

Monitoring Officer Response

Appendix 2

Dear Mr Hassan Rohimun,

I write as follows in response to your letter of the 1st April, and my conversation with your Mr Surrige. In addition to the questions raised I have covered the Elected Member code of conduct because as a political organisation elected members have a key role in governance and probity.

How do you, as Monitoring Officer, gain assurance that all relevant laws and regulations have been complied with?

The council has a corporate governance framework in place against which elected members and officers are held to account to act in accordance with the law and regulations. The council has a designated monitoring officer (MO) to ensure that the council acts lawfully, and by law has to provide the MO with sufficient resources to enable him to carry out his role. In addition the council has an Internal Audit section to test and report on compliance and performance against the governance framework. The Council has an Audit Committee and Standards Committee to oversee issues of governance.

To assist the MO in his function the council has a fully staffed internal legal services department that is responsible for ensuring that the council acts lawfully. Where there is a deficiency in capacity or expertise to deal with legal matters the council is a member of EM Lawshare which is an EU compliant procured external provider of Legal Services that the Monitoring Officer or other legal officers can call upon to assist with matters. These officers report through a line management structure to the Head of Legal and Democratic Services (and designated Monitoring Officer). A standing item on the monthly management team agenda is entitled "Issues for the Monitoring Officer". This allows management team members across Legal and Democratic Services to raise any issues of governance, and actual or potential unlawfulness.

The Monitoring Officer attends Chief Officers Management Team on a weekly basis which allows him to provide legal and governance advice on strategic issues under consideration by the council.

There are arrangements in place for legal screening of all decisions coming before the Council, Executive or Committees of the same for a decision, which is incorporated in the report writing protocol. Lawyers attend all decision-making meetings to advise on the law and procedure. The Democratic Services function also reports to the Head of Legal Services, and the Head of Democratic Services is part of the Legal Services management team which provides additional scrutiny and certainty around the council's application of law and regulation, policy and procedure.

The Council legal department subscribes to Lexis Nexis an online supplier of legal intelligence which includes access to the Lexis law library and Lexis PSL. Lexis Nexis also provide regular updates in relation to proposed and actual changes in legislation. All fee earners in the legal service have online access to this service. In addition the Council subscribes relevance legal periodicals which also ensure that the Council is aware of all relevant laws and regulations that affect its operations.

The Monitoring Officer meets with other Monitoring Officer's on a quarterly basis across the Black Country to review various aspects of governance that impact upon local government, including the application of legislation. Local Authorities have worked together collaboratively to implement changes in legislation such as changes to the Elected Member, Standards Regime under the Localism Act 2011. There is also a peer-review and shared learning in respect of how each authority is implementing various pieces of legislation.

Decision-making across the Council is open and transparent as required under the Access to Information Procedure Rules, and subsequent legislation. All decisions and reports of committees of the Council are publicly available on the Council's website under the Committee Management Information System (CMIS), as is the council's constitution. The council's constitution contains all the relevant rules, regulations, and protocols that govern the operation and lawfulness of decision-making. This openness and transparency provides assurance that any decision or action taken by the Council can be subject to challenge. The council's constitution also contains the Code of the Conduct for Elected Members and employees.

The Monitoring of Officer protocol is contained at Part 12 which sets out working arrangements between the Monitoring Officer, the Council and its Officers and Members in relation to providing assurance that all relevant laws and regulations have been complied with.

How, as Monitoring Officer, do you exercise oversight over those charged with governance and Management and their arrangements in relation to:

a. assessing and responding to either changes in the legal framework or identified or potential breaches of relevant legal provisions.

As above the council has a fully staffed internal legal services department that is responsible for ensuring that the council acts lawfully. Where there is a deficiency in capacity or expertise to deal with legal matters the council is a member of EM Lawshare which is an EU compliant procured external provider of Legal Services that the Monitoring Officer or other legal officers can call upon to assist with matters. These officers report through a line management structure to the Head of Legal and Democratic Services. A standing item on the monthly management team agenda is entitled "Issues for the Monitoring Officer". This allows management team members across Legal and Democratic Services to raise any issues of governance, and actual or potential unlawfulness.

The Monitoring Officer attends Chief Officers Management Team on a weekly basis which allows him to comment on strategic issues under consideration by the council, including policy and procedure, in respect of governance and legal matters.

There are arrangements in place for legal screening of all decisions coming before the Council, Executive or Committees of the same for a decision, which is incorporated in the report writing protocol. Lawyers attend all decision-making meetings to advise on the law and procedure. The Democratic Services function also reports to the Head of Legal Services, and the Head of Democratic Services is part of the Legal Services management team which provides additional scrutiny and certainty around the council's application of law and regulation, policy and procedure. These actions flow through all of the questions posed by this letter.

The MO carries out an annual review of the council's constitution in conjunction with the Directorate Management Teams. This addresses changes in legislation throughout the year and is reported to the Audit Committee before being submitted to Annual council for approval.

The Monitoring Officer has unrestricted access to the Chief Executive and Chief Finance Officer to deal with any issues that may arise in relation to changes in legal provisions, or actual or potential breaches in law.

- b. ensuring that joint working arrangements and other such similar arrangements operate in a manner consistent with the entity as a single body in respect of law and regulation and do not pose a risk, either operational, reputational or financial;**

The legal department advises on joint working arrangements as and when instructed which ensures that such arrangements do not pose a risk, operationally, reputationally, or financially. There are provisions within the council's constitution under Part 4.7 of the financial rules that ensure that uniform standards are employed to joint working arrangements. These are set out from 9. External arrangements onwards. In addition the council's code of conduct for employees still applies where the employee is working as part of a partnership arrangement where the council remains the employer. If councillors are appointed by the council to represent it as part of a joint working arrangement the elected member code of conduct applies to their behaviour.

- c. undertaking an assessment of the risk that the financial statements may be materially misstated due to fraud or error (including the nature, extent and frequency of these assessments);**

This is not a function of the role of the Monitoring Officer and is covered in other responses to Ernst and Young submitted by Walsall MBC.

- d. identifying and responding to risks of fraud in the organisation, including any specific risks of fraud which have been identified or that have been brought to either those charged with governance's or Management's attention, or classes of transactions, account balances, or disclosure for which a risk of fraud is likely to exist;**

The council's processes are detailed in the counter fraud/anti corruption policy, containing the fraud and corruption response plan. Fraud reporting responsibilities are also detailed in the confidential reporting policy (Whistle Blowing), which is

supplemented by an on-line notification tool. A counter fraud review was undertaken and reported to Audit Committee on 1 September 2015, and the Committee received and endorsed a refreshed counter fraud policy and anti money laundering policy and received the Protecting the English Public Purse (PEPP) 2015 report. Where fraud or corruption is reported, there are robust mechanisms in place to address these.

The council has counter fraud resources within audit and the benefits service and makes use of NFI.

The Internal Audit plan covers the main areas of internal control risk. The council's specific fraud risks have been identified in a Fraud Risk Register which maps key fraud risks to internal audit coverage. Core financial systems are audited each year, each audit resting and reviewing specific areas of internal control and fraud risks, including the testing and appropriateness of controls such as segregation of duties, etc. Any weaknesses are reported and required to be dealt with promptly.

Internal Audit produce reports on their work activity including where suspected fraud has taken place and has been investigated. Members have the opportunity to scrutinise the activity noted within the summary reports. Where significant matters, including fraud, are identified by Internal Audit, these are brought to the attention of the Audit Committee as soon as possible to give assurance that appropriate remedial action has or is being undertaken.

Internal Audit reports regularly on its audit work, including reporting on audits where No or Limited Assurance audit opinions have been received.

Cases of suspected fraud are investigated thoroughly and actions reported to the CFO and to the Audit Committee. The Head of Internal Audit ensures the CFO is advised of all matters in relation to fraud and that appropriate investigations are put in place. The Head of Internal Audit liaises with senior officers in the responsible areas to assess the risks and agree any further actions required to mitigate risks.

Specifically, an area of suspected significant fraud was identified and reported to Internal Audit in relation to Supported Housing and there is an ongoing internal investigation into this matter and a criminal investigation by the Police. This and other alleged, suspected or actual fraud have been reported to Audit Committee and made available to external audit.

e. identifying and responding to potential or actual unlawful acts which have been identified or that have been brought to either those charged with governance's or Management's attention;

The MO has the personal responsibility under the Local Government and Housing Act 1989 for identifying and responding to potential or actual unlawful acts. These may come to the MO's attention through the corporate complaints process internally, or through the office of the Local Government Ombudsman, legal challenge through the court, or self reporting by evaluating actions taken against corporate governance. If the council has acted unlawfully this has to be reported to either full council or cabinet by the Monitoring Officer in accordance with statutory requirement under the

LGHA 1989. This requires the Council or Executive to respond to the Monitoring Officer to explain how unlawfulness is being rectified.

f. communicating to employees their views on business practice and ethical behaviour (for example by updating, communicating and monitoring against the organisation's code of conduct);

All employees are issued with an employee Code of Conduct on commencing their employment and, during induction, the importance of ethical behaviour is made clear. The Code was last updated in June 2015. The Code is also referenced in other HR and counter fraud policies and is made available on the intranet. The Code of Governance also sets out responsibilities and expectations in relation to good business practice and ethical behaviour.

In addition the Council has a corporate induction programme which is delivered via e-Learning and classroom based modules. Information on the programme can be found on HR's intranet pages for learning and development. A manager will need to discuss and agree with a new employee which modules they need to complete to assist in them in fulfilling their role in accordance with the standards of governance adopted by the council.

This will depend on their previous experience and job role. Some modules are mandatory for all new starters. Once agreed, the modules would be included in the workplace induction programme and will be monitored through the employee performance appraisal system adopted by the council.

All new staff invited to attend a Welcome to Walsall session. The sessions are held monthly and last for three hours. Attendance is not compulsory but new employees are encouraged to attend. The session includes: an opportunity to meet the Chief Executive, an overview of the Council, information on SARC, the corporate induction programme, an introduction to e-Learning and 'Inside Walsall' and information on what staff should expect from their manager in respect of workplace induction. This will enable them to understand of HR procedures; the code of conduct; use of the intranet and an explanation of the IT policy.

There are a number and variety of communication channels for employees such as Team Spirit; all Staff Weekly Bulletin; Chief Executive's Core Brief; home page of the intranet and directorate/service specific methods of communication, by which such information is distributed.

As a political organisation it is also a requirement under s27 Localism Act 2011 that the council promotes and maintains high ethical standards of conduct for elected members. As a consequence the council has adopted a Code of Conduct for Elected Members which is contained with the council's constitution. The Code and arrangements for dealing with complaints is set out on the internet and council's intranet. Elected Members undergo an induction after accepting the office of councillor. They receive ongoing training annually both compulsorily and voluntary on key aspects of the code. They are required to attend compulsory training on planning and employment law prior to sitting on relevant committees. There is also an Officer/Member protocol that regulates and advises on appropriate relationships

between officers and elected members which is contained in the procedures in the council's constitution.

g. encouraging employees to report their concerns about fraud or potential illegal acts;

The latest counter fraud policy update was reported to Audit Committee on 1 September 2015 and included a planned training module for all employees to raise awareness of counter fraud arrangements and reporting mechanisms. Counter fraud policies and the whistle blowing policy provide clear guidance on reporting arrangements for suspected or actual fraud. As stated above, internal audit reports to the Committee summarise allegations of fraud, and action taken. The council is clear that it has a zero tolerance approach to fraud corruption and communicates this to employees.

The Council also has a confidential reporting "whistle-blowing" policy which plays a key part in maintaining the highest standards of openness, honesty and accountability by requiring everyone to report appropriate concerns. This policy is reviewed as and when appropriate and is available on the intranet.

h. communicating the processes for identifying and responding to fraud or error; and

See the response to f above, and the response given by the CFO, and the role of Internal Audit and Audit Committee.

i. compliance with internal control arrangements and due process?

See the response to f above, and the response given by the CFO, and the role of Internal Audit and Audit Committee.

Are you aware of any:

j. breaches of, or deficiencies in, internal control in respect of fraud or compliance with relevant legal provisions that could have a significant effect on the entity or a material impact on the financial statements;

No.

k. actual, suspected or alleged frauds or breaches of legislative requirements during 2015/16;

As reported in the 2014/15 audit risk assessment there has been an instance of non-compliance in respect of Appointeeships in Adult Social Care. The impact was assessed and accounted for in the statement of accounts, with the value not being material. Further work has taken place during 2015/16 to put in place processes to prevent any further issues of non-compliance, with the outcome of this work expected to conclude in 2016/17.

l. excessive or undue pressure to meet financial or operating targets that may unduly influence the actions of either those charged with governance or Management;

Walsall MBC, as any Authority, is under financial pressure from reduced government funding and increases in demand and cost pressures, particularly within Adult Social Care and Children's Services. Managers are expected to deliver to agreed service targets and delivery requirements within the approved budget wherever reasonably possible. It is recognised that changes in demand, legislation, etc may occur once a budget has been set.

The council undertakes a comprehensive risk assessment of the budget and has appropriate processes in place to manage these – including an appropriate level of general reserves and contingencies should in place to manage these scenarios. Management are not aware of any undue pressure to meet operating or financial targets.

Financial reporting processes are set out in the budget management and control manual, vital skills training for non-financial managers, and are supported by specific procedures and accounting policies.

Accounting arrangements are undertaken in accordance with all relevant Codes of Practice. Comprehensive final accounts guidelines and outturn proformas, along with risk assessments of the financial outturn, senior officer review of reports and the accounts, officer review of provisions, reserves, carry forwards, accruals and liabilities, ensure override of controls or inappropriate influence is minimised. Analytical review of the income and expenditure account and balance sheet adds to this. Major variances between years and in years are reviewed for accuracy.

The Accounts are independently audited.

m. actual or potential litigation or claims that would have a significant effect on the entity or a material impact on the financial statements;

None that will not already be included within the accounts, which are currently being finalised and will be reported to the Audit Committee in June prior to external audit of the accounts. External audit have been advised of all actual or potential limitation or claims are they have arisen or become known.

n. circumstances that would call into question the preparation of the financial statements on a going concern basis?

The CFO carries out a 'going concern' assessment. This includes an assessment of net worth, assets and liabilities, use of ratio analysis and the wider balance sheet position. The council has agreed and reports monthly on a set of financial health indicators, which forms part of this assessment along with reporting on other key indicators such as Prudential Code indicators, revenue and capital outturn forecasts, the position on general and earmarked reserves, and a constant review and update of the council's medium term financial outlook, alongside future funding, income and cost predictions and forecasts. The assessment does not focus on just the current years but into the foreseeable future. The MTFO is constantly updated to reflect future changes and fluctuation, specifically in terms of funding and income streams, and significant cost pressures such as pension, pay etc.

Additionally, assurance is obtained from the Letter of Representation which is signed off by the Chief Executive and approved by Audit Committee, and through a thorough understanding of the financial position of the council and the statement of accounts.

Going concern is reviewed and reported to the Audit Committee within the statement of accounts. The council's balance sheet shows a negative balance. This is largely due to the net pension liability, however this liability is to be paid over many years and would not be due for payment immediately as the balance sheet suggests. In addition it is planned for the pension liability to decrease and achieve a breakeven position in 20 years, and contribution rates have been set for the next year on this premise. Taking these into account the underlying balance sheet is sound.

The CFO is satisfied that it is appropriate to adopt the going concern basis for the foreseeable future.

I trust that this response provide the information you require, however if you do require any further information please not hesitate to contact me.

Yours sincerely

TONY COX
Head of Legal & Democratic Services