

Private and Confidential
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Dear Paul

Review of anonymous whistleblowing statement

Outline of work undertaken

In accordance with our engagement letter dated 22 November 2013 (a copy of which is attached to this letter as Appendix 1), we have carried out the work in relation to the investigation of allegations made in an anonymous and undated whistleblowing statement (the Whistleblowing Statement) submitted to the Council in November 2013. Being an anonymous document, we have been unable to contact the whistleblowers, something we would have liked to have done in order to better understand the evidential basis for their allegations. We have summarised the allegations within the Whistleblowing Statement into five main areas as follows:

- ▶ The procurement of services from Interim 1 and Interim 2
- ▶ The procurement of services from Interim 3, Interim 4 and Interim 5
- ▶ Value for Money
- ▶ Declarations of interest
- ▶ Potential misreporting

As with all investigations, the initial scope of work was intended to be a proportionate response to the matters at hand, in this case, the allegations made in the Whistleblowing Statement. A proportionate response is important in order to balance the need for robust investigation with the impact that an investigation has on the subjects of the investigation as well as the costs to the Council.

As set out in our engagement letter, we initially agreed to undertake six groups of tasks which included a review of relevant parts of the Council's constitution and standing orders, registers of interests and payments made to the individuals named in the Whistleblowing Statement and the manner in which the Council accounted for these payments. Our work also consisted of analytical procedures applied to information and data made available to us and explanations provided to us.

Having undertaken the tasks set out in our engagement letter, we concluded that it would be proportionate to hold fact finding meetings with Council officers, the individuals named in the Whistleblowing Statement, as well as contacting third parties from outside of the Council.

In summary, our work has not identified evidence of corruption, malpractice or unlawful expenditure in relation to the specific issues raised by the whistleblowers.

Our work has not involved a forensic analysis of the email accounts and electronic data held by the individuals on laptops and other electronic devices or details of personal financial information to the extent that it would be available. Such work would be appropriate particularly where well founded concerns exist with regard to the making of illicit payments.

Given that, in this case, the rates paid to the individuals are comparable with the market rates for such services and Interim 1 and Interim 2¹ are providing services to a number of senior officers in addition to Officer 1, there is insufficient evidence to suggest that there is a heightened risk that such payments have occurred. In this context, the Council should consider whether further investigation would be a reasonable and effective use of resources since, unless new evidence is brought to its attention, the cost of undertaking further investigative work would be disproportionate to the risk of such payments having been made or received. At this stage, we would not recommend that further work is undertaken.

Our procedures did not intend, or seek, to express an audit opinion on the information and, therefore, will not constitute an audit and should not be relied on as such. Our work and this letter do not constitute any legal opinion or advice. Should further information come to light we reserve the right to amend or update this letter where appropriate.

We set out below our findings in relation to each area.

The procurement of services from Interim 1 and Interim 2

The Whistleblowing Statement alleges that Officer 1 (O1 - Director of Resources) personally appointed Interim 1 (I1) to the role of Assistant Director of Finance and Interim 2 (I2) as Business Partner in the Corporate Services Department² without following Council procurement processes.

Although I2 provided services to the Council in financial year (FY) 04/05 and FY 05/06, the majority of I2's costs incurred by the Council began in FY 08/09 and she continues to provide services to the Council up to and including FY 13/14. I2's role has changed during the period from FY 08/09 when she first worked on the Council's Corporate Services' Transformation and Restructure programme, and she has been working as an interim 'Business Partner' since April 2011.

I1's initial contract ran from 3 May 2011 to 30 September 2011. I1's contract has been renewed three times and he has also continued to provide services to the Council up to and including FY 13/14.

With reference to their initial appointments (i.e. FY 08/09 for I2 and FY 11/12 for I1) O1 approached the individuals with an offer of work on a consultancy and interim basis, respectively. O1 completed a 'single

¹ As explained below, the Whistleblowing Statements makes reference to Interim 1 and Interim 2 and the procurement of their services by Officer 1 on behalf of the Council.

As explained below, Officer 1 was not responsible for the procurement of services from Interim 3, Interim 4 or Interim 5

² Interim 2 has actually been covering the role of Business Partner within the Children's, Schools and Families directorate.

price quotation' form and agreed contractual terms directly with I1 and I2. Neither of the original roles was advertised externally. O1 also interviewed both I1 and I2 alone and no other candidates were interviewed.

From the time when I1 and I2 have been engaged by the Council, O1 has been responsible for authorising purchase orders for their services and authorising the payment of the majority of their invoices.³ Although they both provide support to other senior officers within the Council, I1 is line managed by O1 and both I1 and I2 report to O1.⁴

The Whistleblowing Statement refers to I1 and I2 as being consultants. I1 has been appointed to cover a permanent role and so is working on an interim basis rather than a consultancy basis. I2 was initially appointed in the capacity of a consultant. Since April 2011, I2 has been working in the capacity of one of the Council's three business partners, therefore moving from a consultancy role to filling an interim role at the Council.

We have obtained a copy of the Council's 'Consultants Code of Practice' (the Code) which sets out a process for the procurement of consultants. The document is dated 2001 and few of the people we discussed the document with had either heard of or were familiar with it. In addition, the Code was not referred to within the Standing Orders (SOs) in effect at the time when I1 and I2's services were initially procured by the Council.⁵

The Council's SOs state⁶, inter alia, that a 'Responsible Officer' must always:

- ▶ Seek value for money
- ▶ Carry out a robust options analysis before selecting the chosen procurement procedure
- ▶ Show no undue favour to any provider
- ▶ Conduct purchasing or price-testing or other procurement in accordance with the highest standards of propriety, probity and proper practices to prevent fraud and corruption.

In addition, the SOs require a minimum of three written quotations to be obtained for a contract value of between £10,000 and £75,000. A quotation is defined as a "written or oral offer following price testing".

In regard to the SOs, O1 stated in interview that due to her knowledge of the market (for example, details of other interim appointments and information received from agencies), she was aware of applicable rates for interims and consultants and was satisfied that the rates agreed with I1 and I2 were in-line with the market.

In addition, O1 also provided us with a 'Consultancy Framework Agreement' used by Croydon Council. However, this refers to the provision of services from large organisations such as Deloitte MCS Ltd and

³ The Council's finance system also shows that these have sometimes been authorised by other Council Officers, including the Chief Executive.

⁴ In I2's case, she also reports to another senior member of the Council's management team

⁵ A "Code of Practice on Consultants" is included in the Council's current SOs dated 28 March 2012

⁶ Paragraph 4.1 of the Council's SOs dated 1 February 2007, being the SOs in force at the point when I1 and I2's services were initially procured. Note that there are similar requirements listed at paragraph 4.2 of the Council's SOs dated 28 March 2012

Serco Consulting rather than self-employed consultants. We have not been provided with contemporaneous documentary evidence that formal market testing of prices was undertaken for either I1 or I2 at the time of their appointments, and as far as we can tell, a formal benchmarking process did not take place.

Both the SOs⁷ and the Code⁸ allow for exemptions from Council procurement processes. They both refer to 'single price quotation' forms which require the person who completes the form to set out why only a single quotation has been sought.

For I1, the reason for obtaining a single price, as shown on the single price quotation form, was:

"[Interim 1] – Recently retired London Treasurer in the process of registering with Executive Search Agencies & more than fits the relevant criteria for the post. By a single price quotation omits the 16-20% mark [up] rates from our preferred suppliers."

For I2, the reason for obtaining a single price, as shown on the single price quotation form, was:

"[Interim 2] has experience in this area and delay to the corporate services TOM⁹ will lead to delays in other departments and the overall corporate TOM."

The SOs include example reasons for using an exemption.¹⁰ Although these are examples only and are not, therefore, comprehensive, none of the examples specifically cover the reasons used by O1. However, both single price quotations were authorised by the Chief Executive. On that basis, the procedures required by the Council's SOs for the exemption to be valid have been followed.

In addition, 'Recruitment Authorisation Forms' for the consultancy appointments of I2 were approved in 2009 and 2010 by a Cabinet member of the 'Outstanding Council Programme Board' at the time of I2's appointment.¹¹

Whilst I1 and I2's contracts and contract extensions have been formally documented¹², the Council has not undertaken formal market testing of rates, nor did it advertise the vacant posts externally¹³ prior or subsequent to filling them with interim appointments. By undertaking the application/interview process solely herself, and by being responsible for authorising the majority of payments to I1 and I2, O1 has made herself vulnerable to allegations of corruption and has created a situation where I1 and I2 could be seen to be beholden to her for their roles. There is also a heightened risk that I1 and I2 could be perceived to be acting in O1's interests to the detriment of the Council, although no evidence of this has been brought to our attention.

The procurement of services from Interim 3, Interim 4 and Interim 5

It has been alleged that I1 procured services on behalf of the Council from Interim 3, Interim 4 and Interim 5 and did not declare a personal interest in these appointments.

⁷ Paragraph 6 of the Council's SOs dated 1 February 2007 and 28 March 2012

⁸ Paragraph 6 of the Code dated 14 March 2002

⁹ Target Operating Model

¹⁰ Appendix 2 of the Council's SOs dated 1 February 2007 and 28 March 2012

¹¹ I2's consultancy work was covered by the transformation work required as part of the Outstanding Council programme.

¹² O1 emailed a Council Member, in April 2012 in order to explain why she had been looking to extend I1's period of service

¹³ With the exception of I2's role as a Business Partner which began in April 2011 and which, we understand, has been advertised in January 2014

Our work has shown that the services of Interim 3 had been procured by the Council before I1 first started work at the Council. I1 could not, therefore, have procured Interim 3's services. Our work has also shown that although I1 was one of two people who interviewed Interim 4 and Interim 5, he was not responsible for engaging their services and did not know Interim 4 or Interim 5 before they were recruited.¹⁴

Value for Money

The Whistleblowing Statement alleges that the Council has not achieved value for money through the use of long standing interims and that 'mates rates' have been applied in agreeing the daily rates with I1 and I2.

We address the issue of market rates and value for money separately below.

Market rates

We sought independent confirmation of market rates from a recruitment agency which has placed interim staff at the Council to compare the daily rates paid to I1 and I2 with those prevailing in the market. The agency told us that rates have remained constant for at least the last three years and that they would expect the following rates to apply:

- ▶ I1's role to attract a daily rate in excess of £800, compared with the rate paid by the Council of £750.
- ▶ I2's role to attract a daily rate in the region of £500 to £800 per day, compared with the initial rate paid by the Council of £700, and the current rate of £650.

The rates paid by the Council for I1 and I2's services are comparable with market rates.

Comparison with permanent employees

The table below shows a comparison of the estimated annualised costs of the four people named in the Whistleblowing Statement whose procurement involved O1 or I1.¹⁵

The table compares the cost of a full time equivalent compared to the cost of an interim staff member where the agreed daily rates of the interims are multiplied by the available working days in a year.¹⁶ This amount is then compared to the equivalent gross annual salary (including employers' national insurance (NI) and pension costs) for a permanent employee in the same role.

The annual salaries provided to us by the Council's HR team were exclusive of NI and Pensions contributions. For the purposes of this comparison, we added a flat rate of 12% for NI contributions and

¹⁴ Due to long term absence, we have not been able to discuss the procurement of Interim 4 and Interim 5 with the officer responsible for their appointment.

¹⁵ We note I1's involvement was only as a second interviewer.

¹⁶ Available working days is assumed as 226, being 260 available working days, less 8 bank holidays and less 26 days annual leave. We have not accounted for sickness absence. This number represents the notional number of days a permanent staff member is expected to work in one year.

Pensions contributions of an additional 14.1%. The daily rate for Interim 4¹⁷ and Interim 5¹⁸ includes the agency mark-up being paid by the Council (17.5% and 15% respectively).¹⁹

Person	Daily Rate (ex VAT) £	Estimated annualised cost £	Permanent equivalent (inc. NI and Pensions) £	Difference £
Interim 1	750	169,500	109,783 – 114,719	54,781 – 59,717
Interim 2	650 ²⁰	146,900	75,180 – 80,124	66,776 – 71,720
Interim 4	460	103,960	62,855 – 64,655	39,305 – 41,105
Interim 5	470	106,220	66,604 – 70,666	35,554 – 39,617

The above differences demonstrate that the Council has been paying more for interim staff than it would have done had it appointed permanent members of staff to these posts.

In interview, O1 offered the following reasons why the additional expenditure incurred in respect of the long-term interim basis appointments of I1 and I2 should not be considered as the Council having failed to achieve value for money:

- ▶ I1 and I2 provide consultancy services on top of the interim roles they are undertaking, thereby saving the Council the cost of appointing consultants in addition to a permanent staff member.
- ▶ The Council finds it difficult to recruit some permanent posts due to Merton paying less than comparable Councils. The Council could not afford for any of these roles to have been left vacant for an extended period of time.
- ▶ The budget for permanent employees has been used to cover the expenditure on temporary employees; therefore the Council is not overspending against budget.
- ▶ Appointing both I1 and I2 directly, rather than through an agency, avoided paying a mark-up to agencies. O1 had checked with the Head of HR before the appointment of I1 that agency mark-ups could be between 13% and 20%.²¹
- ▶ With specific reference to I1, O1 also explained that at a time of reducing resources, the role undertaken by I1 is not one upon which you can 'cut your teeth', i.e. it required someone of experience.

¹⁷ Interim 4 started work at the Council in August 2011

¹⁸ Interim 5 started work at the Council in June 2011

¹⁹ A mark-up is not applicable to I1 and I2 as their services were not procured via an agency.

²⁰ We have only compared the daily rate of I2 whilst she was acting as an interim to provide for maximum comparability with a permanent staff member.

²¹ We note that the single price quotation form refers to mark ups between 16% and 20%. Furthermore, our comparison of costs does not include a mark-up for I1.

None of these comments adequately evidence value for money being achieved through the incremental payment for the services being provided by interims for an extended period of time rather than permanent employees.

Interim staff will typically cost more than permanent staff due to the need to compensate these staff for the absence of employment rights, or pension contributions. However, the Council has not actively sought to minimise this additional expenditure by recruiting permanently to the posts being covered by interims. This has created a situation where some interim appointments have been in place at the Council for close to three years.²²

Whilst the responsibility for recruiting permanently rests with the relevant budget holder²³, the Council's HR team has not provided challenge to the length of I1 and I2's interim appointments, nor has it encouraged a return to the market to recruit permanent replacements.

We understand from O1 that the Council is currently in the process of advertising internally and externally to fill I2's current role. However, prior to January 2014, we understand that the Council had not sought to replace either I1 or I2 with a full time appointment from outside of the Council. No such advertisement of I1's role has taken place.

Declarations of interests

The Whistleblowing Statement made a number of allegations regarding the relationship O1 has with I1 and I2. We address each relationship in turn.

O1 and I1

The Whistleblowing Statement alleges that O1 was personal friends with I1 and did not declare this during the recruitment process. O1 explained to us that she was not a personal friend of I1 but had known of I1 via the Society of London Treasurers and they had met through this forum.

O1 and I2

The Whistleblowing Statement alleges:

- ▶ a close personal friendship between O1 and I2
- ▶ I2 gave gifts and hospitality to O1
- ▶ O1 attended I2's wedding as a 'guest of honour' and
- ▶ O1 and I2 attended Epsom and Kempton Park races together.

In interview, both O1 and I2 acknowledged that they knew of each other prior to I2 starting work at the Council as they had been introduced through a colleague when they both worked at Westminster

²² Note that I2 initially started working for the Council as a consultant, rather than on an interim basis

²³ As stated by HR

Council.²⁴ O1 and I2 also confirmed that subsequent to I2's appointment, they have met socially on a number of occasions.

I2 denied having offered or given gifts or hospitality to O1 and O1 stated she had not received any gifts or hospitality from I2.

Both O1 and I2 confirmed that O1 had attended I2's wedding in 2012, but not as a 'guest of honour'. We understand that four other council officers also attended the wedding.

O1 and I2 have been to Epsom race course together (the first time being June 2011) with a group of friends during the periods in which I2 has provided services to the Council but not on Council time. We have been informed by O1 and I2 that they pay for their own costs associated with these events. Neither O1 nor I2 has attended Kempton Park races.

The Council's Constitution in effect at the time of the appointments of I1 and I2, stated at part 4G, paragraph 8.2 that:

"Conflict of interest means conflict of private interest and public duty and /or conflict of public duty to a public body and duty to The Council. It is important that a person's judgement of the public (Council) interest is not impaired by their private interest or duty to another public body. It is not just about actual conflict but also an appearance of conflict."

In addition, part 4H required familial relationships with existing council officers to be declared by people seeking employment by the Council.

Neither parts 4G or 4H explicitly extend to declarations in relation to friendships, either at the time of appointment or which develop after an employee and/or interim appointment has first begun. We note that no declarations as to friendships were made by O1, I1 or I2 at the time of appointment. This is consistent with their statements regarding their relationships at the time of the appointments.

However, paragraph 6.2 of the Council's constitution states that:

"If you engage or supervise contractors/consultants or have any other official relationship with contractors/consultants and have previously had or currently have a relationship in a private or domestic capacity with contractors/consultants, you should declare that relationship to the appropriate manager. Details should be recorded in the 'Declaration of Interests Register' that is kept by Directors."

Had the friendship between O1 and I2 been interpreted by the Council to fall within the scope of paragraph 6.2 (i.e. a relationship in a private capacity with contractors/consultants) then it should have been declared on an on-going basis. We were provided with the declaration of interest forms completed by O1 in 2011, 2012 and 2013, and no declarations of friendship were made.

²⁴ O1 had been Director of Finance at Westminster Council and I2 had undertaken some consultancy work at Westminster during that time. We understand that O1 was not involved in the procurement of I2 whilst at Westminster and the two never worked directly with each other.

Potential misreporting

We address below the allegations of potential misreporting in relation to reporting to committees, publication of expenditure over £500 and declarations made on the consultants registers.

Reporting to committees

The Whistleblowing Statement alleged that the Council has overspent as the result of the appointment of 'consultants' and this has not been reported to full Council.

We note above that the Council is paying more in relation to the appointment of each of the interim staff members when compared with the annual salaries provided by the Council's HR team for the corresponding posts.

The Council's reporting process is such that expenditure on employees is reported at an aggregated level (i.e. total expenditure on employees within a directorate) and does not separately identify expenditure between permanent and interim staff.

Whilst departments monitor expenditure at a cost centre level, reports to Council and its sub-committees report at a divisional level, not a cost centre level. This is standard practice within local government reporting. The position for the corporate resources department, which includes the costs of I1 and I2, was as follows:

- ▶ FY 11/12 overspend of £1.5m (Cabinet report 2 July 2012 attributes this overspend to redundancy costs and repairs and maintenance)
- ▶ FY12/13 overspend of £393k (due largely to a £460k overspend in Customer Services which does not include the costs of I1 or I2)
- ▶ FY 13/14 underspend of £1.4m (forecast)

Expenditure over £500

The Whistleblowing Statement further alleges that payments to I1 and I2 have been deliberately excluded from publication on the Council's expenditure over £500 listing, which it publishes on a quarterly basis on its website. We note that payments to I1 and I2 are disclosed on the payments over £500 list but their names have been redacted. This is a Council policy to prevent publication of information which would allow individuals to be identified.

Consultant's registers

The Whistleblowing Statement also alleges a failure by O1 to declare the consultants on the Consultant's Register. As noted above, only I2 has operated as a consultant when she first worked at the Council in FY 08/09. We have reviewed the Consultants Register for FY 08/09 and confirm that I2 is disclosed on the register as the 'Transformation Project – CS TOM Lead'.

Errors in the whistleblowing statement

In undertaking our work, we have identified a number of inaccuracies in the Whistleblowing Statement, including incorrect references to names, job titles and involvement in recruitment processes. It should also be noted that when comparing annual salaries with payments made to interims, the payments to interims should not include VAT if the comparison is to be on a like for like basis. We have further identified a number of errors in the value of payments listed within the Whistleblowing Statement.

Conclusion

In summary, our work has not identified evidence of corruption, malpractice or unlawful expenditure in relation to the specific issues raised by the whistleblowers.

Moreover, given that the rates paid to the individuals are comparable with the market rates for such services, and I1 and I2 are providing services to a number of senior officers in addition to O1, there is insufficient evidence to suggest that there is a heightened risk that illicit payments have occurred. In this context, the Council should consider whether further investigation would be a reasonable and effective use of resources since unless new evidence is brought to its attention, the cost of undertaking further investigative work would be disproportionate to the risk of such payments having been made or received. At this stage, we would not recommend that further work is undertaken.

We note that both I1 and I2 provide support to senior officers within the Council in addition to O1, and their invoices have sometimes been authorised by officers other than O1. Nonetheless, the ability to exempt procurement of interim staff from the Council's standing orders, coupled with responsibility for the appointment of those interim staff/consultants, gives rise to a lack of transparency and absence of appropriate oversight and scrutiny in the selection process. In addition, the appointment of interim or consultancy staff, on a long term basis, should regularly be challenged to ensure it is an appropriate use of Council resources.

Recommendations

- ▶ The Council should review the use of single price quotation forms, particularly in respect of the justifications required to be documented and the approval process for their use.
- ▶ Council officers should report all prospective interim positions to the Council's HR function, and the Council's HR function should be responsible for maintaining a central database of all prospective and live roles filled by interim appointments.
- ▶ HR should challenge departments on their use of long term interim appointments, the rates which are being paid and ensure that external recruitment is considered.
- ▶ HR should be involved in any recruitment process, including the recruitment of interim managers.
- ▶ The Council should review its interview process and its policy on the number of interviewers required, including in relation to the appointment of interim managers.

- ▶ The Council should review its policy on declarations of interest to include personal friendships.
- ▶ The Council should communicate to all Council officers any revisions it makes to its procurement procedures.

Yours sincerely

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Private and confidential

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22 November 2013

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Dear Paul

Merton LBC – Review of whistleblower allegations

This letter is supplemental to our engagement agreement for the statutory audit Merton Council (“the Council”). All terms and conditions in that letter remain unchanged except that the scope of the work that we are required to perform is expanded to include the following work. Such additional work will be covered by all the terms and conditions contained in our engagement agreement, including the limitation of liability provisions. For the avoidance of doubt, the aggregate liability of our firm contained in the limitation of liability provisions will not be increased as a result of this additional work.

Additional scope

On Thursday 14 November 2013, a letter was sent to various council officers and members raising a number of allegations against certain council officers. Merton Council has requested that Ernst and Young investigate the allegations set out in that letter (“the Matter”).

In accordance with our discussions with you on 18 November 2013, our scope of work for this investigation will cover the following:

1. Identification of payments made to two named consultants, including a review of the nature and purpose of those payments and whether the payments were made in accordance with Council policies regarding appointment of consultants
2. Review of the appointment of the named consultants and whether their appointments were in accordance with Council policies
3. Review of the appointment of three other consultants and whether these appointments were in accordance with Council policies
4. Review of any declarations made by the Council's s151 officer in relation to the appointment of the named consultants on the Council's consultants register
5. Review of any declarations made by the Council's s151 officer, in relation to the named consultants, on the Council's hospitality register and register of interests

6. Review of the reporting of expenditure on consultants taken to Cabinet and Council and approval of budgets for the appointment of the above named consultants

Our scope of work does not include formal interviews of any of the Council officers named in the whistleblower's letter²⁵, nor does it include capture of electronic data such as emails and server data. Depending on the findings from our work, we will discuss with the Council appropriate next steps in the investigation. Those steps will then be subject to a separate statement of work.

²⁵ The scope of our work was subsequently amended as agreed with the Council in December 2013 to include interviews