

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Audit and Governance Committee**
held on Thursday, 28th July, 2022 in the Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor M Simon (Chair)
Councillor J Nicholas (Vice-Chair)

Councillors C Bulman, M Goldsmith, A Harewood, M Houston, P Redstone,
A Kolker and J Saunders

INDEPENDENT COOPTED MEMBER

Mr. Ron Jones

EXTERNAL AUDITORS

Mark Dalton, Mazars (via Microsoft Teams)
Muhammed Uzair Khan, Mazars (via Microsoft Teams)

OFFICERS IN ATTENDANCE

David Brown, Director of Governance and Compliance and Monitoring Officer
Jane Burns, Executive Director of Corporate Services
Helen Davies, Democratic Services Officer
Josie Griffiths, Head of Audit and Risk
Lianne Halliday- Procurement Officer (via Microsoft Teams)
Jamie Hollis, Interim Head of Legal (via Microsoft Teams)
Gareth Pawlett, Chief Information Officer and Head of ICT Services
Brian Reed, Head of Democratic Services and Governance
Alex Thompson, Director of Finance & Customer Services and Section 151
Officer
Michael Todd, Acting Internal Audit Manager
Alan Ward- Complaints Officer

ACKNOWLEDGEMENTS

The Chair welcomed Councillor Mark Goldsmith who was newly appointed to the Committee.

The Chair placed on record the Committees thanks to Councillor Byron Evans for the work completed during his tenure.

The Chair also noted a retrospective thanks to Jo Wilcox, former Head of Financial Management who retired from Cheshire East Council at the end of May. The Committee placed on record its thanks for the sterling work over many years.

The Committee noted that the Monitoring Officers report scheduled as agenda item 13 would be deferred and brought back to the next meeting on 29 September 2022.

15 APOLOGIES FOR ABSENCE

Apologies of absence were received from Councillor Rachel Bailey (Councillor Andrew Kolker was substituting) and Councillor Mike Sewart (Councillor Jos Saunders was substituting).

16 DECLARATIONS OF INTEREST

There were no declarations of interest received.

17 PUBLIC SPEAKING TIME/OPEN SESSION

Councillor David Marren attended the meeting as a visiting Member and wished to speak on Ward Budgets and the Cheshire East Members Code of Conduct.

Councillor Marren reminded the Committee that on the 17 Feb 2021 he moved an amendment at Council in respect of Ward Budgets, the amendment was approved by a majority.

Councillor Marren noted the £4,200 member grants, but accepted the original government grant and source of the funding did have rules attached to it.

Councillor Marren was concerned that the member grants were being described as a pilot, something he disputed from the original decision taken by Council, and had repeatedly requested information on who made the decision to pilot. Councillor Marren did not believe the original decision had been implemented properly and circulated a note of the key points for Members consideration.

The Chair used discretion to enable Councillor Marren to speak on at the beginning of the Members Code of Conduct item ahead of any Committee debate.

18 MINUTES OF PREVIOUS MEETING

Councillor Carol Bulman noted at the bottom of Page 11, there was a paragraph that related to closures between Pym's Lane and Flowers Lane Hospital Campus. Councillor Bulman had been made aware that an open letter had been sent on this matter and she felt this should be shared with the Committee.

The Chair was aware of this matter and noted that she had no opportunity to speak to Councillor Rachel Bailey, who was unable to attend the meeting, but this was an item that could be taken away and shared with the Committee in due course.

The Committee noted a number of grammatical and spelling errors within the minutes of the last meeting:

1) Page 7 Paragraph 2 read:

"...the communication issues and the personality liability for himself and the Business Manager."

This should read: personal liability.

2) Page 9 Paragraph 2 read:

"...were known this would enable the Mazars to complete the work in a timely manner."

This should read: ...were known this would enable Mazars to complete the work in a timely manner.

3) Page 10, the fifth line of the second paragraph read:

"...and these had been report to the National Anti-Fraud Network and several Government bodies."

This should read: reported

4) Page 10, the final bullet point read:

"Issued that had occurred in the past between approved use of purchase credit cards."

This should read: Issues

5) Page 12, the first bullet point read:

"...be managed through the consultation period for the Medium Term Financial Strategy (MTFS)."

This should read: Term

6) Page 12, the first bullet point read:

"There was now a three-year financial settlement that had enabled to Council to balance the budget."

This should read: the Council

7) Page 13, the exclusion of the press and public resolution read:

"...and the public interest would not be served in publishing the served in publishing the information."

This should read: and the public interest would not be served in publishing the information.

The Chair added two points of accuracy on page 11- Member Code of Conduct:

1) Whilst the second paragraph noted the comments from the Leaders Group, the item had been deferred because the Working Group had not had time to consider the comments.

2) There had been an amendment in the previous meeting that had not been minuted, that the Working Group had not had time to consider the expanded wording to the amendment that was suggested by the Vice-Chair at the beginning of the meeting.

RESOLVED:

That subject to the changes outlined above, the minutes of the 26 May 2022 be accepted as a correct and accurate record.

19 **AUDIT & GOVERNANCE ACTION LOG**

The Committee considered the Action Log. David Brown, Director of Governance and Compliance and the Monitoring Officer advised the Committee that the first item in relation to Member Ward Budgets would fall under the terms of reference for the Highways and Transport (H&T) Committee. A report was scheduled for H&T Committee and once considered, the Audit and Governance Committee would be able to review any governance issues.

The Chair agreed to review the report, but maintained that the governance issue was the implementation of the original decision made by Council.

The Director of Governance and Compliance and the Monitoring Officer advised that it would be for this Committee to receive the H&T Committee report, together with a covering report for this Committee, that would reflect the governance issues raised separate from any scrutiny related issues.

The Chair noted that this matter would not encroach on the service Committee work programme, but for the opportunity for this Committee to ask questions relating to governance.

RESOLVED: That:

- a) the action be updated on the Action Log; and
- b) a report on the actual implementation of the Member Ward Budgets decision from Council and the Highways and Transport Committee be presented to the Audit and Governance Committee.

20 **MEMBER CODE OF CONDUCT**

Jamie Hollis, Interim Head of Legal attended the meeting via Microsoft Teams and presented the report. The report had been deferred from the previous meeting to facilitate a further Working Group discussion, however it had not been possible to convene that discussion within the time

allowed. The Committee was advised a course of action could be to defer the matter further, or to make a decision to deal with the substantive items within the report.

The Chair used discretion to enable visiting Member Councillor David Marren to address the Committee in regard to the Member Code of Conduct.

Councillor Mark Goldsmith noted that any agreement on this item would go to Council, and potentially Councillor Marren (as the current Mayor) could be perceived as pre-determining a decision on the item by speaking on it during this meeting.

David Brown, Director of Governance and Compliance and the Monitoring Officer advised it was down to individuals to determine if they were approaching matters with an open mind.

The Chair noted all Members of the Working Group would be in the same position.

Councillor Marren addressed the Committee and began by noting that MP Kemi Badenock (the Minister for Levelling Up Communities) had responded to the recommendations set out in the report of the Committee on Standards in Public Life and agreed with five out of the 25 recommendations. The minister had also advised that it was for individual councils to set their own local code in line with the Localism Act.

Councillor Marren went on to say that he was part of the Working Group assigned to review the updated Member Code of Conduct as published by the Local Government Association. The Committee heard that at the first meeting of the Working Group, the code presented by officers had been amended in parts and there was some confusion about whether these amendments were fully explained to the group. The changes were reinstated by the second meeting of the group.

Councillor Marren then read correspondence he had written in January 2019 to the then Acting Chief Executive at Cheshire East Council Kath O'Dwyer, all Councillors at the time had been copied into this correspondence and it covered:

- The disappointment of officers lodging complaints against Members and associated costs paid to external lawyers rather than using in-house resources;
- The acceptance that complaints needed to be investigated, but that if an officer makes a complaint against a Member that is not upheld, then disciplinary action should be taken against that officer because of the potential for irretrievable damage to relationships and any monies used to investigate will have been in vain;
- That potentially, those subject to complaints should be able to speak freely, as they could be vulnerable to further ill-founded and

malicious complaints that would result in further money being spent to external lawyers;

- Councillor Marren believed that lack of openness would lead to malicious complaints and serial complainants, and that the current Member Code of Conduct needed urgent review to avoid being used as a tool by bullies;
- Councillor Marren had publicly advised that he did not object to any complaints made against him being made public, because he believed that the reputation of Councillors by the public was generally negative, that they were secretive, broke promises and tried to avoid scrutiny and that straight-talking and openness was the antidote to help restore Councillors general reputation; and
- Councillor Marren was of the opinion that Police referrals and Member Code of Conduct complaints had become weaponised by officers to attack Members.

The Committee heard that the day after this correspondence was sent, Councillor Sam Corcoran (in his then capacity as Opposition Leader) wrote to the Acting Chief Executive to support Councillor Marren's concerns about the complaints process being used a tool for bullies, and potential misuse by senior officers. The original purpose of the process was for members of the public to complain against councillors, not councillors against councillors or officers against councillors.

Councillor Marren continued to have concern that the complaints process has been used by councillors and officers to intimidate and control councillors.

The Committee heard that the Working Group had raised several concerns about the LGA model code, and that the group were mindful that the code could be subject to local modifications. A key concern of the Working Group was that the code should not be more onerous than any process a councillor could be subject to should an interview by the Police be necessary.

Councillor Marren was concerned that the council could be requiring more with the current arrangements than the Police would. He noted that the expectation was that Councillors would cooperate whilst officers investigated complaints, when these might range from exaggeration, or manipulation and lies with intent to disrupt or remove people from positions of influence whilst they're investigating.

In summary, Councillor Marren believed:

- 1) there ought to be an appeals mechanism supported by all Members. Until that time the code should not be approved;
- 2) people should not be expected to have to respond to questions that the Police would not request; and

- 3) If someone had a complaint made against them they should not be bound by any code of silence, and should be able to argue against the allegations.

The Committee were given the opportunity to debate the item and ask any questions.

Some Members of the Committee were of the opinion that the Member Code of Conduct should be deferred until an appeals mechanism is built into it.

The Interim Head of Legal advised that any appeals process would likely form part of the Procedure for dealing with Member complaints rather than the Code itself. A separate paper could therefore be brought back to Committee on this specific matter, bearing in mind there was currently no statutory appeal process available.

Some members of the Committee were of the opinion that the code and the appeals process should be considered together as there was the risk of delay to move them separately, whilst others thought that any appeal would be to the Ombudsman.

There was some debate on whether it was better to have a bespoke appeals process in place, some Members noted that recommendations 13 and 14 outlined within the report (relating to the right to appeal to the Local Government Ombudsman (LGO) and the LGO's power to investigate) would require a change to the law.

It was confirmed to the Committee that some Councils had a review process in place, rather than an appeals process.

Some members of the Committee felt that the process had taken too long to complete and were mindful that the model code had been adopted by a significant number of councils across the country and to deviate away from the model would weaken it. The Members Code of Conduct should hold Members to a higher account than just the legal minimum. The Committee noted more recent reputational damage resulting from Police Investigations and Handforth Parish Council and that the direction of travel should be in restoring the confidence of the public.

Some Committee members felt frustration that the Working Group had voted to defer the item from the last meeting and there did not appear to have been any work carried out in the meantime. The Chair did explain some of the reasons for the delays and noted the favourable comments by the Leaders in reference to the appeals mechanism.

Councillor Mark Goldsmith proposed the Committee approve the draft Member Code of Conduct, on the basis that all amendments proposed by the political Group Leaders were incorporated.

Councillor Marilyn Houston seconded the motion.

The Chair felt the work was incomplete and did not advise progression. The Committee noted that should the item proceed to full Council, some members of the Working Group would be speaking against the recommendations by this Committee.

RESOLVED: That

- a) the draft Member Code of Conduct, incorporating all amendments proposed by the Group Leaders, be recommended for adoption by full Council; and
- b) the draft Member Code of Conduct Complaints Procedure be approved to take effect following adoption of the Members Code of Conduct by full Council.

21 COVID-19 REPORT

The Executive Director of Corporate Services presented the report to the Committee and advised that Covid was still in present and active, and public health messages were still relevant.

The report, which had been received by the Corporate Policy Committee on 9 June 2022, included an updated account of finances, including business grants.

This was the last report which would be prepared given the changes to the national and local situation in Covid responses but this report could be reinstated if the situation changed.

The item was opened up for Committee questions, there was some discussion on:

- How much the pandemic cost the Council and whether all funds had been passed on to individuals and businesses from government funding. There had been no negative impact on council finances although it was acknowledged there was some lost income from some services and expense incurred from others;
- The Agile and flexible working policy for staff;
- The People Helping People initiative rolled out during the pandemic to support vulnerable individuals and groups across Cheshire East;
- The opportunity for the council to review assets, particularly Estates and ICT post-pandemic to make realistic assessments of need; and
- The duty of care by the council to continue to meet reasonable requests for adjustments.

RESOLVED:

The Committee received and noted the report.

22 DRAFT STATEMENT OF ACCOUNTS

Alex Thompson, Director of Finance and Customer Services and Section 151 Officer presented the Draft Statement of Accounts to the Committee, the accounts remained a draft until they had been audited and this Committee would then approve the final accounts.

The report presented key variations in specific areas, as a suggestion to the Committee, for consideration ahead of approval.

The Committee were advised that the assets issue (previously discussed and advised on by External Auditors at earlier meetings) was still outstanding, this meant that no certificate could be issued to any Local Authority at the moment.

The item was opened for any questions and clarity was given:

- between the relationship of the Cheshire and Warrington Local Enterprise Partnership (LEP) and Cheshire East Accounts, Cheshire East were the accountable body for the LEP, Alex Thompson was the 151 Officer for the LEP and Murray-Smith was the External Auditor for LEP; and
- how the council records the revaluation of assets, these were treated as an unusable reserve.

RESOLVED:

That

- a) the summarised position of the accounts for the year ended ending 31 March 2021 be received and noted;
- b) the dates in relation to the approval process for the Statement of Accounts be received and noted.

23 PRODUCTION OF THE ANNUAL GOVERNANCE STATEMENT 2021/22

Josie Griffiths, Head of Audit and Risk presented the Production of the Annual Governance Statement (AGS). The Committee noted this was a short report that gave clarity on timescales and that changes to accounts in current and previous deadlines meant this Statement was not in line with usual reporting timelines.

A draft AGS was expected in September, a final AGS in November and a training session would be scheduled for Members.

RESOLVED (Unanimously):

That the Production of the Annual Governance Statement 2021/22 be received and noted.

24 INFORMATION GOVERNANCE REPORT

Gareth Pawlett, Chief Information Officer and Head of ICT Services presented the Information Governance Report (an update on the information assurance and data management programme underpinning the safeguarding of information) to the Committee.

The report noted an improved score in 5 areas but reductions in some areas. The current climate of cyber-attacks was challenging, the Committee were advised of a recent example which impacted on some staff and the importance of mandatory training for both officers and Members.

The Committee were advised that innovative projects were implementing new ways of working and managing information, this meant teams or services (now at an enterprise level) did have some conflicts to work through.

The Committee sought assurances:

- a) in respect of cyber-crime, and was advised that it was a real threat with attempts made daily, but to date defences had held. There was confidence that the right action was being taken, and investment in this area continued; and
- b) in respect of recruitment and retention of staff, the Committee was advised that resourcing was a risk within ICT but this was being managed through development of staff, to train and upskill. Whilst the employment offer was good, from a flexibility perspective, the challenges came from the salaries and grading, which was in competition with often more lucrative employment within the private sector. Roles were being evaluated appropriately but there were setbacks when individuals were trained and then left the council.

RESOLVED:

That the progress made with the Information Assurance and Data Management Programme during 2021/2022 and the future vision to support ongoing compliance be received and noted.

25 **EXTERNAL AUDIT 2021/22 PROGRESS REPORT**

Mark Dalton and Muhammed Uzair Khan from External Auditors Mazars, attended the meeting via Microsoft Teams and presented the report to the Committee.

Section 5 of the report, the approach to Value for Money work, was highlighted to the Committee, and it was noted there was no significant risk or weakness identified. The National Audit Office had extended the deadline for submission to 3-months after the opinion was submitted.

Section 6 of the report, Planned Fees for Audit and Other Services, noted the planned fees were in line with the planned year.

Section 3 of report outlined the Audit Scope, Approach and Timeline, Mazars planned to present the External Audit in November.

The Committee noted that in 2020-21 the council implemented a new financial system, and that separately there had been objections from members of the public that required further clarification and correspondence, this led to incurred additional fees from Mazars.

RESOLVED

That the External Audit 2021/22 Progress Report be received and noted.

26 INTERNAL AUDIT ANNUAL REPORT 2021/22

The Head of Audit and Risk presented the Internal Audit Annual Report. The Internal Audit team sought to work with services to establish assurances, balancing the audit requirements without burdening departments.

Clarity was sought by the Committee on the selection process for determination of the high number of recommendations with limited audit assurance opinion. Internal Audit follow up all actions with evidence and testing with further scrutiny in 6-months time.

RESOLVED: That

- a) the contents of the Internal Audit Annual Report 2021/22 be received and noted; and
- b) the Internal Audit opinion on the Council's framework of risk management, control and governance for 2021/22 as 'Adequate' be received and noted.

27 MONITORING OFFICER REPORT

RESOLVED:

That the Monitoring Officer Report be deferred until the following meeting 29 September 2022.

28 STANDING ITEM: UPHELD COMPLAINTS TO THE LOCAL GOVERNMENT OMBUDSMAN

At the start of the meeting, a letter addressed to the Chief Executive, Leader of the Council and Chair of the appropriate Scrutiny Committee, from the Local Government and Social Care Ombudsman was circulated to the Committee. The letter had been received after report publication; and was an annual summary of compliant statistics for the year ending 31 March 2022 with opportunities to learn and improve noting that in three of the cases, remedies were not made in agreed timescales.

Brian Reed, Head of Democratic Services and Governance introduced the report to the Committee. The report provided a summary of complaints received and considered by the council during the period 1st April 2021-31st March 2022 and included complaints considered at Stage One and Stage Two of the complaints policy and those referred to the Ombudsman. Complaints were noted in the area of Highways and SEND (special educational needs and disabilities).

The report provided information about measures taken by service departments to address key areas in respect of the complaints made.

The Committee found the annual summary of Ombudsman outcomes and complaints report to be helpful and comprehensive; and noted that the SEND service provided by the council was an important area of work and that the Council had responded effectively providing remedies with training and developing staff. The training programme was in place for staff, and encompassed both internal and external training.

Alan Ward, Complaints Officer advised the Committee that complaint numbers sat between 2-3,000 per year. The Committee discussed complaints dealt with within timescales and it was noted 84% were dealt with within 20 working days, whilst 16% went beyond.

RESOLVED: That:

- a) the content of the report, plus the Council's compliance with the Corporate Complaints Policy and recommendations of the Ombudsman be received and noted.

29 STANDING ITEM: WORK PROGRAMME 2021/22 AND 2022/23

The Committee considered its Work Programme.

The Head of Audit and Risk noted that the Chartered Institute of Public Finance and Accountancy (CIPFA) had released a position statement in relation to Local Authorities Audit Committees, and was due to provide detailed guidance later in the summer, the Committee would be kept sighted on any developments.

Arising from this, the Head of Audit and Risk requested one item be added to the published work programme.

During the change of governance from a Strong Leader and Cabinet Model to the Committee System, the Terms of Reference were reviewed for this Committee, and had been informed by 2018 CIPFA guidance. There was a unique opportunity to take advantage of CIPFAs availability to do an assessment of the Committee, the benefits of this would be its independent, that it would draw on peer experience and provide helpful insight for Members and officers. The ongoing benefit would be this insight could inform training programmes and highlight areas for

improvement. Committee members would receive an update at their next meeting on the progress of this review.

The Committee had some discussion about how assurances for the Committee could be sought. The Director of Governance and Compliance advised that there were mechanisms in place to enable line-of-sight to the Committee plus there were a number of briefing sessions built into the calendar of meetings to enable the Chair and Vice Chair to have timely information. The Director of Finance and Customer Services also added that the relationship between the Committee and the External Auditors Mazars offered a layer of independent assurance and that ordinarily the Value for Money commentary would provide useful assurance, not just on financial stability but improvements including procurement. This is not yet available as the External Audit must be completed first.

The Chair noted that a meeting with the new Director of Highways and Infrastructure, Tom Moody has been scheduled for the Chair and Vice Chair and this may bring forward items to add to the Work Programme.

RESOLVED: That

- a) the Work Programme be received and noted; and
- b) an update to the September meeting in respect of the CIPFA Committee Assessment review be included.

30 STANDING ITEM: COMPLIANCE WITH CONTRACT PROCEDURE RULES

The Director of Finance and Customer Services and Section 151 Officer presented the Waivers and Non-Adherences (WARNs) report, these had been reviewed by the Finance Sub-Committee.

Waivers had increased in relation to Covid related expenditure these were sometimes in an emergency, there was an expectation that the figure will reduce significantly in due course.

RESOLVED: That:

- a) the reason for five Waivers approved between 1 May 2022 and 31 May 2022 (6 in total in 2022/23) be received and noted; and
- b) the Finance Sub-Committee, on the 6 July 2022 had reviewed the Waivers for this period as part of its responsibility for the pipeline of procurement activity be received and noted.

31 EXCLUSION OF THE PRESS AND PUBLIC

That the press and public be excluded from the meeting during consideration of the following item pursuant to Section 1000(A)(4) of the Local Government Act 1972 on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 1, 2 and 3 of

Schedule 12A of the Local Government Act 1972 and the public would not be served in publishing the information.

32 STANDING ITEM: COMPLIANCE WITH CONTRACT PROCEDURE RULES: PART TWO

The Committee considered the five WARNS.

RESOLVED:

That the WARNS be received and noted.

The meeting commenced at 10.30 am and concluded at 1.39 pm

Councillor M Simon (Chair)