



Audit Advisory Committee
10 January 2018

**Report from the Chief Finance
Officer**

**Objections to the Accounts Regarding the Payment to the
Council's Former HR Director**

Wards Affected:	All
Key or Non-Key Decision:	N/A
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	None
Background Papers:	N/A
Contact Officer(s): (Name, Title, Contact Details)	Conrad Hall Chief Finance Officer Email: conrad.hall@brent.gov.uk Tel: 0208 937 6529

1.0 Summary

- 1.1. This report sets out the outcome of the Objections to the accounts regarding the payments made to the Council's former HR Director, Cara Davani. It also sets out the recommendations made for improvement, all of which have been accepted by the Council.
- 1.2. There are legal restrictions on how personal information contained within the auditor's determination letters can be disclosed. The report sets out these restrictions in order to assure residents and others interested in the matter that the Council is being as transparent as legally possible about the matter.
- 1.3. It remains the Council's position that the sequence of events resulting in the unfair dismissal of Rosemarie Clarke reflect poorly on the organisation as it then was, and caused harm to the Council's former employee. Lessons have been learned and new procedures have been implemented and the Council hopes that with this report the long-standing matter may now be brought to a close.

2.0 Recommendations

- 2.1. That the Audit Advisory Committee note the three recommendations made by the independent auditor as set out at section five.

- 2.2. That the Audit Advisory Committee endorse the Council's response to the recommendations as also set out in section five.

3.0 Process for Objections

- 3.1. Any local elector has the right to object to their Council's accounts. They must do so in writing to the appointed auditor (KPMG for Brent Council) and in order to "accept" the objection certain minimum tests must be met, for example that the objection is not in respect of a clearly trivial item. The significant majority of all objections made nationwide are "accepted".
- 3.2. Once an objection is "accepted" it must be "determined" by the auditor. The process for this is largely at the discretion of the auditor, who must be able to obtain information, interview relevant people and so on as they see fit in order to reach a decision. Once an objection is determined it is communicated to the Objector and to the Council, typically to the Chief Executive and s151 officer.
- 3.3. There is a right of appeal to the High Court against an auditor's decision not to apply for a declaration that an item of account is contrary to law. Any such appeal must be initiated within 21 days of receipt of the determination. Although there is no right of appeal against an auditor's decision not to issue a public interest report, it is amenable to judicial review.

4.0 Summary of relevant events and the objections

- 4.1. The background to the Employment Tribunal decision in respect of the claim brought against the Council by Ms Rosemarie Clarke and subsequent events, including the payments made to the former HR Director, Cara Davani, are well known and so not repeated here.
- 4.2. Five Objections to the Council's 2015/16 accounts related to the exit payment made to the former HR Director were received in August 2016.
- 4.3. They were similar in nature but had slight differences. Each requested that a public interest report be issued by the auditor, and they also requested that the auditor declare items of account "contrary to law" and that arrangements be made for the recovery of payments made if any items were found to be "contrary to law".
- 4.4. Specifically the auditor was also asked to determine the following questions and/or to determine the following statements.
 - 4.4.1. *Was it reasonable to take disciplinary action in the first place against Ms Clarke?*
 - 4.4.2. *Was it reasonable to appeal the Tribunal verdict in the light of the Judge's comment that "Brent had no reasonable prospect of success?"*
 - 4.4.3. *Was it reasonable not to take disciplinary action against Ms Davani in the light of the Tribunal judgement?*

- 4.4.4. *Was it reasonable for Brent to pay all Ms Davani's legal costs and damages personally awarded against her?*
- 4.4.5. *Was it reasonable for Brent to make the exit payment of £157,610 to Ms Davani?*
- 4.4.6. *That a proportion of the total amount paid by the Council in the out-of-court settlement of the Rosemarie Clarke case, should have been the personal liability of the second respondent in that case, Cara Davani (the Council's former HR Director).*
- 4.4.7. *That a proportion of the Council's legal costs (both external and internal) in the Rosemarie Clarke case should have been recharged to, and paid by, Cara Davani personally, as a separate respondent in that case.*
- 4.4.8. *That the whole of the £157,610 "compensation for loss of office" paid to Cara Davani, and shown as part of the Senior Employees' Remuneration to 'Human Resources Director (to June 2015)' at Note 30 to the Council's draft accounts should be regarded as unlawful.*
- 4.5. The auditor's letters determining the objections were received on 5 December 2017 at 15:27. They were all sent to the Chief Executive and Chief Finance Officer, and the auditor will also have sent them separately to the objectors. As they were only received approximately three hours before the Audit Advisory Committee meeting of that date it was not possible to take appropriate legal advice in respect of the discussion at that meeting. This was therefore somewhat brief, and Members are referred to the minutes of that discussion on this agenda.
- 4.6. At that meeting council officers (and the auditor, Mr Andy Sayers, who was in attendance) were able to confirm that the objections had not been upheld, and that three recommendations for improvement had been made, all of which were agreed by the council.
- 4.7. The objection letters contain detailed personal information about former employees. The disclosure of this information is subject to general data protection and Human Rights Act (specifically, the right to private life under Article 8) restrictions. In all the circumstances, the public disclosure of the personal information is not considered to be necessary, reasonable or fair as the individuals concerned can claim to have a reasonable expectation of confidence and privacy.
- 4.8. Further, there is no overriding public interest reason justifying disclosure. There are legitimate public interests in ensuring openness, transparency and accountability. These interests, however, are achieved by this report which publicly reports the outcome of the objections and a commitment to implementing the recommendations.
- 4.9. There is also a specific but qualified restriction set out in the Local Audit and Accountability Act 2014 which makes it a criminal offence to disclose information about others which is obtained by an auditor unless an exception applies.

- 4.10. In addition to the information set out in this report, arrangements will be made for members of this Committee, in the full and proper exercise of their role, to inspect the objection decision letters should they wish to do so.

5.0 The auditor's recommendations and the council's response

- 5.1. These are set out below.

Recommendation	Proposed response
Where an individual makes a grievance against a specific member of the HR management team, an independent person should investigate any separate investigation against the individual who raised the grievance.	Agreed. This can be added as an amendment to the Grievance Procedure.
Where legal advice is obtained via telephone calls, this should be recorded formally immediately after the call and key issues confirmed with the solicitor.	Agreed. The Council's in house legal team will make records of advice provided by them as part of the usual case management process. The Chief Legal Officer can remind them of this. External solicitors should do likewise. Solicitors should proactively confirm in writing any significant advice. The Chief Legal Officer can also provide a note to CMT members to discuss at their DMT meetings emphasising the importance of making a note of legal advice and/or ensuring advice is confirmed in writing by legal advisers.
Where sensitive issues such as whether settlement agreements should be offered or whether disciplinary procedures should be taken against senior officers, notes of those meetings should be formally taken.	Agreed. A new procedure is already in place for settlement agreements to ensure that the reasons for (and arguments against) are considered carefully before entering into such arrangements. All senior staff have also been formally reminded of the need to document the reasons for decisions in a reasonable and proportionate way, and that a decision not to do something can be just as significant as a decision to do something. The Chief Legal Officer will circulate a Monitoring Officer Advice Note concerning this.

6.0 Financial Implications

- 6.1. Their hourly fees in dealing with objections are set by Public Sector Audit Appointments (PSAA, a subsidiary of the Local Government Association, which carries out the role of independently appointing auditors to local authorities), and are charged on to the council in question. In this case the cost of dealing with the Objections was approximately £17,500 plus VAT.

7.0 Legal Implications

- 7.1. These are contained within the report.

Report sign off:

CONRAD HALL
Chief Finance Officer