



**Safest People, Safest Places**

## **Combined Fire Authority**

**11 March 2024**

### **Report under Section 5 of the Local Government and Housing Act 1989**

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#### **Report of the Clerk and Monitoring Officer**

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#### **Purpose of Report**

1. The purpose of this report is to report on a contravention of an enactment or rule of law pursuant to Section 5 of the Local Government and Housing Act 1989.

#### **Background**

2. Section 5 of the Local Government and Housing Act 1989 requires that all relevant authorities, of which the Combined Fire Authority is one, must designate an officer as its Monitoring Officer. The Clerk is currently the officer so designated.
3. The remainder of the section places a personal duty upon the Monitoring Officer to report to the Combined Fire Authority in respect of any proposal, decision or omission that appears to them to have given rise to a contravention by the Authority of any enactment or rule of law or where such a proposal, decision or omission, in their opinion, is likely to or would give rise to such a contravention.
4. In preparing a report, the Monitoring Officer is required, so far as is practicable, to consult with both the Chief Fire Officer and the Treasurer.
5. As soon as practicable after preparing such a report, a copy must be sent to all members of the Combined Fire Authority, who must consider the report at a meeting within 21 days.

## The Budget

6. The Combined Fire Authority is a Major Precepting Authority for the purposes of the Local Government Finance Act 1992. It is required under s40(5) of the Act to issue its precept before the 1 March in the financial year preceding that for which it is issued. Before issuing its precept, the Combined Fire Authority must determine its Council Tax Requirement pursuant to s42A of the Act and then calculate its Basic Amount of Council Tax pursuant to s42B of the Act. A failure to calculate these figures in accordance with the provisions of the above sections means that the purported issue of a precept shall be treated as having not occurred (s40(8)).
7. Notwithstanding these provisions, the legislation is clear that a precept shall not be invalid simply because it was issued after the 1 March.
8. At its meeting on the 16 February 2024, the Combined Fire Authority considered a report of the Treasurer and resolved that its Council Tax Requirement pursuant to s42A was £21,488,957.38.
9. It then went on to consider its Basic Amount of Council Tax pursuant to s42B. That section states that the Basic Amount of Council Tax shall be arrived at by dividing the Council Tax Requirement by the Aggregate Council Tax Base figure provided by the Billing Authorities (in this case being Durham County Council and Darlington Borough Council). Unfortunately, the figure for the Durham County Council Tax Base was incorrect with an earlier estimated figure being used as opposed to the final figure which had been notified to the Combined Fire Authority.
10. As the Basic Council Tax has been calculated otherwise than in accordance s42B, it must be concluded therefore that the issuance of the precept has legally not occurred and that the Combined Fire Authority has failed to issue its precept before 1 March as it is statutorily obliged to do. It is the breaches of these enactments that as Monitoring Officer I am under a duty to report to the Combined Fire Authority on.
11. Having undertaken consultation with the Treasurer, he has concluded that had the correct Council Tax Base for Durham been used, his recommendation would have been that the Council Tax Requirement be set £2,515.96 higher than originally agreed by the Combined Fire Authority. Crucially, this would have also ensured that the Basic Amount of Council Tax would be exactly the same as members agreed at the meeting in February (£118.12 per Band D property).
12. The Treasurer has therefore undertaken to bring a further report to the Combined Fire Authority to correct this very technical and very minor (in terms of quantum) human error. Should the Combined Fire Authority agree to his recommendations then there will be no detriment to the Combined Fire Authority or to the people of Durham and Darlington and no further action will be necessary.
13. However, the consequences of a failure to take a decision on the 11 March in accordance with the Treasurer's recommendations cannot be overstated. Any further delay in issuing a precept is likely to mean an expensive re-billing process for Durham County Council and a risk that the Combined Fire Authority may not receive its first instalment of payments. The cash flow consequences of which may

necessitate a statutory report from the Treasurer under his powers at s114 of the Local Government Finance Act 1988.

14. Given the urgency of the situation, officers have considered whether a decision could be taken under delegated powers (with a report for information provided to the next meeting of the Combined Fire Authority). However, s67 of the 1992 Act is clear that decisions regarding the setting of the precept are matters which can only be taken by members.
15. Given annual leave commitments and the urgency of the situation, it has not been possible to consult with the Chief Fire Officer in the preparation of this report.

### **Recommendations**

16. Members are requested to:
  - (a) **note** the content of the report; and
  - (b) **consider** the advice contained in this report when considering the report of the Treasurer.