

## The Highland Council

### Report to Resources Committee - 26 August 2015

Agenda Item	28
Report No	RES/84/15

#### Grant Street Park – Internal Audit Investigation

#### Report by Director of Finance

##### Summary

The Council administers property, including cash and land, held on the account of the Inverness Common Good Fund (ICGF).

This report advises that the Council has not met the standard of administration expected in relation to the management of the leasehold interest at Grant Street, Inverness.

Accordingly, Members are recommended to agree to make restitution of the sums assessed as being lost to ICGF.

#### 1. Background

- 1.1 The Inverness Common Good Fund owns ground at Grant Street, Inverness which has been leased to Inverness Clachnacuddin Football Club.
- 1.2 The Council's Internal Audit Section was invited to review the circumstances of the Council's management of the ICGF's interests as Landlord of the above lease in the period between 2003 and 2010. The period in question covers a time when the Football Club experienced significant financial difficulty, subsequently entering in to a Creditors Voluntary Arrangement in 2010.
- 1.3 The review has established that in 2003 the Council was made aware that the Football Club was experiencing financial difficulties. A meeting took place between Members of the Area Committee, officers and the Club. Although the Club was looking for a rent reduction, Members expressed their requirement, as Common Good Trustees, to ensure a commercial rent was in place. However it was agreed that the Council would review the position upon receipt of further information relating to the Club's accounts. Unfortunately it appears that this information was not provided.
- 1.4 The Football Club's rent was paid by monthly direct debit instalment. In January 2004 it appears that the direct debit was cancelled and information was notified to the appropriate Service to enable action to be taken. The review has found that although the Football Club were contacted no further payments were received and no legal action instigated.
- 1.5 Following the default in rental payment debtors invoices should have been raised. This would have formalised the debt position and would have prompted the need for formal follow up action, including, if appropriate, legal action.

- 1.6 As this action was not taken it was only in July 2006 that it was identified that 26 months' rent, totalling £36,167, had accrued for the period. Discussions with the Football Club, its bankers and accountants, officers and Members then took place in September 2006 to try and resolve the situation.
- 1.7 It has been suggested that the Football Club believed that the Council had granted a payment holiday in respect of the rental in order to assist the Club at a time of financial difficulty. However no record has been found within Council Committee minutes of the time to evidence the Council's agreement to this request.
- 1.8 A Member working group was established in 2008 to consider options and to identify the nature of any support that might be offered to the Football Club.
- 1.9 The Football Club subsequently entered into administration in 2010. At the point of entering administration the arrears had reached £67,000 although a one off payment of £17,500 was received prior to administration, leaving a debt owed to the ICGF of £49,500.
- 1.10 Ultimately the ICGF received settlement through the Creditors Voluntary Agreement (CVA) of £15,682.06 (approximately 32p in the £) and had to write off a total of £32,959.51.

## **2. Discussion**

- 2.1 The Council is obliged to exercise the same duty of care and diligence for funds held within the ICGF as it does for general funds under its control. Even though the ICGF did not pay the Council for advice and general administrative support the Council is legally obliged to apply the principles of Best Value to the maintenance of all Common Good assets under its control.

Following the Football Club's entry into administration the ICGF had no legal means to recover the outstanding rental. The arrears arose through the Council's failure to meet the standard of administration reasonably expected.

- 2.2 In this respect officers failed to invoice the Football Club for two and a half years which meant that the debt was not visible to the Council, thus allowing substantial arrears to accumulate. Whilst it can be argued that the Football Club may not have been in a position to pay, action could have been taken sooner, and the outcome may well have been different and less costly to the ICGF.
- 2.3 As a result of this maladministration there is a case for financial restitution. However the level of restitution needs to take account of monies received and the receipt through the CVA.
- 2.4 **Appendix 1** shows a calculation that a net sum of £18,424.22 would be an appropriate restitution payment.. As there is no identified or allocated budget for such payment it is recommended that this restitution is made from Council balances.

2.5 The Audit Plan for 2015/16 has recognised that procedures need to be strengthened and audit reviews are therefore scheduled to look at rental income agreements as a whole (Common Good and non-Common Good). The outcome from these reviews will be reported through the Audit and Scrutiny Committee.

### **3. Implications**

#### **3.1 Legal Issues**

3.1.1 In considering the issues raised in this report, Members should be aware of the potential conflict between their role as Council Members and as Trustees of the Common Good Fund.

3.1.2 The payment of restitution highlights such a conflict of interest as the financial impact on the Council and the Inverness Common Good Fund are the direct opposite of one another.

#### **3.2 Financial Issues**

3.2.1 The financial issues are highlighted in this report. As a result Members are particularly asked to note the action outlined at paragraph 2.5.

3.3 There are no other implications to highlight.

#### **Recommendation**

The Committee is asked to agree to payment of £18,424.22 of restitution to the Inverness Common Good Fund from Council balances.

Designation: Director of Finance

Date: 14 August 2015

Author: Derek Yule

**Clach – Calculation**

Debt arising through non-billing of rental income (16/01/04 to 15/08/06):	£36,166.67
Subsequent debt to August 2008:	£31,467.64
Total debt as at August 2008:	£67,634.31
Payment received – August 2008:	(£17,500.00)
Debt outstanding – August 2008:	£50,134.31
Further payments received (for specific services provided)	(£1,492.74)
Debt outstanding as at time of administration through CVA:	£48,641.57
Final CVA dividend (32.24p/£)	£15,682.06
Amount written off:	£32,959.51

Apportionment of £17,500 payment between (i) debt arising through failure to raise accounts (£36,166.67) and (ii) subsequent debt (£31,467.64):

- $£17,500 \times 53.47\% = £9,357.25$

Apportionment of CVA dividend on same basis:

- $£15,682.06 \times 53.47\% = £8,385.20$

**Total sum to be repaid: £36,166.67 – (£9,357.25 + £8,385.20) = £18,424.22**