

City Council – 4 January 2021

Report of the Leader of the Council

Lead Officers **Mel Barrett, Chief Executive**
 Clive Heaphy, Corporate Director for Finance and Resources and
 Section 151 Officer
 Malcolm R. Townroe, Director of Legal and Governance and
 Monitoring Officer

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

1 Summary

- 1.1 On 15th December 2021, the Council's Section 151 Officer was required by law to issue a report under Section 114(2) of the Local Government and Finance Act 1988. At the same time, the Monitoring Officer elected to issue a further report under Section 5 of the Local Government and Housing Act 1989.
- 1.2 Following the issuing of a Section 114 report to all Councillors the law requires Full Council to meet within 21 days to consider the report, decide whether it agrees or disagrees with it and what action (if any) to take in response.
- 1.3 This report presents to Council:
- a) the Section 114 report (including the Section 5 elements), (appendix A),
 - b) the report of the Chartered Institute for Public Finance Accountants (CIPFA) that informed the Section 114 report (appendix B)
- It also presents a draft written response to the Section 114 report for Council to consider for approval (appendix C, to follow).

2 Recommendations

- 2.1 It is recommended that Council:
- a) Gives due and proper consideration to the Section 114 report and its response to it.
 - b) endorses the views contained in the Section 114 report
 - c) accepts all of the recommendations contained within the Section 114 report, in particular:
 - i. to note and endorse at its meeting the actions proposed by the Section 151 Officer in paragraphs 8.2.1 – 8.2.5 of the s114 report
 - ii. to endorse the recommendations made by CIPFA at 9.3 – 9.9 in the s114 report (which have been accepted by the Section 151 and other Statutory officers)
 - iii. to note the actions taken at recommendation 9.10 in the s114 report
 - d) approves the draft written response to the s114 report.

3 Reasons for recommendations

- 3.1 Nottingham City Council fully recognises the serious nature of s114 and s5 reports being issued. It fully accepts the findings, conclusions and recommendations made by the Section 151 Officer and the Monitoring Officer in the report.
- 3.2 Under section 115 of the Local Government Finance Act 1988 Council is required to consider and respond to a report made by the Section 151 Officer under Section 114 of that act. It is also required to consider any report made by the Monitoring Officer under Section 5 of the Local Government and Housing Act 1989.
- 3.3 On 15th December 2021, the Council's Section 151 Officer was required by law to issue a report under Section 114(2) of the Local Government and Finance Act 1988. At the same time, the Monitoring Officer elected to issue a further report under Section 5 of the Local Government and Housing Act 1989. Both reports are issued in respect of acts of unlawfulness by the Council in respect of 'management fee rebates' made to the Council by its wholly owned and controlled company Nottingham City Homes over the period 2014/15/ to 2020/21 inclusive.
- 3.4 Prior to the issuing of the report concerns had been raised by the Council's Section 151 Officer and were investigated by the Chartered Institute of Public Finance and Accountancy (CIPFA) and found to represent illegitimate spend. External legal opinion was sought and confirmation provided that these acts were unlawful.
- 3.5 Tenant funds of £15.868m have been wrongly used by the Council's General Fund over a period of 7 years. This money rightly belongs to tenants of the Council and should be applied toward the management and maintenance of the Council's Housing stock within the Housing Revenue Account ring fence as defined in law.
- 3.6 The s114 report makes recommendations to correct the unlawful use of those funds (at 2021/22 prices). The report also seeks to understand how and why this occurred, and to confirm that all transactions between NCC and NCH (as well as between entities within the NCH 'group' are reasonable and justified. Finally the recommendations seek to strengthen the Council's HRA client function (the HRA cannot be delegated, only the management and maintenance of the stock) and review the relationship and governance arrangements between the Council and NCH.

4 Other options considered in making recommendations

- 4.1 No other options were considered. The actions were deemed unlawful and must be remedied and steps must be taken to ensure that this cannot re-occur.

5 Background (including outcomes of consultation)

- 5.1 The background and findings to the Section 114 report are set out fully in the report,

6 Finance colleague comments (including implications and value for money)

- 6.1 The Council has budgeted each year since 2014/15 for contributions from NCH into the Council's General Fund. On average these are budgeted at around £2.3m per annum but have been in excess of £4m in some years.

- 6.2 Stopping this unlawful source of income will impact immediately on the Council's General Fund reserves but in the medium term financial plan. This income has already been discounted for future years.
- 6.3 HRA reserves will be the immediate beneficiary of the proposed actions and it will enable the Council to reduce its management fee to Nottingham City Homes in 2021/22 and future years.
- 6.4 Further investigations are taking place through CIPFA and should these yield any further issues, additional provision may need to be made.

7 Legal and Procurement colleague comments (including risk management issues, and legal, Crime and Disorder Act and procurement implications)

- 7.1 The legal issues that arise following the issue of a section 114 report and a s5 report are alluded to above. In simple terms the statutory requirement is for the Council to meet to consider its response to the s114 report within 21 days of its issue. Meeting on the 4th January 2022 will enable the Council to fulfil this obligation.

8 Equality Impact Assessment (EIA)

- 8.1 Has the equality impact of the proposals in this report been assessed?

No

An EIA is not required because this report does not contain proposals for new or changing policies, services or functions.

Yes

Attached as Appendix x, and due regard will be given to any implications identified in it.

9 List of background papers other than published works or those disclosing confidential or exempt information

- 9.1 None

10 Published documents referred to in compiling this report

- 10.1 Local Government Finance Act 1988 and Local Government and Housing Act 1989

Councillor David Mellen
Leader of the Council