



AUDIT AND GOVERNANCE COMMITTEE:

27 March 2018

Report of: Borough Treasurer

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**SUBJECT: PROPERTY SERVICES ARRANGEMENTS RELATING TO THE
ENGAGEMENT OF A CONTRACTOR.**

Wards affected: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To advise members of Audit and Governance Committee of matters relevant to their oversight of the Council's framework of control arising from an internal audit examination of property services arrangements with a contractor.

2.0 RECOMMENDATION

2.1 That the actions agreed by management to strengthen controls on procurement, payments, accountability, transparency and custody of documents following internal audit's examination of property services use of a contractor be noted.

3.0 BACKGROUND

3.1 This Committee's terms of reference include monitoring of Contract Procedure Rules and Financial Regulations in so far as they contribute to the effectiveness of the Council's internal controls. This includes consideration of the Council's compliance with its own and other published standards and controls in so far as these contribute to the adequacy of its framework of internal control.

3.2 They also permit consideration of matters arising from internal audit work where requested by the Audit Manager.

3.3 Members are asked to consider the report at appendix 1 arising from internal audit's examination of property services' engagement with a contractor which summarises matters relevant to this Committee's responsibilities.

- 3.4 Other activity arising from the examination which are not within the remit of this committee have been progressed through the appropriate channels in accordance with Council Policy in the usual way.
- 3.5 Progress against the action plan that has been put in place will be reported back to each future meeting of this committee until such time as it has been completed.
- 3.6 The Council's External Auditors have been briefed on the content of this report.

5.0 SUSTAINABILITY IMPLICATIONS

- 5.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder.

6.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 6.1 The financial and resource implications arising from activity identified in this report are included in existing budget provisions.

7.0 RISK ASSESSMENT

- 7.1 This report summarises risks which internal audit work has identified as not being adequately addressed by the Council's existing framework of controls and measures proposed by management to address those risks for members information.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

Appendices

1. Audit Manager's Report: Arrangements relating to property services engagement of a contractor.

Report of the Audit Manager:

Arrangements relating to property services' engagement of a contractor (Valueworks).

1.0 Background

- 1.1 When a contractor engaged on the capital works programme went into liquidation the Council submitted a claim to the administrators.
- 1.2 When the Council received its final distribution of funds, another company, Valueworks, requested settlement of an amount included in the claim on their behalf.
- 1.3 The officer dealing with the liquidation left and the officer newly responsible for processing this request approached the Audit Manager for advice.
- 1.4 During initial exploration of the matter it became evident that property services arrangement with Valueworks had a number of unusual features.
- 1.5 It was agreed with the Borough Treasurer and the Director of Housing and Inclusion that internal audit would examine this arrangement further.
- 1.6 During the course of the examination the arrangement with Valueworks has reached its specified end date and has not been renewed.

2.0 General observations on records arising from the examination.

- 2.1 It proved impossible to establish a comprehensive account of the procurement and commissioning process for the Council's arrangement with Valueworks due to a lack of adequate documentation.
- 2.2 The records of day to day transactions maintained by property services were also incomplete. After the arrangement had become operational only a fraction of the large volume of standard documents generated by this arrangement, mostly in electronic format, e.g. invoices submitted by Valueworks, were retained. Those documents that had been retained were found in unstructured groups in various locations with no proper arrangements established for their custody.
- 2.3 The arrangement entered into had not used established procedures to transact business with Valueworks.
- 2.4 Property Services had not initiated an acceptable alternative process incorporating adequate audit trails, in fact no alternative procedures had been documented.
- 2.5 Property Services had not sought approval for the alternative approach adopted as required by Financial Regulations.

3.0 Services commissioned from Valueworks.

- 3.1 Valueworks provided services to a number of social landlords and offered a menu of services to clients (the company has since re-focused its activities under revised management).
- 3.2 While their service offerings included support for procurement, this option was not taken up by West Lancashire, the arrangement Property Services made with Valueworks mainly centred on the provision and ongoing maintenance and support of an e-marketplace software application and liaison with suppliers of materials used on the kitchen and bathroom contracts included in the capital programme.
- 3.3 The main deliverable was a system to administer the purchase-to-pay cycle for WLBC and their suppliers covering financial transactions – orders, delivery notes and invoices created within the e-marketplace system. A basic version of this was already achievable using our pre-existing housing management software.
- 3.4 The available evidence suggests that Valueworks performance was in accordance with the service specification outlined to the Council in their standard Terms and conditions as modified by the Council's choice of services.
- 3.5 Fees charged were in accordance with the rates specified in those terms and conditions.
- 3.6 No documented business case has been provided relating to the decision to bring Valueworks on board part way through the contract procurement process at West Lancashire.

4.0 Commissioning decision.

- 4.1 A partial account of events surrounding the commissioning process has been constructed from correspondence gathered from various sources, supplemented from memory by various members of staff in property services and by contact with representatives of Valueworks. The narrative is incomplete and its accuracy cannot be fully verified.
- 4.2 In 2012/13, part way through the procurement process for contracts to fulfil the Capital Programme for Kitchen and Bathroom replacements, property services entered into an arrangement with Valueworks.
- 4.3 The documentation available does not clearly record precisely when the decision to incorporate the use of Valueworks into the procurement process was made or how or who by.

5.0 Procurement

- 5.1 Valueworks fees from the start of the arrangement in 2013 up to January 2017 were approximately £382,160 net, £458,592 Gross.
- 5.2 Expenditure with Valueworks in relation to this engagement therefore exceeds the upper threshold in Contracts Procedure Rules (CPR) where tenders must be invited.
- 5.3 This level of expenditure exceeds the EU procurement threshold for Services Contracts. In 2016/17 this was £164,176 (this applies to all contracts which are neither “works” nor “supplies”). These thresholds are the total value of the contract over its full duration, excluding VAT.
- 5.4 No tender exercise was undertaken before entering into this arrangement.
- 5.5 While payments appear to have been made in accordance with the arrangement entered into by property services no evidence has been provided to demonstrate that proper consideration was given to how this arrangement would secure value for money.

6.0 Use of alternative arrangements to make creditor payments to Valueworks.

- 6.1 The process set up in property services to administer this arrangement was that Valueworks' fees would be collected through an arrangement with contractors and suppliers engaged on the kitchen and bathroom replacement programmes.
- 6.2 The process bypassed controls in the Council's regular corporate systems and no compensating controls were incorporated. Under this arrangement contractors were required to transfer part of the fee paid to them by the Council on to Valueworks. Consequently no payments were made direct from the Council to Valueworks.

7.0 Contract matters

- 7.1 Valueworks sent a copy of their standard terms and conditions modified to reflect their engagement with WLBC to Property Services as an e-mail attachment 28/2/2013.
- 7.2 Valueworks requested return of a signed copy of this agreement (contract) on more than one occasion.
- 7.3 A later e-mail dated 30/4/13 proposed that in the absence of a signed agreement they would use these standard terms until such time as one was put in place.
- 7.4 The Council's Contract Procedure Rules require a signed contract to be in place for contracts of this value.
- 7.5 No signed contract has ever been in place for the Council's engagement of Valueworks.

8.0 Budget for the services provided under the agreement

- 8.1 This engagement is not identified separately in the Capital Programme and no other explicit budget approval has been identified for this expenditure.
- 8.2 Capital expenditure is approved with the intention of acquiring or enhancing fixed assets with a long-term value to the Council.
- 8.3 Expenditure on the Valueworks arrangement has been coded to the Capital Programmes for replacement kitchens and bathrooms.

9.0 Failure to process invoices correctly

- 9.1 Invoices have been submitted by Valueworks throughout their engagement. Those invoices have not been processed, authorised or paid by property services.
- 9.2 No arrangements were made for safe custody of these invoices by Property Services who were unable to produce a complete set for inspection (duplicate copies were provided by Valueworks on request).
- 9.3 The failure to secure invoices submitted by Valueworks contravenes the requirement in the Council's Retention and Disposal Schedule to retain invoices for 6 years after the conclusion of the financial transaction that they support.

10.0 Alternative Payment process.

- 10.1 Payments have not been processed through the regular creditor payment process.
- 10.2 It was instead arranged between Property Services, Valueworks and the contractors that 2.5% would be added to all invoices for works and materials paid to the contractors and suppliers on the WLBC Kitchen and Bathroom Replacement Programme and passed on to Valueworks.
- 10.3 Valueworks net off payments received against the fees they charged to the Council.
- 10.4 While VAT has been processed at the correct overall value, property services did not establish viable processes for ensuring payment was only made where a VAT invoice had been received, checked, coded and certified for payment.
- 10.5 The payment arrangements in place are unclear and inadequate to ensure the treatment of invoices complied with official invoice processing instructions, Financial Regulations and HMRC requirements.
- 10.6 This alternative system has not been documented by Property Services.

11.0 Transparency and accountability

- 11.1 As the Council's official financial creditor payments processes and systems have been bypassed these have not recorded any of the payments made to Valueworks and so these transactions will not be disclosed by any search of the Council's regular financial systems.
- 11.2 This expenditure would not be identified during regular sampling of the creditor system for audit testing.
- 11.3 The payments to Valueworks have not been explicitly identified separately anywhere in the accounting system.
- 11.4 This activity and expenditure would not be identified in response to any Freedom of Information request.
- 11.5 The arrangement has not been recorded on the Contracts Register which is verified against payments made through the creditor system.
- 11.6 The payments have not appeared in the published list of payments over £500 produced through the creditor system (a regulatory requirement).
- 11.7 Property Services did not comply with Financial Regulations by consulting with the Borough Treasurer and informing Internal Audit before introducing this alternative system which would not have met the basic requirements to gain approval.

12.0 Conclusions and Recommendations

- 12.1 The procurement process for the engagement of Valueworks is not adequately documented.
- 12.2 The procurement process for the engagement of Valueworks did not comply with Contracts Procedure Rules and other purchasing requirements.
- 12.3 Financial regulations have not been complied with.
- 12.4 Transactions have not been adequately recorded.
- 12.5 The alternative arrangements were put into place without proper authority and without consultation with Financial Services.
- 12.6 No formal contract was put in place to secure adequate governance arrangements for the Council's use of Valueworks.
- 12.7 The Council's document retention rules have not been complied with.
- 12.8 The arrangements in place for this engagement did not meet the standards of transparency and accountability required by the Council in its business transactions.
- 12.9 To address this position an action plan has been agreed and put in place as shown below. Work to implement this action plan will be prioritised and regularly reported back to members.

Action Plan

	<u>Issue</u>	<u>Action</u>	<u>Responsible</u>	<u>Timescale</u>
1.	Lack of adequate documentation of the procurement process.	Since the procurement process referred to in this report the Council has implemented an e-procurement system. The system records all steps in procurement exercises administered through it. Its use is now mandatory for all contracts over £50,000 under the Council's current Contracts Procedure Rules.	Procurement Executive	Complete
2.	Failure to comply with Contracts Procedure Rules and Financial Regulations and to record transactions adequately.	Non-compliance cannot be corrected retrospectively. Further training will be provided for staff in property services on the requirements of Contract Procedure Rules, Financial Regulations and in relation to transaction processing to clarify requirements for clearing invoices and to ensure that staff understand the conditions for exceptions to established creditor payment procedures.	Director of Housing and Inclusion	In progress
3.	Failure to seek authority to make changes to financial systems.	All staff to be reminded that changes should not be made to financial systems without consultation with internal audit (and where necessary the approval of the Borough Treasurer)	Borough Treasurer	30 th March 2018
4.	Absence of a signed agreement governing the arrangement.	Non-compliance cannot be corrected retrospectively. Internal Audit will carry out a review comparing property services expenditure over the threshold at which a contract is required to agreements held by legal services to evidence levels of compliance in other contracts.	Internal Audit Manager	30 th March 2018

5.	Non-compliance with Council's Document retention requirements.	A corporate programme of review and cataloguing of records is in progress. It has been agreed that Property Services will be included early in the programme to ensure appropriate document retention criteria are developed and implemented.	Information Asset Owners in consultation with Data Access and Storage Governance Project Officer	In progress
6.	Establish transparency and accountability in payment procedures adopted.	All officers authorising payments to be instructed that no invoices including "premium payments" to third parties are to be authorised and any presented for payment are to be referred immediately to the Internal Audit Manager	Borough Treasurer	30 th March 2018
7.	Issues relating to transparency and accountability due to alternative payment procedure adopted.	Internal Audit to carry out a programme of checks to identify whether this practice has been employed on any other existing contracts in property services.	Internal Audit Manager	30 th March 2018
8.	To establish that there are no other unauthorised amendments to established creditor payment procedures in use.	Examination by internal audit of payments made by property services through creditors (including the D100 process) to ensure these comply with corporate requirements.	Internal Audit Manager	30 th March 2018