

Certification of claims and returns - annual report

Wirral Council

Audit 2010/11



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Introduction

I reported the outcome of the 2010/11 grant claims programme to members on 13 March 2012. This supplementary report summarises the outcomes of my certification work for the two 2010/11 claims and returns that were still being discussed at that time.

In my grant claims and returns annual report presented to members of the Audit and Risk Management Committee on 13 March 2012 I confirmed that the grant claims programme for 2010/11 was complete and set out the outcomes of our work. In addition to providing a certificate I also report back to the Deputy Chief Executive and Director of Finance in a letter any further issues that we have not reported to the department but need to be resolved or where arrangements need to be improved.

At the time of writing the annual report I was still discussing the issues and recommendations on two grant claims. This supplementary report now summarises those issues for members' attention, provides a further action plan and updates the position on fees for 2010/11. The final two claims now being reported are:

- Flood and coastal erosion management
- Sure start, early years and childcare grant and aiming high for disabled children grant

Results of 2010/11 certification work

This section summarises the results of my 2010/11 certification work on the two remaining claims and highlights the significant issues arising from that work.

Table 1: **Claims and returns above £500,000**

There were 7 claims above £500,000 (10 claims in total in 2010/11) and this section reports on the final 2 claims

Claim or return	Value of claim or return presented for certification (£'000)	Was reliance placed on the control environment?	Value of any amendments made	Was a qualification letter issued?	Further issues raised in letter to DCE&DoF
Flood and coastal erosion management	1,387,163	No – First year of claim and contractor liquidation therefore part A & B testing required	-1	Yes	Yes - see (1) below: 17 high priority recommendations
Sure start, early years and childcare grant and aiming high for disabled children grant	15,140,605	No – The claim is complex and includes a large volume of both revenue and capital transactions	0	Yes	Yes – see (2) below: 1 high and 5 medium priority recommendations

(1) Flood and coastal erosion management

The Environment Agency provided a grant to contribute towards the protection works of the Marine Lake wall at West Kirby and the work was managed by the Technical Services Department. The Council completed a tendering exercise to select the original Contractor for the works and that Contractor was approved by members on 11 February 2009 following the Cabinet meeting on 5 February 2009. However, the original Contractor abandoned the site during the works on 24 April 2009 and subsequently went into liquidation; the contract was completed by another contractor.

A qualification letter was raised in respect of a number of issues and I have also raised concerns with the Deputy Chief Executive and Director of Finance in respect of a number of governance issues (significant issues highlighted in bold). We made 17 high priority recommendations. My findings are set out below:

- **There was a failure to adequately communicate known concerns about the financial standing of the company awarded the original contract to members and legal officers and the contract was approved by members without this knowledge.**
 - Officers obtained an external credit report on 28 January 2009 that highlighted significant financial concerns in respect of the original Contractor and that stated there was a very high likelihood of business failure. The results of the credit report were discussed by Technical Services officers, Finance (Procurement) officers and Internal Audit and it was agreed to continue to recommend the approval of the original Contractor to members. Technical Services officers have confirmed that there were no minutes taken at the meeting that decided on the selection of the original Contractor.
 - The recommendation to award the construction work to the original Contractor was made in a report from Technical Services to Cabinet dated 5 February 2009. There is no mention in this Cabinet report nor any supplement issued following receipt of the credit report of the serious concerns regarding the financial status and the very high likelihood of business failure of the company. There is no evidence in the minutes of the Cabinet meeting that officers informed members of the risks at the meeting itself.
 - Members were asked to agree the recommendation to award the contract to the original Contractor without being given the details that would have enabled them to make an informed decision.
 - Section 3.4 of the report states *'the Corporate Procurement Unit have been consulted and are satisfied with the procurement process implemented for this scheme.'* There is no reference to any legal advice obtained and no reference in the minutes that members sought the assurance of Legal Services. The Group Solicitor was notified by Technical Services of the concerns on 3 April 2009, nearly two months after the award of the contract and nearly a month after work had started on site.

- **CPR 15.3(ix) requires that the contract provides for a Bond. Although the contract did ask for one, the Council did not obtain a Bond.**
 - Although the literal instruction in CPR 15.3(ix) was complied with, the intent of the CPR was not as a Bond was not obtained. The importance of this was not evident to Legal Services until 3 April 2009 and shortly after this the company abandoned the site and went into liquidation.
 - Following the execution of contracts and the requirement to provide a Bond within the 28 day period it is usual that suppliers are not allowed possession of the site until the Bond has been obtained. From our review it is noted that the original Contractor started on site on 9 March 2009 without a Bond and without an agreement about security. In addition, the contract documents were not returned until 12 March 2009 nor signed until 20 March 2009 and this further raises risks.
 - As noted above, the intent of CPR 15.3(ix) was not complied with and it should have triggered a review of CPRs in relation to obtaining a Bond following the circumstances around this example.
 - The latest version of CPRs (17 October 2011) now requires that the relevant Cabinet Portfolio holder must be consulted. However, the CPR does not state specifically *when* the bond should be obtained and it does not specify what constitutes 'sufficient security'. This should also relate to parent company guarantees, or other tangible insurance arrangements.
- Although officers made enquiries as to the financial standing of the bodies tendering under CPR 7.1 at the Invitation to Tender (ITT) stage, the premise that Constructionline (a select list) could be relied on for financial standing was not reliable at the time.
- The Council retained £488,424 in respect of an engineer's valuation of work done by the original Contractor prior to abandonment. The valuation certifies the costs for completing the works as £350,811. Officers plan to put a case to Cabinet to provide for £137,613 of this as the value of the work completed by the original Contractor less the additional cost of completing the works with another contractor. We are currently awaiting information from officers to confirm that the liquidator has accepted the valuation.
- A Cabinet Report on 23 July 2009 updated members on the progress of the contract and informed them formally that the original Contractor had abandoned the site on 24 April 2009. The report states that the proposed change in contractor was reported verbally to Cabinet on 23 April 2009 and approval was received to appoint another Contractor to undertake the Completion Contract at that meeting. However, there is no evidence of any supplementary paper presented to that meeting to explain the situation and the formal Minute 493 on West Kirby Marine Lake does not go into the detail of what was discussed or approved: *'The Director of Technical Services reported upon a number of matters in relation to West Kirby Marine Lake. Resolved – That the report be noted and the action proposed by the Director of Technical Services be endorsed.'* It is important that members' decisions and approvals are explained and formally noted in the minutes of meetings.

- The 23 July 2009 Cabinet report stated at paragraph 3.4: ‘*During the third week of April the Council received information that (the original Contractors) were in serious financial difficulty*’. However, this is not consistent with underlying information that the financial difficulties were known from the 28 January 2012 credit report.
- CPR16 requires that variations to a contract in excess of 10% (or £50,000, whichever is the lower) should be reported to Cabinet. The estimated expenditure for the specialist consultants was £100,000 (outturn £192,793). Officers need to confirm that variations for the consultant’s contract for this scheme were reported in line with CPR 16.2, with a written report submitted to the next meeting of the Cabinet.
- CPRs were updated in October 2011 but do not reflect the need for an appropriate review of tenderers’ technical or professional ability and economic and financial standing for contracts over £50,000 and below the EU threshold.
- Technical Services Officers state that Internal Audit was aware of the adverse credit report prior to approval of the original Contractor by members. Internal audit is now involved in all financial evaluations of prospective tenderers and carries out a full ratio analysis in respect of works and service contracts. The role of Internal Audit is to provide assurance to officers and members that appropriate checks have been made and it is the role of the Chief Officer, with help from Finance to carry out and draw conclusions from the financial evaluations.

(2) Sure start, early years and childcare grant (SSEYCG) and aiming high for disabled children grant (AHDCG)

A qualification letter was raised in respect of a number of issues and I have also raised concerns with the Deputy Chief Executive and Director of Finance in respect of a number of issues. We made 6 recommendations (1 high priority and 5 medium priority). My findings are set out below:

- Eligible expenditure claimed for 2 Year Old Offer Early Learning and Childcare activities exceeded the allocation by £13,436.
- During our certification work we raised concerns about the procurement process followed by the school for architectural work included as eligible expenditure as one of the governors was awarded the work. Council officers have informed us that the architect’s services for the Great Meols Primary project were procured in line with procedures applying to resources under the control of the school governing body. We have been provided with a Cabinet report from May 2010 that confirms that the Preschool provider was to make a financial contribution to the project. This report also retrospectively reports that officers gave agreement to the governing body to appoint the project architect. Officers have now stated that this item should have been removed from the sample population as it was considered to have been funded from other streams. It is important that:
 - expenditure by the Council in respect of procurement by local authority schools is in line with delegated arrangements.
 - there are controls to ensure no duplicate claims for funding can be made and there is no possibility of double funding and duplication with other claims.

- eligible expenditure for specific claims and returns can be identified for accounting and audit sampling purposes separately from that funded from other sources which may be subject to different conditions.
- there was no inventory of assets that would have allowed adequate information to fulfil the conditions of grant funding i.e. monitoring the use of assets funded, or any disposals as required by Annex D, paragraph 14 of Memorandum of Grant and paragraph 46 of the SSEYCG capital guidance (July 2011).
- CYP had not agreed a comprehensive action plan following a November 2010 Internal Audit report on Children's Centres Extended Service provision that included 14 high priority risk observations. Internal Audit followed up its original report in March 2012 and concluded that 12 of the recommendations have now been implemented with the remaining 2 being partly implemented.

Summary of recommendations

This section highlights the recommendations arising from my certification work on the two remaining claims and the actions agreed for implementation.

Table 2: Summary of supplementary recommendations arising from 2010/11 certification work

Recommendation	Priority	Agreed action	Date for implementation	Responsible officer
(1) Flood and coastal erosion management	17 high			
<i>Reporting to members, recording and risk management</i>				
R1. Ensure members have complete information, and in particular are made aware of any significant risks and how they have been mitigated in order to make robust and safe decisions.	High	Instructions on content of reports (including risks) to be reviewed, revised and re-issued. Report authors (Chief Officers) to ensure compliance with instructions.	June 2012 June 2012	Bill Norman Director LHRAM Chief Officers
R2. Ensure that members' decisions and approvals are explained and formally noted in the minutes of meetings (in this case regarding the verbal update to Cabinet in April 2009)	High	All meetings are formally recorded and will continue to be so whilst having regard to 'exempt information'.	On-going	Surjit Tour Legal & Member Services

Recommendation	Priority	Agreed action	Date for implementation	Responsible officer
R3. Ensure that reports contain information that is consistent with underlying evidence to help members understand any risks to aid decision-making and their assessment of the control environment.	High	As with R1. Instructions on content of reports (including risks) to be reviewed, revised and re-issued.	June 2012	Bill Norman Director LHRAM
		Report authors (Chief Officers) to ensure compliance with instructions.	June 2012	Chief Officers
R4. Ensure that the advice of Legal Services is sought and reported to members before decisions are made.	High	As R1 and R3. Instructions on content of reports, and need to involve legal services, to be reviewed, revised and re-issued.	June 2012	Bill Norman Director LHRAM
		Report authors (Chief Officers) to ensure compliance with instructions.	June 2012	Chief Officers
R5. Ensure that key judgements, by officers are adequately recorded - such as the decision to award the tender to the original Contractor despite the risks identified	High	Links to R1. Instructions on content of reports (including officer judgements) to be reviewed, revised and re-issued.	June 2012	Bill Norman Director LHRAM
		Report authors (Chief Officers) to ensure compliance with instructions.	June 2012	Chief Officers
<i>Fit for purpose CPRs</i>				
R6. Ensure CPRs are updated and revised to include a final check of financial standing and technical ability immediately prior to the award of a contract.	High	Contract Procedure Rules to be enhanced – report to Cabinet on Constitution changes.	October 2012	Surjit Tour Legal & Member Services (with Ray Williams)

Recommendation	Priority	Agreed action	Date for implementation	Responsible officer
R7. Ensure that CPRs: (i) are clear about when the Bond should be obtained (ii) are clear about and record what constitutes 'sufficient security' when the standard Bond is not obtained.	High	As with R6. Contract Procedure Rules to be enhanced – report to Cabinet on Constitution changes.	October 2012	Procurement) Surjit Tour Legal & Member Services (with Ray Williams Procurement)
R8. Ensure the CPRs approved in October 2011 are updated to reflect the need for an appropriate review of tenderers' technical or professional ability and economic and financial standing for contracts over £50k and below the EU threshold.	High	As with R6. Contract Procedure Rules to be enhanced – report to Cabinet on Constitution changes.	October 2012	Surjit Tour Legal & Member Services (with Ray Williams Procurement)
R9. Ensure all CPRs are fit for purpose and non-compliance is promptly, clearly and unambiguously reported to members.	High	As with R6. Contract Procedure Rules to be reviewed and include guidance – report to Cabinet on Constitution changes.	October 2012	Surjit Tour Legal & Member Services (with Ray Williams Procurement)
<i>Compliance with procedures</i>				
R10. Ensure 'appropriate' enquiries are made on financial standing under CPR 7.1 by reviewing detailed information and considering the overall assessment before issuing invitations to tender. Ensure this is clearly documented and	High	Links to R6. CPRules to be issued to all employees involved in the procurement process along with the Procurement Toolkit.	Commencing from June 2012	Chief Officers (with Ray Williams Procurement)

Recommendation	Priority	Agreed action	Date for implementation	Responsible officer
evidence retained for review. Update the assessment of financial standing immediately before approving the award of the contract.				
R11. Confirm that the significant variation to the consultant's contract was in line with CPR 16.2, with a written report submitted to the next meeting of the Cabinet.	High	Report to Cabinet.	July 2012	Mark Smith Deputy Director Of Technical Services
R12. Obtain the confirmation of the Director of Finance when officers waive a Bond and ensure it is reported to members in line with CPR 15.3(ix).	High	Links to R7. CPRules to be issued to all employees involved in the procurement process along with the Procurement Toolkit.	Commencing from June 2012	Chief Officers (with Director Of Finance)
R13. Do not allow suppliers possession of the site until an appropriate Bond is obtained, any Parent Company Guarantee is obtained and the contract is signed and executed. Where this is not practical, ensure there are proper processes in place to mitigate any risks, judgements are recorded and decisions appropriately approved and reported.	High	Links to R7 CPRules to be issued to all employees involved in the procurement process along with the Procurement Toolkit.	Commencing from June 2012	Chief Officers (with Directors Of Finance & LHRAM)
R14. Ensure all relevant staff and members are properly trained to deal appropriately with CPRs.	High	CPRules to be issued to all employees involved in the procurement process along with the Procurement Toolkit.	Commencing from June 2012	Chief Officers (with Ray Williams Procurement)

Recommendation	Priority	Agreed action	Date for implementation	Responsible officer
		Training on CPR's to be incorporated within the Member's programme.		Surjit Tour Legal and Member Services
R15. Clarify the role of Internal Audit in the events around this contract.	High	Report to Cabinet.	July 2012	David Taylor-Smith Deputy Director Of Finance
R16. Ensure Chief Officers take responsibility for carrying out appropriate checks in line with CPRs and Internal Audit provides assurance that these checks have been made.	High	CPRules to be issued to all employees involved in the procurement process along with the Procurement Toolkit.	Commencing from June 2012	Chief Officers (with Internal Audit)
R17. Ensure members and the Environment Agency are notified of the progress of discussions with the administrators of the original Contractor over the contract value due (the Council has currently included eligible expenditure of £137,613 in the claim).	High	Environment Agency to be kept informed.	On-going	Mark Smith Deputy Director Of Technical Services
(2) Sure start, early years and childcare grant and aiming high for disabled children grant	1 high 5 medium			

Recommendation	Priority	Agreed action	Date for implementation	Responsible officer
R18. Ensure that eligible expenditure claimed does not exceed ring-fenced funding allocations.	Medium	In respect of these areas the procedures were followed but could have been better evidenced.	On-going	Andrew Roberts Children & Young People
R19. Provide information or introduce controls to ensure no duplicate claims for funding can be made and there is no possibility of double funding and duplication with other claims.	High	The procedures exist but the different funding sources make this complex. No duplicate claim has been made. Information provided will be more specific for future claims.	On-going	Andrew Roberts Children & Young People
R20. Ensure eligible expenditure for specific claims and returns can be identified for accounting and audit sampling purposes separately from that funded from other sources which may be subject to different conditions.	Medium	The procedures exist but the different funding sources make this complex. Information provided will be more specific for future claims.	On-going	Andrew Roberts Children & Young People
R21. Ensure there are adequate asset records to allow monitoring of all assets funded under the scheme as required by Annex D, paragraph 14 of Memorandum of Grant and paragraph 46 of the SSEYCG capital guidance.	Medium	Assets are being identified to ensure compliance with the guidance.	September 2012	Andrew Roberts Children & Young People
R22. Ensure prompt responses to Internal Audit reports and recommendations.	Medium	Across the Council Chief Officers to ensure action taken (Internal Audit report to Audit & Risk Management Committee on outstanding actions).	July 2012	Chief Officers
R23. Consider whether the procurement of the architect's fees was in line with	Medium	Review undertaken by Internal Audit identified the School had followed	May 2012	David Garry Chief Internal

Recommendation	Priority	Agreed action	Date for implementation	Responsible officer
delegated arrangements at Great Meols School.		their delegated arrangements.		Auditor

Summary of certification fees

This section updates the fees arising from my 2010/11 certification work and highlights the reasons for any significant changes in the level of fees from 2009/10.

Table 3: Summary of certification fees

Claim or return	2010/11 fee @ April 2012 (£)	2009/10 fee (£)	Reasons for changes in fee greater than +/- 10 per cent
Housing and council tax benefit scheme	57,632.25	68,387.75	Improved 40+ testing and officer response to queries
National non-domestic rates return	6,405.75	2,665.00	Part A completed 2009/10; Part A and B completed 2010/11
Teachers' pensions return	3,060.00	2937.50	N/A
Sure start, early years and childcare grant and aiming high for disabled children grant	9,681.50	8,072.50	More complex issues found during our work
Disabled facilities	1,716.00	0	No grant 2009/10
Housing subsidies and grants	0	1662.50	No grant 2010/11
Flood and coastal erosion management	16,154.00	0	No grant 2009/10
Single programme – 4 projects	10,720.15	13,287.50	More complex issues found during our work and increase in claims requiring amendment

Claim or return	2010/11 fee @ April 2012 (£)	2009/10 fee (£)	Reasons for changes in fee greater than +/- 10 per cent
Grant planning, liaison and reporting	11,270.00	24,821.50	
Estimate – still to be charged	3,360.35		
Total	120,000.00	121,834.25	

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The Statement of responsibilities of grant-paying bodies, authorities, the Audit Commission and appointed auditors in relation to claims and returns issued by the Audit Commission explains the respective responsibilities of auditors and of the audited body.

