


REPORT TO AUDIT AND RISK ASSURANCE COMMITTEE

18 January 2018

Subject:	Council update on allegations of fraud, misconduct and related issues
Director:	Executive Director – Resources – Darren Carter
Contribution towards Vision 2030:	
Contact Officer(s):	Peter Farrow Audit Services and Risk Management Manager peter_farrow@sandwell.gov.uk

DECISION RECOMMENDATIONS

That Audit and Risk Assurance Committee:

1. Note the update on allegations of fraud, misconduct and related issues.

1 PURPOSE OF THE REPORT

- 1.1 The report updates the Audit and Risk Assurance Committee on the ongoing investigations into allegations of fraud, misconduct and related issues.

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2 IMPLICATIONS FOR SANDWELL'S VISION

- 2.1 Internal Audit operates across the council and helps it accomplish its vision by bringing a systematic, disciplined approach to evaluating and improving the effectiveness of risk management, control and governance processes.

3 BACKGROUND AND MAIN CONSIDERATIONS

- 3.1 This report brings the Audit and Risk Assurance Committee up to date on a number of investigations and reviews relating to concerns that have been raised alongside the Wragge & Co (now Gowling WLG) report, some of which go back several years and only came to light following more recent investigations.
- 3.2 These investigations and this subsequent report to the Audit and Risk Assurance Committee underline the council's commitment to investigate any allegations in an open and transparent way. The council is determined to deal with any allegation properly, professionally and appropriately.
- 3.3 In order to address these issues, officers have conducted thorough internal reviews and investigations across the council.
- 3.4 Issues being raised as a result of the continuing investigations work that relate to the council's risk, governance and internal control environment, and therefore fall under the remit of the Audit and Risk Assurance Committee, will be reported back to the committee with any recommendations as appropriate. It is important to the council that the committee, council members, staff, taxpayers, the wider public and the media can see these matters are being dealt with comprehensively and promptly, even when they relate to issues some years in the past. The council continues to need to draw a line under these matters, taking action where necessary, so the whole organisation can look to the future.
- 3.5 At the January 2017 meeting of the Audit Committee, the following matters were considered:
- Land sales to Councillor Bawa and Councillor Hussain regarding Compulsory Purchase Orders on their homes
 - Housing allocations to members of Councillor Hussain's family
 - Councillor I Jones and Councillor Rouf's involvement in the disposal of a plot of land.
 - The allocation of a council property to Councillor Frear

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- Former Councillor Rowley's involvement in the disposal of a number of council owned containers to a member of the public and his involvement in the hire of marquees

3.6 Following the Audit Committee meeting the following matters from the above were referred to the Monitoring Officer for consideration for dealing with Standards Allegations under the Localism Act 2011. Determinations from some of which were initially placed on hold until the judicial review application was dealt with. The Monitoring Officer has since consulted with the council's independent person who agreed with the Monitoring Officer that it was in the public interest for these matters to be formally investigated given the serious nature of the allegations.

- Land sales to Councillor Bawa and Councillor Hussain regarding Compulsory Purchase Orders on their homes
- Housing allocations to members of Councillor Hussain's family
- Councillor I Jones and Councillor Rouf's involvement in the disposal of a plot of land.

3.7 Also, following the Audit Committee the five items referred to in paragraph 3.5 above were referred to the Economic Crime Unit at the West Midlands Police for their consideration. At the same time an anonymous letter the council had received raising a number of similar concerns was also referred to the Police. Again, a number of issues were placed on hold awaiting the outcome of the police referral.

3.8 The Police considered it appropriate that when concerns arise around the behaviour of any persons, which may be considered to reach the thresholds of criminality, that they should be informed.

3.9 They then set out the differences in thresholds for criminal conduct and that, which falls within the scope of what may be described as misconduct or breaches of the Standards of Behaviour that are expected of councillors and officers of the council.

3.10 They explained that when a crime is alleged or reported to them that the expectation is that it will be recorded and investigated in accordance with Home Office Counting Rules and set against the relevant legislation. Allegations are taken at face value unless there is credible evidence to suggest what is being reported did not actually occur. The purpose of any investigation is an impartial search for the truth. When evidence is secured during an investigation that reaches a threshold where it is more likely than not that a prosecution would be successful, then further criminal justice action may be appropriate. If not, then no further action can be taken. Ultimately, the threshold to be reached in determining guilt

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is that beyond all reasonable doubt. This is understandably a high threshold.

- 3.11 In disciplinary proceedings then the investigative process is the same, in that it is an impartial search for the truth. The burden of proof still lies with the investigating or prosecuting body, however, the threshold is the balance of probabilities. In this case, where evidence is secured that suggests that an act is more likely than not to have occurred then appropriate action can be taken in respect of these findings.
- 3.12 The Home Office also provides useful guidance to police forces when considering offences against the state. In these cases, for offences against the state (such as Misconduct in Public Office) the points to prove to evidence the offence must be clearly made out before a crime is recorded. In essence, this allows a police force to review any material which may support allegations before a crime recording decision is reached.
- 3.13 The Crown Prosecution Service provides further guidance when considering a misconduct in public office in that it should only be considered in the most serious of cases and where no statutory alternative offence exists. It must also be such a serious abuse of trust that a prosecution is necessary and that the misconduct impugned is calculated to injure public trust so as to call for condemnation and punishment (R v Dytham 1979 QB 722). Therefore breaches, which may in themselves lead to disciplinary process and even repeated breaches are not likely to meet the threshold.
- 3.14 In the allegations to be considered within the referrals there is an implied inference of dishonesty. Although, dishonesty is not an essential ingredient of the offence itself, where alleged then the dishonesty must be proven and where it is so proven, then the relevant statutory offence should be considered before any decision to proceed with misconduct in public office.
- 3.15 Following a detailed review of the material held by the council, they reached a determination that there was insufficient evidence to meet the threshold for recording a crime. However, they stated that this would not prevent the council pursuing any action that it deemed appropriate if it identifies any breaches of standards or misconduct.
- 3.16 Therefore, the standards investigations referred to in paragraph 3.6 above will continue.

- 3.17 There are also a number of other reviews and investigations under way. Once completed, the outcomes of these investigations will also be reported back to the committee where appropriate.

3 THE CURRENT POSITION

- 4.1 The report does not require a decision and therefore, no position analysis is necessary.

4 CONSULTATION (CUSTOMERS AND OTHER STAKEHOLDERS)

- 5.1 The outcomes of individual reports issued are, where appropriate, discussed with the relevant stakeholders and reported to the respective Director.

6 ALTERNATIVE OPTIONS

- 6.1 The report does not require a decision and therefore, alternative options do not need to be considered.

7 STRATEGIC RESOURCE IMPLICATIONS

- 7.1 There are no direct financial and resource implications arising from this report.

8 LEGAL AND GOVERNANCE CONSIDERATIONS

- 8.1 Legal and Governance considerations have been taken into account in producing this report.

9 EQUALITY IMPACT ASSESSMENT

- 9.1 It was not necessary to undertake an Equality Impact Assessment.

10 DATA PROTECTION IMPACT ASSESSMENT

- 10.1 It was not necessary to undertake a Data Protection Impact Assessment. Data gathered during audit reviews is used and retained in accordance with current legislative requirements.

11 CRIME AND DISORDER AND RISK ASSESSMENT

- 11.1 The report does make reference to a number of issues reported to the Economic Crime Unit of the West Midlands Police.

12 SUSTAINABILITY OF PROPOSALS

12.1 There are no direct sustainability issues arising from this report.

13 HEALTH AND WELLBEING IMPLICATIONS (INCLUDING SOCIAL VALUE)

13.1 There are no direct health and wellbeing implications from this report.

14 IMPACT ON ANY COUNCIL MANAGED PROPERTY OR LAND

14.1 A number of the issues raised in this report relate to concerns over the historic disposal of council owned land. These matters are currently under investigation.

15 CONCLUSIONS AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

15.1 The purpose of the report is to update the Audit and Risk Assurance Committee on the ongoing investigations into allegations of fraud, misconduct and related issues. As such, no decision is required.

16 BACKGROUND PAPERS

16.1 Council update on allegations of fraud and misconduct reports to what was previously known as the Audit Committee on 26 January and 23 March 2017.

17 APPENDICES:

None.

Darren Carter
Executive Director – Resources