



City of Westminster

# Audit and Performance Committee Report

<b>Date:</b>	4 February 2015
<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
<b>Report of:</b>	Head of Legal and Democratic Services and Monitoring Officer.
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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 Head of Legal and Democratic Services".*

The Head of Legal and Democratic Services 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 his 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. The imperative for ethical behaviours and practices to underpin and guide the actions of an organisation has arguably never been more important. This is especially the

case for local authorities whose primary objectives are to deliver the highest standard of local services for its residents and to do so in a timely, transparent and accountable manner. When public services are heavily scrutinised and public opinion is formed not only on what we do but how we do it, ethical governance needs to be at the forefront of our approach.

- 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.

The areas covered 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 through-out 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; and
- 2.4 That the report be circulated to all Members of the Council for information with a covering letter from the Chairman of the Committee.

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

- 3.1 In December 2013 the proposal to create a Tri-borough Fraud and Audit Service was formally ratified. A key aim of the service is to review policies and procedures across all three Councils to identify best practice in respect of corporate governance and promote a culture of zero tolerance in respect of fraud, corruption and mismanagement. Anti-fraud training has already commenced within Tri-borough service areas and online training is also now available to all staff.

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

- 3.2 The Council's Anti-Fraud, Bribery and Corruption Strategy, which was approved by the Cabinet Member for Finance and Customer Services in April 2013, states

that if fraud, corruption or any misconduct directed against the Council (or directed at others by staff and contractors of the Council) is suspected, this should be reported through the freephone Fraud and Whistleblowing hotline or the anonymous 'Report a Fraud' facility on the Council website. Investigators will then consider the merits of investigation and will communicate the intended action so that reported complaints are clearly responded to and acted upon. There is also the option of referring concerns directly to Internal Audit in cases where it is inappropriate or not possible to inform a line manager; or when a line manager has been informed and has taken no action. Officers and staff should not attempt their own investigations as the Fraud Team will identify a course of action and decide the reporting process. The types of allegation that has been received in the past include:

- Financial irregularity resulting in loss or expense to the Council;
- Failure of staff or contractors to perform the duties for which they are paid;
- Undertaking work or entering into an arrangement which is not within the remit of the role.

In the first nine months of 2014/15, approximately 500 calls had been received on the Fraud and Whistleblowing hotline and 100 referrals received through the 'Report a Fraud' facility. The majority of these referrals relate to possible fraud in respect of Housing Benefit payments, the abuse of residents' or disabled parking badges and housing sub-letting and are made by members of the public.

3.3 The Tri-Borough Director of Audit and Fraud will decide who will conduct the investigation and when/if referral to the police is required. The Team will regularly report to the Tri-Borough Director of Audit and Fraud on the progress of the investigation and will also:

- Ensure that other relevant parties are informed where necessary e.g. Human Resources will be informed where an employee is a suspect;
- Ensure that the Council incident and losses reporting systems are followed; and
- Ensure that any system weaknesses identified as part of the investigation are followed up with management or Internal Audit.

#### **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”*

- 4.2 One of the roles of the Tri-Borough Internal Audit Service is to investigate allegations of fraud, bribery and corruption, therefore 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 in this way the complainant will be advised that the matter will be referred to the Fraud Investigation Team to take the appropriate action.
- 4.3 The Corporate Complaints Team is a distinct service to that of the Fraud Investigation Team and is based within the Strategic Finance 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 heard by the Committee at its meeting on 26 November 2014 did not provide any comment on any complaints which meet the definition of an ethical governance complaint as none were recorded by the service areas for the financial year 2013/2014. Complaints related to service delivery as opposed to alleged breaches of the high standards of ethical conduct expected of those working for the Council.
- 4.4 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. 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 Confidence in local democracy is essential to an open and effective relationship between residents and their local authority and this can only be achieved when those serving their communities adhere to – and can be held accountable for – the high standards expected of them. The residents of Westminster have a right to expect honest and ethical behaviour from their elected representatives and, in turn, the City Council has a responsibility to ensure that its Members are aware of and understand what these ethical standards are. These standards are set-out in the Members’ Code of Conduct.

- 5.2 In accordance with the provisions of the Localism Act 2011 a new Members' Code of Conduct was adopted by the full Council in June 2012. This Code explains that Members have a commitment to behave in a manner that is consistent with the 'Seven Principles of Public Life' (also known as the Nolan Principles) when acting as a representative of the City Council. The Code also provides more detailed guidance relating to the conduct expected of Members during the course of their service to the Council including the requirements to: champion the needs of residents; exercise independent judgement; value colleagues and Council staff and engage with them in an appropriate manner. The Code further details requirements relating to the registration and declaration of interests and actions to be taken in the case of potential conflicts of interest. Notably, the Code also includes the new statutory requirements regarding the disclosure of Disclosable Pecuniary Interests.

### **Ethical Governance Training, Support and Advice**

- 5.3 To ensure all Members were informed of (and fully understood) the implications of the new Code and their obligations as City of Westminster Councillors, the Head of Legal and Democratic Services held a number of training sessions for Members on the new Code of Conduct and associated requirements shortly after its implementation. Aside from this structured training, Members are always encouraged to contact the Head of Legal and Democratic Services to discuss any queries relating to any part of the Code. Professional advice and support is also provided for Members on behalf of the Head of Legal and Democratic Services by the Senior Governance Officers who manage and attend every formal Member-level meeting of the Council. This ensures that, when partaking in Council business or considering any formal decision (whether in public or in private session) Members have ready access to professional advice to enable them to take part in business legitimately and appropriately.
- 5.4 Following the local elections in May 2014 the Head of Legal and Democratic Services (Monitoring Officer) held three Code of Conduct training sessions (two in June and one in July) as part of the Member induction programme, which achieved a very good attendance rate. Members were also advised that further one-to-one sessions would be arranged for any Member who either could not attend the scheduled sessions or wished to receive further advice. A number of Members have taken up this offer and one-to-one sessions have since been held upon request. This is a standing invitation and Members are advised to contact the Head of Legal and Democratic Services at any time if they require advice relating to matters relating to their conduct or interests.
- 5.5 These recent sessions combined (the scheduled sessions and one-to-one training) achieved an **attendance rate of 98%**, which is a vast improvement on

the 2012 rate. The Member who has not yet received training has been contacted to ensure training can be arranged at the earliest opportunity.

### **Publicity and Access to Ethical Governance Information**

- 5.5 The Members' Code of Conduct and each individual Member's Register of Interests form is published on the Council's website in accordance with the publicity requirements of the Localism Act and is readily available to view online. For those who do not have access to the internet, these documents can be viewed at City Hall by prior arrangement.
- 5.6 No issues have arisen to date during the course of Council business (or which have been brought to the Monitoring Officer's attention by other means) regarding any Member's non-compliance with the new Code. Since the implementation of the new Code Members have been conscientious to ensure the requirements relating to the registration, declaration and disclosure of interests in all circumstances have been maintained – whether partaking in business at formal meetings or taking an Executive decision in a Cabinet Member capacity.

### **Complaints against Members Procedure**

- 5.7 The Committee will recall that the Localism Act abolished the previous prescribed arrangements for dealing with complaints against Members (enforced under the Standards for England regime). The City Council subsequently took advantage of the provisions of the Localism Act to establish our own fit-for-purpose complaints procedure which reflected a robust but streamlined (less bureaucratic) approach to the consideration and determination of complaints. The agreed procedure for dealing with complaints against Members is published on the Council's website, along with information detailing exactly how a member of the public can submit a complaint and who they can contact for advice in this respect.
- 5.8 Since the implementation of the new procedure very few complaints have been received. Each complaint has been thoroughly considered by the Monitoring Officer on the basis of the information set out in the complaint form or submitted with the complaint. In accordance with legal requirements the City Council's Independent Person has been consulted on each complaint. Following this consultation, a decision was taken in each case that a formal investigation was not merited. Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, investigating a complaint involves spending public money as well as the cost of officer and Member time. Therefore the Council takes a proportionate approach to the issue of whether or not a complaint merits investigation, bearing in mind the sanctions which can be imposed if a Member is found to be in breach of the Code, and the costs to the Council (and to the public) of undertaking an investigation.

5.9 Historically, the City Council has received few complaints against Members. However, where serious complaints have been received in the past an investigation and hearing has been conducted as necessary and Members have been held accountable for their actions. Where issues have arisen relating to conflicts of interest during the course of Council business, these have been dealt with appropriately and transparently in accordance with the professional advice provided to Members. In these respects we are satisfied that a high standard of ethical governance is promoted, enforced and maintained.

**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 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:

	2011-2012		2012- 2013		2013-2014		Trend
	Closed	Open	Closed	Open	Closed	Open	
Disciplinary	28	3	35	3	19	8	Ⓔ = Decrease

- The council concluded 19 disciplinary matters in the 2013/2014 financial year.
- 4<sup>1</sup> of these were in schools, 15<sup>2</sup> of these were in non-schools departments.
- There were 8 cases opened in 2013/2014 financial year which remained open going into the new financial year, 1 case within Schools and 7 within non-schools departments. Out of those 7 cases that were open only 1 remains open to date.
- The outcome of those disciplinary matters were:

Departments								
<u>Outcome</u>	No Case to answer	Not Blameworthy	Formal Oral Warning	Formal Written Warning	Final Written Warning	Dismissal	Other*	<u>Total</u>
<u>Closed Cases</u>	3	0	0	4	5	3	0	15

Schools								
<u>Outcome</u>	No Case to answer	Not Blameworthy	Formal Oral Warning	Formal Written Warning	Final Written Warning	Dismissal	Other*	<u>Total</u>
<u>Total</u>	1	1	1	0			1	4

There were two whistleblowing matters raised via the HR department. Both of these matters were 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 council also requires all employees in specified designated<sup>3</sup> posts to complete a

<sup>1</sup> 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

<sup>2</sup> Cases concerned “undermining trust and confidence” and “bringing the council into disrepute”, allegations of child protection / safeguarding concerns, insubordination, fraud, punctuality and absenteeism, inappropriate behaviour at work, theft, sending inappropriate communications.

It should be noted that in relation to the schools data this is in relation to only those schools that buy into the Westminster Council’s HR Service and does not represent all schools across the borough. At present there are 22 schools out of 42 that buy into Westminster Services be it HR only, payroll only, or both.

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

<sup>3</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



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 2016.

- 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**

- 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

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- 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.

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 3 and appendix B of the Procurement Code make specific reference to the Code of conduct and employee guide, Anti fraud and bribery and the Local Government Act 1972 – Section 117 Disclosure by officers of interest in contracts.

### **Gate Review**

- 7.2 The City Council has a Gate 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 strategy and tender evaluation criteria.

**Gate 2:** Examines the proposed contract award and implementation plan.

Peer Reviews are to be led by Nominated Authorised Officers for Operational spend (£10k to £100k) and Strategic spend (>£100k). A Peer Review ensures that officers are not acting alone when making decisions about contract awards, and it ensures that due process has been followed. The Gate Review Panel provides additional rigour for Strategic spend.

- 7.3 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 'Declarations of Interest' form and signing it. The declaration must be made at the time when bidders are selected or short-listed from a response to an advertisement or, in exceptional cases, where a single supplier is chosen. The form is part of the Category Management process for Strategic spend.

### **CapitalSourcing**

- 7.4 During the Committee's discussion of a previous report Members raised concerns about the Council's vulnerability in respect of staff being largely unmonitored in their dealings with external contractors. The launch of a new electronic sourcing solution called 'capitalSourcing' across Tri-Borough from January 2014 increased transparency and monitoring around procurement activities. The capitalSourcing solution contains a module on contract performance which enables Tri-Borough to apply standard high level performance measures for all contracts and more detailed relationship management data for strategic suppliers and key contracts. This means that all tendering and requests for quotes are carried out online. Advertising, evaluations and contract awards will be conducted using the system and contract awards will be 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. Workflows ensure that approvals are obtained at the appropriate stages of the procurement process.

## **7.5 Safeguards during procurement exercises: Examples**

7.5.1 The following is listed as an example of safeguards which are followed. During a recent procurement exercise, a project team member who was managing contracts as part of Supplier Relationship Management had day-to-day contact with contractors. Tweets were exchanged between the team member and a contractor, which were available for anyone to see. This team member was due to sit on the evaluation panel for the re-let of a contract. However, a letter from an unknown person who had seen the tweets was sent to Westminster City Council via a solicitor, and it was suggested that there was a conflict of interest as the contractor in question would be bidding for the new contract. The situation was investigated and, although there was no substance to the suggestion in the letter, the team member was not included on the evaluation panel as a safeguard to any allegations that the outcome of the competitive procurement exercise had been influenced unduly.

### **7.5.2 Managed Services:**

Measures were taken when dealing with the Managed Services Provider (MSP) contracts to avoid conflicts of interest. However, no conflicts of interest occurred and Lot 1 was awarded to BT.

### **7.5.3 Customer Services:**

Measures were also taken when dealing with the Customer Services contracts to avoid conflicts of interest – for example, Serco submitted a bid but there was a clear segregation of responsibilities

### **7.5.4 Parking Services:**

In respect of Parking Services, the existing contract for the provision of the systems and back-office processing performed by Serco expires in November 2014 and the provision of Parking and CCTV Enforcement performed by NSL expires in June 2014. The City Council prepared to re-procure these services to ensure that effective provision is in place to ensure continuity of service and that it continues to adhere to the Network Management Duty placed on it by the Traffic Management Act 2004. Baker Tilly provided gateway support to Westminster City Council to ensure that the procurement complies with EU Procurement Rules. An audit of the Parking contracts re-let was also carried out.

### **7.5.5 Aggresso:**

There will be closer alignment with finance in the policies and implementation of the new Purchase to Pay “P2P” system and associated controls.

## **Complaints from unsuccessful bidders**

- 7.6 The Strategic and Commercial Procurement team do not currently keep a log of instances/examples where they have been challenged by an unsuccessful bidder. However, the Category Management Toolkit is being reviewed between January 2014 to March 2014 and a process step to facilitate the recording of such data will be included. In addition, the refresh of the Procurement Code (due to be published in January 2014) will include a statement to address this issue to ensure that all supplier challenges for unsuccessful bids will be logged, and reviewed in the Gate Review Panel meetings.

## **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 2013/2014 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:**

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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