

10.00am, Thursday, 29 June 2017

## Monitoring Officer Investigation

Item number 8.6  
Report number  
Executive/routine  
Wards

### Executive summary

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This report sets out the findings of an investigation carried out on behalf of the Monitoring Officer in relation to:

- (i) the Council's management of certain outdoor advertising projects;
- (ii) the Council's handling of an individual's complaints and requests for information in relation to such projects; and
- (iii) the findings of a report by the Scottish Public Services Ombudsman (the "SPSO") into these matters.

### Links

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## Monitoring Officer Investigation

### 1. Recommendations

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- 1.1 To note that the Council's Monitoring Officer is required, under s.5 of the Local Government and Housing Act 1989, to report to Council if he considers that in the course of the discharge of the Council's functions any proposal, decision or omission has resulted in maladministration. In this context, maladministration means unreasonableness in the delivery of Council services, or failure to apply the law or rules properly;
- 1.2 To note that a report by the Scottish Public Services Ombudsman ("SPSO") into the Council's management of certain outdoor advertising contracts and related complaints resulted in a finding of maladministration;
- 1.3 To note the outcome of investigation reports into the matter undertaken by Brodies LLP ("Brodies") on behalf of the Monitoring Officer (the "Reports");
- 1.4 To note that the Chief Executive has sent a written apology to the complainant on behalf of the Council in relation to this matter; and
- 1.5 To note that the Council has complied with all recommendations of the SPSO's report and has taken further action to prevent recurrence of the issues identified.

### 2. Background

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- 2.1 In 2003, advertising drums were installed in the Grassmarket area as part of a trial project instructed through Economic Development, with temporary advertising consent granted for a year. The purpose of the drums was to provide an allocated space for events flyers, thereby reducing illegal fly-posting. The management and removal of illegal fly-posting was an ongoing problem for the Council at the time, taking up significant resource. The trial was managed by City Centre Posters Ltd ("CCP") and was not competitively procured. Over the next 12 years, the Council permitted CCP to operate further drums around the city.
- 2.2 In November 2014, a complaint was made by a member of the public ("Mr C") that there had not been a proper procurement process for CCP's use of the drums and that they did not have proper consent.

- 2.3 In October 2015, the Council informed CCP that, following review, the drums were to be removed. The Council's contract with CCP will terminate on 30 September 2017. The intervening period allowed for a reasonable notice period to be given to CCP in accordance with the current contractual arrangements and to allow consultation with the cultural sector around the commencement of the new contract (i.e. after the Summer festivals).
- 2.4 Mr C submitted a large volume of detailed information requests and complex complaints to the Council, which often spanned several service areas.
- 2.5 Ultimately, Mr C's complaints were referred to the SPSO. Overall, the SPSO was highly critical of the Council's handling of the outdoor advertising projects and Mr C's complaints in relation thereto.
- 2.6 Given the long history and complexity of the matter, Brodies were appointed to undertake a thorough and independent review of what had gone wrong and what improvements could be made to minimise the risk of recurrence.

### 3. Main report

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- 3.1 Brodies were appointed to investigate and report on the Council's management of the advertising drums and on its handling of Mr C's questions and complaints. Brodies provided two reports dealing with each element. I summarise each of the reports below:

#### **Outdoor Advertising Contracts Review**

- 3.2 Brodies were satisfied that there was a reasonable rationale for initially introducing advertising drums into the city centre due to significant problems with flyposting. It was costing the Council around £300,000 annually to clean up affected areas.
- 3.3 However, Brodies found that there were very limited records of decision-making in relation to the project. The Council's record-keeping and overall monitoring of project performance was inadequate. In the absence of monitoring arrangements, the project could not be properly assessed in terms of providing value for money.
- 3.4 The Council accepts that there was no proper procurement process originally carried out in relation to the advertising drums. The arrangements with CCP were described as an informal management agreement. The contract should have been formalised and tendered to ensure best value. Brodies highlighted a lack of evidence of Council officers paying regard to the principle of best value in the early stages of decision-making and in the ongoing decisions to maintain the arrangements with CCP.

- 3.5 Brodies found that there was no effective oversight of the drums project from 2004 to 2014. Overall, there was also a lack of clarity in relation to who had overall responsibility for outdoor advertising drums. There was an overlap between the role of the Neighbourhood Office and other teams, such as Planning, Economic Development and Culture and Sport. Latterly, the confusion was exacerbated by the major service and structural reorganisation that was taking place within the Council. Officers in the Information Governance Unit (“IGU”) state that they advised the Acting Director of Services for Communities in June 2015, that the issue of contract management for advertising drums should be thoroughly investigated. This does not appear to have happened.
- 3.6 The lack of clarity over responsibility for the various contracts was compounded by poor lines of communication between the different Council service areas and teams involved in advertising projects.
- 3.7 In terms of mitigating factors, Brodies recognised that a significant barrier to addressing the management of advertising contracts was a lack of resources within the Council and competing pressures on officers’ time. A substantial amount of resources had to be directed towards dealing with Mr C’s lengthy and numerous complaints and requests. However, overall Brodies did not excuse the inaction on this basis – over the long history of the matter there was sufficient time and scope to resolve the relevant issues.

#### Maladministration

- 3.8 The SPSO concluded that the failure to procure the advertising drums contract, compounded by its repeated expansion, amounted to maladministration.
- 3.9 The definition of maladministration is wide and can include incorrect action or failure to take action in addition to failure to follow procedure or the law.
- 3.10 Whilst recognising the resourcing pressures on the Council, Brodies agreed with the SPSO that the Council’s management of the advertising contracts amounted to maladministration.

#### Improvement actions

- 3.11 Overall responsibility for the project now belongs to the Cultural Services team within the Place Directorate. The team is responsible for ensuring robust contract management and clear channels of communication. Procurement and Legal colleagues are currently working with the team to finalise the procurement process for the new project to put in place appropriate contractual arrangements.

## Complaints Handling Review

- 3.12 Brodies identified that officers involved in the matter had not been consistently trained on complaints handling. There was varied experience of using the Council's Complaints Procedure and some officers were not clear when they had last had training.
- 3.13 Had all officers been fully trained on complaints handling, a more appropriate and effective strategy could have been employed to deal with Mr C's complaints and information requests. The main element of his complaint (that the arrangement had not been openly procured) may have been more properly categorised as the basis of a legal challenge against the Council. In terms of lengthy, repeated communications from Mr C, it may have also been appropriate to consider invoking the Council's Managing Customer Contact Policy. However, Brodies noted that seeking to treat communications under this policy would have had to have been considered in the light of whether the fundamental issues of Mr C's complaints were being addressed.
- 3.14 Brodies saw no evidence of Council officers intentionally withholding information from Mr C or not taking his complaints seriously enough. Council officer workloads and priorities, lack of clarity on both sides as to timescales for responses, and the complexity and volume of Mr C's complaints appear to all have played a part in delayed response times.
- 3.15 In terms of information handling, there were also various issues with the accuracy of information being provided within the Council. Not all FOI requests are routed through the FOI team. Some are dealt with directly by service areas which, in this instance, led to contradictory responses being issued (Mr C had addressed very similar complaints to different teams within the Council). Officers in the Procurement team also rely heavily on information from service areas to answer questions from disappointed or potential bidders. Procurement officers do not necessarily have the technical knowledge to realise when poor or incorrect information is being provided by a service area and nor should they be expected to do so. However, this again led to inaccurate information being issued to Mr C.
- 3.16 There was no collective awareness of Mr C's varied complaints, with different service areas not being aware of the bigger picture surrounding Mr C until matters had escalated.

## Maladministration

- 3.17 The SPSO concluded that the Council did not respond accurately to Mr C's questions and complaints and provided a series of inaccurate and confusing responses over a period of time. The SPSO considered that the delays and

inaccuracies in the Council's response were sufficient to constitute maladministration.

- 3.18 Brodies concluded that, on balance, the circumstances did appear to have met the threshold for maladministration. They considered that there was clear evidence of inadequate internal communication leading to delays in investigation and action and inaccurate and contradictory information being issued to Mr C. The Council also demonstrably neglected to follow or properly apply its own Complaints Procedure on a number of occasions.

### Improvement Actions

- 3.19 All officers involved in dealing with Mr C's complaints have undertaken complaints handling training.
- 3.20 Since the Council's Transformation programme in 2016, a new strategic complaints function is proposed to be set up as part of the IGU. This development responds to the need for a more coherent and streamlined approach to the management of complaints throughout the Council, including significantly enhanced support, oversight and management of complex complaints. A review of the complaints management procedure is currently underway and there have been several workshops and a Council-wide consultation to identify issues, challenges and potential opportunities. The findings are currently being collated into a report for the Council's Corporate Leadership Team and will include a series of recommendations, including the development of a more robust complaints framework and overarching policy that clearly defines staff roles and responsibilities and the escalation process.
- 3.21 Under the new framework, the IGU will provide a single point of reference for advice on the complaints process and will assist service areas in co-ordinating and escalating complex complaints.
- 3.22 In terms of senior responsibility, if responsiveness issues arise in the future in relation to treatment of a complex complaint, the IGU will escalate the matter to the relevant Director or the Council's Corporate Leadership Team. The appropriate Head of Service will be tasked with dealing with the matter.

## **4. Measures of success**

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- 4.1 The actions taken by the Council after a thorough investigation by an independent law firm demonstrates that it has taken this matter seriously and has taken steps to prevent a reoccurrence.

## **5. Financial impact**

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- 5.1 No direct impact.

## 6. Risk, policy, compliance and governance impact

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- 6.1 There is a risk that by not following the appropriate legislative and policy requirements, the Council is open to unnecessary external scrutiny and potentially legal action.

## 7. Equalities impact

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- 7.1 No direct impact.

## 8. Sustainability impact

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- 8.1 No direct impact.

## 9. Consultation and engagement

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- 9.1 None.

## 10. Background reading/external references

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- 10.1 The SPSO report can be found using the following link:  
<https://www.spsso.org.uk/investigation-reports/2017/march/city-edinburgh-council>

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### **Links**

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**Coalition pledges**

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**Appendix**