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5th May 2016

Our Ref: 15-16 Central Bedfordshire
Council/Whistleblower
Your Ref:

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Dear Richard

Central Bedfordshire Council – Public Interest Disclosure regarding the partnership the Council has entered into for legal services

Further to our meeting on 19th April 2016, I am writing to confirm my position following a review of the Council's arrangements for the procurement of legal services. As you will recall from my letter of 11th January 2016, this follows a Public Interest disclosure from a whistleblower concerning the approach the Council took to the procurement exercise.

I have reviewed the Council's arrangements for procurement of legal services in the context of our responsibilities and statutory powers defined under the Local Audit and Accountability Act 2014 and the National Audit Office Code of Audit Practice.

I am grateful for the open and constructive manner in which the Council have engaged with me since this matter was referred to me by the National Audit Office. I sought to take the time necessary to review the procurement arrangements and draw on the advice and support of colleagues in EY who have experience of reviewing governance and decision making in contracts and procurements of this nature.

I have carefully considered all of the allegations and concerns raised by the whistleblower. I am not minded to challenge the decision taken by the Council on the procurement of legal services. I do however believe there were some weaknesses in the Council's written documentation to support the procurement decisions and process it took at the time. I set out below the work I have undertaken, my observations and recommendations. I believe we have responded appropriately and proportionately to the concerns raised. I therefore do not intend to take any further action in this matter.

In completing my work, I have carefully reviewed and considered all of the allegations and concerns raised by the whistleblower together with:

- Your letter addressed to me of 28th January 2016 responding to each of the concerns raised by the whistleblower.
- All available written documentation pertaining to support the Council's procurement for legal services and compliance with your constitution and standing orders which were provided to me on 28th January 2016.
- All available written instructions and external legal advice the Council received which were provided to me on 28th January 2016.
- Oral explanations I received when I met with you, the Chief Financial Officer and the Director of Improvement and Corporate Services on 29th February 2016 to discuss supplementary questions I had following review of the Council's written documentation.
- Your letter addressed to me of 3rd March 2016 which provides written response to the supplementary questions.

I do acknowledge the statements made by the Council and its external legal advisors that procurement law, and particularly the application of public contract regulations, are a "grey" area and open to interpretation. I have not considered it appropriate to seek my own legal advice on the lawfulness of the procurement exercise. Instead, I think it is more appropriate at this stage to consider whether the Council has acted reasonably, in an open, fair and transparent manner, in its decision making process.

I am satisfied that the Council has been aware of the need for openness, fairness and transparency in the procurement of legal services for the following reasons:

- Agenda reports and discussions at the Council's Executive have sought to establish clear objectives and evaluation criteria for the procurement of legal services, consistent with the Council's strategic, corporate and financial plans.
- Evidence of Executive and Member scrutiny of the Council's proposed approach and key decisions.
- Council actively seeking and considering external legal advice.
- In procuring legal services, the Council recognised one option would involve it entering into a shared service partnership for the first time. I recognise the Council were and are particularly sensitive to this and keen to learn any lessons from this exercise should it explore similar options in the future.
- Oral explanations I received, particularly when we met on 29th February 2016. Particularly I note the oral explanations provided to me indicated that Council were aware of the need to be sensitive to the whistleblower's concerns as well as to conflicts of interest.

However, I do believe there are weaknesses in some aspects of the Council's written documentation and evidence that is available to me to support the decision making process taken at the time for the procurement of legal services. I set out my concerns on some of the written documentation and evidence in two categories:

- Explanations and statements which appear in places either unclear or inconsistent with the evidence provided to me by the Council. For example, in demonstrating how the Council has safeguarded any risks to conflicts of interest with potential bidders and perhaps more significantly, how the Council ensured that the procurement process it followed was in accordance with its Constitution, particularly sections J3 on Partnership Protocols and I3 on Code of Procurement Governance.
- Absence of information in places to support the assertions made in Council reports, orally and in written letters I have received. For example, although there were score sheets to support the evaluation of bids which included financial information, I have not seen a detailed financial analysis of the options explored and in addition there is little or no written evidence to support the rejection of options for the provision of legal services.

In its procurement of legal services, I do believe the Council would have benefited from much more detailed records and documentation to substantiate its key decisions. Having sufficient and appropriate evidence enables the Council to substantiate fully how it has acted in an open, fair and transparent manner as well as addressing any actual or perceived risks and threats at each stage of its decision making process. I recommend that the Council should ensure that in any future procurements of a similar nature, sufficient and appropriate evidence is available to support each stage of the decision making process and the Council's assertions, in particular for:

- Exploration and selection of options.
- Ensuring compliance with the Council's constitution and standing orders.
- Ensuring the Council avoids potential, actual or perceived conflicts of interest
- Ensuring the Council is acting within its legal powers, based on instructing, receiving and acting on internal or external legal advice.
- Evaluation and analysis of tender/bid submissions, including sensitivity analysis on the proposed outcome.

The Council has also acknowledged openly that the procurement of legal services represented the first time it has considered an option that involved a shared service partnership. I recommend that the Council should take the learning from this procurement exercise and revisit its Constitution. The Council should ensure that its Constitution, particularly sections J3 and I3, appropriately reflects, now and in future, how the Council should respond when it is either considering options and/or intends to make decisions that involve it entering into shared service arrangements.

I will now share my letter with the Chair of the Audit Committee and the whistleblower, via the National Audit Office. I intend to present this letter to the next Council Audit Committee on 27th June 2016.

Yours sincerely



Neil Harris
Executive Director
Ernst & Young LLP