

Title of Report	Deep Dive: Public Interest Reports
For Consideration By	Audit Committee
Meeting Date	17 April 2024
Classification	Open
<u>Ward(s) Affected</u>	All
<u>Group Director</u>	Dawn Carter-McDonald, Interim Chief Executive

1. Introduction

- 1.1. Over a period of several years the Audit Committee has undertaken deep dive reviews into specific areas of Council business which has a direct impact on the remit of the Committee's terms of reference. Examples of deep dives in the past include SEN expenditure, capital spend, the pandemic response, Net Zero and Council reserves.
- 1.2. As part of their work programme for the 2023/24 municipal year, the Audit Committee agreed to undertake a deep dive review into recent public interest reports and best value interventions. The terms of reference of the review are attached at Appendix one. These were drafted in Autumn 2022 and finalised following feedback from Committee members.
- 1.3. The review consisted of a detailed briefing on various recent best value interventions and also public interest reports at which the Acting Director of Legal, Democratic and Electoral Services and the Group Director, Finance gave a presentation and responded to questions.

2. Recommendations

- 2.1. **The Committee is asked to note the contents of this report.**

3. Background

- 3.1. Members of the Committee cannot fail to have noticed the recent media headlines around public interest reports and best value interventions up and down the country. Before considering the themes which have emerged from some of the more recent reports, the following paragraphs provide a summary of how a public interest report or best value intervention might come about and the implications/obligations that follow.

Public Interest Reports

- 3.2. The accounts of all local authorities must be audited in accordance with the Local Audit and Accountability Act 2014. Auditors are required not only to give an opinion on financial statements but to also consider the adequacy of an authority's arrangements for economy, efficiency and effectiveness and to consider the application of formal audit powers where necessary - these include public interest reports, statutory recommendations, an application to the courts for judicial review or a declaration of unlawful items of account.
- 3.3. A public interest report (PIR) is a report issued by an authority's external auditor under Schedule 7, Local Audit and Accountability Act 2014. Under Schedule 7, an external auditor is under a duty to consider whether any matter which comes to its attention during their audit should be reported in the public interest. In considering whether to issue a PIR, auditors should weigh up:
 - 3.3.1. The significance of the matter or weakness in arrangements which has come to their attention or which they have identified;
 - 3.3.2. Whether the authority recognises the need to address a concern and is taking appropriate action in a timely way;
 - 3.3.3. What information is already in the public domain and whether there is merit in bringing the matter to the attention of the public in the interests of openness, transparency and accountability or to facilitate dissemination of learning to other public bodies;
 - 3.3.4. Which form of reporting is likely to be most effective in helping the audited body to understand the significance of the matter and the need to take action; and
 - 3.3.5. Whether previous reporting has been acted upon and, if not, whether more prominent reporting is now necessary.
- 3.4. Where a PIR is issued, a local authority must publish the report and consider it at a public meeting held within one month of publication and subsequently provide a written response to the auditor.

Best Value Interventions

- 3.5. The Local Government Act 1999 imposes a statutory duty on local authorities to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness". This is known as the Best Value Duty (BVD). In practice the BVD covers issues such as how authorities exercise their functions to deliver a balanced budget, provide statutory services, and secure value for money in all spending decisions. Authorities must also demonstrate good governance across all their functions and effective risk management.

- 3.6. Where over a period of time the required continuous improvement is not demonstrated, then the 1999 Act grants the Secretary of State for Levelling Up, Housing and Communities powers to intervene in the authority to ensure compliance. These powers include taking action to protect the public purse and ensure that significant or long term failings are corrected and performance is raised to an acceptable and sustainable level.
- 3.7. The Secretary of State has powers to appoint persons to carry out inspections into an authority's compliance with the Best Value Duty. This power may be exercised to provide evidence for the Secretary of State to make a judgement on whether to intervene, but an inspection is not formally required prior to statutory intervention.
- 3.8. Where the Secretary of State is satisfied that an authority is failing to carry out its functions in compliance with the Best Value Duty, section 15 of the 1999 Act provides powers for the Secretary of State to intervene on a statutory basis in that authority. These powers include the ability to:
 - 3.8.1. Direct a local inquiry to be held into the exercise by the authority of specified functions;
 - 3.8.2. Direct the authority to carry out a review of its exercise of specified functions;
 - 3.8.3. Direct the authority to take any action which the Secretary of State considers necessary or expedient to secure its compliance with the requirements of the Best Value Duty; and
 - 3.8.4. Direct that a specified function or functions of the authority be exercised by the Secretary of State or a person nominated by them (referred to as "commissioners") for a specified period.

4. Recurring themes from reports

- 4.1. The briefing for members of the Committee, held on 4 October 2023, focused on six local authorities:
 - 4.1.1. Woking Borough Council - BVI
 - 4.1.2. Spelthorne Borough Council - PIR
 - 4.1.3. Cheshire East Council - PIR
 - 4.1.4. Thurrock Council - BVI
 - 4.1.5. London Borough of Croydon - 2 x PIRs
 - 4.1.6. City of York Council - PIR
- 4.2. A copy of the presentation slides for the briefing appear at **Appendix A**.

4.3. Since the briefing was held, a BVI at Birmingham City Council was announced on 5 October 2023 and on 24 February 2024 the Secretary of State announced BVIs for London Borough of Tower Hamlets and Nottingham City Council, in the latter case extending the intervention that the Council has been under since 2021.

4.4. The Secretary of State has also issued Best Value Notices to:

- Runnymede Borough Council (19 December 2023)
- Eastleigh Borough Council (19 December 2023)
- Middlesbrough Council (30 January 2024)
- Cambridgeshire and Peterborough Combined Authority (30 January 2024)
- City of Bedford Metropolitan District Council (29 February 2024)
- West of England Combined Authority on 5 March 2024.

These Best Value Notices can be viewed on the Department of Levelling Up, Housing and Communities [website](#).

4.5. Whilst the specific circumstances leading to each individual PIR or BVI are different and unique to each of the six authorities referred to in paragraph 4.1 above, there are broad recurring themes from these reports considered as part of the deep dive which can be discerned.

Culture and Governance

4.6. Local authorities have a variety of different governance models, ranging from the elected mayor or leader/cabinet model to committee systems. Arguments could be made both for and against all of the models, but in terms of recent PIRs/BVIs, it is less about what the system of governance actually is and more about how it operates in practice and ensuring that there is appropriate scrutiny and challenge.

4.7. The main issues identified in this theme tended to concern weaknesses in authority cultures for example poor behaviours and a lack of transparency; and/or weaknesses in governance, for example a circumvention of proper decision-making procedures or a lack of information for those making decisions; and/or deteriorating senior officer and member relationships, often over a number of years with some authorities spending a significant amount of time and resources responding to internal allegations and complaints.

4.8. Poor relationships between members and senior officers often undermined collective leadership and communications. In some instances members failed to fulfil their constitutional and ethical responsibilities, particularly in respect of their fiduciary duties. Similarly officers have not adequately fulfilled their professional and legal responsibilities through the provision of accessible information to assist in decision-making, and failing to challenge poor or even unlawful decision-making.

4.9. Another focus has been the part played by elections. Some of the authorities were subject to retirement of councillors in thirds, meaning that elections

were held three years out of four. Where this occurred, issues were identified around the lack of focus on delivering priorities and strategic objectives due to those authorities being in 'perpetual election mode'.

Failures to manage risks associated with Council owned companies

- 4.10. Where companies are council owned, that means councils are ultimately responsible for the financial risks and benefits of those companies. In some instances a lack of commercial skills led authorities to enter into risky ventures which they could not then manage effectively. Many authorities then chose to continue to fund companies, rather than face potential reputational damage of winding up a loss-making company. Indeed, some were seen as 'too big to fail'.
- 4.11. In addition, the use of council owned companies can increase the risk around lack of transparency and conflicts of interest.

Financial capability and capacity

- 4.12. Many of the finance departments in the authorities in question had suffered from underinvestment with many Councils seeking to protect front line services in times of budgetary constraint at the expense of those service areas who provide 'support'. This in turn had an impact on the capability and capacity with significant weaknesses in succession planning; in understanding the financial accounting implications of new and innovative schemes; and in the production of financial statements being amongst the consequences highlighted.
- 4.13. Many reports also refer to weak treasury management which compounded other financial management problems.

Officer capacity, experience and skills

- 4.14. In many of the cases, the authorities in question have had a prevalence of interim/acting up appointments in senior officer roles. The consequences highlighted from this included lack of understanding around historic decision-making on complex or high risk matters, lack of corporate ownership to provide support and direction; and/or lack of performance management; and/or loss of corporate knowledge.

Effectiveness of Audit

- 4.15. A robust internal audit service and audit committee are important lines of defence but are often not used appropriately. In some instances internal audit failed to focus on the areas of greatest risk to the authority which resulted in an inability to recognise the early signs of failure and take the necessary steps.
- 4.16. Audit committees should provide assurance on the arrangements in place over governance, risk management and the overall control environment, as well as review the financial and non-financial performance at a council. In

many instances, the Audit Committee was not effective in undertaking this function.

5. How does Hackney fair?

5.1. At the briefing, members of the Committee asked Officers for a rated assessment of how it was considered that the Council fared against the themes identified. This is set out in the table below.

5.2. The RAG assessment should be understood as being a reflection of a snapshot in time and it is important for both Officers and Members not to be complacent around the need for continual review and evaluation. It does not take much, or long, for things which were working well to start to go wrong. In such instances it is vital that issues are identified promptly and action taken to resolve them. It is also imperative that there is a focus on continuous improvement.

Theme	Overall RAG Assessment	Explanation for Assessment
Culture & behaviours	Green ▾	<ul style="list-style-type: none"> ● The Council reviewed its Code of Conduct for elected members and co-optees in 2020/2021, using the LGA model code of conduct as its base. The new version came into effect following the May 2022 elections. Annual training is mandatory. ● The Monitoring Officer does not receive significant numbers of complaints concerning alleged breaches of the Code of Conduct. In 2022/23, as reported in the Standards Annual Report, none of the allegations met the threshold for investigation. ● The Standards Annual Report contains a breakdown of the types of complaints received and any details of any themes which emerge. ● Certain officer posts are politically restricted and managers are expected to keep this under review from time to time. That said, the recent Independent Governance Review, which was considered by Full Council on 24 January 2024, has recommended that the Council review the politically restricted posts list. The Head of Paid Service has agreed that this should be done. ● There are established policies and procedures for dealing with concerns - Councillor Code of Conduct, Anti-Fraud & Corruption Strategy,

Theme	Overall RAG Assessment	Explanation for Assessment
		<p>Anti-Money Laundering Policy, Anti-Bribery Policy and Whistleblowing Policy.</p> <ul style="list-style-type: none"> ● The Elected Mayor & Councillors are required by law to complete a register of interests form within 28 days of taking office and within 28 days of any changes. These forms are published on the Council's website. ● Officers whose roles are PO1 or above are required to complete an annual declaration of interest form in accordance with the Council's "Officer Declarations of Interest Policy" which must be signed off by the relevant line manager, who is at least Head of Service level. ● In addition to the above, the Elected Mayor & Councillors and Officers are required to make any specific declarations of interest at all Council meetings and this is a standing item on all agendas and any declarations are recorded in the minutes. Members are always able to seek advice from the Monitoring Officer, lawyer responsible for the meeting or the Governance team if they wish to do so, recognising that ultimately it is a matter for them as an individual. ● The Elected Mayor & Councillors are required to declare the acceptance or rejection of any gifts and hospitality with a value of £25 or more. This is a lower threshold than the £50 contained with the LGA's Model Code of Conduct and therefore provides additional reassurance. ● Officers are required to declare the acceptance or rejection of gifts/hospitality with a value of £25 or more and comply with the Council's "Gifts and Hospitality Procedure". ● The Council's protocol on Elected Mayor & Councillors / Officer relationships was the subject of a light touch review as part of the wider Constitution review in 2023. However, one of the recommendations from the recent Independent Governance Review was that the Council reviews its culture around political impartiality of officers and thus a more in-depth review of the protocol, to be accompanied by any training for officers / members once complete, would be sensible.
Governance &	<div style="background-color: #28a745; color: white; padding: 2px 5px; border-radius: 10px; display: inline-block;">Green ▾</div>	<ul style="list-style-type: none"> ● Reports to members are required to include

Theme	Overall RAG Assessment	Explanation for Assessment
decision-making		<p>financial and legal comments which must be signed off by the Group Director, Finance and the Director of Legal, Democratic & Electoral Services (or their nominated representative). Certain categories of reports must also be cleared by the Chief Executive, s151 Officer and Monitoring Officer (in the latter two cases if they have not personally provided the finance or legal comments). Depending upon what is being asked of the decision-maker, reports must also include an assessment of alternative options and a detailed risk analysis.</p> <ul style="list-style-type: none"> ● Decision notices are issued following every meeting, circulated to all Councillors and published so that there is transparency around the decisions that have been made. ● In the case of decisions made by officers acting under delegation, key decisions are still required to be notified in the Council's Forward Plan and there are legal requirements as to the publication on the Council's website of certain types of delegated decisions. ● The current Constitution includes a section specifically devoted to decision-making and the various considerations, including statutory duties, that decision-makers must have regard. ● The Council's Scrutiny Commissions offer challenge to the Council's executive through pre-decision scrutiny, e.g. budget setting, and the relevant commission work programmes and also via the statutory call-in process where triggered. ● The Council does not have a high number of call-ins following executive decisions. This could be indicative of the quality of reports to support the decisions made and the opportunities for pre-decision scrutiny. Equally it could be an indication of lack of challenge. The Council does have a significant political majority, but there is no legal requirement that call-ins must originate from an opposition group; a call-in requires 5 elected members who are not part of the executive to make a request. ● The Council utilises the CIPFA/SOLACE Code of Corporate Governance as a mechanism to assess how the Council operates. The Code is

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		<p>kept under review and reported to the Audit Committee.</p> <ul style="list-style-type: none"> • The Council's decision-making processes will be the subject of consideration & review as part of the wider Council transformation project. • The Council operates robust procurement processes, supported by Contract Standing Orders. The Contract Standing Orders are scheduled to be reviewed as a consequence of changes that will be brought in via the Procurement Act 2023. In addition, a review of procurement processes is scheduled for 2024. • The Council has not been the subject of Corporate Peer Review through the Local Government Association since 2013, as compared to the recommendation of at least one every five years. Such a review would provide robust, strategic and credible challenge around, inter alia, organisational & place leadership and governance & culture. A Peer Review is, however, planned for later this year (2024)
Risk associated with Council owned companies	Amber ▾	<ul style="list-style-type: none"> • The Council does not have a significant number of wholly owned companies in comparison to some other local authorities. We have six wholly owned subsidiaries and only three have been consolidated into the Council's Statement of Accounts - these are the Housing Group of Companies. The Council takes a cautious approach to establishing companies and will only establish a company when there is a compelling business case and the purpose of the company activity can not be delivered within the powers of the Council. • The Company governance arrangements have been included within the Council's Constitution for the first time (September 2023 edition) and this is supported by an internal Alternative Service Delivery Framework document which provides guidance to officers on implementing alternative service delivery vehicles. • The Intelligent Shareholder function for every company is held by the Council's s151 officer. • Companies report to Cabinet on an annual basis to provide information about their activities in the

Theme	Overall RAG Assessment	Explanation for Assessment
		<p>preceding financial year and to seek authorisation for any significant changes to business plans to ensure appropriate oversight and transparency.</p> <ul style="list-style-type: none"> • Currently council officers are appointed as directors of the Council's wholly owned companies. Whilst care is taken to try to avoid appointments where conflicts of interest would repeatedly arise, this can mean that directors are appointed in areas where they do not have significant levels of expertise. • The operation of the Council's companies were subject to an internal audit in 2021/22. The overall assurance level was 'significant', however there are some medium level recommendations still in progress to be implemented (e.g director's training).
Financial capability and capacity	Green ▾	<ul style="list-style-type: none"> • Level of external borrowing relatively low for the General Fund & HRA (but will increase) • Recent departure of long-service and experienced S151, however, interim has 3 years experience in the deputy role plus considerable experience in the supporting team. • Although savings have been made in finance teams in the period since austerity began, care has been taken to ensure we retain a strong and sufficient core. • The Council has also continued to ensure a pipeline of qualified staff through CIPFA trainee schemes. • Furthermore additional advice (e.g. taxation) is sought externally where required.
Chief Officer capacity, experience and skills	Amber ▾	<ul style="list-style-type: none"> • There has been a significant turnover in chief officers over the past 3 years, including the chief executive and s151 officer, and this has led to a number of senior positions within the Council currently being on an Acting or Interim basis. Recruitment for a permanent Chief Executive is underway and should be completed by mid May. • The Council looks to use acting arrangements in preference to interim appointments to minimise risks around lack of historical/current knowledge. That said, the use of interim appointments can be useful in bringing new ideas into the organisation.

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		<p>Therefore an appropriate balance needs to be struck between the two.</p> <ul style="list-style-type: none"> • The Council seeks to ensure that acting/interim arrangements are only used for so long as is necessary to conduct recruitment on a permanent basis. • Notwithstanding the changes referred to above, the Council has retained a core of senior finance & legal officers who have significant experience in their relevant areas and the Corporate Leadership Team provides a mechanism through which there is corporate ownership of projects.
Audit Committee effectiveness	Green ▾	<ul style="list-style-type: none"> • The Audit Committee meets 5 times per year. At the first meeting in any municipal year and at every meeting thereafter, a work programme for the Committee is considered and approved. • The Committee’s work programme includes regular reviews of risk registers, treasury management & other financial updates, reports from internal audit, reviews of any whistleblowing reports received, review of Council performance indicators, deep dive reviews (such as this). • The Auditor’s Audit Report prepared by the Council’s external auditors, Mazars, for 2020/21 VFM report from our external auditors (received July 2023) states with regards to the Audit Committee as follows: <ul style="list-style-type: none"> “The Council has a separate Audit Committee, and has the appropriate status within the organisation to challenge management and obtain assurance on the operation of the internal control framework. The Committee has a wide range of responsibilities, but includes an agreed workplan that addresses governance issues, and requests reports on specific internal control issues if considered appropriate. The Audit Committee met regularly throughout the year, with minimal cancellations as a result of the pandemic, and received a range of reports on internal controls. Where the Committee identifies areas where it requires additional assurance, such as on IT disaster recovery and Treasury Management, reports are brought to future

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		<i>meetings.”</i>

5.3. The risks identified in the PIRs / BVIs around elections as a consequence of retirement in thirds does not apply as the Council has ‘all out’ elections every fourth year; this provides greater stability and enables focus to be maintained on delivering strategic priorities. However, in 2024 there are a number of elections of varying types - Council by-elections, General Election, Mayor of London/London Assembly Elections. Not all of these will take place on the same day. This does have the potential to have an impact upon the Council’s decision-making due to the pre-election period which precedes every one. However, there is a robust procedure in place for ensuring that impacts are considered and, where possible, mitigation measures taken (for example, moving meeting dates).

5.4. Everyone whose expertise, powers and duties form part of the chain of safeguards has the responsibility to consider what they need to do to strengthen their ability to prevent the types of failures and issues which have given rise to recent PIRs/BVIs. It is important that this is done collectively, as well as individually, the Council must:

5.4.1. Understand and learn from failures;

5.4.2. Understand and mitigate the risks of failure; and

5.4.3. Work collaboratively across professions, hierarchies and organisational boundaries to support good governance and robust financial management.

6. **Comments of the Interim Group Director of Finance**

6.1. There are no direct financial consequences arising from this report.

6.2. Set out in section 5 is an officer assessment on how the Council compares against the themes identified from this review. The assessment has identified that overall we currently compare well against these themes whilst there are two areas identified for improvement. Taking forward actions in these areas will further improve our governance, financial management and resilience.

6.3. Whilst the assessment is a snapshot in time the policies, processes and procedures and financial frameworks we have in place are robust and will guard against the risks of the Council in this space. The annual review of our performance against the CIPFA Financial Management Code carried out as part of the Budget Setting process, the Annual Governance Statement, our

Internal Audit function and Audit Committee arrangements all support minimising this risk to the Council.

7. **Comments of the Acting Director of Legal, Democratic and Electoral Services**

7.1. Save as set out in the body of this report, there are no further legal implications arising.

Appendices

Appendix 1 - Terms of Reference - Public Interest Reports / Best Value Interventions

Appendix 2 - Presentation slides for member briefing held on 4 October 2023

Background documents

None

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