

BRIGHTON & HOVE CITY COUNCIL

AUDIT & STANDARDS COMMITTEE

4.00pm 8 JANUARY 2019

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors Miller (Chair) Gilbey (Group Spokesperson), Sykes (Group Spokesperson), Janio, Lewry, Phillips, Platts and Robins

Independent Members present: Diane Bushell and Dr David Horne

PART ONE

37 PROCEDURAL BUSINESS

a Declarations of substitutes

37.1 Councillor Janio was present as substitute for Councillor Cobb and Councillor Phillips was present as a substitute for Councillor Greenbaum.

b Declarations of interests

37.2 There were none.

c Exclusion of the press and public

37.3 In accordance with Section 100A of the Local Government Act 1972 ("the Act"), the Committee considered whether the public should be excluded from the meeting during consideration of any item of business on the grounds that it is likely in view of the business to be transacted or the nature of the proceedings, that if members of the public were present during it, there would be disclosure to them of confidential information as defined in Section 100A (3) of the Act.

37.4 **RESOLVED** - That the public were excluded from the meeting from items listed on Part 2 of the agenda.

38 MINUTES AND ACTION LOG

38.1 Councillor Sykes requested the following three amendments to the Minutes of the last meeting:

1. 27.3 SR13 should be amended to SR30

2. 27.4 should be deleted

3. 29.6 “community involvement” should be amended to: “community correspondence”

38.2 Dr Horne stated that regarding Item 27, he had not seen the report which had been promised on the implications of Brexit. The Executive Director, Finance & Resources confirmed that this report had been brought forward to the PRG committee and that he would circulate it by email after the meeting and that this should be added to the Action Log.

38.3 **RESOLVED** – That the Chair be authorised to sign the minutes of the meeting held on 18 September 2018 as a correct record, with the above three amendments.

39 CHAIR'S COMMUNICATIONS

39.1 The Chair welcomed Darren Wells from Grant Thornton - the new external auditors to the meeting. He also confirmed that Diane Bushell was stepping down from her role as Co-optee for the Audit & Standards Committee after a four year term. He praised her for all her hard work and there was a round of applause in thanks. The Chair also confirmed that he had been asked to accept a late item – a letter from Councillor Nemeth, which he was minded to consider under Item 42 with the letter included in the addendum papers.

40 CALL OVER

40.1 The following items on the agenda were reserved for discussion:

Item 44 – Strategic Risk Focus: SR30, SR23, SR21 and SR26

Item 45 – Internal Audit & Counter Fraud Progress Report 2018

Item 46 – External Audit Progress Report January 2019

Item 49 – Oversight and C-ordination of Key Council Policies and Strategies

Item 50 – Cash Collection – Company Administration Update

41 PUBLIC INVOLVEMENT

41.1 There was no public involvement.

42 MEMBER INVOLVEMENT

42.1 The Chair invited Councillor Nemeth to introduce his letter that had been accepted as a late item and was printed on page 5 of the Addendum.

42.2 Councillor Nemeth apologised for the lateness of the letter and stated that Councillors Mears and Taylor were supporting this letter which requested an urgent report to be brought to the Committee for the next meeting in March in order to get full clarification on the Council's rough sleeping figures. He explained that two different counting methods had been used in the Council's figures which had appeared to reduce. However this may have led to a misrepresentation of the numbers of rough sleeping in the City.

- 42.3 There was a short discussion on the item and Councillor Sykes stated that he was very sympathetic to this issue and confirmed that Audit & Standards Committee was a forum where figures could be checked and that it should not therefore be a significant task to verify this information. Councillor Gilbey questioned whether a new count would add to the confusion on figures and the Chair clarified that they were only requesting a verification of the figures and methods of counting – not a new survey. The Chair asked the internal auditors whether this task was clear and workable within the time frame and the Chief Internal Auditor and the Executive Director, Finance & Resources confirmed that they would discuss this.
- 42.4 **RESOLVED:** That the Council would request an urgent report that would be brought to the March Audit & Standards Committee in order to clarify the rough sleeping statistics used by the Council and the methods used to arrive at these figures.

43 ITEMS REFERRED FOR COUNCIL

- 43.1 There were no items to be referred to Full Council for information.

44 STRATEGIC RISK FOCUS: SR30, SR23, SR21 AND SR26

- 44.1 The Committee considered a report of the Executive Lead Officer, Strategy, Governance & Law that provided detail on the actions taken and future actions to manage each strategic risk.
- 44.2 The Risk Management Lead introduced the report and confirmed that the last Executive Leadership Team (ELT) meeting was on the 21st November 2018 and she highlighted three main points:
1. There were now a total of 17 strategic risks with one new risk SR34 related to Our People's Promise.
 2. SR20 - the risk related to the inability to integrate Health & Adult Social Care was now the most significant increased risk score.
 3. Following a Management Task Review across the Council ELT confirmed that there would be no change to how strategic risk was calculated. However the Risk Management Lead confirmed that now she would be facilitating and minuting all the Directorate Risk Reviews as requested by the ELT and that these would replace use of the CAMMS risk software for Directorate Risks.
- 44.3 Councillor Sykes noted the significant increase in risk scores regarding SR20 'Inability to Integrate health and adult social care at local level and deliver timely and appropriate interventions; and asked if there was an officer present who could speak on this matter.

SR20 - Geoff Raw – Chief Executive

- 44.4 The Chief Executive spoke about this risk regarding Adult Social Care referring to the "graph of doom" which had been presented three or four years previously by the Local Government Association (LGA) and had identified the long term financial pressures on the service, in dealing with the rising ageing population. He stated that he had received a provisional long term Government settlement which would be presented to Budget

Council and he also confirmed that there had been a Government consultation and a Fair Funding Review and that a Green paper on the future of social care was also expected. Meanwhile, he also confirmed that the £1.2 million budget from the local authority may initially appear to be a significant sum, but gave an example that if a patient's recovery was delayed and they might have to spend three years in care, then the extra funding would only cover the residential care required for ten people. So he confirmed that funding remained a challenging issue.

- 44.5 Councillor Robins asked for an explanation on how any risk and its impact were linked and gave an example of SR20 where the risk rose and yet the impact was the same. The Risk Management Lead answered that it was quite possible that the impact remained the same although the likelihood may increase. She also confirmed that the impact related to the previous risk score and she stated that for the next meeting she could add the previous risk score to this table to clarify this.
- 44.6 The Chief Executive gave an explanation on the difference between impact and risk by giving the background to this. He stated that dealing with the cost of Adult Social Care is currently one of the biggest challenges for a Local Authority - which meant, if this was not addressed, it would affect ongoing viability of the council. He then confirmed that 18 months ago the Council tried to engage with the Clinical Working Group on integrating health and social care this issue and confirmed that some working groups had not performed as well as they had hoped and therefore the likelihood of things being difficult had increased. He confirmed that he hoped to double the efforts on this issue over the next year in order to reduce risk.
- 44.7 Councillor Janio asked how the focus on individual risks was re-assessed throughout the year and whether they were still classed as local risks. The Chief Executive replied that there would be revisions in certain circumstances. For instance the council would take any extra national funding from a Fair Funding Review or a Green paper into account, in terms of impact on risk.

SR21 Larissa Reed – Executive Director, Neighbourhoods, Communities & Housing

- 44.8 The Executive Director, Neighbourhoods, Communities & Housing summarised this housing risk by confirming the causes and existing controls that had been put in place which included allocation polices, procurement of temporary accommodation, and bringing back the use of long term empty properties.
- 44.9 Councillor Sykes questioned firstly the risk action regarding Government meetings from 30th March 2018 – 30%, and secondly the narrative on page 9 around negotiating with developers development resources which did not appear to respond to the 80% risk given. The Executive Director, Neighbourhoods, Communities & Housing replied that regarding the first question, she had met with Homes England and had also consulted with Government as a member of ARCH and that she was putting in a bid for Government funding in order to respond to the fast pace of change. She also stated that the 30% stated was in fact closer to 60 – 70% due to the changes in timing of these different funding meetings.

- 44.10 The Head of Housing Strategy, Property & Investment stated that the Housing Committee had agreed extra Revenue resources which enabled this further funding. He also confirmed that the Council was reviewing its approach in order to give more options to purchase housing and that through the Housing and New Homes Committee they were looking at new resources to explore planning and enable existing sites.
- 44.11 Councillor Janio asked if student housing could be used to offset strategic housing targets, thus allowing family homes to be released and he also asked if the report on this would come back to Audit & Standards or the Housing and New Homes Committee. The Executive Director, Economy, Environment & Culture confirmed that student housing could be used to offset housing targets and that this could be reported back to either the Housing and New Homes Committee or Tourism Development and Culture Committee (TDC).
- 44.12 The Chair queried the types of housing risk in the 3 key questions referred to on page 26. The Executive Director, Neighbourhoods, Communities & Housing confirmed that all forms of housing were included but that the report focussed on the types of housing that the Council have control over. She confirmed that in future reports they could add additional forms of housing to the table.

SR26 – Larissa Reed - Executive Director, Neighbourhoods, Communities & Housing

- 44.13 The Executive Director, Neighbourhoods, Communities & Housing introduced this risk around strengthening the relationship with citizens in the way that the Council worked. She stated that there was a first and second line of defence and that the council was winning with this approach, citing the Communities Fund and Neighbourhood Development Plans as examples of increased involvement.
- 44.14 Councillor Sykes asked two questions, the first regarding maintaining trust with citizens as mentioned on page 16 and whether the lack of improvement in Cityclean was not a way of improving trust with citizens. Secondly, he queried whether the figure of 2,000 people who received the e-newsletter as stated on page 17 was very small and how this compared to other authorities. The Executive Director, Neighbourhoods, Communities & Housing answered that they were looking into the best way of communicating to citizens such as the Housing In magazine, which was currently produced in hard copy only that tenants were now asking for via email. She confirmed that tenants used this together with the council website and social media to gain information and as a transactional tool. She also stated that her team had worked with other councils and that this was a problem that was a struggle for all councils and that people generally received too many emails and therefore looked instead at sections of the website or social media aimed at their part of the city. Therefore they were currently listening to people and the methods of communications were constantly under review.
- 44.15 Councillor Sykes stated that the council needed to present itself in a credible way. The Executive Director, Economy, Environment & Culture replied that in relation to Cityclean, the Council was aware that significant details were going to the 22nd January ETS Committee meeting and that the council needed to be honest and focussed on a progress of this report.

- 44.16 The Chair stated that it must be difficult to control communication separately by Directorate across the whole council and asked if this risk should be owned by all the different Executive Directorates, or if not, by whom. The Executive Director, Neighbourhoods, Communities & Housing replied that each Directorate had a corporate responsibility for the customer and confirmed that although she liaised with colleagues, she still held personal responsibility for her Directorate. She also stated that every time she asked for help from her ELT colleagues, she was always given 100% support.
- 44.17 Councillor Robins stated that he appreciated the difficulty in communicating with citizens and that this conscious effort to encourage the use of the council website may be worth commenting further on. The Executive Director, Neighbourhoods, Communities & Housing confirmed that the old website was difficult to navigate and had since been changed by focussing on what customers use, such as highlighting the more specific link for Brighton & Hove Parking permits – not just the council home page. She summarised that the website communication should be simple and without fuss in order to get key, relevant messages across.
- 44.18 Councillor Gilbey asked whether the round of sessions for the Full Council Hub mentioned on page 46 would be expanded. The Executive Director, Neighbourhoods, Communities & Housing replied that the council wanted to test and challenge this in certain areas and confirmed that the council needed to identify the next key places to go with the Action Plan for their own area. She confirmed that the council needed to ensure that it had the resources ready to deliver these actions.

SR23 – Nick Hibberd - Executive Director, Economy, Environment & Culture

- 44.19 The Executive Director, Economy, Environment & Culture introduced this risk, confirming that he had previously spoken to the Committee on the subject of the high importance of the Seafront to the city. He stated that it was a key part of our transport infrastructure and would naturally deteriorate over time due to use. He confirmed that this risk originated from a Cross Party Strategic Delivery Board that took place in 2014, and whose findings concluded that significant investment was required in order to ensure that the Seafront was successful. The Executive Director, Economy, Environment & Culture highlighted that this had been worked at over the last couple of years and three lines of defence had been highlighted on page 22 of the plan. He highlighted the progression of projects in Shoreham and Black Rock, and investment in the i360 and Shelter Hall in Brighton. He also highlighted the importance of the A259 road which had been given a 120 year life and included the seafront arches along the lower promenade. The second line of defence had been the Seafront plan from 2016 established in 2009 with an investment plan that followed the detailed eastern seafront including the regeneration from the Pier to Black Rock. The Tourism Development and Culture (TD&C) Committee had been receiving updates including a major project update on this project. He also confirmed that reports had gone to the Greater Brighton Economic Board which had designated the Government funding for this. He also highlighted the recent outcome of a series of investment internal audit reviews which had just been finalised after Christmas 2018. From the review there were short recommendations on how the Council could strengthen its position on this and reflect the Annual Report. He confirmed that they would start work on these recommendations in January 2019 and that major projects were reflected in this strategic risk and that in order to ensure this, the Investment Progress group were meeting on a regular basis.

- 44.20 Councillor Janio stated that he felt the whole of the Seafront should include areas such as Hove and Portslade and the Chair added that the Marina and King Alfred's areas were not mentioned either. The Executive Director, Economy, Environment & Culture confirmed that the seafront did include the whole of the city including all of these areas and that the progress of the work was about prioritisation.
- 44.21 Councillor Sykes noted the point on page 3, Risk Action 25 there had been an issue in recruiting a Project Manager and that this was also a problem for SR21 as stated on page 12. He asked whether there was a problem with recruitment and what the Council were doing to address this. The Executive Director, Economy, Environment & Culture answered that there had been some recruitment problems, but not in this area where they had appointed three project managers and all staff were excellent. He added that they had been waiting on funding from the HLF bid, which was not successful, since there was not enough funding to go around and therefore since the December news of the unsuccessful bid, they were now progressing with crowdfunding for the Arches project. The Chair enquired whether this was the second failed bid for the Arches project and The Executive Director, Economy, Environment & Culture confirmed that it was and that the next opportunity to bid was in March 2019. He confirmed that it was a normal situation to keep applying for the HLF funding until it was successful and that they were also looking at alternative plans and opportunities for grant funding for the Arches.
- 44.22 Councillor Janio commented that the risk assessments were done well and that it was a good job in comparison with some other councils.
- 44.23 Councillor Phillips asked whether the Shelter Hall project was currently on track and The Executive Director, Economy, Environment & Culture confirmed that it was on track, despite some previously escalating costs, since they were now working to budget within the revised timescale and that the concrete structure was now underway. The Chair asked whether there should be a separate risk action regarding the delivery of the Waterfront & other major seafront projects and the Executive Director, Economy, Environment & Culture stated that they would reflect the risks within this better and that the work to start preparing the development strategies was now on track but that they would continue to monitor the situation.

SR30 – Geoff Raw, Chief Executive

- 44.24 The Chief Executive highlighted a number of issues that caused concern on this risk and confirmed that since the council were currently in an ambiguous era due to Brexit, the approach the council was taking was for a worst case scenario. He stated that, at present the Council had certain ways of dealing with these risks and that, coming up to the Budget Council meeting, members and officers were working with partners through policy committees and ELT meetings as well as two monthly private executive meetings in order to help keep the city working. He added that they also had forums such as the Brighton & Hove City Management Board to reach out to other parts of the city.
- 44.25 The Chair asked how the individual elements of this broad risk were assessed and whether the council owned that risk. The Chief Executive replied that when there had been a critical incident such as the Shoreham air crash, the Sussex Resilience forum

had taken this on, so that there was a structured approach for an emergency situation. Where there was an issue arising over a longer period of time such as seafront disrepair, the best way to deal with this was being addressed in order to ensure the system of governance. He gave the example of the current situation in France where there had been a lot of civil disorder, and in order to prevent a similar situation, then establishing good systems of governance was key. He also confirmed that Brexit was an issue and by taking advice from the Government and discussing this with partners across the region, where areas could be affected by any changes in legislation.

44.26 Councillor Gilbey asked if the Police had been involved with this process and the Chief Executive replied gave some examples of police collaboration such as the City Management Board where the Police and Ambulance services had been involved and there had been representation from the Crime Commissioner.

44.27 **RESOLVED:** That the Committee:

1. Noted the streamlining of the risk management process as agreed at ELT on 21 November 2018.
2. Noted the changes to the council's SRR.
3. Noted Appendix 1 for details of SR30; SR23; SR21; and SR26.
4. Noted Appendix 2: Information on the council's risk management process relative to Strategic Risks (SRs); and Suggested questions for Members to ask Risk Owners and officers on Strategic Risks.
5. Having considered Appendix 1 and any clarification and/or comments from the officers, the Committee did not decide to make any recommendations to any other council body.

45 INTERNAL AUDIT AND COUNTER FRAUD PROGRESS REPORT.

45.1 The Audit Manager summarised the report for the second quarter of the year up to September 2018. He stated there were ten finalised reports, half of which gave an outcome of reasonable assurance and four reports with partial assurance. The report also contained information on counter fraud activities.

45.2 Ms Bushell asked about disaster recovery and wanted reassurance that the business continuity planning would be addressed. She also asked about the date of the last internal audit and who was responsible for this. The Audit Manager replied that 2017 was the date of the last report following a previous critical business continuity audit and that there was also a recent IT disaster recovery audit containing a number of continuity actions with a March 2019 deadline. He explained that business continuity fell under the Executive Director, Neighbourhoods, Communities & Housing area. The Executive Director, Finance & Resources confirmed that although this came under the Executive Director, Neighbourhoods, Communities & Housing area, the Committee had discussed previously that the area of IT & D had not been robust and that they had now enlisted better expertise through the Orbis partnership, and therefore hopefully by March 2019

they would get some reassurance on this issue. He also confirmed that the Council had a lot of different IT systems including life support systems within Housing and Social Care and they were hopeful that this would be improved soon since the level of cyber threat due to criminal elements was increasing.

- 45.3 Ms Bushell asked about the action tracking mentioned in the report on page 73 and how this was currently being addressed and whether it was possible for the Committee to have a “deep dive” – detailed audit investigation in what is occurring with Seaside Homes. The Audit Manager replied that it was a long term agreement and since some aspects did not work for the council in financial terms on a long term basis there was a real need to resolve these issues over the next twenty years. He also confirmed that pieces of work had already been carried out on this issue over a number of years and that Housing were now reviewing these arrangements. He added that Seaside Homes was an independent company which the Council could influence through elected members, but not dictate to. He added that this was an important fix but not one that could be completed in a couple of weeks. The Executive Director, Finance & Resources confirmed that finance officers had recently been supporting the Housing department in establishing stronger links between Seaside Homes and the council. He confirmed that both sides were currently locked into the constraints of the original financial and legal arrangements set up of for 499 homes that they were set up with. He confirmed that new methods of working with the council and also with councillors were being established in order to improve the situation which was now more positive than when the audit had been completed. The Chair added that there may be historic issues which may have an impact on revenue and thus a “deep dive” or detailed audit investigation into Seaside Homes was required. Councillor Janio agreed with this, as did the Executive Director, Finance & Resources and he confirmed that this action should be added to the Action Log, but that the timing of the deep dive would need to be considered further.
- 45.4 Ms Bushell asked for assurance on the issue stated on page 75. The Chief Internal Auditor replied that there was a distinction between audit days and delivery of audits within the audit plan and that this had been a relevant point since they had experienced issues with long term sick absence and had been able to manage this better due to the more recent introduction of Orbis. He added that if these sickness absences had occurred two years ago, there would have been a severe impact on the delivery of the BHCC audit plan, as there was no resilience at that time, but now they had been able to bring resources in from across Orbis.
- 45.5 Councillor Sykes remarked on the wide cost parameters of the local delivery vehicle stated on page 66 of the report and asked about whether there had been a national policy change in this area and what lessons could be learned for new contracts that would be set up in the future. The Audit Manager replied that the costs for the LDV project had been identified as a risk and any project should normally have a risk register and that with hindsight, financial arrangements should have been set up differently. He added that there may have been optimism bias on the issue but that there now had to be a pause before going ahead in the future. On the issue of the Orbis Budget Management Audit, the Chief Internal Auditor explained that whilst the review did only conclude partial assurance, there was clear evidence that the Finance service were tackling this issue and introducing improved arrangements. It was further explained that the audit was carried out relatively early in the partnership and transition issues were

believed to be a contributing factor. The Chief Internal Audit also confirmed that a follow up review would be carried out in 2019/20 to provide assurance that appropriate actions have been taken to improve controls.

45.6 Councillor Gilbey queried the minimal assurance of the Brighton Centre and asked whether it was the database that was incorrect or just bad reporting of staff overtime. The Audit Manager replied that it was a mixture of both since the unique work shift patterns of the staff plus the paper forms and rota systems added to the problem that the database had not calculated the payments correctly and thus the whole process had not worked effectively. He confirmed that he had been given full assurance that this had all been corrected now. In answer to the Chair's query on the likelihood of a follow up, the Audit Manager confirmed there would be a follow-up report on this matter either now or in the last quarter of 2018/19 or in the new financial year 2019 / 2020.

45.7 **RESOLVED:** That the Committee noted the report.

46 EXTERNAL AUDIT PROGRESS REPORT JANUARY 2019

46.1 The Chair welcomed Darren Wells from Grant Thornton to introduce their first progress report. Mr Wells gave a brief summary of the report and stated that their purpose was to set up a timeline and summarise the council's current audit position, so that Grant Wells could become fully conversant with the Council and its financial environment. He confirmed that the outcome of the current risk assessment work would be brought to the next March 2019 meeting.

46.2 In answer to the Chair's query on which wider items applied to Brighton & Hove so far, Mr Wells replied that one issue was financial sustainability and that they were planning to introduce a financial resilience index since 15% of local authorities were currently moving towards a tipping point which was a cause for concern.

46.3 The Executive Director, Finance & Resources stated that he felt the report was a useful source of information and a good summary of how the council could progress in a unified way and he suggested that this report should be forwarded to all councillors. It was confirmed as an action that this should be circulated to all councillors and added to the Action Log.

46.4 **RESOLVED:** That the Committee noted the report.

47 STANDARDS UPDATE

47.1 **RESOLVED:** That the Committee noted the report.

48 REVIEW OF THE CODE OF CONDUCT FOR MEMBERS

48.1 **RESOLVED:** That the Committee agreed for an informally constituted cross-party group of members to generate proposed revisions to the Code of Conduct for Members for a future meeting of this Committee to consider. If those revisions were approved, they may then be recommended for full Council approval.

49 OVERSIGHT AND CO-ORDINATION OF KEY COUNCIL POLICIES AND STRATEGIES

- 49.1 The Executive Lead Officer, Strategy, Governance & Law and the Senior Policy Partnership & Scrutiny Officer introduced this report and stating that it was being presented to this Committee as part of ensuring the risk assessments and performance monitoring was including the relevant policy issues and risk required legally. They confirmed that they also had optional strategies to adhere to, whilst the other part of the work was performed by the council's legal team. They confirmed that they had created a worksheet for each directorate and were now looking at which partners the council should work with in order to ensure the relevance of each one. They confirmed that there was also a policy grid which informs and prepares the council for major events. These grids had not yet been included with the report at this early stage.
- 49.2 Councillor Sykes asked about whether the sustainability strategy followed up on that from Full Council Action Plan from 2015 – p. 11 – 17. The Senior Policy Partnership & Scrutiny Officer said they would have to check and reply on this after the meeting.
- 49.3 Councillor Janio commented on the 322 elements on the list and queried whether there were other committees that may be better place to present this to and he asked which Committee the review should be taken to. In reply, the Executive Lead Officer, Strategy, Governance & Law replied that these were required to be reviewed within each directorate and its working group, however, they often received conflicting advice and thus a mechanism was required to review this every year.
- 49.4 The Chair stated that he understood that policies that had already been allocated to Full Council required review, however he queried how often policies that were not currently being presented to Full Council should be reviewed? The Executive Lead Officer, Strategy, Governance & Law replied that when policies were initially developed, they were looked at in totals – not in isolation and that therefore now a more detailed and accurate review was required. The Senior Policy Partnership & Scrutiny Officer suggested that from the beginning of the new electoral cycle in May 2019 may be a good time to start afresh and ask the new Council what it requires at that time.
- 49.5 The Chair asked how long these plans should last, since the timescales did not seem to fit with the current political cycle. The Executive Lead Officer, Strategy, Governance & Law replied that there were no set rules and some by law had to be reviewed annually and some every four years. Councillor Janio stated that since there was already a lot of pressure on officers to produce reports for many committees, he agreed that it would be a good idea to review these policies after May 2019.
- 49.6 **RESOLVED:** That the Committee noted the report.

50 CASH COLLECTION - COMPANY ADMINISTRATION UPDATE

- 50.1 The Deputy Chief Finance Officer introduced the report which set out actions that the administrators of Coin Co International had already taken and also suggested possible options that were open to the council and other creditors in the future.
- 50.2 Councillor Sykes asked what additional safeguards had been put in place now to prevent this happening again. The Deputy Chief Finance Officer answered that a report had come to this Committee in this regard and now more regular checks were being made and a new process for assessing financial health of companies had been put in place.
- 50.3 The Chair asked Councillor Janio to propose the amendment to this Report.
- 50.4 Councillor Janio proposed the following amendment to the Recommendation:
- “That the Audit & Standards committee *request officers seek external counsel advice on the likelihood of success of any claim brought against all or any of the parties outlined in this report. This advice should be reported on (with copies of this full advice) back to the next Audit and Standards Committee, as a Part 2 item if appropriate, with a recommendation from officers as to the next steps. The instructions to Counsel should be drafted by the Executive Lead – Strategy Governance & Law following consultation with the Chair and lead members of this committee prior to them being asked for their opinion.*”**
- 50.5 Councillor Lewry seconded the amendment.
- 50.6 Councillor Janio outlined the reasons behind the amendment, stating that they were asking for external advice on this matter. He stated that the report did not mention how any money that may be received from any potential action would be distributed and he was unclear whether ownership of this money would be the council's or whether it would belong to the company. Therefore he felt that they required specialised external legal advice on this matter and had requested this in the amendment. He understood that this would have a cost implication and wanted to confirm whether it was certain that a criminal case could not be pursued against the company and also that it was possible to recover money.
- 50.7 Councillor Robins agreed that there was obviously a cost involved in legal counsel and whether this was around £10,000 or £50,000; he felt there was a high cost of chasing the money and why should the Committee ignore the legal advice given by the council on this.
- 50.8 The Chair replied that £3.2 million was the current final amount owed to the council in the report and he then explained why he felt it would be prudent to request specialist external legal investigation to get advice on £3.2 million of tax payers' money. He stated that after the company's thirty years of trading there should be an element of assurance and diligence that every possible avenue had been explored. He asked that if the council were to take advice on this matter, as stated under paragraph 4.4 on page 166, the report did not outline why “there are serious concerns” about this matter. He also asked whether Santander would have first call on any claim, and that if the council were suing them, would the council have the last refusal on any money claimed? He also queried whether some of this item which was being discussed in Part One of the meeting should be in Part Two.

- 50.09 To clarify, the Deputy Chief Finance Officer stated that the total company turnover would be far greater than £300,000 and was probably in the millions of pounds. He confirmed that administrators had already spent four years investigating claims in many countries and the UK and that they had great concerns about the success of any further recoveries or potential claims. He stated that the company's directors had already been through a court process including other claims that had already been brought but that detailed information was unknown to us, due to confidentiality. He confirmed that having settled one claim on a loan of £200k to a secured creditor, Santander, the primary secured creditor, had not fully recovered their £1.6m debt as yet. He confirmed that if the council were to bring any legal action, there may be risks for the council but any discussion of potential risks would need to be in Part Two as this may affect other unsecured creditors. Regarding taking action against the auditors, it was confirmed that the council would have to demonstrate that they had had a duty of care to the creditor (the council) but that this did not appear to exist in this case.
- 50.10 Simon Court, Senior Solicitor, Housing & Litigation team was introduced by the Deputy Chief Finance Officer as supporting him in this case. The Senior Solicitor stated that the team had recruited the assistance of a lawyer who had relevant specialist background and had the benefit of discussions with a specialist lawyer from Isadore Goldman Sachs to investigate this matter. He stated that the primary problem was the lack of information on the case. He stated that Counsel would be confronted with the same problem (i.e. lack of knowledge) and believed Counsel would require more information which we don't. It could possibly be very expensive to research and obtain the necessary information including applications to the courts. He also confirmed that the auditors in this case could not be sued for a third party debt and that the Directors of the company had already been sued for breach of duty and therefore it was unlikely that the administrators or the council would be able to take the matter any further. He confirmed that, if required, he would need to speak about the other actions stated within a Part Two discussion.
- 50.11 Councillor Platts asked about the cost of underwriting this case and how the council could be liable for this. The Deputy Chief Finance Officer replied that due to the recoveries and settlements already achieved by the administrators and the uncertainty of achieving further recoveries, they would not pursue further action without the council providing indemnity to ensure their costs would be covered. Councillor Platts continued to ask whether in the case of liquidation of a company, the accountants always received their money first. The Deputy Chief Finance Officer replied that this was correct. The Senior Solicitor, Housing & Litigation added that the council would have to appoint a Joint Liquidator since the existing administrator had unrecovered costs outstanding of £300,000 and, as stated, we would have to indemnify any proposed joint liquidator and that this would have serious cost implications. The Senior Solicitor confirmed that initial counsel fees would be £8 - £10,000.
- 50.12 Councillor Platts stated that since CCI had caused the loss of money originally, letting this go was an equally uncomfortable situation for the council.
- 50.13 Councillor Sykes stated that he understood the motivation for the Amendment but had now been dissuaded, since he was impressed by the officers' presentation and felt that even if there was a claim made, the council had to consider the high Counsel costs and also the costs in Officer time that this would create, so he did not want to support the amendment.

- 50.14 The Chair stated that he respectfully disagreed with Councillor Sykes' conclusion, since he felt the cost of £8 – £10,000 in order to chase the possibility of gaining £3.2 million in order to get clarification on this issue and find out what the next steps could be, such as possibly making a claim against the Bank, were valid.
- 50.15 Councillor Robins questioned whether it was the Chair's role to disagree with a member's opinion on this matter.
- 50.16 Councillor Janio stated that £3.2 million was a large sum for the council and queried whether Santander had pushed for their claim, as they were dealing in much larger figures. He also asked that if there was a criminal action that could be taken, then local recovery would not be part of the liquidator's fraud action. He felt it was difficult to distinguish the difference between fraud debt and criminal debt and that we would have to go to Counsel before we knew this. He also stated that residents knew that the council had lost this money and that we would be letting people down if we did not try to gain more information on this. The Executive Director, Finance & Resources answered that the real issue was that spending the money initially would not increase the validity of any findings.
- 50.17 The Senior Solicitor, Housing & Litigation stated that it was a question of balancing financial risk and that because no guarantees could be offered on this matter it was a high risk to the council. The Deputy Chief Finance Officer added that within the early updates into the investigation the National Crime Agency (NCA) had investigated the Directors but had found no criminal case to answer.
- 50.18 In answer to Councillor Robins question on whether this Committee had the power to spend this amount of money, the Legal Adviser confirmed that there was an issue since this item had not been budgeted for.
- 50.19 The Committee voted on the amendment and it was not agreed. Therefore the existing recommendations of the Report were noted.
- 50.20 **RESOLVED:** That the Committee noted the report.

51 ITEMS FOR THE NEXT MEETING

- 51.1 There were none.

52 PART TWO MINUTES

- 52.1 **RESOLVED** – That the Part Two minutes of the meeting held on 18 September 2018 were approved and signed as a correct record.

53 PART TWO PROCEEDINGS

- 53.1 **RESOLVED** – That the Part 2 Items remain exempt from disclosure from the press and public.

The meeting concluded at 6.45pm

Signed

Chair

Dated this

day of