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REPORT TO YORK CITY COUNCIL ABOUT THE CONDUCT OF THE
AUDIT AND GOVERNANCE COMMITTEE HELD ON 22ND FEBRUARY
2017

SEPTEMBER 2017

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1. EXECUTIVE SUMMARY

I was tasked to review the Audit and Governance Committee that took place on 22nd February 2017. In particular, the governance and decision making processes together with the overall conduct of the meeting, and to make recommendations for improvement. Whilst this is a very limited scope review, it is clear that the reasons for the problems that occurred at the meeting are broader and both historical and deep rooted. The issues are a symptom of general difficulties that the Council is experiencing in relation to challenges from protagonists from both inside and outside of the Council. In addition, there is a lack of trust and a perception amongst some that the Council operates within a degree of secrecy. This investigation has found that the Council generally does endeavour to operate in an open and transparent fashion, but there are heritage issues that conspire against this. [REDACTED] My recommendations deal only with the narrow issues that I have been asked to consider, however, they merely scratch the surface. Unless the wider issues are tackled and the Council endeavours to demonstrate improved transparency in order to re-establish trust, then there is a potential for a repeat of this type of incident. There are of course, specific issues that this report has identified relating to the conduct of the meeting and these need to be addressed forthwith.

2. RELEVANT LEGISLATION AND GUIDANCE SUMMARY

[REDACTED]

2.3 The Data Protection Act 1998 (DPA) and ICO's Guidance entitled 'determining what is personal data'

The act sets out people's rights in relation to their personal data. The guidance aims to assist data protection practitioners in determining whether data falls within the definition of personal data.

3. MY APPOINTMENT

3.1 I was asked by the Council's Chief Executive to carry out an investigation into the events which took place at the meeting of the Council's Audit and Governance Committee on 22nd February 2017. The Local Government Association procured my services on the Council's behalf.

3.2 I am a Solicitor with over 30 years' experience. I have held the position of Head of Legal Services in County Council. I have also held the position of Monitoring Officer in a unitary authority. In addition, I have experience of working as Head of Public Law and Corporate Governance in a private law firm.

4. TERMS OF REFERENCE

To look at the 22nd February 2017 Audit and Governance Committee meeting with the terms of reference as follows:-

4.1 consider the governance and decision making processes including preparation for the meeting and the handling of private items;

- 4.2 consider overall conduct of the meeting itself and input and interaction by the Chief Executive, Section 151 Officer, Monitoring Officer, Auditors, Members of the Committee and members of the public; and
- 4.3 recommend any improvements to the Governance arrangements needed for this Committee and any other actions.

5. BACKGROUND

- 5.1 A private internal audit (Veritau) report was commissioned by [REDACTED] with regard to the engagement of Consultant B and Company C in 2013. In the past two years the Council had received a number of Freedom of Information (Fol) requests regarding its expenditure on consultants, in particular, Consultant B.
- 5.2 As part of the most recent Fol requests (received by the Council on 7th April 2016) a number of specific questions were asked about the way in which Consultant B's contract had been procured. The original request was made using the 'WhatDoTheyKnow' website, so attracted interest from other residents. Concerns were subsequently raised [REDACTED]. [REDACTED] in turn asked Internal Audit to investigate the matter further and this request was received by the [REDACTED] on 29th July 2016. [REDACTED] discussed the concerns with [REDACTED] and it was agreed that a detailed review would be undertaken.
- 5.3 The Council's external auditors, Mazars, also received an objection to the 2015/16 Statement of Account on 11th August 2016. The objection covered a number of issues, including the Council's apparent failure to carry out a procurement exercise prior to appointing Consultant B and Company C. The objection referred to the Fol request and related correspondence on 'WhatDoTheyKnow'.

- 5.4 It was agreed to consider both reports at the Audit and Governance Committee in November 2016, however, they were deferred because [REDACTED] had requested the police to consider whether there was any potential fraudulent involved.
- 5.5 The police confirmed the case did not meet the evidence test required for fraud and on that basis the reports were scheduled to be considered at the Audit and Governance Committee on 22nd February 2017. The private Internal Audit report was a redacted and anonymised version in view of the potential identification of individuals and other private matters.
- 5.6 [REDACTED]
- 5.7 The individuals named in the report had contacted the Council with their concerns and objections regarding the report being made public. [REDACTED] maintained their advice to keep the report private.
- 5.8 Following the meeting, external correspondence was received from Elected Members and members of the public complaining [REDACTED]

6. THE REVIEW PROCESS

- 6.1 During the investigation I held face to face meetings, and made notes of the meetings in relation to the following people:-

[REDACTED]

7. SUMMARY OF MATERIAL FACTS

7.1 Audit and Governance Committee 22nd February 2017

- 7.1.1 The primary purpose of the audit and Governance Committee held on 22nd February 2017 was to consider firstly, the report prepared by the Internal Audit

following investigations undertaken in relation to the procurement of consultants and secondly the External Auditor's report concerning objections to the 2015/16 accounts. This also concerned two procurements, one of which was the procurement of the consultant who was the subject of the Internal Audit Report. The Internal Auditor's report was anonymised in order to prevent identification of the individuals/company involved. There was also a partial redaction. [REDACTED] advised prior to the meeting that in spite of this anonymisation, the Internal Audit report should be considered in private as the report contained personal data as it was still possible to identify the individuals/company involved. [REDACTED] of the meeting had been briefed [REDACTED] prior to the meeting and had been provided with a script which was read out at the beginning of the meeting. The substance of this was that members were asked to consider excluding the press and public during the consideration of Annex 1 of Agenda Item 5 on the grounds that it contained information relating to individuals. This information was stated to be classed as exempt under Paragraphs 1 and 2 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006.

- 7.1.2 [REDACTED] was asked to explain the reasons why the committee was being asked to consider excluding the public and press during consideration of the Annex. [REDACTED] explained that it was the view of officers that the Annex satisfied the requirement of paragraphs 1 and 2 of Schedule 12A to Section 100A of the Local Government Act 1972 (information relating to any individual and information which is likely to reveal the identity of an individual). These exemptions were subject to a public interest test, but it was the view [REDACTED] that the information that had already been published by the

Council met the requirement of the public interest test. In reaching this conclusion, regard had also been taken of guidance produced by the Information Commissioner's Office in which there was a strong expectation of privacy and consideration of the impact on individuals. [REDACTED] attention was drawn the extensive interest on social media and the fact that the press published extracts of the report. Notwithstanding this, [REDACTED]-advised that consideration should still be given to the impact and damage to individuals if additional information was made public. [REDACTED] pointed out the potential risk to future internal audits, as, if such information were to be made public, contributors to audits may be much more circumspect. [REDACTED] seconded a proposal that the public and press be excluded from the meeting during consideration of Annex 1 of Agenda Item 5. On being put to the vote, the proposal was lost. The press and public were not therefore excluded from the meeting.

7.1.3 [REDACTED] gave the following reasons:

- (a) It was in the public interest for the press and public not to be excluded during consideration of the Annex.
- (b) Whilst there was a duty to protect employees, the vast majority of staff would be 'tarred' by secrecy and wrong-doing.
- (c) The report did not name individuals and the information had been redacted so as not to identify individuals.
- (d) Greater identification of individuals was already available, for example through Freedom of Information requests that were in the public domain.
- (e) The report should not have been exempt when published.

(f) The report could be discussed without reference to individuals.

7.1.4 There followed a discussion about the consequences and risks of this decision.

7.1.5 In view of the additional information that had been received, [REDACTED] that the vote be retaken. On being put to the vote the proposal was lost again.

7.1.6 [REDACTED]

7.1.7 [REDACTED] was then given the opportunity to speak under the Council's Public Participation Scheme. [REDACTED] expressed [REDACTED] views in relation to breaches of the procurement rules and asked the Council to take action in respect of these deep concerns regarding allegations of secrecy and multiple failings in finance and governance. [REDACTED] to demand Police action, for an independent investigation by CIPFA, and for [REDACTED] be held to account.

7.1.8 [REDACTED] raised concerns relating to the breaches of financial procedures and a failure to maintain records. [REDACTED] asked for a Police investigation.

7.1.9 [REDACTED] expressed concern regarding issues that had been raised in respect of procurement and the effectiveness and independence of the audit and monitoring procedures. [REDACTED] believed that the Council should launch an independent investigation to ascertain whether these had been isolated incidents.

7.2 **Internal Audit Report on Procurement of Consultants**

7.2.1 Once all of the issues regarding publication were dealt with, [REDACTED] were then able to consider the report which informed them of the results of the

internal audit investigation into the procurement of an external consultant. [REDACTED] explained the background to the internal audit investigation and the reasons why the internal audit review had been instigated. [REDACTED] clarified that, although the word “illegal” had been used during the meeting, a failure to follow council procedures did not mean that the action taken was illegal. [REDACTED] concerned had the authorisation to make the payments.

7.2.2 [REDACTED] gave an update on the action that [REDACTED] had taken since the internal audit investigation. [REDACTED] stated that the Veritau report had not identified any fraud and [REDACTED] had commissioned a Police investigation and this had confirmed that no evidence of fraud had been found.

7.2.3 [REDACTED]

7.2.4 [REDACTED] stated that the auditors could find no documentary evidence to demonstrate that the council’s contract procedure rules had been followed. This was, however, an internal matter and there had been no fault on the part of the [REDACTED]. Improvements had already been implemented to strengthen control measures and further improvements were planned. [REDACTED]

7.2.5 Clarification was sought regarding the paragraphs in the report which had been redacted. [REDACTED] were informed that this was because the paragraphs related to matters that were still subject to audit investigation. [REDACTED] confirmed that these issues did not specifically concern the situation under discussion.

7.2.6 [REDACTED] questioned whether a similar situation could arise in the future. They were informed that a guarantee could not be given that every purchase

made in the Council would be in accordance with procedures. The organisation was large and complex. Monitoring arrangements had, however, been strengthened and when breaches were identified action would be taken, including HR procedures if appropriate.

7.2.7 Whilst [REDACTED] suggested that there was a need for further investigation, others stated that the investigation should not be extended and that the committee should focus on monitoring the improvements that had been introduced.

7.2.8 [REDACTED] seconded that:

- (a) the report be noted;
- (b) in view of the ongoing work by Veritau in respect of the redacted information in the Internal Audit Report, an update be given on the further work that was taking place after this had been concluded; and
- (c) in respect of paragraph 2.19 of the Internal Audit Report, the Executive be asked to consider if further work was required to identify whether the work referred to, represented value for money.

7.2.9 On that basis, the report was approved.

7.3 **Mazar's Procurement Issues Report**

This was considered and [REDACTED] was able to confirm that they considered that Veritau had reached 'reasonable conclusions based on the evidence available.' They considered that the Internal Audit Review had been properly scoped and thorough. The report was noted.

7.4 **Procurement Action Plan**

Members were informed that the issues raised in the Internal Audit report were being taken very seriously and work was already underway to make the necessary improvements. The action plan was noted with a reference to Corporate and Scrutiny Management Policy, and Scrutiny Committee to consider how Members could be involved in the monitoring of procurement processes.

Finally, the Audit and Governance Committee Forward Plan was approved. The meeting had lasted for 3 hours and 20 minutes.

8. **ISSUES AND RECOMMENDATIONS**

8.1 [REDACTED]

Recommendation 1 - Both the Chair and Vice Chair should be briefed prior to a meeting.

Recommendation 2 – [REDACTED]

8.2 [REDACTED]

Recommendation 3 - Chairs should be given training and guidance in order to ensure that meetings are conducted in an orderly fashion, and are able to apply appropriate intervention when necessary.

8.3 [REDACTED]

Recommendation 4 – [REDACTED]

8.4 [REDACTED]

Recommendation 5 [REDACTED]

8.5 [REDACTED]

Recommendation 6 – [REDACTED]

8.6 [REDACTED]

Recommendation 7 – [REDACTED]

8.7 [REDACTED]

Recommendation 8 – [REDACTED]

8.8 It was clear that the room in which the meeting was held was too small. This made things more oppressive and was not appropriate given the foreknowledge about how contentious the meeting was likely to be.

Recommendation 9 - Care should be given to booking rooms that are fit for purpose.

8.9 A security guard was present for the meeting. This was unnecessary. It was clear that the meeting would be challenging, but there was never any threat of violence.

Recommendation 10 - There is no requirement for a security guard unless advance information dictates otherwise.

8.10 [REDACTED]

Recommendation 11 –[REDACTED]

8.11 The investigation into the procurement issues was requested by the [REDACTED]. The objections to the 2015/16 Statement of Accounts were received by the external auditors and investigated. In view of the heritage governance issues and in the spirit of acting in a transparent way in order to rebuild trust, it was entirely appropriate for the reports to be presented to the Audit and Governance Committee for consideration. It is

unfortunate that this positive move was tainted by the debate as to whether the report in Annex 1 was to be considered in public.

Recommendation 12 - That the Council works actively to address the heritage governance issues and strives to demonstrate transparency so as to ensure that future meetings proceed in a more appropriate fashion.

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