

# **Response to Information Received by the Audit Commission**

**Walsall Metropolitan Borough Council**

**Audit 2004-2005**

External audit is an essential element in the process of accountability for public money and makes an important contribution to the stewardship of public resources and the corporate governance of public services.

Audit in the public sector is underpinned by three fundamental principles:

- auditors are appointed independently from the bodies being audited;
- the scope of auditors' work is extended to cover not only the audit of financial statements but also value for money and the conduct of public business; and
- auditors may report aspects of their work widely to the public and other key stakeholders.

The duties and powers of auditors appointed by the Audit Commission are set out in the Audit Commission Act 1998 and the Local Government Act 1999 and the Commission's statutory Code of Audit Practice. Under the Code of Audit Practice, appointed auditors are also required to comply with the current professional standards issued by the independent Auditing Practices Board.

Appointed auditors act quite separately from the Commission and in meeting their statutory responsibilities are required to exercise their professional judgement independently of both the Commission and the audited body.

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- any third party.

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## Contents

Introduction	4
Background	5
Main conclusions	5
<b>Appendix 1 – Recommendations</b>	<b>7</b>
Neighbourhood Renewal Funding	7
Allegations relating to employee A	8
Prohibition of drinking alcohol in public places	8
<b>Appendix 2 – Action plan</b>	<b>10</b>

## Introduction

- 1 On 5 July 2004, the Audit Commission received disclosures under the Public Interest Disclosure Act (PIDA) from an employee of Walsall Metropolitan Borough Council (the Council). The Audit Commission asked me to investigate the disclosures and ascertain what audit action, if any, needed to be taken to discharge the duties of the appointed auditor. I have written to the Council and notified them that I have completed my investigation and that I have concluded that:
  - there is no need for the auditor to issue a report in the public interest under section 8 of the Audit Commission Act 1998; and
  - there is no need for any formal audit action under section 17 of the Audit Commission Act.
- 2 The Audit Commission is a 'prescribed person' under the PIDA legislation for matters relating to the proper conduct of public business, fraud and corruption in local government. I have investigated all the disclosures on these grounds as far as they affect my role as external auditor. In this role, I am concerned primarily with the Council's overall management arrangements and financial implications relating to the disclosure. I have no role in determining or judging the specific outcomes of the Council's disciplinary process nor in investigating specific allegations of fraud. Neither is it the role of the external auditor to intervene in any dispute between an individual and the Council.
- 3 The concerns of the discloser had already been reported to the Council. My investigation focused on reviewing the Council's response to those concerns. I did not repeat the investigations but considered whether they were adequately carried out.
- 4 The disclosures related to the following:
  - the use of and accounting for Neighbourhood Renewal Fund (NRF) grant the Council had received;
  - insufficient investigation by the Council of allegations of irregularities by a council employee when raised by the discloser, and failure to apply the Council's disciplinary procedures appropriately;
  - insufficient investigation by the Council of allegations of irregularities by a further council employee, and failure to apply the Council's disciplinary procedures appropriately; and
  - the introduction of alcohol bans in certain areas by the Council.
- 5 The discloser provided a 14-page written statement with extensive supporting documentation. I have reviewed the documentation and met with the discloser to clarify the disclosures. I have reviewed a significant amount of documentation at the Council, including the Council's own investigations of three of the disclosures, and spoken to a number of individuals both from within and outside the Council.

- 6 In completing our investigation, there are some areas where the Council's arrangements could be improved or enhanced and I have made a number of recommendations to this end. This report explains those areas and makes recommendations. In doing so, it gives contextual information only to those specific areas to allow an understanding of the recommendations which have been made.

## Background

- 7 The disclosures relate in the main to period 2001 to 2004 and in some cases potentially earlier years. During the earlier part of this period, the Council was encountering serious management and governance issues which were impacting on service delivery. The Council was the subject of a Corporate Governance Inspection by the Audit Commission in July 2001. The report found significant weaknesses in the Council's corporate governance arrangements at the time. In 2001, the Council was placed under the intervention of an Interim Board managed by the Office of the Deputy Prime Minister (ODPM) who embarked on a recovery plan. This was made known to all staff, the general public and all Council partners. The interim management team was not replaced until the current Chief Executive was appointed in April 2003 and the new Executive Management Team was not in place until August 2003, although the ODPM continued to monitor the progress made by Walsall under 'special measures'.
- 8 A re-inspection in August 2003 found the Council had made good progress in addressing at least some of the weaknesses but recognised that there was still a long way to go. In December 2003, the Council was rated under Comprehensive Performance Inspection (CPA) as 'poor' and by December 2004 had progressed and was re-assessed as 'weak'. In April 2005, following a corporate assessment, the Council was assessed as 'fair'. The Council has now been externally recognised as having addressed these issues but it was not until June 2005 that Walsall was removed from the ODPM special measures. More recently, in December 2005 under the harder CPA test the Council was awarded three stars and assessed as 'Improving well'.

## Main conclusions

- 9 There is no need for the auditor to issue a report in the public interest under section 8 of the Audit Commission Act 1998, and there is no need for any formal audit action under section 17 of the Audit Commission Act.
- 10 There is some evidence during the time period the disclosures relate to of poor management and governance arrangements at Walsall, which have already been referred to in previous public Audit Commission reports, and which the Council's improvement programme was addressing.

- 11 Allegations relating to three of the four disclosures have already been extensively investigated by Internal Audit. The management arrangements relating to one of the four disclosures were reviewed jointly with the external auditor. In all cases, investigations were carried out and concluded. My overall conclusions relating to the disclosures are as follows.
- The Council's investigations have identified significant shortcomings in the management arrangements in relation to the Neighbourhood Renewal Fund which has resulted in recommendations, in several reports, to strengthen processes. Whilst implementation of these recommendations has not been rapid, action plans have been completed for each report. Whilst I acknowledge that during the period the Council was facing a challenge in seeking corporate recovery and this may have impeded progress the full implementation of the action plans remains an important task for the Council.
  - The Council has investigated allegations relating to a former and current employee and whilst, with hindsight, some procedural aspects of the investigations could have been more effectively handled, I have not concluded that the Council's overall approach was unreasonable given the circumstances pertaining. The Council risk assessed the allegations in each case, taking into account the weight of available evidence and focused on the principal areas as a result. The Council decided whether or not to involve the Police as it judged appropriate, taking account of the available evidence and the response of the Police to matters initially raised relating to one of these cases. This does not appear unreasonable.
  - The introduction of alcohol bans in certain areas by the Council was undertaken in good faith but was carried out in a way that was flawed procedurally. The Council became aware of its error in late 2003 and sought to re-apply the correct process, As a result it now recognises that there are no legally enforceable bans in these areas.
- 12 The Council has taken or is taking action in line with the findings on the Internal Audit reports. Progress on the Internal Audit reports relating to NRF should be considered by the appointed auditor as part of the normal audit process.
- 13 There are some specific areas where we have recommended actions to improve arrangements in the future. These are referred to in Appendix 1 and summarised in Appendix 2 in an action plan together with the Council's response. The recommendations only relate to areas where the Council needs to take action and the appendices provide sufficient context to give an understanding of the recommendations.
- 14 There are also a number of issues which have arisen during my investigation, including more recently additional issues relating to NRF, not directly related to the disclosures which have been referred to the Council's appointed auditor for him to consider as part of his role as external auditor.

## Appendix 1 – Recommendations

### Neighbourhood Renewal Funding

- 15 The disclosure covered concerns on Neighbourhood Renewal Funding most of which had already been investigated by Internal Audit and reported in 2002. The report showed that £2.75 million of NRF had been allocated to mainstream funding and recognised significant shortcomings including difficulties in some cases in showing how NRF could be linked to deprivation or relevant government targets. The report included recommendations that:
- clear strategies and milestones need to be set;
  - meetings should be clearly minuted and agreed;
  - application of the robust practices applied on the SRB grants should be used on NRF;
  - clear links should be set between project outcomes and the Government's floor targets and tackling deprivation;
  - questioning those projects where clear links could not be established
  - new projects for 2002/03 should be presented to the LSP for approval; and
  - the training and development needs of the NRF Co-ordinator and thematic leaders need to be identified and addressed.
- 16 The recommendations made in the Internal Audit review were significant for the Authority. Internal Audit reviewed progress in 2003 and were concerned about the speed of implementation and rightly requested more time for a further in depth review in 2004/05 and have also more recently followed up concerns raised internally. The more recent audits were wide ranging and concluded that there had been an ineffective control environment in relation to NRF in the past and identified a need to improve control and governance in many areas some of which were raised in the initial Internal Audit report. Action plans have been compiled for each report. The findings and recommendations made in the reports are significant for the authority and progress against them should be monitored closely by the Council and the District Auditor may wish to review this as part of his normal audit role.

#### **Recommendation**

*R1 Progress against the recommendations should be monitored closely by the Council.*

## Allegations relating to employee A

- 17 This disclosure included the investigation of alleged irregularities by an employee (A). In response to this, an external consultant was appointed by the Council as investigating officer for the case. The way the appointment of the consultant was handled can be criticised but there were mitigating reasons why things developed in this way. There was a need to start the investigation quickly and the Council was having difficulties at the time finding the necessary resources for this and other investigations. The consultant, who was already working for the Council on a separate issue, was appointed within delegated limits under the Council's urgency procedures at the time. The decision was not reported back in writing to the Council's Corporate Management Team as required at the time as there was no management team in place. I acknowledge that at the time the Council was in the transition between the interim management team having left and the appointment of the new team. Whilst an official order was raised for the appointment no written terms of reference or accountability arrangements specific to the appointment were made. However, the Council briefed the consultant on the purpose of the investigation and the reasons behind why the employee had been suspended and she was given access to information she required. She worked with Internal Audit during the investigation.
- 18 A compromise payment was eventually paid to employee A in return for dropping all potential claims against the Council. This followed discussions between officers and employee A's representatives concerning potential claims by A against the Council. Whilst I do not have any reason to suspect claims would not have materialised it would be good practice for the Council to document a risk assessment of all potential claims and the basis on which they were settled.

<b>Recommendations</b>
<i>R2 The Council ensure that where services are purchased under the urgency procedure they are fully documented.</i>
<i>R3 Ensure written terms of reference and accountability arrangements specific to the appointment are put in place when employing consultants.</i>
<i>R4 The Council should undertake and document a risk assessment when considering claims for compromise payments.</i>

## Prohibition of drinking alcohol in public places

- 19 This concerns the introduction, in July 2003, of alcohol bans in four public areas under the provisions of the Criminal Justice and Police Act 2001 and the Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2002. At the time of the disclosure signs indicating the bans were displayed in the four public places.



- 20** The Council explained that the original introduction of the bans was undertaken in good faith on the basis of a misunderstanding of the statutory regulations, and in late 2003, it did seek to put this right on becoming aware of this by applying the correct process. In doing so it now agrees that currently there are no legally enforceable bans in these areas. The Council has since taken the signs down.

## Appendix 2 – Action plan

Page no.	Recommendations	Priority 1 = Low 2 = Med 3 = High	Responsibility	Agreed	Council comments on recommendations	Date
<b>Issues found during investigation into information received under the PIDA</b>						
7	R1 Progress against the recommendations should be monitored closely by the Council.	3	Internal Audit	Agreed	The Council is aware that the basis of the NRF funds to the Council and its management within the LSP has changed significantly since the Council has been awarded a Local Area Agreement. This new regime means the Council now works within a different framework, different targets and different criteria.	
8	R2 The Council ensure that where services are purchased under the urgency procedure they are fully documented.	1	WMBC	Agreed	There is no general evidence that these are not documented. The audit has found one incident which relates to a period of time when the Council was without an Executive Management Team and all the processes were not embedded. This was clear to the Interim Board in 2003 when this one incident occurred. This has now been rectified and no further action is required.	

Page no.	Recommendations	Priority 1 = Low 2 = Med 3 = High	Responsibility	Agreed	Council comments on recommendations	Date
8	R3 Ensure written terms of reference and accountability arrangements specific to the appointment are put in place when employing consultants.	1	WMBC	Agree	This recommendation is only agreed recognising that as an employer no terms can limit the scope of a disciplinary investigation because the investigating officer cannot be unfairly restricted as an individual, who is subject to disciplinary investigation, has under the natural rules of justice the right to know that nothing is being concealed whether it supports the employer or supports them.	
8	R4 The Council should undertake and document a risk assessment when considering claims for compromise payments.	1	WMBC	Agree	This is now in place and there are very few payments of this type.	