

## Contingent Liabilities

In addition to amounts recognised on the Balance Sheet, the Council is aware of the following contingent liabilities at 31 December 2020:

### Guarantees

#### **Aberdeen Science Centre (formerly Satrosphere)**

The Council has agreed to provide a guarantee to the Bank of Scotland for the sum of £127,654 in support of an overdraft facility and card guarantee facility until 31 March 2021. **A request from ASC has been made for a continuation of this facility for a further period.**

#### **Transition Extreme Sports Ltd**

The Council has agreed to provide a guarantee to the Bank of Scotland in respect of a maximum overdraft facility of £250,000, as approved at City Growth and Resources Committee on 5 December 2019. Exercising the delegated authority provided by the Committee, the Chief Officer put in place a guarantee that ends on 31 March 2021. **A request from Transition Extreme has been made for a continuation of this facility for a further period.**

#### **Sport Aberdeen**

The Council agreed to provide a bank guarantee to Sport Aberdeen to a maximum of £5 million over a 5-year period for investment in Council leisure facilities, as approved at the 7 June 2016 Finance, Policy and Resources Committee. A guarantee for a revolving credit facility for £1.4m is also in place.

#### **External Organisations - Guarantor in relation to North East Scotland Pension Fund (NESPF)**

As the administering authority, the Council may admit a body to the Pension Fund as an 'admitted body' provided (i) the organisation can confirm they have sufficient links with a Scheme employer for the body and the Scheme employer to be regarded as having a community of interest; and (ii) the Scheme employer is prepared to act as guarantor in the event the admitted body should cease to exist. If this situation was to occur and staff made redundant the staff over 50 years old would become entitled to immediate payment of their pension benefits. The Council has agreed a number of such guarantees to organisations that include Aberdeen Sports Village, Sport Aberdeen, Aberdeen Performing Arts, Aberdeen International Youth Festival, Aberdeen Heat and Power, Bon Accord Support Services and Bon Accord Care Ltd. The potential values guaranteed are subject to a range of actuarial assumptions.

#### **SEEMIS Group LLP**

The Council has agreed to fund any additional pension liability payments arising from its membership of the SEEMIS organisation (the provider of our schools' Management Information System). To date there has been no call on the guarantee.

#### **Integration Joint Board (IJB)**

The IJB is responsible for the strategic planning of the functions delegated to it by Aberdeen City Council and NHS Grampian. The Aberdeen City IJB Integration Scheme provides the framework in which the IJB operates including information on

funding and what should happen if the IJB is projecting to overspend its budget at the year-end. Whilst steps will be taken to address this (through a Recovery Plan), ultimately the parties to the arrangement may be potentially liable should the IJB overspend.

### **Contractual**

#### **Waste Disposal**

The Council has a long-term contract with an external contractor for the disposal of all relevant waste arising in the City and the operation and maintenance of waste transfer stations, recycling facilities and landfill sites. The contract commenced in September 2000 and is due to run for 25 years.

The Council is lead partner in a three-authority project with Aberdeenshire and Moray Councils to procure an energy from waste facility which will deal with all residual waste from the three authorities. The contract commenced on 8 August 2019 with the facility expected to come online in summer 2022 and will run for 20 years.

#### **Landfill Allowance Scheme (LAS)**

The Scottish Government had previously introduced a scheme under which Local Authorities were to be penalised for exceeding landfill tonnage targets. The Landfill Allowance Scheme in Scotland is currently suspended, and it is expected that the Waste (Scotland) Regulations 2012 will take over the requirement for the control of landfilling biodegradable municipal waste. However, until such a repeal is formalised there remains a potential liability on the Council.

#### **Section 75 agreements**

Section 75 agreements (developer obligations) are frequently sought by the Council in relation to the award of planning permission. The Supreme Court's judgement in relation to the Strategic Transport Fund (STF), which was funded through developer obligations, has significant implications for the Council, as there are several large scale projects in development which had expected to rely on STF funding. Delivery of these projects is now at risk unless an alternative funding solution can be identified. As highlighted in the report the current economic conditions are making cashflow for developers particularly challenging and the consequence of this is increased risk of agreements not being met.

#### **Our Generation – Solar Panels**

A contractual dispute exists in relation to this contract which may give rise to a future financial liability. On 23 July 2019 the Council successfully defended an appeal by Our Generation to the Court of Session on the findings of the original judgement. The matter remains outstanding and is subject to further legal proceedings.

#### **Aberdeen Art Gallery**

A contractual dispute exists in relation to who bears the cost of the delays in respect of the refurbishment of the Art Gallery. A Court of Session action was raised against the Council by McLaughlin & Harvey, the main contractor, following adjudication in favour of the Council.

A new adjudication was raised by the main contractor for a specified time period within the works period. The adjudication decision led to an extended time award for the main

contractor. Notwithstanding this, and prior to the adjudication decision the Council raised a new Court of Session action to determine the cost of delays encompassing the whole contract period. Part of this court action will reconsider the recent adjudication decision. This may give rise to a future financial liability.

### **Scottish Child Abuse Enquiry**

The Scottish Parliament is introducing a redress Bill (April 2021) for survivors of abuse in care in Scotland. The stage 1 debate took place on 17 December 2020 where members considered the general principles of the Bill. Survivors as an alternative to civil litigation may choose to apply for redress. Financial contributions may be requested from Local Authorities to support the redress scheme. Ongoing discussions will take place to assess any proposed level of contribution from the Council and the mechanism by which this is met.

The Council will continue to receive civil claims relating to periods of time in care. These have the potential for significant costs to be incurred and alongside the contribution to the scheme will give rise to future financial liability, although unquantifiable at this time.

### **Multi Storey Blocks**

In response to the Grenfell Tower incident, Building Regulation Fire Safety has been reviewed by the Scottish Government, and an updated Technical Handbook published. The provision of automatic fire suppression systems has been deferred until 2021 to align with a government commitment to introduce this within new build social housing. Retrofitting suppression in existing dwellings is not a requirement. The cost impact of these changes for new dwellings is not quantified at this time.

### **Pension Fund costs – McCloud Judgement**

The decisions of the Court of Appeal in the Sargeant/McCloud cases (now generally known as McCloud for Local Government Pension Schemes) have ruled that the transitional protections afforded to older members when the Public Service Pension Schemes were amended constituted unlawful age discrimination. Going forward remedies relating to the McCloud judgement will need to be made in relation to all public sector pension schemes including the LGPS.

As the exact timing and costs to the Council are unknown at this time estimates have been built into the 2018/19 and 2019/20 pension service costs. There remains the possibility that these costs may be higher. The triennial valuation, dated 31 March 2020, that affect employer contributions from 1 April 2021 has taken account of assumptions to incorporate the estimated impact on pension liabilities.

### **COVID-19 Impact**

Statute and government guidance around the ongoing lockdown situation continues to restrict the movement of people and leaves the Council in a position of uncertainty on a number of fronts. Closure of facilities and construction sites being shut down for a period of time increases the likelihood of the Council and contractors referring to contractual documents and for disputes to arise. The Council continues to monitor the situation closely, and while the vaccination programme is being rolled out, a level of uncertainty continues and there remains the possibility that costs may be higher.