

Council

Tuesday, 24th January 2023, 6.30 pm
Council Chamber, Town Hall, Chorley and YouTube

The Mayor has accepted this urgent item to present to council an internal audit report that was considered by the Governance Committee last week. The report highlighted two internal audit reviews that had been given limited assurance ratings and highlight weaknesses in the governance framework of the Commercial Services directorate.

Agenda No	Item	
14	Internal Audit reviews	(Pages 75 - 82)
	To receive and consider the report of the Chief Executive.	
15	Exclusion of the Public and Press	
	To consider the exclusion of the press and public for the following items of business on the ground that it involves the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A to the Local Government Act 1972.	
	By Virtue of Paragraph 1: Information relating to any individual. Condition: Information is exempt to the extent that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Information is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town & Country Planning General Regulations 1992(a).	
16	Internal Audit reviews (confidential appendices)	(Pages 83 - 114)
	To receive and consider the report of the Chief Executive.	

Chris Sinnott
Chief Executive

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Report of	Meeting	Date
Chief Executive (Introduced by Executive Leader)	Council	Tuesday, 24 January 2023

Internal Audit reviews

Is this report confidential?	Partly Appendix A is confidential as it contains information relating to staff
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Is this decision key?	No
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Purpose of the Report

- To present to full council the Audit and Risk Interim Report that was considered by the Governance Committee on 18 January 2022 to highlight the findings of two internal audit reports that received limited assurance ratings.

Recommendations

- To note the Audit and Risk Interim Report set out at Appendix A and to note the proposed response set out in this report.

Reasons for recommendations

- It is important that the council is aware of issues in relation to the operation of the governance framework, and presenting the report to council provides an opportunity to ensure that the issues raised are considered in a transparent manner.

Other options considered and rejected

- To not present the report to Council. This was rejected because it would not support the objective of ensuring the issues are understood by all councillors.

Corporate priorities

- The report relates to the following corporate priorities:

Housing where residents can live well	A green and sustainable borough
An enterprising economy with vibrant local centres in urban and rural areas	Healthy, safe and engaged communities

Background to the report

6. The council's internal audit service review the operation of its internal control environment on an ongoing basis primarily through risk-based reviews that seek to test controls in place and ensure they are operating effectively.
7. The Governance Committee oversees the work of internal audit and the operation of the council's internal control environment on behalf of full council.
8. When internal audit undertake a review, an assurance rating is given to indicate the reliance that can be placed on the effectiveness of controls in place. These ratings are set out in the table below:

Assurance Rating	Definition
Full	the Authority can place complete reliance on the controls. No control weaknesses exist.
Substantial	the Authority can place sufficient reliance on the controls. Only minor control weaknesses exist.
Adequate	the Authority can place only partial reliance on the controls. Some control issues need to be resolved
Limited	the Authority cannot place sufficient reliance on the controls. Substantive control weaknesses exist

Utilities management

9. As part of the annual internal audit plan, a review was undertaken into the management of utilities contracts. The findings of the review concluded that only limited assurance could be placed on the controls in place.
10. The full report is included at Appendix A. The key issues identified in the review include:
 - Lack of understanding and clarity around the responsibilities for; the management, administration and procurement of utilities
 - Lack of policies and procedures and inadequate record keeping
 - Inadequate arrangements in place to ensure the council meets its landlord obligations for electrical and gas safety checks, creating a health and safety risk
 - Failure to undertake a procurement exercise for water supply despite advice from the council's procurement team. In addition, there was no proper management of the contract for the electricity supply to the covered market

Procurement in Commercial Services

11. In addition to undertaking reviews included in the annual internal audit plan, the internal audit team also undertake routine checking and testing of key elements of the council's governance framework. This includes routine checks of the creditors system, to identify whether payments made are in compliance with the council's Contract Procedure Rules and Financial Regulations.
12. That routine checking highlighted that one contractor had submitted invoices across both Chorley Council and South Ribble Borough Council totalling around £400,000. The work that had been invoiced had been undertaken through a series of separate

commissions over time. As part of the initial contract at Chorley, the contractor acted as a consultant filling an internal post. They had access to council systems and data.

13. The then Chief Executive requested an internal audit report to determine whether the council had acted ethically and in line with contract procedure rules and other policies.
14. The review concluded only limited assurance could be placed on the controls in place. The full report included at Appendix A sets out the full findings. The key issues identified include:
 - A clear breach of the council's governance framework, including the code of conduct, contract procedure rules and information security framework
 - A failure by management to ensure proper safeguards were put in place led to a significant reputational risk for the council and that the council's confidential data had been compromised
 - A lack of clear decision making in relation to the appointment of the contractor in some of the contracts
15. The internal audit review raised some significant issues in relation to the conduct of members of staff. Because of that, following the production of the draft report, an investigation into two members of staff under the conduct policy was initiated. The conduct investigation was able to examine the actions, or inaction, of staff in relation to the issues identified in a fair manner. The investigation was undertaken by an external investigator from North West Employers. Once that was concluded, the internal audit report was able to be finalised.

Action already taken

16. Some action has already been taken in relation to the issues identified through the internal audit report. This includes:
 - a. Access to the council's network and data (both digital and non-digital) was withdrawn once concerns were raised and before the internal audit review commenced.
 - b. Decisions in relation to the contractor (including ongoing payments or contract arrangements) were removed from the employees concerned.
 - c. Action was taken through the council's conduct policy in relation to key employees. That concluded when mutual agreements were agreed. The terms of the mutual agreements are set out in Executive Member Decisions.
 - d. A spot check of other similar contractual arrangements across the rest of the organisation, which has not indicated similar issues identified in the internal audit report.

Actions planned

17. Further work will be needed to ensure improvements to the internal control environment are made and embedded. The improvements needed are set out in the action plan included in the internal audit review reports.
18. However, given the potential seriousness of the issues raised in the internal audit reports, a development group is being established to provide focus and oversight on improvements within the Commercial Services directorate. The group will be chaired

by the Chief Executive and Interim Director for Commercial Services and bring together representatives from the directorate, internal audit, finance, legal, HR and ICT.

19. The then Chief Executive considered the ongoing relationship with the relevant contractor twice. This followed the production of the draft audit report and then following the conduct investigation. At those points, it was considered that the immediate changes made around access to data provided sufficient interim safeguards. This position will be reviewed again.

Other considerations

20. There are a number of further considerations that have been made as a consequence of the findings of the work undertaken. They include:

- a. Should the data breaches be reported to the Information Commissioner's Office?
The council's Data Protection Officer (the Director of Governance), has considered the position and formed the view that the data processed by the Contractor was not personal data within the definition of the Data Protection Act. Whilst there is an argument that can be made where personal information used for business purposes may have the characteristics of personal data, given the use here, for specific business purposes the view of the DPO is that there would not be a data breach.

It is accepted that not all the data processed by the Contractor has been reviewed for content of actual personal data, but it is assessed as low risk that personal data would be present and no risk of there being sensitive data where a reporting to the ICO would have been undertaken.

- b. Should a report of potential fraud be made to the police?
Fraud has not been investigated. There is no evidence of dishonesty, which is an element of the offence.

The Police would be the investigating body for this offence. This has not as yet been reported. Factors weighing against reporting include the fact that whilst there were procedural breaches in the contractor's appointment there was no lack of transparency in it with a number of senior officers aware of the appointments including the then Head of Paid Service and Monitoring Officer. In addition, it was noted that the contractor did not win tenders undertaken after accessing the data.

Questions submitted under Rule 8

21. Following the Governance Committee on 18 January, the Leader of the Opposition submitted a series of questions for the Executive Leader. Subsequently, the Mayor agreed to receive this report as an urgent item. Therefore, to support the discussion of this report, the questions submitted by the Leader of the Opposition is included as Appendix B.

Climate change and air quality

- 22. The work noted in this report has an overall negative/positive impact on the Council’s Carbon emissions and the wider Climate Emergency and sustainability targets of the Council.

Equality and diversity

- 23. There are no equality and diversity implications of the report

Risk

- 24. Risk management is considered in the scoping and undertaking of the audit review.

Comments of the Statutory Finance Officer

- 25. Failure to follow contract procedure rules exposes the council to the risk that value for money cannot be evidenced, and may not be achieved. The Internal Audit review to which this report refers identifies required improvements to ensure adherence to the council’s contract procedure rules going forward.
- 26. The Internal Audit review and investigation found no evidence of fraud or dishonesty and therefore no evidence of financial loss.

Comments of the Monitoring Officer

- 27. Comments are contained within the reports.

Appendices

Appendix A: Audit and Risk Interim Report: Internal Audit Report on Utilities Management and Internal Audit Report on Procurement in Commercial Services

Appendix B: Questions posed by the Leader of the Opposition

Report Author:	Email:	Telephone:	Date:
Chris Sinnott (Chief Executive)	chris.sinnott@chorley.gov.uk	01257 515337	23 January 2023

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Questions to Council asked under Rule 8

In respect of the report placed before Governance Committee on 18 January 2023 could the Council Leader give a response, in particular to answer the following:-

1 Internal Audit state on page 70 that that the service had not maintained up to date and accurate records of safety checks. As they cannot provide assurance that all Gas and Electricity have been carried out could the Leader confirm that the Council has not broken the Law and that no member of the public or employees have been put at risk?

1b Why despite recommendations from Procurement Dating going back to 2017 was no procurement exercise undertaken for water supply and what is the potential cost to the Council for this failing?

2 Within the Commercial Services Directorate procurement could the Leader confirm:-

a When did he become aware of the Audit being carried out?

b From that date what action did he take to protect the Council?

c Why when he became aware were steps not taken to suspend relevant staff pending investigation?

d When did other members of the Labour Group become aware of the Audit and its findings?

e Can the Leader confirm whether the Information Commissioners Office has been made aware of any potential breach? Has the entirety of the data sent by the Contractor to his personal email address been checked to ensure there were no personal data?

f Could the Leader confirm that there has been no evidence of fraud under Section 4 of the Fraud Act 2006? Should the decision on whether an offence of fraud may have occurred be made by Police/CPS?

g Why were the findings within this report not brought before full Council and into the public domain?

h What data was available to the contractor named in the report?

i Why were members of SRBC made aware of this report prior to Chorley?

j What checks are now in place to ensure contractors do not have an unfair advantage by way of access to data?

k Of contracts noted in the report Audit are unable to identify how these were procured. Could the Leader confirm he believes these were acquired fairly and without breach of procurement rules?

l Within the report there are several failings in the award of contracts, including breaches of the 2015 Public Contracts Regulations. Could the Leader confirm to whom these breaches have been reported and what has been the comments of the External Auditors?

m Will the Leader ensure that any report of the External Auditor on these issues is made available to full Council Members?

n Could the Leader confirm whether the people named in the Report have, or will be asked, to sign non disclosure agreements?

2o What plans are there to make contractors aware that their commercially sensitive information has been handed to a competitor?

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