

**AUDIT REPORTS WITH MODERATE OR LOW LEVEL OF ASSURANCE
ISSUED QUARTER 1 2013/14**

Catering Concessions – 22 May 2013

1 SCOPE AND OBJECTIVES OF THE AUDIT

- 1.1 The audit was undertaken in order to establish and test the management and financial controls in place over catering concessions.
- 1.2 The audit programme identified the controls that were expected to be in place and the possible risks arising from the absence of those controls.
- 1.3 The control objectives examined were as follows:
- a) All catering provided by outside contractors is governed by a formal, signed agreement.
 - b) Terms and conditions are clearly defined, adhered to and monitored.
 - c) Rents or other charges are appropriate, justifiable and comparable with other similar catering outlets.
 - d) Rents charged are accurate, complete, invoiced promptly, properly accounted for and pursued if necessary.
 - e) Rents are reviewed in accordance with the terms of the agreement and then correctly charged.
 - f) Budgetary control procedures are in place.
 - g) All risks associated with the function have been identified, recorded and assigned.

2 BACKGROUND

- 2.1 Catering is provided at a number of sites including:
- Jephson Gardens
 - The Royal Pump Rooms
 - Abbey Fields Swimming Pool
 - St Nicholas Park and Myton Fields
 - The Newbold Comyn Arms
 - Victoria Park Bowls Pavilion
- Catering is also provided by way of vending machines at a number of locations.
- 2.2 The estimated income from catering concessions in 2012/13 was £89,700.

- 2.3 A licensed bar is provided at the Royal Spa Centre and this is considered as part of the Spa Centre audit.
- 2.4 Catering is a very volatile activity that is affected by the national economy, consumer preferences and the uncertainty of the weather. It is quite common for leases to change hands during their term, as operators often struggle to make a viable living.
- 2.5 Income from catering at some sites is based on a straightforward annual rent, but at the District's most prestigious sites, namely the Royal Pump Rooms and the Jephson Gardens, the core income is a percentage of sales. This approach creates uncertainty and requires a much greater staff input to administer and monitor.

3 FINDINGS

- 3.1 In overall terms, the audit drew the conclusion that there are sound controls in place over the management of catering concessions. However, there is an issue concerning the agreement with Crown Holdings Limited, known informally and referred to from here on as Kudos, in that they owe the council a significant sum of money.
- 3.2 In terms of the control objectives listed at 2.3, the findings are as follows:
- 3.3 **All catering concessions are covered by a formal, signed agreement**
- 3.3.1 In most cases there is a formal agreement in place. These range from the fairly simple leases for most sites, to the very detailed agreement with Kudos.
- 3.3.2 The catering provided by way of vending machines is fairly informal, not a great source of income to the council and consequently managed without any great formality. The arrangements are in accordance with The Code of Procurement Practice.
- 3.4 **Terms and conditions are clearly defined**
- 3.4.1 All of the agreements are detailed when it comes to terms and conditions covering such areas as opening hours, staffing, access rights, cleanliness, food safety etc.
- 3.4.2 However, given the scale and nature of the activity, there is no formal or regular monitoring of the sites or the service provided. Staff from Cultural Services will visit the sites on an ad hoc basis as required and as a matter of course if there is a change in management.
- 3.4.3 Any areas of customer concern will be raised via the usual channels and customer feedback forms are provided at all of the Kudos sites.

3.4.4 It was always intended to monitor the agreement with Kudos on a formal basis by way of quarterly meetings with a standard agenda to include such items as past quarter performance, investment, health and safety, food safety etc. This has not been possible up to now as Kudos haven't had a stable management structure in place for longer than three months at a time.

3.5 **Rents or other charges are appropriate.**

3.5.1 Most of the council's commercial rent deals are based on comparables and market conditions. In broad terms that still applies to catering concessions but the nature of the activity and the differences in the businesses and their locations means that a different approach is required.

3.5.2 Rents charged will be based on the location of the site, the likely level of trade and the history of the site. If an agreement cannot be reached between the council and a current or prospective lessee, the matter can be referred to an independent valuer.

3.5.3 In respect of the sites operated by Kudos, there is also the question of service charges and these are billed in accordance with the agreement.

3.5.4 The calculation of the service charges was not examined in detail but it was clear from the records produced that the information was comprehensive, extremely detailed and well maintained. It was reasonable to assume, and later confirmed, that the collation and maintenance of the information is an onerous task.

3.6 **Rents and charges are accurate and invoiced promptly**

3.6.1 The invoicing and payment of rents for all concessions other than the Kudos operated sites is trouble free. Most invoices are raised through the periodic income facility and are paid promptly.

3.6.2 Kudos took over the operation of the Jephson Gardens Restaurant and Aviary, the Royal Pump Room and Newbold Comyn Leisure Centre on 1 January 2012. Under the terms of the agreement they were to pay the council a proportion of the service charges relating to each building and a percentage of sales and income from room hire.

3.6.3 This is quite a complicated process and it is well managed by the Business Support Officer in Cultural Services, but it has taken a while to establish and it is reliant on information supplied to him by other service areas.

3.6.4 Added to this, the necessary information required from Kudos on sales etc. has not been provided, meaning that invoices for service charges and commission for most of 2012 were not raised until the beginning of March 2013 (8 invoices raised between 1st and 12th March 2013).

3.6.5 These invoices total almost £99,000 (including VAT) and as at 15 May 2013 they were still outstanding. Naturally the normal recovery procedures have been actioned, together with personal contact with the company. A further meeting to consider the situation is imminent.

3.6.6 Raising invoices regularly every quarter is what should be happening in the interests of both the council and Kudos.

Risk

Allowing debts to accumulate increases the risk that payment will not be received.

Raising invoices so late after the due date is damaging for the council's reputation.

Recommendations

Concerted and appropriate efforts should be made to resolve the situation concerning the outstanding debts due to the council from Kudos.

In future, invoices for service charges and commission should be raised regularly every quarter.

3.7 **Rents are reviewed in accordance with agreements and then applied**

3.7.1 Where a rent review clause was in place it had been actioned and a new rent applied.

3.7.2 In the case of the Newbold Comyn Arms, a rent review was due on 1 April 2010 but the rent being charged had not altered and there was nothing on file to evidence that a review had taken place.

3.7.3 The explanation offered was that the matter had been considered but that the economic conditions at the time meant that there was no prospect of increasing the rent added to which the Council had good tenants in place paying the rent on time every month. A perfectly plausible explanation but not recorded or evidenced in any way.

Risk

The absence of any evidence could suggest that the matter had been overlooked and not actioned.

Recommendation

Any decisions taken affecting the terms and conditions of an agreement should be recorded for future reference and not merely committed to memory.

3.8 **Budgetary control procedures are in place**

3.8.1 Corporate budgetary control procedures are in place to monitor performance. Income has, until recently, not been an issue with rents received being in line with estimates.

3.8.2 Income under the Kudos agreement was always going to be based on their forecasts of sales and therefore something of a risk that could have gone either way.

3.8.3 For 2012/13 the total income from catering concessions was estimated as £89,700 and the actual figure (based on invoices raised) is £71,030.

3.9 **Risk Management**

3.9.1 Catering is an extremely volatile and uncertain business activity evidenced by the number of times that the catering rights at all of the relevant council sites have changed hands.

3.9.2 Closure of any of the catering outlets would be disruptive, time consuming to reinstate and result in a loss of income. The risk has been identified and is recorded in the Cultural Services Risk Register.

4 **CONCLUSION**

4.1 The audit concluded that in overall terms there are sound systems and procedures in place to manage the council's catering concessions. However, the raising of invoices for Kudos and the current level of debt is a concern.

4.2 The audit can therefore give a **MODERATE** level of assurance that the systems and procedures in place are appropriate and working effectively.

Local Land Charges – 19 June 2013

1 SCOPE AND OBJECTIVES OF AUDIT

1.1. The purpose of the audit examination was to report a level of assurance on the adequacy of systems in place to ensure:

- § compliance with statutory requirements;
- § completeness and accuracy of records;
- § economic, efficient and effective service delivery.

1.2 An evidential risk-based evaluation was undertaken focusing on the following areas:

- § roles and responsibilities (including third party providers);
- § procedures and training;
- § monitoring and review (operational and financial);
- § performance and improvement;
- § information assurance.

1.3 The findings are based on consultations and discussions with key staff contacts and examination of relevant documentation and records. The principal contacts for the audit were:

Teresa Muddeman, Administration Support Manager
Cheryl Morris, Land Charges Officer
Dale Duffy, Land Charges Assistant.

1.4 For the area of information assurance, reliance is placed on the audits of the Acolaid Business Application and Document Management Systems, both undertaken in 2012.

2 FINDINGS

2.1 General Comments

2.1.1 Since the previous audit reported in September 2010, considerable organisational and system development have impacted on the Local Land Charges service. The function has now been absorbed within the Development Management division of Development Services and a 'digitisation' project that had been progress at the time of the last audit reached fruition in 2012.

2.1.2 The Local Land Charges register has ceased to centre around the blue typed index cards formerly maintained, being now absorbed within the databases supporting Planning, Building Control, Environmental Services and Private Sector Housing functions. The search process is automated to the extent of collating applicable data from the Council's own systems, while still relying on manual intervention by Warwickshire County Council on highways matters. Scanned images of the old blue cards are still held for checking purposes.

2.1.3 The process takes due advantage of the efficiencies offered through the national electronic (e-)search framework sponsored by the National Land Information Service (NLIS). There is a clear dependency, however, on the client take-up of e-searches which analysis of recent data shows to little more than 50 per cent of all official searches processed by the Council, therefore showing considerable scope for improvement.

- 2.1.4 From discussions during the audit, attributable factors include client issues with the national system as well as a 'hard core' of solicitors' firms unwilling to adapt their practices. It was also stated that the Council's fee structure itself acts as a disincentive because it does not differentiate between electronic and non-electronic searches (NLIS places its own fee loading on the former). This is one of several issues concerning the Council's setting of search fees which have arisen from the examination and are discussed further in the next section.
- 2.1.5 An issue that emerged at the time of the previous audit (and that has recently come to a head financially) was the coming into force of the Local Land Charges (Amendment) Rules 2010. This disallows the charging of fees for personal searches, with possible retrospective effect going back to 2005 (when the Environmental Information Regulations 2004 came into force). A provision of £200,000 has been made in the 2012/3 accounts for potential reclaim of fees paid during that period.
- 2.1.6 Combined with the effect of the Local Authorities (England) (Charges for Property Searches) Regulations 2008, the above Rules also raise fundamental questions over the Council's fee charging policy.
- 2.2 Roles and Responsibilities
- 2.2.1 Maintenance of a Local Land Charges register is a statutory duty of the Council, although the setting of fees is at the discretion of individual authorities subject to strict provisions on linkage with cost recovery contained in the aforementioned Regulations. In the absence of any formal delegation provisions in the Constitution specific to Local Land Charges, power of decision on fees remains with full Council.
- 2.2.2 The fees are set as part of the corporate fees and charges approval process with submissions via the Executive and the approved fees are set out in the Council's budget information. However, serious anomalies were found between fee regime as manifest in the approval submissions and budget book on the one hand, and the actual fee regime being applied on the other (the Head of Finance has already been made aware of this). These anomalies are seen as potentially opening the prospect of challenge to the legality of fees levied for a substantial proportion of official searches (this is in addition to the issue of fees charged for personal searches between 2005 and 2010).
- 2.2.3 In tandem with this, fundamental issues on the fee levels themselves emerge from the financial results over the last few years which suggest an effective charging policy that is contrary to key provisions of the Local Authorities (England) (Charges for Property Searches) Regulations 2008.

2.2.4 These Regulations and related government guidelines ¹ are based on the overriding principle that a charge is levied only to recover the cost of 'complying with a request for access to property records'. Another key message that comes out is the charges cannot be levied to offset the cost of dealing with personal searches as they now represent access to free statutory information.

2.2.5 In fact, the Local Land Charges cost centre has shown an operating surplus of income over expenditure over the last four years, although this followed a volatile phase between 2006 and 2008 with more substantial surpluses initially followed by significant deficits. This is attributed to a combination of various factors, some of the key ones including:

- market factors;
- transfer of Legal Services;
- cessation of fee charging for personal searches;
- a major one-off payment of agreed back-fees to Warwickshire County Council in 2008;
- staffing changes;
- e-search development costs.

2.2.6 However, the more settled financial outturn picture over the last four years clearly demonstrates a persistent departure from the aforementioned Regulations.

Risks

- (1) Fees charged may be challenged as being levied without proper authority and at levels unjustified under national regulations and guidelines;**
- (2) Efficiency gains through e-searches are constrained by fee levels disadvantageous to clients.**

Recommendations

- (1) A fundamental review of the Local Land Charges fee structure should be undertaken, with appropriate legal advice, to bring it into line with national regulations and government guidelines.**
- (2) Checks should be undertaken to ensure that all future submissions to Executive for approval of fees and charges completely and correctly represent the Local Land Charges fee structure (where this included).**

¹ Local Government Property Search Services – Costing and Charging Guidance (Department for Communities and Local Government, January 2009)

- 2.2.6 Turning to the administration of Local Land Charges, the organisational change occurring at the time of the last audit has evidently run its course with two dedicated posts now established as part of the Administration Support Team in Development Management. At the time of the audit, this has still to be 'formalised' to some degree, illustrated by existing versions of job descriptions that reflect outdated structures and methods. It is anticipated that this will be addressed in due course.
- 2.2.7 Another area where the changed structure and processes need to be 'formalised' is the managed risk profile. As the Operational Risk Register for Development Services is itself due for re-appraisal this year, it is anticipated that the entries for Local Land Charges will be duly examined.
- 2.2.8 Noticeably absent from the Risk Register is any reference to dependency on third parties. On further examination, the two e-search channel providers can be discounted in its context as any failure in their effective role would impact on the client and not the Council. This leaves the Acolaid system supplier (IDOX) and Warwickshire County Council.
- 2.2.9 It has been confirmed from previous audit papers and recent financial transactions that the Acolaid and IDOX DIP applications are maintained under support contracts.
- 2.2.10 The official search process has long depended on Warwickshire County Council supplying information in respect of highways matters. This is now facilitated by terminal server access to the Acolaid system so that the information can be input directly by them (quarterly charges to Warwick District are levied by the County at established unit rates).
- 2.2.11 The arrangement with the County as it now operates has not been codified into a formal agreement and there is been a history of dispute over their contribution entitlement over the years which was partially resolved by arbitration in 2009. Since then, there appears to have been a tacit acceptance of a rate equivalent to around 20 per cent of the District charge for standard official searches (exclusive of the 'data refining' element) and small inflation increases since.
- 2.2.12 On the other hand their 'buy-in' to the data input arrangements and record of prompt response on official searches demonstrates a clear commitment on the County's part to making the system work.
- 2.2.13 With that in mind, it is acknowledged that there may not be any significant risk mitigation value to come from pursuing a formal agreement, therefore this is left to management discretion. It is anticipated, however, that the County may have to be brought in on the recommended review of the charging structure.

2.3 Procedures and Training

2.3.1 Documented procedures are in place for the search processes as they now operate and guidance for client published on the Council's website appears generally comprehensive and up to date with appropriate external links. The procedures come across as duly robust and well adapted to the system operation with embedded monitors to ensure prompt search processing (some of these were still being refined at the time of the audit such as Crystal reports on outstanding searches to replace reliance on Excel logging).

2.3.2 Sample tests across a range of search types confirmed adherence to the procedures (with minor exceptions) and that fees are being correctly charged according to fee regime as published on the website and properly accounted for. The procedural exceptions relate to receipt transactions for non-electronic search requests where the entry of the fee receipt reference into Acolaid and scanning of the Paris receipts were not universally applied. This is attributed to a difference of approach between the relevant officers.

2.3.3 While these are not particularly important controls, they do accord with good financial practice by maintaining precise trails to the transaction sources and accounts.

Risk

Fee receipt transactions may not be precisely traceable to source in case of query.

Recommendation

Fee receipt references should be entered into Acolaid for all non-electronic searches.

2.3.4 The area of training has not been looked at in depth. The two core staff posts are held by officers with several years experience who have been closely involved with the system migration.

2.3.5 The Administration Support Manager advised that another member of the Team is being trained to cover the role, thereby adding some extra resilience in case future staff change or protracted absence.

2.4 Monitoring and Review

2.4.1 Operational monitoring mechanisms are primarily focused on clearing outstanding searches in the minimum possible time span and, at the time of the audit, relied on logging in Excel of searches received then updating each search with date registered and date despatched. This has already been recognised as a far from ideal solution and enhancements being sought to the suite of Crystal reports include one on to keep track on outstanding searches.

- 2.4.2 The suite of reports produces various statistics including search turnaround periods. The results of sample tests on searches undertaken during the audit confirm the reliability of the report outputs.
- 2.4.3 From 2010, it has been a statutory requirement to publish an annual statement of total cost, income and number of requests, and for the information to be approved by the Section 151 Officer. The current website information resource includes a table with this information, but in respect of the 2009/10 financial year (i.e. not updated for two years).
- 2.4.4 The resource also makes a declaration of intent to include the information in the Statement of Accounts, but no evidence can be found from any of the Statements from 2009/10 onwards that this has been adopted.

Risk

The Council may be held to account for breach of the statutory requirement to publish local land charges information.

Recommendations

- (1) Information required under Section 9 of the Local Authorities (England) (Charges for Property Searches) Regulations 2008 in respect of the financial year ended 31st March 2012 should be published without delay.**
 - (2) Arrangements for publication of information required under Section 9 of the Local Authorities (England) (Charges for Property Searches) Regulations 2008 should be reviewed to ensure that results in respect of every financial year from 2012/3 onwards are promptly published.**
- 2.4.5 Review of financial histories did not bring out any issues in respect of budget monitoring.
- 2.5 Performance and Improvement
- 2.5.1 In the context of the overall corporate performance framework, Local Land Charges comes across as a small backwater with scarcely a mention in service plans.
- 2.5.2 For this reason, there is no requirement for formal performance reporting under the framework and no direct pressure in evidence to find further efficiency savings. This could well change, however, in the wake of the recommended review of the fee structure.

2.5.3 Performance measurement on searches is still based on a traditional turnaround target of 10 days on official searches. From discussions, there is a reluctance to reduce this on account of possible backlogs arising from staff absence.

2.5.4 Casting a shadow over all this is a pilot project led by the Land Registry to enable consolidated land and title searches, which would require standardisation nationally of ways in which information is held, search systems, working practices and turnaround targets.

2.6 Information Assurance

2.6.1 With the process now effectively digitised, assurance on the confidentiality, integrity and availability of the information assets lies in the application controls relating to IDOX Acolaid and document management systems. Both of these have been subject to separate review sufficiently recently to be relied upon for this purpose.

2.6.2 The review of the Acolaid application reported in January 2012 resulted in substantial assurance and the review of Document Management Systems found no issues specific to IDOX.

3 CONCLUSIONS

3.1 The findings give a mixed picture. On the one hand, the implementation of a fully-fledged electronically deliverable service for Local Land Charges (something that has evidently defied previous efforts over the years), has to be considered a major achievement. The challenge faced in relation to the level of change and improvement, especially over the last year is acknowledged.

3.2 The review has found sound, efficient and well adapted structures and processes in place for effective service delivery within the constraints of prevailing client practices.

3.3 All of this, however, is overshadowed to a large degree by what is seen as continued failure to:

- § adapt financial policy to address changed statutory regulations on charging for searches and provide incentives for the take-up of e-searches;
- § ensure that all fees charged are properly approved under the Constitution;
- § observe statutory requirements on publication of Local Land Charges information.

3.4 The above are seen as rendering the Council subject to possible challenge on fees charged with potential further financial implications on top of those being addressed in respect of potential reclaim of personal search fees.

3.5 In the light of the above, we are only able to give **LIMITED** assurance on the effectiveness of controls in place to mitigate against applicable risks.