

PERFORMANCE AND AUDIT SCRUTINY COMMITTEE

3RD MARCH 2009

Report of the Chief Executive

ITEM 13 INVESTMENT WITH HERITABLE BANK PLC (ICELAND) - CABINET RESPONSE TO COMMITTEE

Purpose of Report

At its meeting on 20th January 2009, the Committee considered a report on the outcome of the investigation into the investment with Heritable Bank PLC (Iceland) and submitted comments to Cabinet in that respect (see minute 64 – 20th January 2009). Cabinet considered these comments on 5th February 2009 as part of its consideration of Annual Use of Resources Statement 2007-08 (see Cabinet minute 155). This report and appendices sets out the Cabinet's response to the Committee.

Background

On 20th January 2009, the Committee considered a report on the outcome of the investigation into the investment with Heritable Bank PLC (Iceland). Following consideration of this item, the Committee submitted its comments to Cabinet (see minute 64 – 20th January 2009), these are attached as Appendix A. Cabinet considered these comments on 5th February 2009 as part of its consideration of Annual Use of Resources Statement 2007-08 (see Cabinet minute 155). The Cabinet noted resolutions 2 to 4 of Performance and Audit Scrutiny Committee minute 64 (2008/2009) and the Leader indicated that the minute for the item would be the Cabinet's formal response to the Performance and Audit Scrutiny Committee. An extract of the relevant minute is attached as Appendix B.

A comment was made at Performance and Audit Scrutiny Committee on 20th January 2009 regarding the Cabinet Lead Member's role being strategic rather than operational. It was stated that in that sense, responsibility did not rest with the Cabinet Lead Member. In respect of this, the Monthly Lead Member "Kit" Meeting Agenda has been attached as Appendix C. This agenda includes the opportunity to raise issues relating to Budget Tracking, Major Projects/Capital Programme Schemes and Current Service Issues including Risk Management & Audit Reports.

Background Papers: None

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APPENDIX A

Extract from minutes of Performance and Audit Scrutiny Committee – 20th January 2009

“64. INVESTMENT WITH HERITABLE BANK PLC (ICELAND)”

A report of the Director of Governance and Procurement setting out the outcome of the investigation into this matter was submitted (item 12 on the agenda filed with these minutes). The Committee had asked to receive this report at its meeting on 18th November 2008, following its consideration of a progress report on the 2008/09 Internal Audit Plan (see minute 49 – 18th November 2008). A supplementary report of the Chief Executive was also submitted to give further background information and to outline the circumstances under which the Committee would need to exclude the press and public from the meeting (copy filed with these minutes). Also referred to at this meeting and submitted were the Final Internal Audit Report for Treasury Management 2007/08 (dated January 2008) and Code of Practice for Treasury Management adopted by Council on 1st March 2004 (copies filed with these minutes).

The Cabinet Lead Member for Finance, Resources and Risk Management, Councillor Bush, had been invited to assist the Committee and was in attendance. He was assisted by the Chief Executive, the Deputy Chief Executive, the Director of Governance and Procurement and the Head of Performance and Audit.

In considering this matter, reference was made to the following issues:

- (a) Further to the report, clarification was provided on the chronology of events/when matters had been known and by whom (in respect of the Heritable Bank investment), in particular that the problem had first come to light in mid-October 2008 following the Heritable Bank going into administration. Councillors and the press had been informed of the position at that time and investigation into the matter had begun. The investigation had considered the service over a twelve month period ending October 2008.
- (b) Further to the report, clarification was provided on the other instance of a breach of the Code of Practice for Treasury Management (CPTM) that had been revealed as part of the above investigation (maximum investment value had been exceeded with three separate investments with Dexia Bank, as outlined in the report). There had been no loss of investment in that case.
- (c) The routine internal audit of Treasury Management which had reported in January 2008 had not highlighted the cases of non-adherence with the CPTM in respect of the Heritable Bank and Dexia Bank as those investments had not yet been made at that time. That routine internal audit had identified an instance when the maximum investment period had been exceeded (National Australia Bank), but that had been sanctioned by the Head of Financial Services as he was able to do (although not recorded). It was confirmed that

although scope for improvement had been identified at that time, the overall finding for the service had been satisfactory with qualification.

- (d) Discussion regarding the reporting of the Internal Audit programme and outcomes of internal audits to the Committee and the current arrangements in that respect (quarterly summary reports). It would be expected that areas of concern would be reported to Cabinet Lead Members by officers through the briefing systems in place. However, as stated above, the service had been found to be satisfactory with qualification in January 2008. Internal Audit reports with a Limited Assurance outcome were not routinely circulated to Cabinet Lead Members, but it would be advisable to do so in future.
- (e) As stated in the report, the investment with Heritable Bank had been made in January 2008 for 364 days. That exceeded the maximum investment period of 3 months on the Council's approved counterparty list. It was understood that the Head of Financial Services had attempted to recover the investment (March 2008), but the agreed investment term was 364 days and he had been unable to do so. In response to a question, it was confirmed that the Council had not been in receipt of any information which might have alerted it to the problem with Icelandic bank investment earlier than October 2008. Ratings had not fallen for the Heritable Bank until September 2008.
- (f) Officers considered that the CPTM was comprehensive and clearly set out responsibilities/rules for staff. There was brief discussion regarding training for staff in this matter, including the importance of recommended action 4 in that respect and the Head of Financial Services' responsibility for that. Members of staff in the service were experienced and many had worked for the Council for some years. The term "junior" related to those staff being more junior than others in the service structure, not to them being inexperienced or of a low grade.
- (g) Comment regarding the Cabinet Lead Member's role being strategic rather than operational. In that sense, responsibility did not rest with the Cabinet Lead Member. However, in light of events, appropriate training for the Cabinet Lead Member in respect of his role would be useful.
- (h) The Council's counterparty list had been maintained in good order by the Head of Financial Services. However, as that was overwritten on an ongoing basis, an action had been recommended that that list be printed off as investments were made and filed with the record of that investment. Reference made to other means of assessing the position when an investment had been made.
- (i) Reference to need to regularly review the CPTM, record that that had been done and report that to Cabinet as part of Treasury Management Strategy report.
- (j) Concern that some of the areas of concern highlighted by Internal Audit report of January 2008 were still in existence in the service in January 2009. In response, it was stated that, overall, Treasury Management procedures at

the Council were comprehensive, thorough and compared favourably with those in place at unitary authorities. In that respect, there was no reason to consider that responsibilities were not being fulfilled in the service and there was no evidence of widespread non-adherence to the CPTM. There was brief discussion regarding the considerable number of investment transactions taking place each year and the number of cases of non-adherence to the CPTM which had been found being only a very small percentage of those. Officers at similar levels carried out the similar roles at other local authorities. The Internal Audit which had reported in January 2008 had considered a large sample of investments.

- (k) View expressed that the Council was partly responsible for the loss of the investment with Heritable Bank given that it had failed to adhere to its prescribed investment period. The loss could not be entirely attributed to bad luck that Icelandic banks had failed.
- (l) Report clearly set out what had gone wrong on this occasion. It was important to consider what changes would be made in the future.
- (m) It was not possible to remove all risk from Treasury Management. However, adhering to a comprehensive and up to date CPTM would reduce the risk as far as possible.
- (n) The statutory responsibilities of the Section 151 Officer did not specifically refer to training of staff.

Note:

At this stage in the meeting, the Committee resolved to exclude members of the public from the meeting on the grounds that they wished to refer to matters which would involve the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A to the Local Government Act 1972.

Councillor Stork left the meeting during this part of the Committee's discussions.

In summary, reference was made to the following matters in this part of the meeting:

- (o) Assurances were given that senior officers in the service were aware of investments being made. It was acknowledged that adhering to CPTM would assist in protecting Council and officers.
- (p) Details of the post holders responsible for the Section 151 Officer role over past two years were provided. There was brief discussion of Treasury Management responsibilities and roles and how those were allocated within the service structure.
- (q) It was recognised that decisions taken in the service needed to be documented.

- (r) Discussion of importance of staff receiving appropriate training and demonstrating that. Further information was provided on current training arrangements and proposals for future in that respect.
- (s) Brief reference to disciplinary action and posts involved, although that not a matter for scrutiny.
- (t) View that no political responsibility had been taken for the matter. Discussion regarding whether a public apology would be appropriate in this case.

RESOLVED

1. that the report be noted;
2. that the Cabinet be informed that the Committee considers an apology should be made to the public regarding this matter;
3. that it be recommended that a clear protocol is put in place for informing Cabinet Lead Members of internal issues relevant to their roles at an early stage and that training is provided to Cabinet Lead Members where needed in those respects;
4. that the Committee considers that:
 - (i) the requirements of the service set out in paragraph 1.3 of the Final Internal Audit Report for Treasury Management 2007/08 (dated January 2008) should be strictly adhered to; and
 - (ii) recommended action 4 (training) in the Action Plan set out in the Treasury Management Investigation 2008 Internal Audit Report (dated December 2008) should be implemented;
 - (iii) the Code of Practice for Treasury Management adopted by Council on 1st March 2004 should be strictly adhered to, with any amendments made as part of the recommended review to be reported to back to the new Audit Committee (to be established in March 2009);
5. that the issue "Ethical Investment Policy" be added to the Committee's work programme.

In accordance with Council Procedure Rule 41 of the Council's Constitution (Length of Meetings), members of the Committee agreed to extend the length of this meeting by 30 minutes to enable consideration of the above item to be concluded."

EXTRACT FROM CABINET MINUTES

5TH FEBRUARY 2009

PRESENT: The Leader (Councillor Shepherd)
The Deputy Leader (Councillor Bush)
Councillors Fryer, Hampson, J. Hunt, Lewis, Preston, Slater and Snartt.

151. DISCLOSURES OF PERSONAL INTERESTS

A disclosure of Personal Interest was made by Councillor Slater – Personal and Prejudicial Interest in item 11 – Motion on Notice – Naming of Epinal Way Extension.

155. ANNUAL USE OF RESOURCES STATEMENT 2007-08

A report of the Chief Executive was submitted, which informed Cabinet of the outcome of the 2007/08 Use of Resources judgements and of remedial action which was being taken as a consequence of the issues identified; in addition the comments and recommendations of the Performance and Audit Scrutiny Committee (20th January 2009 minute 64) in respect of Investment with Heritable Bank PLC (Iceland) were submitted (item 6 on the agenda filed with these minutes).

In accordance with Overview and Scrutiny Procedure Rule 8 (c), Councillor Burr, as Chair of the Performance and Audit Scrutiny Committee, addressed Cabinet in respect of their scrutiny of the Investment with Heritable Bank PLC (Iceland) (minutes set out as Appendix 2 of the report). Councillor Burr clarified the meaning of resolution 3, which essentially asked that the Lead Member be involved with such issues at an earlier stage.

The Leader, Councillor Shepherd, referred to the “Use of Resources Judgements” on page 9 of the agenda. He stated that from 2007 to 2008 there had been improvements in two areas, with the score increasing from 2 to 3; these were KLOE 2.3 “The Council manages its asset base” and KLOE 5.2 “The Council manages and improves value for money”. The Leader stated that from 2007 to 2008 there had been one area where the score had decreased from 3 to 2; this was KLOE 4.3 “The Council has arrangements in place that are designed to promote and ensure probity and propriety in the conduct of its business”.

On KLOE 3.2 ‘The Council manages its spending within the available resources’ the Council had not gone up from 2 to 3 because of weaknesses in Treasury Management, including the Icelandic Bank Investment. The Leader acknowledged these weaknesses and apologised to the public on behalf of the Council stating that the Council would ensure improvements were made.

The Cabinet noted resolutions 2 to 4 of Performance and Audit Scrutiny Committee minute 64 (2008/2009). The Leader indicated that the minute for this item would be the Cabinet's formal response to the Committee.

RESOLVED

- 1. that the contents of the 2007/08 Use of Resources Statement be noted; and**
- 2. that the management actions being taken to deal with the issues raised in the statement be endorsed.**

Reasons

1. To formally note the issues arising from the Audit Commission review for 2007/08.
2. To ensure the issues arising from the statement were dealt with.

MONTHLY LEAD MEMBER “KIT” MEETINGS

AGENDA

- 1) Actions from last Meeting**
- 2) Forward Planning**
 - a) Forthcoming Cabinet items**
 - b) Forthcoming Scrutiny items**
- 3) Team Plan Monitoring – progress**
- 4) Key Performance Indicators – monitoring**
- 5) Budget Tracking**
- 6) Staffing Issues**
- 7) Major Projects/Capital Programme Schemes**
- 8) Complaints Monitoring**
- 9) Current Service Issues including Risk Management & Audit Reports**
- 10) Any Other Business**