18 March 2024	ITEM: 9
Cabinet	
Divestment Programme Professional Fees	
Wards and communities affected: All	**Key Decision:** Yes
Report of: Cllr Graham Snell, Portfolio Holder for Finance, Human Resources and Payroll	
Accountable Assistant Director: n/a	
Accountable Director: Dawn Calvert, Chief Financial Officer S151	
This report is Public	
Version: Final	

Executive Summary

The Council has agreed to pursue a Divestment Strategy to reduce the scale of its investment portfolio which was in excess of £1bn at the start of the financial year. This strategy is critical to the Council's financial recovery and will enable it to reduce its level of debt, reduce borrowing costs and reduce its exposure to commercial and financial risk.

This has become a more complex task, and even more time critical, due to two companies in the Council's investment portfolio being placed into administration in November and December 2022 (Toucan[1] and JLG/JCF[2]). The company directors appointed administrators to run the companies and prepare for asset sale (Toucan) and service the loan book to recover debts (JLG/JCF). The Toucan sale complete in February 2024 which will result in total distributions to the Council of c.£510m in FY 2023/24 with further distributions expected in FY 24/25. The JLG/JCF administration process will continue into FY 2024/25 with distributions expected to be paid to the Council on an ongoing basis as the loan book is recovered.

Given the Council's lack of expertise, experience and capacity to engage in complex administration processes, the Council has used a number of specialist financial and legal advisors to protect the Council's interests and work with the administrators to realise timely distributions to the Council. They have also gathered information and undertaken investigations to inform potential litigation proceedings to recover anticipated financial losses.

This report sets out the Council's contractual arrangements with its advisors, professional fees to date and an estimate of future costs to deliver the Divestment Strategy and support the administration processes. It does not seek to provide a comprehensive update on the status of the

[1] Toucan Energy Holdings Ltd (TEH) was placed into administration – referred to as "Toucan"
[2] Companies are Just Loans Group (JLG) and Just Cashflow (JCF)

divestment programme, ongoing investigations and litigation, although some commentary is included to provide context to current and future estimates for professional fees to deliver the Divestment Strategy.

It is recommended that contracts for professional advisors are extended to provide continuity of advice during the critical final period of the Divestment Strategy, including potential litigation proceedings.

The Council has developed a robust approach to managing its divestment workstreams including the oversight of its professional fees. They remain broadly in line with previous estimates provided to Cabinet at c.£11.1m (was £11m) up to the end of FY 25/26. Costs as set out in this report reflect the latest cost estimates for potential litigation proceedings (Toucan and JLG/JCF) which will remain subject to regular revision as actions and timescales are determined. Investigative work and supporting analysis are now more advanced, with the Council and administrators due to compare and prioritise claims and agree actions. This specialist resource has enabled the Council to divest and/or recover amounts from companies in administration (in excess of £630m before the end of FY 24/25) with further amounts anticipated in FY 25/26.

Commissioner Comment:

Commissioners have been consulted on the content of this report and agree with the recommendations made.

1. Recommendation(s)

1.1 That Cabinet:

Approves the extension of advisor contracts for those professional advisors as stated in this paper to provide continuity of advice to support the final phase of the Divestment Strategy and agrees that these are met from the Transformation Reserve.

Notes the Council's direct professional fees incurred to date and future cost estimates to implement its Divestment Strategy including potential litigation proceedings.

Endorses the third-party administration costs associated with two companies within the Council's investment portfolio that have been placed into administration (Toucan and JLG/JCF) and the arrangements that are in place to review and challenge theses costs[3].

Notes that a separate paper on the sale of the Toucan assets will be provided to Cabinet following sale completion and resolution of a number of outstanding matters associated with the transaction/sale.

Notes the programme management arrangements in place to provide oversight of the Divestment Strategy, including the administrations and the criteria used to consider litigation proceedings.

Updates Council on the above decisions.

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[3] These are not Council costs but are reported here for completeness of the administration process

2. Introduction and Background

The Council's Divestment Strategy

2.1 On 2 September 2022, the former Secretary of State announced that after due consideration he was using his powers under the Local Government Act 1999 to intervene at the Council, given the great concerns about the scale of the financial and commercial risks faced by the Council.

2.2 The Direction stated that the Council should "*secure the Authority's compliance with the requirements of Part 1 of the Local Government Act 1999, in particular:*

- *To deliver financial sustainability by closing any short or long-term budget gaps and reducing the Authority's exceptionally high level of external borrowing.*
- *To ensure compliance with all relevant rules and guidelines relating to the financial management of the authority.*
- *To ensure that a strategic and systematic approach to risk management, with appropriate scrutiny and governance of the decision-making processes and procedures is adopted and embedded across the authority.*
- *To address the culture of poor financial management and governance of its commercial portfolio*".

2.3 Annex 1 of the Direction states that the Council should adopt a strict debt reduction plan and action to ensure that the investment and treasury strategies are sustainable and affordable. This is currently the overarching strategic financial objective of the Council.

2.4 The Council's current financial position has been impacted by its investment strategy, which has resulted in the Council having a c.£1bn investment portfolio, which is clearly a disproportionate size compared to the size of the Council. As most of this investment had been financed from borrowing, the Council had one of the highest levels of debt per head of population for any local authority in the UK.

2.5 A **Divestment Strategy (**the process of selling its investment portfolio) is a key part of the Council's Financial Strategy with proceeds received from the sale of any investments to be used to repay borrowing as a priority. It should be noted that where a portfolio company has been placed into administration, the Council is no longer permitted to sell its asset although it can seek to recover amounts from the administrators[4] in line with the Insolvency Act 1986.

2.6 The divestment strategy will enable the Council to:

- Reduce its level of debt and its borrowing costs.
- Reduce the Council's level of commercial and investment risk.
- Remove a dependency on investment income, including single asset dependency.
- Focus on its core services.
- Make progress towards becoming more financially sustainable.
- Ensure compliance with relevant rules and guidelines relating to financial management.
- Deliver best value due to the above.

[4] Note that any reference to Divestment Strategy in this paper refers to the general process of the Council seeking to realise its investments via (a) a planned sale/exit or (b) by making a claim as part of an administration process if applicable. Eligible claims may receive a distribution (a payment) following the outcome of the administration process if assets are available

Divestment progress overview

2.7 Given the scale and complexity of the Council's investment portfolio, and the lack of in-house capacity and expertise to deliver the Divestment Strategy at pace, external professional advice has been critical to support the Council in order to accelerate and maximise realisations and/or distributions to the Council.

2.8 As set out separately in the Council's Medium Term Financial Strategy (MTFS) 2024/25, significant work has been undertaken and progress has been made to reduce the Council's investment portfolio. Pre the commencement of the Divestment Strategy, the Council had 14 investments totalling c.£1bn. By the end of this financial year, it is expected that the Council will have received £633m in FY 2023/24 with respect to its investments (excluding associated investment income). In order to achieve this, the Council has relied upon specialist external financial and legal advice, especially with regards to its major investments (Toucan, JLG/JCF and CCLA).

Table 1: Investment Portfolio Summary

Investment	Nominal Value £m
Toucan Energy Holdings	655
CCLA Property Fund	104
JLG/JCF	94
Windfarms	73
Private Debt Fund	24
Convertible Bonds	19
Safe as Houses	15
PWE	30
Others	21
	1,035

2.9 The majority of cash expected to be received by the end of this financial year relates to the sale of the Toucan solar farm assets (by the administrators) which completed in February 2024 (c.£510m received before the end of FY 23/24) and CCLA at circa £92m, with smaller amounts from JLG/JCF (c.£11m) although further distributions are expected in the next financial year as the loan book is recovered.

2.10 Company directors of Toucan and JLG/JCF placed the companies into administration and administrators[5] were appointed in November and December 2022. As a result, the process to recover any monies from these investments is substantially different and more complex compared to the Council's other investments[6] and has required significant external advice

[5] Under the Insolvency Act 1986, once a director is aware that a company is insolvent, directors have legal duties placed upon them and there is a process to follow which usually results in an insolvency practitioner (IP) being appointed. In the process of a company entering administration, a licensed IP is appointed as the administrator. Administrators must act in accordance with the power and duties afforded to then under the Insolvency Act 1986. They are an Officer of the Court and must perform their role in the best interests of creditors as a whole. Administrators have been appointed for Toucan (representatives from Interpath) and JLG/JCF (representatives from FRP)

[6] The rescue of the company is the primary aim of any administrator and other options will only be considered if the company is not considered to be a going concern. The joint administrators effectively take over the day-to-day running of the business to ensure that the adopted strategy can be pursued. In relation to the Toucan assets, the joint administrators developed a strategy to continue to trade the company in administration due to the high quality of the underlying assets and the significant free cash flows of the company, whilst preparing the solar asset portfolio for sale. In relation to JLG/JCF, which provides finance to SMEs, the administration strategy

(financial and legal). This is reflected in the level of Council's professional fees incurred to date and future estimated costs.

2.11 Following a global competitive sales process, the Toucan portfolio of solar farm assets has been sold. Members were updated on the progress of the administration and sales process in September 2023 which was expected to complete in November 2023 however this was extended to February 2024 due to the complexities of the due diligence process and contractual and financial arrangements to facilitate the transaction. The Council does not lead this process – the administration is led by Interpath, supported by an extensive team of legal, commercial and financial advisors. As a major creditor of the company, the Council has been updated and engaged on a regular basis with weekly updates following bidder evaluation, biweekly review meetings and monthly cost and progress meetings.

2.12 Following the completion of the sale, the administration process will enter a new phase. Analysis and investigations have been undertaken by the Council and the administrators, with a number of potential options available to seek to recover financial losses that have been incurred. This is a highly complex matter and the Council will need to decide, together with the administrators, which claims to pursue and the prioritisation of those claims given (in some instances) the common pool of assets being targeted for recovery of losses. Projected future costs as set out in this report, primarily relate to potential litigation costs and associated costs to support any action.

2.13 JLG/JCF is likely to continue to remain in administration throughout 2024 and into early 2025 whilst loan recovery continues to be undertaken by the loan service providers. Costs are projected up to the end of the FY 2024/25 when the substantive administration work is expected to be completed. Investigations and analysis have progressed significantly in 2023 and potential actions are expected to be agreed in March 2024.

2.14 The assessment and prioritisation of claims and proceedings, including which party is best placed to bring claims, will be informed by a consideration of a wide range of matters including, but not restricted to:

- Relevant legal limitation periods;
- Potential claim value;
- Asset pool for any claims;
- Costs of pursuing claims;
- Assessment of claims and chance of success informed by quality of evidence, witness requirements, complexity, timescales and enforcement;
- Type of claim; and
- Wider actual or perceived risks.

2.15 This workstream is multidisciplinary, led by the Council's Lead Legal Advisor and S151with advice from several legal and financial advisors. Claim review and prioritisation is scheduled for March 2024 between the Council, its advisors and administrators.

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is based upon servicing the loan book to recover debts to enable distributions to be made to creditors in advance of the closure of the business

2.16 Looking ahead to FY 2024/25, the Council's Divestment Strategy will continue to focus on number of key workstreams including:

- Loan book recovery for JLG/JCF;
- The sale of two wind farm investments[7];
- Pursuing potential litigation proceedings (Toucan and JLG/JCF); and
- The recovery of "tail investments" which are those investments that are considered to be smaller in scale or potentially illiquid[8]. A schedule of investments is included in the MTFS.

2.17 A proportionate, well-managed and value for money-based approach will continue to be taken to ensure that the Council's Divestment Strategy can be brought to a close at the earliest opportunity to reduce debt, reduce borrowing costs and enable the Council's financial and treasury teams to focus on core operations.

2.18 February 2024 marks the end of an important milestone with a likely shift in focus towards litigation and tail investments. As a result, in March 2024 the Council will review and update its divestment workstream including its programme management and reporting requirements, its short- and medium-term advisor requirements and consideration of future decision making and oversight to align with, and best support, the next critical phase of work.

Professional advisors – <u>direct</u> fees

2.19 The Council has assembled a team of lead advisors to provide advice to deliver its Divestment Strategy objectives including:

- Financial and investment advice - Camdor Global Advisory (Camdor);
- Legal advice in relation to transactions and potential litigation/claims - Birketts and Herbert Smith Freehills (HSF); and
- Advisory, assurance and programme management services – including but not restricted to Stanhope Capital, CIPFA and Kroll.

2.20 Other advisors may be required in the future subject to the specific requirements of the divestment programme as it progresses. e.g. expert witnesses, valuation advice, asset recovery and enforcement. These will continue to be procured in line with the Council's procurement requirements.

2.21 The Council's professional advisors are considered to be **direct** costs to the Council. The Council is responsible for procuring theses services, agreeing the scope of works, day-to-day management and payments to its advisors. As set out in the September 2023 Cabinet Financial Strategy Report, programme management arrangements have been introduced to enable the Council to maintain robust strategic oversight of the divestment programme including the associated scoped of works, costs and programme performance. These are set

[7] Note that costs/fees associated with the sale of the wind farms are excluded from this fee analysis as it is expected that sales agents will be paid on a % sale basis. The business case to support the sale of the wind farms was based upon net receipts (i.e. after taking into account any associated sales fees). Future reporting will comment on final agreed realisations and any associated sales agent costs

[8] Fee analysis includes costs associated with the ongoing orderly review and planned exits/realisations from the tail investments. It does not include any legal or financial costs that may be required – although it should be noted that none are anticipated at this stage

out in Section 2.42-6 and provide members with assurances over the robust governance, management and reporting arrangements across the programme.

2.22 Total Council direct costs up to the end of December are c.£5.3m (January 2021 to December 2023) and are estimated to be c.£11.1m up to the end of the FY 25/26 subject to pending decisions on litigation proceedings. See Table 2. Direct costs to date relate to Toucan (£2.2m), JLG/JCF (£2.3m) and other (£0.8m) with future costs predominantly relating to potential litigation proceedings should they proceed.

2.23 The projected outturn position has slightly increased (£0.1m) compared to the September 2023 Cabinet Report (c.£11m) which is due to further progress on investigations and a more informed view on the Council's potential future fees. At this stage, the costs (and associated timescales) are estimates pending final decisions. See section 2.14 for key factors that will inform proceedings and decision-making.

Table 2: Council direct fees/costs

	Current Costs Jan 21 - Dec 23 £m	Projected Costs Jan 24 - Mar 25 £m[9]	Total Projected Costs £m	Total Projected Costs Sept 23 Cabinet Report £m
Council advisor fees - direct only[10]	5.1	5.8	11.1	11.0

Direct fees – financial advisory

2.24 Camdor was originally contracted by the Council in late 2020 to undertake a series of advisory reviews in 2021 and 2022. Their contract was extended and varied in February 2023 to provide continuity of advice and capacity following an extremely busy and complex period before/after JLG/JCF and Toucan were placed into administration.

2.25 Camdor's contract allows for a one-year extension. It is recommended that their contract is extended for 12 months up to the 31st December 2024 to support ongoing investigations, litigation, administration processed, final close out of tail investments and divestment programme reporting.

2.26 Costs to date are c.£2.8m and additional costs are estimated to be c.£0.6m (January – December 2024) subject to the prioritisation and timing of litigation proceedings. Camdor continue to provide high quality financial advice and value for money services to the Council and work effectively with the administration teams to protect the Council's interests, including cost review of the administrators. They successfully negotiated a fee reduction for administrator services which resulted in an estimated net saving of c.£4.2m, achieved a further saving of c.£1.3m due to data analysis undertaken by Camdor (and not administrators at higher day rate), negotiated fixed fee elements into administrator contracts to place a cap on some fees, and played a key role in the procurement and negotiation of administrator advisors (e.g. service operators and M&A advisors) to further reduce administration costs. They also negotiated a fee rate freeze part way through the administrations to reduce ongoing administration costs. They have supported the Council in accelerating realisations across the portfolio to reduce debt, borrowing costs and risk exposure and, together with the Council,

[9] Timescales remain uncertain – costs are likely to be incurred in FY 24/25 and 25/26. To be updated and reported as more information becomes available especially in relation to the timing of litigation proceedings
[10] Remains subject to regular review and revision

have provided robust and effective oversight of the two company administrations to improve distributions to the Council.

Direct fees – legal advisors

2.27 The Council's contract procurement rules do not apply to contracts for the retention of legal counsel, legal services or the appointment of expert witnesses in legal proceedings. Primary advisors include HSF, Birketts and Craig Morrison KC. Additional legal services including expert witnesses may be required in 2024 and will be considered following an assessment of all clams and actions.

2.28 Costs to date are c.£1.8m with future costs estimated to be a further c.£4.3m although this will be subject to ongoing review and action will only be taken where the Council considers this to be appropriate and represents value for money (see litigation considerations in section 2.14). It should be noted that in addition to the Council's future cost provisions, administrators have also provided estimates for potential further litigation costs should they lead on a range of claims as opposed to the Council. These costs are not disclosed in this report as they have not been agreed with Interpath and would effectively result in a "double counting" of professional fees. Future workstreams and associated costs remain subject to discussion and agreement between the Council and the administrators.

Direct fees – other fees including programme management and assurance

2.29 Stanhope Capital were appointed in May 2023 to provide Commissioners with financial and assurance advice across the divestment programme. They have provided assurance advice on major transactions/decisions (e.g. Toucan sale and windfarm options review) and are likely to continue to act in that capacity for major divestments. Their contract is due to end in May 2024 and it is recommended that approval is obtained to extend their contract, should their services continue to be required, to ensure continuity of advice throughout 2024.

2.30 CIPFA provide programme management and divestment tracking advice across the divestment programme. They were appointed via waiver due to the need for urgent assistance as part of the improvement recovery plan. It is anticipated that they will continue to provide divestment fee tracking services to the programme. CIPFA maintains a database of all advisors including workstreams and costs, which is updated on a monthly basis based upon returns from each advisor.

2.31 Costs to date for other advisors is c.£0.7m with an estimate of a further c.£0.9m included for the final phase of the programme in FY 24/25 for assurance, programme management and additional advisory. Cost estimates assume that substantive work across the programme is completed by the end of FY 24/25 which is considered reasonable at this stage.

Professional advisors – indirect administration costs

2.32 In addition to the Council's direct professional fees, there are additional fees (indirect costs) associated with two investments in the Council's investment portfolio that have been placed into administration (Toucan and JCG/JLF). Administration-related fees (known as "remuneration" are not under the direct control of the Council and are not paid for by the Council. However they are reported to the Cabinet as part of this report for transparency and completeness purposes to show the quantum of administration costs associated with the Council's investments.

2.33 When a company goes into administration, the costs of the proceedings are paid out of the company's assets before any payments (distributions) to creditors. This will directly impact the amounts available for distribution to creditors and it is important that the Council is aware of these costs and challenges them, if appropriate, in order to maximise potential distributions to it. In relation to Toucan, the Council is the majority creditor although in relation to JLG/JCFG, it is one of several creditors. Administration costs are therefore not solely related to the Council's claims.

2.34 The Insolvency Act sets out the basis for agreeing, reporting and varying costs throughout the administration period. This includes providing progress reports to creditors on a six-monthly basis with a statement of costs/remuneration. The Council, Camdor and the administration teams meet on a monthly basis to discuss costs including future estimates, issues and progress. As a creditor, the Council has been actively engaged in the administrators' procurement of external services which has enabled it to use its influence to strengthen the efficiency and effectiveness of the administration process. e.g. appointment of loan service provider (JLG/JCF) and M&A advisor (Toucan). As stated elsewhere in this report, the Council has successfully challenged/negotiated outcomes to reduce administration costs (see Section 2.26).

2.35 Total indirect external administration costs to date are estimated to be c.£21.4m and are expected to be c.£36.3m by close of the administrations. This compares to a projected total of c.£29.9m reported in September 2023, which as can be seen in Table 2 below, is due to increased costs for the Toucan administration associated with the asset sale which is now substantively complete. This added a further three months onto the timetable. Costs associated with JLG/JCF are in line with previous estimates.

2.36 **Table 3: Administration costs**

	Current Costs (up to Nov 23) £m	Projected Future Costs (Nov 23 – Mar 25[11]) £m	Total Projected Costs £m	Total Projected Costs (Sept 23 Cabinet) £m
Toucan - administration related costs (Indirect)[12]	16.4	8.1	24.5	18.1
JLG/JCF - administration related costs (Indirect)[13]	5.0	6.8	11.8	11.8

Toucan

2.37 Projected administration costs have increased by c.£6.4m to c.£24.5m compared to costs estimated provided in the September 2023 Cabinet paper. This is due to a range of factors including previous cost estimates prepared in advance of the final bids being received, increased investigation work and complexity of legal requirements to support the sale process which resulted in three additional months being add to the work programme. Note that these totals exclude tax losses and irrecoverable VAT which will be included in the administrators' final report. The costs in table 2 also exclude a proposed administrator provision for litigation costs should the administrator lead on those proceedings. This has not yet been agreed with the Council and there is likely to be some overlap of claims with the Council's claims. To

[11] All costs have been included in FY 24/25 however they remain subject to change in line with timescales for litigation proceedings
[12] Note that total estimated administration costs of £31m in relation to Toucan also includes non-professional fees. e.g. irrecoverable VAT. £24.5m relates to professional fees only
[13] Note that administration costs for JLG/JCF also includes loan servicing costs which are considered to be core businesses operating costs. For formal cost reporting, these costs are included as administration costs. As a result, they are not comparable to Toucan

avoid duplication and to maximise outcomes, any future actions will be reviewed and prioritised (in line with the criteria as set out in section 2.14) with revised cost estimates and timelines agreed by both parties. Indirect fees may increase as a result of the prioritisation meeting, but any increase in fees will be based upon an assessment of expected future recoveries and value for money.

2.38 Note that any reference to financial distributions to the Council as a result of the sale of the Toucan solar farm assets, are stated after the deduction of administration fees. i.e. they are net distributions.

JLG/JCF

2.39 Projected costs remain in line with plan at c.£11.8m (ending in FY 25/26). All costs have been reviewed and updated which has resulted in some minor reclassifications, but no significant changes to overall costs. Future costs relate to ongoing loan servicing, administrator fees and potential legal costs. As reported in the MTFS, loan book recoveries have accelerated and continued progress is expected throughout 2024.

2.40 It should be noted that these costs also include Service Provider costs to service the loan book and recover debts. This is a core operating cost of the business, alongside other operating costs such as offices, employees and IT, but is included in the administrator cost analysis reports as these costs are considered to be an “administration cost” for reporting purposes following the company being placed into administration. These costs are c.£3m to date (FY 23/24) with an estimate of c.£4m across FY 24/25 and early 25/26. This represents the single biggest cost of the business and is essential to realise value and recover assets.

2.41 See Table 3 for a breakdown of all fees – direct and indirect. Council direct costs are estimated to be c.£11.1m (current spend £5.3m) and indirect costs are estimated to be c.£29.9m (current spend £21.4m). Future costs remain best estimates at this stage and will be updated on a quarterly basis to reflect the current status of the Divestment Strategy and any legal proceedings.

Table 3: Divestment Programme – direct and indirect professional fees

Investment and Cost Type	Description	Current Costs (Jan 21 - Dec 23) £m	Projected Future Costs (Jan 24 - March 26) £m	Total Projected Costs £m	Total Projected Costs as reported Sept 23 £m
Council advisor fees - direct only		5.3	5.8	11.1	11.0
Administration fees - indirect (excluding potential legal cost provision)		21.4	14.9	36.3	29.9
Total professional fees		**26.7**	**20.7**	**47.4**	**40.9**
Toucan					
Council Direct Costs					
Council Advisors	Financial and legal advisors	2.2	3.0	5.2	4.8
		2.2	**3**	**5.2**	**4.8**
Indirect Costs - Administrator-led/not under the control of TBC					
Administration (Administrator costs)	Interpath (administrator) direct costs since Nov 22 (incl liquidation entities)	7.3	3.4	10.7	
Administration (Legal advisor costs)	Legal costs associated with the administration - incl: M&A investigations and general matters	7.7	1.6	9.3	
Administration (Third Party Advisor costs)	Costs of external financial, M&A and technical advice incurred by Toucan	1.4	3.1	4.5	
		16.4	**8.1**	**24.5**	**18.1**
Total Toucan					
		18.6	**11.1**	**29.7**	**22.9**
JLG/JCF					
Council Direct Costs					
Council Advisors	Financial and legal advisors	2.3	1.8	4.1	4.2
		2.3	**1.8**	**4.1**	**4.2**
Indirect Costs - Administrator-led/not under the control of TBC					
Administration (Administrator Direct Costs)	FRP (administrator) direct costs since Dec 22	1.2	1.8	3.0	
Administration (Legal advisor costs)	Legal costs associated with the administration	0.8	0.9	1.7	
Administration (Operating costs)	Costs of servicing and collecting loans	3.0	4.1	7.1	
Total JLG/JSF		**5.0**	**6.8**	**11.8**	**11.8**
		7.3	**8.6**	**15.9**	**16.0**
Remaining Investments/Divestment Programme		**0.8**	**1.0**	**1.8**	**2.0**
Total all costs		**26.7**	**20.7**	**47.4**	**40.9**

Programme management arrangements

2.42 Since the September 2023 Cabinet report, CIPFA has provided the Council with programme management services to enable detailed fee and workstream tracking across all of its advisors. All advisors are required to provide a monthly detailed analysis of activities and estimated costs, together with a longer term (12 months) estimate of activities, outputs and fees. This is reviewed by the Council Divestment Team on a monthly basis to monitor progress and costs. Costs are closely managed and remain in line with expectations.

2.43 In addition, the Divestment Programme has introduced a range of critical reporting, review and governance measures to strengthen management and oversight of advisor activities and fees associated with the Divestment Strategy:

- Designated core Council Divestment leadership team including financial and legal representatives;
- Monthly Officer Investment Meeting (OIM) to review progress across Divestment Strategy and key targets;
- Weekly all-advisor meeting – external legal and financial advisor meeting to review workstream progress, issues and key actions with regards to administrations, investigations and litigation proceedings;
- Bi-weekly financial meeting – Council meeting with Camdor to review investment portfolio including progress against divestment targets, workstream planning and priorities;

- Monthly progress reporting – Report produced by Camdor covering all aspects of the Divestment Programme including consideration of risks, costs, recoveries, current and future activities and priorities (report considered by the Officer Investment Meeting on monthly basis).

2.44 These arrangements will be reviewed in March as the Divestment Strategy enters a new phase following the sale of Toucan, continued progress with JLG/JCF and realisation of a number of investments.

2.45 In addition to these arrangements, administration-specific oversight arrangements are in place to engage with administrators for Toucan and JLG/JCF, review administration costs and progress and liaise on potential litigation matters. Administrators have a statutory requirement to report on progress and costs on a six-monthly basis. Toucan and JLG/JCF administrators have provided regular six-monthly progress reports, including cost analysis, in line with their statutory requirements. Creditors are required to approve progress and costs every six months. The Council has done this on a regular basis informed by its review and challenge meetings as set out in 2.46.

2.46 A range of other arrangements have been introduced to enable the Council to maintain good oversight of progress, costs and issues and to ensure that distributions can be paid at the earliest opportunity to reduce the Council's level of debt. This includes, but is not restricted to:

- Monthly cost review/challenge meetings with administrators, the Council and Camdor;
- Advance notification and approval for major external related appointments by the administrators (e.g. M&A team for Toucan and service providers for JLG/JCF);
- Biweekly progress meetings during the final sale phase (Toucan) and regular ongoing engagement on critical matters throughout the administration period.

4. Reasons for Recommendation

4.1 With an investment portfolio of more than £1bn, a Divestment Strategy is a key part of the Council's financial strategy to reduce its level of debt, reduce borrowing costs, reduce investment risk and reduce reliance on investment income streams. The Council's aim is to significantly reduce its investment portfolio and maximise net realisations from its investments.

4.2 Given the scale and complexity of the Divestment Strategy, and the recognised lack of capacity and expertise within the Council to manage administrations/divest, the Council has utilised a range of specialist advisors (legal, financial, investment and assurance advice) to enable it to both exit its investment position (where applicable) and to protect/maximise value and enable timely distributions to be made where possible. This has been more complicated by some of the investee companies entering into administration which has required specialist and intensive support.

4.3 The continuation of the Divestment Strategy, and the associated professional fess as set out in this report, are critical to the Council's debt reduction measures and to ensure that action is taken to recover monies from third parties where there is a strong case to do so. The Council will proceed with litigation following a consideration of a wide range of factors, and following consultation with the Council's leadership and Commissioners.

5. Consultation (including Overview and Scrutiny, if applicable)

5.1 No requirement

6. Impact on corporate policies, priorities, performance and community impact

6.1 The Divestment Strategy is a major part of the Council's financial recovery plans to enable it to reduce its level of debt, reduce interest and reduce the scale of the Council's investment portfolio. Professional advisors have played a key role in enabling the Council to comply with the Directions that are in place and realise its investments in a timely manner.

7. Implications

7.1 Financial

Implications verified by: [**Steve Mair]**

[S151]

22 February 2024

The Council has incurred direct professional fees (legal, financial and assurance advisory) of £5.3m with a further £5.8m projected by the end of the FY 25/26 (total £11.1m). The timing of future costs is uncertain at this stage although for financial planning purposes it is assumed that these costs are split £3.8m and £2.0m in each of FY 24/25 and FY 25/26.

These fees have supported the realisation of c.£633m which has/will be used by the Council to repay debt and reduce borrowing costs. In addition, future fees primarily relate to potential litigation proceedings which may result in additional monies being recovered by the Council. Estimates of recoveries are not disclosed in this report, although they are an important part of the Council's litigation evaluation criteria (Section 2.14).

The Council has established a Transformation Reserve, as described in the MTFS, and it is proposed that it should be used to fund future professional fees associated with the Divestment Strategy including litigation/claims in relation to Toucan and JCG/JLF.

Whilst the Council does not directly incur administration costs, these costs are separately noted in this report as these costs will reduce the amounts distributable to all recognised creditors with a claim. The accounting implications of the distributions, professional fees and other costs associated with the Council's investments that have entered administration are set out in a separate transaction report which will be presented to Cabinet following final completion and resolution of outstanding matters.

7.2 Legal

Implications verified by: **Mark Bowen**

Interim Project Lead - Legal

22 February 2024

The Council's financial and assurance advisors have been procured in accordance with the Council's procurement framework, including the proposed contract modification for Camdor and Stanhope.

Regulation 10 of the 2015 Public Contracts Regulations takes a lot of legal fees outside of the "statutory" procurement framework and this is reflected in the Council's procurement framework. **10**—(1) This Part does not apply to public service contracts—

d) for any of the following legal services:—

(i)legal representation of a client by a lawyer, in—

(aa)an arbitration or conciliation held in the United Kingdom another country or before an international arbitration or conciliation instance, or

(bb)judicial proceedings before the courts, tribunals, or public authorities the United Kingdom another country or before international courts, tribunals or institutions.

(ii)legal advice given—

(aa)in preparation of any of the proceedings referred to in paragraph (i), or

(bb)where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings,

provided that the advice is given by a lawyer

v)other legal services which in the United Kingdom are concerned are connected, even occasionally, with the exercise of official authority.

All of the above matters are reflected in the Council's procurement rules.

"These Contract Procedure Rules do not apply to: (c) Contracts for retention of legal counsel, legal services or the appointment of expert witnesses in legal proceedings. "

HSF were procured following a competitive process which secured a discount to their usual commercial rates.

7.3 **Diversity and Equality**

N/A

7.4 **Risks**

The primary risk is that activities and costs associated with professional advisors to support the Divestment Strategy escalate significantly or do not represent value for money. This paper sets out the key governance, management and reporting arrangements that have been introduced across the programme to manage risks. This is an agile programme that will continue to evolve and adopt to the Council's risk profile and future requirements.

7.5 **Other implications** (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder, or Impact on Looked After Children

N/A

8. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

N/A

9. Appendices to the report

N/A

Report Author:

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Chief Financial Officer S151

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