



COUNCIL – 28TH JANUARY 2014

SUBJECT: WALES AUDIT OFFICE PUBLIC INTEREST REPORT

REPORT BY: INTERIM CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to present to Council the Wales Audit Office Public Interest Report on Chief Officers Essential Car User and Annual Leave Allowances. Based on the requirements of the Public Audit (Wales) Act 2004 the Council must now decide:
- a) Whether the report requires it to take any action
 - b) Whether the recommendations in the WAO report are accepted
 - c) What action (if any) to take in response to the WAO report and the recommendations.

2. SUMMARY

- 2.1 In April 2012 payments totalling £218,563 were paid to 51 senior staff (the Hay salary group) as a buy-out of essential user car allowances and annual leave.
- 2.2 In April 2013 the Council's Section 151 Officer referred this issue to the Council's auditors (PWC) for an independent review/investigation as there were concerns regarding the processes adopted.
- 2.3 In September 2013 the WAO determined (as part of the work on the 2012/13 financial accounts) that the expenditure was unlawful.
- 2.4 On the 19th December 2013 the WAO published its detailed report on this issue. The report was issued in the public interest under Section 22 of the Public Audit (Wales) Act 2004.
- 2.5 This covering report presents the WAO report to Council, provides some additional background/context and sets out proposals for an appropriate response.

3. LINKS TO STRATEGY

- 3.1 This report is a requirement of Section 24(2)(b) and Section 25 of the Public Audit (Wales) Act 2004 - there is also a link to the Council's People Management Strategy.

4. THE REPORT

- 4.1 At Council on 25th September 2013 Members considered a report on the financial accounts for 2012/13. At that time Council were verbally advised that the expenditure in the 2012/13 accounts relating to the buy-out of essential user car allowances and holiday pay for senior staff (payments totalling £218,563 made in April 2012) had been deemed by the WAO to be unlawful. The issue of unlawfulness has therefore been known since then but the Council has been awaiting the detailed report before forming a view as to the appropriate action to be undertaken.

- 4.2 On the 19th December 2013 the WAO published its report. The report has been issued under Section 22 of the Public Audit (Wales) Act 2004 (i.e. a Public Interest Report) in response to the referral by the Council's S151 Officer and provides the detailed findings to support the previous announcement on 25th September 2013 that this expenditure was deemed unlawful. The report is attached as Appendix 1.
- 4.3 The contextual background to this issue is highlighted in paragraphs 3 and 4 of the WAO report. It makes clear that this issue was referred to the WAO by the Council's Section 151 officer in April 2013 due to concerns about certain payments made in April 2012. The payments of concern related to the surrender of benefits due to the Chief Officer group under the existing Joint Negotiating Committee (JNC) terms and conditions of employment in return for a one off payment under a compromise agreement. Although the WAO report refers to "Chief Officer" the issue related to most of the Hay Grade Group – some 51 staff.
- 4.4 Because of the time between the initial WAO decision in September 2013 and the completion/receipt of the report I presented an interim report to Council on the 19th November 2013 (report attached as Appendix 2). In this report I set out more background context but explained that appropriate action would be determined after receipt of the WAO report.
- 4.5 In this context the WAO report is not new or unexpected. It explains why the decision has been taken but also highlights other associated areas of concern including officer advice, informal procedures and some specific anomalies even within the action taken.
- 4.6 The decision was undoubtedly unlawful because of procedural failings but I would still draw to your attention the comments in my earlier report (Appendix 2 – paragraphs 3.10 – 3.12) regarding the danger of automatically assuming that the actions were unreasonable or illegal.
- 4.7 Members are aware that the Council has been notified by Gwent Police that the WAO report has been referred by them to Avon and Somerset Police for investigation. In light of the fact that the matter is to be investigated by the Police it is not appropriate to offer any comment at this stage on the actions of any specific individuals referred to in the WAO Report.
- 4.8 Whilst fully accepting the thrust of the WAO report there are elements of wording/nuance within the report with which I do not agree. However, these do not affect the determination of unlawfulness so I will pursue these separately with the auditors where appropriate.
- 4.9 Representatives of the WAO will attend the Council Meeting on the 28th January 2014 to present their findings. It will then be for Council to determine its' response. In this context I believe that there are a number of separate but related actions that Council should consider i.e.:

a) The Council accept the determination by the WAO of the expenditure being unlawful.

There seems no doubt that officers did not follow correct procedures and therefore the payments are unlawful

b) The Council accepts the recommendations set out in the WAO report and sets out the proposed action to respond to these.

The recommendations are appropriate and some of the actions have already been partially addressed as a result of current improving corporate governance work.

c) The content of the WAO report regarding the actions taken by individual officers is noted and referred to the Investigating and Disciplinary Committee for consideration. In addition members are asked to note formally that the Report has been referred to Avon and Somerset Police by Gwent Police for investigation.

The failure to comply with the correct procedures does not automatically mean that the decision itself was unreasonable or that any officer acted illegally. However, it is not possible to offer any comment on this point at this stage as this matter is now with the Police for investigation and it is essential that the Council does not pre-determine any decisions about individual officers or to in any way jeopardise a fair process being followed by Police and the Investigations and Disciplinary Committee.

- d) A detailed report should be submitted to a future meeting of the Council on the specific issue of the buy-out so that Members can consider the options available regarding the unlawful payments and determine the appropriate course of action.**

As previously reported the fact that the expenditure has been deemed unlawful does not necessarily mean that the payments were unreasonable or can be unilaterally recovered. It is therefore my intention to seek external legal advice on this issue. A future report will therefore be presented to Council setting out the legal position explaining the options available to the Council to regularise the position.

- 4.10 Members will be aware that as part of the current corporate improving governance work the Council established the Improving Governance Programme Board (IGP). This has successfully driven the Council's Action Plan to improve its corporate governance arrangements. The Board is now well established, with a regular reporting format to ensure that Corporate Management Team play a key active role and that Cabinet are updated monthly. There are also progress updates to the Audit Committee.
- 4.11 In order to ensure that the outstanding recommendations listed in Appendix 3 are effectively and promptly delivered, it is proposed that they are taken forward using the same process as detailed in Paragraph 4.10 above. The IGP Board will continue to meet every 3 weeks up to the end of April 2014, when it is anticipated that the actions will be completed.
- 4.12 Monthly Cabinet reports will be presented and where appropriate, reports will be presented to Council along with progress reports to the Audit Committee.

5. EQUALITIES IMPLICATIONS

- 5.1 There are no equality implications arising directly from this report, however the implications for employees and equalities issues that arise will be considered as part of the future report.

6. FINANCIAL IMPLICATIONS

- 6.1 There are no direct financial implications arising specifically from this report but resources will be deployed to respond to the recommendations (which is primarily staff time). The significant financial implications regarding the unlawful payment will be addressed in a future report.

7. PERSONNEL IMPLICATIONS

- 7.1 There are no specific personnel implications arising from this report but there may be further personnel issues arising from on-going investigations.

8. CONSULTATIONS

- 8.1 There has been limited officer consultation because most of the senior officers have had some previous involvement in this issue which means there is a potential conflict of interest.

9. RECOMMENDATIONS

9.1 It is recommended that:

9.1.1 The Council receives and notes the WAO report (Appendix 1).

9.1.2 The Council accepts the determination by the WAO of the expenditure being unlawful.

9.1.3 The Council accepts the recommendations set out in the WAO report and agrees the proposed actions set out in the Action Plan attached to comply with these recommendations (Appendix 3).

9.1.4 The issues referred to in the report be further considered/examined as part of the on-going Police and/or internal investigations and note that the matter has been referred to Avon and Somerset Police for investigation.

9.1.5 Upon receipt of external legal advice a further report is submitted to a future meeting of the Council on the specific issue of the buy-out so that Members can consider the options available regarding the unlawful payments and determine the appropriate course of action.

10. REASONS FOR THE RECOMMENDATIONS

10.1 To comply with the statutory requirements associated with the WAO report and to ensure that the Council fully addresses all the issues arising from it.

Author: Stuart Rosser – Interim Chief Executive
Consultees: Cllr H Andrews – Leader of the Council
Cllr C Forehead – Cabinet Member for H.R. & Governance / Business Manager
Cllr K Reynolds – Deputy Leader and Cabinet Member for Corporate Services
Angharad Price – Solicitor
Lynne Donovan - HR Service Manager

Appendices:

Appendix 1 WAO Report

Appendix 2 Report to Council 19th November 2013

Appendix 3 Response to WAO Recommendations (Action Plan)