



London Borough of Hammersmith & Fulham

Audit, Pensions and Standards Committee Minutes

Thursday 14 February 2013

PRESENT

Committee members: Councillors Michael Adam (Chairman), Marcus Ginn, Robert Iggulden, Michael Cartwright and PJ Murphy (Vice-Chairman)

Other Councillors: Stephen Cowan

Deloitte: Mike Clarkson

P-Solve: John Conroy

KPMG: Mike McDonagh, Samantha Maloney

Officers: Derek Myers, Chief Executive, Jane West, Executive Director of Finance and Corporate Governance, Tasnim Shawkat, Bi-Borough Director of Law, Geoff Drake, Chief Internal Auditor, Michael Sloniowski, Principal Consultant, Risk Management, Vishal Sharma, Treasury Manager, Westminster City Council, and Owen Rees, Committee Coordinator.

51. MINUTES OF THE PREVIOUS MEETING

The minutes of the meeting held on 10th January 2013 be agreed as a true and correct record.

52. APOLOGIES FOR ABSENCE

There were apologies from Councillor Ivimy and Sheela Selvajothy, the Trade Union representative.

53. DECLARATIONS OF INTEREST

Councillors Murphy and Cartwright declared an other interest in item 54.

54. PENSION VALUE AND INVESTMENT PERFORMANCE

John Conroy, P-Solve, introduced the report, which set out the fund's performance in the quarter to 30 September 2012. He said that, due to the rescheduling of the meeting scheduled for December, the Committee had been briefed on performance for the period. He said that January had seen a continuation of the broadly positive market sentiment of the previous period, which he characterised as tempered confidence. He said that the 1 year return showed the fund repairing some of the losses caused in earlier periods, linked to the extraordinary performance of gilts.

He said that the fund's managers had performed well, and noted that Majedie had outperformed the market by 4.5%. He said that the managers who held dynamic asset allocation mandates had not performed as well, but this was reflective of their mandate. He said that both Barings and Ruffer had moved towards greater levels of equity holding, but remained understandably cautious about the fundamentals behind improved market sentiment. Their performance in 2012 had been further affected by a fall in the value of gold, but Mr Conroy said that P-Solve believed that the employment of the dynamic asset allocation mandates remained the correct strategy, given that doubts remained about the long term viability of a bull market.

He added that the matching fund managers had performed in line with expectation.

Eugene White observed that Ruffer and Barings had been appointed at a time when LIBOR had been at 4%, and the mandate had been designed to match the actuary's assessment of the liabilities. The collapse in LIBOR meant that the performance achieved would not be enough to meet actuarial expectations. She added that she was concerned that both managers appeared to be late to capture the rise in equities.

She also asked about the net cash outflow from the fund; she asked why the funds had been withdrawn from the equity section of the fund. Jane West, Executive Director of Finance and Corporate Governance, confirmed that net outflows of cash were now likely. Mr Conroy said that the funds had been withdrawn from equities as that element of the fund had been over target.

With regards to the issue of the benchmark for Barings and Ruffer, Mr Conroy said that the DAA mandates had been designed to allow the fund greater manoeuvrability. He said that their performance should be seen in the light of large negative returns for equities, and a difficult investment climate in other sectors. He said that while he accepted the concerns about whether the managers had moved with sufficient dynamism, this should be set against the continuing disparity between positive sentiment and negative sentiment.

With regards to the demands set by the actuary, he said that no investment strategy could have delivered the required return, given market conditions. He said that the strategy to diversify had been the correct one.

The Chairman noted that the volatility of previous years, with heavy negative returns in a single given month, would see the 3 and 2 year returns substantially improved as they were removed from the three year rolling programme. Mr Conroy confirmed that this was the case, and the next monthly return should show, presuming no downward shift in market sentiment, a further improvement in fund manager performance.

Councillor Murphy asked whether the benchmark for the DAA managers was sufficiently challenging. Mr Conroy said that it had been challenging, noting that capital protection was part of their role. Councillor Murphy asked if he believed they had been over-exposed to gold. Mr Conroy said that the reason for initiating DAA mandates was to ensure the fund could move flexibly. He said that he believed that the two managers had the liquidity and infrastructure to move quickly, and that they did not aim to hit the top or bottom of markets given the capital protection element of their role. He said that P Solve assessed them on the percentage of good and bad decisions that they had made, and believed that, on that measure, both managers had performed well.

The committee requested a report on the performance of the private equity mandates.

RESOLVED THAT

(i) The report be noted.

(ii) That officers be requested to report to the next meeting on the performance of the private equity mandates.

55. TREASURY MANAGEMENT STRATEGY 2013-14

Vishal Sharma, Treasury Manager, Westminster City Council, presented a report outlining the proposed Treasury Management Strategy for 2012-13. He said that the approach was unchanged, both in terms of the overall aim of debt reduction and in terms of the investment strategy as outlined in section 11 of the report.

Councillor Iggulden asked what was being done in light of the high penalties to redeem debt, given that income from asset disposals had been used to cut debt. Jane West, Executive Director of Finance and Corporate Governance, said that the Council was lobbying the Public Works Loan Board to have an amnesty on debt rescheduling, while there were other options in relation to the Housing Revenue Act and the CFR in general.

Councillor Iggulden asked about Santander's exclusion from the list of approved deposit holders. Mr. Sharma said that though the UK subsidiary of Santander was classed as a UK bank, officers still believed that caution should be exercised in respect of long-term holdings, given the parent's position; Santander was used for overnight deposits.

In response to a question from Cllr Ginn, Ms. West confirmed that the gap between external debt and the capital financing requirement was met from internal borrowing.

Eugenie White asked what had prompted the introduction of new investment categories. Mr. Sharma said that these had been introduced in Westminster since April 2012, and had offered better yields without additional risk.

Councillor Murphy asked for clarification of the relationship between asset disposal and debt. Ms. West said that it was possible, though it had not happened yet, that the Council would reach a point at which receipts could not be matched against debt with expiring terms, with the terms for early repayment onerous. The Council was therefore lobbying for forgiveness on early repayment of PWLB debt, while seeking other ways to configure capital spending if necessary.

Councillor Murphy asked whether involvement in fraudulent LIBOR reporting affected the Council's decision to invest in a bank. Ms. West said that the Council's chief concern was that any monies invested were returned, and it did not therefore take into account problems such as the LIBOR scandal. Mr. Sharma noted that while a number of banks had already been implicated in LIBOR fraud, others may be drawn in.

RESOLVED THAT

The report be noted.

56. 2012-13 AUDIT OPINION PLAN

Mike McDonagh, Partner, KPMG and auditor to the Council, introduced the report, which was the first of its kind since KPMG had appointed the Council as its auditor. He introduced himself, stating that he had been appointed as auditor of the three Councils comprising Tri-Borough, and said that Samantha Maloney would be the audit manager for Hammersmith & Fulham.

He said that his role replicated that previously held by the District Auditor, in terms of both responsibility and powers, and that he would review and sign off the Council's financial statements, form a view on value for money and answer questions and objections from electors.

He said that, for the sector as a whole, austerity measures represented the foremost risk to the Council, with a 25% reduction in funding meaning cuts to staff, disposal of assets and possible impact on services. He said that he had held discussions with the previous auditor and the responsible officers of the Council and had a good view of the Council's financial systems and procedures.

He added that KPMG had no conflicts over taking the contract, and that the scale of fees meant that it was unlikely to cause a conflict. He concluded by saying that the fee quoted was considerably smaller, but it required the Council to produce good quality working papers, without which the fee would require upward revision.

Councillor Iggulden asked how KPMG came to be appointed as the Council's auditor. Mr. McDonagh said that the Government had disbanded the Audit Commission's audit business, leaving the Audit Commission to oversee audit work as a much smaller organisation. The Audit Commission had tendered the work of auditing Councils on a regional basis, with KPMG winning the contract containing Hammersmith and Fulham for an initial 5 years with possibility of extension.

Councillor Murphy asked whether a client had ever had a reduction in fees due to the quality of their working papers. Mr. McDonagh said that this had happened in a handful of cases in his experience.

RESOLVED THAT

The report be noted.

57. CERTIFICATION OF GRANTS AND RETURNS 2011/12

Mike McDonagh, Partner, KPMG, introduced the report which set out the results of the audit of the Council's grant claims for the 2011-12 financial year. He said that the work underpinning the report had been done by KPMG's predecessors at the Audit Commission. He said that the number of claims requiring certification was falling, and that the Audit Commission had issued 3 unqualified opinions and 2 qualified, with the latter including an issue relating to NNDR which had previously been reported to the Committee.

RESOLVED THAT

The report be noted.

58. EXTERNAL AUDIT RECOMMENDATIONS UPDATES & ANNUAL GOVERNANCE STATEMENT ACTION PLAN

Geoff Drake, Chief Internal Auditor, introduced the report, which summarised progress against Audit Commission recommendations and against the AGS Action Plan. He said that progress in the quarter had been excellent, with recommendations either implemented or on track for implementation.

RESOLVED THAT

The report be noted

59. COMBINED RISK MANAGEMENT HIGHLIGHT REPORT

Mike Sloniowski, Principal Consultant, Risk Management, introduced the report, which summarised risk management activity in the quarter. He said that work towards Bi-Borough Risk management was continuing, and it had been decided that RBKC would host the service, though the Council would remain an equal partner.

He also said that work had been done on simplifying director's statements for the next year's Annual Governance Statement, and that an emerging priority was looking at maturing intelligence, particularly in relation to the Council's supply chain, following the recent failure of a Council contractor.

In response to a question from Councillor Ginn, Mr. Sloniowski confirmed that Westminster had chosen to retain total sovereignty over their governance staff.

Eugenie White asked about the pattern of insurance claims, noting that it was hard to reconcile a trend. Mr. Sloniowski said that work was being done to measure the pattern, and that he was working with the officers responsible for insurance to see whether and if there was anything the Council could or should do to mitigate against further incidents. He added, in response to a question from Cllr Iggulden, that the nature of insurance settlements made it difficult to relate expenditure in a given year to incidents.

The Chairman asked about the failure of a Council contractor. Mr. Sloniowski said that it had come at a sub-contractor of a main contractor, and was therefore less easy to anticipate. He stated, however, that greater checks would be made of the critical aspects of a contractor's performance. Jane West, Executive Director of Finance and Corporate Governance, said that Credit Safe had shown the sub-contractor to be low-risk, and Mr. Sloniowski said that he was looking to broaden the Council's work in this area, including by speaking to private sector risk managers.

Councillor Murphy asked whether a Bi-Borough Service, with officers' time split between the two boroughs, represented a potential risk in itself. Ms. West said that the communality of risks between the two boroughs meant that the Council could retain a significant capacity at half the cost, but performance would be monitored.

RESOLVED THAT

The report be noted.

60. DRAFT 2013/14 INTERNAL AUDIT PLAN

Geoff Drake, Chief Internal Auditor, introduced the report, which set out the work plan for internal audit in 2013-14. He said the plan was increasingly Bi and Tri-Borough focused, with significant entries in relation to change management, given its key role in the current climate.

The Chairman proposed, and it was agreed, to lift the guillotine until 10.15pm. He asked if there was any change to the previously planned programme.

Mr. Drake said that size of the Council's change programme, and the arrangements that facilitated Tri and Bi-Borough, were of increased prominence.

The Chairman asked how the plan compared with the scope of work at other Councils. Mr. Drake said that he was aware of what happened at the other Tri-

Borough Council, and that the Council was an active member of the London Audit Group, and discussed its plans and practices with them.

RESOLVED THAT

The audit plan be agreed.

61. INTERNAL AUDIT QUARTERLY REPORT FOR THE PERIOD 1 OCTOBER TO 31 DECEMBER 2012

Geoff Drake, Chief Internal Auditor, introduced the report, which summarised internal audit activity. He said that 17 reports had been issued in the period, and 12 letters sent for management response. 3 limited assurance reports were issued, which had been sent to the Committee, 2 of which concerned schools. All but 2 recommendations made in reports were either implemented or not due for implementation, and 7 outstanding reports were with Executive Directors for sign off.

Progress towards delivering the Audit Plan was good and it was expected to be 95% delivered at year end; the phasing of audit days had also improved.

Councillor Murphy asked about the management response to the audit report on the Theft Of Precious Metals. He noted that there was no intention to carry out a systematic risk assessment as suggested, and asked how this affected the likelihood of a further loss of precious metals.

Mr. Drake said that there was a risk, and the Council had had previous thefts; moreover, the cost of replacing stolen metals outweighed the cost of those metals alone. However, no funds were available for an inspection and cataloguing of all Council stock, so a sample survey, and the incorporation of an assessment of the vulnerability of metals into the rolling programme of inspection, had been agreed in the first instance.

Councillor Iggulden asked whether this represented a conscious decision to run the risk. Mr. Drake said that losses of £500,000 had already taken place, but raising awareness of the risk was key, particularly to encourage the reporting of metals at particular risk upwards.

RESOLVED THAT

The report be noted.

62. EARLS COURT REGENERATION SCHEME - OUTCOME OF INVESTIGATION BY DELOITTE

The Chairman moved that this item, which had been circulated after the main agenda, be heard first. He said that he hoped to hold discussion of the report in

open forum, but that if the Committee wished to discuss individuals named in the report by name, excluding the press and public would be necessary.

Derek Myers, Chief Executive, said that he was happy to be named in the discussions, and that the decision to redact personal details was the decision of Deloitte, who had been appointed to undertake an investigation. He said that Deloitte had been commissioned, further to a complaint made to the police by Jonathan Rosenberg, to investigate allegations of a "movers list". They were asked to assess whether any conduct by Council officers had been inappropriate and should lead to criminal or disciplinary investigation. He said that, in his opinion, the report offered assurance as to the probity of officers' conduct, and that no further investigation was necessary.

Mike Clarkson, Deloitte, confirmed that Deloitte had insisted on the report being redacted, due to the requirements of data protection legislation.

Councillor Iggulden asked what experience of investigation the Deloitte investigators had. Mr Clarkson said that he was the managing partner of the public sector internal audit and anti-fraud investigation team, and had considerable experience of investigation work. His colleagues also had many years of investigative experience.

Councillor Cartwright said that he did not have an issue with the redaction of personal details, but was concerned by the late distribution of the redacted version. Mr Myers said that both versions of the report were distributed within 24 hours of their receipt. He said that the view of the Chairman and Vice-Chairman of the Committee was that the report should be considered as soon as possible.

Councillor Cartwright said that he had three concerns with the way the investigations had been conducted. Firstly, he felt that an investigation of computer records should have been conducted, and did not believe that a search of e-mails was inappropriately onerous. Secondly, that there was no investigation of officers' qualifications, meaning that their ability to understand the potential illegality of their own actions was not tested. Thirdly, that there was no statement of truth by witnesses, as was common in tribunal investigations, though he acknowledged that Deloitte and the Council did not have police powers. Finally, he added that the suggestion put forward that a further investigation did not need to interview all tenants and residents, only those who had been listed on the database.

He concluded by stating that, in relation to the comments made in 5.9 of the report, local government officers should expect scrutiny when allegations of this nature were made.

Mr. Clarkson said that there was balance between cost and effort, and there would have been a very significant cost to an investigation of e-mail records. Deloitte's approach had been to attempt to identify incidents that would act as a gateway to a wider and deeper investigation; their investigation had not identified any such incidents. As for the qualifications of the staff involved, Mr Clarkson said that the Council had a recruitment policy, which had been followed; further investigation would be outside the terms of the terms of reference. As regards statements of truth, the majority of statements had been digitally recorded.

Mr. Myers, referring to para 5.9 of his report, said that the allegations were of criminal conduct by officers, and could not be considered part of normal scrutiny. He said that an investigation that continues for an indefinite period without proper cause was not appropriate.

Councillor Iggulden noted that if emails were sent they would have been received by someone and no such e-mails had been produced to support the original allegation. Councillor Cartwright clarified that internal e-mails were those most in need of examination.

Eugenie White asked what the consequences of the allegations would be if true, both for the officers accused and the Council's policy. Mr. Myers said that the issue was complicated, but that if the accusations had been substantiated, the matter would have very likely prompted both criminal and disciplinary investigation. He said that the allegations had arisen in the context of consultation on the future of the West Kensington and Gibbs Green estates. The Council had a statutory duty to consult its tenants, but it was not obliged to hold a ballot, and it had not held a ballot. He said that had the Council held a ballot, he could imagine why officers would have an incentive to offer residents preferable treatment for support. In the absence of a ballot, there was no comparable motivation. Further, he noted that Deloitte's analysis of the consultation responses, which compared responses to the consultation amongst those marked as "Seagrave Road" on the Council's database, showed a proportion of those residents as having objected to the proposals.

Councillor Ginn asked whether any evidence had been found that this list represented an early movers list. Mr. Clarkson said that while there was matching data between the hand written note and the information held within the overall consultation database, no evidence had been found that this constituted an early movers list.

Councillor Cartwright asked about the consultation meeting referred to in the report, where one slide had appeared to hold out the promise of early movement. He asked whether it was normal for no minutes to be kept of such meetings. Mr. Clarkson said that practices and standards varied, but that it was not unusual for no minutes to be kept, in Hammersmith and Fulham and at other authorities.

Councillor Iggulden said that residents had a clear incentive to move to Seagrave Road, but that the existence of a movers list had not been proven. He said that given that records had not been kept and the officers had denied any wrongdoing, it was unlikely that any evidence could be provided. Councillor Cartwright said that there was circumstantial evidence, and evidence that an individual resident believed themselves to be on the list.

The Chairman said that he was concerned that further investigation would be in the cause of proving a negative, in the absence of a "smoking gun". He said that the findings would be referred to the police, who had powers to interview under caution if they believed it necessary.

Councillor Murphy said that the decision not to examine computer records appeared to use a circular logic. He said that he believed that an examination of those records should have been a first step, and that Deloitte appeared to overestimate the onerousness of such an exercise.

Mr. Clarkson said that Deloitte had checked that the e-mails were secure, but had not found a gateway to explore a specific element of that e-mail.

Councillor Murphy said that the approach seemed to be seeking paper evidence when an e-mail was much more likely to contain material substantiating the allegations, if they were true. He asked whether, in light of the promises made in the slide presentation and Deloitte's acknowledgement of the perception amongst residents that a movers list existed, Deloitte ascribed this to incompetence on the part of the officers or as an inducement to residents.

Mr. Clarkson said that the slides were contradictory, and that, given that Seagrave Road was not originally included in the scheme, there was no evidence to support it being offered as an inducement.

Councillor Murphy asked if there was evidence that it had not.

Mr. Clarkson said that no evidence supporting the allegation that early moves to Seagrave Road had been offered as an inducement had been put forward during the interviews undertaken by Deloitte.

Councillor Murphy asked about the e-mail sent to an officer that had mentioned an early movers list. He said that the officer's reply had not refuted its existence.

Mr. Clarkson said that he disputed that interpretation, stating that the officer had made a general refutation of the e-mail.

Councillor Murphy asked why the Council had approached former officers on behalf of Deloitte, rather than Deloitte approaching them directly. Mr. Clarkson said that it was standard practice, and used to save time and assure those under investigation of the Council's involvement.

Councillor Murphy asked whether it was standard practice for a group of officers to submit a joint report to investigators.

Mr. Clarkson said that it had happened during past investigations.

Councillor Murphy suggested that the report had been rapidly produced, given the short period between Deloitte's appointment and the report being submitted, and asked Mr. Clarkson if he thought such behaviour raised questions. Mr. Clarkson said that Deloitte could not stop those under investigation from talking to each other, but that Deloitte had interviewed them separately and queried a number of points; he added that those under investigation had adopted this approach in the past.

Councillor Murphy asked if the Council document which had identified those ticked for Seagrave Road had any other purpose. Mr. Clarkson said that that the

references to Seagrave Road were part of a much larger database, which contained details of all interaction with residents over the proposals.

In response to a question regarding 5.9 of the report, Mr. Myers clarified that officers who had been the subject of investigation and who had then left the Council had done so as a result of natural career development, and no inference should be drawn that they had resigned as a result of the investigation.

Councillor Murphy said that he believed that the cover report written by Mr. Myers lacked objectivity in dealing with the outcome of the investigation. Councillor Iggulden suggested that this was a distorted perception.

Councillor Murphy asked if Deloitte had undertaken any work with CapCo. Mr. Clarkson said that, before beginning the investigation, he had performed a conflict check in line with Deloitte policy, which had returned no conflicts.

Councillor Murphy said that in summary, he believed that an investigation of e-mails should have been the first stage of investigation. He said that he believed that an investigation of those e-mails, together with interviewing those residents on the Seagrave Road list, was necessary to achieve adequate assurance.

Mr. Myers said that the investigation had been thorough, and the Committee should note that further investigation would be extremely costly. He said that an investigation of e-mails would cost tens of thousands of pounds, reflecting the very considerable effort to do undertake a complete examination.

Councillor Iggulden noted that no further evidence had been brought forward during the investigation, despite residents being aware of the initial allegation.

Councillor Murphy said that he did not believe that an investigation of e-mails using a word search function would be as onerous as Mr. Myers said. He proposed that the Committee should request officers to arrange an investigation based on Option 2, with an investigation of e-mails between officers and interviews for those residents listed under Seagrave Road only.

The Committee voted on this proposal, and agreed on Option 1, by 3 votes to 2.

RESOLVED THAT

That the Committee accepts the findings of Deloitte as set out in their report, recognises that the Deloitte report is credible and sufficient, and accept, on behalf of the Council, that there is no case for further enquiries at public expense.

63. EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED THAT

Under Section 100A (4) of the Local Government Act 1972, the public and press be excluded from the meeting during the consideration of the following items of

business, on the grounds that they contain the likely disclosure of exempt information, as defined in 3 and 7 of Schedule 12A of the said Act, and that the public interest in maintaining the exemption currently outweighs the public interest in disclosing the information.

64. EXEMPT MINUTES OF THE PREVIOUS MEETING

RESOLVED THAT

The exempt minutes of 10 January 2013 be agreed as a true and correct record.

65. CREATION OF AN EMPLOYEE-LED MUTUAL AND SELECTION OF THE BUSINESS PARTNER

RESOLVED THAT

The report be noted.

66. EARLS COURT REGENERATION SCHEME - OUTCOME OF INVESTIGATION BY DELOITTE- EXEMPT APPENDIX A

RESOLVED THAT

The report be noted.

Meeting started: 7.00 pm
Meeting ended: 10.04 pm

Chairman

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