

West Dunbartonshire Council

**Audit Review of the Investigation of Tendering and
Contracting Practices in Roads and Greenspace
Services**



 **AUDIT SCOTLAND**

Prepared for West Dunbartonshire Council

April 2019

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Key Messages

Procurement practices and contract management

1. In March 2016, Internal Audit was made aware of allegations of receipt of hospitality and breaches of tendering and contracting practices in Roads and Greenspace services. In December 2018, a summary of Internal Audit's findings on these issues was presented to the Audit Committee. The Audit Committee noted the findings and the action plan for improvements in Roads and Greenspace services, and some generic actions for all council services.
2. In February 2019, all elected members were provided with a redacted version of the Internal Audit report. During the investigation period, members of the Audit Committee were not updated on progress. It would have been appropriate to update the members of the Audit Committee given the time taken to conclude on the investigation.
3. Internal Audit reported that in the period 2013/14-2015/16, council procurement policies and procedures had regularly been breached in awarding Roads and Greenspace contracts to suppliers. This resulted in most work being awarded without a tender process or without seeking sufficient quotes from contractors. Internal Audit said this left the council at significant financial and reputational risk.
4. Internal Audit has also reported procurement issues in fire detection and alarm services and issues are emerging from their ongoing work in social care service contracts.
5. Departures from the financial regulations where expenditure exceeds or is likely to exceed £50,000 are to be disclosed to members, at the appropriate committee. We have identified that this has not been done for all contracts. For these contracts the council has, therefore, not demonstrated to members that it has achieved Best Value in procuring these services. Any impact of this on the council's costs cannot be quantified.
6. Members of the Senior Management Team (SMT) were aware that procurement practices were not being followed for some service contracts, over a number of years. The SMT accepted this approach due to staffing pressures to secure delivery of services. Improvements have been implemented over time, and are ongoing. Additional staff have been employed since 2015 to work in the Corporate Procurement Unit (CPU). The council is reporting that the proportion of contracts awarded which comply with the regulations was 72% in 2017/18. Officers recognise that this needs to increase and have set a target of 90% of all spend being 'on contract' by the end of 2020/21.
7. The ongoing improvements to procurement practices have been reported to members. However, there is no explicit reference to any 'off contract' spend that breaches the council's procurement regulations, in the 2017/18 Annual Governance Statement or the Annual Procurement Report. The 2018/19 reports should include reference to where procurement practices have breached the council's procurement regulations.
8. We have identified that the council did not have effective controls in place to monitor revenue spend consistently against contracts across all services.

This is of particular concern where contracts are being awarded outwith the procurement processes. Since January 2019, additional controls have been put in place to monitor spend against contracts.

9. In our opinion, the council's controls to ensure personal relationships between officers and suppliers do not influence the awarding of contracts were not effective. It is not possible to identify whether this influenced the awarding of council contracts.
10. Senior officers should now establish and report to members on the full range of services where procurement procedures are not followed. This should be included in the council's Annual Governance Statement (AGS) in the 2018/19 accounts.

Council's investigation of the allegations

11. In our opinion, the time taken by Internal Audit to investigate and report on the allegations to the Audit Committee, between March 2016 and December 2018 was excessive. The format of the Internal Audit report was not appropriate for an investigation of this nature and could not be easily shared with members. The summary findings presented to the Audit Committee in December 2018 lacked the level of detail required by members for them to effectively scrutinise the issues identified.
12. Despite our views on the format of the report, based on the evidence reviewed by us, we agree with the conclusions reported by Internal Audit.
13. Internal Audit reported that the allegations of hospitality were not proven. During the investigation, Internal Audit were in contact with Police Scotland to share information about the allegations. Internal Audit reported that, *'in May 2017 Police Scotland concluded that they would not be progressing this matter any further as in their opinion there was insufficient evidence to build a criminal case in relation to the allegations of the receipt of hospitality linked to procurement activity.'* Police Scotland has confirmed this.
14. As a result of the Internal Audit findings, a disciplinary process concluded in May 2018. The process found there was no basis for action to be taken against any individual employee regarding the procurement regulation breaches and the allegations regarding hospitality. In our opinion, these conclusions are reasonable.
15. No disciplinary action has been pursued against any employees relating to the Internal Audit conclusion that staff failed to declare close personal relationships with contractors, in breach of the council's Code of Conduct. We agree with the conclusion of Internal Audit that the employee relationships should have been declared to comply with the council's employee Code of Conduct.
16. In our action plan at [Appendix B](#), we recommended that senior officers should reconsider whether action should be taken regarding any breaches of the council's Code of Conduct. Officers have now considered this and are of the view that no disciplinary action is appropriate. The Strategic Lead – People and Technology and the Council's Monitoring Officer disagree with Internal Audit's assessment that employees had breached the Code of Conduct, "due to its wording" at the time. They feel there has been no breach of the Code of Conduct and the matter was fully considered by managers at the time, with no additional evidence now available to warrant review.

Introduction

Background

17. In January 2019, we were informed of concerns regarding how the council had responded to allegations of breaches of tendering and contract regulations at West Dunbartonshire Council. At the same time, the Chief Executive approached us to discuss the allegations made and to request an external audit review. We discussed the scope of our work with the Chief Executive, which was planned as part of our 2018/19 annual audit work.
18. As part of our routine audit work on the council's governance and systems of internal control, we reviewed the council's response to these issues. This report contains our findings.

Audit Approach

19. The scope of our work was discussed with the council and included a review of the timeline and the action taken by the council in investigating the allegations. Our work included:
 - consideration of the 2018 Internal Audit report I/038/17, Investigation Roads and Greenspace – Allegation of Hospitality and Tendering and Contract Arrangements.
 - interviews with officers, and an elected member
 - observation of the council meeting on 14 February 2019
 - review of relevant council policies and procedures
 - review of a number of documents provided to us by third parties relating to the allegations of hospitality being provided to council employees.
20. All our outputs and any matters of public interest will be published on our website: www.audit-scotland.gov.uk.

Audit findings

The council's approach to procurement of services

The procurement strategy

21. In 2017/18, the council's gross expenditure on services was £445 million. The council's total spend with third party suppliers was in the region of £165 million.
22. In 2017, the council's refreshed Corporate Procurement Strategy 2017/18-2020/21 was approved. This strategy contains the council's procurement vision for efficient and effective procurement and use of best practice methods of sourcing ensuring fairness, transparency and proportionality for all suppliers.

Procurement practices

23. Since 2016, the council's financial regulations have included a section on procurement regulations relating to contracts, supplies, works and services. All council officers are required to comply with these regulations. Prior to this, the 2013 financial regulations included a statement which said all employees must comply with the employee framework document for corporate procurement when purchasing goods, services and works.
24. Members of the SMT were aware that procurement practices were not being followed for some contracts over a number of years. Instead of tendering or seeking quotes from contractors, for some services, historical rates from previous contracts were used. Senior officers, including procurement staff, accepted this approach due to staffing pressures to secure delivery of services. This is evidenced, and reported to members, through the May 2018 Annual Procurement Report and the improvement actions reported in the Annual Governance Statements. The 2017/18 Annual Governance Statement includes references to:
 - a number of improvements to procurement processes have been put in place, including more information on the intranet and the development of a council-wide pipeline. Following recent committee approval of the Contract & Supplier Management Policy, it is anticipated that after six months all new contracts will follow this policy
 - roll-out of a Procurement Request Form and Procurement Awareness Toolkit across the council
 - the implementation by 31 March 2019 of 'robust' commissioning and procurement arrangements within social services
 - the implementation by 31 March 2019 of a contract and supplier management policy
 - the ongoing implementation of commodity strategies for procurement activity.

25. The ongoing improvements to procurement practices have been reported to members. However there is no explicit reference to the fact that some 'off contract' spend, breached the council's procurement regulations. In our opinion, this should have been explicitly reported in the Annual Governance Statement and the Annual Procurement Report, see audit recommendations 1 and 10.
26. Where procurement regulations have not been followed, the council has not demonstrated that it is delivering Best Value in the award of these contracts. Any impact of this on the council's costs cannot be quantified.
27. Over a number of years, there is some evidence of improvements being made to procurement practices. Additional staff have been employed to the corporate procurement unit (CPU), doubling the number of staff since 2015 to 21.5 FTE. Mandatory training has also been provided to employees involved in procuring contracts.
28. The council reports that the proportion of contracts that are awarded in compliance with the regulations was 44% in 2011/12, 66.8% in 2015/16, 77% in 2016/17 and 72% in 2017/18. Officers recognise that this needs to increase and have set a target of 90% of all spend being 'on contract' by the end of 2020/21, see [Appendix 2, recommendation 7](#).
29. Since 2017/18, in accordance with the Procurement Reform (Scotland) Act 2014, councils have been required to publish an Annual Procurement Report disclosing how its procurement activity complies with its procurement strategy. In May 2018, the 2017/18 Annual Procurement Report was presented to the Corporate Services Committee. The covering report says that the report must detail '*A statement of non-complying procurements and how the authority intended to comply in future*'. However, no such statement appears in the report.

Recommendation 1

The 2019 Annual Procurement Report should contain the information required by section 18 of the Procurement Reform (Scotland) Act 2014, including the extent of non compliance with the council's procurement regulations.

Procurement assessment results

30. Scotland Excel carries out Procurement and Commercial Improvement Programme (PCIP) assessments of councils in Scotland. The PCIP was introduced in 2015 and replaces the previous Procurement Capability Assessment (PCA). Both assessments score councils in a number of procurement areas and shows the score in percentages compared to the other councils.
31. West Dunbartonshire Council's PCA started from a low base but showed improvement from 17% in 2011 to 60% in 2014. The first PCIP report on the council published in August 2017 received an overall score of 64%, equalling the local authority average. The 2018 overall score increased to 76%.

The council's response to the allegations made

The Internal Audit Investigation

32. In March 2016, Internal Audit was made aware of allegations of receipt of hospitality and breaches of tendering and contracting regulations. The allegations covered hospitality received and contracts awarded in the period 2006 to 2016. Internal Audit investigated the allegations and reported to the Chief Executive in September 2017. The Internal Audit report I/038/17, Investigation Roads and Greenspace – Allegation of Hospitality and Tendering and Contract Arrangements was finalised in April 2018.
33. In December 2018, a [summary of Internal Audit's findings](#) was presented to the Audit Committee. The Audit Committee noted the findings and an action plan detailing specific actions for Roads and Greenspace services and generic actions to be implemented across the council.
34. We compared the December Audit Committee summary report with the Internal Audit report. We identified that some significant audit findings were omitted from the summary. In particular, the summary report did not include:
 - the fact that Procurement financial regulations were *“regularly circumnavigated”*
 - *“In the Auditor’s opinion, this leaves the council at significant financial and reputational risk”*
 - That there was *“systematic failure to follow appropriate and designated policies and procedures”*.

In our opinion, the summary findings lacked the level of detail required by members to enable them to effectively scrutinise the issues identified.

35. We reported in March 2018 to the Audit Committee, that members of the Audit Committee are not provided with full completed Internal Audit reports and are only provided with summaries and the action plans. In our view, it would enhance transparency for members if full reports are presented in an appropriate format. Alternatively, summary reports can be presented if members are also given access to full reports. We acknowledge, in some circumstances, that redaction of information may be appropriate.
36. In December 2018, the Chair of the Audit Committee and the Audit Manager reported the results of the *“Audit Committee self-assessment and reporting on audit assignments”* exercise where they agreed to continue with the current approach. We note the Audit Committee’s decision, but in view of our findings, in this report, we feel it is important that members are still assured that they receive the appropriate level of detail on Internal Audit findings to support informed discussions and scrutiny responsibilities. Members of the Audit Committee should reconsider whether the level of detail they receive relating to Internal Audit reports remains appropriate for their needs.
37. In February 2019, members received a redacted version of the Internal Audit report. In our opinion, the format of the full Internal Audit report was not appropriate for an investigation of this nature. It was very lengthy and consisted of 135 pages, including transcripts of interviews with employees and personal and commercial information. As a result, the full report could not be shared with members. The report was finalised in April 2018, but it shows a date of January 2018 on its cover. We would have expected the detailed audit work and transcripts of interviews to be recorded on audit files

and the report to be a summary of the findings and conclusions that could be shared with members.

Recommendation 2

The format of Internal Audit reports should be reviewed, and the level of detail provided to the Audit Committee should be reconsidered.

Internal Audit conclusions

38. The overall findings of the 2018 Internal Audit report were:

- the allegations of receiving hospitality were not proven
- personal relationships were not declared which is a breach of the council's Code of Conduct
- procurement policies and procedures were “regularly circumnavigated”
- work in Roads and Greenspace had been awarded without a contract or detailed specification
- the council's document retention policies had not been followed
- there was a systematic failure to follow appropriate policies and procedures
- the procurement policies in place across the council were “sufficient”.

39. Internal Audit reported that ‘the lack of adherence to procurement policies and procedures has led to an increased risk in the following areas:

- ‘increased opportunity for fraud and corruption including bribery and falsification of invoices
- negative impact on reputation in the market place
- creation of a culture of non-compliance with all control measures leading to failure in corporate governance
- failure of the council to obtain or demonstrate “Best Value”
- inability of the council to determine resource requirements in service areas
- poor quality of work
- risk of litigation or enforcement in the following instances:
 - from contractors who believe they were not able to bid for work
 - health and safety violations
 - work not being carried out as per expectations.’

Scope of the Internal Audit work

40. The following areas were not covered by Internal Audit's work that we feel should have been considered and reported as part of the investigation:

- whether council's procedures for ensuring that procurement is performed in accordance with Official Journal of the European Union (OJEU) regulations were followed. There is a risk that, for the contracts where procurement regulations were not followed, the council may have breached OJEU regulations
- whether the contractors covered by the review were appropriately vetted, to ensure the quality of services procured
- whether any of the senior officers were aware that the procurement practices were not being followed
- whether disclosures were made to committees in instances where contracts were to be awarded outwith the procurement regulations.

Recommendation 3

Internal Audit should ensure that the scope of future procurement audits adequately covers relevant areas.

41. We have reviewed Internal Audit's files relating to the investigation. In our opinion, the documentation of the work could have been clearer to demonstrate how the work was carried out and the conclusions reached. Having said that, we are satisfied that the evidence compiled by Internal Audit supports the conclusions reached and reported. We have relied on Internal Audit's work previously and found no areas of concern with the quality of their work.

Recommendation 4

Internal Audit should review how they document complex investigations to ensure clear documentation, in accordance with Public Sector Internal Audit Standards.

Improvement actions from the Internal Audit report

42. Since the Internal Audit report findings were finalised, significant progress has been reported against the action plan. Progress is monitored in the council's performance management system, Pentana, and an update report provided to the Audit Committee in December 2018 and March 2019. This update report shows the responsible officer's view of the progress made against actions and has not yet been verified by Internal Audit.
43. The Internal Audit Plan for 2019/20 was reported to the March 2019 Audit Committee. This details the risk-based audit activity relating to Procurement which specifies *"review of compliance levels across the council and follow up on implementation of agreed actions following previous audits on procurement."* Internal Audit told the Audit Committee this work is due to be completed by June 2019 to provide assurance for the 2018/19 AGS.
44. Where the council does not comply with its governance arrangements and procedures, this should be disclosed within the AGS. The governance statement in previous years makes general references to improvement requirements in procurement. However, there is no explicit disclosure of non-compliance with the procurement financial regulations.

Recommendation 5

The Internal Audit follow up of tendering and contract arrangements should be reported and the results included in the 2018/19 Annual Governance Statement.

Time taken to complete the investigation

45. In our opinion, the time taken by Internal Audit to investigate and report on the allegations to the Audit Committee, between March 2016 to December 2018 was excessive. A timeline is included at [Appendix A](#). Significant periods elapsed during the investigation where no progress was made. For instance, the response time from officers to provide information requested by Internal Audit was in excess of seven months. This was despite a large number of reminders issued and a site visit by Internal Audit. Another significant delay resulted when the draft report was issued for comment to officers. The draft report was issued in August 2017 but it was not finalised until April 2018. The disciplinary process concluded in May 2018. It then took until December 2018 for the findings to be reported to the Audit Committee. These time periods are excessive.
46. In these circumstances we would have expected Internal Audit to escalate the lack of response from staff to line management and then ultimately to the SMT and consider discussion with the Chair of the Audit Committee. The council should ensure that procedures are effective to ensure that staff respond timeously to Internal Audit requests.

Recommendation 6

The approach taken to investigating serious allegations should be reviewed. Staff should respond quickly to internal audit queries, to facilitate timely reporting of audit findings. Progress updates to the Audit Committee or appropriate member groups should also be considered.

Briefing note to members

47. On 11 March 2019, a Briefing Note was sent to all councillors from the Audit Manager providing further information on Internal Audit's findings. It explained that:
 - 'Based on an audit of a number of documents from 2013/14, 2014/15 and 2015/16, Internal Audit concluded that procurement policies were not always followed in Roads and Greenspace. This resulted in work being awarded without a tender process or without seeking sufficient quotes from contractors. Managers stated this practice was undertaken due to delivery pressures, and the requirement to continue to deliver essential services. In practice, existing contracts had lapsed and in the absence of a replacement contract, contracts with historic rates were used with existing contractors. It was also noted that the service management made the council's Procurement team aware of this non-compliance at regular intervals.'
 - 'Non-compliance with the procurement policies was and continues to be highlighted to elected members through service specific performance indicators which are reported to committee and council.'
 - 'A disciplinary process was undertaken concluding in May 2018 in line with the council's Disciplinary Policy and this found there was no basis for action to be taken against any individual employee.'

- 'The nature of the evidence considered by the audit team in reaching the conclusion that the hospitality allegations could not be substantiated.'
 - Police Scotland was notified by Internal Audit about this matter. 'No criminality was established, and no further action was taken'... 'In May 2017, the Police concluded that they would not be progressing this matter any further as, in their opinion, there was insufficient evidence.'
48. We can understand how members may have been frustrated about the level and timing of information they received from officers relating to the allegations made on the procurement issues. The first evidenced contact from the whistle-blower was in March 2016 and only selective findings were included in the Audit Committee papers in December 2018 (see paragraph 34). Members then received a redacted report, until the Audit Manager provided the briefing in March 2019. During that time, members were not updated on progress. See recommendation six.

Allegations of hospitality

49. The Internal Audit report states "the allegations of hospitality were not proven" as no conclusive evidence has been provided. Based on the evidence reviewed by us, we agree with the conclusions reported by Internal Audit.
50. Internal Audit have explained that, during the investigation, they were in contact with Police Scotland to share information about the allegations. Internal Audit reported that, *'in May 2017 Police Scotland concluded that they would not be progressing this matter any further as in their opinion there was insufficient evidence to build a criminal case in relation to the allegations of the receipt of hospitality linked to procurement activity.'* Police Scotland has confirmed this.

Non-compliance with council procedures

Procurement regulations

51. As part of the Internal Audit investigation, 27 contracts were reviewed within Roads and Greenspace services, with a value of £5.3 million. Internal Audit concluded that *"council wide procurement policies and procedures were regularly circumnavigated in both Roads and Greenspace in order to get work done quickly. This resulted in most work being awarded without a tender process or without seeking sufficient quotes from contractors. In many instances work within Roads and Greenspace was awarded without a contract or a detailed specification. In the auditor's opinion this leaves the council at significant financial and reputational risk."*
52. Departures from the financial regulations where expenditure exceeds or is likely to exceed £50,000 are to be disclosed to members, at the appropriate committee. Part 8 (b) of Section Q of the financial regulations stipulates that the *"procurement financial regulations will apply unless departure is expressly agreed by a meeting of the Council, the appropriate Service Committee or the Tendering Committee in advance of such a departure."* The previous standing orders had a similar requirement for spend above £50,000. From our review of committee papers and discussions with officers, we have identified that departures from the regulations were not always disclosed to the members at the appropriate committee. This issue was not referred to in the Internal Audit report, nor has it been included in the action plan.

Recommendation 7

Officers should comply with all procurement financial regulations. Committee approval should be obtained as required by the regulations. Committee papers should record how the procurement approach taken demonstrates Best Value for the council.

Declaring personal interests with contractors

53. All councils should have controls in place to ensure personal relationships between officers and suppliers do not influence the awarding of contracts. All West Dunbartonshire Council employees are required to comply with the council's employee Code of Conduct.
54. The Code of Conduct in place until October 2018 states at paragraph 8. *"Employees must notify the Chief Executive, in writing, if it comes to their knowledge that a contract, in which they have a personal or financial interest, whether direct or indirect, has been or is about to be, entered into by the Council"*
55. In October 2018, the council's Code of Conduct was revised and paragraph 12 says that *'employees must not allow any private interest to influence their decisions at work and any interest must be declared.'* Paragraph 8.1 provides further details and says that *"if an employee is involved in any work for the council in which close members of their family, friends or people living in the same household may have financial interests, these interests must be declared to and recorded by their line manager."*
56. The Internal Audit report says that *'the allegations of hospitality were not proven,'* however officers were personal friends with the contractors, and *"these relationships were not declared and should have been in accordance with the council's Employee Code of Conduct."* Internal Audit reported that they are *'unable to prove that procurement decisions were not influenced through friendships or socialising with' contractors.*
57. To remind employees of their Code of Conduct responsibilities, Internal Audit's action plan contains a high priority action for employees to be made aware of the need to declare personal relationships that could be perceived to facilitate an award of Council contracts. The council has recorded that this action is now complete and that staff are being reminded of their responsibilities through team meetings.
58. Since March 2018, the council has expanded guidance on offers of gifts, hospitality and declaring interests which all staff are expected to follow. However, this guidance does not include procedures to be followed by managers for contracts where a personal relationship has been declared. No records are currently required to be kept by line managers of any action taken. The action taken should be documented to demonstrate that personal relationships between officers and suppliers do not influence the awarding of contracts.

Recommendation 8

Council regulations should be revised to include actions to be followed by managers when personal relationships are declared between officers and contractors. Documentation should be maintained by managers and centrally for senior officers, to demonstrate action taken to avoid relationships influencing the award of contracts.

59. As a result of the findings above, we have concluded that the council's controls in place to ensure personal relationships between officers and suppliers do not influence the awarding of contracts were not effective. It is not possible to identify whether this has influenced the awarding of council contracts.

Monitoring spend against contracts

60. It is important that the council has effective controls in place to monitor expenditure against contracts awarded to suppliers. These controls are particularly important in the circumstances that contracts are being awarded outwith the procurement processes. We have identified that the council did not have effective controls in place to consistently monitor revenue spend against contracts across all council services. Since January 2019, additional controls have been put in place:

- quarterly monitoring of spend to ensure it is on contract
- quarterly monitoring of spend to ensure it is not in excess of the contract
- improvements to the procurement pipeline, a spreadsheet which outlines details for all planned contracts
- identification of contracts which are due to expire, which triggers a request to the service to re-procure the contract, in compliance with procurement regulations.

It is too early to assess the effectiveness of these controls.

Disciplinary Process

61. As a result of the Internal Audit findings, a disciplinary process concluded in May 2018. The employees considered for inclusion in the disciplinary process were those covered by the Internal Audit investigation. The process found there was no basis for action to be taken against any individual employee.
62. In our opinion, based on the findings reported in the Internal Audit report, there were three areas to be considered as part of this process:
- the breach of procurement regulations. As senior officers were aware of the breach of procurement regulations it was reasonable that no action was taken against the employees
 - the hospitality allegations were not proven, therefore, it was appropriate that no disciplinary action was taken against employees
 - non-compliance with the breach of the Code of Conduct in failing to declare close personal relationships with contractors. No disciplinary action has been taken against any employee with regard to this issue.
63. With regard to the Code of Conduct issues, the Internal Audit report said that, *“these relationships were not declared and should have been in accordance with the Employee’s Code of Conduct.”* The Internal Audit Report to the Audit Committee of 12 December 2018 stated *“there was a failure to declare personal associations with contractors, as per the employee Code of Conduct.”* We agree with the conclusion of Internal Audit that the employee relationships should have been declared to comply with the council’s Code of Conduct. The Code of Conduct in place until October 2018 states at paragraph 8. *“Employees must notify the Chief Executive, in writing, if it comes to their knowledge that a contract, in which they have a*

personal or financial interest, whether direct or indirect, has been or is about to be, entered into by the Council”.

64. The council's Strategic Lead – People and Technology and the Council's Monitoring Officer have explained that they disagree with Internal Audit's assessment that employees had breached the Code of Conduct. They consider the wording of the council's code up to 2018, did not require such relationships to be disclosed. As a result, they feel disciplinary action was not justified. In 2018, the Code of Conduct was revised and the paragraph relating to employees disclosing personal relationships changed, see paragraph 55 for details.
65. In discussions between Internal Audit and HR in finalising the investigation report, HR officers did not raise any disagreement with Internal Audit's view on the breach of the Code of Conduct.
66. Given the different views of the council officers, on whether or not the Code of Conduct was breached, we recommended that the council review its position and clarify its final view on this issue.

Recommendation 9

In our action plan at Appendix B, we recommended that senior officers should reconsider whether action should be taken regarding any breaches of the council's Code of Conduct. Officers have now reviewed this decision and are of the view that no disciplinary action is appropriate, as they feel there has been no breach of the Code of Conduct and the matter was fully considered by managers at the time, with no additional evidence now available to warrant review.

Restructuring of Roads and Greenspace services

67. As of January 2019, the council has formed a shared service for roads with Inverclyde Council. Senior officers should consider whether any of the findings in this report impact on the consideration of any restructuring decisions.

Procurement weaknesses in other services

68. The 2018 Internal Audit report on Roads and Greenspace includes procurement practices and contracts awarded since 2013/14. There is a risk that similar weaknesses in procurement practices have continued with some contracts in this service.
69. In December 2018, Internal Audit also reported to the Audit Committee *Investigation: Fire Detection and Fire Alarm Systems*. This covered similar allegations regarding the procurement and tendering arrangements. Internal Audit reported that *“procurement processes in relation to fire alarm upgrades and maintenance have not been adequately followed, controls over checking and review of work done by third party contractors has not been adequate and there has been a lack of management oversight.”* This report covered the period between 2013 – 2017.
70. A further Internal Audit report *‘Allegations in relation to WDC Tower Blocks’* concluded that, while there was no substance to any of the allegations made, *“the arrangements for procurement processes were not fully adhered to in that the Council's Corporate Procurement Unit were not involved.”* This report covered the year 2016 – 2017.

71. Internal Audit is currently carrying out a planned exercise covering the tendering of social care services, which is due to be reported in May 2019. We have been told that issues are emerging.

Recommendation 10

Senior officers should now establish and report to members on the full range of services where procurement procedures are not being followed and improvement actions should be monitored. Explicit reference should be made to breaches of the council's procurement regulations.

Other Allegations

72. At the Council meeting on February 14, 2019, a query was raised by an elected member regarding alleged tampering of a tender document for work on a car park in Dalmuir. From review of this contract, there is no evidence to support the allegation that the contract was tampered with or that the lowest bid was not selected for this contract.

Appendix A – Timeline

| Date | Event |
|----------------|--|
| March 2016 | Internal Audit was made aware of the allegations and subsequently met with the informant and Police Scotland |
| October 2016 | Internal Audit requested sample documentation from services |
| December 2016 | Internal Audit interviewed employees |
| May 2017 | All sample evidence received |
| May 2017 | Police Scotland advised that they were not progressing any action |
| June 2017 | Further interviews with employees |
| August 2017 | Draft report issued for comment to officers |
| September 2017 | Draft report sent to the Chief Executive |
| Jan 2018 | Updated version of report issued to officers |
| April 2018 | Internal Audit Report finalised between officers |
| May 2018 | Annual Procurement Report reported to Corporate Services committee |
| May 2018 | Disciplinary process concluded |
| Dec 2018 | Summary Internal Audit findings and the action plan reported to the audit committee |
| January 2019 | External Audit was informed of concerns regarding how the council had responded to allegations of breaches of tendering and contract regulations at the council. At the same time, the Chief Executive approached us to discuss the allegations made and the scope of our work |
| February 2019 | A redacted Internal Audit report was provided to members |
| March 2019 | A briefing note was sent to all councillors from the Audit Manager providing more information on this issue |
| April 2019 | External Audit report issued to the Council |

Appendix B – Action plan

| Audit Recommendations | Management response | Responsible officer and target date |
|---|--|--|
| <p>1. The 2019 Annual Procurement Report should contain the information required by section 18 of the Procurement Reform (Scotland) Act 2014, including the extent of non compliance with the council's procurement regulations.</p> <p>Risk</p> <p>There is a risk of non-compliance with section 18 of the Procurement Reform (Scotland) Act 2014.</p> <p>Paragraph 29</p> | <p>The 2019 Annual Procurement Report will contain information required by the Act, including the extent of compliance.</p> | <p>Procurement Manager 22 May 2019</p> |
| <p>2. The format of all Internal Audit reports should be reviewed, and the level of detail provided to the Audit Committee should be reconsidered.</p> <p>Risk</p> <p>There is a risk that members are not provided with the appropriate level of detail to support them in their scrutiny role.</p> <p>Paragraph 37</p> | <p>1. The format of Internal Audit reports has been reviewed as a lessons learned exercise, e.g. transcripts from interviews would not normally be included, and personal and commercial information kept to appropriate levels of detail.</p> <p>2. The level of detail provided to Audit Committee is included in this review and will be reported to a future Audit Committee</p> | <p>Audit Manager 30 April 2019</p> <p>Audit Manager 12 June 2019</p> |
| <p>3. Internal Audit should ensure that the scope of future procurement audits adequately covers relevant areas.</p> <p>Risk</p> <p>There is a risk that weaknesses with procurement practices are not reported.</p> <p>Paragraph 40</p> | <p>The audit work undertaken was an investigation not a planned audit. Internal Audit will build this into future planned procurement audit</p> | <p>Audit Manager 30 April 2019</p> |
| <p>4. Internal Audit should review how they document complex investigations to ensure clear documentation, in accordance with Public Sector Internal Audit Standards.</p> <p>Risk</p> <p>There is a risk that there is a lack of documentation to support the judgements in Internal Audit reports.</p> <p>Paragraph 41</p> | <p>Internal Audit will utilise the Team Mate electronic audit system to document all audit investigations, including document and activity logs on complex investigations</p> | <p>Audit Manager 30 April 2019</p> |

| Audit Recommendations | Management response | Responsible officer and target date |
|---|---|---|
| <p>5. The Internal Audit follow up of tendering and contract arrangements should be reported and the results included in the 2018/19 Annual Governance Statement.</p> | <p>This follow-up audit is in progress and will be completed in time to inform the Annual Governance Statement for 2018/19.</p> | <p>Audit Manager 31 May 2019</p> |
| <p>Risks</p> <p>There is a risk of financial loss and reputational damage to the council if the required improvements have not been implemented.</p> <p>There is a risk that the Annual Governance Statement disclosures are not comprehensive.</p> | | |
| <u>Paragraph 44</u> | | |
| <p>6. The approach taken to investigating serious allegations should be reviewed. Staff should respond quickly to internal audit queries, to facilitate timely reporting of audit findings. Progress updates to the Audit Committee or appropriate member groups should also be considered.</p> | <p>1. Internal Audit will create a protocol on expected response times which will set out clearly the timescale for escalation where responses are not forthcoming or delayed.</p> | <p>Audit Manager 31 May 2019</p> |
| <p>Risk</p> <p>There is a risk that members are not provided with sufficient information to support them in their scrutiny role.</p> | <p>2. Ongoing reports to Audit Committee on whistleblowing and other investigations will be enhanced from the next due report.</p> | <p>Audit Manager 25 September 2019 onwards</p> |
| <u>Paragraph 46</u> | <p>3. Audit Manager has set-up a regular meeting with the Chair of the Audit Committee.</p> | <p>Audit Manager Complete</p> |
| | <p>4. Audit Manager, Chief Executive and Strategic Lead - Resources will consider wider Member awareness on emerging issues on an ongoing basis</p> | <p>Audit Manager Chief Executive Strategic Lead-Resources Ongoing</p> |
| <p>7. Officers should comply with all procurement financial regulations. Committee approval should be obtained as required by the regulations. Committee papers should record how the procurement approach taken demonstrates Best Value for the council.</p> | <p>All Strategic Leads will be reminded of the Financial Regulations and in particular those areas of spend where a departure from normal processes is required to be approved.</p> | <p>Strategic Lead – Resources 30 April 2019</p> |
| <p>Risk</p> <p>There is a risk that the council breaches its regulations and does not achieve Best Value.</p> | <p>Mandatory training has been provided and will continue to be provided to employees involved in procuring contracts.</p> | <p>Procurement Manager Ongoing</p> |
| <u>Paragraph 52</u> | <p>The Procurement Team will advise Service areas as appropriate in this regard following the review of the on</p> | <p>Procurement Manager Ongoing</p> |

| Audit Recommendations | Management response | Responsible officer and target date |
|---|--|--|
| | contract spend analysis and when agreeing priorities with service areas. | |
| <p>8. Council regulations should be revised to include actions to be followed by managers when personal relationships are declared between officers and contractors. Documentation should be maintained by line managers and centrally for senior officers, to demonstrate action taken to avoid relationships influencing the award of contracts.</p> | <p>The Council will amend its guidance and Code of Conduct to make explicitly clear, the considerations and actions expected of managers when personal relationships are declared between officers and contractors. The timescale suggested, reflects the consultation required with the Joint Trades Union and reporting policy changes to the relevant Council Committee.</p> | <p>November 2019</p> <p>Strategic Lead, People and Technology</p> <p>Strategic Lead - Regulatory</p> |
| <p>Risk</p> <p>There is a risk of financial loss and reputational damage to the council.</p> | | |
| <p>Paragraph 58</p> | | |
| <p>9. Senior officers should reconsider whether action should be taken regarding any breaches of the council's Code of Conduct.</p> | <p>At the time of investigation officers disagreed with the assessment that employees had breached the Code of Conduct. As a result disciplinary action was not considered to be justified. Different officers have now reviewed this position and agree with the view taken at the time that there was no breach and no disciplinary action is appropriate for that reason. In addition it would be grossly unfair to employees to re-open decisions taken a considerable time ago on disciplinary matters in the absence of fresh information. The associated risk is not accepted on this action as it is not accepted any employees breached the code then in place. In 2018, the Code of Conduct was revised, with additional supporting guidance to make it clear regarding when employees should disclose personal relationships accordingly the same situation should not arise again.</p> | <p>No further action planned.</p> |
| <p>Risk</p> <p>There is a risk of reputational damage to the council and a perception by employees that non-compliance with council regulations is acceptable.</p> | | |
| <p>Paragraph 66</p> | | |
| <p>10. Senior officers should now establish and report to members on the full range of services where procurement procedures have not been followed and improvement actions should be monitored. Explicit reference should be</p> | <p>1. The Annual Procurement Report will provide enhanced information as to levels of on and off contract spend.</p> | <p>Procurement Manager</p> <p>22 May 2019 and Ongoing</p> |

| Audit Recommendations | Management response | Responsible officer and target date |
|---|--|--|
| <p>made to breaches of the council's procurement regulations.</p> <p>Risk</p> <p>There is a risk that members are not provided with sufficient information to support them in their scrutiny role.</p> <p>Paragraph 71</p> | <p>2. The Annual Governance Statement within the annual accounts will be enhanced to provide more information on issues and actions agreed to improve.</p> | <p>Strategic Lead – Resources 12 June 2019 and ongoing</p> |

West Dunbartonshire Council

Audit Review of the Investigation of Tendering and Contracting Practices in Roads and Greenspace Services

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Audit Scotland, 4th Floor, 102 West Port, Edinburgh EH3 9DN
T: 0131 625 1500 E: info@audit-scotland.gov.uk
www.audit-scotland.gov.uk