



City of Westminster

Audit and Performance Committee Report

Date:	21 November 2012
Classification:	General Release
Title:	Maintaining High Ethical Standards at the City Council
Wards Affected:	All
Financial Summary:	N/A
Report of:	Head of Legal and Democratic Services (Monitoring Officer) Chief Operating Officer
Author:	Naomi Stauber Legal and Democratic Services Email: nstauber@westminster.gov.uk

1. Executive Summary

1.1 This is the first annual report to the Audit and Performance Committee 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 Head of Legal and Democratic Services and the Chief Operating Officer".

1.2 This function was previously carried-out by the City Council's Standards Committee and, as agreed by the Council at its Annual Meeting 16th May 2012, has been transferred to the terms of reference of the Audit and Performance Committee. The Standards Committee's remit is now limited to Member conduct issues.

1.3 The report sets out how the City Council goes about maintaining high ethical standards and provides Members with a summary of the activity in key areas of ethical governance. The areas covered this year's report are the following:

- (i) Summary of the work undertaken by the Governance Working Group;
- (ii) Compliance with the Bribery Act 2010;
- (iii) New Members' Code of Conduct and Register of Interests
- (iv) Corporate Complaints;
- (v) Procurement; and
- (vi) Human Resources (Staff Disciplinary Cases, Whistleblowing issues, Staff Declarations of Interest and Receipt of Gifts and Hospitality)

2. Recommendations

- 2.1 That the annual report and actions taken to maintain high standards of ethical governance through-out the authority be noted;
- 2.2 That the Anti-Fraud, Bribery and Corruption Strategy attached as **Appendix 1** be endorsed and recommended for submission to the Cabinet Member for Finance and Customer Services, for approval;
- 2.3 That the Committee suggest any areas of ethical governance which have not been addressed in this report, for inclusion in the annual report 2013; and
- 2.4 That the report be circulated to all Members of the Council or information with a covering letter from the Chairman of the Committee.

3. Summary of the work undertaken by the Governance Working Group

- 3.1 The Governance Working Group is an Officer-level body which exists to monitor and review the governance arrangements and related procedures of the City Council, to ensure best practice so that the highest standards are maintained and to undertake actions as required by the Statutory and Corporate Governance Group (the SCGG is convened as necessary and consists of the Chief Executive, Head of Legal and Democratic Services and the Chief Operating Officer).
- 3.2 The Governance Working Group is chaired by the Head of Legal and Democratic Services (Monitoring Officer) and the membership is comprised of representatives from Legal and Democratic Services, Corporate Finance (Performance, Complaints and Audit), Human Resources, Information Management and Procurement.
- 3.3 Over the last 12 months the Governance Working Group has overseen a programme of work which has included the following in the context of ethical governance:

- (1) A review of the Council's existing arrangements in respect of anti-fraud and corruption, in light of the Bribery Act 2010, and a revised Anti-Fraud, Bribery and Corruption Strategy (see Section 4 below).
- (2) The development and implementation of a refreshed Council-wide governance training course for staff, to be relaunched in November 2012.
- (3) The monitoring of the issues associated with poor FOI compliance and referral to the Council's Senior Leadership Team.

4. Compliance with the Bribery Act 2010

- 4.1 It had been identified that the Council's anti-fraud arrangements needed to be updated to incorporate the introduction of the Bribery Act 2010. An advisory review by Internal Audit was requested in March 2012 and the subsequent report was used to help develop a plan of action for ensuring the Council's arrangements to comply with the Act were robust.
- 4.2 The action plan has been implemented and included updates to key policies and guidance, including the following:
 - Anti-Fraud, Bribery and Corruption Strategy
 - Gifts and Hospitality Policy
 - Officers Code of Conduct
 - Council Codes of Governance
 - Disciplinary Code
 - Declarations of Interest
 - Whistleblowing Policy
 - Procurement Code
- 4.3 The Members of the Audit & Performance Committee have been provided with a briefing note on the key changes arising from the Act and an explanation of their responsibilities relating to this legislation. One of the Committee's responsibilities in this respect is to review the Anti-Fraud, Bribery and Corruption Strategy prior to its formal submission to the Cabinet Member for Finance and Customer Services for approval and implementation. The Strategy is attached as Appendix 1 for Members' consideration.
- 4.4 The training of staff and process of raising awareness will continue to be an ongoing matter and an agenda is in place to communicate the Bribery Act's requirements to different audiences.

4.5 Internal Audit will follow up the advisory review with a compliance check towards the end of the 2012/13 year to ensure the action plan has been implemented fully and effectively.

5. New Members' Code of Conduct and Register of Interests

5.1 The new Members' Code of Conduct was adopted by the full Council at its meeting on 25 June 2012 and came into force on 1 July, in accordance with the provisions of the Localism Act 2011.

5.2 Notably, the Code includes new statutory requirements regarding the disclosure of Pecuniary Interests. Failure to disclose such interests (as specified in the Code), without reasonable excuse, is a criminal offence punishable by a fine of up to £5,000 and disqualification from office for up to five years.

5.3 As part of the new Code of Conduct and the new Register of Interest requirements, Members and Co-opted Members have completed new Register of Interest forms - the returns of which have been placed on the Council's website, in accordance with the requirements of the Act.

5.4 The Head of Legal and Democratic Services held training sessions for Members on the new Code of Conduct and associated requirements in August, September and November this year, to ensure all Members were informed of (and fully understood) the implications of the new Code and their obligations as City of Westminster Councillors. However, Members are encouraged to contact the Head of Legal and Democratic Services if they have any questions relating to any part of the Code – particularly relating to their interests when partaking in Council business.

5.5 It is recognised that the aforementioned Regulations were published by the DCLG at a very late stage in the context of the 1st July commencement date. This forced the final drafting and approval of the Code to be quicker than is ideal and, accordingly, the Code and the associated wider arrangements will be fully reviewed by the City Council's Standards Committee after 6 months of operation.

Complaints against Members Procedure

5.6 The Localism Act abolished the previous prescribed arrangements for dealing with complaints against Members (enforced under the Standards for England regime). Local authorities are now free to consider complaints in the way in which they deem fit, providing they have formally appointed at least one 'independent member' of the authority and consulted that person upon receipt of a complaint against a Member, as required by the standards provisions in the Act.

5.7 The Council formally appointed His Honour Geoffrey Rivlin QC at its meeting on 12 May 2012 and, following consultation with the Council's Standards

Committee, the agreed procedure for dealing with complaints against Members was formalised and published on the Council's website. The Council has not received any complaints against Members since the commencement of the new requirements and revised complaints procedure.

6. Corporate Complaints

- 6.1 This section of the report provides the Committee with the definition of an ethical governance complaint, explains how such complaints are dealt with and the mechanisms for reporting what is considered to be an ethical governance complaint.

Definition of an Ethical Governance Complaint

- 6.2 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, 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 "an alleged breach of the high standards of ethical conduct set out in the Codes of Conduct for officers and Members".

How Ethical Governance Complaints are dealt with

- 6.3 The Anti-Fraud, Bribery and Corruption Strategy (attached for the Committee's approval) reflects the actions detailed in the previous Anti-Fraud Policy in respect of dealing with ethical governance complaints, stating that if staff suspect fraud, corruption or any misconduct directed against the Council, or directed at others by staff and contractors of the Council, they should raise their concerns with their line manager immediately. He / she will then consider referring the matter to the Internal Audit Anti-Fraud Team for investigation. Officers and staff should not attempt their own investigations as the Fraud Team Manager will identify a course of action and decide the reporting process. In view of this it is not appropriate for ethical governance complaint issues to be investigated under the Council's complaints procedure. However, if a complaint is raised this way the complainant should be advised that the matter will be referred to the Fraud Manager to take the appropriate action.

Ethical Governance Complaint Monitoring

- 6.4 The Corporate Complaints Team is based within the Strategic Finance Department, and is part of the Shared Service Centre. The team has overall responsibility for the management and development of the Corporate Complaints procedure and for the compilation of the Annual Complaints Review.

- 6.5 In accordance with its terms of reference the Committee receives an annual report (the Annual Complaints Review) which monitors the Council's overall complaints process and performance. The Annual Complaints Review report is included elsewhere on the agenda for this meeting and the information contained in this report refers only to those complaints which relate directly to ethical governance.
- 6.6 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. The council's complaint database has also been amended to enable this category of complaint to be recorded on the system.
- 6.7 As indicated in the table below for the year ending 31 March 2012 the council received a total of 1243 complaints. For the same period in the previous year 1604 complaints were received, and this represents a total reduction of 361 complaints. The figure quoted includes complaints made under all 3 stages of the complaints procedure together with first time enquiries investigated by the Local Government Ombudsman.

Complaint totals 2011/12	Stage 1	Stage 2	Stage 3	LGO
Housing Needs	131	17	13	8
Planning	8	1	0	0
Education	1	1	1	3
Parking	68	30	13	10
CityWest Homes	357	56	20	7
Finance	263	30	17	7
Legal Services	1	0	0	0
Libraries	36	1	1	0
Street Mgt	27	1	0	0
Sports & Leisure	36	1	0	0
Premises Mgt	34	9	7	3
One Stop	8	6	0	0
Totals	970	153	72	38

- 6.8 Using the definition of what constitutes an ethical governance complaint, Departments/service areas have provided a nil return for stages 1 and stage 2. However, a review of all stage 3 complaints found a Parking case that contained one such complaint. A summary of this complaint can be found below. It is not unusual for Departments to report that no ethical governance complaints have

entered the complaints procedure as it is a matter of general practice that allegations of this nature are usually dealt with under the Council's disciplinary Code, or referred to Internal Audit for investigation as appropriate.

A summary of the Parking Ethical Governance Complaint made at stage 3 of the Complaints Procedure

- 6.9 A motorist questioned the fairness of inconsistent application of the "no return within one hour" rule and the "maximum stay" rule on parking bays in Westminster, and that the Parking Pay by Phone system accepted payments for further parking time even though the "no return" rule and the "maximum stay" rule were not uniformly enforced.

When the complaint went to stage 3, the motorist made a further allegation that street staff (Civil Enforcement Officers) were taking bribes not to enforce these regulations and the lack of consistent enforcement leaves them to a position of temptation to do so.

As part of the Stage 3 investigation the motorist was asked for evidence or further information to support his allegation, and he did not provide any. However, the stage 3 response advised him to report any such allegations to the Fraud Hotline, and the relevant telephone number was given, or to contact Parking Customer Relations with any relevant details.

Current status of the complaint

- 6.10 The stage 3 response was sent in October 2011 and the complaint was not escalated to the Local Government Ombudsman. No similar allegations have been made in any other Parking complaint reaching stage 3 of the complaint procedure for the financial year ending 31 March 2011/12.

7. Procurement

- 7.1 Details of the ethical governance guidance/safeguards which are being incorporated into the new Procurement Code/process are as follows:

Section 5.1 sets out the 'Fundamentals', one of which is:

"That the highest standards of probity and ethical governance are maintained and adhered to at all times".

- 7.2 Section 4 of the Code provides a summary of the principal areas of legislation and policy that impact on procurement activity, with further explanation found in Appendix B. The Local Government Act 1972 Section 117 Disclosure by Officers of Interest in Contracts is particularly pertinent to ethical governance and specifically refers to the fact that any Officer employed by a Local Authority who

becomes aware that a contract in which he/she has a pecuniary interest (whether direct or indirect) has been, or is proposed to be, entered into by the Authority, he/she shall as soon as practicable give notice in writing to the Authority of the fact that he/she is interested in the contract.

It also states that employees whose duties involve tendering, outsourcing, partnerships, the awarding of contracts, dealing with contractors, etc. must:

- always award contracts on merit, by fair competition against other tenderers, and show no special favour to businesses run by, for example, friends, partners, and relatives;
- be aware of and follow the relevant Council procedures set out in the Code of Governance, the Constitution and any other relevant procedures;
- be clear on the separation of client and service provider roles;
- not disclose confidential information to any unauthorised party or organisation;
- exercise fairness and impartiality when dealing with potential service providers;
- not show special favour to current or former employees or their partners, friends, relatives, or associates in outsourcing to businesses run by them in a senior or relevant managerial capacity;
- comply with the confidentiality arrangements of the Council's partner organisations;
- discuss any problems with their Director/Head of Service if they are unclear whether or not they may be compromised in relation to the awarding of contracts; and
- In addition to completion of the declaration of interests form, employees must also declare any interests at meetings as appropriate.

Other legislation which is pertinent includes the Human Rights Act 1988, the Equality Act 2010 and the Bribery Act 2010.

- 7.4 Appendix B of the Code also makes reference to Westminster City Council Policy, including the Code of Conduct and employee guide. In addition, City Council officers are prompted to see the Wire for A-Z of policies. A document library will be put in place on Sharepoint which will contain further guidance on Legislation, Regulation and Policy.
- 7.5 In respect of procurement processes, a Category Management process has been implemented within Strategic Procurement for all spend over £100k which introduces greater rigour by applying a formal 7 step process for procurement.
- 7.6 Lessons have been learnt from a legal challenge to a Parking procurement activity which took place in 2009/10, and a 'Lessons Learned' document is still available on the Strategic Procurement and Corporate Contracts Sharepoint site. This document contains personal notes and key messages extracted from a

Policy and Scrutiny meeting which was held on 27 April 2010 and a table of recommendations.

8. Human Resources

Details of Staff Disciplinary Cases and Whistleblowing issues

8.1 Details of Staff Disciplinary Cases and Whistleblowing issues throughout the authority, categorised by issue, are set out below. Details of all cases are monitored by HR who review these and flag up any issues arising. The level of disciplinary cases is regarded as normal in an organisation the size of the City Council and is a reduction from the previous financial year.

An overall three year trend:

	2009-2010		2010- 2011		2011-2012		Trend
	Closed	Open	Closed	Open	Closed	Open	
Disciplinary	45	8	31	7	28	3	↓ = Decrease

- The council concluded 28 disciplinary matters in the 2011/2012 financial year.
- 7¹ of these were in schools, 21² of these were in non-schools departments.
- The outcome of those disciplinary matters were:

Departments								
Outcome	No Case to answer	Not Blameworthy	Formal Oral Warning	Formal Written Warning	Final Written Warning	Dismissal	Other*	Total
Closed Cases	4	0	0	3	4	9	1	21

Schools								
Outcome	No Case to answer	Not Blameworthy	Formal Oral Warning	Formal Written Warning	Final Written Warning	Dismissal	Other*	Total
Total	1	0	1	1	1	1	2	7

¹ Cases concerned issues such as “undermining trust and confidence” and “bringing the school into disrepute”, serious breach of health and safety, inappropriate language and unprofessional behaviour , bullying, child protection allegations, breach of ICT/ acceptable use policy, breach of staff code of conduct

² Cases concerned “undermining trust and confidence” and “bringing the council into disrepute”, falsifying council documents, harassment and bullying, computer misuse, allegations of child protection concerns, CRB disclosure and being under the influence of alcohol and drugs, insubordination, fraud, punctuality and absenteeism, inappropriate behaviour at work,

*Resignations , compromise agreement, case handed to other HR provider,

There was one whistleblowing matter raised via the HR department The matter was not upheld.

Staff Declarations of Interest and Receipt of Gifts and Hospitality

- 8.2 The council requires all employees to disclose any interests which may conflict with their public duty by completing a Declarations of Interests Form. The council also requires all employees in specified designated³ posts to complete a Declarations of Interests Form on taking up the post, on any change in personal circumstances and on the general declaration completion date which occurs every 3 years. The next general declaration completion date is 1 April 2013. Failure to disclose such interests may lead to disciplinary action under the council's policies.
- 8.3 A register of pecuniary and personal interests is maintained by each SEB member for their area of responsibility. Each SEB member will review the register to consider whether any steps need to be taken to avoid conflict when relevant employees complete and resubmit forms. Information is maintained and held on the register during the employees' employment and for six years thereafter. 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. In addition to completion of the declaration of interests form, employees must also declare any interests at meetings as appropriate.
- 8.4 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.

³ **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 Strategic Executive Board (SEB) 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.

9. Financial Implications

There are no financial implications associated with this report.

10. Legal Implications

- 10.1 The Monitoring Officer is a statutory appointment under the provisions of Section 5 of the Local Government and Housing Act 1989. The role of the Monitoring Officer is assigned to the Head of Legal and Democratic Services under the provisions of the Constitution, Article 12.1 and includes responsibility for ethical governance.
- 10.2 The report details the actions taken to ensure the Council is compliant with the Localism Act 2011 and Bribery Act 2010.

11. Conclusion

- 11.1 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 2011/12 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. The Monitoring Officer, supported by the Governance Working Group, will continue to oversee a programme of work to ensure that all key service areas with responsibility for functions relating to ethical governance are observing their responsibilities and working to maintain high standards.

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

Naomi Stauber, Legal and Democratic Services

Email: nstauber@westminster.gov.uk

BACKGROUND PAPERS:

Council Report (25 June 2012) Re: Report of the Standards Committee held on 18 June 2012