

AUDIT AND RISK MANAGEMENT COMMITTEE

Wednesday, 8 October 2014

Present: Councillor J Crabtree (Chair)

Councillors RL Abbey D Elderton
J Hale M Patrick
S Kelly A Sykes
P Doughty

MARK DELAP

The Chair referred to the recent and sudden death of Mark Delap, Principal Committee Officer for this Committee and the Committee stood in silent tribute to Mark's memory.

32 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

Members were asked to consider whether they had any disclosable pecuniary interests and/or any other relevant interest in connection with any item(s) on this agenda and, if so, to declare them and state what they were.

Councillor Patrick declared a personal interest by virtue of a friendship with Mr Hobro's son.

33 BUSINESS INVESTMENT GRANT (BIG) AND INTENSIVE START UP SCHEME (ISUS) INVESTIGATIONS

The Chair in introducing this item made a statement to the Committee as follows:

"The matter being considered tonight is important and has been ongoing since June 2011. There have been a lot of allegations made and issues and concerns raised since 2011.

A number of important steps have been taken and the Committee has received a considerable volume of papers to consider and digest. The papers have been redacted to protect businesses and companies against whom the allegations and concerns are made or directed. The names of officers and other individuals have also been redacted as appropriate.

It is important that the Committee recognises the need to ensure that names of businesses and companies, and commercially sensitive information is protected and that appropriate steps are taken to protect identities.

I accept that the Committee must satisfy itself of whatever line of enquiry it considers necessary to reach an informed decision, but that cannot be at the expense of exposing the Council to a risk of legal challenge and potential liability.

I would therefore remind everyone, including anyone addressing the Committee not to name businesses, companies, individuals or officers of the Council. Any issues involving officers should be addressed to the Council as officers act on behalf of the Council.”

Councillor Kelly sought some assurance as to the method of redactions in the documents before the Committee, noting in that some instances several lines of text or whole paragraphs had been redacted.

The Head of Legal and Member Services stated that a judgment had had to be made as to the levels of redaction but assured the Committee that they had been kept to a minimum level. Sometimes a number of lines of text had had to be redacted where it was felt that through reasonable enquiry someone would be able to piece together a name or organisation.

The purpose of the report was to share the outcomes from Grant Thornton's reports into the Business Investment Grant (BIG) and Intensive Start-Up Support (ISUS) schemes with the Audit and Risk Management Committee. The report contained the initial draft reports produced by the former Chief Internal Auditor. The initial draft reports were attached at Appendices 1 and 2.

A review, requested by the Chief Executive, of the initial draft reports undertaken by the then Interim Director of Finance was attached at Appendix 3. This review recommended that an external firm of accountants or solicitors specialising in investigations for local authorities reviewed the evidence, allegations and investigations that had taken place in relation to both BIG and ISUS. Following a tender process Grant Thornton were appointed to deliver this work. The ISUS reports, appendices and documents to accompany the reports were attached at Appendix 5, with the Executive Summary at Appendix 4. The BIG report was attached at Appendix 9, with the accompanying Executive Summary attached at Appendix 10.

Grant Thornton recommended that the Council consider referring the findings of its report into ISUS to the Police. As the provider was the same for the BIG scheme, the Council made the decision to also refer the BIG report to the Police for their consideration, in the interests of openness and transparency. The Police, after reviewing both reports, subsequently wrote to the Council advising that no action was to be taken following receipt of Grant Thornton's draft reports. The Police letter was attached as Appendix 6.

Given that ISUS utilised North West Development Agency (NWDA) Funding, the ISUS report was initially referred by the Council to the Department for

Business, Innovation and Skills ('BIS') and thereafter to the Department for Communities and Local Government ('DCLG') for consideration following the abolition of the NWDA.

To assist the Committee, a further two summary reports had been produced (Appendices 7 and 8) by the Council, each of which provided a summary of events and background from the period when the matters were first raised with the Council to the point at which Grant Thornton provided its finalised reports.

The Chair invited Mr N Hobro to address the Committee for up to 15 minutes.

Mr Hobro stated that the Chief Executive had said how small an affair this is. It was two years since Mr Garry's report was suppressed and three years since he himself had raised his objections.

He had brought a Bible and was prepared to put himself on oath. He would not criticise Councillors but rather officers. He believed that Councillors had continually been misled by officers. He then referred to a former employee and his voluntary severance details, at which point, the Head of Legal and Member Services advised him not to raise unnecessary personal information and to direct his comments to the issues to be considered.

He described himself as presenting the case for the 'prosecution'. He then gave examples of what he believed were weaknesses in the 'defence'. Referring to pages 459 and 460 of the document bundle he said it was an absurd statement to say in paragraph 4.2, 'the only major finding was a £500 repeated entry in one company's accounts.' Of the six applications investigated two of the companies or successor companies had gone into liquidation. It was bound to have a positive effect giving out up to £20,000 but were the businesses appropriate ones to give to as all six had anomalies.

He suggested that it was outrageous that the former Chief Internal Auditor's imperfect report into ISUS had taken 13 months to prepare 13 pages, whereas the Grant Thornton report of 375 pages had been produced in less than five months. The Chief Internal Auditor's report of 25 pages into BIG had taken 13 months whereas the Grant Thornton report of 115 pages had again taken less than five months.

He stated that the hundreds of pages of the Grant Thornton report made recommendations which were highly neutral and suggested that why would they risk anything for their £50,000 payment when they were potentially facing a lawsuit for billions of pounds by the Tchenguiz Brothers.

Three whistleblowers had met with Grant Thornton at their offices for six hours and subsequently met with two investigators for six hours at ISUS(1)'s house. The Grant Thornton report didn't say Council officers were negligent or

incompetent. Mr Hobro handed out a paper to the Committee which questioned the integrity of officers and listed a number of suggested untruths which had appeared in the Chief Internal Auditor's report.

The Head of Legal and Member Services noted that the document referred to some companies by name but Mr Hobro stated that Lockwoods Engineering no longer existed.

Referring to page 19 and 20 of the document bundle, Mr Hobro questioned the comment, 'There was no evidence of deception...' and suggested that the numbers which were not redacted in the BIG report on page 521 were, 'completely and utterly untrue'.

At this point in the meeting, the Chair informed Mr Hobro that he had had 20 minutes and would he like to start winding up.

Mr Hobro then said to the Chair, 'I hold you in contempt'.

Referring to page 25 of the document bundle, Mr Hobro asked why the Head of Regeneration had agreed the transfer of £30,000 of assets from an insolvent company to a successor company. Referring to the former Chief Internal Auditor's report, he held up a copy of the 35 pages with numerous colour coded inserts which he stated marked misleading or untruthful statements.

Mr Hobro referred to an impact statement ISUS (1) who had lost a substantial amount of money in his business because he received the wrong advice from Council officers that his licence to occupy would be converted into a lease. He invested £35,000 into a franchise which he couldn't sell and Wirral Biz had charged him £1,444 for two and half hours work. In respect of ISUS (2) they had collected a County Court judgement bill of £22,000 because of the wrong advice received.

He also referred to ISUS (3), a 16 year old who had been advised under the Working Wirral Programme and opened a 'boutique sweet shop' in Birkenhead Market with a predicted turnover of £100,000. She had borrowed £10,000 from her aunt and lost it. A County Court judgement had been made against her for failing to file accounts promised under the Wirral Biz scheme.

Mr Hobro queried what employee of an outsourced company would tell the Council about fraud. He rebuked the officers for their loss of control, loss of the CRM databases and negligence in the BIG and ISUS affair and stated that it had taken two extra years to get to this point.

The Chief Executive then addressed the Committee. Having taken up his post with the Council in September, 2012 he stated that if investigations had found

any wrongdoing then he could say that it would not have been on 'his watch'. He was, however, convinced that the Council and officers had acted honourably. A statement was then circulated to the Committee and members of the public present from the Chief Executive which read as follows:

- "Committee has been provided with key documents relating to the ISUS and BIG schemes following various allegations being raised initially in June 2011.

Approach

- We have followed an open and transparent process and you will have noted that external auditors, Government Departments and the Police have all been engaged to ensure the issues and concerns that have been raised are scrutinised.
- This approach has afforded the complainants to speak openly and freely with these independent bodies and share with them ALL the evidence they have which they believe supports or otherwise proves their allegations.
- The concerns raised by the complainants were initially raised by one of them directly with the Director of Regeneration, who referred them to NWDA who commissioned A4E to undertake an audit into ISUS.
- A4E reported no concerns or issues with the operation of ISUS.
- The Director of Regeneration on 5 July 2011 nonetheless reported the concerns raised to the Head of Legal & Member Services who referred them to Internal Audit on 12 August 2011 for investigation.

Summary of Schemes

BIG

- The BIG fund was a capital investment programme aimed at supporting companies who, during the economic downturn, had experienced problems in securing capital investment.
- It was hoped that, through the availability of this funding from the Council, this would encourage financial and other institutions to invest in Wirral businesses.
- The funding available ranged from £4,000 to a maximum of £20,000 per project.

- Businesses prepared a BIG application with the support of Enterprise Solutions (NW) Limited t/a Wirralbiz.
- A total of 49 businesses were supported through the BIG programme.

ISUS

- On 1st April 2009 the North West Development Agency (NWDA) introduced a Regional Business Start Programme called Intensive Start-Up Support (ISUS).
- The Managing Agents for ISUS was A4E who were appointed by NWDA.
- Every Council in the North West wishing to participate in ISUS was required to accept a Managing Agent that was either the same or similar to A4E.
- Funding was made available by the NWDA and European Regional Development Fund (ERDF) to support the ISUS programme.
- The programme was aimed at new and recently created businesses and was complemented by the business start up grant scheme that was funded by the Council and an additional services contract, (namely the Complimentary Services Contract) funded through the Working Neighbourhoods Fund.
- All payments made to Wirralbiz (Enterprise Solutions Limited) could only be made if approved by NWDA's Managing Agent – A4E.
- Before ISUS, Wirral Council already had its own business start programme, offering a wider range of support. In its tender, Wirral specified that it might wish to procure these additional services because of their proven benefits to the programme.
- This additional work was awarded to Enterprise Solutions (NW) Limited in December 2009.
- The scheme ran from October 1st 2009 to December 31st 2011.
- The recorded outputs from the ISUS scheme met the initial target set by NWDA by achieving 877 new business starts (initial target was 676). This fell slightly short of Wirral Council's target of 900 new business starts.

- The scheme created 1,095 new jobs, short of the NWDA target of 1,216.
 - For both these outputs it should be noted that the dissolution of the NWDA meant that the scheme did not run its full course.
 - At the end of 12 months of the scheme, 94% of new businesses were still trading, which surpassed the 93% target set by the NWDA.
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- The concerns raised by the complainants were initially raised by one of them directly with the Director of Regeneration, who referred them to NWDA who commissioned A4E to undertake an audit into ISUS.
 - A4E reported no concerns or issues with the operation of ISUS.
 - The Director of Regeneration on 5 July 2011 nonetheless reported the concerns raised to the Head of Legal & Member Services who referred them to Internal Audit on 12 August 2011 for investigation.
 - Due to ill health the investigator was unable to complete the investigations into ISUS and BIG - she later then left the organisation.
 - The investigations were taken over by the then Chief Internal Auditor.
 - The complainants were afforded opportunities to meet both auditors.
 - The reports of the CIA into ISUS and BIG are contained within the Committee's papers.
 - These reports were reviewed by the then Interim Director of Resources and S.151 Officer, and in agreement with me, it was decided that both reports did not adequately address the concerns raised.
 - It was decided that the allegations raised by the complainants needed to be referred externally for investigation.
 - In October 2012, following a tender exercise, Grant Thornton was appointed to undertake investigations into both ISUS and BIG.
 - The complainants were afforded the opportunity to meet Grant Thornton and detail their allegations and share any evidence in support.
 - The redacted reports detailing their findings and conclusions, including Executive Summaries, of Grant Thornton are included in the

Committee papers. The redaction is necessary to protect commercially sensitive information.

Police Referral

- Given the nature of the allegations that had been made and the recommendations of Grant Thornton, the Council referred the allegations of fraud in connection with BIG to Merseyside Police.
- However, the Council took it upon itself to also refer ISUS to the Police for consideration and investigation as they considered appropriate.
- The complainants were afforded the opportunity to meet with the Police and share their concerns and any relevant evidence.
- The Police having conducted a proportionate investigation in order to identify criminal activity and to assess the viability of prosecuting anyone responsible.
- The investigation revealed “no clear evidence of criminality”.
- The Police concluded that in the absence of further evidence no action would be taken.

BIS Referral

- Whilst the Council was under no obligation to do so, it referred the allegations and concerns raised in connection with ISUS to the Department for Business, Innovation and Skills - the successor to the North West Development Agency.
- BIS should be in receipt of ALL relevant evidence, information etc relating to ISUS and therefore able to address and consider any evidential matters.
- The concerns / allegations were subsequently referred to the Government’s Cross Departmental Internal Audit Services who have been tasked with investigating the allegations.
- The complainants have had many opportunities to share and disclose any evidence that they have to BIS. The complainants have taken up those opportunities.
- A draft report is currently going through their internal quality control process. This will in due course be issued to the DCLG Managing Authority who will be responsible for making the final decision on circulation of the report.

- If and once the report is received, it will be referred to the Council's Audit and Risk management Committee for consideration.
- If the complainants or anyone else have any other information, evidence or supporting documents which they have not disclosed to the Police or BIS in connection with the allegation and concerns raised, they should do so immediately.

Officers involved in ISUS and BIG are also in attendance to explain further the operation of both schemes and answer any questions of the Committee.”

The Chief Executive expressed dismay that officers' professional roles had been traduced in social media over the last two years. He stated that officers had acted both professionally and properly on every occasion and this was now an opportunity to recognise the work of officers in helping with the creation of over 1,000 jobs. If he had been involved in the scheme he would have been proud from the start.

David Ball, Head of Regeneration and Planning, outlined for the Committee the operation of the ISUS programme which had become operational in Wirral on 1 October, 2009, including the role of A4E (appointed by the NWDA) which would check and sample up to 10 per cent of evidence sent to the Council's Finance officer.

Kevin Adderley, Strategic Director of Regeneration and Environment, reported that with regard to the 49 businesses supported through BIG, three had since gone insolvent but 619 people were, as of July, employed by the 46 companies. He outlined the process for BIG grant applications including their assessment by an independent panel prior to submission for approval by the then Director of Corporate Services and Cabinet Member for Regeneration. This process continued until October 2010 and he was proud to have been associated with the scheme.

Councillor Hale remarked that there had been similar schemes in the early 1980s through the Merseyside Development Agency when there was a great need on Merseyside and Wirral to create jobs. Local Authorities encouraged schemes of this sort and it was inherent that there would be some business failings but it was remarkable how few there had been compared with the failure rates in the 1980s and 1990s. Officers involved in the BIG and ISUS schemes seem to have done a very good job.

Turning to the role of the Committee in this matter, Councillor Hale suggested that this was to look at the allegations made, the procedure and way they were investigated rather than as a second investigation. Given the success of the two schemes he was baffled by the remarks and innuendos made in this matter. The former Head of Internal Audit's report was not lengthy but this had

been picked up by the former interim Director of Finance. He thanked Grant Thornton for their work.

Councillor Hale stated that he could not find anything in the Grant Thornton report which laid any criticism on the staff involved. With regard to BIG the issues had been fully answered and if officers still felt there were lessons to be learnt then all well and good. In respect of ISUS, Grant Thornton had some misgivings on some of the matters. He would be happy to receive a report back once the DCLG had reported back to the Council.

Councillor Hale said that he regretted that the hard work done to help people into work had been tainted in this way with the sort of language used. Mr Hobro should apologise for some of the inferences he has made because he (Councillor Hale) was happy to accept the Chief Executive's report.

Councillor Kelly commented that the Chief Executive had emphasised that he was satisfied with the honesty and integrity of officers, there was no conspiracy here but rather an issue of process. By its nature the Council was a bureaucracy and the process had broken down at various points in the system. When the Chief Executive took up his post Internal Audit was not fit for purpose. The test was whether officers had acted with honesty and integrity. With regard to ISUS Grant Thornton had raised some concerns and he drew the Committee's attention to a number of these within the document bundle where there had been a breakdown in process.

Councillor Kelly referred to the Grant Thornton recommendation suggesting the matter be referred to the Information Commissioner, 'given the possible breaches of the Data Protection Act' and also to the Council considering possible civil action. He suggested that the Council needed to accept that the way in which the Council had dealt with whistleblowers was not fit for purpose. He shared the frustration of the whistleblowers and felt that the process had let them down. There were issues to be addressed, maybe at a later date after receipt of the BIS report. He stated that Enterprise Solutions had behaved appallingly.

The Chief Executive thanked Councillor Hale for his comments and agreed that the Committee needed to ensure adequate process and checks and balances were in place. Councillor Kelly was right, there had been very damaging statements made through social media and that was why he had highlighted the integrity and honesty of officers. He remarked that he expected similar flaws would have been found if one had looked at other Authorities in such detail but lessons were being learnt.

He had also been reassured by the Annual Governance Statement and Value for Money statements and was delighted to see a massive improvement in the Council's governance. When the BIS report was received he would give the

full details of this along with how the Grant Thornton recommendations were being responded to in a report to a future meeting.

Responding to comments from the Committee both Kevin Adderley and David Ball acknowledged that there were lessons to be learnt. The ISUS contract had been one of the most complex contracts to manage.

Councillor Abbey expressed agreement with the comments made by both Councillor Hale and Kelly. He was reassured by the Chief Executive, although mistakes had been made, everything was now in the public domain. He asked that a full report be brought to the Committee giving details of the actions put in place to make sure these mistakes didn't happen again. There was also a need to ensure people were never dissuaded from whistleblowing. He stated that he trusted the Council's officers with the advice they gave to elected Members.

Councillor Doughty expressed his understanding of the frustration felt by whistleblowers; public bodies and quangos could be notoriously inefficient in the distribution of funds. All the facts were now before the Committee in a transparent and accountable manner. Officers had been diligent in carrying out their duties. He didn't think it was the place of public bodies and officers to advise how to run a small start up business, this was a difficult thing to ask officers to do. There was no evidence officers had not acted with integrity and honesty and he was happy to support the recommendations.

Responding to further questions, the Chief Executive stated that with regard to potential civil action there was a need to look carefully at the strength of any case and the Head of Legal and Member Services would be able to brief Members on this at a future meeting when the further report was brought back.

Kevin Adderley stated that the Council had provided BIS with every document they had been asked for although some Customer Relations Management information was held by Enterprise Solutions.

The Head of Legal and Member Services stated that BIS was now in possession of all the relevant information. Their report was currently going through their internal approvals process and the DCLG Monitoring body was yet to consider the report and they were unable, as yet, to share any timetable for the release of the report.

On a motion by the Chair, duly seconded, it was -

Resolved (unanimously) – That the Committee,

(1) Notes the report;

- (2) Accepts the findings reported by Grant Thornton and Merseyside Police into the allegations made in respect of BIG and ISUS grant programmes; and**
 - (3) Subject to the response of the Department for Communities and Local Government ('DCLG'), the Chief Executive shall undertake all necessary steps to address any points/issues raised by DCLG and report back to this Committee.**
 - (4) That the report from the Chief Executive referred to at (3) above (or in a separate report if necessary) shall also include the response of the Council to the Grant Thornton recommendations as set out in their reports into the ISUS and BIG programmes and how they are being and / or have been addressed.**
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