

Committee: General Purposes Committee

Date: 26th June 2014

Wards: All

Subject: Response to Ernst and Young report - “Review of anonymous whistleblowing statement”

Lead officer: Paul Evans – Assistant Director Corporate Governance

Lead member: Councillor Mark Allison

Contact officer: Paul Evans – 020 8545 3163

Recommendations: In response to the recommendations 1-7 set out in the Ernst and Young report “Review of anonymous whistleblowing statement” to consider and agree the changes and actions set out in the report for implementation or recommendation to Council where necessary.

1. Purpose of report and executive summary

1.1. At its meeting on the 12th March 2014 the Committee received a report from the Council’s external auditors Ernst and Young “Review of anonymous whistleblowing statement” and agreed that a report be presented at it’s next meeting detailing the actions the Council should take further to the reports recommendations.

2. Details

2.1 In November 2013 the Council received an anonymous “whistleblowing” statement containing a number of allegations in relation to unlawful expenditure, corruption and malpractice by Council officers. In accordance with the Council’s whistleblowing policy the Council appointed it’s external auditors to investigate the issues raised in the statement.

2.2 The Committee considered Ernst and Young’s report on their investigation on the 12th March 2014 and resolved the following actions be carried out and reported to this meeting for consideration and approval.

Recommendation 1 - That 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, and report back to the Committee in June;

2.3 There are two key documents which regulate the Council’s procurement activity:

1. [Public Contract Regulations 2006](#) – this legislation is the UK's implementation of the European Procurement Directives and as such takes precedence over any local policies, rules and procedures.
 2. [Contract Standing Orders \(Part 4G of the Council Constitution\)](#)
- 2.4 Exemptions to the Contract Standing Orders (CSOs) – Current Position
- 2.5 Currently, the CSO's, effective from April 2012 allow Officers to seek exemptions to the CSOs by completing a Form of Exemption Report which is then submitted to the Director of Corporate Services for approval.
- 2.6 The Form of Exemption Report requires Officers to provide:
1. Executive summary and purpose of report
 2. Details
 3. Alternative options
 4. Financial implications
 5. Procurement implications
 6. Legal implications and statutory provision
 7. Human rights and equalities implications
 8. Consultation undertaken
- 2.7 Currently, the CSOs invite the Director of Corporate Services to seek comment from Head of Commercial Services and the Head of Shared Legal Services on any request for exemption and the Head of IT Service Delivery/Head of IT Systems where appropriate. In the case of exemptions relating to Corporate Services, sign-off from the Chief Executive is required.
- 2.8 It should be noted that no exemption may be granted:
1. that would result in a breach of European or U.K. law
 2. that requires Cabinet to approve major contract variations
 3. that requires Cabinet to accept certain tenders
 4. that differs from the Scheme of Management
 5. that removes the requirement for declaration of any Officer or Members Interests
- 2.9 A review of the exemptions process has been undertaken to determine how robust the current process is and also to identify opportunities for improvement. The review considered:
- The process for exemptions;
 - Details of the exemption process and non-exhaustive list justifications for exemptions;
 - The form completed by Officers requesting exemptions.

- 2.10 Review Outcome and Recommendations
- 2.11 The policy and procedure followed by Merton is broadly consistent with that used by other local authorities. In summary, the review has resulted in a number of proposed revisions which are as follows:
- 2.12 The Process for Exemptions
- 2.13 The process as set out in the CSO's is consistent with other authorities and no changes are recommended at this stage.
- 2.14 Details of the Exemption Process and Non-Exhaustive List Justifications for Exemptions
- 2.15 The list is broadly comparable with other authorities, however, a number of revisions are recommended. These are indicated as track changes set out in appendix 1. The revisions will tighten the criteria for exemption, emphasise that the procedure can only be used in exceptional circumstances, ensure clarity and also that procurement is operating in line with the treaty principles of being open, fair and transparent.
- 2.16 The form completed by Officers requesting exemptions.
- 2.17 The form is design to provide all the relevant information in order to assess the justification for exemption. However, in its current form, it does not provide guidance to Officers on the type and level of information required within each section. In order to rectify this, proposed guidance has been produced for each section, this will ensure a consistent and robust approach when competing the form. Further amendments to the form require Officers to consult with and obtain a recommendation from the Commercial Services team prior to submission, this streamlines the process and ensures a robust commercial review of potential exemptions prior to submission for sign off. We have also added a Section requiring budget sign off.
- 2.18 A copy of the 'Form of Exemption Report' is attached at appendix 2.

Recommendation 2 - that officers should report all prospective interim and consultancy positions to HR and that HR should be responsible for maintaining a central database of all prospective and live roles filled by interim and consultancy appointments; and that a mechanism is built in to allow monitoring of this register at Member level;

Recommendation 3 - 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.

Recommendation 4 - HR should be involved in any recruitment process, including the recruitment of interim managers.

- 2.19 The current position within the Council with regard to the appointment of interims and consultants is not as clear as it needs to be. A number of categories exist depending on the suitability of various sources of interims that might be suitable. An analysis has been carried out of the different categories and appointment methods and these can be described as follows:
- 2.20 **Temporary employee** - The employee is directly employed by the Council on a temporary or fixed-term contract and paid directly from the Council's payroll. There is a direct employment relationship with the Council.
- 2.21 **Agency worker "on" and "off" Contract** - This is a worker procured and supplied from an agency. In most cases the worker would be supplied through the Council's agency managing agent, currently Commensurate and is described as "on contract". The worker is employed by the supplying agency, not the Council. The Council is defined as an 'end user' but is not the employer. If the position requires specialisms which are not available through the Council's contracted supplier, specialist agencies are approached. Agency workers engaged outside of the Council's contracted supplier are referred to as "off contract".
- 2.22 **Casual Worker** - The casual worker employed by the Council (i.e. if they work they are paid via the Council's payroll). However there is no obligation on the employee to work and they are free to accept work or reject that work if offered by the Council another employer. The Council is under no obligation to provide work to the casual worker.
- 2.23 **Senior interim manager** - The senior interim manager is procured from interim executive search agents (using the LBRP framework contract) The senior interim manager is engaged through a contract for services.. They are not employed directly by the Council. The interim senior manager will cover the duties of a senior post (usually at management level 3 and above for an interim defined period, pending the post being filled or reorganised. If a senior interim manager is not available through the LBRP framework, other agencies may be approached and these are referred to as "off contract"
- 2.24 **Independent consultant** - The independent consultant is not employed by the Council and is engaged under a contract for services prepared by legal services. Payment is through the submission of invoices. The independent consultant should not generally cover the duties of a post, rather they are engaged to undertake specific project work within a defined task and outcomes for a defined time period,.
- 2.25 By far the largest grouping of interim workers are "on contract" agency and interim staff appointed further to the Council's contracts for the supply of agency staff. These are all engaged with the involvement and oversight of the HR function who have a data base which supplies monthly reports to Council managers.

- 2.26 In the week ended 6th June 2014 the Council's employed 362 interim workers through its agency contracts. 98 of these are being paid at an hourly rate equivalent to the Council's management grades which start at £47,736. Of these 94 are locum social care or legal staff.
- 2.27 HR are able to provide reports from Comensura to Directorates which state the agency worker employed, the line manager, the hourly rate paid, and the number of weeks employed to manage the use and cost of agency staff over time.
- 2.28 When "off contract" interim staff are appointed there is not currently a comprehensive system whereby HR are automatically informed of all interim workers or when an individual consultant is used to cover a permanent role, or a specific project.
- 2.29 It is recommended that a single uniform authorisation process is introduced for all categories of interim worker or individual consultant for all roles described above. This single authorisation process should be used:
- 1) to justify the appointment
 - 2) define its purpose
 - 3) confirm funding
 - 4) identify which appointment process is appropriate
 - 5) identify if the assignment is a new assignment or an extension
 - 6) to provide a cost difference of engaging an interim as opposed to filling the role on a permanent basis
 - 7) Detail any steps to permanently recruit and reasons if no attempt has been made.
 - 8) Sign off by line manager, Director, finance officer and HR manager. If the line manager is a Director, sign off by Chief Executive.
- 2.30 An example of a draft form is attached at appendix 3 and draft guidance for those completing the authorisation has been prepared.
- 2.31 This process will ensure a clear justifiable decision is required in each case with the cost differential between the use of interims and permanent recruitment at managerial grades highlighted to the decision maker. The Director and the HR manager will need to ensure a clear justification for any extension of an interim appointment providing challenge as required.
- 2.32 The record will enable the HR function to record every interim role from authorisation and report to Directorates on the number of interims appointed in each category, the length of appointments, the cost difference at managerial level between interims and permanent filling of vacancies and the number of appointments which are extended. This will be done in the short term until the establishment exercise is completed within iTrent to be able to give a comprehensive view of the workforce of the Council for managers and members. The HR function will also be enabled to challenge directorate managers on the use of interims over time and the effectiveness of permanent recruitment, and provide support as required.

Recommendation 5 - 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.

- 2.33 A review has been undertaken of the Council's recruitment policy and procedure. The current procedure whilst applicable to all recruitment processes does not explicitly state that it applies to any recruitment process, including the appointment of interim managers.
- 2.34 The Council's current policy states that a recruitment panel must be used but does not explicitly state that a panel must have a minimum number of members in all interview situations. It is recommended the policy should state that a panel must consist of at least two.
- 2.35 The following amended paragraphs to the existing Council policy are recommended.

INTRODUCTION

- 1.1 This policy contains important information for managers and staff who are involved in the recruitment and selection of new members of staff and is applicable to all hiring situations: permanent, temporary, agency, executive interim, self-employed consultants, apprentices and graduate placements. The principles set out in this policy document apply to all groups of staff with the exception of those stated above.[nb exceptions are Chief Officers and schools and acting up appointments]
- 1.5 If you are intending to recruit an agency member of staff / consultant, please refer to the guidance on the Comensura intranet pages. N.B. the principles and good practise set out in this policy for shortlisting and interviews apply to all hiring situations i.e. for permanent, temporary or self-employed consultant positions in order to ensure a fair, transparent and unbiased approach to all hiring

SHORT LISTING

9. The short listing panel must consist of at least two people to avoid any allegations or perceptions of personal bias. If there is any potential conflict regarding the short list panel and the candidates this must be disclosed, a risk assessment completed and a decision made on whether to change the panel.

INTERVIEW

10. Hiring managers and the interview panel should agree the evidence expectations from candidates before commencing the interview process. The evidence expectations should be recorded in advance and used to assess the candidates' interview answers against

The interview panel must consist of at least two people to avoid any allegations or perceptions of personal bias

Recommendation 6 - The Council should review its policy on declarations of interest to include personal friendships.

- 2.36 The Council's "Managing relationships at work" policy was last reviewed in 2008 and seeks to provide a framework to ensure that where there is a relationship between employees or an employee and a future employee or external provider of goods or services to the Council, this is declared to their line manager. The line manager then carries out a risk assessment and puts in place arrangements to ensure the conflict is managed.
- 2.37 The policy seeks to cover a number of circumstances, primarily to ensure that relatives and those employees who are in a "close personal relationship" do not line manage one another and are prevented from being in a position of conflict, e.g. in a recruitment process. The existing policy makes reference to "friends", however it is apparent there is some difficulty in setting out the circumstances in which declarations of friendship need to be made due to the differing meanings of the word "friend" e.g. work friend, or lifelong friend, and whether a declaration is required as a general declaration .e.g of a spouse who is employed by the Council, or only in particular circumstances when a conflict may arise e.g. when a friend applies for a role with the Council.
- 2.38 It is suggested that the policy should be amended to distinguish between "close personal relationships" e.g. spouse, co habitee, or relative which need to be declared as a general declaration, and declarations which need to be made when a conflict of interest arises from time to time because e.g. a friend may tender for Council business. The Declaration of Interests form, signed off by the Director, can be used to record these.
- 2.39 The existing policy with track changes showing recommended amendments is attached at appendix 4 for consideration and approval.

Recommendation 7 – The Council should communicate to all officers any revisions it makes to its procurement procedure.

- 2.40 Subject to the approval of Committee and Council's changes to the Council's procurement and recruitment systems, requirements and guidance will be cascaded to all relevant managers in a special managers briefing in July 2014 to apply from 1st September 2014.. The changes and guidance will be incorporated in the relevant training programmes provided to managers on Recruitment and Selection and procurement.

3. Consultation undertaken or proposed

- 3.1 Consultation has been undertaken with various officers including the Joint Head of Human Resources, the Head of Internal Audit & Investigations, and the Head of Procurement.

4. Timetable

4.1 The changes to Standing Orders will go to Council on 9th July.

- 4.2 Changes to the recruitment systems, requirements and guidance will be cascaded to all relevant managers in a special managers briefing in July 2014 and the new arrangements will apply from 1st September 2014..

5. Financial, resource and property implications

- 5.1 There are no specific financial implications arising from the actions contained in the report.

6. Legal and statutory implications

- 6.1 There are no specific legal implications arising from the report

7. Human rights, equalities and community cohesion implications

- 7.1 The amendments to the Council's HR policies will improve confidence in the Council's HR recruitment procedure.

8. Crime and Disorder implications

- 8.1 None

9. Risk management and health and safety implications

- 9.1 These are detailed in the Ernst and Young report.

10. Appendices – the following documents are to be published with this report and form part of the report

Non Exhaustive List Justifications for Exemption
Form of exemption report
Single Authorisation Form – Interim and Agency Workers
Policy – Employment of relatives/Partners/friends.

11. Background papers

- 11.1 Merton council recruitment policy