

West of England Combined Authority

VfM Report on Governance

FINAL

November 2022



Contents



We are required under Section 20(1)(c) of the Local Audit and Accountability Act 2014 to satisfy ourselves that the Combined Authority has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. The Code of Audit Practice issued by the National Audit Office (NAO) requires us to report to you our commentary relating to proper arrangements.

We report if significant matters have come to our attention. We are not required to consider, nor have we considered, whether all aspects of the Combined Authority's arrangements for securing economy, efficiency and effectiveness in its use of resources are operating effectively.



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Appendix A – Explanatory Note on Recommendations

The contents of this report relate only to those matters which came to our attention during the conduct of our normal audit procedures which are designed for the purpose of completing our work under the NAO Code and related guidance. Our audit is not designed to test all arrangements in respect of value for money. However, where, as part of our testing, we identify significant weaknesses, we will report these to you. In consequence, our work cannot be relied upon to disclose all irregularities, or to include all possible improvements in arrangements that a more extensive special examination might identify. We do not accept any responsibility for any loss occasioned to any third party acting, or refraining from acting on the basis of the content of this report, as this report was not prepared for, nor intended for, any other purpose.

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Executive Summary



Introduction

Introduction

This report relates to the 2020/21 External Audit of the West of England Combined Authority (the Combined Authority). It provides a commentary on the results of the additional audit procedures carried out to support our assessment of Value for Money (VfM). This should be read in conjunction with our Annual Auditor's Report.

For the avoidance of doubt, reference to the “Monitoring Officer” and the “Chief Finance Officer” referred to in this report, exclusively refer to former incumbents who have since left the Combined Authority. Both posts have now been filled in a temporary capacity and the current incumbents are not referred to in this report from this point.

Background and objective of this review

In July 2021, a serving Director on the senior management team entered into discussion with the Chief Executive of the West of England Combined Authority about their future. The opportunity was taken to negotiate an exit in advance of a management restructure that the Chief Executive was starting to consider at this stage but had not yet developed. A series of options were considered and developed by the Human Resources team, including resignation and serve of notice, redundancy and a mutually agreed severance settlement. In due course, a mutually agreed severance settlement was agreed upon as the best option.

Potential conflicts of interest were identified by the Chief Executive relating to the Chief Finance Officer and the Monitoring Officer. This arose from the Chief Executive's belief that the officers might themselves be exiting the organisation in the near future, either of their own volition (Chief Finance Officer) or as a result of future restructuring decisions (Monitoring Officer). These conflicts of interest caused the Chief Executive to prevent their involvement in the severance process for the Director. This decision severely limited the Chief Finance Officer and Monitoring Officer's ability to make sure their statutory duties were properly discharged in regard to the severance settlement, including the need to ensure that the correct process was being followed, which is necessary and important even if the individuals are conflicted. This caused both officers significant concern.

At West of England Combined Authority's Audit Committee on 9 December 2021, we advised the Committee of work undertaken as part of the statutory external audit regarding the proposed severance payment to the Director of Infrastructure.

Our updated Audit Findings Report also informed the Committee:

- that we had required further disclosure in the draft accounts and Annual Governance Statement of the current strained relationships within the West of England; and
- that we had designated a risk of significant Value for Money weakness impacting on the Combined Authority's governance arrangements, due to these strained relationships.

We informed the Committee that this risk would now be considered and reported against in our forthcoming Auditor's Annual Report of the Combined Authority's overall arrangements for delivering Value for Money. This work would also assess and comment on the findings from the work we had previously completed on the director severance issue.

Since the Audit Committee meeting, the severance matter was addressed at the extraordinary Combined Authority Committee of 17 December 2021. **The minutes of this meeting reflect a degree of dissatisfaction from some members and, particularly, the fact that, supported by external legal advice, the Monitoring Officer had also communicated significant concerns at the meeting.**

The Audit Committee Chair was also in attendance at the Combined Authority Committee of 17 December 2021 and made a statement to the Committee highlighting a number of their concerns.

On 3rd February 2022 we briefed the Audit Committee Chair and Audit Committee to confirm that we would undertake this review, within the context of the statutory audit duties, set out in the Local Audit Accountability Act 2014 and the National Audit Office's (NAO) Code of Audit Practice. Furthermore, given the nature and potential significance of the issues, we also considered it important that this briefing was extended to a wider group of key stakeholders, including the Chief Executive, Chief Finance Officer and the Combined Authority Committee's membership of the unitary authority Leaders and Mayor.



The Scope of our review

To assist the understanding of our further work regarding the identified risk of significant VfM weakness, we established six areas of focus to enable us to target and report our work on the issues raised. These fall into two broad themes: General governance issues and Issues specific to the severance matter:

Area of Focus	Areas identified for Review
Governance - General governance issues	1 Partner Relationships
	2 The Constitution
	3 Turnover of Senior Staff
Governance - Issues specific to the Severance Matter	4 Conflicts of interest regarding severance
	5 The approach to obtaining legal advice
	6 The rationale for the award of severance



Summary of findings by theme

Area of Focus	Audit consideration	Key Findings
Wider governance		
1. Partner Relationships		
<p>Despite recent challenges around relationships and engagement between the Combined Authority and its constituent councils, plans are now in train to address difficulties and move forward in a constructive way through an ongoing independent review. This area is a key area of governance within the NAO's audit expectations.</p> <p>The planned review of the terms of reference for the Joint Committee could have implications for funding arrangements between the Combined Authority and the Unitary Authorities</p>	<p>Review the partnership governance arrangements between the Combined Authority and councils and progress against the plans to address current difficulties, following the ongoing review</p> <p>Consider the scope and implications of the planned review of the Joint Committee terms of reference.</p>	<p>Significant Weakness Requiring Statutory Recommendations [Recommendations SR1 and SR2].</p> <p>The poor state of professional relationships we found during the period of this review between the Combined Authority Mayor and the representatives of the other members of the Combined Authority, and between some Chief Officers, reflect a significant weakness in partnership governance. We are concerned that the ongoing poor state of relationships could start to limit the ability to work together to optimise strategic opportunities in future. External perceptions of disfunction could also begin to affect the reputation of the Combined Authority with central government and other partners, ultimately affecting the ability to raise further funding and undermining public confidence. This becomes increasingly important in the context of increasing competition for devolved funding from other devolved regions and new county deals, and government's need to prioritise devolution decisions and activity.</p> <p>In addition to Statutory Recommendations SR1 and SR2 we have also made one Improvement Recommendation (IR1).</p>
2. The Constitution		
<p>The Combined Authority's constitution proved difficult to apply when considering the severance matter and was acknowledged by all sides (including legal advisors) as being in need of review and clarification.</p>	<p>Specific identification of the key problematic areas and assessment of the Combined Authority's proposed response in conducting its planned review.</p>	<p>Area for Improvement (Not a Significant Weakness)</p> <p>We have noted a number of specific areas where the Combined Authority Constitution would benefit from revision (see detailed findings section 2). In the context of the relationship challenges, strengthening of the Constitution beyond fulfilling the basic requirements will help to mitigate issues arising in future. We note that amendments to the Constitution will require unanimous agreement by the Combined Authority Members.</p> <p>We have made one Improvement Recommendation (IR2).</p>
3. Turnover of senior staff		
<p>In recent months, the Combined Authority has lost, or is about to lose, the services of an experienced Director of Infrastructure, its Monitoring Officer, its Chief Finance Officer and a number of other senior officers. Given the expansion of its role and scale, losing continuity of this number of senior and statutory officers at this time could prove highly problematic for the proper administration of the Combined Authority and its ability to deliver its objectives.</p>	<p>Identification and commentary on whether there are any underlying issues contributing to the loss of key staff.</p> <p>Assessment of future plans to replace key roles with appropriately experienced individuals.</p>	<p>Significant Weakness Requiring Key Recommendation (KR1)</p> <p>Following the Combined Authority Committee's refusal to endorse the proposed management restructure, there is a pressing need to finalise the future management structure, with the approval of the Combined Authority Committee, to provide clarity and enable the recruitment of permanent officers to key roles to support the strategy. At present this reflects a significant weakness in arrangements.</p> <p>We did not identify any general issues with management culture contributing to the loss of key staff. We are satisfied that key roles have been backfilled in the short term to enable operations to continue to function.</p> <p>We have made one Key Recommendation (KR1).</p>

Area of Focus	Audit consideration	Key Findings
Severance issue		
<p>4. Conflicts of interest regarding severance</p> <p>On the basis that they felt there were conflicts in place, the Chief Executive did not initially involve the two statutory officers (Monitoring Officer and Chief Finance Officer) when agreeing severance with the previous Director of Infrastructure. Because of this, the Chief Executive commissioned external legal advice to support their decision making.</p> <p>The former Monitoring Officer considered this was not effective working.</p>	<p>Commentary on the matter of statutory officer conflicts and the engagement of external legal advice.</p> <p>Assess the steps being taken to ensure that the Combined Authority has procedures to protect the interests of statutory officers and to remove any uncertainty about responsibility.</p>	<p>Significant Weakness Requiring Statutory Recommendation (SR3).</p> <p>We are satisfied that it was reasonable for the Chief Executive to have identified potential conflicts of interest on this matter in regard to both the Monitoring Officer and the Chief Finance Officer. We accept that the Chief Executive was acting in good faith and had taken significant action to ensure the legality of the process, however the third party advice that was obtained did not remove the need for the role of the all statutory officers to be effectively discharged. The route chosen to manage the potential conflicts demonstrates the need to be more vigilant in ensuring the complementary roles of the statutory officers in protecting the Authority from risk. Appropriate action was not taken to ensure that the statutory duties of the Monitoring Officer and Chief Finance Officer roles were appropriately discharged by the incumbent officers or through alternative arrangements. In addition, we note that the Chief Executive was not well served by the Combined Authority's Constitution which provided no guidance on how conflicts of interest between statutory officers should be managed or sufficient clarity on the use of delegated powers (See section 2 of this report). Significant reliance therefore was placed on the third party legal advisors to interpret the intention of the Constitution.</p> <p>In our view, the Chief Executive's decision not to inform the statutory officers of the severance transaction at an earlier stage and the failure to manage the potential conflict effectively, was a significant weakness that placed the Combined Authority at the potential risk of committing to an unlawful payment. The issue of the risk of unlawful payment is explored further in Section 5. The specific roles of the three statutory officers are key checks and balances that the legislation puts in place to ensure that major financial and operational decisions are lawful and in the best interests of the Combined Authority. It is important to note that these also serve to protect any single statutory officer from inadvertently exposing the Combined Authority to risk. In this context and the absence of adequate alternative arrangements to manage any conflict of interest, it was not unreasonable for the Monitoring Officer to resort to intervention in the process.</p> <p>We have made one Statutory Recommendation (SR3).</p>
<p>5. The approach to obtaining legal advice</p> <p>Conflicting legal advice was obtained by different officers at different points in the process.</p>	<p>To assess how the Combined Authority managed that conflict and in particular what steps are being taken to ensure that future differences are handled in an open manner.</p>	<p>Significant Weakness Requiring Key Recommendation (KR2)</p> <p>In our view, the role of Monitoring Officer as Head of Legal Services is particularly important when it comes to commissioning and interpreting third party legal advice. Advice is usually sought based on very specific terms of reference and highly reliant on the information supplied to the advisor. The Monitoring Officer is party to the wider context and can exercise professional experience to ensure that the right advice is sought and the right information given. It is important to recognise that it is not uncommon for legal advisors to differ in their judgements, especially where legislation or constitutional clauses are not clear and judgement has to be made. In practice, legal advice is often sought specifically because the legal position requires interpretation and judgement. The difficulty in reaching a consensus on the lawfulness of the severance transaction that arose in this case, highlights the risk that arises when legal advice is sought independently of the Monitoring Officer.</p> <p>By bypassing the Monitoring Officer in this case, and failing to make alternative provision for the discharge of the Monitoring Officer's responsibilities, the statutory protections provided by the Monitoring Officer's role were significantly weakened.</p> <p>In addition to one Key Recommendation (KR2), we have also made two Improvement Recommendations (IR3 and IR4).</p>

Area of Focus	Audit consideration	Key Findings
Severance issue		
<p>6. The rationale for the award of severance</p> <p>Clarity is required on the rationale for proposing the severance payment and how the payment and its terms was constructed.</p>	<p>Assessment of the rationale for recommending the severance and supporting the amounts and arrangements proposed.</p>	<p>Significant Weakness Requiring Statutory Recommendation (SR3)</p> <p>It was the Chief Finance Officer’s statutory duty to undertake an assessment of value for money to protect the Combined Authority from the risk of overpayment in regard to the Director of Infrastructure’s exit package. If there was a conflict of interest, this duty should have been passed to a nominated deputy. Without this assurance, it is understandable that Combined Authority members would be unsure as to whether VfM had been achieved and therefore felt it necessary to abstain from the vote when the matter was brought to the Combined Authority Board in December 2022.</p> <p>In our view, due to a potential conflict of interest, the Chief Finance Officer was not able to discharge their statutory duty to ensure VfM. The deputy CFO was consulted in some specific areas, for example, in regard to affordability within the budget. However, no satisfactory alternative arrangement was made to enable the broad range of the CFO’s statutory function to be formally exercised through the deputy or any other means, prior to the severance package being agreed with the Director of Infrastructure. This reflects a significant weakness in arrangements.</p> <p>The Director of Infrastructure approached the Chief Executive regarding an exit from the organisation before firm plans had been developed for any management restructure, however it is reasonable to accept that a significant change to the requirements of the role was already being considered by the Chief Executive at this point and may have become apparent to the Director. This is also not incompatible with the Chief Executive’s later assertions that there were skills and experience aspects in relation to the current needs of the Combined Authority for that role beyond the original recruitment criteria. A number of points had to be considered, including the length of time and cost of different options to enable the exit of the Director. There was therefore a reasonable rationale for entering into discussion over options for the mode of exit. We have reviewed the initial options report developed by HR, and the legal advice that was sought to support the assumptions that had been made. Setting aside the weaknesses identified under key areas of focus 4 and 5, these steps were otherwise comprehensive, professional and reasonable.</p> <p>While it may be possible to develop counter arguments to the evaluation of a severance package as the preferred option, we are satisfied that the rationale that was followed is reasonable. On the issue of whether the best value was achieved from this decision, we take the view that there is doubt here, particularly given that there is no documented evidence of performance or capability issues on the part of the Director. In addition, we note that the proposed restructuring of the role was eventually rejected by the Combined Authority Committee and the current role has continued to be performed on a temporary basis by a nominated deputy. However, this risk is sufficiently mitigated due to the relatively low value of the settlement in comparison to the cost and operational benefits of the alternative options.</p> <p>We have incorporated this Significant Weakness into our third Statutory Recommendations (SR3).</p>



Summary of findings and recommendations

Our overall Conclusion

SIGNIFICANT WEAKNESS IN GOVERNANCE ARRANGEMENTS

We have completed our review and have identified five significant weaknesses in the Combined Authority's arrangements to secure value for money in its use of resources which all fall under the VfM theme of Governance. The presence of such a large number of significant governance weakness is a major concern. Our summary findings on each of the six Areas of Focus defined in our scope are set out on pages 5 to 7. In order to address these weaknesses we have raised a number of recommendations.

We have provided an explanatory note on the various types of audit recommendation included in this report in Appendix A.

Statutory recommendations

We have raised three Statutory Recommendations which must be enacted as a matter of urgent priority by the West of England Combined Authority. These Statutory Recommendations reflect the discharging of the auditor's statutory powers 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.

The statutory recommendations are as follows:

1. The Mayor and members of the Combined Authority represented by the Council Leaders, must commit to improving their working relationship and demonstrate that significant progress has been made within a reasonable timeframe, to be determined by the Mayor and Combined Authority. This should include a role for independent mediation and the constructive consideration of advice arising from this process (SR1).
2. A formal protocol should be agreed between member organisations within the Combined Authority to commit to consultation on key proposals, that they should define, at an earlier stage. Combined Authority members should engage effectively in this process, to help mitigate points of contention before they are published and debated in public. This should include a commitment to deliver proposals on a reasonable timetable (SR2).
3. In future, where there is a potential conflict of interest affecting individual statutory officers, adequate steps must be taken to ensure the statutory duties of these officers are effectively discharged (SR3).

Further detail on these statutory recommendations and the Combined Authority's response are provided on pages 10 to 12.

Key recommendations

We have raised a further two Key Recommendations which must also be enacted as a matter of urgent priority by West of England Combined Authority. These Key Recommendations reflect the NAO Code of Audit Practice requirement that where auditors identify significant weaknesses as part of the body's arrangements to secure value for money they should make recommendations setting out the actions that should be taken by the Combined Authority.

The key recommendations are as follows:

1. The future management structure of the Combined Authority should be reviewed in order to ensure it is fit for purpose in the context of new funding awards and strategic priorities and this must include appropriate consultation and agreement by the CA Committee (KR1).
2. The Constitution of the Combined Authority should be revised to define the conditions under which it is acceptable for other officers and members to seek independent legal advice, without reference to the Monitoring Officer and/or Head of Legal Services (KR2).

Further detail on these key recommendations and the Combined Authority's response are provided on pages 13 and 14.

Other Improvement Recommendations

We have made four other Improvement Recommendations (IR1 to IR4). These recommendations, if implemented should improve the arrangements in place at the Combined Authority, but are not a result of identifying significant weaknesses in the Combined Authority's arrangements.

Further detail on these improvement recommendations and the Combined Authority's response are provided on page 15.

Recommendations

Statutory recommendation 1 (SR1)



Recommendation

The Mayor and members of the Combined Authority represented by the Council Leaders, must commit to improving their working relationship and demonstrate that significant progress has been made within a reasonable timeframe to be determined by the Mayor and Combined Authority. This should include a role for independent mediation and the constructive consideration of advice arising from this process (SR1).

Why/impact

Urgently required to safeguard the future growth and success of the Combined Authority in attracting investment to the region.

Auditor judgement

This reflects the need to address a significant weakness in the Combined Authority's ability to deliver value for money in its use of resources.

Summary findings

See Section 1.

Management Comments

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.

The results of these sessions will culminate in a number of workshops to build and consolidate the work. 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.

Statutory recommendation 2 (SR2)



Recommendation

A formal protocol should be agreed between member organisations within the Combined Authority to commit to consultation on key proposals, that they should define, at an earlier stage. Combined Authority members should engage effectively in this process, to help mitigate points of contention before they are published and debated in public. This should include a commitment to deliver proposals on a reasonable timetable.

Why/impact

Urgently required to ensure that key operational decisions regarding the management of the Combined Authority can be made without unnecessary delay or further straining relationships between the members of the Combined Authority Committee.

Auditor judgement

This reflects the need to address a significant weakness in the Combined Authority's ability to deliver value for money in its use of resources.

Summary findings

See Section 1.

Management Comments

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 Chief Executive 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.

An officer delivery board has been established and meets monthly to review progress on agreed projects and to provide challenge and support to projects to ensure timely delivery.

Statutory recommendation 3 (SR3)



Recommendation

In future, in all circumstances, including where there is a potential conflict of interest affecting individual statutory officers, adequate steps must be taken to ensure the statutory duties of these officers is effectively discharged (SR3).

Why/impact

Urgently required to ensure that statutory officers' roles and responsibilities are appropriately discharged where a conflict of interest has been identified. The communication and agreement of appropriate alternative arrangements should be more clearly and transparently undertaken.

Auditor judgement

This reflects the need to address a significant weakness in the Combined Authority's ability to deliver value for money in its use of resources.

Summary findings

See Sections 4 and 6.

Management Comments

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 Authority'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. This will be kept under review and adapted as necessary.

Key recommendation 1 (KR1)



Recommendation

The future management structure of the Combined Authority should be reviewed in order to ensure it is fit for purpose in the context of new funding awards and strategic priorities and this must include appropriate consultation and agreement by the CA Committee.

Why/impact

Urgently required to ensure that the Combined Authority can put in place the management team it requires in order to deliver its strategic goals.

Auditor judgement

This reflects the need to address a significant weakness in the Combined Authority's ability to deliver value for money in its use of resources.

Summary findings

See Section 3.

Management Comments

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 be considered and brought to the CA Committee in the new year.

Key recommendation 2 (KR2)



Recommendation

The Constitution of the Combined Authority should be revised to define the conditions under which it is acceptable for other officers and members to seek independent legal advice, without reference to the Monitoring Officer and/or Head of Legal Services.

Why/impact

Urgently required to ensure that the Combined Authority does not get into a position of senior officers obtaining conflicting or duplicate legal advice on the same issue.

Auditor judgement

This reflects the need to address a significant weakness in the Combined Authority's ability to deliver value for money in its use of resources.

Summary findings

See Section 5.

Management Comments

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.

Improvement recommendations

Recommendation	Report Section	Management Comment
IR1 We recommend that consideration of relationships within the Chief Executive Group should be incorporated into any relationship development and mediation work undertaken.	1	See SR1.
IR2 We recommend that the Constitution be reviewed, as previously considered by Combined Authority members. This should incorporate the new Monitoring Officer protocol but also focus on the specific ambiguities raised in recent legal advice including the definition of statutory roles, delegated powers, managing conflicts of interest, decisions on all senior staffing matters including restructure and severance. The results should be reported to Committee and used alongside the points we have raised as a basis for revision. There may be value in reviewing other combined authority constitutions to optimise the opportunity to improve the document in these areas.	2	Recognising that any constitutional changes require the unanimous support of the Mayor and their UA representatives, proposals for possible changes will be consulted upon with a view to bring acceptable proposals to a meeting in the new year.
IR3 We recommend that the annual performance reviews of senior officers be formally recorded, including reasonable steps taken to manage issues and provide access to resources to enable skills development as appropriate.	5	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.
IR4 We recommend that the Monitoring Officer role retains its current seniority at Director level in any future restructure or that sufficient safeguards are implemented to protect the authority and influence of the role.	5	Agreed as currently appropriate and actioned.

Statutory basis of the audit

The local audit of bodies such as the Combined Authority is performed under a different statutory framework than that applying to the corporate world. Under the Local Audit and Accountability Act 2014 and the National Audit Office's Code of Audit Practice, local authority auditors are required to perform a wider scope of audit than just the statement of accounts. This involves a VfM audit, which has been extended in this year's NAO Code update, that covers three prescribed 'Code Criteria':

- financial sustainability;
- improving economy, efficiency and effectiveness; and
- governance (including partnership working).

We are required to produce a comprehensive narrative within an Auditor's Annual Report at the end of this process, which is a public facing independent report on the Combined Authority's arrangements. If significant weaknesses are identified, we are required to raise 'key recommendations', which are formally defined under the Code of Audit Practice as arising if, 'in the auditor's professional view, it is reasonable to conclude that the matter would be of interest to the audited body or the wider public'.

The wider scope of local audit also includes additional formal powers and duties that are required for more significant issues. These include:

- the ability to apply to the Court for a declaration that an item of account is contrary to law;
- the use of an advisory notice to make an application for judicial review; or
- the responsibility to report matters in the public interest; and to make written statutory recommendations (which are reserved for more serious matters than the key recommendations referred to earlier).

These powers can be instigated directly by the auditor, or in response to questions raised and objections made by local government electors, when the audit of the accounts is advertised.

For the avoidance of doubt, we have considered the application of these powers in this VfM review.

Acknowledgements

We would like to take this opportunity to record our appreciation for the assistance provided by officers and members of the Combined Authority, constituent councils, and external stakeholders with whom we have engaged during the course of our review.

Additional VfM Code Work

As already noted, we have identified governance arrangements as an audit risk. This requires additional work to inform our auditor's judgement on VfM. The work has been undertaken in line with the requirements of the Code and associated auditor guidance. This review helps us discharge our responsibilities under the Code and will include the reporting of any significant weaknesses in arrangements and other points for improvement identified during the review. Any fee variation is subject to approval from Public Sector Audit Appointments Ltd (PSAA) which is responsible for appointing auditors and setting audit fees for relevant authorities that have chosen to opt into its national scheme of auditor appointments.

Detailed findings

1. Partner relationships

Wider Governance – Partner relationships

Despite recent challenges around relationships and engagement between the Combined Authority and its constituent councils, plans are now in train to address difficulties and move forward in a constructive way through an ongoing independent review. This area is a key area of governance within the NAO's audit expectations.

The planned review of the terms of reference for the Joint Committee could have implications for funding arrangements between the Combined Authority and the Unitary Authorities.

Audit considerations

- Review the partnership governance arrangements between the Combined Authority and councils and progress against the plans to address current difficulties, following the ongoing review
- Consider the scope and implications of the planned review of the Joint Committee terms of reference.

1.1 Partner relationships

The Mayor and Chief Executive of the West of England Combined Authority, and the Leaders and Chief Executives of the three constituent unitary councils, have acknowledged that the relationships between members of the Combined Authority remain strained at the current time. This is partly attributable to inherent tensions built into the governance structure that was established on the creation of the Combined Authority in 2017. Specifically, we observe that the tension arises between the West of England Mayor's mandate to create and deliver a regional strategy and the desire of individual authorities to retain and protect their own political and strategic areas or remits. In both cases, the parties can point to a political mandate through a popular vote. This tension is common to the combined authority model generally and has been played out across the country. In the West of England, in addition to any political differences that might be expected, the dynamic is further complicated by local circumstances, that include:

- the existence in parallel of a separately constituted Joint Committee that includes North Somerset Council as an additional member but outside of the Combined Authority.
- the co-existence of the West of England Mayor and the Bristol City Mayor over part of the same footprint (noting that the latter is due to be abolished within 2 years following the recent referendum).
- the Constitutional requirement for significant elements of Combined Authority business to require unanimous voting, which effectively allows any member to veto a decision.

It is in this context that we have considered the implications of challenged partner relationships within the Combined Authority, and the steps being taken to resolve the issues. Because of the inherent challenges outlined above, a constructive and collaborative working relationship between partners is fundamental to the ability to continue to reach consensus, approve the use of devolved funding and attract funding and deliver value to the region. We have reviewed the Minutes of the Combined Authority Committee and joint Board meetings since the election of the new West of England Mayor.

We have concluded that, the day-to-day business of the Combined Authority in regard to its budget and financial allocations to projects has continued effectively in 2021 and to date in 2022. In addition, we note that significant new funding has been brought into the region and been allocated to approved projects, including those impacting on individual unitary authorities via the Investment Fund. This provides assurance that the Combined Authority has not become dysfunctional and has continued to deliver benefit to residents in the region. However, there have been some notable points of contention that, in our view, have damaged the reputation of the Combined Authority in the public eye.

We note that a key meeting in October 2021 was cancelled at short notice, following a disagreement over the lack of consultation on a key agenda item. We attended the meeting in April 2022 and observed that, although some business was able to proceed, this was another confrontational encounter played out in public. In our view, this fell short of constructive challenge or a spirit of effective collaboration.

The key points of contention in 2021 and 2022 have been primarily related to Combined Authority governance and management arrangements, rather than funding decisions. These have included:

- the failure of the Combined Authority's attempt to restructure senior management to better align to Mayoral priorities on 15 October 2021 (this is covered in more detail in Section 4).
- a specific severance payment for a member of the Combined Authority director team on 17 December 2021 (see section 4).
- A proposal by the Unitary authorities to revise Joint Committee governance on 8 April 2022.
- discussion over the future accommodation of the staff of the Combined Authority on 8 April 2022.

1.2 Conclusion – partnership governance

The poor state of relationships between Combined Authority Committee members and between Chief Officers, we found during the course of this review, reflects a significant weakness in partnership governance. We are concerned that the ongoing poor state of relationships could start to limit the ability to work together to optimise strategic opportunities in future. External perceptions of disfunction could also begin to affect the reputation of the Combined Authority with central government and other partners, ultimately affecting the ability to raise further funding and undermining public confidence. This becomes increasingly important in the context of increasing competition for devolved funding from other devolved regions and new county deals, and government's need to prioritise devolution decisions and activity.

We note that the members of the Combined Authority have recognised the relationship challenges and have attempted to initiate a review and mediation process. While we welcome this, we are concerned that progress has stalled and there has been limited improvement.

SR 1 - Statutory Recommendation

The Mayor and members of the Combined Authority represented by the Council Leaders, must commit to improving their working relationship and demonstrate that significant progress has been made within a reasonable timeframe to be determined by the Mayor and Combined Authority. This should include a role for independent mediation and the constructive consideration of advice arising from this process (SR1).

The level of collaboration and consultation on proposals put forward to the Committee have been poor. Proposals have been presented to members as complete for decision, with little or no attempt to seek views or reach consensus.

This has reduced the options open to members to either approve or reject at the risk of appearing to be standing in the way of progress and therefore creates a culture of distrust. This confrontational approach has overshadowed legitimate arguments around the benefits of a transparent decision-making process and the fact that members should remain at arms-length from delegated management decisions (while continuing to provide scrutiny and challenge).

SR 2 - Statutory Recommendation

A formal protocol should be agreed between member organisations within the Combined Authority to commit to consultation on key proposals, that they should define, at an earlier stage. Combined Authority members should engage effectively in this process, to help mitigate points of contention before they are published and debated in public. This should include a commitment to deliver proposals on a reasonable timetable.

The Chief Executive group is highly influential in regard to Combined Authority relationships, even though the members of this group have no direct constitutional role. This arises from the close support they provide to the elected leaders and their role in setting the agenda for collaboration at operational level. This influence could be used to help mitigate political tensions, but there are some poor relationships between the chief executives of the member councils and the Combined Authority which are contributing to the tensions.

IR1 - Improvement Recommendation

We recommend that consideration of relationships within the Chief Executive Group should be incorporated into any relationship development and mediation work undertaken.

1.3 Joint Committee Governance

The West of England Joint Committee incorporates all of the members of the Combined Authority with the addition of North Somerset Council. The Joint Committee is a separate legal entity predating the Combined Authority, responsible for funding from earlier rounds of devolution. Between January 2020 and October 2021 Joint Committee and Combined Authority business was dealt with on a joint meeting basis, moving to separate meetings run consecutively on the same day from December 2021. This recognised the significant strategic overlap, helped co-ordinate business and streamlined arrangements to enable more efficient meetings. In April 2022, the unitary authorities put forward a proposal to separate the governance arrangements. This was to further clarify the separate roles of the statutory bodies and reinforce North Somerset's position as separate from the Combined Authority, but was also focused on the future of the LEP. The direction of travel set by the government's Levelling Up White Paper (February 2022) established Combined Authorities as the preferred model for receiving further devolved powers and funding in the future and to take over the functions of the LEP.

1.4 Conclusion – Joint Committee

The members of the Joint Committee are within their constitutional rights to propose this change. We are concerned that this is being influenced by the poor relationships with the Combined Authority and it risks the establishment of two competing regional hubs for devolution which runs counter to the intent of the White Paper. We will continue to monitor these developments but make no recommendation at this time.

2. The Constitution

Wider Governance – Constitution

the Combined Authority's constitution proved difficult to apply when considering the severance matter and was acknowledged by all sides (including legal advisors) as being in need of review and clarification..

Audit considerations

- Specific identification of the key problematic areas and assessment of the Combined Authority's proposed response in conducting its planned review.

2.1 Specific areas of weakness within the Constitution

The Combined Authority Constitution is its founding document and compliance with the clauses it contains is a legal requirement. The current Constitution is broadly functional and covers the basic areas that would be expected. However, in our review of the documentation that supported the severance matter (see section 4), we noted a number of instances where a lack of clarity in the wording of the Constitution had contributed to disagreement over how it should be applied and left it open to interpretation. Specific instances include:

- The way that the delegated powers of the Chief Executive are described in regard to staffing matters for senior staff are very vague and include general clauses that are open to interpretation.
- The definition of Chief Officers, Statutory Officers, Directors and other members of the senior management team referred to in the document is not clear.
- Lack of clarity over circumstances and threshold at which the Appointments Committee and/or the Combined Authority Committee is required to become involved in staffing matters relating to senior officers (e.g. recruitment, changes to terms and conditions, dismissal, restructuring, redundancy and severance).
- Clarity on the extent of the Chief Executive's delegated powers to agree exit packages of various kinds with Directors and members of the senior management team, without reference to the Appointments Committee and/or the Combined Authority Committee.
- The absence of a process to be used in the case of a conflict of interest between senior officers in general and statutory officers in particular.
- Lack of clarity on the role of the Monitoring Officer in regard to the commissioning of legal advice and the conditions under which it is acceptable for other officers and members to seek independent legal advice, without reference to the Monitoring Officer. This should include a process of approval that should include escalation to the Combined Authority Committee

We note that a new protocol for the Monitoring Officer's working arrangements has now been developed (see comment in Section 4). While this goes some way to addressing the specific issue of a conflict of interest involving the Monitoring Officer, we do not think that this goes far enough in addressing a number of issues with the wording of the Constitution listed above or fully explores the role that the Monitoring Officers at the constituent member councils might play.

2.2 Conclusion

Although the Constitution is not a particularly deficient example of its type, we have noted a number of specific areas where it would benefit from revision. In the context of the relationship challenges, strengthening of the Constitution beyond fulfilling the basic requirements will help to mitigate issues arising in future.

IR2 - Improvement Recommendation

We recommend that the Constitution be reviewed, as previously considered by Combined Authority members. This should incorporate the new Monitoring Officer protocol but also focus on the specific ambiguities raised in recent legal advice including the definition of statutory roles, delegated powers, managing conflicts of interest, decisions on all senior staffing matters including restructure and severance. The results should be reported to Committee and used alongside the points we have raised as a basis for revision. There may be value in reviewing other combined authority constitutions to optimise the opportunity to improve the document in these areas.

In addition, in section 5 we have made a key recommendation in regard to access to legal advice.

3. Turnover of Senior Staff

Wider Governance – Staff Turnover

In recent months, the Combined Authority has lost, or is about to lose, the services of an experienced Director of Infrastructure, its Monitoring Officer and its Chief Finance Officer, and a number of other senior officers. Given the expansion of its role and scale, losing continuity of this number of senior and statutory officers at this time could prove highly problematic for the proper administration of the Combined Authority and its ability to deliver its objectives.

Audit considerations

- Identification and commentary on whether there are any underlying issues contributing to the loss of key staff.
- Assessment of future plans to replace key roles with appropriately experienced individuals.

3.1 Recent Turnover at the Combined Authority

We note that since 1 May 2021, staff turnover in senior roles has been high, including 3 of the 4 senior directors and 2 of the 3 statutory officers. Over this period, the following officers have left or are in the process of leaving:

- Director of Infrastructure
- Director of Investment and Corporate Services (Chief Finance Officer)
- Director of Legal Services (Monitoring Officer)
- Head of Communications
- Head of Capital delivery
- Head of Transport
- Head of Performance and Planning

This is in the context of a team of 34 people with salaries in excess of £50,000 per annum (as at 31st March 2021) and represents a significant proportion of the senior team. We have discussed the operational implications of this with current senior management team members and the Mayor, and note that these roles are currently being covered either by interim appointments, consultants or other team members acting in the role, pending new appointments. In the short term, operational activity appears to be able to continue to operate effectively.

We have attempted to ascertain the reasons for the departures. Direct documentary evidence from exit interviews and questionnaires is incomplete (these are voluntary), although we have been able to review some. There has been no recent staff satisfaction (Pulse) survey or equivalent. Taking into account that feedback from leavers is not usually objective, we conclude that there are a combination of themes that have driven the high turnover:

- We accept that some turnover would be expected as a result of the election of a new Mayor who may have a different style of working from their predecessor.
- There is some feedback that the management culture has shifted to become less collaborative and inclusive, with some examples given of excessive or inappropriate pressure or a disrespectful tone being applied. The poor relations with the other unitary authorities has also been a factor.

- It is reasonable to assume that the proposed management restructure may have influenced the thinking of some officers.
- Two of the three statutory officers have resigned, in part over concerns around the governance of the severance payment, and in part due to general concerns over governance arrangements and a breakdown in relationships within the leadership group. The reasons given in these cases echo some of the concerns noted by other leavers about how management interact with one another.
- It is reasonable to assume that COVID conditions may have impacted on working culture or caused those considering leaving to postpone their decision until COVID restrictions had been lifted, resulting in a short-term higher level of turnover.

3.2 Conclusions

We did not identify any general issues with management culture contributing to the loss of key staff. We are satisfied that key roles have been backfilled in the short term to enable operations to continue to function.

Following the Combined Authority Committee's refusal to endorse the proposed management restructure, there is a pressing need to finalise the future management structure with the approval of the Combined Authority Committee to provide clarity and enable the recruitment of permanent officers to key roles to support the strategy. At present this reflects a significant weakness in arrangements.

KR1 - Key Recommendation

The future management structure of the Combined Authority should be reviewed in order to ensure it is fit for purpose in the context of new funding awards and strategic priorities and this must include appropriate consultation and agreement by the CA Committee.

4. Conflicts of interest regarding severance

Severance – Conflict of interest

On the basis that they felt there were conflicts in place, the Chief Executive did not initially involve the two statutory officers (Monitoring Officer and Chief Financial Officer) when agreeing severance with the previous Director of Infrastructure. Because of this, the Chief Executive commissioned external legal advice to support their decision making.

The former Monitoring Officer considered this was not effective working.

Audit considerations

- Commentary on the matter of statutory officer conflicts and the engagement of external legal advice.
- Assess the steps being taken to ensure that the Authority has procedures to protect the interests of statutory officers and to remove any uncertainty about responsibility.

4.1 Background to the severance payment

In May 2021, the new West of England Mayor was directly elected to lead the Combined Authority. As is reasonable to expect, the new Mayor set a fresh strategic direction.

It is the role of Chief Executive of the Combined Authority to equip the organisation to deliver against the Mayor's priorities. In line with this role, the Chief Executive began to consider a different management restructure over the Summer of 2021 to ensure that the team was appropriately configured. As part of this initial thinking, the Chief Executive appears to have been considering changes to the role of Monitoring Officer, as emerged subsequently in the proposed restructure paper that was circulated to members of the Combined Authority in October 2021.

In July 2021, a serving Director on the senior management team entered into discussion with the Chief Executive about their future. We have seen evidence to indicate that the Chief Finance Officer was involved in the initiation of this discussion and was also seeking to initiate a similar discussion on their own account. In the case of the Director, but not the Chief Finance Officer, the opportunity was taken to negotiate an exit ahead of the formal restructure proposals being developed.

A series of options were considered and developed by the Human Resources team, including resignation and service of notice, redundancy and a mutually agreed severance settlement. In due course, a mutually agreed severance agreement was settled upon as the best option (see section 6).

The Chief Executive did not act unilaterally and took steps to consult with the Mayor and the Head of Human Resources. We would point out that the latter role is a conventional employee, does not enjoy the equivalent statutory protections and independence of action afforded to the Chief Finance Officer and Monitoring Officer, and is therefore less well equipped to provide challenge. Under normal circumstances, the Combined Authority's other statutory officers would have been consulted on the proposals at this point.

4.2 Validity of the conflict of interest

In this case the Chief Executive had concerns that both statutory officers would have a conflict of interest were they to be involved. The Chief Executive was concerned that the officers were either already considering leaving the organisation or may have been aware that a restructure was being planned for the near future that could affect them or would become aware in due course when the plans were fully developed and announced. It was therefore reasonable from the Chief Executive's perspective to believe that involving these individuals in a discussion on severance terms for a senior colleague could unfairly influence any future negotiations over their own departure and would result in a conflict of interest.

We have established that the restructure that was eventually proposed did not include a change to the Chief Finance Officer role but did for the Monitoring Officer role. In this case, there may have been a potential conflict for the Monitoring Officer relating to the details of the severance decision. In addition, we have also seen evidence that the Chief Finance Officer had also previously raised the possibility of exiting the organisation with the Chief Executive. 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.

We note that the parties had differing views on the validity of the conflicts of interest.

The Chief Executive took the view that the potential conflict of interest was of sufficient magnitude to justify the total exclusion of both officers from not only the details and approval process for the Director's severance package, but also from any discussion of how to manage the conflict of interest to ensure that the statutory obligations of both officers were adequately discharged (specifically to ensure the lawfulness and value for money of the award of severance).

In the case of the Monitoring Officer, this extended to not informing them that the Director's severance package was being considered and developed. In our view, it was reasonable for the officers to be excluded from involvement in agreeing the details of the package. However, the failure to inform them and consult with them on how to ensure that their statutory duties could continue to be discharged, significantly weakened governance over the process. This resulted in both officers becoming involved despite the potential conflicts and led directly to the prolonged series of challenges and interventions that then arose.

4.3 The decision to exclude the statutory officers

The Chief Executive recognised the need for legal advice on the exit package and the restructure, and on the extent of their delegated powers under the Combined Authority's constitution. The advice was sought, without informing the Monitoring Officer, from regular third party legal providers to the Combined Authority. We note that in the original advice on powers to enact restructuring, the advisors recommended approval by the Combined Authority Committee as a way of overcoming ambiguity in the Constitution (although it did not specifically apply this to severance payments).

The later specific legal advice on severance, received initially verbally and then in writing after we have made initial audit enquiries, validated the choice of severance as an option that offered value for money, that compared favourably to the other options (resignation and paid gardening leave, or redundancy). We note that the total direct value of the package was £80,618, including the agreed severance payment itself and paid gardening leave over the notice period but excluding associated costs such as providing cover for the role and the legal and other administrative costs associated with this matter.

The severance package was duly agreed with the Director and announced to the senior team along with a proposal to appoint an interim on the 25 August 2021. Both the Monitoring Officer and the Chief Finance Officer were very concerned to find out shortly after that the severance package had been agreed with the Director, without consulting them. There followed an ongoing exchange of communications where the Monitoring Officer set out their significant concerns to the Chief Executive. Many of the concerns related to the lack of access to information that would enable the Monitoring Officer to discharge their legal duties and protect the Combined Authority from risk. At this stage the Monitoring Officer felt that they had no choice but to intervene in the process and was not able to accept the Chief Executive's assertion that there was a conflict of interest as a reason not to take action.

A difference of opinion also emerged in regard to the lawfulness of the severance payment and the extent of the Chief Executive's delegated power to action this without formal approval from the Combined Authority Committee. This originated from a difference of professional legal interpretation between the Chief Executive's advisors and the Monitoring Officer and their advisors. This is explored further in Section 5.

4.4 The significance of the role of Statutory Officers

Local authority legislation, which includes combined authorities, is set up in a way that mitigates the risk that could arise if key decisions were made on the prerogative of a single individual executive officer. It does this by dividing responsibility for elements of any key decision between a triumvirate of roles defined by statute. This includes the Head of Paid Service (in the case of the Combined Authority, this is incorporated into the role of Chief Executive, which is standard practice in local government), the Monitoring Officer (Director of Legal Services) and the Chief Finance Officer (Director of Investment and Corporate Services).

The legislation endows each statutory officer with specific powers and duties that can be exercised independently of other officers or elected members. In normal circumstances, a Chief Executive would be expected to consult with the two other statutory officers to manage the risks and protect the interest of the Combined Authority:

- the Monitoring Officer is responsible under statute for ensuring that the process and the options offered fell within legal boundaries set by local government legislation and the Combined Authority's Constitution.
- the Chief Finance Officer is responsible under statute for making sure that value for money had been safeguarded and the relevant financial disclosures were made.

Management restructures and role changes impacting on senior officers are common in local government. However, it is not common for the statutory officers not to be informed, at the point a decision is being considered that would normally require their involvement, that a conflict of interest had been identified that required their exclusion from a specific process or decision.

In cases of a conflict of interest, appropriate action must be taken to ensure that the statutory duties outlined above can be appropriately discharged. Appropriate action should include a high level of clarity and transparency in defining the conflict, informing the individuals involved at the earliest opportunity and notifying one or more individuals in key governance and oversight roles, for example, the Audit Committee Chair, so that an agreed way forward can be put in place. It is common practice for the Chief Executive and any conflicted statutory officers to discuss the existence of a conflict and agree an appropriate mitigating strategy. If there is disagreement, external advice can be sought, for example from professional bodies. In the very rare situation of an impasse, after following due process according to the officer employment rules, which may involve suspension of the officer, the matter could be taken to the Combined Authority Committee. If a conflict is confirmed, it is important that alternative arrangements are made to ensure that the full statutory functions of the roles are provided. For example, a nominated deputy or temporary appointment can be put in place to discharge the duties of the statutory officer to make sure the role is covered.

4.5 Conclusion

We accept that the Chief Executive was acting in good faith, and had taken significant action to ensure the legality of the process. However, the route chosen demonstrates the need to be more vigilant in ensuring the complementary roles of the statutory officers in protecting the Authority from risk. Appropriate action was not taken to ensure that the statutory duties and responsibilities of the Monitoring Officer and Chief Finance Officer roles were appropriately discharged by the incumbent officers or through alternative arrangements. The advice sought from the third party advisor at various intervals was based on answering specific questions and was not equivalent to the advice of a statutory monitoring officer in scope or in terms of Constitutional status, or of a statutory chief finance officer. For example, third party legal advisors can not produce statutory reports under the relevant legislation and do not have the wider overview that such officers are required to have to effectively discharge their roles.

We note that the Chief Executive was not well served by the Combined Authority's Constitution which provided no guidance on how conflicts of interest between statutory officers should be managed or sufficient clarity on the use of delegated powers (See section 2 of this report). Significant reliance was therefore placed on the third party legal advisors to interpret the intention of the Constitution. We note that the Constitution was clear on the appointment of Directors and Statutory Officers being a matter for decision by the Combined Authority as a whole.

In our view, the Chief Executive's decision not to inform the statutory officers of the severance transaction at an earlier stage, when the matter first came under consideration and the failure to manage the potential conflict effectively, was a significant weakness that placed the Combined Authority at potential risk of committing to an unlawful payment. The issue of the risk of unlawful payment is explored further in Section 5.

The specific roles of the three statutory officers are key checks and balances that the legislation puts in place to ensure that major financial and operational decisions are lawful and in the best interests of the Combined Authority. It is important to note that these also serve to protect any single statutory officer from inadvertently exposing the Combined Authority or themselves to risk. In this context and the absence of adequate alternative arrangements to manage any conflict of interest, it was not unreasonable for the Monitoring Officer to resort to intervention in the process.

SR3 - Statutory Recommendation

In future, in all circumstances, including where there is a potential conflict of interest affecting individual statutory officers, adequate steps must be taken to ensure the statutory duties of these officers is effectively discharged (SR3).

We note that following our earlier discussions with the interim Monitoring Officer, a new protocol has been developed that sets out a clear procedure for dealing with conflicts of interest that involve the Monitoring Officer. We have commented on this issue in Section 2.

5. The approach to obtaining legal advice

Severance – Legal advice

Conflicting legal advice was obtained by different officers at different points in the process.

Audit considerations

- To assess how the Combined Authority managed that conflict and in particular what steps are being taken to ensure that future differences are handled in an open manner.

5.1 Concerns raised by the statutory officers

At the end of August 2021, the severance package was offered to the Director and was committed to by the Combined Authority. We found no indication of inappropriate action on the Director's part in accepting the agreement.

Early in September 2021 we became aware of the concerns of the two statutory officers in our capacity as external auditors. At this stage the Chair of the Audit Committee was also informed of the issue. There were a number of concerns held and expressed by the two statutory officers, but the key issues are summarised as follows:

- The Monitoring Officer and Chief Finance Officer had been excluded from any discussion on the severance package, removing their ability to discharge their statutory responsibilities exposing the Combined Authority to legal and financial risk.
- That the authorisation of the severance package did not clearly fall within the Chief Executive's delegated powers under the constitution and did in fact need approval from the Combined Authority Committee. Without this it would be an illegal payment in the view of the Monitoring Officer.
- That the value for money offered by the severance option could not be verified.

Between September and December 2021 significant dialogue took place between ourselves and the Combined Authority, and between the Chief Executive and the two statutory officers, who continued to raise concerns. In our view, based on the information available, their concerns had substance that required careful review. This view was shared by the Chair of the Audit Committee, and the Head of Internal Audit.

5.2 Contradictory advice on the legality of the payment

In our view, which we expressed to officers at the time, there was an opportunity at this point, for the three statutory officers to pause and reflect on the situation, and to work together to reach a satisfactory conclusion. However, this was not taken and the positions hardened.

In our opinion, all parties should have worked to avoid the breakdown in relationships that had occurred and the confrontational tone of the dialogue that emerged during this time. However, we do consider that the onus was on the Chief Executive as the principal senior officer to take into account the views of the other statutory officers and reach a unified position. Not to do so was a significant weakness in the management of the serious issue that had arisen.

The result of this was that the Combined Authority ended up with two conflicting sets of legal advice on whether or not the severance payment was legal, one commissioned by the Chief Executive and one provided by the Monitoring Officer, supported by commissioned advice from a senior legal advisor. In this case, as auditor we had no option other than to commission our own legal advice in order to form our own view of whether the Combined Authority was about to make an unlawful payment. This third set of independent advice agreed that, on balance, the payment was likely to be unlawful if it was not approved by the Combined Authority Committee. It is important to note that from a value for money perspective, the duplication of legal fees and the cost of senior management time spent on this issue incurred a much greater cost to the Combined Authority, than would otherwise have arisen had the Chief Executive accepted the concerns of the other parties at an earlier stage.

At this point, following further negotiation on the legal position, the Chief Executive agreed that for the avoidance of any doubt, the severance payment would go to Committee for approval, but did not accept that there had been a risk of unlawful payment.

5.3 Resolution of the severance issue

There was significant time pressure on approving the severance package which, having already been offered and agreed to by the Director at the end of August 2021, would become a financial commitment in December 2021.

An opportunity to approve the severance package in the October 2021 Combined Authority Committee meeting, was missed. We note that this was cancelled at short notice when members of the Combined Authority opted not to attend following a disagreement over a perceived lack of consultation on the proposed management restructure (see Section 1).

The ongoing poor relationships between the Combined Authority and the leaders of the constituent Unitary Authorities are likely to have been a factor in the general reluctance to take the decision on severance to the Combined Authority Committee. Having taken legal advice, the Chief Executive firmly believed this was not a requirement of the Constitution, and was concerned that if it were taken voluntarily, it would be unnecessarily politicised and potentially voted down. We recognise the potential validity of this concern (See section 1).

As previously noted, the Chief Executive eventually agreed that for the avoidance of any doubt, the severance payment would go to Committee for approval.

In December 2021, the severance agreement was taken to Committee and was approved on the back of a single vote in favour on the part of the Combined Authority Mayor, with two abstentions and one absence. The representatives of the Unitary Authorities expressed significant discomfort in being placed in a position where they had to approve the payment to avoid the potential risk of unlawfulness, but had no opportunity to challenge or amend.

However, despite abstentions from representatives of the member councils the severance payment was approved and concerns over its lawfulness were substantially mitigated.

5.4 Conclusion

In our view, the Monitoring Officer with the role of Head of Legal Services at the Combined Authority, is particularly important when it comes to commissioning and interpreting third party legal advice. Advice is usually sought based on very specific terms of reference and highly reliant on the information supplied to the advisor. The Monitoring Officer is party to the wider context and can exercise professional experience to ensure that the right advice is sought and the right information given.

It is important to recognise that it is not uncommon for legal advisors to differ in their judgements, especially where legislation or constitutional clauses are not clear and judgement has to be made. In practice, legal advice is often sought specifically because the legal position requires interpretation and judgement. The difficulty in reaching a consensus on the lawfulness of the severance transaction that arose in this case, highlights the risk that arises when legal advice is sought independently of the Monitoring Officer.

By bypassing the Monitoring Officer in this case, and failing to make alternative provision for the discharge of the Monitoring Officer's responsibilities, the statutory protections provided by the Monitoring Officer's role were significantly weakened.

In our view it is unusual for the Monitoring Officer's advice to be contradicted by other statutory officers based on professional legal or other advice from third party who has no constitutional authority in their own right. If there is a difference of view, the Monitoring Officer can obtain an independent second opinion from alternative legal advisers and/or professional associations. The fact that this was permitted to occur, reflects a significant weakness in management arrangements.

KR2 - Key Recommendation

The Constitution of the Combined Authority should be revised to define the conditions under which it is acceptable for other officers and members to seek independent legal advice, without reference to the Monitoring Officer and/or Head of Legal Services.

5.5 Other matters relating to employment decisions

We note that the demands of any senior officer's role may evolve over time and this may require different skills or experience to fit the organisation's future needs - as appears to have been a factor in the severance decision. When we attempted to follow this up, we found that there was no record of any such matters being recorded and managed through any formal performance review process. If these matters are going to be a factor in any future employment decisions, it is crucial that they are formally recorded and evidenced. Failure to do so could weaken the Authority's case in the event of future legal challenge.

IR3 - Improvement Recommendation

We recommend that the annual performance reviews of senior officers be formally recorded, including reasonable steps taken to manage issues and provide access to resources to enable skills development as appropriate.

We also note that the proposed restructure sought to downgrade the status of the Monitoring Officer and Head of Legal Services role below the tier of senior director. Monitoring Officer is a statutory role and while they could be changed in terms of grade, the responsibilities under statute would remain the same. We note that a change in grade has been done in other local authorities and a case can be made for reducing costs. However, in the context of the findings of this report and the importance of the role in managing risk, in our view there should be appropriate and sufficient safeguards implemented to ensure that the statutory role of the Monitoring Officer can continue to be delivered unabated of their position within the hierarchy of the management structure.

IR4 - Improvement Recommendation

We recommend that the Monitoring Officer role retains its current seniority at Director level in any future restructure or that sufficient safeguards are implemented to protect the authority and influence of the role.

6. The rationale for the award of severance

Severance – Rationale for award

Clarity is required on the rationale for proposing the severance payment and how the payment and its terms was constructed.

Audit considerations

- Assessment of the rationale for recommending the severance and supporting the amounts and arrangements proposed.

Consideration of the rationale for severance

The key concern of the Chief Finance Officer was the lack of visibility over the steps the Combined Authority had taken to ensure that severance was the most appropriate and cost effective solution. Under normal circumstances, the Chief Finance Officer would be responsible for evaluating this aspect, prior to a decision being made on the preferred option. We note that prior to the severance package being agreed, the Chief Finance Officer had held preliminary informal dialogue with The Chief Executive and Head of Human Resources about their own future which had also referred to the potential exit of the Director, pointing to a potential conflict of interest.

We have considered a number of factors that underpinned the decision to award severance to the Director.

Firstly, although not directly a result of the restructure, there is logic in the argument that the exit of the Director presented an opportunity that would complement this process. Although the Director's approach to the Chief Executive pre-dated the development of firm plans for restructure (see Section 4), it is reasonable to accept that a significant change to the requirements of the role was already being considered by the Chief Executive at this point.

This is not incompatible with the Chief Executive's later assertions that there were issues of compatibility with the skills and experience that would be needed in future for that role that had changed over time as new powers and funding had been accrued. There was therefore a reasonable rationale for entering into discussion over the mode of exit.

We have reviewed the initial options report developed by HR, and the legal advice that was sought to support the assumptions that had been made. These steps were comprehensive, professional and reasonable.

Conclusion

The key deficiency was that it was the Chief Finance Officer's statutory duty to confirm that the chosen option offered the best value to protect the Combined Authority from the risk of overpayment. If there was a conflict, alternative arrangements needed to be made to ensure that the appropriate statutory functions were discharged (e.g. this duty could have been passed to a deputy). Without this assurance, it is understandable that Combined Authority members would be unsure as to whether the best value had been achieved. In our view, the fact that the Chief Finance Officer was unable to ensure the discharge of their statutory duty to ensure that the best value was obtained from the transaction, prior to the severance package being agreed with the Director of Infrastructure, and that no effective alternative arrangements were put in place, reflects a significant weakness in arrangements.

In this we refer to the Key Recommendation made in section 4 of this report (SR3) regarding the involvement of statutory officers in key decisions. This also links to the Improvement Recommendation to review the Constitution made in Section 2 of this report (IR2).

While it may be possible to develop counter arguments to the evaluation of severance as the preferred option, we are satisfied that the rationale that was followed is reasonable. On the issue of whether the best value was achieved from this decision, we take the view that there is doubt here, particularly given that there is no documented evidence of performance or capability issues on the part of the Director. In addition, we note that the proposed restructuring of the role was eventually rejected by the Combined Authority Committee and the current role has continued to be performed on a temporary basis by a nominated deputy. However, this risk is sufficiently mitigated due to the relatively low value of the settlement in comparison to the cost and operational benefits of the alternative options.

Appendix

Appendix A - Explanatory note on recommendations

A range of different recommendations can be raised by the Authority's auditors as follows:

Type of recommendation	Background	Raised within this report	Page reference
Statutory	Written recommendations to the Authority under Section 24 (Schedule 7) of the Local Audit and Accountability Act 2014. A recommendation under schedule 7 requires the Authority to discuss and respond publicly to the report.	Yes	10,11,12
Key	The NAO Code of Audit Practice requires that where auditors identify significant weaknesses as part of their arrangements to secure value for money they should make recommendations setting out the actions that should be taken by the Authority. We have defined these recommendations as 'key recommendations'.	Yes	13,14
Improvement	These recommendations, if implemented should improve the arrangements in place at the Authority, but are not a result of identifying significant weaknesses in the Authority's arrangements.	Yes	15

