

REPORT WEST OF ENGLAND COMBINED AUTHORITY COMMITTEE

DATE: 17th November 2022

REPORT TITLE: EXTERNAL AUDITORS VFM
REPORT ON GOVERNANCE

DIRECTOR: STEPHEN GERRARD –
MONITORING OFFICER

Purpose of Report

To consider the written recommendations of the Auditors VfM report on Governance issued by the Combined Authority's External Auditor.

Recommendation

The Combined Authority is recommended to:

1. Fully accept the findings of the report and the external auditor's recommendations.
2. Note that the written recommendations SR1, SR2 and SR3 have been identified by the external auditor as Section 24 Local Audit and Accountability Act 2014 statutory recommendations as detailed in the report.
3. Note the progress that has been made and the range of corrective actions that have already been taken to date as detailed in appendix 1.
4. Note that the financial issue detailed in the report for the employee exit payment has already been considered and accounted for in the 2021/22 draft published accounts.
5. Consider and agree the action plan detailed at appendix 1 to this report, that includes a response to each of the external auditor's recommendations.
6. Agree that the action plan be presented to both the Audit Committee and the Scrutiny & Overview Committee at their next meetings to consider and

review from their differing constitutional positions and report any feedback to the Combined Authority Committee.

7. Request that Combined Authority Committee receives a report that includes any feedback on the action plan from the Scrutiny & Overview Committee and Audit Committee and provides further detail on the delivery of the Action Plan at a future meeting.
8. Note that the West of England Combined Authority will continue to maintain an open dialogue with the external auditor, Chair of the Audit Committee, and Chair of Overview and Scrutiny Committee to keep them apprised of the progress in implementing the Action Plan.

Voting arrangements

Decision requires majority agreement of Committee Members in attendance, or their substitutes (one vote representing each Authority) including the West of England Combined Authority Mayor.

1. Background

- 1.1. This report relates to the 2020/21 External Audit of the West of England Combined Authority. During this work the external auditor (Grant Thornton) determined that some issues required further consideration. Grant Thornton's work focused on investigating those issues, the results of which are set out in their "VfM Report on Governance". The full report is attached at Appendix 2.
- 1.2. The report contains 9 recommendations, of which 3 are identified as statutory recommendations. Statutory recommendations are written recommendations to the Combined Authority made by the Auditor under section 24 (Schedule 7) of the Local Audit and Accountability Act 2014. A recommendation under Schedule 7 requires the Combined Authority to discuss and respond publicly to the report. This discussion and response is taking place at this Meeting, which is being held within one month of receiving the report and written recommendations as required by the Act.
- 1.3. The Combined Authority must decide if the recommendations are accepted and what, if any actions will be taken in response to them.
- 1.4. The Action Plan at appendix 1 sets out the actions that the Combined Authority proposes to take in response to all the recommendations made in the report, including the 3 statutory recommendations.

2. Issues for Consideration

- 2.1. The Auditor's recommendations centre around the following themes:
 - a) The current state of professional relationships between the Combined Authority Mayor and the representatives of the other members of the Combined Authority, and between Chief Officers.

- b) The future management structure of the Combined Authority.
- c) The role of statutory officers in circumstances when a potential conflict is identified.
- d) The circumstances when it is acceptable to seek legal advice without reference to the Monitoring Officer.

2.2. The issues raised in the auditor's report relate to a period of time over 14 months ago when the Combined Authority was adjusting to the election of a new Mayor and dealing with the additional challenge of continued Covid restrictions and remote working. Many of these issues were recognised by the Combined Authority at the time and action has been taken to address them as outlined in the Action Plan attached at Appendix 1.

2.3. The report concludes that the day-to-day business of the Combined Authority has continued effectively, that significant new funding has been brought into the region and the Combined Authority has continued to deliver benefit to residents.

2.4. Over the last 12 months the Combined Authority has secured £910m additional funding for the region; supported 13,000 residents with training and careers support and supported 1,373 businesses through the Growth Hub. Specific successes have included:

- a) £540m through the City Region Sustainable Transport Settlement the highest amount of funding per head awarded in England
- b) £95m from Homes England for the Bristol Temple Quarter Regeneration Programme, which will deliver some 2,400 new homes alongside a significant upgrade to Bristol Temple Meads Station.
- c) Passing the Gateway Review for the Investment Fund, unlocking the next tranche of £150m for the 5-year period to 2026.
- d) Combined Committee unanimous investment decisions in respect of The North Fringe, Quantum Technology and Hydrogen Sustainable Transport in driving forward matters of regional, local and national importance
- e) regional Climate and Ecological Strategy and Action Plan including a Green Recovery Fund of up to £50m to support projects including on green energy and nature recovery / pollinator support.
- f) regional Cultural Action Plan and agreement to £1m of investment in the sector which has already levered in an additional £1.5m from DCMS through Create Growth Programme – only 1 of 6 in country

2.5 The Action Plan sets out how the Combined Authority proposes to build on the action already underway to address the points highlighted by the Audit

report. Committee members are asked to consider and agree the Action Plan which includes a response to each of the external auditor's recommendations.

2.6 Overall accountability for the delivery of the Action Plan will rest with the Combined Authority Committee. Following this Combined Authority Meeting, the Action Plan will be submitted to both the Scrutiny and Overview Committee and Audit Committee to review it. Those Committees will submit their feedback in the form of a report to the Committee at a subsequent meeting.

3. Comments from the Monitoring Officer

3.1 Section 5 of the Local Government and Housing Act 1989 provides that it is the responsibility of the Monitoring officer to report formally to the Authority on any proposal, decision or omission by the council which has given rise to, or is likely to, or would give rise to the contravention of any enactment or rule of law or statutory code of practice.

3.2 As the Monitoring officer I do not feel that the circumstances trigger my duties under a Section 5. While there was a difference of legal opinion, an acceptable approach was agreed.

3.3 I refer to the observations of the Auditor at various points in the report, including:

- p. 23 "It was therefore reasonable from the Chief Executives perspective to believe that involving those individuals in a discussion on severance terms for a senior colleague could unfairly influence any future negotiations about their own departure and could result in a conflict of interest."
- "We are satisfied that it was reasonable for the Chief Executive to believe there was a potential conflict of interest that needed to be managed relating to both statutory officers."
- P 24 "We accept that the Chief Executive was acting in good faith and had taken significant action to ensure the legality of the process."
- P27 "We have reviewed the initial report developed by HR, and the legal advice that was sought the assumptions that had been made. These steps were comprehensive, professional and reasonable."

I am further supported in that view in the light of the fact the Auditor did not otherwise intervene, issued no advisory notice or seek judicial review.

4. Comments from the Chief Finance Officer (S73 Officer)

4.1. Having considered the matter, I have concluded there is no requirement to issue a section 114 (2) report.

4.2. The Local Government Finance Act, places certain responsibilities on the CFO.

4.3. Section 114 (2) requires that the chief finance officer (S73 officer) to “make a report under this section if it appears to him that the authority, a committee of the authority, a person holding any office or employment under the authority:

- a) has made or is about to make a decision which involves or would involve the authority incurring expenditure, which is unlawful,
- b) has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the authority, or
- c) is about to enter an item of account the entry of which is unlawful”.
- d) Section 114 (2) requires consultation with the Head of Paid Service and the Monitoring Officer (MO) which has been undertaken
- e) Section 114 (2a) also obliges the S73 officer to send a copy of the report to the Combined Authority’s auditors and to every member of the authority.

4.4. The Chief Executive received advice from Bevan Brittan that stated in relation to the lawfulness of the termination payment of £58,784 made up of £36,950 settlement payment plus £21,834 pay in lieu of notice that draws the conclusion that a reasonable argument can be made to support the position that the Chief Executive had authority to agree the settlement.

4.5. Indeed, the External Auditors legal advice from Bates Wells was “Whilst the matter (of whether the Employments and Appointments Committee or the Chief Executive) (having the authority) is arguable either way, given a court would have to come down one side or other on the issue, we take the view that the better interpretation is that the Committee had the appropriate delegated authority – the outcome of a court action would however be uncertain. As such, we have recommended the Authority approve (ratify) the severance arrangements and payment. Given the lack of clarity, and the fact that the Chief Executive obtained legal advice supporting her position, we do not suggest that an advisory notice would be advisable in this situation”

4.6. In coming to my view, I have also been minded to also consider the fact that:

- a) The External Auditors report concludes in section 5 that the severance payment was approved at Committee and concerns over its lawfulness were largely mitigated.

- b) The Monitoring Officer does not feel the need to issue a Section 5 report.
- c) The Combined Authority has already recognised the full cost of the exit payment in the published draft accounts 2021/22 .

5. STATUTORY RESPONSE TO THE REPORT IN THE PUBLIC INTEREST

- 5.1. Written Recommendations are issued under the provisions of the Local Audit and Accountability Act 2014. The Act sets out a number of statutory requirements that a Local Authority must comply with following the publication of the Report.
- 5.2. The Combined Authority is required under the Act to consider the recommendations of the Report and decide what action to take in response in public at a dedicated Combined Authority meeting held within one month from publication.

6. Publicising the Report

- 6.1. Following receipt of the Report, the Combined Authority is required to ensure that it is brought to the attention of public, elected members, its partner organisations and stakeholders.
- 6.2. The report is publicised on the homepage of the Combined Authority's website, which provides a link to the detailed dedicated webpage.
- 6.3. The Combined Authority has also proactively contacted partner organisations to share the report such as the Local Enterprise Partnership and the Combined Authority's regulators.
- 6.4. Full copies of the report were sent to the relevant Members of Parliament.
- 6.5. The report was sent to all members of the Combined Authority's Audit Committee, including independent Members.
- 6.6. All Combined Authority staff have been briefed.
- 6.7. The external auditor has issued the Secretary of State for Levelling Up, Housing and Communities with a copy of the report.

7. Responding to the Report

- 7.1. Within a period of one month beginning with the day upon which the Combined Authority received the report, the Combined Authority is required to hold a Combined Authority Meeting (this meeting) to consider the report.

7.2. In considering this report, Members of the Combined Authority are asked to vote on the recommendations, response and action plan or amend these as they see fit.

7.3. The notice includes all relevant details of this meeting to comply with the Local Audit and Accountability Act 2014 requirements. In addition, the agenda and supporting papers for this meeting have been published to comply with the Local Government Act 1972 requirements.

7.4. Following the Combined Authority Meeting, the Combined Authority is required to publish a public notice, approved by the external auditor, that summarises the outcome of the meeting. That notice will be published in both the local press and on the Combined Authority's dedicated webpage following this meeting.

7.5. In considering the Report and the proposed action plan, Members may also wish to reflect upon their personal responsibilities and the Combined Authority's constitutional and legal responsibilities, under two further areas. These are the Seven Principles of Public Life, better known as the Nolan Principles, and the Combined Authority's "best value" duty under the Local Government Act 1999 – details of which can be read here:
<https://www.gov.uk/government/publications/revised-best-value-statutory-guidance>.

7.6. The Local Government Act 1999 introduced the duty of "best value" for all local authorities. This duty requires Combined Authorities to "make arrangements to secure continuous improvement in the way in which its functions are exercised having a regard to a combination of economy, efficiency and effectiveness".

8. Finance Implications, including economic impact assessment where appropriate:

8.1. the costs of the exit payment of £58,784 have been fully accounted for and disclosed in the draft 2021/22 published accounts.

8.2. There will be costs associated with the implementation of the recommendations detailed within the report and for the production of the external auditor's report.

8.3. The costs of responding to this report are yet to be finalised and an update regarding any associated costs will be presented to a future meeting of Cabinet for consideration and approval if necessary.

8.4. The External Auditor has been asked to and is yet to provide at the time of

writing this report, the fees that will be charged to the West of England Combined Authority either as incurred to date or a forecast total cost through to completion, The External Auditor is gathering this information together.

Richard Ennis – Interim Director of Investment and Corporate Services

9. Legal Implications:

9.1. This report to Combined Authority sets out the statutory background to the auditor's report and the obligations falling on the Combined Authority as a consequence. In particular, the Combined Authority is reminded that it has a duty to consider and respond to the report as detailed in section 3 of this report.

9.2. The written recommendations are issued under the provisions of the Local Audit and Accountability Act 2014 ("the Act"). The Combined Authority must comply with the requirements of the Act in responding to the report.

9.3. In particular Schedule 7 paragraph 4 on the Act provides that as soon as reasonably practicable after receiving the report the Combined Authority must:

- a) publish the report and a notice identifying the subject matter of the report on the Combined Authority's website.
- b) permit the public to inspect the report at all reasonable times without payment, make a copy of it, or any part of it, and be supplied with a copy of it, or any part of it, on payment of a reasonable sum.
- c) supply a copy of the report to each of its members and its auditor panel (if it has one).

9.4. Paragraph 5 of Schedule 7 further requires the Combined Authority to consider the report or recommendation(s) at a meeting held before the end of the period of one month beginning with the day on which it was sent to the Combined Authority. At that meeting the Combined Authority must decide:

- a) whether the report requires the Combined Authority to take any action;
or
- b) whether the recommendation(s) is/are to be accepted; and
- c) what if any action to take in response to the report or recommendation(s).

9.5. The recommendations and proposed actions by the Combined Authority are set out in the body of this report and accompanying Action Plan.

9.6. Paragraph 9 of Schedule 7 goes on to provide that information contained in the Report is not to be treated as exempt information under the Local Government Act 1972.

9.7. After considering the Report and its response to it, the Combined Authority must notify the external auditor of its decisions and publish a notice containing a summary of those decisions which has been approved by the external auditor.

9.8. The recommendations seek to comply with statutory requirements following the issue of written recommendations by the Combined Authority's external auditors. The actions recommended also seek to improve the governance of the Combined Authority in line with the Combined Authority's Constitution and promote the Combined Authority's statutory duty of best value and continuous improvement.

Stephen Gerrard, Interim Director of Legal Services & Monitoring Officer

10. Human Resources Implications

10.1. As noted in the report, the Audit recommendations have been accepted, and an action plan for addressing the recommendations is attached as an Appendix.

10.2. In respect of the recommendation to review the leadership structure, as noted in the action plan, the structure of the Authority is regularly reviewed, and is currently functioning well. Should any changes be made to the structure in the future, these will be conducted in full accordance with HR policy and best practice.

10.3. In respect of the recommendation to ensure that regular performance reviews of senior staff are carried out and are documented fully, this has already been happening and will continue to take place, as identified within the Action Plan.

10.4. In respect of the Auditor's comment on undertaking staff surveys, regular surveys already take place, with the most recent one (conducted in October 2022) demonstrating positive results for the Combined Authority. Surveys will continue to be conducted on a regular basis, with appropriate actions taken where necessary.

Alex Holly, Head of People and Assets

Appendices:

Appendix 1 – Action Plan in response to Audit

Appendix 2 Grant Thornton's "VfM Report on Governance"

West of England Combined Authority Contact:

| Report Author | Contact Details |
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| S Gerrard | Director Law and Governance |

Appendix 1 Action Plan in response to Audit

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| SR1 | <p>The Mayor and the UA leaders have participated in a mediation process led by an agreed regional chair. This is undertaken under agreed confidentiality to allow a full and frank exchange between the participants. This work is ongoing and the leaders and the Mayor have all been engaged.</p> <p>The results of these sessions will culminate in a number of workshops to build and consolidate the work.</p> <p>It is anticipated that one of the outcomes of the workshops will be a protocol for future working. It is proposed that all the Chief Executives will continue to engage in this work at the appropriate time, including developing regional priorities and strategy.</p> |
| SR2 | <p>Consultation and engagement processes have developed over the last year, particularly since the lifting of the last of the Covid restrictions. The Mayor now meets on a regular basis one to one with the leaders of the UAs. The CA Ch.Ex meets with her UA counterparts one-to-one on a similar basis. In addition, there are monthly meetings of all the CEOs from the CA and the UAs. There is engagement with the respective service areas in the CA and UAs and agreement on proposals are reached where possible at an operational level before reference to CEOs or members.</p> <p>An officer delivery board has been established and meets twice a month to review progress on agreed projects and to provide challenge and support to project to ensure timely delivery.</p> |
| SR3 | <p>A protocol has been prepared and shared earlier this year with the Auditor and Chair of Audit, which has been designed to manage the rare cases of conflict of interest by statutory officers. This will be posted on the council's website. This is designed to reflect the unusual circumstances that in a small authority there may not always be another employee able to discharge the role of deputy.</p> |
| KR1 | <p>The management structure is kept under constant review. The current management team has been substantially refreshed since late 2021 and is functioning well as can be seen from the CA's achievements over the last 12 months. Following the work on regional priorities and objectives a revised management structure, if appropriate, will considered and brought to the CA Committee in the new year.</p> |
| KR2 | <p>The current monitoring officer has agreed arrangements to ensure that officers engaging legal support do it within an agreed framework and external firms understand their obligations to the CA, including when to escalate issues directly to the Monitoring Officer.</p> |
| IR1 | See SR1 |
| IR2 | <p>Recognising that any constitutional changes require the unanimous support of the Mayor and there UA representatives, proposals for possible changes will be consulted upon with a view to bring acceptable proposals to a meeting in the new year.</p> |
| IR3 | <p>These have been recorded this year and will continue to be so. The requirement for continuing professional development and wider engagement with the professional community will continue to be a requirement for all officers and will continue to form part of any performance review.</p> |
| IR4 | Agreed as currently appropriate and actioned |