

## REPORT TO AUDIT AND RISK ASSURANCE COMMITTEE

08 November 2018

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

### DECISION RECOMMENDATIONS

**That Audit and Risk Assurance Committee:**

- 1 Considers the attached summary in order to gain assurance that the issues identified in the report are being comprehensively and promptly addressed.
- 2 Monitors progress in the implementation of all agreed recommendations through the consideration of a regular progress report/action plan.

## **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.

## **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 through a number of avenues following the Wragge & Co (now Gowling WLG) report, some of which go back several years.
- 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 For this report, a review has been completed on concerns raised over:
- Inappropriate Member involvement in dismissing an employee
  - Independent Member advice ignored
  - Sheepwash Nature Reserve
  - Lion Farm Playing Fields

- 3.6 The findings from these reviews have been shared with the Monitoring Officer. Following due consideration a decision based on the evidence available was arrived at, that there was insufficient evidence to amount to fraudulent activity or any breach of the Members Code of Conduct.
- 3.7 The committee will recall that at previous meetings it has referred a number of matters to the council's Monitoring Officer for consideration under the arrangements for dealing with complaints of breach of the Member Code of Conduct.
- 3.8 Following this the council's Monitoring Officer considered the conduct alleged, and sought assistance from the council's Independent Person before deciding that a formal Standards investigation was required in a number of cases.
- 3.9 Since that time a number of Standards investigations have been completed and a small number of others are ongoing. A number of the completed investigations were reported to the Ethical Standards and Member Development Committee meeting on 28 September 2018.
- 3.10 There are also a limited number of other audit reviews and investigations under way. Once completed, the outcomes of these investigations will also be reported back to the committee where appropriate.

#### **4 THE CURRENT POSITION**

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

#### **5 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 There are no direct crime and disorder issues arising from this report.

## **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 allocation of council housing.

## **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 None.

**Darren Carter - Executive Director – Resources**

Issue	Summary of findings	Outcome
Inappropriate Member involvement in dismissing an employee	A concern was raised that Members had been inappropriately involved in the dismissal of an employee. From the information that was available no evidence of any wrongdoing on behalf of the council was found and the employee left the council’s employment via the planned leaver route.	No further action required.
Independent Member advice ignored	A concern was raised indicating that advice received from the Independent Member from the Standards Committee may have been ignored following recent standards investigations. From a review of correspondence between the Monitoring Officer and the Independent Member there was no evidence to suggest the Independent Members advice had not been followed.	No further action required.
Sheepwash Nature Reserve	<p>A concern was raised that Section 106 monies allocated for the nature reserve in 2006 had been subject to fraud and misappropriation by employees. From the records available, no evidence of any fraudulent activity was found to support the concerns raised. There did appear to have been a breakdown in the relationship between residents involved in the nature reserve and the council and its employees, over a period of time and over how section 106 monies earmarked for the park, were being spent.</p> <p>Unfortunately, as many of these issues date as far back as 2006, with the passage of time many of the key employees involved in the project were no longer employed by the council. Also, a number of the records were no longer available for review as they had either been destroyed in line with the council’s retention policy, or the officers now in post were unsure of if, or where they may have been held.</p> <p>However, there were finance records that accounted for how the expenditure had been incurred. All of the payments from the section 106 funds were</p>	A recommendation has been made and agreed that will see that mitigating measures (record keeping/decision making/authorisations etc.) are put in place to avoid such difficulties as those highlighted arising in the future, particularly when large aggregate sums are involved. Also, the use of Section 106 monies will form part of the wider council financial monitoring processes.

	<p>either made through internal recharges to council service areas for work they had undertaken at the nature reserve, to a contractor who had been selected through a tender exercise, or through a range of other suppliers. However, there were no further records that sat behind many of the secondary records used to generate the recharges or payments to the contractor, identifying in any detail exactly what work had been undertaken and when. Where records were available from suppliers, they appeared to relate to work undertaken at the reserve.</p> <p>A significant sum was spent on internal recharges and activities for which, many will have taken place 'behind the scenes' and this may have contributed to the concerns that not all of the expenditure had not been incurred on the reserve.</p>	
<p>Lion Farm Playing Fields</p>	<p>Following the report presented to the Audit and Risk Assurance Committee in July 2018, two concerns were raised as follows:</p> <ul style="list-style-type: none"> <li>• That the Asset Management and Land Disposal Cabinet Committee of 19 December 2012 where the Committee approved a 12 month development option (with authority given to the Area Director – Regeneration and Economy, to extend for a further 12 months), was not quorate as former Councillor Mahboob Hussain had failed to disclose highly material matters.</li> <li>• That employees had acted ultra vires to the powers delegated to them in extending the option given to the developer beyond the two years mandated by members.</li> </ul> <p>These matters were addressed by the Monitoring Officer in a “Decision Notice of The Monitoring Officer for Dealing with Standards Allegations Under the Localism Act 2011” issued on 17 August 2018 which noted that:</p> <p>A due diligence exercise has been undertaken in relation to the history of decision making in relation to this matter, which has considered in particular the legal impact of any deficiency (if any) arising from the possibility of a</p>	<p>No further action required.</p>

Member of the Asset Management and Land Disposal Cabinet Committee (at its meeting on 19 December 2012) failing to disclose a disclosable pecuniary interest ('DPI').

Whether the relevant Member actually had a DPI at the material time is not clear. The due diligence exercise has included obtaining Counsel's opinion.

The advice received from Counsel is that the meeting was quorate. Any failure by a Member to recuse him/herself from a Committee meeting, when dealing with a specific Agenda item in which they have a DPI, does not render the meeting inquorate. This is consistent with paragraphs 43 and 44 of Schedule 12 to the Local Government Act 1972, and because there is no principle whereby a Member's attendance is to be treated as a nullity.

Moreover, Counsel confirmed that if the meeting was inquorate, the argument that the decision would be ultra vires after the event is not consistent with statements in the Court of Appeal's judgment in *Charles Terence Estates Ltd v. Cornwall Council* (2013) relating to the relevant law in this area.

Counsel advised that the decision is not invalidated by virtue of a DPI not being disclosed. Even if the decision were to be invalidated, it does not follow that the legal Option would be invalidated given that there is no reason to conclude that the developer was anything other than a bona fide purchaser. In any event the council's general powers were sufficient to entitle the council to enter into the contract/Option. Cabinet acted both reasonably and lawfully in relation to this matter. Due process was followed and again, no challenge was made through judicial review at the time.