

AUDIT AND RISK MANAGEMENT COMMITTEE

Wednesday, 28 September 2011

Present: Councillor J Crabtree (Chair)

Councillors D Dodd RL Abbey
S Mountney JE Green
A Brighthouse J Keeley

Deputies: Councillors J Walsh (In place of I Williams)

18 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

No declarations of interest were received.

19 MINUTES

RESOLVED:

That the Minutes of the meeting held on 30 June 2011 be confirmed as a correct record.

20 MERSEYSIDE PENSION FUND ACCOUNTS

A report of the Deputy Chief Executive/Director of Finance presented the Cabinet with the audited Statement of Accounts of Merseyside Pension Fund 2010/2011 and responded to the Draft Annual Governance Report (AGR) from the Audit Commission.

The Committee was informed that, following changes to regulations for 2011; the un-audited Statement of Accounts had not been presented to this Committee or the Pensions Committee. There had been a meeting of the Governance and Risk Working Party on 14 July 2011 where there had been a training session on how the accounts for the Merseyside Pension Fund were put together and an explanation had been given of the changes made as a result of the newly introduced International Financial Reporting Standards. The draft accounts had also been made available to Members at this meeting.

The Committee was also informed that the Audit Commission was close to completing its audit of the draft accounts and the draft AGR was also to be considered by the Committee at this meeting. The report responded to the draft AGR.

The Director of Finance/Deputy Chief Executive informed that he had prepared a Letter of Representation on behalf of the Committee which gave assurances to the District Auditor on various aspects relating to the Pension Fund.

The Audit Opinion would be issued following completion of the audit, consideration of the Annual Governance Report and approval of the amended Statement of Accounts at both the Pensions Committee and this Committee. Once approved, the District Auditor had indicated that he would issue an unqualified opinion, and state that the accounts presented fairly the financial position of the Merseyside Pension Fund as at 31 March 2011. Subject to this, the accounts, as they were now, would form the basis of the Annual Report for the year ended 31 March 2011.

The report provided Members with an overview of the Accounts, details of the amendments made to the Accounts and included the Audit Commission's findings and an Action Plan.

RESOLVED:

That the audited Statement of Accounts for 2010/11, the amendments to the draft Accounts and the draft Annual Governance Report and the Letter of Representation be agreed.

21 **AUDIT COMMISSION - MERSEYSIDE PENSION FUND ANNUAL GOVERNANCE REPORT**

The Committee received the Annual Governance Report (AGR) of the Audit Commission which summarised the findings of the 2010/2011 audit of Merseyside Pension Fund. It was noted that, subject to satisfactory completion of outstanding matters, the District Auditor planned to issue an unqualified opinion on the Merseyside Pension Fund's accounts. She had identified two material errors in the accounts, the omission of a Net Assets Statement as at 1 April 2009, and a misclassification of £273m pooled investments as equity. The Pension Fund had agreed to amend the accounts for both of these items. The District Auditor had also identified a small number of other disclosure errors and one non-trivial accounting error, all of which the Pension Fund had agreed to amend.

The Deputy Chief Executive/Director of Finance provided the Committee with an update in note form. He told Members that the AGR had been presented to the Pensions Committee at its meeting on 19 September 2011. His summary on page 3 of that report remained valid and he proposed to give his opinion by 30 September 2011. Page 5 of the report set out a number of issues that remained outstanding and the Director provided an update on the position in respect of each one. Attached to his note to the Committee was an updated Appendix 2 to the Merseyside Pension Fund's AGR.

The Committee went through the AGR and the note setting out updates in detail and it was

RESOLVED:

That the report be agreed.

22 **STATEMENT OF ACCOUNTS 2010/11**

A report of the Deputy Chief Executive/Director of Finance reminded the Committee that the Council's Constitution allocated responsibility for the approval of the

Statement of Accounts to the Audit and Risk Management Committee. The Statement for 2010/11 had been published on 4 July 2011 and was then subject to audit. The District Auditor would present his findings within the Annual Governance Report (AGR) together with additional updates to this Committee meeting.

The Statement of Accounts included the Merseyside Pension Fund (MPF) accounts as the Council was the Administering Authority for MPF. As MPF received a separate Annual Governance Report (AGR) this had been considered by the Pensions Committee on 19 September 2011 and this Committee on 28 September 2011 as part of approving the Accounts.

Members noted that the Accounts were subject to audit and if the Audit Commission required any material amendments to the Accounts, then under the Audit Commission Act 1998 and the Audit Commission Code of Audit Practice for Local Government, the District Auditor reported on the financial statements. As stipulated by the Regulations, these would be reported to this Committee, prior to 30 September 2011.

The Committee was responsible for approving the Statement of Accounts (which presented the Council's overall financial position as at 31 March 2011) on behalf of the Council which was a requirement under the Accounts and Audit Regulations 2003, as amended in 2011. The Committee studied the report and Statement of Accounts in detail noting that there were a number of amendments to the financial statements that had been requested by the District Auditor and were detailed in the AGR at Appendix 2. These amendments had been agreed by Officers and Members were requested to agree to them too.

The District Auditor had also identified a potential misstatement which had not been adjusted in the Accounts at Appendix 3. Members received an update and were asked to consider whether or not they would want to adjust the Statement of Accounts should this issue remain. It was noted that any unadjusted misstatement must be referred to in the Letter of Representation. They had not changed the level of General Fund balance or reserves and provisions at 31 March 2011.

The Deputy Chief Executive/Director of Finance reported that the Audit Opinion would be issued following the Committee's consideration of the AGR, approval of any amendments to the Statement of Accounts and agreement of the Letter of Representation (the draft was included at Appendix 6 to the AGR). The District Auditor would issue an opinion before 30 September 2011 and state if the accounts were a true and fair view of the financial position of the Council at 31 March 2011. The Auditor's report would be incorporated within the final version of the Statement of Accounts that would enable the accounts to be agreed and published by 30 September 2011, (the statutory deadline).

The report also included a Value for Money conclusion and the Committee was told that District Auditor had identified that, whilst the Council was achieving cost reductions, it was not able to demonstrate that it was improving efficiency and productivity in some areas with the Highways and Engineering Services contract quoted as an example.

RESOLVED:

- (1) the Deputy Chief Executive/Director of Finance be requested to sign off the Council's 2010/11 Accounts when they are ready, in consultation with the Chair of the Committee;**
- (2) the Deputy Chief Executive/Director of Finance be requested to sign the Letter of Representation, in consultation with the Chair of the Committee and the Chief Executive, who both must be satisfied that the information contained therein is correct; and**
- (3) the Deputy Chief Executive/Director of Finance be requested to bring a report to the next meeting of the Committee on the accounting for, and recording of, assets.**

23 AUDIT COMMISSION - ANNUAL GOVERNANCE REPORT

The Deputy Chief Executive/Director of Finance presented the Committee with the Annual Governance Report (AGR). The report summarised the findings from the 2010/11 audit which was substantially complete. It included the messages arising from the audit of the financial statements and the results of the work the District Auditor had undertaken to assess the Council's arrangements to secure value for money in its use of resources.

The District Auditor circulated his draft report as at 22 September 2011 of his qualified Value for Money Conclusion and reported that the paragraph in the 'basis for qualification' in the draft AGR had not changed very much and not at all in the message. The actual conclusion was still 'with the exception of the matter reported in the basis for qualified conclusion, that he was satisfied that in all significant respects the Council had put in place proper arrangements'. What had changed was the 'report by exception'. In the draft AGR the District Auditor had a high level message referring to governance and internal control weaknesses. On the advice of his technical section, he had been far more explicit and made specific reference to the key issues, including the two independent reports.

The basis for the qualified conclusion was that, in considering the Council's arrangements for challenging how it secured economy, efficiency and effectiveness, the District Auditor had identified that the Council was not able to provide information on activity and performance of the Highways and Engineering Services Procurement Exercise (HESPE) contract to determine whether it was receiving better value for money spent. He had concluded that, having regard to guidance on the specified criteria published by the Audit Commission in October 2010, with the exception of the matter reported in the basis for qualified conclusion, he was satisfied that in all significant respects the Council had put in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources for the year ending 31 March 2011.

The Audit Commission's guidance also required the District Auditor to report, by exception, on any other significant additional matters that came to his attention and which he considered to be relevant to proper arrangements to secure economy, efficiency and effectiveness in the use of resources. Such matters had come to his attention relating to significant weaknesses in:

- Promoting and demonstrating the principles and values of good governance

The District Auditor had identified that the Council's Constitution required updating and the current Contract Procedural Rules had not been followed for term contracts. Also, an independent review of bullying and harassment made a number of significant criticisms of individual officers and collective behaviour within and across the whole Council and another independent review had concluded that Wirral Council's corporate governance arrangements were, and probably remained, inadequate. Without good governance, risks increased and priorities might not be achieved.

- Managing risks and maintaining a sound system of internal control

The District Auditor had identified weaknesses in corporate arrangements for risk management, policies, procedures and internal control arising from whistleblowing concerns. There were also significant weaknesses in internal control in respect of assets which had continued for a number of years. Without sound arrangements risks could not be managed to a reasonable level and resources may not be used effectively to deliver value for money.

The District Auditor also circulated an addendum to page 36 of the AGR that served to update Members by providing a summary of his findings. He reported that he was awaiting information that he needed to review before he could confirm that he could give an unqualified opinion on the Council's accounts. He informed that he may not be able to give the certificate of completion of audit.

The District Auditor referred to the Financial Statements at page 36 of the Committee's agenda in respect of outstanding issues and provided an update on the position with each one. He also referred to the Council's Property, Plant and Equipment Assets disclosed on the face of the Comprehensive Income and Expenditure Statements and informed that the latest position was that the figure had gone up from £9.5m to £15.975m. The revaluation element relating to the PFI schemes of £5.163m had been separated out and disclosed on a new line with the result that the figure had gone up.

The Council had explained that the amount of £15,975m was made up of £4.5m correctly relating to asset revaluation and £11.4m of incorrectly accounted for capital grants and the impact was that both this line and service line income were overstated (and therefore cancelled each other out, with no overall effect on the bottom line). Officers had analysed £5.4m of the incorrect balance and were planning to make an adjustment for this. This left the remaining £6m as an unadjusted error which could impact on any of the service level income lines.

The Committee was informed that Officers were providing the District Auditor with working papers to support their amendments and their explanation for the unadjusted error which he would need to review. At this stage, he was considering giving the Council an unqualified opinion with an explanatory paragraph or 'emphasis of matters' (the financial statements were affected by significant uncertainties (about which it was either not possible to, or, would not be reasonable to obtain sufficient appropriate audit evidence) and the matter was disclosed adequately).

The District Auditor reported that he still intended to give a qualified value for money conclusion and the wording of the draft had been updated and circulated to Members. He also informed that he had that day received two notices of objections to the accounts that he would need to consider before he could give the certificate of completion of the audit in the Auditor's Report. The District Auditor also reported that if he gave the opinion but needed to delay his certificate he was required to also re-assess and re-issue the opinion and value for money conclusion at the time of giving the certificate.

Consequently, Members were asked to consider how they would review and approve the final changes to the Statement of Accounts and the final Letter of Representation.

The Deputy Chief Executive/Director of Finance informed that this year, for the very first time, the accounts had been prepared in accordance with the International Financial Reporting Standard and this had been a learning curve and time consuming and the situation had been further exacerbated because a number of accountants had left the Council through voluntary severance or voluntary early retirement. He considered that having gone through the process this year staff would have the experience behind them making them better able to cope with compiling the Council's 2011/12 Accounts. Work was in hand on all matters raised and the District Auditor was confident that the statutory deadline of 30 September 2011 would be met.

Members were very concerned by what they had been told by the District Auditor and regarded it as extraordinary. The Deputy Chief Executive/Director of Finance informed that the problem, in part, was a resource issue. However, Members were aware of the same issues being raised in previous years and were not sure that it could be put down to lack of resources. However, if the issues could be addressed through resources they were prepared to do it. The Deputy Chief Executive/Director of Finance agreed to see what could be done process wise and come back to the Committee with a further report.

The Committee deliberated the serious issues raised by the District Auditor at length and it was:

RESOLVED: That

- (1) authority be delegated to the Deputy Chief Executive/Director of Finance, in consultation with the Chair, to sign off the Action Plan; and**
- (2) the Deputy Chief Executive/Director of Finance be requested to review his Department's processes and bring a report to a future meeting setting out what can be done to bring about improvements so that the Council's Account are compiled in future without the problems experienced this year.**

24 ANNUAL GOVERNANCE STATEMENT

The preparation and publication of an Annual Governance Statement (AGS) was necessary to meet the statutory requirement set out in the Accounts and Audit Regulations 2003 (amended 2006 and 2011).

This report explained the requirement for the Authority to produce the AGS declaring the degree to which it meet the Governance Framework.

Cabinet had considered the AGS at its meeting on 14 April 2011. The AGS has now been revised to provide further information. The revised statement was presented for approval and was at Appendix A to the report.

The published Annual Governance Report informed that the District Auditor planned to qualify the Value for Money conclusion drawing "attention to weakness identified in the arrangements for securing value for money in respect of the Highways and Engineering Services (HESPE) contract and other governance and internal control issues arising from the whistleblowing issues and from the recording and control of assets".

The Committee considered the issues raised during the consideration of this report and during the consideration and deliberations of the Statement of Accounts 2010/11 and the Annual Governance Report. Of particular concern to Members was that the District Auditor had identified that the Council was not able to provide information on activity and performance of the (HESPE) contract to determine whether it was receiving better value for money spent. The District Auditor had indicated that this would be the basis for a qualified conclusion in respect of the Council's Value for Money Statement. The Committee queried whether other matters of concern would be of sufficient seriousness for the District Auditor to give a qualified report.

Members asked a number of questions. They queried why the HESPE contract had been signed when the benefit to be derived from it were still unclear, some 2½ years later. They considered that system must be put in place and relevant date collected to measure value for money. The Audit Manager was in attendance at the meeting and she told Members that she was hoping to bring a report to the next meeting which would answer their questions. It was appropriate that they know exactly what they got before the contract and from the contract. Making a decision to let a contract on price alone did not demonstrate value for money. It was vital that the tender specification was water tight and there were issues over how a contract was managed.

The Committee sought clarification over the line management of the Internal Audit Section because of the criticisms levied at audit reports produced and actions not being taken. Assurances were also sought. The Deputy Chief Executive/Director of Finance informed that Internal Audit was managed by the Chief Internal Auditor and if there were any concerns about the Finance Department the Chief Internal Auditor would report directly to the Chief Executive or the Leader of the Council on them.

RESOLVED: That

- (1) the Annual Governance Statement be agreed; and**
- (2) the Director of Technical Services be requested to attend a meeting of this Committee as soon as possible to satisfy the Committee that the HESPE contract is providing value for money and that controls are in place to demonstrate value for money on future contracts.**

25 **BUDGET PROJECTIONS 2012/2015**

Following the agreement of the budget for 2011-12 at the Council meeting on 1 March 2011, a report by the Deputy Chief Executive/Director of Finance presented the projected budgets for 2012-15. This information had been presented to the Cabinet at its meeting on 1 September 2011.

RESOLVED:

That the budget projections be regularly reviewed.

26 **INTERNAL AUDIT UPDATE**

In order to assist in effective corporate governance and fulfil statutory requirements, the Internal Audit Section of the Finance Department reviewed management and service delivery arrangements within the Council as well as financial control systems. Work areas were selected for review on the basis of risks identified on the Corporate Risk Register and as assessed by Internal Audit in consultation with Chief Officers and Managers.

A report by the Chief Internal Auditor identified and evaluated the performance of the Internal Audit Section and included details of the actual work undertaken. There were no items of significance identified during the audit process that required action by the Members for this period however a number of items of note concerning ongoing audit work were included in the report.

Members raised concerns about the need to know that the findings of the Internal Audit Section were acted upon. They agreed that a system must be put in place to monitor satisfactory progress and ensure that the Committee received feedback. It was also important for Departments to have key controls in place and ensure that they followed through with actions identified to bring about necessary improvement.

RESOLVED: That

- (1) the contents of the report be noted;**
- (2) the Chair and Spokespersons will meet to discuss progress chasing and how the Committee can identify any differences and improvements in services, following the Internal Audit Section's findings and recommendations being implemented; and**
- (3) in the meantime, 1 Star Internal Audit opinions and the more significant findings and recommendations are to be reported to the Committee.**

27 **AUDIT COMMISSION - PROGRESS REPORT**

The Committee received a Progress Report dated September 2011 from the Audit Commission. This report set out the detail of ongoing work at the Council and informed of the risks arising from the audit, under International Standard on Auditing (United Kingdom and Ireland) 300. A number of key messages were drawn to Members' attention.

Members noted, in particular, that the Audit Commission continuing to work on the Public Interest Disclosure Act (PIDA). This was in respect of the Department of Adult Social Services. It was also currently following up the PIDA in respect of the Highways and Engineering Services Procurement Exercise (HESPE) and would report back to Members at a future meeting on this.

A letter from the Audit Commission's Chief Executive was circulated at the meeting. This letter updated Members on progress on the procurement exercise which involved the transfer of the work of the Audit Commission's in-house Audit Practice to the private sector, the timetable and associated developments.

RESOLVED:

That the content of the Audit Commission's Progress Report be noted along with the update on its procurement exercise to transfer its in-house Audit Practice to the private sector.

28 UPDATE ON AUDIT RECOMMENDATIONS RELATING TO LAW, HR AND ASSET MANAGEMENT

A report by the Director of Law, HR and Asset Management provided the Committee with an update, as requested at its meeting on 30 June 2011, of the actions taken and to be taken in relation to various Internal Audit and External Audit recommendations that had been reported as outstanding within his Department.

RESOLVED:

That the actions taken and to be taken in relation to various Internal Audit and External Audit recommendations that had been reported as outstanding within the Department of Law, HR and Asset Management be noted.

29 INSURANCE FUND ANNUAL REPORT

A report by the Deputy Chief Executive/Director of Finance provided the Committee with a review of the Risk and Insurance activity during 2010/11 and the plans for 2011/12. It also detailed the current status of the liability, fire and motor claims Insurance Fund and the impact of measures taken to improve the management of risk. This report had been considered by the Cabinet at its meeting on 23 June 2011.

RESOLVED:

That the transfer of £946,654 from the Insurance Fund to General Fund balances at 31 March 2011 be noted.

30 CORPORATE RISK AND INSURANCE MANAGEMENT

A report by the Deputy Chief Executive/Director of Finance detailed progress made against the objectives for corporate risk and insurance management and the anticipated developments in the coming months.

Members asked if the Council had a proper agreed Risk Management Strategy in place. The Director reported that an independent consultant had been

commissioned in the previous year, to carry out work in this area. The results of this work would be reported to the next meeting of the Cabinet, seeking its agreement and would then be reported to the next meeting of the Committee.

RESOLVED:

That the Corporate Risk and Insurance Management report be noted.

31 **FRAUD PREVENTION**

A report by the Deputy Chief Executive/Director of Finance informed that corporate fraud was a crime that was increasing in both the public and private sectors. In Local Government it was becoming more complex as a result of business transformation and the extended use of partnerships, outsourcing and new technologies. The report also covered fraud prevention in the Council and identified the roles of the various teams in pursuit of this aim.

RESOLVED:

That the content of the report be noted.

32 **REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) - QUARTERLY UPDATE**

The Regulation of Investigatory Powers Act 2000 (RIPA) governs how public bodies use surveillance methods: The Council may use covert surveillance for the purpose of preventing or detecting crime or preventing disorder. The Council's Constitution authorises Directors to designate Heads of Service and Service Managers to authorise the use of covert surveillance in accordance with the procedures prescribed by RIPA.

A report by the Director of Law, HR and Asset Management summarised the use of covert surveillance by the Council between 1 June and 1 September 2011. It was noted that within this time period seven authorisations for covert surveillance had been granted. Two authorisations had been granted to obtain evidence of serious offences of fly-tipping at sites in the Borough where this offence had become a public nuisance. One had led to a prosecution. Five authorisations had been granted to obtain evidence of alleged anti-social behaviour. One authorisation had provided evidence for possession proceedings and three authorisations were current. Anti-social behaviour had included alleged racial harassment, intimidation, the lighting of fires in derelict property, criminal damage, drunken and abusive behaviour and the playing of loud music.

The Committee was informed that on the 26 January 2011 the Home Office had published its review focusing on which security powers could be scaled back in order to restore the balance of civil liberties, including the use of RIPA by local authorities and had made the following recommendations concerning local authorities:

- Magistrate's approval should be required for local authority use of RIPA and should be in addition to the authorisation needed from a senior officer and the more general oversight by elected councillors.

- Use of RIPA to authorise directed surveillance should be confined to cases where the offence under investigation carries a maximum custodial sentence of six months or more. But because of the importance of directed surveillance in corroborating investigations into underage sales of alcohol and tobacco, the Government should not seek to apply the threshold in these cases.

The Director reported that the above proposals have been incorporated in the draft legislation and are expected to be enacted in a year's time. If the Bill becomes law, it would become more difficult to obtain evidence of anti social behaviour. Persistent acts of disorder and nuisance would not pass the threshold. Witnesses would be more reluctant to give evidence if the outcome of the case was less certain because the evidence of covert surveillance was no longer available to prove they were telling the truth. They would fear retaliation. The change in the law would protect the right to privacy of suspected perpetrators of anti-social behaviour which would be regarded as a higher priority than the right of their victims to live peacefully and without fear.

Evidence obtained by authorised cover surveillance had been used to support civil proceedings for anti-social behaviour, and in prosecutions for fly-tipping, underage sales of tobacco, and of counterfeit goods. It was a valuable resource for a local authority provided proper safeguards were in place to prevent its abuse.

RESOLVED: That

- (1) **the contents of the reported be noted; and**
- (2) **more detail be included in future reports on the possible penalties that any convictions might incur.**

33 EXEMPT INFORMATION - EXCLUSION OF MEMBERS OF THE PUBLIC

RESOLVED:

That, under section 100 (A) (4) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the following item of business on the grounds that it involves the likely disclosure of exempt information as defined by the relevant paragraphs of Part I of Schedule 12A (as amended) to that Act. The Public Interest test has been applied and favours exclusion.

34 CARE HOMES - CONTINGENCY PLANNING

A report by the Interim Director of Adult Social Services advised the Committee of the development of the strategic contingency planning process within the Department of Adult Social services; this was necessary in the event of an emergency such as an independent care home or other service provider going into administration.

RESOLVED:

That the contingency planning framework outlined in the report be noted.