

North East Derbyshire District Council

Standards Committee

29 September 2016

Public Interest Report – Derby City Council

Report of the Assistant Director – Governance and Solicitor to the Council and Monitoring Officer

This report is public

Purpose of the Report

- To inform Members of Standards Committee of the issues raised in the Derby Public Interest report by Grant Thornton.
- To the issues raised in the report and what they mean for the Council.

1 Report Details

1.1 This report, which was issued in June this year, raises some serious governance issues for Derby City Council. However they are historic issues, there being new political and management leadership in place.

1.2 The specific issues relate to the management of major projects and member conduct.

Procurement of a Job Evaluation consultant

From the report	Comment in relation to BDC and NEDDC
A signed copy of the delegation to the Director to procure a strategic partner could not be found.	The Councils have in place a system for approving and recording delegated decision notices for such decisions (DDs).
There was no senior involvement in the Procurement Team for the JE procurement.	A project of this size (for us the swimming pool at Clowne for instance) involves the AD, relevant Director and the statutory officers are kept informed of progress both through SAMT and through specific structures set up for the project.
The tender evaluation was flawed in that the selected company, which was too small for the contract, had assets of only £0.385m and working capital of £0.171m when the contract sum was	The Councils carry out rigorous tender evaluations which are reported to members for approval for contracts above £50k. These include financial considerations such as those listed here as well as checks on

<p>circa £0.285m. In addition the selected company could not perform all the tendered work (unlike the other contractors) and a further consultant had to be engaged.</p>	<p>proposed methodology for performing the contract and the consideration of references.</p>
<p>Project management arrangements had blurred lines of responsibility and proved to be ineffective.</p>	<p>See above. There are clear lines for the project management of the new swimming pool as outlined above.</p>
<p>The project was poorly specified. As a result of an incoming new administration, there was a change of direction in how the project was to be structured. At this point the Council should have reconsidered its appointment of the consultant and whether that consultant could deliver the revised work programme.</p>	<p>This is not a situation that I am aware the Councils have encountered.</p>
<p>The officers failed to understand at the outset the selected consultant had not got the necessary intellectual property rights to use the Hay Scheme for JE. This was pointed out in a reference but wasn't acted upon.</p>	<p>This should have been sorted as part of the tender evaluation process.</p>
<p>Concerns on this point and its practical implications for the Council were raised by an HR advisor. These were however ignored.</p>	<p>Whoever raises concerns, their comments should be considered and investigated. If there is something amiss it is better to pick it up this way and do the best to put it right as soon as possible.</p>
<p>The Council failed to take account of concerns raised by the selected contractor and also failed to put in place adequate arrangements to manage the work.</p>	<p>Ditto</p>
<p>There was little direct contact between senior officers and the contractor which resulted in emerging concerns not filtering through to the top of the organisation. Decisions were generally taken too low in the organisation.</p>	<p>This is not the way contracts are run in the 2 Councils. Senior Officers are directly involved.</p>
<p>Senior officers did not share any of these concerns with the Chief officer Group or the Monitoring Officer.</p>	<p>Communication is vital to transparency. Details are shared through SAMT as a minimum.</p>
<p>The senior officers involved failed to relay to the Chief Officer Group or the</p>	<p>The CEO, the Statutory Officers (including the Monitoring Officer), the senior officers</p>

<p>Monitoring Officer that Hay was disputing that the consultant had any right to use the Hay system. Although this is fundamental to the contract with the consultant and Hay was likely to pursue actively, this was commented on but left. Advice should have been sort from the Monitoring Officer on the copyright issue.</p>	<p>and legal must be engaged in any similar situation.</p>
<p>When threatening legal letters were received from Hay's lawyers, the wider chief officer group should have been informed of the potential risk to a key project irrespective of the merits in the legal letter and advice sought from the Monitoring officer and Legal.</p>	<p>I don't think this is an issue at the Councils as officers seem to be very keen to let Legal have any legal letters!</p>
<p>These copyright issues were not actively pursued with the consultant and in fact the contract was not actively managed. Issues flowing from the copyright issue included difficulties of producing adequate data to validate job evaluations and the ability to conduct an appeals process.</p>	<p>This should have been pursued as part of the tender evaluation process and should not therefore have become an issue after the award of the contract.</p> <p>An issue such as this arising after contract award needs to be reviewed by Legal to snure the correct legal o other action is taken to protect the Councils.</p>
<p>The consultant was paid more than £60k more than the agreed contract value but without the matter being reported anywhere.</p>	<p>Extensions of contract in large projects must only be done with authority given by members (Cabinet/Executive) or through a DD.</p>
<p>Members weren't informed of the problems until very late in the day. The job evaluation project had to be recommenced from the beginning of the process with Hay.</p>	<p>Members should be informed at the relevant time and should be kept informed.</p>
<p>The failings have led to additional costs of £1.2m.</p>	

Governance of the project and involvement of members in decision making

<p>The governance of the project was overly complex. Monitoring activity was therefore confused and duplicated and was not monitoring the risks.</p>	
<p>Members' involvement was at too low a level. They were involved in the detailed discussions relating to the emerging pay model which was unusual according to external consultants. It would be more usual for officers to develop a model for approval by members at a strategic level. The Cabinet member had also insisted on day to day involvement even though the CEO had told the member this was not usual.</p>	<p>This is a repeated theme in the report, that members were involving themselves in too low a level in matters, that they were getting involved in operational matters which were the preserve of officers. This can only be tackled by making members aware of the limits of their responsibility in each situation. For example members are not involved in the appointment and dismissal process for employees (outside the appeal process). This is clearly stated in the Constitution and understood by members.</p>
<p>Minutes from the formal Negotiating Committee could not be found.</p>	<p>All minutes are kept by Governance and public minutes are on the website.</p>
<p>There were un-minuted meetings of Chief Officer Groups, the outcome of which was disputed by participants.</p>	<p>No decision making body should be un-minuted.</p>
<p>The pay option chosen by the Council appears to have been influenced by political considerations which were never explicitly articulated.</p>	<p>There is always a tension in this respect. It is for officers to make sure advice on the issue is recorded as having been given. A decision in opposition to such advice is still bad governance, but the decision making route is clear.</p>
<p>A major decision had been taken at informal un-minuted meeting rather than at a formally constituted one. No report was ever produced, the outcome being reported verbally to the Personnel Committee. This was outside the constitution, through a variety of shadow structures which senior officers dipped in and out of.</p>	<p>Lack of a clear decision making framework meant bad governance.</p> <p>The Councils governance is set out in the Councils' Constitutions and is reviewed annually with members.</p>

Webhelp – State Aid advice

Facts

The Council set up a fund for giving grants, loans, joint ventures, equity and debt finance. £2m was given from the fund without Legal advice being sought on its lawfulness.

An arrangement was made through Cabinet for the fund to be used in assisting a company to acquire a lease. This included the Council taking a variable and reducing lease on commercial terms of the same property. The Council's costs of this were stated to be capped at £2.25m in the Cabinet report.

<p>Although the report stated external legal advice would be obtained on the proposal and particularly vires and state aid issues, this was not obtained. This was in spite of a firm of solicitors who were advising prior to the Cabinet report stating that state aid would be an issue and thus alerting the Council to the fact there could well be an issue.</p>	<p>Clearly the decisions of the Council's Cabinet, Committees or Council itself should be actioned. In this case the Council was also on notice of potential problems with State Aid. These issues should always be pursued and resolved.</p>
<p>Legal were not involved in any stage with the negotiations with the replacement company (Webhelp) in sorting out the surrender of their lease. Correspondence wasn't marked "subject to contract".</p>	<p>Which meant that no legal advice on what was proposed was obtained. This left the Council vulnerable in legal and financial and reputational terms.</p>
<p>The report notes that it is "concerning" that the CEO and Director of Regeneration were involved in negotiations without having legal involved.</p>	
<p>The Council did not follow its own procedure in relation to the negotiations and the fund. No further Cabinet approval was obtained for the surrender of the lease by the Council.</p>	<p>Again one to emphasise to officers.</p>
<p>When Legal (in June 2014) alerted the Monitoring Officer it was that there were substantial state aid issues with the lease arrangements.</p>	<p>This was already too late for the best protection to the Council to be given and financial costs to be avoided.</p>
<p>The lack of involvement of the legal department put the Council at risk in relation to a multi million pound contract. It was the duty of the CEO and the Director of Regeneration to ensure legal advice was obtained in line with the Cabinet report and resolution.</p>	<p>Decisions of the Executive and Council and Committees must be actioned and legal advice obtained.</p>
<p>One of the recommendations was that all legal advice should be commissioned by the Council's Legal Officer or her</p>	<p>Although it wouldn't go amiss to re emphasise this, generally the commissioning of external legal advice is</p>

staff. Departments should not commission legal advice directly	done in coordination with Legal.
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Taxi licensing

There were a number of issues relating to taxi licensing. These are being considered by relevant officers in both Councils and will be reported if necessary. However there are some generally applicable points as follows:-

Some members had lobbied on behalf of applicants. There was member interference in general with the administrative processes around the licensing function.	This can happen in any area of activity of the Councils. It is imperative that where this occurs, the Monitoring Officer and CEO are made aware so that they can consider what appropriate action should be taken.
There was a lack of understanding by members on the Licensing Committee as to what their role is. They considered it appropriate that they knew applicants appearing in front of them and didn't declare the relationship. In addition members would consider applications in the light of their affect on applicants' livelihoods if no licence granted rather than on the proper grounds of public safety.	This is in contrast to Licensing Committees at the 2 Councils. Regular training is given to the 2 Licensing Committees on the relevant issues including as part of the induction.

HR Payroll Project

Again a poorly managed project	
Contract rules not followed. Additional works were ordered but not reported to Audit Committee in accordance with Contract Procedure Rules.	There have been times when there has been a problem with this. There was an audit report a few years ago after which the Executive Director Operations ensured a series of training sessions took place reminding people of the rules. It may be appropriate to repeat some of this training through the Service Managers Group.
Some documentation in relation to 2 of the 4 of these extensions was missing completely.	The Councils would deal with such extensions through the Delegated Decision notice process or a formal report to Members.
It was claimed that the extensions were urgent and should therefore be approved and endorsed via Audit Committee. In fact according to the report none of them	Officer failure to deal with something in a timely fashion does not make it urgent.

was urgent as most were discussed a month before approval. These should therefore have been reported to Cabinet in accordance with the Constitution.	
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Overall Governance: Member and Officer arrangements

Not all members are clear about the boundaries between officer and member roles.	This is something which we can remind members about through the Member Involvement half days.
The Council has an informal meeting of the Executive members called PCCM. The political agent attends many of these meetings. No notes are kept of the meetings and officers are confused about its role. The report states that it is unusual for officers to attend political meetings.	Whilst it is true that it is unusual for officers to attend political meetings, in BDC and NEDDC the equivalent meetings (Cabinet and Leadership respectively) are not political meetings but briefing meetings and an arena for the informal discussion of policy direction as is appropriate. Notes are taken/to be taken of these meetings. I am not aware of any confusion amongst officers in this regard.
Standards Committee and the member complaints system are being used for political point scoring by members of Derby City Council.	This happens from time to time but mostly with Parish and Town Councils.
The opposition members refused to sit on Standards Committee, alleging a fear of bias in the majority group.	Not an issue for the Councils.
The Leader, who was subject to a complaint, made a complaint against the Monitoring officer leading to the exoneration of the Monitoring Officer following an expensive investigation.	Not an issue for the Councils.
There was pressure to manage the information to members in an overly positive way. The report says this may have contributed to officers not reporting emerging risks and inhibited transparency of reporting and decision making.	Not an issue for the Councils.
The Management Team had an underlying dysfunctionality.	Not an issue for the Councils.
There were shadow officer structure groups which lacked transparency.	This does not occur in the 2 Councils, all structures for decision making being made public and having notes recording outcomes.

The officer structure has strengthened and has a greater emphasis on good governance, with the management team has been more assertive in insisting on good governance.	
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1.5 Attached to this report are the recommendations from the report.

2 Conclusions and Reasons for Recommendation

2.1 Whether further reminders by way of training sessions should be given in relation to the issues raised in this report.

3 Consultation and Equality Impact

3.1 There are no consultation or equality issues directly involved in this report.

4 Alternative Options and Reasons for Rejection

4.1 Not applicable

5 Implications

5.1 Finance and Risk Implications

The report demonstrates the potential significant financial costs to the Councils in not dealing with Procurement and Governance issues properly. The issues raised should be considered in relation to current work by the Councils.

5.2 Legal Implications including Data Protection

The report shows that in dealing with Procurement and Governance issues, the CEO, Senior Officers and the Statutory Officers including the Monitoring Officer must be made aware of how major projects are to be managed. In addition, where legal problems arise whether in a major project or other work, the same officers **must be kept informed and the Monitoring Officer and Legal's advice sought as soon as possible in order that the Council's position can be protected.**

5.3 Human Resources Implications

None

6 Recommendations

6.1 That the Committee consider the report and decide what (if any) issues should be pursued further with members

7 Decision Information

Is the decision a Key Decision? (A Key Decision is one which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	No
District Wards Affected	N/A
Links to Corporate Plan priorities or Policy Framework	N/A

8 Document Information

Appendix No	Title
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
The Grant Thornton Derby Public Interest Report	
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