

Agenda item 12

Statutory Report

External Audit Delays Causing Delays to the publication of certified ECC accounts for 2022/23.

Report of Paul Turner, Director, Legal and Assurance and Monitoring Officer

1. Introduction

- 1.1 This is a report issued under section 5 of the Local Government and Housing Act 1989 to formally inform members that the County Council has, for reasons beyond its control, failed to publish its certified draft accounts for the 2022/23 financial year by the statutory deadline of 1 June 2023. The County Council is required by law to consider this report and decide what action (if any) to take in response. The Chief Executive (Head of the Paid Service) and the Executive Director, Corporate Services (Chief Finance Officer) have been consulted on this report.

2 Context

- 2.1 The Accounts and Audit Regulations 2015 require that a period of public consultation on the draft accounts starts by 1 June following the close of accounts. The purpose of the consultation is to provide an opportunity for residents to:
- (a) Inspect the accounts and supporting documents
 - (b) Ask questions of the external auditor
 - (c) Make a formal objection to the accounts.
- 2.2 Before the period starts, the Council has to publish its draft accounts and a certificate by the section 151 officer confirming that they are satisfied that the statement of accounts presents a true and fair view of—
- (a) the financial position of the authority at the end of the relevant financial year; and
 - (b) that authority's income and expenditure for that financial year.
- 2.3 To be able to confirm that the statement of accounts represents a true and fair view of the council's financial position on 31 March 2023 the section 151 officer needs to be satisfied that the accounts are built on her having appropriate assurance that previous years' accounts are accurate. A key piece of assurance is the external audit of previous years' accounts. Regrettably, the external audit for the 2020/21 and 2021/22 financial years have not yet been completed. The 2020/21 audit is nearly two years late and the 2021/22 audit is nearly a year late. Whilst the external auditor has completed substantial elements of both audits, the timescales for completion of these audits remains unclear to the Council. Officers and the Audit, Governance and Standards Committee have repeatedly pressed BDO LLP to complete the audits.

- 2.4 BDO have confirmed that the accounts and supporting material supplied by the County Council has been of a consistent high quality and that all requested information has been provided promptly, but for a number of reasons, principally their own lack of resources, they have failed to complete their audit. In addition BDO has raised a technical issue relating to infrastructure valuation which accounts for nine months of delay to the 2020/21 accounts, but many other county councils have had their accounts signed off by now and we do not believe it is operative cause of the delay.
- 2.5 There is currently little or no confidence in the timescale to which BDO will be able to complete these audits, meaning that the section 151 officer may not feel able to issue a certificate for the 2022/23 accounts for a considerable period of time. At present we are simply unable to assess how long the delay is likely to continue.
- 2.6 It should be emphasised that the section 151 officer has confirmed that there is nothing significant that she is aware of which would cause the accounts to be wrong. Our external audits do not generally lead to the identification of significant issues. That said, the longer the delay in the audit of accounts continues, the more likely it is that something is identified. If something is identified it could have a cumulative impact across financial years.
- 2.7 It is important to note that many authorities are in a similar or worse position. It is believed that Cambridgeshire, Kent and Oxfordshire county councils are faced with a similar position to ECC. Looking at the national picture for all local authorities rather than just county councils, the picture is that 31% of 2020/21 audits and 74% of 2021/22 local authority external audits were overdue as at 31 March 2023. This is an unprecedented and extremely concerning situation for the sector.

3. Impact of the delay

- 3.1 The first thing to say is that failure to start the period for the exercise of public rights places the Council in breach of its statutory duty under regulation 15 of the Accounts and Audit Regulations 2015. This has led to the Council having to place a notice on its website to explain the breach and it has led to this report. In the interests of transparency, the Council has published its uncertified draft Statement of Accounts for 2022/23 on its website. This does not however obviate the breach of its statutory duties and does not trigger the public rights.
- 3.2 It also means that our residents will be unable to scrutinise the accounts as quickly and as fully as they should be able to. We will of course answer any questions we may receive about the draft accounts, and the period for exercise by the public of their statutory rights will take place at some point. Any delay is undesirable and the rights become less meaningful and relevant as the delay lengthens.

- 3.3 The audit delay has a financial impact on the Council in two ways:
- A legacy IT system has had to be maintained purely for the purpose of seeing the 2020/21 audit through to completion at an estimated cost of £378,000.
 - Valuations we have commissioned for the draft accounts have, in some cases, become out of date and have had to be repeated, valuation of the Council's net pensions liability in particular.
 - The Council has had to repeatedly arrange and rearrange extra meetings of the Audit, Governance and Standards Committee to accommodate BDO's assurance that they will have completed work by that date. Unfortunately those assurances are frequently not met.
- 3.3 The Audit, Governance and Standards Committee, the Chief Executive, the Leader and the Cabinet Member for Finance, Resources and Corporate Affairs have all been kept informed as to the situation. This report formally notifies the full county council of the situation and the Council must decide what (if any) action to take in response.

4. What action can the Council take with respect to the audit delays?

- 4.1 The period for the exercise of public rights cannot lawfully start without the certificate, so all we can do is continue to implore BDO LLP to complete the audit of previous years accounts as quickly as possible. It is difficult to think of anything else which can be done to address the immediate breach of the regulations. In the longer term, there may need to be national action taken to facilitate the 'catch up' of audit.
- 4.2 BDO were appointed by Public Sector Audit Appointments Limited, a company established by the Local Government Association to collectively procure auditors without authorities having to go through the extremely technical and legally complex statutory process of appointing their own auditor. This means that only PSAA can remove BDO as our auditor. We have complained to PSAA about the situation.
- 4.3 We are exploring what action can be taken against BDO to investigate whether BDO's failures could amount to a breach of statutory duty entitling ECC to claim damages. This would be a new claim but the failures of BDO represent new and worrying degree of failure which is causing ECC financial loss.
- 4.4 It should be noted that BDO's engagement as ECC's auditor ends with the audit of the 2022/23 accounts. EY has now been appointed as our auditor for the 2023/24 financial year. It is unlikely that EY will be able to commence its audit until BDO have completed their work. It should also be noted that BDO are understood to have withdrawn from Local Government audit work, at least for the short term.

5. Recommendation

- 5.1 That the County Council instructs the Chief Executive to write to the Chief Executive of BDO LLP to express its regret at the audit delays and to ask BDO to confirm that ECC won't suffer financial loss as a result of its delay in audit.
- 5.2 That the County Council formally thanks the finance team for working to such high standards, particularly given the current difficult circumstances with audit delays.