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Date:

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Ref:

RP/47131/SAAA/HU0026

Beverley Town Council: audit of accounts for the years ended 31 March 2020 and 31 March 2021

Thank you for your emails and attachments dated 1 October 2020 and 22 July 2021 in connection with Beverley Town Council ('BTC' or 'the Council'). You have raised matters in respect of the 2019/20 and 2020/21 Annual Governance and Accountability Returns ('AGARs'); the matters raised have been summarised below:

You have raised six matters within your objection letters in respect of 2019/20 (numbered 1-6 below) and six matters in respect of 2020/21 (numbered 7-12 below).

In respect of the 2019/20 AGAR, you have objected to:

1. the failure to maintain a proper system of financial control compliant with Proper Practices;
2. the failure to maintain a proper budget process;
3. the failure to properly safeguard public funds;
4. the failure to maintain a proper level of general reserves, and to earmark reserves for specific purposes;
5. the making of unlawful statements in the Annual Governance Statement; and
6. the failure to provide proper notice of Public Rights to inspect the 2019/20 accounts.

In respect of the 2020/21 AGAR, you have objected to:

7. the failure to maintain a proper system of financial control compliant with Proper Practices;
8. the failure to properly safeguard public funds;

9. the failure to maintain a proper level of general reserves, and to earmark reserves for specific purposes;
10. the failure to take account of the recommendations of the Independent Panel contrary to s25(2) of the Local Authorities (Members' Allowances) (England) Regulations 2003;
11. the failure to ensure officers' salaries were paid in accordance with Contract and National Association of Local Councils ('NALC') "Greenbook" Terms; and
12. the failure to provide proper notice of Public Rights to inspect the 2019/20 accounts.

In this letter we:

- summarise the requirements for an eligible objection;
- set out with reasons the objection that we have formed the view is not eligible;
- explain the factors that we have taken into account in deciding which objections we are going to consider;
- set out the objections that we have decided to consider and not to consider and the reasons for those decisions;
- set out the conclusions of our consideration of the objections and any actions that we are minded to take as a result

You have asked us to consider applying for a judicial review in respect of Objection 5 to the 2019/20 AGAR. We have considered whether we should apply for a judicial review under section 31(1) of the Local Audit and Accountability Act 2014 ('the 2014 Act') in respect of that objection.

We have also considered whether each accepted objection should be included in a public interest report.

We wrote to you on 17 August 2021 in respect of our decision not to accept Objection 7 and not to apply for a declaration under section 28(3) of the 2014 Act in respect of that objection.

Requirements for an eligible objection

Section 27 of the 2014 Act provides that local government electors for an area may object to the Council's accounts concerning a matter in respect of which the auditor could:

- make a public interest report under paragraph 1 of Schedule 7 of the 2014 Act. Paragraph 1 of Schedule 7 of the 2014 Act provides that auditor must consider whether, in the public interest, they should make a report on any matter coming to their notice during the audit and relating to the Council or an entity connected with the Council, so it can be considered in accordance with Schedule 7 of the 2014 Act or brought to the public's attention; and/or
- make an application to the court for a declaration that an item of account is contrary to law under section 28 of the 2014 Act.

Section 27 requires that objections must be made in writing and copied to the Council.

Regulation 14 of the Accounts and Audit Regulations 2015 ('the 2015 Regulations') provides that objections may only be made in a single 30-day period of which notice has been given under Regulation 15 of the 2015 Regulations.

Regulation 17 of the 2015 Regulations provides that a notice of objection under Section 27 of the 2014 Act must specify:

- the facts on which the local government elector relies;
- the grounds on which the objection is being made; and
- so far as is possible, particulars of any item of account which is alleged to be contrary to law; and any matter in respect of which it is proposed that the auditor could make a public interest report under section 24 of and paragraph 1 of Schedule 7 to the 2014 Act.

Furthermore:

- in 2015, in exercise of their duties under paragraphs 1 and 2 of Schedule 6 to the 2014 Act, the Comptroller and Auditor General prepared and published a Code of Audit Practice ('the 2015 Code') prescribing the way in which local auditors are to carry out their functions;
- paragraph 9 of Schedule 6 of the 2014 Act empowers the Comptroller and Auditor General to issue guidance to auditors;
- paragraph 1.11 of the 2015 Code states that auditors should 'have regard' to guidance issued under paragraph 9 of Schedule 6 of the 2014 Act.

In February 2018, in exercise of the power in paragraph 9 of Schedule 6 of the 2014 Act, the National Audit Office, on behalf of the Comptroller and Auditor General, issued Auditor Guidance Note 4: Auditors' Additional Powers and Duties ('AGN 04'). Paragraphs 20 to 28 of AGN 04 provide guidance on determining whether an objection is eligible. We have had regard to that guidance, which can be found here: <https://www.nao.org.uk/code-audit-practice/wp-content/uploads/sites/29/2017/01/Auditor-Guidance-Note-04-Auditors-Additional-Powers-and-Duties.pdf>

Eligibility of objections

We have to satisfy ourselves that:

- at the time you objected to the Council's accounts for each of the years ended 31 March 2020 and 2021 you were a local government elector for the Council's area;
- your objections have been made in writing;
- you provided a copy of your objections to the Council; and
- you gave notice of your objections within the requisite 30-day period.

We have formed the view that, except for the objection below, your notices of objection meet the requirements of Regulation 17 of the 2015 Regulations.

Objection 6: You object to the failure to provide proper notice of Public Rights to inspect the 2019/20 accounts.

Findings: The original Notice published by the Council included incorrect dates; this was amended by the Council and you allege that the amended version was not available on the website for the entire period.

The requirements of Assertion 4 on the 2019/20 AGAR relate to the equivalent Notice in respect of the 2018/19 AGAR. We note that the Council has declared that it was non-compliant with Assertion 4 in its negative response to that assertion on the 2020/21 AGAR.

Conclusion: In our view this objection does not relate to a governance assertion or an item of account on the 2019/20 AGAR. Therefore, in our view, this objection does not meet the requirements of Regulation 17 of the 2015 Regulations.

Factors taken into account in deciding whether to consider objections

Section 27(3) of the 2014 Act requires that we decide whether to consider an objection. Section 27(4) of the 2014 Act provides that we may decide not to consider an objection if, in particular, we think that:

- the objection is frivolous or vexatious;
- the cost of the auditor considering the objection would be disproportionate to the sums to which the objection relates, or;
- the objection repeats an objection already considered by an auditor of the Council's accounts, whether appointed under the 2014 Act or section 16 of the Audit Commission Act 1998.

By virtue of section 27(5) of the 2014 Act, we are not entitled to refuse to consider an objection which we think might disclose serious concerns about how the relevant authority is managed or led.

By virtue of section 27(6) of the 2014 Act, if we decide not to consider an objection, we may recommend that the Council should instead take action in response to the objection.

Section 28 of the 2014 Act gives a person who has objected to the Council's accounts asking that the auditor make an application for a declaration that an item of account is contrary to law and who is aggrieved that the auditor decides not to do so:

- the right to receive written reasons for that decision; and
- the right to appeal against that decision to the court.

Paragraphs 29 to 38 AGN 04 provides guidance on deciding whether to consider objections. Paragraph 33 emphasises that the grounds set out in section 27(3) of the 2014 Act do not constitute an exhaustive list.

We have written to the Council and received its formal response and all of the additional information that we requested.

Objections we are going to consider and not consider

We have carefully considered all the objections you have made and decided which objections we will consider, in particular by reference to the matters detailed in section 27(4) of the 2014 Act.

We would emphasise that in so doing we have:

- considered both the likely individual and aggregate cost of consideration of objections and the sums to which the objections relate in the context of the scale of the Council's activities; and
- had regard to the fact that, under section 27(7) of the 2014 Act, our reasonable costs of considering objections fall on the Council.

Two of the objections raised in respect of the 2019/20 AGAR that are categorised as eligible have been considered under Step 2 of AGN 04; however, they have not been accepted for further consideration under Step 3 of AGN 04 for the reasons set out below:

Objection 1: You object to the failure to maintain a proper system of financial control; specifically in relation to the failure to issue purchase orders in line with the Council's financial regulations (FR 10).

Findings: We note that the interim internal audit report has considered this area in detail and includes a number of recommendations designed to strengthen such internal controls. It noted that the Council as not compliant with FR 10.

The Joint Panel on Accountability and Governance Practitioners' Guide includes the following within the mandatory requirements for a 'Yes' response to Assertion 2:

'1.14 Standing Orders and Financial Regulations. The authority needs to have in place standing orders and financial regulations governing how it operates. Financial regulations need to incorporate provisions for securing competition and regulating the way tenders are invited. These need to be regularly reviewed, fit for purpose, and adhered to.'

Conclusion: We do not accept this objection for further consideration since the internal auditor has already reported on this area of weakness and raised appropriate recommendations to strengthen control. We are minded to raise an 'other' matter in our external auditor report on the 2019/20 AGAR drawing attention to the internal auditor's reports and an 'except for' matter regarding the incorrect response to Assertion 2.

Objection 3: You object to the failure to properly safeguard public funds due to the funds held in one institution being greater than the Financial Services Compensation Scheme ('FSCS') limit of £85,000.

Findings: We note that the FSCS is not the only safeguard on funds invested in banks and building societies. We further note that the Council's investment strategy was reviewed and approved by Full Council in July 2020 and that the interim internal auditor report notes that the Council has plans to diversify its investments.

Conclusion: We do not accept this objection for further consideration, since it is a matter of Council policy.

We have previously written to you to confirm that four of the objections raised in respect of the 2020/21 AGAR that were categorised as eligible have been considered under Step 2 of AGN 04; however, they have not been accepted for further consideration under Step 3 of AGN 04 for the reasons set out below (as previously explained to you in our correspondence dated 17 August 2021):

Objection 7: You object to the failure to maintain a proper system of financial control; specifically in relation to the controls around expenditure and detailing a specific payment of £1,200.

Findings: We note that the interim internal audit report has considered this area in detail and includes a number of recommendations designed to strengthen such internal controls. We note that this objection is a repeat of an objection that you made to the 2019/20 AGAR. (Objection 1).

Conclusion: We do not accept this objection for further consideration since the internal auditor has already reported on this area of weakness and raised appropriate recommendations to strengthen control. In respect of the expenditure item detailed, we are of the opinion that the cost of us considering the objection would be disproportionate to the sum to which the objection relates. We are minded to raise an 'other' matter in our external auditor report on the 2020/21 AGAR drawing attention to the internal auditor's reports.

Objection 8: You object to the failure to properly safeguard public funds due to the funds held in one institution being greater than the FSCS limit of £85,000.

Findings: We note that the FSCS is not the only safeguard on funds invested in banks and building societies. We further note that the Council's investment strategy was reviewed and approved by Full Council in July 2020 and that the interim internal auditor report notes that the Council has plans to diversify its investments. We note that this objection is a repeat of an objection that you made to the 2019/20 AGAR. (Objection 3).

We note that the Council's investment strategy does not appear to have been updated annually as is required by the statutory guidance on local government investments and we are minded to raise an 'other' matter in our external auditor report on the 2020/21 AGAR drawing attention to this point in relation to the 2021/22 financial year.

Conclusion: We do not accept this objection for further consideration, since it is a matter of Council policy.

Objection 11: You object to the failure to ensure officers' salaries were paid in accordance with contract and NALC "Greenbook" terms.

Findings: We note that the interim internal audit report has considered this area in detail and includes a number of recommendations designed to strengthen such internal controls in this area.

Conclusion: We do not accept this objection for further consideration since the internal auditor has already reported on this area of weakness and raised appropriate recommendations. We are minded to raise an 'other' matter in our external auditor report on the 2020/21 AGAR drawing attention to the internal auditor's reports.

Objection 12: You object to the failure to provide proper notice of public rights to inspect the 2019/20 accounts

Findings: We note that the Council has declared that it was non-compliant with Assertion 4 in its negative response to that assertion.

Conclusion: We do not accept this objection for further consideration since the Council has correctly disclosed this non-compliance.

Three of the eligible objections raised in respect of 2019/20 and two of the eligible objections raised in respect of the 2020/21 AGAR have been accepted under Step 2 of AGN 04. Our decisions following consideration of them under Step 3 of AGN 04 are set out below:

Objection 2: You object to the failure to maintain a proper budget process since you assert that reserves and non-precept income were not taken into account when preparing the annual budget.

Findings: The requirements of section 49A of the Local Government Finance Act 1992 when determining the precept are as follows:

- calculation of the aggregate of revenue expenditure, contingency, transfers to and from reserves and non-precept income in order to determine the precept requirement

We note that, although this process appears not to have been followed for some years up to and including the preparation of the 2019/20 budget and precept, the 2020/21 precept calculation (carried out during 2019/20) did follow and record the requirements of section 49A.

Conclusion: In our view this objection should not be upheld, since the budget and precept that were set during the 2019/20 financial year followed the requirements of section 49A of the Local Government Finance Act 1992.

Objections 4 and 9: You object to the failure to maintain a proper level of general reserves, to earmark reserves for specific purposes and to release earmarked funds when a project is completed or abandoned.

Findings: We note that these objections relate to the response given in Assertion 1 of the Annual Governance Statement as well as items of account in the Accounting Statements. Each year, we request an analysis of reserves or breakdown between restricted and unrestricted reserves at the year end from smaller authorities where the level of total reserves is more than twice the annual precept.

The benchmark for a higher than acceptable level of general reserves that we use is two times the precept. Higher than acceptable levels are included as reporting matters within our external auditor report on the AGAR.

As at 31 March 2020, the Council's total reserves were £791,296 compared to a precept for the year of £296,106 (2.67 times the precept). We note that the breakdown of reserves includes an 'earmarked' reserve entitled 'EMR - operating' for £200,000. It is our view that this forms part of general reserves, which therefore total £214,588. In our view, this represents an acceptable level of general reserves.

We note that the Audit Yorkshire internal audit report raised the fact that earmarked reserves should be set aside for specific projects and a specific purpose and that by the time the report had been published, this recommendation had been actioned by the Council in respect of 2019/20.

As at 31 March 2021, the total reserves were £794,116 compared to a precept for the year of £291,414 (2.73 times the precept). We note that the breakdown of reserves includes an 'earmarked' reserve entitled 'contingency' for £200,000. It is our view that this forms part of general reserves, which therefore total £269,316. In our view, this represents an acceptable level of general reserves.

Conclusion: In our view these objections should not be upheld, since the Audit Yorkshire internal audit report included this area of weakness and raised appropriate recommendations. In our view, the level of general reserves is not inappropriate.

Objection 5: You object to the making of unlawful statements in the Annual Governance Statement in the light of the findings described in the Audit Yorkshire internal audit report dated July 2020 (Assertions 1, 2, 3, 5 & 9).

Findings: The Council commissioned Audit Yorkshire to look at specific areas of internal control and governance and make recommendations where they felt improvements could be made. The report included 8 'major' and 18 'moderate' recommendations.

We noted a number of areas that the report identified as non-compliant with the Council's financial regulations (Assertion 2) or non-compliant with legislation (Assertion 3). We also noted from the report that the risk management requirements for a 'Yes' response to Assertion 5 had not been met in respect of 2019/20.

We have not seen any evidence that the answers to Assertions 1 and 9 should have been 'No' and 'Yes' respectively. In our view, the Council's responses were correct for these assertions.

Conclusion: In our view this objection should be partially upheld. We are minded to raise an 'except for matter' in our external auditor report on the 2019/20 AGAR in respect of the fact that Assertions 2, 3 and 5 should have been answered 'No'.

Objection 10: You object to the failure to take account of the recommendations of the Independent Panel contrary to s25(2) of the Local Authorities (Members' Allowances) (England) Regulations 2003.

Findings: We note that this objection relates to the response given in Assertion 3 of the Annual Governance Statement as well as an item of account in the Accounting Statements.

We reviewed the Full Council minutes of 7/6/2021, where the councillors concluded that an optional basic allowance of £250 per year (before tax) would continue. We note that BTC has paid optional Councillor Allowances since 2003.

The Independent Review was carried out on 7/2/2020; however, we note that due to the pandemic and lockdown this was only discussed by the Council on 7/6/2021.

Conclusion: In our view this objection should not be upheld, since the decision to provide basic allowances is a matter of Council policy. The Council is not required to act upon the Independent Panel recommendations and the minutes clearly show that the Panel's recommendations were taken into account.

We have considered whether we should apply for a judicial review under section 31(1) of the 2014 Act in respect of Objection 5 to the 2019/20 AGAR and decided that we should not do so. We have also considered whether each accepted objection should be included in a public interest report and decided not to issue a public interest report.

Please note that there is no right of appeal against a decision not to issue a public interest report or request a judicial review in respect of any of the objections.

Yours sincerely

Handwritten signature in black ink, appearing to read "PKF Littlejohn" followed by a stylized flourish.

PKF Littlejohn LLP

cc Beverley Town Council c/o Matt Snowden – Acting Town Clerk