlog as timely as possible.

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<b>Yes</b>	<b>The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:</b>	
<p>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.</p> <p>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 also interesting to note that the Government have been bringing forward the date that accounts need to be published by, while the associated external audit capacity has been reducing.</p> <p>The Council published the certified Statement of Accounts for 2022/23 by the 1 August 2023, which meant that they had been published within the similar timescales as the last two years, which had not had a detrimental impact on the Council being able to adequately fulfil its financial stewardship role.</p>		
<b>USE OF RESOURCES AND VALUE FOR MONEY</b>		
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	
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 Council and the action taken 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	
<b>MILESTONES AND DELIVERY</b>		
These are broadly set out elsewhere in this report.		
<b>ASSOCIATED RISKS AND MITIGATION</b>		
These are broadly set out elsewhere in this report.		
<b>EQUALITY IMPLICATIONS</b>		
None		
<b>SOCIAL VALUE CONSIDERATIONS</b>		
None		
<b>IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030</b>		
None		

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<b>OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS</b>	
<b>Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.</b>	
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.	
<b>Crime and Disorder</b>	n/a
<b>Health Inequalities</b>	
<b>Area or Ward affected</b>	

### **PART 3 – SUPPORTING INFORMATION**

<b>BACKGROUND AND CURRENT POSITION</b>
<p>This is a report issued under Section 5 of the Local Government and Housing Act 1989 to inform Members that the Council, 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.</p> <p>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.</p> <p>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 issue which is estimated to reach 1,000 audits 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. The delays are a well-publicised issue and in no way reflects any wrong doing by those Councils adversely affected.</p> <p>As highlighted earlier, the Government have now announced a set of proposals to address the issues in both the short and longer term.</p> <p>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 October / November 2023 at the earliest. Given the Government's announcement highlighted earlier, the Council's existing auditors will be asked to set out their own plans on how they will be responding to the new requirements and their approach to complete their necessary work on all outstanding years (2020/21, 2021/22 and 2022/23).</p> <p>Although the external audit delays did not necessarily prevent the Section 151 Officer from certifying and publishing the accounts for 2022/23, given there were two earlier 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.</p>



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As reported to Cabinet on 21 July 2023, the Council's Section 151 Officer confirmed that:

- The delays in the external audit of the accounts highlighted above had direct and secondary impacts on the ability for Councils to meet the 31 May 2023 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. [This position will be reviewed in light of the announcements by the Government set out earlier in this report.]
- In terms of the secondary impact, the Council is still working with the External Auditor on the 2020/21 accounts which in turn had 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 endeavoured to publish its certified accounts and commenced the required period of public inspection as soon as possible, at the end of July 2023. [The accounts for 2022/23 were subsequently published on 1 August 2023].
- The proposed delay did 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 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.

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 was decided 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 autumn of 2023 and the 2021/22 accounts remaining subject to the external audit process.

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

- he was able to certify that the 2022/23 provide a true and fair view of the Council's financial position given this largely reflected the confirmation that the accounts had been prepared in accordance with the associated code of practice and that the financial transactions had been recorded and presented correctly;

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- the Council was aware of the external audit issues still outstanding for 2020/21, which were not expected to have a material impact on the 2022/23 position.
- the accounts were 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 highlighted the External Auditor's delays for prior years' accounts and the risk of the potential impact on the 2022/23 position;
- the Annual Governance Statement highlighted the need to publish this Section 5A report.

### **PREVIOUS RELEVANT DECISIONS**

Decision of Cabinet taken on 21 July 2023 (Minute 27)

### **BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

Monitoring Officer's Section 5 Report to Cabinet on 21 July 2023.

### **APPENDICES**

None

### **REPORT CONTACT OFFICER(S)**

<b>Name</b>	<b>Lisa Hastings</b>
<b>Job Title</b>	<b>Deputy Chief Executive and Monitoring Officer</b>
<b>Email/Telephone</b>	<b><a href="mailto:lhastings@tendringdc.gov.uk">lhastings@tendringdc.gov.uk</a> 01255 686561</b>