

WEST DUNBARTONSHIRE COUNCIL

At the Special Meeting of West Dunbartonshire Council held in the Civic Space, Council Offices, 16 Church Street, Dumbarton on Tuesday, 14 May 2019 at 10.00 a.m.

Present: Provost William Hendrie, Bailie Denis Agnew and Councillors Jim Bolla, Jim Brown, Gail Casey, Karen Conaghan, Ian Dickson, Diane Docherty, Caroline McAllister, Jonathan McColl, Iain McLaren, Marie McNair, John Millar, John Mooney, Lawrence O'Neill, Sally Page, Martin Rooney and Brian Walker.

Attending: Joyce White, Chief Executive; Angela Wilson, Strategic Director – Transformation & Public Service Reform; Richard Cairns, Strategic Director – Regeneration, Environment & Growth; Beth Culshaw, Chief Officer, West Dunbartonshire Health & Social Care Partnership; Peter Hessett, Strategic Lead – Regulatory (Legal Officer); Stephen West, Strategic Lead – Resources; Laura Mason, Chief Education Officer; Victoria Rogers, Strategic Lead – People & Technology; Malcolm Bennie, Strategic Lead – Communications, Culture & Communities; Jim McAloon, Strategic Lead – Regeneration; Colin McDougall, Audit and Risk Manager; and Craig Stewart, Committee Officer.

Also Attending: Fiona Mitchell-Knight, Assistant Director and Zahrah Mahmood, Senior Auditor, Audit Scotland.

Apologies: Apologies for absence were intimated on behalf of Councillors Jim Finn, Daniel Lennie, Douglas McAllister and David McBride.

Provost William Hendrie in the Chair

STATEMENT BY CHAIR – AUDIO STREAMING

The Provost advised that the meeting was being audio streamed and broadcast live to the internet and would be available for playback.

DECLARATIONS OF INTEREST

It was noted that there were no declarations of interest in the item of business on the agenda.

AUDIT SCOTLAND REVIEW OF INVESTIGATION INTO TENDERING AND CONTRACTING PRACTICES IN ROADS AND GREENSPACE SERVICES

A report was submitted by the Chief Executive providing an update on the outcome of the Audit Scotland review of the Council's internal audit investigation into Tendering and Contracting Practices in Roads and Greenspace Services and recommendations arising.

Ms Mitchell-Knight, Assistant Director of Audit Scotland, the Chief Executive and relevant officers were heard in further explanation of the report and in answer to Members' questions.

Following discussion, Councillor McColl moved:-

That Council:-

- (1) note the contents of the report;
- (2) note the report and recommendations from Audit Scotland at Appendix A;
- (3) note the Council action plan outlining progress to date and further planned activity at Appendix B; and
- (4) note that the report and appendices would be presented to the Council's Audit Committee on June 12, 2019.

ADJOURNMENT

Having heard the Provost, the Council agreed to adjourn the meeting for a short period. The meeting resumed at 12.13 p.m. with all Members listed in the sederunt present, with the exception of Councillor Walker.

As an amendment, Councillor Rooney moved:-

Council notes that Scotland Excel carries out assessments and scores Councils on a number of procurement areas.

Originally, the Procurement Capability Assessment (PCA) was used, but this was replaced by the PCIP, Procurement and Commercial Improvement Programme, in 2011.

The Council had demonstrated steady improvement since 2011 and the percentage of spend on contract has increased over time.

- In 2011 it was 44% spend on contract

- In 2014 we had 60% spend on contract
- In 2017 we had 64% spend on contract
- In 2018 we had 78% spend on contract

The spend in 2017 – 64% - represent the average spend on contract for Scottish Local Authorities.

In 2017/18 the Council spend £165million with third party suppliers. Around £130million of this was on contract.

The evidence suggests that there has been a steady increase in the percentage of spend on contracted, which demonstrates continuous improvement.

However, there is still a long way to go.

The Council notes the Council report from the Strategic Lead for Resources and the attached report from Audit Scotland.

Council also notes the action plans as Appendix B, which includes the improvement action plan arising from the Audit Scotland Report.

The Council's Internal Auditor found:

- The hospitality allegations were unsubstantiated
- That the Council's procurement procedures were not always followed
- Document retention policies weren't followed
- There was a systematic failure to follow approved policies and procedures
- That the procurement policies across the Council were sufficient
- Personal relationships were not declared which breached the Council's Code of Conduct.

Police Scotland Found : No evidence of criminality.

The Council's Disciplinary Process : discounted the unsubstantiated allegations and found that there was no basis for action.

The Audit Scotland Review : confirmed the Internal Auditors findings and agreed the conclusions reached were reasonable.

However Audit Scotland identified a number of issues and made appropriate recommendations.

The Audit Scotland findings include:

- The extent of non-compliant should be in the Annual Procurement Report 2019
- The format of Internal Audit reports should be reviewed
- The documentation of Internal Audit investigation should be reviewed

- Approach to investigating serious allegations should be reviewed and staff should respond quickly to Internal Audit findings
- Council Officers should comply with financial regulations and any deviation approved by Committee.
- Actions expected of Managers should be clear when declaring personal relationships.

Audit Scotland also agreed with Internal Audit's view that personal relationships were not declared which is a breach of the Council's Code of Conduct, and recommends that Senior Officers should reconsider whether action should be taken regarding any breaches of the Council's Code of Conduct.

The Council's Human Resources disagreed with Internal Audit's assessment that the employees had breached the Code of Conduct.

The Code of Conduct in place until October 2018 stated:

“ 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”

Given the excerpt from the Code of Conduct above, Council would be inclined to support the Internal Auditor and Audit Scotland's findings in regard to potential breaches to the Code of Conduct.

However, it is noted that in light of the Audit Scotland report, the disciplinary process was further reviewed by the Strategic Lead – People and Technology, and the Strategic Lead – Regulatory. They agreed with the view taken by Human Resources at the time.

Council believes that despite significant improvement in the spend on contract over recent years, the non-compliance with Policy and Procedures has had a detrimental impact on the Council's reputation.

At this point, the motion by Councillor McColl was seconded by Bailie Agnew and the amendment by Councillor Rooney was seconded by Councillor Mooney.

Councillor Bolla, seconded by Councillor O'Neill, moved a second amendment which is only produced in redacted form in these public minutes. A full record of the terms of same is being retained should the detail of same be required at a future date. Were the Council to publish the terms of same it would breach the Data Protection Act 2018 and risk a fine and may also be liable in an action of defamation. Minutes of Council meetings are published in accordance with Part IIIA of the Local Government (Scotland) Act 1973 and section 50A(2) provides “nothing in this Part shall be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence.” Confidential information is defined in section 50A(3) as including “information the disclosure of which to the public is prohibited by or under any enactment.” The amendment as redacted reads as follows:-

Council agrees to commission an Independent Public Inquiry into the allegations of fraud and corruption by [REDACTED] WDC officers. The [REDACTED] implicated and interviewed regarding this case should be suspended immediately, under the normal rules, pending the public inquiry reporting. Police Scotland continue to investigate this matter.

The report from Internal Audit uncovered a series of deliberate actions which completely ignored and breached Council Policy on Procurement, Council's Financial Regulations and the Officer's Code of Conduct, yet not one officer received any sanction under the Council's disciplinary procedures. [REDACTED] officers were not even put through the disciplinary process.

The processes and methodology used by I A to investigate these types of serious financial offences are not fit for purpose and should be reviewed independently and urgently.

The first officer accepted [REDACTED] probably attended [REDACTED] and possibly attended an [REDACTED] where hospitality was provided by the [REDACTED] the private company who were given around [REDACTED] of Council work. This officer produced no evidence he made a contribution to the cost of the hospitality, nor was he asked to provide any evidence of such a contribution.

He also confirmed he was a very [REDACTED] and knew WDC were giving this company work. [REDACTED] two weeks [REDACTED].

The second officer in his first interview said he [REDACTED]. Yet in his second interview, he said [REDACTED] and any time he attended these he contributed towards the cost of the hospitality provided [REDACTED] via the same Director of this private company. This officer produced no evidence that he made a contribution to the hospitality, nor was he asked to provide any evidence he made these payments.

[REDACTED]

[REDACTED]

In contrast, the evidence contained in the 43 receipts from the whistleblower with WDC officers and partners names on the back for receiving hospitality from [REDACTED] posh restaurants and golf events across Scotland where the officers were wined and dined was discounted in the IA report, with no officer being sanctioned.

No officers produced evidence to prove they did not attend these events/dinners/lunches, where their names appeared on the back of the till receipts and were signed [REDACTED].

It is clear from the unredacted I.A. report that there are clear inconsistencies with the evidence the officers gave across the two sets of interviews that took place in [REDACTED].

The unredacted report also demonstrates the cavalier attitude that these officers displayed in breaching Council rules, possibly emboldened due to the lack of oversight by the CEO & SMT who knew for years they were breaching Council procurement rules. The unredacted report makes some comment on this lack of oversight, by more senior officers with one Director saying they did not know work was not being tendered yet IA & AS both confirmed the SMT knew this had been happening for years. Both versions can't be right.

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██████████ along with the receipts and their own testimonies admitting deliberately breaking, Procurement, Financial and Code Of Conduct Council rules, provides hard written evidence in a paper trail of wrongdoing.

The failure of Audit Scotland to take up the offer of interviewing the whistleblower was a major error on their part which beggars belief and must make their report incomplete and highly questionable.

The first point of any investigation is to "follow the best evidence" and in this case, this was not done. The question needs to be asked, why was the whistleblower not interviewed?

The whistleblower had quality first-hand knowledge and information and was present at many of the dinners/social-functions/golf-events that Council Officers attended and received the hospitality paid for by ██████████. They were present during many of the discussions that took place regarding arrangements for contracts and services between WDC & ██████████.

The information provided by the AS report is confirmation that the CEO and the SMT not only knew for years the procurement policies and finance regulations were being deliberately breached, but they condoned it. The cost to the public purse is incalculable.

The CEO & the SMT have been complicit and need to be held to account for condoning these clear serious premeditated breaches of Council Financial Policy.

The code of conduct on officers in place up to 2018 made clear written consent from the CEO was required if they had a direct or indirect personal relationship with a contractor being issued with work by WDC. Both IA and AS agree this rule was breached on a regular basis, yet no action has been taken against any officer.

There is no doubt based on the written and oral evidence, plus the damning evidence from IA & AS there have been deliberate multiple breaches of the Financial Regulations, Procurement Policies and the Officers Code of Conduct ██████████.

The public and the Council Taxpayers in particular of West Dunbartonshire who expect value for money and the public pound to be safeguarded have a right to know the truth which has not yet been put into the public domain and the best way to achieve this, given the Council's premeditated failure to act, is by a truly Independent Public Inquiry, funded from reserves, into all aspects of this case with the subsequent report being made available to the Public.

During the reading of this amendment the Legal Officer advised Councillor Bollan that, in his opinion, he considered his amendment may be in breach of law in terms of the Data Protection Act and was potentially in breach of the Council's Code of Conduct for Elected Members and that some parts of it could be found to be defamatory.

On a roll call vote being taken between the first amendment (Councillor Rooney) and the second amendment (Councillor Bollan), 2 Members, namely Councillors ¹Bollan and O'Neill, voted for the second amendment and 6 Members, namely Bailie Agnew and Councillors Casey, Millar, Mooney, Page and Rooney voted for the first amendment, which was accordingly declared carried

On a further roll vote being taken between the amendment (Councillor Rooney) and the motion (Councillor McColl), ²1 Member abstained, namely Councillor Rooney, 5 Members, namely Councillors Bollan, Casey, Millar, Mooney, O'Neill voted for the amendment and 11 Members, namely Provost Hendrie, Bailie Agnew and Councillors Brown, Conaghan, Dickson, Docherty, Caroline McAllister, McColl, McLaren, McNair and Page voted for the motion, which was accordingly declared carried.

The meeting closed at 1.35 p.m.

¹ As corrected by West Dunbartonshire Council at its meeting on 26 June 2019.

² As corrected by West Dunbartonshire Council at its meeting on 26 June 2019.