

Birmingham City Council External Audit 2020-21 to 2023-24

Statutory recommendations under Schedule 7 of the Local Audit and Accountability Act 2014

Introduction

Birmingham City Council is currently facing a number of issues, each one of them significant enough to have caused any other council significant financial challenge. The fact that all of these issues are impacting upon the Council at the same time is of such significance that in our view it has destabilised the Council's financial position. Following a period of dialogue, we challenged the Council with regard to these matters in our email to the Council dated 1 September 2023. The extent of these issues prompted its Interim Director of Finance (Section 151 Officer) to issue a Report under Section 114(3) of the Local Government Finance Act 1988 (the s114 report) on 5 September 2023.

The use of the s114 power is relatively rare to local government. The use of this power was required as the Section 151 Officer has assessed that the Council is in a negative General Fund position when the full liabilities arising from its Equal Pay agenda are recognised. The Section 151 Officer considers that the Council has insufficient resources to meet these liabilities and other known future financial pressures, set out later in this report, and that it is not currently able to agree measures to address this position. An extraordinary meeting of the Council held on 25 September 2023 confirmed the Section 151 Officer's opinion.

As the Council's external auditor, we have been closely engaged with senior officers and leading members as the Council has sought to respond to the issues it is facing. Due to outstanding enquiries on equal pay and other matters we delayed the completion of our 2020/21 and 2021/22 financial statements audits and have yet to issue our audit opinions. We have yet to receive financial statements for 2022/23 due to issues with the Oracle ledger system implementation.

As part of our audits, we have made regular requests to officers to confirm the equal pay liability. On each occasion up to March 2023 we were provided with assurances, documentation and supporting information by officers which confirmed their view that the provisions in the draft 2020/21 and 2021/22 financial statements (of £150 million and £121 million respectively) were adequate. In attempting to conclude our audit of these financial years we continued to make enquiries into the Council's equal pay liabilities and were informed in March 2023 that the Council may have an additional equal pay liability but that the Council was not able to fully quantify the amount. Officers confirmed to us in May 2023 that the Council had further equal pay liabilities that were substantially in excess of these provisions and accumulated to an estimated current liability of up to c£760 million.

Once the level of the equal pay liability was confirmed we liaised closely with the Council to ensure that it put in place an appropriate job evaluation process and responded to the future financial pressures. We note that the choice of a job evaluation process has been a difficult and prolonged process. In our view however this process has taken longer than needed. We will report separately on this matter, along with our review of the Council's decision-making process since 2017 that has led to the equal pay liability.

We welcome publication of the s114 report on 5 September 2023 and the subsequent s114 and s5 reports on 21 September 2023. Equally, we welcome the announcement on 19 September 2023 of the Secretary of State (Department of Levelling Up, Housing and Communities) that he is considering exercising the powers of direction available to him under sections 15(5) and (6) of the Local Government Act 1999 in relation to the Council's compliance with the Best Value duty. Notwithstanding the actions that the Council must now take in response to the recent s114 and s5 reports and the possible intervention of the Secretary of State, we consider that some matters are of such urgency that they require immediate consideration and response from the Council in order to ensure that its financial position is safeguarded and that appropriate governance is applied to the Council's affairs. These matters are of such significance that they require us to make 'statutory recommendations' under Schedule 7 of the Local Audit and Accountability Act 2014 (the Act).

This report therefore sets out a number of statutory recommendations across a wide range of areas where we consider urgent action is needed by the Council. Due to the significance of the matters referred to in the s114

and s5 reports, in the announcement of the Secretary of State, and in the following paragraphs of this report, we consider that further application of our formal audit powers may be warranted if the Council does not deliver an appropriate job evaluation process, does not secure its financial stability, does not ensure its financial reporting system is adequate for its needs, does not ensure appropriate governance arrangements, or if its response to the statutory recommendations in this report are not adequate.

We note that the City Council, in large part, has acknowledged its acceptance of our recommendations [as provided in draft form to the Council] and commented that it wishes to continue to work in partnership with the external auditor and the proposed Commissioner to drive the changes needed to place the City Council on a firmer financial footing and to improve both governance and performance.

Statutory recommendations under Schedule 7

Statutory recommendations are a power available to external auditors of local authorities, who act under the Local Audit and Accountability Act 2014 and the National Audit Office (NAO's) Code of Audit Practice. They are reserved for more significant audit matters, as they are required to be sent to the Secretary of State for Levelling Up, Housing and Communities and must be considered at a public meeting of the Council within one month of the recommendations being sent to the Council.

At the public meeting, the Council must decide:

- whether the recommendations are to be accepted, and
- what, if any, action to take in response to the recommendations.

The Council must subsequently notify us of its decisions and publish a notice containing a summary of its decisions which has been approved by us.

Background to the statutory recommendations

The following paragraphs set out succinctly why we consider such recommendations are required at this time. The issues behind the recommendations are significant and complex and hence, for expediency are set out in summary in this report. We anticipate further, more detailed external auditor reporting of the matters to follow, when the situation for us to report is less urgent.

Equal Pay

The Council's current Equal Pay (EP) agenda is one of the most significant challenges that any council in England has ever faced. Previous historical EP payments at the Council have been significant (exceeding £1 billion) and, over the last six months, we have become aware of factors that arose between 2017 to today, that have driven further claims, with a value currently estimated by officers of up to £760 million. We note that this is an estimate by officers and consider that the actual liability may be in excess of this value (see later in this report).

Officers have identified that, putting in place an effective Job Evaluation (JE) methodology and implementing subsequent collective agreement with the Trade Unions by 1 April 2025 is essential if the Council is to be financially sustainable. They have also identified that the matter is highly time-sensitive, as the liability is estimated to grow by up to c£14 million for every month until JE is implemented. The estimated value of up to £760 million takes account of this increase to April 2025.

The Council's Business Management Committee (CBMC) of 1 September 2023 made a key decision as to the JE option the Council would now pursue, resolving to accept 'Option 2' as the way forward, which was an adapted version of the National Joint Committee (NJC) Gauge+ methodology. This decision was subject to the agreement by the Trade Unions of an Addendum to the Principles of Collective Agreement.

Option 2 was considered to take more time to implement than the alternative outsourced option available to members but was also felt more likely to avoid industrial unrest at the Council. The additional time required to pursue this option over its alternative was forecast as 3 months, which officers have estimated as creating further EP liabilities of some £42 million. The decision to progress Option 2 was a difficult one and officers had worked on developing suitable proposals for members' acceptance for over 6 months. Given the extent of the liability, the time required to arrive at this position, and uncertainties over the time that the final JE model will need for full implementation (collective agreement), which would increase the overall liability, it is critical to the Council's financial sustainability that a JE process is completed and implemented on or before 1 April 2025.

A key safeguard within the report to CBMC was:

“To note that Option 2 ... is conditional on: a signed Addendum to the Principles Collective Agreement between the recognised trade unions and BCC ... and, if the Addendum is not signed by 09:00am Monday 11 September 2023, that then means Option 2 is not practical to implement and the Council reserves the right to choose an alternative Pay Equity System.”

We are aware that the Unions are not supportive of the decision to take Option 2. The Addendum (that the CBMC decision required) had a deadline of 11 September 2023 for an agreement between the Council and the Unions to work in “*positive partnership*” over the JE process and for all parties to do all within their powers to maintain satisfactory progress and provide the relevant resources at all stages. The Council received correspondence from the Unions between the date of the CBMC meeting and the 11 September 2023 deadline confirming that they would not support the Addendum.

Since the CBMC on 1 September 2023 and the s114 report on 5 September 2023 the Council has received communication from ACAS offering to broker a meeting between the Council and its Unions. Whilst any attempts to mitigate the current tensions between the Council and the Unions are welcome, we also note that there has been over 6 months of consultation between officers and the Unions, which was ultimately ineffective in avoiding the current impasse. We also consider that the CBMC decision was clear on timescales and set a clear safeguard date of 11 September for the Unions signing the Addendum.

In our view, and based on what we have been told of the legal advice received by the Council to date and our knowledge of how engagement with the Unions has been conducted, the option that CBMC supported (Option 2) enabled Union involvement in the JE process whilst ensuring that the Council met its legal responsibilities for providing the most economically advantageous outcome for the taxpayer.

Statutory recommendation 1: The commencement of the job evaluation process should not be further delayed (as this would further undermine the Council’s financial sustainability). As the Addendum was not signed by 11 September 2023, the Council should apply the safeguard within the CBMC report and should determine the job evaluation option it intends to follow at the earliest opportunity.

Since June 2023, officers have been clear that the costs of EP to the Council, if addressed by April 2025, will amount to up to £760 million, with an accrual rate of up to £14 million as per elapsed month. Given the risks to effective delivery of the JE process set out above, we consider that this initial estimate is now likely to be understated and the final liability the Council would have to settle in the future could well exceed £1 billion. This is in addition to the amounts already settled on past claims – over £1 billion.

Statutory recommendation 2: It is important that the Council reviews its previous equal pay estimates and regularly updates its estimate of the potential future liability (at least on a quarterly basis). This updated position should be reported to members on a quarterly basis.

Key drivers of the current EP liability have been identified by the Council as:

- Alleged enrichment – the fact that certain (mainly male) members of the workforce may have been graded at a higher level than their previous JE scores would suggest, which may have created a pay differential with other (mainly female) members of the workforce that were graded in line with their JE scores; and
- Alleged task and finish – whereby certain (mainly male) members of the workforce may have worked shorter working days than their contract of employment required if they felt they had completed the tasks that their daily work duties required (thus impacting their comparable pay) – to the extent that this occurred, this flexibility was not afforded to many (mainly female) members of the workforce in other areas of the Council’s operations.

The costs of both ‘enrichment’ and ‘task and finish’ have only been reported insofar as they impact on the EP liability. The impact on the operations of the Council and the cost of the enriched roles and task and finish has not been reported. We note that the potentially enriched roles can only be proven and subsequently resolved through the JE process and that the Council has been working over the last few months to identify and stop task and finish work.

We consider that the reporting of these matters is relevant to the Council’s ability to demonstrate its compliance with the Best Value duty. A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and

effectiveness. This duty is a requirement on councils to ensure they provide value for money (best value) in all of their arrangements – the factors that have created the EP liability are, in our view, relevant considerations in relation to this duty.

Statutory recommendation 3: the Council should separately report the financial impact of potentially enriched roles to members as a matter of urgency and should prioritise their assessment as part of the job evaluation process. This should include a consideration of the Council's Best Value duty. Similarly, officers should provide monthly updates to members on the Council's identification of roles where task and finish has been in operation and the financial impact of this practice and confirm at the earliest opportunity that these practices are no longer operated. The Council should undertake a review of all working practices within the Council and ensure that all employees comply with their terms and conditions, including working their full contractual hours.

We have become increasingly concerned over the last few months with regard to the governance process for choosing the JE option. We have set out below the key areas where we have concerns.

Delays in the process – we consider that the process to choose a JE option has taken significantly longer than necessary. We have formed this view on the following basis.

We note that there was a change of political leadership in May 2023 and that the current political leadership team wished to take time to consider the various issues with regard to equal pay. Whilst acknowledging this point, it is clear that the current and previous Council Leader and some cabinet members were aware of this matter from as far back as 3 February 2023. We consider that the political leadership team has had sufficient time to make a choice on which JE process to follow.

We recommended to officers in March 2023 that the process should be completed by no later than June 2023. Officers stated that this was not possible but confirmed that this could be completed by July 2023. The process was then further delayed. The delays included procedural delays as the Council considered that its constitution required the Council's Business Management Committee to make the decision on the JE option, and additional delays to allow further debate and for further legal advice to be obtained. While there were legitimate reasons for some delay, in our view the Council did not seek to expedite the process sufficiently.

More recently we have noted a lack of direction of officers by the political leadership as to how choice of the JE option was to be made. This issue is of such significance that on 21 September 2023 the Section 151 Officer issued a second s114 report and the Monitoring Officer, who is the City Solicitor, issued a s5 report under Local Government and Housing Act 1989. Section 5(2) provides for the Monitoring Officer to prepare a report where they consider that a proposal, decision or omission is or would likely contravene the law. The s114 report cites that *'the omission of a decision by the Council Business Management Committee [to agree an appropriate JE process] has resulted in a decision which involves the authority incurring additional expenditure which is unlawful and the course of action if pursued to a conclusion would be unlawful and cause a loss or deficiency on the authority.'*

We note the following sequence of events that led up to the issuing of the s114 and s5 reports. On 15 September 2023 the Council Leader issued an email to the Council's three statutory officers (Chief Executive [Head of Paid Service], Section 151 officer, and Monitoring Officer) stating that a meeting should be arranged as soon as practicable for CBMC to approve JE option 4 as the only remaining option. [Option 4 is the outsourcing of the JE process to a third party firm without TU involvement.] In response, officers made preparations for a report to be presented to CBMC. Following the announcement of the Secretary of State on 19 September 2023 regarding possible intervention, the Council Leader informed officers [on the same day] that, due to the Secretary of State's announcement, he did not feel comfortable making such a major decision without the involvement of Commissioners. He has told us that he was subsequently advised by officers that, Commissioners not yet being in place, the Council could proceed with its decision making. Officers however, after taking legal advice that the Council's failure to come to a decision on the JE option, constituted an act of omission leading to a likelihood of illegality, unlawful expenditure and a loss or deficiency, proceeded to issue their statutory reports. The Leader has further told us that CBMC cannot now make a decision because of the statutory officers' reports, thus causing further delay.

Whatever the position on this, while it is understandable that the Council Leader wished to await the likely appointment of Commissioners and now the debate as to the statutory officer reports, it is also the case that any delay in choosing a JE process continues to increase the Council's EP liability. While the Secretary of State has set out his proposals for intervention, this matter is subject to consultation and a date for the appointment of Commissioners has not been agreed. We also note, should the Secretary of State decide to intervene, that:

- the Commissioners will need some time to understand these matters (as did the current political leadership)
- the Council will continue to make decisions as normal unless the Commissioners consider it necessary to direct the Council on certain matters
- any resulting Inquiry, insofar as its findings will be useful to the Council, will take time to be established.

It is therefore critical to the Council's financial sustainability that it now chooses a JE process.

We understand that the Council could have debated the second s114 and s5 report on 25 September 2023 (along with the s114 report issued on 5 September 2023). It could also have debated and agreed the JE option at the same meeting. This option was not taken by the Council. We understand that certain officers considered that this date would not have allowed sufficient time for members to have been briefed on the s114 and s5 report issued on 21 September 2023. The Council will therefore need to call a further extraordinary meeting of the Council to discuss the s114 report and s5 notice issued on 21 September 2023. This requires five working days' notice. The Council has the option of choosing a JE option at this extraordinary council meeting or holding a CBMC soon after to agree the JE option. We understand that the former is now the Council's preferred position.

We note that as at 28 September 2023 the Council did not have an agreed JE option (as Option 2 was no longer viable as the TUs had not signed the Addendum to the Principles Collective Agreement). Based on Officers' modelling of the rate of increase for the EP liability for every month that JE is delayed, we estimate that the delays from our recommended date of 30 June 2023 to choose a JE process has increased the Council's EP liability by up to £42 million.

Communication and relationships – in our view the process has not been collaborative. We would normally expect that the three statutory officers and the People and Corporate Services Director would be involved throughout the decision-making process. In response to audit queries, we have been informed that some of these officers have been excluded from certain meetings with members. We note that the relationship between senior officers and some key members has become strained during the process and has undermined the process to choose a JE option. We return to the relationships between officers and senior politicians later in this report.

Involvement of Trade Unions – the Council has attempted to work closely with its Trade Unions throughout this process. We note that the Trade Unions have expressed a preference for the NJC Gauge+ JE process. The involvement of the Trade Unions has been significant throughout the process. This has involved a number of meetings with the Trade Unions but also the involvement of Labour Party and Industrial Relationship advisors in the process for choosing the JE option. We would expect that the Council would engage with the Trade Unions but note that this has significantly extended the process for setting out the JE options available and that the Council has not secured Trade Union agreement to its preferred JE option. The report to CBMC on 1 September 2023 sets out a number of 'red lines' set by the Trade Unions with regards to the potential options and continuing risks regarding industrial relations. The suggested Addendum for the Option 2 JE process has not been agreed by the Trade Unions and the risk of an industrial dispute remains.

Legal advice – we understand that the advice of the Monitoring Officer (referred to in this report as "MO", but acting sometimes in their role as Monitoring Officer and on occasion further to their role as City Solicitor) regarding the JE options was not initially followed and additional external legal advice has been needed to move matters forward. The MO has told us that they have been frustrated in their ability to carry out their roles on a number of occasions. In particular, we note that:

- As part of their ongoing support for the Council, the Local Government Association (LGA) was asked to facilitate a process of mediation between the Statutory Officers (CEO, MO, S.151) and the political leadership with a view to identifying the different options available and to explore the areas for potential compromise as regards the most effective way of delivering a successful job evaluation process for BCC. We understand from the LGA that they were clear that they were not providing advice and that it was for officers at the Council to provide advice for councillors and that councillors need to have regard to that advice in any decision they then ultimately make. We also understand from the LGA that it made it clear to a senior officer on the 18 August 2023 that it would only recommend the NJC Gauge+ JE scheme and that, in their view, it was possible to have TU involvement and maintain the integrity of the process. We note that the Chief Executive was aware of the involvement of the LGA but was not consulted on and was not aware of the involvement of the peer legal officer that the LGA had appointed, until the day before the peer started. The commentary offered by the LGA followed its stated view that NJC Gauge+ should be implemented and, as such, was not fully supportive of the MOs position that other JE options should also be considered.

- In providing advice to the Council, we understand, the MO was supported by opinions from different King's Counsel (KC) (to ensure her advice was appropriate). The MO's advice was not accepted until an additional KC opinion was received by the Council. We further understand that all KC opinions supported the MO's initial advice.

We note that concern has been expressed by the Council Leader and Deputy Leader that the advice of the Council's MO has gone beyond legal matters, has not always been appropriately balanced and that challenge to the advice has not been accepted. Whilst appreciating that the Executive commissions legal advice and is entitled to disagree with and indeed challenge any legal advice received, it would nevertheless be expected to give appropriate weight to the advice of its most senior lawyer and counsel which they have engaged on the authority's behalf. We note that the advice of the MO has now been accepted. In our view, the matters above indicate a breakdown in officer and member relationships and have prevented the timely agreement of a JE process.

Legally privileged information – it is important that the Council's political leadership and officers have appropriate access to legal advice. It is equally important that the MO (in their role as City Solicitor) is able to ensure that the confidentiality of this information is safeguarded. During the JE process there has been some debate as to how best to share this information while also safeguarding the confidentiality/privilege in this information. We understand that full access has been given to the Council Leader and Deputy Leader and to statutory officers.

A number of matters have been raised with us indicating that legally privileged information may have been provided by individuals within the Council to third parties in circumstances which, in our view, called for the oversight or agreement of the MO (acting as City Solicitor and further to the Scheme of Delegation). We note that, if this is the case and absent justification, that this would be a significant failure in the Council's governance.

We consider that the process to choose a JE evaluation option has been inadequate for the reasons set out above. We will return to these matters as part of our audit. However, we consider that it is urgent that the Council investigates whether due process was followed in receiving and considering legal advice as part of this process, and in particular, whether legally privileged information was provided to third parties and, if it was, that it considers any implications for the Council.

The Department for Levelling-Up, Homes and Communities have confirmed (via letter dated 19 September 2023 to BCC) that a local inquiry may be undertaken into the circumstances surrounding Equal Pay. Both ourselves and the Council consider that the delivery of the following recommendation (#4) should be folded into this inquiry, if and when it takes place.

Statutory recommendation 4: The Council should commission an independent review of the process for receiving and considering legal advice, including consideration of whether the Monitoring Officer's advice was appropriately taken into account and followed, and whether access to legally privileged information was appropriately safeguarded. If the local inquiry outlined by the Secretary of State does proceed this should be part of the wider inquiry.

Oracle implementation

The Council has experienced significant problems during and resulting from the implementation of its new Enterprise Resource Planning (ERP) IT system, Oracle Cloud, leading to anticipated additional costs (total costs of £100 million compared to an initial budget of £38.7 million as approved by Cabinet in March 2021). This has significantly impacted on the Council's ability to operate business-as usual activities, due to the workarounds and manual interventions needed to operate the system. Due to these issues the Council has been unable to produce an outturn position for 2022/23 or a set of financial statements for 2022/23. It is also unable to provide an up to date financial position for the current year (2023/24). This has impacted on payments to suppliers and also on financial reporting for schools and other organisations that use the Council's financial services.

We are currently assessing the issues associated with the Oracle Fusion implementation, the Council's plans for resolving these issues, and the further investment required for this programme's completion. We note the following:

- Implementation - the Oracle system implementation was rated as 'red' before going live and included a significant number of items requiring a solution. The finance system had several adaptations that did not subsequently operate effectively. As such, the system is not able to fully meet the financial reporting needs of the Council including finance, human resources, and schools.

- Information Technology (IT) Security – some IT security systems were not implemented and there is an inadequate segregation of duties in the system.
- Finance system - the financial system has not operated as planned and financial reporting is still not fully operational. Financial system integrations were not in place in April 2022 but some were integrated during the 2022/23 year. Data was held in feeder systems until this integration occurred. Where financial system integrations had not taken place the financial information has been transferred via journal. The Council has asserted that controls were in place to ensure data was appropriately transferred. We have not yet been able to verify that controls were in place.

The programme is currently going through a process of re-engineering including a 'safe and compliant phase' which will then lead to a full re-implementation of the Oracle system. We note the following:

- The Council has not set a target date for the completion of the 'safe and compliant phase'. We understand that the completion of this phase is imminent. The Council considers that the short-term workarounds developed by the Council to identify and correct errors should enable 2022/23 accounts to be prepared and a basic functionality of transactional processing, reporting and monitoring restored (albeit with a high reliance on inefficient manual processes)
- There appears to be a coherent programme governance structure in place but we are looking at the proposed transition from crisis management to more conventional programme management structure
- We are considering whether all of the basic foundations for the Oracle re-implementation design phase are in place
- We are also looking at whether the emerging proposals for the Oracle re-implementation have properly considered all the options and whether they have a good enough understanding of the costs/ implications
- The capacity of senior staff to deal with Oracle and other issues within the same time-frame remains a major risk to the Council
- The Oracle implementation has significantly impacted the Council's ability to focus and manage savings delivery and budgetary control. The initial projections are for major overspends in 2022/23 and 2023/24 putting severe pressures on reserves. This excludes Oracle implementation and Equal Pay costs.

The Council's management arrangements for the implementation of the Oracle system were inadequate. The Council is working to resolve these but at present the lack of an appropriate financial reporting system presents a significant weakness and risk to its financial sustainability.

Statutory recommendation 5: The Council should set a target date for the completion of the 'safe and compliant' phase. We consider that this should be completed by 30 November 2023.

Statutory recommendation 6: The Council should report its outturn for 2022/23 and its current financial position by 30 November 2023. It should provide financial statements for 2022/23 for audit by 31 January 2024.

Statutory recommendation 7: The Council should consider the capacity of its senior staff to deal with the Oracle 'safe and compliant' and 're-implementation' phases alongside the other competing pressures. Additional resources should be provided to ensure that this critical project is completed at the earliest opportunity. This may include additional internal or external IT capacity and capability. In the longer term, the Council will need to ensure that it rebuilds its own IT capacity and capability.

Savings and other financial pressures

In addition to the key financial pressures set out above, the Council is also subject to other pressures, many of which would in themselves be considered significant challenges on their own right. These include the costs of demand pressures in social care (both adults and children's services), the impact of inflation on pay and non-pay costs, and other potential impairments of regular income streams such as Non Domestic Rates and Council Tax income.

These pressures were reported by the Section 151 Officer to Cabinet on 25 July 2023 as amounting to an £87 million budget shortfall in 2023/24, with other financial risks still to be quantified, including the finalisation of the Council's Highways PFI contract. Given the magnitude of the EP and Oracle issues, there is a risk that the Council's focus will only be on those issues.

Statutory recommendation 8: The Council should provide an updated budget for 2023/24 that takes account of the 2022/23 outturn, its current financial position for 2023/24, its progress on delivering savings plans in 2023/24, and the other financial pressures impacting on the Council.

Financial sustainability

The s114 report is of fundamental importance to the future of Birmingham City Council. In it the Section 151 Officer clearly sets out the magnitude of the challenges facing the Council and the essential mitigations that will need to be adopted to mitigate the impact of the financial pressures on the Council. The Council must now collectively and individually get behind the measures included in the report and not seek to dilute their implementation in any way.

In our view, it needs to be understood that the Council will be a very different organisation in future, with stringent spending controls and the development of a robust savings and recovery plan meaning that non-essential services will need to be significantly scaled down or even withdrawn.

Notwithstanding whether these actions are effective, the Council's finances are still not secure for the future, as they will depend on a level of asset sales to generate capital receipts and subsequently on support from the Government. If the Council needs to undertake further borrowing to fund the Equal Pay liability (and a Government Direction is made to allow this) it will need to assess the impact of its borrowing costs on its financial sustainability.

Statutory recommendation 9: The Council must now, as a matter of urgency fully support the Section 151 Officer in effectively responding to the s114 report and, specifically:

- *give full support to the development of the mandatory spending controls and savings and recovery plan;*
- *identify and implement a suitable asset disposal plan; and*
- *continue to work with the Department for Levelling Up, Housing and Communities over the extent and timing of support that will then be required to secure the ongoing financial viability of the Council.*

Statutory recommendation 10: Officers should put in place a formal and detailed cashflow model that focusses on when the payment of the Council's liabilities will fall due against the timing of its other cash outgoings and inflows (including the estimated funds produced from asset sales). This cashflow model should predict at what point, without Government support, the Council will exhaust its usable reserves and will no longer have sufficient finances to be able to continue to operate or would be unable to meet its financial obligations when they become due.

Governance and management capacity

The process to identify the JE option has significantly impacted the relationship between ourselves and the Council and between senior officers and leading members. We are also concerned about how best the Council should manage the relationship with the Trade Unions, in that leading members and senior officers are rightly concerned to ensure Trade Union involvement and if possible support for the JE option, but ultimately the decision as to which JE option is chosen must be driven by the interests of local residents of the City Council area.

We note the following governance concerns:

- The emerging risks in September 2022 relating to equal pay were not shared with us until March 2023.
- To enable us to conduct our audit we made a formal request for information from the Council. It is a legal requirement for the Council to respond to our request and we note that the Council repeatedly missed the deadline set.
- Interviews of senior officers have indicated that they have not always felt supported in their roles by senior politicians.
- There is evidence of a growing mistrust between certain officers and members. This, in turn, appears to be causing mistrust between officers.

- Interviews of certain senior officers have indicated that they feel that they have been subject to unwarranted professional criticism.
- The MO is subject, at the request of some senior politicians, to investigation in relation to the provision of legal advice. As far as we are aware, the Council had not at that point commissioned or received legal advice that indicated that the Monitoring Officer had provided incorrect legal advice (noting in particular that the LGA was not commissioned to give legal advice to the Council but was rather offering a mediation and support role).
- Certain senior politicians have requested that statutory officers are subject to investigation for making notes of meetings, and for providing a record of some meetings to external audit. We note that we would expect officers to make notes of internal meetings and that the Council was legally obliged to provide information to us insofar as we had made a request under Section 22 of the Local Audit and Accountability Act 2014 and that section applied.
- As set out earlier (Equal Pay, Communications and Relationships), there is evidence that certain senior officers have been excluded from key discussions with members and that the advice of the MO (acting as City Solicitor and further to the Scheme of Delegation) has not been promptly followed. We are not yet aware of any good reason for this.
- Interviews with officers indicate that unrealistic timescales have been set for the issue of reports.
- There is uncertainty as to whether the contract for the People and Corporate Services Director will be renewed beyond October 2023. No explanation has been provided to us for this decision. We note that the Director has been subject to significant criticism from Unison and that the Council has not responded to the criticism.
- It is alleged that a senior politician has commented that that they have lost confidence in the three statutory officers and another senior officer.

The last year has been exceptional in terms of the issues that senior officers and leading members have been contending with. Given the investment that, particularly senior officers have made into the highly complex and significant issues, it is important that the Council's secures continuity of personnel and that individuals are fully supported in delivering their professional responsibilities. We are becoming aware that certain officers consider that there is a breakdown in the confidence of their relationship with members and have stated to us that they believe they are now being restricted in their functions or at least facing a degree of personal criticism that is leaving them fearful for their future at the Council. We note that leading members have commented to us that the Council does have confidence in its senior management team and that the political leadership recognises that the necessary improvement journey requires that officers and members work closely together, learn how to work more collaboratively and do things differently.

In recent years the Council has experienced a high degree of turnover on its senior management. In our opinion, the high turnover of such officers has significantly diluted the 'corporate memory' within this key group. In addition, the relatively short tenure that these and other senior officers have had, has meant that they have not fully been able to add the value to the business of the Council that would otherwise have been the case.

The underlying issues behind this level of turnover will be more fully considered in future audit reports.

It is essential that the Council has appropriate governance arrangements in place to ensure that officers are able to fulfil their functions without concern as to their position. The Council has confirmed to us that it has appropriate processes in place to safeguard its staff and that these processes will, if Commissioners are appointed, be overseen by Secretary of State and Commissioners as part of the statutory intervention. Given the reassurance provided to us by the Council we have not made a recommendation on this matter but will continue to monitor whether officers are treated fairly.

Statutory recommendation 11: Given the significant risks facing the Council it should ensure that it cooperates with external audit in a timely and appropriate manner, and in accordance with legal requirements.

Statutory accounts 2020/21, 2021/22, and 2022/23

As set out earlier we have not yet received the accounts for 2022/23. We have not repeated our commentary or recommendation on this matter.

The Council's accounts for 2020/21 and 2021/22 are still unsigned – primarily due to the need to ensure that the provisions for EP liabilities are not materially misstated. Officers have been working on a new accounting model to estimate these liabilities at the various year-ends subject to audit. Officers have recently informed us that whilst the model is nearing completion, various parameters would still need to be updated following the decision of the CBMC.

Whilst we still await finalisation of this position, based on statements already made by the Council that the liability is likely to go up to £760 million by 2025 and the various assessments incorporated into the CBMC report and s114 report, we can now be confident that the provisions set out in the 2020/21 and 2021/22 draft accounts of £150m and £121m respectively are materially understated.

We are in discussion with officers as to whether the accounts will now be amended. If the accounts are not amended we will need to issue a qualification on the financial statements. We understand that the Council are likely to amend their financial statements.

Statutory recommendation 12: The EP liability model should be completed and the 2020/21 and 2021/22 accounts should be closed by 30 November 2023.

Next steps – further potential application of our auditor's additional powers

We have reported to the Council's Audit Committee that we have a number of other workstreams in place at this stage.

Our assessment of the governance arrangements surrounding the EP agenda will include:

- a high-level understanding of the historical context of the Council's approach to single status job evaluations and the management of equal pay claims, including how the Council's workforce strategy may have created the conditions for the subsequent level of equal pay claims.
- understanding how the Council has modelled the impact and financial exposure of the equal pay claims, the arrangements put in place to protect the Council's financial sustainability, and how this has been updated and monitored as circumstances have evolved.
- a review of the arrangements in place from 2017 to the present. This will include actions taken at the time of industrial action taken by the refuse service in 2017, the agreement of the Memorandum of Understanding with trade unions in 2021, and how the Council has managed the job evaluation options available over this period up to the end of August 2023.
- establishing the governance arrangements in place when decisions have been made since 2017 including following the onset of the COVID-19 pandemic, to change the waste services operational model, and how these changes have impacted on equal pay claims.
- a clear understanding of the Council's current plans for resolving outstanding equal pay claims, their forecast financial impact, and how this is being managed.
- consideration of the interactions between senior officers and members, and the role of trade unions and other third-party organisations who were involved in determining the job evaluation process.

Our assessment of the Oracle project will focus on the following:

- the Programme to date - a review of the full programme life cycle, and related governance arrangements and decision-making processes, from inception of the original programme through to the end of the Financial Year 2022/23 and then to 30 June 2023.
- programme remediation and issue resolution – an assessment of the Council's plans for remediation and stabilisation of the delivered solution, through to an agreed steady state for the programme.

Our detailed assessment of the Council's financial sustainability will consider:

- the likely effectiveness of the Council's proposals for cost control and for securing additional funding (including asset sales and capitalisation direction from the Government) in meeting the financial gap created by the identified additional cost pressures.
- the impact on future spending requirements of the decisions currently being sought for JE.
- the role of statutory officers at this time.

We anticipate that some or all of these matters will require consideration for further action under the statutory auditors' additional powers and duties set out in the Act and the NAO Code of Audit Practice and will continue to keep the Council apprised as this work progresses.

M C Stocks

Mark Stocks

J Roberts

Jon Roberts

Grant Thornton UK LLP

Birmingham

29 September 2023

Annex 1 - Statutory recommendations

Our statutory recommendations are set out in the body of this report and have set out below for ease of consideration:

Statutory recommendation 1: The commencement of the job evaluation process should not be further delayed (as this would further undermine the Council's financial sustainability). As the Addendum was not signed by 11 September 2023 the Council should apply the safeguard within the CBMC report and should determine the job evaluation option it intends to follow at the earliest opportunity.

Statutory recommendation 2: It is important that the Council reviews its previous equal pay estimates and regularly updates its estimate of the potential future liability (at least on a quarterly basis). This updated position should be reported to members on a quarterly basis.

Statutory recommendation 3: the Council should separately report the financial impact of potentially enriched roles to members as a matter of urgency and should prioritise their assessment as part of the job evaluation process. This should include a consideration of the Council's Best Value duty. Similarly, officers should provide monthly updates to members on the Council's identification of roles where task and finish has been in operation and the financial impact of this practice and confirm at the earliest opportunity that these practices are no longer operated. The Council should undertake a review of all working practices within the Council and ensure that all employees comply with their terms and conditions, including working their full contractual hours.

Statutory recommendation 4: The Council should commission an independent review of the process for receiving and considering legal advice, including consideration of whether the Monitoring Officer's advice was appropriately taken into account and followed, and whether access to legally privileged information was appropriately safeguarded. If the local inquiry outlined by the Secretary of State does proceed this should be part of the wider inquiry.

Statutory recommendation 5: The Council should set a target date for the completion of the 'safe and compliant' phase. We consider that this should be completed by 30 November 2023.

Statutory recommendation 6: The Council should report its outturn for 2022/23 and its current financial position by 30 November 2023. It should provide financial statements for 2022/23 for audit by 31 January 2024.

Statutory recommendation 7: The Council should consider the capacity of its senior staff to deal with the Oracle 'safe and complaint' and 're-implementation' phases alongside the other competing pressures. Additional resources should be provided to ensure that this critical project is completed at the earliest opportunity. This may include additional internal or external IT capacity and capability. In the longer term, the Council will need to ensure that it rebuilds its own IT capacity and capability.

Statutory recommendation 8: The Council should provide an updated budget for 2023/24 that takes account of the 2022/23 outturn, its current financial position for 2023/24, its progress on delivering savings plans in 2023/24, and the other financial pressures impacting on the Council.

Statutory recommendation 9: The Council must now, as a matter of urgency fully support the Section 151 Officer in effectively responding to the s114 report and, specifically:

- *give full support to the development of the mandatory spending controls and savings and recovery plan;*
- *identify and implement a suitable asset disposal plan; and*
- *continue to work with the Department for Levelling Up, Housing and Communities over the extent and timing of support that will then be required to secure the ongoing financial viability of the Council.*

Statutory recommendation 10: Officers should put in place a formal and detailed cashflow model that focusses on when the payment of the Council's liabilities will fall due against the timing of its other cash outgoings and inflows (including the estimated funds produced from asset sales). This cashflow model should predict at what point, without Government support, the Council will exhaust its usable reserves and will no longer have sufficient finances to be able to continue to operate or would be unable to meet its financial obligations when they become due.

Statutory recommendation 11: Given the significant risks facing the Council it should ensure that it cooperates with external audit in a timely and appropriate manner, and in accordance with legal requirements.

Statutory recommendation 12: The EP liability model should be completed and the 2020/21 and 2021/22 accounts should be closed by 30 November 2023.