



City of Westminster

Audit and Performance Committee Report

Date:	3 February 2016
Classification:	General Release
Title:	Maintaining High Ethical Standards at the City Council
Wards Affected:	All
Financial Summary:	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.

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;

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 been provided within Tri-borough to service areas at greater risk, and a new Fraud Awareness campaign is planned to commence in 2016.

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 Fraud Hotline 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 half of 2015/16, approximately 100 calls had been received on the Fraud and Whistleblowing hotline and 75 referrals received through the 'Report a Fraud' facility. The majority of these referrals relate to possible fraud in respect of Housing Benefit payments (which are redirected to the Department for Work and Pensions), 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”

4.3 One of the roles of the Tri-Borough Internal Audit Service is to the 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.

- 4.4 The Corporate Complaints Team is a distinct service to that of the Fraud Investigation Team and is based within the Chief Executive's 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, which went to Audit Performance Committee on 2 December 2015, did not report on any complaints which meet the definition of an ethical governance complaint as none were reported to the Complaints Team as having been received in the financial year 2014/2015.
- 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 As a mark of the importance with which the Council regards ethical governance it was agreed to retain a separate Standards Committee even though the statutory requirement to do so has been removed. The Standards Committee meets three times per annum and in the last year has commissioned refresher training for Members who sit on quasi-judicial bodies. These training sessions have all been programmed and due for completion before the end of March 2016.
- 5.2 As part of its review of training carried out during the course of the year the Standards Committee has been advised that all Members had been signed off by the Monitoring Officer as having been trained in the Code of Conduct. Following a report from the Monitoring Officer the Standards Committee have asked her to undertake a review of the Members Code of Conduct particularly as it is now four years since it was originally adopted. The review will be conducted by the Monitoring Officer who will consult the three Independent Persons. Following the adoption of any new Code of Conduct the Standards Committee will consider training requirements for Members and co-opted Members will be provided.
- 5.3 The Monitoring Officer has considered 4 complaints about Member conduct. In each case she determined that there was no case to answer. The Monitoring Officer considered one case against a member of the Queen's Park Community Council the details of which are outside the scope of this report.

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, excluding schools, 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 slight increase from the previous financial year.

An overall three year trend:

	2012-2013		2013- 2014		2014-2015		Trend
	Closed	Open	Closed	Open	Closed	Open	
Disciplinary	24	3	15	7	20	4	↑= Increase
Staff employed	2106		2128		2083		

- The council concluded 20 disciplinary cases in total in the 2014/2015 financial year (this excludes schools)
- There were 4 cases opened in 2014/2015 financial year of which remained open going into the new financial year, none of these cases remain open as of today.
- The outcome of those disciplinary matters closed in 2014/15 were:

Outcome	Departments							Total
	No Case to answer	Not Blameworthy	Formal Oral Warning	Formal Written Warning	Final Written Warning	Dismissal	Other*	
Closed Cases	8	0	0	4	2	3	3	20

There were three whistleblowing matters raised via the HR department two of these matters was not upheld and one was partially 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 designated¹ 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 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.

¹ 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.

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 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.

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

7.3 A Communications Plan is held by the Operations team, which is used to ensure that all appropriate officers are informed of changes to the Code. Corporate Induction sessions include attendance by members of the Strategic and Commercial Procurement team who signpost officers to the Procurement Code. There are links to the Code on the Wire and on the external Westminster City Council site.

Gate Review Panel and Contracts Approval Board

- 7.4 The City Council and Shared Borough Services have 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.

- 7.5 At Westminster City Council and CityWest Homes, 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.
- 7.6 For Shared Borough Services, Peer Reviews are also to be held. For Adult Social Care (including Public Health) and Children's Services there is a Contracts and Commissioning Board, which acts as a Peer Review, to ensure that officers are not acting alone when making decisions about contract awards. The Contracts Approval Board provides additional rigour.
- 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 '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

- 7.8 In the past, Members have 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 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. Workflows ensure that approvals are obtained at the appropriate stages of the procurement process.

Complaints from unsuccessful bidders

- 7.9 The Strategic and Commercial Procurement team have not kept a log of instances/examples where they have been challenged by an unsuccessful bidder. Paragraph 6.3.3.3. of the Procurement Code, which was published on 3 Nov 2015, includes a statement which addresses the issue to ensure that all supplier challenges for unsuccessful bids will be logged, and reviewed in the Gate Review Panel meetings.

Category Management

- 7.10 The Category Management function is designed to support major categories of expenditure and Category Management has been adopted as an approach by the Strategic and Commercial Procurement team to address key spends. The Category Management Toolkit provides a commercially focused practical reference that will guide procurement professionals (and all others involved in the procurement process) through a rigorous process to effectively manage the organisations spend. In the Toolkit, Category Management is defined as; *“The process in which blocks of rationally segmented expenditure (driven by desired outcomes and/or external market place) are objectively (data driven) and critically (wide ranging) examined to determine why we buy what we do, how we buy it, from whom and with what results. The categories are then managed through a continuous and systematic process to develop and implement strategies which deliver maximum value whilst managing risk”*.
- 7.11 The Category Management team undertake regular training, including:
- Legal Aspects & Contract Development (Back to basics) – This one day workshop covers a range of legal aspects relating to commercial contracts – mandated for all procurement staff
 - Embedding Category Management – This 2 day workshop covers all aspects of Category Management, from category management principles and guidelines to practical insights into the best use of the techniques incorporated in the Westminster City Council Category Management Toolkit.

Contracts Management

- 7.12 A Contract Management Framework has been developed for use on all third party Supplier contracts with a total value of £25,000 and above. The Framework consists of two sections:
- i. **Section 1** gives an overview of how it should be applied. It also introduces the three stages of contract management (Define, Mobilise and Deliver).

ii. **Section 2** is a more detailed guide to the three stages (Define, Mobilise and Deliver) and the key activities that Contract Managers are required to perform. All of the activities have been grouped into 6 themes as follows:

- 1 Specification
- 2 Governance and Organisation
- 3 Performance Management
- 4 Commercial
- 5 Risk Management
- 6 Legal

iii. The Contract Management Framework is available on the Wire, with a link included on the “**I want to**” page.

A two day workshop called, “Managing Successful Contracts (the Contract Management Framework)” covers all aspects of Contract Management. It provides delegates with an understanding of robust contract management principles and a practical insight into the “Managing Successful Contracts Framework”. The workshop has been designed to build awareness of the contract management process by exploring the lifecycle stages and their associated activities.

Some of the key characteristics of a Contract Manager are outlined in the Contract Management Framework, one of which is “Strong business ethics”. The CMF also states that the level of experience required will depend on the nature of the contract but, clearly, a high risk strategically important contract will require an experienced Contract Manager with more developed skills.

Strategic and Commercial Procurement team training

It was agreed with Internal Audit that Fraud Awareness should be a compulsory training module for all staff engaged in procurement. A course was delivered by Andrew Hyatt, Tri-borough Head of Fraud, in December 2014 which focussed on:

- 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 2014/2015 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