Audit and Performance Committee Report

City of Westminster

Date:	9 February 2017
Classification:	General Release
Title:	Maintaining High Ethical Standards at the City Council
Wards Affected:	All
Financial Summary:	N/A
Report of:	Tasnim Shawkat, Director of Law and Monitoring Officer.
Author:	Reuben Segal Senior Committee and Governance Officer Email: rsegal@westminster.gov.uk

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 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   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. Fraud awareness training has been provided within Tri-borough to service areas at greater risk, and a new quarterly newsletter entitled *Fraud in Brief*, was launched in November 2016 to inform staff of emerging fraud risks, encourage fraud reporting and to maintain awareness.

How Ethical Governance Complaints are dealt with

3.2   The Council's Anti-Fraud and Corruption Strategy 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 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 and Performance Committee on 24 November 2016, did not report on any complaints

which meet the definition of an ethical governance complaint as none were reported to the Complaints Team in the financial year 2015/2016.

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 reviewed the code of conduct. As a consequence of this review the council adopted a new (simplified) Code of Conduct in July 2016.   The Monitoring Officer has offered training on the new Code to all elected and co-opted members. To date approximately half of the elected members have attended and further training sessions are being arranged.

5.2   As part of its review of training carried out during the course of the year the Standards Committee have also requested training on the Data Protection Act, this is due to take place in summer 2017.

5.3   The Council and the Cabinet have the power to appoint Members to serve on outside bodies in a variety of capacities. To assist Members to better understand their responsibilities in carrying out this role and to understand any potential conflicts of interest, the Council's Constitution is in the process of being updated to provide guidance on this matter.

5.4   The Monitoring Officer has considered 5 complaints about Member conduct, in each case she determined that there was no case to answer.   The complaints were submitted by different members of the public and therefore do not indicate a pattern of vexatious behaviour. Two of the complaints were service related which members do not have responsibility for. The Monitoring Officer also considered one case against a member of the Queen's Park Parish 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 has slightly decreased from the previous financial year.

An overall three year trend:

	2013 - 2014		**2014- 2015**		**2015-2016**		**Trend**
	Closed	**Open**	**Closed**	**Open**	**Closed**	**Open**	
Disciplinary	15	7	20	4	13	4	Decrease
Staff employed	2128		2083		1861		

- The council concluded 13 disciplinary cases in total in the 2015/2016 financial year (this excludes schools)
- There were 4 cases opened in 2015/2016 financial year 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 2015/16 were:

	Departments							
Outcome	No Case to answer	Not Blameworthy	Formal Oral Warning	Formal Written Warning	Final Written Warning	Dismissal	Other	**Total**
Closed Cases	5	0	0	2	3	2	1	13

- Only one of these was of an ethical governance nature and related to a failure to disclose a police caution received during employment with the Council. This compares to three cases in 2014-15 which related to a case of falsification of documentation and two related cases of fraud.
- 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 the HR department and this 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 form is accessible from the Council's intranet, The Wire. The council also requires all employees in specified designated[1] 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

---

[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.

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 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 has just been finalised and is currently awaiting formal cabinet member approval, this will be published by the end of January 2017.

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. There are links to the Code on the internal and external websites.

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 1st January 2017, a new Procurement Assurance Model has been 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   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 'capitalEsourcing' across Tri-Borough since January 2014 has increased transparency and monitoring around procurement activities. The capitalEsourcing solution contains a module on contract performance which enables the Tri-Borough Councils 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.

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 Procurement Services 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.

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 – mandatory 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 "**How Do I?**" 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.

Procurement Services team training

Fraud Awareness training is available in-house. 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

An online version of this training is currently under development and it is anticipated that all of Procurement Services will have completed the online training by the end of this financial year.

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 2015/2016 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:
Reuben Segal, Senior Committee and Governance Officer
Chief Executives
Email: rsegal@westminster.gov.uk**

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