

# Audit and Performance Committee Report

<b>Date:</b>	1 February 2018
<b>Classification:</b>	General Release
<b>Title:</b>	Maintaining High Ethical Standards at the City Council
<b>Wards Affected:</b>	All
<b>Financial Summary:</b>	N/A
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## 1. Executive Summary

- 1.1 This annual report to the Audit and Performance Committee is submitted in accordance with the Committee's following term of reference:

*"To maintain an overview of the arrangements in place for maintaining high ethical standards throughout the Authority and in this context to receive a report annually from the Director of Law".*

The Director of Law also serves as the Council's Monitoring Officer which is a statutory appointment under the provisions of Section 5 of the Local Government and Housing Act 1989. One of the roles of the Monitoring Officer is to advance good governance and ensure the highest standards of ethical behaviour are maintained through the effective discharge of their statutory duties.

- 1.2 'Ethical governance' lies at the very heart of the way in which an organisation is run, how its business is transacted and how its decisions are taken.
- 1.3 At the City Council we recognise that ethical governance is not simply a matter for the 'decision-makers at the top' but is applicable to all those who work for or in conjunction with the organisation – our elected Members, our staff and our contractors are all expected to adhere to the highest standards of conduct and

behaviours. In this context the report will detail how we maintain ethical governance in each case. In compiling this report the Director of Law relies on information provided by or on behalf of Directors of a number of services.

The areas covered in this year's report are the following:

- Tri-Borough Internal Audit Service;
- Ethical governance complaints monitoring
- Ethical governance at Member-level;
- Ethical governance in relation to staff and service areas
- Ethical governance in relation to the Council's contractors and procurement.

## **2. Recommendations**

- 2.1 That the annual report and actions taken to maintain high standards of ethical governance throughout the authority be noted;
- 2.2 That the Committee suggest any areas of ethical governance which have not been addressed in this report, for inclusion in the next annual report;

## **3. Tri-Borough Internal Audit Service**

- 3.1 The Council's Internal Audit & Fraud Investigation Service reviews policies, procedures and governance arrangements across the Council's Services and promotes a culture of zero tolerance in respect of fraud, corruption and mismanagement. Fraud awareness training is available to service areas where a need has been identified and a quarterly newsletter entitled *Fraud in Brief*, informs staff of emerging fraud risks, encourages fraud reporting and to maintains awareness ([Fraud Home Page](#)).

### **How Ethical Governance Complaints are dealt with**

- 3.2 The Council's [Anti-Fraud & Corruption Strategy 2016-2019](#) sets out the Council's overall policy on fraud and corruption and states that if fraud, corruption or any misconduct directed against the Council is suspected, this should be reported immediately.
- 3.3 The Officers' Code of Conduct reinforces the requirement for all staff to be vigilant and describes how they should raise any concerns they may have. Further guidance is also provided in the Council's Whistleblowing at Work policy and the Fraud Response Plan.
- 3.4 Support from members of the public is also important in combating fraud and corruption, and facilities are provided to enable them to report their concerns,

including an electronic “Report a Fraud” facility on the internet and a more traditional Fraud Hotline. The majority of referrals via these channels provide information regarding unlawful subletting, the abuse of residents’ or disabled parking badges and possible fraud in respect of welfare benefits (which are redirected to the Department for Work and Pensions).

- 3.5 The Council’s Fraud Response Plan provides guidance on the action to be taken when a fraud or corruption complaint is received, and details action to be taken to ensure the Council can;
- Minimise and recover losses
  - Establish and secure evidence necessary for criminal and disciplinary action
  - Take disciplinary action against those involved
  - Review the reasons for the incident and ensure that actions are implemented to strengthen procedures and prevent recurrence.
- 3.6 Any suspicion of fraud will be treated seriously and will be investigated in accordance with the Council’s procedures and the relevant legislation including the Fraud Act 2006.

#### **4. Ethical Governance Complaint Monitoring**

- 4.1 As part of the arrangements in place for maintaining high ethical standards throughout the Authority, in March 2007 the Standards Committee endorsed a definition of what constitutes an ethical governance complaint so that Departments can identify and refer any ethical governance complaints to the appropriate persons, and consistently record such complaints.

The definition of an ethical governance complaint as endorsed by the Standards Committee is as follows:

*“An alleged breach of the high standards of ethical conduct set out in the codes of conduct for officers and Members”*

- 4.3 As the Tri-Borough Internal Audit Service investigate allegations of fraud, bribery and corruption, it is not appropriate for such ethical governance complaint issues to be investigated under the Council’s normal complaints procedure. However, if such a complaint is raised under the complaints procedure, the complainant will be advised that the matter will be referred to the Fraud Investigation Team to take the appropriate action.
- 4.4 The Corporate Complaints Team is a distinct service to that of the Fraud Investigation Team and is based within the Corporate Services Department. The team has overall responsibility for the management and development of the Corporate Complaints procedure and for the compilation of the Annual

Complaints Review. The Annual Complaints Review for 2016/17, which went to Audit and Performance Committee on 23 November 2017, did not report on any complaints which meet the definition of an ethical governance complaint as none were reported to the Complaints Team. Adults and Children Social Care Services each have their own separate statutory complaints procedure. Neither have received any complaints which meet the definition of an ethical governance complaint.

- 4.5 As part of monitoring ethical governance complaints service areas are reminded on a quarterly basis what constitutes an ethical governance complaint, and they are also asked if any ethical governance complaints have been dealt with under the Council's complaint procedure. It is not unusual for Departments to report that no ethical governance complaints have entered the complaints procedure and as already explained it is a matter of general practice that allegations of this nature are usually referred to Internal Audit for investigation as appropriate.

## **5. Ethical governance at Member-level**

- 5.1 The Council's Standards Committee meets three times per annum. Since last year's report the Committee has welcomed the introduction of a Member Development Programme which has commenced and from 2018 will be held over 9 dates which have been included in the Council's calendar. Whilst these will focus on service issues a range of governance subjects will also be included.
- 5.2 In order to maintain some independent input the Standards Committee have continued to welcome the Council's Independent persons to its meetings. The Committee have also reviewed the proposed Member Induction Programme to be held following May 2018 City Council elections.
- 5.3 The Monitoring Officer has considered two complaints about Member conduct, one of which was a service complaint and so not pursued for investigation whilst the other is currently being considered. There is no pattern of vexatious complaints.

## **6. Ethical Governance in relation to staff and service areas**

- 6.1 The public is entitled to expect the highest standards of conduct from all Westminster City Council employees.
- 6.2 The law, the Council's constitution, code of governance, terms and conditions of employment, policies and procedures all bear on the way council employees carry out their duties. The main provisions are summarised in the council's code of conduct for employees. The employee guide to the Code of Conduct details

source documents such as HR Policies where more comprehensive information can be found.

- 6.3 Breaches of the Code may result in action under the Council's disciplinary code. The Code is published on the council's intranet and forms part of corporate induction for all new starters

## Human Resources

### Details of Staff Disciplinary Cases and Whistleblowing issues

- 6.4 Details of staff disciplinary cases, grievance cases and whistleblowing issues throughout the authority, excluding schools, categorised by issue, are set out below. Details of all cases are monitored by People Services who review these and flag up any issues arising. The level of disciplinary cases are regarded as normal in an organisation the size of the City Council and has slightly decreased from the previous financial year.

An overall three-year trend:

	2014 - 2015		2015 - 2016		2016 - 2017		Trend
	Closed	Open	Closed	Open	Closed	Open	
Disciplinary	20	4	13	4	11	1	Decrease
Staff employed	2083		1861		1809		

- The council concluded 11 disciplinary cases in total in the 2016/2017 financial year (this excludes schools).
- There were 9 cases opened in 2016/2017 with only 1 case remaining open into the new financial year, this case was later closed.
- The outcome of those disciplinary matters closed in 2016/17 were:

<u>Outcome</u>	No Case to answer	Formal Written Warning	Final Written Warning	Dismissal	Other
<u>Closed Cases</u>	1	2	4	2	2

- There were 5 cases which would fall under the remit of ethical governance and these were in relation to 2 allegations of misusing the Council's Oyster card for personal gain, intent to withhold a substantial overpayment, failure to disclose pertinent information regarding the suitability of working within a regulated role and misuse of Council time resulting in failure to pay outstanding invoices.
- These cases were within CMC, PPC, Family Services, and Legal Services
- Given the small number of cases there is no evidence that there are systemic weaknesses or particular problems of unethical conduct in the Council or in any particular department.
- There was 1 whistleblowing matter raised via People Services which remained open into the new financial year. The complaint was an anonymous complaint regarding an alleged culture of bullying and harassment within a Family Services team. This was later concluded and not upheld.
- There were 10 individual grievance cases opened within the stated period, 11 cases closed and 3 remained open.

The outcome of those cases closed within 2016/2017 were;

Outcome	Not Upheld	Upheld	Partially Upheld	Dealt with Informally	Withdrawn
Closed Cases	6	1	1	2	1

- The general themes to the grievances do not highlight any concerns of unethical conduct. To summarise the grievances were in relation to complaints of bullying and harassment behaviour from line management; failure to consult during a re-organisation; a complaint over pay banding when compared to a male colleague; failure to provide a fair reference and failure to make reasonable adjustment for a colleague with a disability.
- The majority of grievance cases received once fully investigated were unfounded / not upheld.

### **Staff Declarations of Interest and Receipt of Gifts and Hospitality**

- 6.5 The council requires all employees to disclose any interests which may conflict with their public duty by completing a Declarations of Interests Form. The form is accessible from the Council's intranet, The Wire. The council also requires all

employees in specified designated<sup>1</sup> posts to complete a Declarations of Interests Form on taking up the post and on any change in personal circumstances. Employees are further prompted to disclose whether they have any such interests when completing their annual performance appraisal form.

- 6.6 EMT members or their nominated officer will use the information on Declaration of Interests Forms to compile and maintain a register of pecuniary and personal interests for their area of responsibility. Each EMT member will review their register and consider whether any steps need to be taken to avoid conflict when relevant employees complete and resubmit forms. The register is not available for public inspection and there is no statutory requirement to make them available. However, subject to any exemptions which may apply, information contained within the register will be disclosed in accordance with the Freedom of Information Act 2001.
- 6.7 Every endeavour is made to keep the registers up to date but the onus is on employees to ensure that their registration details are accurate and up to date. Information will be maintained and held on the register during the employees' employment and for six years thereafter. In addition to completion of the declaration of interests form, employees must also declare any interests at meetings as appropriate. Failure to disclose such interests may lead to disciplinary action under the council's policies.

### **Staff Receipt of Gifts and Hospitality**

- 6.8 The council also provides managers and employees with guidance as to when they can legitimately receive or give gifts and hospitality during the course of their duties. Without exception all gifts and hospitality given and received, whether accepted or declined, must be entered in the designated corporate register immediately after the offer is made. Given that the council is a public body it is essential that all such items are recorded in an easily accessible and efficient way. To this end, an online Gifts and Hospitality Register has been implemented and been used since 19 December 2006. The corporate Gifts and Hospitality register is maintained and reviewed by the designated monitoring officer on a regular basis. This is currently the Audit Manager.
- 7. Ethical Governance guidance and safeguards in relation to the Council's contractors and procurement**

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#### **<sup>1</sup> Designated Posts**

- all posts at Band 5 or above level or their non-Reward equivalent
- any post referred to on a Directorate / Unit Scheme of Delegation for contract purposes; and
- any other post as determined by the EMT member or their nominated officer where the post holder has a significant involvement in contract matters or other work which requires a high level of transparent probity.

- 7.1 The Council's Procurement Code sets the mandatory rules on behalf of Westminster City Council which must be followed during the conduct of all procurement and contracting activity. The Code ensures that each area of strategic and commercial procurement is rigorously governed to ensure good procurement business practices, whilst minimising risks and adverse implications to the Council's reputation or non-compliance to legal requirements. The Code is underpinned by the fundamental principle that *"the highest standards of probity and ethical governance are maintained and adhered to at all times"*. In addition, section 2.8 (Codes of Conduct) of the Procurement Code makes specific reference to the Bribery Act 2010 and the Council's Code of Conduct.
- 7.2 The Code is reviewed periodically and since April 2014 it has been refreshed a number of times, as detailed below:
- Version 1.9 Issued 11 April 2014
  - Version 1.10 Issued 21 July 2014
  - Version 1.11 Issued 5 November 2014
  - Version 1.12 Issued 29 January 2015
  - Version 1.13 Issued 3 November 2015
  - Version 2.0 Issued 23 January 2017

Version 2.0 has since had some minor editorial amends, following consultation with the Cabinet Member for Finance and Corporate Services, with the latest version issued 20 September 2017.

- 7.3 There are links to the Code on the internal and external websites. Procurement Services have run a number of briefing sessions during quarter 3, with more planned for 2018. The aim of the briefing sessions has been to increase our engagement and visibility with officers, raise awareness and cover key elements of the Procurement Code, as well as providing an overview of the services we provide. Changes to the code are announced on the Wire and emails are sent directly to key Officers.

### **Procurement Assurance Board and Commissioning and Contracts Board**

- 7.4 The City Council and Shared Borough Services have a formal review process which must be followed by all officers, and which demands a formal 'go/no go' decision to be taken at two key stages:

**Gate 1:** Examines the proposed sourcing strategy

**Gate 2:** Examines the proposed contract award

The members of the Procurement Assurance Board will provide a formal recommendation as to whether the proposed procurement strategy or contract award should proceed.



From the 1<sup>st</sup> January 2017, a new Procurement Assurance Model was implemented to simplify the process.

- 7.5 The Procurement Assurance Board is the forum which will advise, agree, recommend and act as a critical friend for procurement activity for:
- 7.5.1 Tri-Borough procurements consisting of The London Borough of Hammersmith and Fulham (H&F), The Royal Borough of Kensington and Chelsea (RBKC) and Westminster City Council (WCC) with a combined value (whole life) greater than £300,000; or where the contract associated with Westminster City Council is greater than £100,000.
  - 7.5.2 Bi-Borough procurements consisting of The Royal Borough of Kensington and Chelsea (RBKC) and Westminster City Council (WCC) with a combined value (whole life) greater than £200,000; or where the contract associated with Westminster City Council is greater than £100,000.
  - 7.5.3 Single Borough procurements consisting of City Council (WCC), City West Homes (CWH) and Westminster Adult Education Services (WAES) procurements, where the total contract value exceeds £100k.

At Westminster City Council and CityWest Homes, Peer Reviews are to be led by Officers for Operational spend (£10k to £100k). A Peer Review ensures that officers are not acting alone when making recommendations about contract awards, and it ensures that due process has been followed.

- 7.6 Adult Social Care and Children's Services procurements (including Tri-Borough, Bi-Borough and Single Borough) are overseen by the Commissioning and Contracts Board (CoCo) within each Services and therefore not in scope for the Procurement Assurance Board, however, ASC and Children's have adopted the Westminster (now Shared Services) Category Management Toolkit and as such the same rigour is expected to be applied.
- 7.7 All participants in a procurement exercise are expected to declare whether they have a personal interest in any proposed contract or in any company or other organisation bidding for a proposed contract by completing a 'Conflict of Interest and Confidentiality Declaration' form.

### **capitalEsourcing**

- 7.8 Since January 2014 capitalEsourcing has been used to manage the majority of the Councils procurement and contract management activity. The use of a single system provides an important source of data and a complete audit trail of our activities. 'capitalEsourcing' contains a module on contract performance which

enables the Councils to apply standard high level performance measures for all contracts and more detailed relationship management data for strategic suppliers and key contracts. All tendering over £100K and a number of request for quotes are carried out online. Advertising, evaluations and contract awards are conducted using the system and contract awards are automatically moved into the contracts management module. This solution provides far greater visibility of our procurement activities, gives a robust audit trail, management information and enables a far more efficient process. Compliance checks are completed each quarter to ensure tenders are converted to contracts and a basic assessment of the contract performance is recorded.

## **Category Management**

- 7.9 Category Management is a strategic approach which organises procurement resources to focus on specific areas of spends. This enables category managers to focus their time and conduct in depth market analysis to fully leverage their procurement decisions on behalf of the whole organisation.
- 7.10 Category Management has been adopted by Westminster City Council since 2012. The Category Management team supports all of Westminster City Council's expenditure. The Category Management Toolkit provides a commercially focused practical reference that guides procurement professionals (and all others involved in the procurement process) through a rigorous approach to effectively manage spend.
- 7.11 Category Management are responsible for ensuring that all purchases made by Officers of the Council are delivered to meet the requirements with a value for money approach and in accordance with the WCC Procurement Code and all relevant legislation.
- 7.12 Category Manager's within Westminster hold either part of full professional qualifications and are subject to regular training both internally and externally to ensure that they stay aware of any market or legislative developments.

## **Contracts Management**

- 7.13 A Contract Management Framework is in place which guides contract managers to consider key points at the define, mobile and deliver stage of a contract. The key themes are:
  - 1 Specification
  - 2 Governance and Organisation
  - 3 Performance Management
  - 4 Commercial
  - 5 Risk Management
  - 6 Legal

It is recognised that further work is needed to improve Contract Management within the Council and a paper was approved by the Executive Management Team on 26th September which endorses a formal development programme and includes 18 different projects to address various aspects from roles and responsibilities, performance reporting to electronic signatures. A programme manager was appointed in December 2017 and the Programme will commence in January 2018.

### **Procurement Services team training**

7.14 Fraud Awareness training is available in-house as an eLearning tool and is reissued as a refresher or for new starters on a regular basis, including earlier in 2017. The last training session held for the team included:

- How to identify procurement fraud
- What are the procurement fraud red flags
- How to identify possible corruption
- Reducing the threat of procurement fraud
- Examples of what procurement fraud looks like
- Ethics of procurement

## **8. Conclusion**

8.1 This report provides the Committee with an overview of the arrangements in place across the Council to maintain high standards of ethical governance and highlights the work which has been undertaken in this respect during the 2016 - 2017 municipal year. As detailed in this report, action has been taken to ensure the Council is fully compliant with legislation relating to ethical governance and to ensure Officers' and Members' responsibilities in this context are communicated accordingly. Appropriate systems are in place to facilitate the reporting of ethical governance complaints and defined mechanisms and procedures exist to ensure any such complaints are dealt with in the correct way.

**If you have any queries about this Report or wish to inspect any of the  
Background Papers please contact:  
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### **BACKGROUND PAPERS:**

- Anti-Fraud, Bribery and Corruption Strategy
- Member's Code of Conduct

- Arrangements for Dealing with Complaints alleging a Breach of the Members' Code of Conduct
- Monitoring Officer Protocol
- Localism Act 2011