

Minutes of the meeting of the City Council (Extraordinary)

held at the Council Chamber - at the Council House, Old Market Square, Nottingham

on 4 January 2022 from 5.00 pm - 5.38 pm

Attendances:

✓ Councillor Dave Trimble (Lord Mayor)	
Councillor Hassan Ahmed Councillor Leslie Ayoola Councillor Cheryl Barnard ✓ Councillor Steve Battlemuch ✓ Councillor Merlita Bryan Councillor Eunice Campbell-Clark ✓ Councillor Graham Chapman ✓ Councillor Azad Choudhry ✓ Councillor Kevin Clarke Councillor Audrey Dinnall ✓ Councillor Michael Edwards Councillor Samuel Gardiner ✓ Councillor Jay Hayes Councillor Rosemary Healy Councillor Nicola Heaton Councillor Patience Ifediora Councillor Phil Jackson ✓ Councillor Corall Jenkins ✓ Councillor Maria Joannou Councillor Sue Johnson Councillor Kirsty Jones Councillor Angela Kandola Councillor Jawaid Khalil ✓ Councillor Gul Nawaz Khan Councillor Neghat Khan Councillor Zafran Khan	Councillor Pavlos Kotsonis Councillor Rebecca Langton Councillor Jane Lakey Councillor Dave Liversidge ✓ Councillor Sally Longford Councillor AJ Matsiko ✓ Councillor Carole McCulloch ✓ Councillor David Mellen Councillor Sajid Mohammed ✓ Councillor Salma Mumtaz ✓ Councillor Toby Neal ✓ Councillor Nayab Patel Councillor Anne Peach Councillor Georgia Power ✓ Councillor Shuguftah Quddoos Councillor Ethan Radford ✓ Councillor Nick Raine ✓ Councillor Angharad Roberts ✓ Councillor Andrew Rule ✓ Councillor Mohammed Saghir Councillor Wendy Smith ✓ Councillor Roger Steel ✓ Councillor Maria Watson Councillor Sam Webster ✓ Councillor Adele Williams ✓ Councillor Linda Woodings Councillor Cate Woodward Councillor Audra Wynter

✓ Indicates present at meeting

1 Apologies for absence

Councillor Hassan Ahmed - leave
Councillor Leslie Ayoola – personal
Councillor Cheryl Barnard – personal
Councillor Eunice Campbell-Clark – leave
Councillor Audrey Dinnall – leave
Councillor Sam Gardiner – leave

Councillor Rosemary Healy – personal
Councillor Nicola Heaton – personal
Councillor Patience Ifediora – Interest*
Councillor Phil Jackson – leave
Councillor Kirsty Jones – personal
Councillor Angela Kandola – leave
Councillor Jawaid Khalil – personal
Councillor Neghat Khan – Interest*
Councillor Zafran Khan - personal
Councillor Pavlos Kotsonis – personal
Councillor Rebecca Langton – personal
Councillor Jane Lakey – personal
Councillor Dave Liversidge – personal
Councillor AJ Matsiko –personal
Councillor Sajid Mohammed – leave
Councillor Anne Peach – Interest*
Councillor Georgia Power – Interest*
Councillor Ethan Radford – Interest*
Councillor Wendy Smith – personal
Councillor Sam Webster – leave
Councillor Cate Woodward – leave
Councillor Audra Wynter - leave

*Prior to the meeting, these councillors were advised by the Council's Monitoring Officer that, because they are either a current or former member of the Nottingham City Homes Board they were likely to have an Other Registerable Interest in the single item on the agenda (Item 4 Consideration of and Response to Section 114 Report and Section 5 Report dated 15 December 2021) that would require them to withdraw from the meeting and therefore they did not attend.

2 Declarations of Interests

None

3 To receive official communications and announcements from the Leader of the Council and/or the Chief Executive

The Chief Executive made an announcement about the recent publication of a Section 114 Notice and Section 5 Notice by the Council's Chief Finance Officer/ Section 151 Officer and Monitoring Officer respectively. He highlighted the following information:

- a) The Council has identified that it has acted unlawfully in relation to funds received for its Housing Revenue Account (HRA) being applied to the Council's General Fund. As a result, the Council's statutory Chief Finance Officer, the Section 151 Officer, has served a Section 114 Notice and the Council's Monitoring Officer has served a Section 5 Notice. Those Notices required a Council meeting to be held within 21 days to consider the substance of those Notices, and therefore today's meeting was called.

- b) Section 114 Notices and Section 5 Notices are extremely rare and usually served to prevent an unlawful act. In this case, the Notices were served after the occurrence of the unlawful act.
- c) The issuing of a Section 114 Notice or a Section 5 Notice are events which, of themselves, can be a trigger for statutory intervention and the appointment by Government of commissioners.
- d) The Council's current position is that, following completion of a Non-Statutory Review of the Council in November 2020, Government appointed an Improvement and Assurance Board to support the Council in delivery of a comprehensive improvement programme, with a particular emphasis on improving strategic financial management and governance, together with a number of other matters. This was a positive alternative to a Best Value Inspection and the appointment of Commissioners.
- e) In this context of seeking to demonstrate that significant improvement is being made in strategic financial management and governance, the identification in the CIPFA report, following concerns raised, of illegitimate payments from the HRA into the General Fund is a significant setback. The issue, and the Council's response to the issue represents a material consideration both for the Improvement and Assurance Board and the Department for Levelling Up, Communities and Housing (DLUCH) in considering whether further statutory intervention into Nottingham City Council is required.
- f) Appropriate briefings on the matter have been provided to the Improvement and Assurance Board and senior civil servants at DLUH, both of whom will be providing advice to Ministers.
- g) My advice is that the best position for the Council to adopt in terms of the issue itself, and in managing important relationships with the Improvement and Assurance Board and the Government, is to demonstrate that the Council understands and owns the issue, and demonstrates that action will be taken at pace to resolve it, and to take steps to ensure that this cannot happen again.
- h) I have commissioned an independent investigation through the Local Government Association to look into this matter and provide a report. The Terms of Reference for this investigation have been circulated to councillors for information and any councillor who can add to the sum of knowledge on this matter should speak to the Independent Investigator.

4 Consideration of and response to Section 114 Report and Section 5 Report dated 15th December 2021

The Leader of the Council, Councillor David Mellen, presented the report recommending that Council give due and proper consideration to the Section 114 report which was served by the Council's Section 151 Officer on 15 December 2021; and that it endorses the views contained in the report, accepts the recommendations contained within the report from both the Section 151 Officer and those made by the Chartered Institute of Public Finance Accounting (CIPFA) and approves the proposed response. He highlighted the following points:

- a) The issuing of a Section 114 notice and a Section 5 notice is a serious situation.
- b) The Chartered Institute of Public Finance Accountancy (CIPFA) has made a number of recommendations which it is proposed to accept in full.
- c) Immediate steps are being undertaken to cease the inappropriate action and refund the full amount to the Housing Revenue Account (HRA) from the

Council's General Fund reserves. The repayment to the HRA requires approval from the Department for Levelling Up, Communities and Housing and officers have been asked to obtain this permission so that the money can be refunded as soon as possible.

- d) While councillors set strategic policy, officers manage the day-to-day running of the Council. The Council's accounts are also audited every year by external auditors. However, it was not until 2021 that the Council's current Chief Finance Officer/ Section 151 Officer alerted the Council to this issue and at that point external advice was sought from CIPFA to review the situation.
- e) The Council has now commissioned an investigation to understand how this situation occurred and to ensure that processes and systems are put in place to prevent this ever happening again.

The report was seconded by Councillor Sally Longford.

Councillors discussed the content of the report and proposed response.

Resolved to:

(1) endorse the views contained within the Section 114 Notice;

(2) approve the following actions:

- a. **set aside £14,366,500 in the General Fund reserves to repay the Housing Revenue Account in respect of financial years 2014/15 – 2019/20 (net of 2b). Interest to be added to bring the payment to 2021/22 prices and repayment made as soon as the sum for each individual year is validated following further detailed work.**
- b. **amend the Council's draft published accounts for financial year 2020/21 by £1,492,000 to remove the 'management fee rebate' from being recognised within the General Fund and not raise an invoice.**
- c. **no 'management fee rebate' will be due from Nottingham City Homes and Nottingham City Homes' management fee will be adjusted by a correspondence amount for financial year 2021/22.**
- d. **from financial year 2022/23 onwards, set the management fee at the correct level to deliver the Council's required specification, and any small surplus made by Nottingham City Homes can be retained for investment in Housing Revenue Account services. A genuine rebate will only be permissible retrospectively and if Nottingham City Homes does not perform a function for which it has been contracted and paid. Such a rebate will be to the benefit of the Housing Revenue Account and not the General Fund. It will never be budgeted for.**
- e. **carry out a review of the processes and systems that failed to prevent the unlawful breaches to ensure that they cannot be repeated. This will include a review process in respect of 'novel'**

proposals by appropriately trained and experienced staff. Further training of councillors and officers in relation to the Housing Revenue Account and housing management functions will take place.

- f. in addition to commissioning legal advice on the lawfulness of the transactions, in consultation with the Department for Levelling Up, Housing and Communities, the Improvement and Assurance Board and the Council's auditor, and subject to that legal advice, consider what further actions are necessary.**
- g. examine in detail the chronology of events in relation to the payments Nottingham City Homes has made to the Council including who conceived the payment, the accounting transaction detail, who authorised it, who knew about it, how challenges to the legitimacy of the payment were dealt with and by who and any other facts that can provide insight into how the situation came to be.**
- h. in the event that the Section 151 Officer considers that the General Fund is required to repay the Housing Revenue Account and Nottingham City Homes, consider how the Housing Revenue Account or Nottingham City Homes should be additionally recompensed to reflect the opportunity cost of not having access to funds they may have been entitled to.**
- i. as a consequence of the concerns raised by the Section 151 Officer and the work undertaken and conclusions drawn by CIPFA, examine and resolve other potential breaches of the Housing Revenue Account ring-fence.**
- j. further analyse the finances of the Nottingham City Homes Group to provide assurance that Housing Revenue Account funds have been properly applied and not used inappropriately to fund non-Housing Revenue Account activities undertaken by Nottingham City Homes, which could potentially breach the integrity of the Housing Revenue Account ring-fence. This will involve a forensic financial examination of:**
 - i. transactions for services flowing between the Council and Nottingham City Homes; and**
 - ii. transactions for services flowing between Nottingham City Homes and its subsidiaries.**
- k. review the adequacy of the Housing Revenue Account client function in order to assess whether it is sufficient to properly scrutinise the activities of Nottingham City Homes and provide the proper strategic direction, controls and assurance on behalf of the Council as the Local Housing Authority.**
- l. consequential to CIPFA's work and in light of the changes that have taken place in how Local Housing Authorities provide**

housing management since the end of the Decent Homes Programme, commission a review of the Council/ Nottingham City Homes Group relationship and future operating model to include the purpose, structure, finances and governance in relation to the housing management function as set out in the Recovery and Improvement Plan.

- (3) note that, until the review as agreed in (2)I has concluded, management controls are being applied prohibiting the Council entering new agreements and spending commitments with Nottingham City Homes unless expressly approved in writing by the Section 151 Officer in consultation with the Head of Paid Service (Chief Executive) and Monitoring Officer, as appropriate.**
- (4) approve the response to the Section 114 Notice and Section 5 Notice as set out in Appendix C to the report.**

The Meeting concluded at 5.38 pm