

Aberdeen City Council

Compliance with laws and regulations

Internal Audit Report
2014/2015 for Aberdeen
City Council

November 2014

Internal Audit KPIs	Target Dates	Actual Dates	Red/Amber/Green	Commentary where applicable
Terms or reference agreed 4 weeks prior to fieldwork	23.06.2014	23.06.2014	Green	
Planned fieldwork start date	21.07.2014	21.07.2014	Green	
Fieldwork completion date	01.08.2014	01.08.2014	Green	
Draft report issued for Management comment	18.08.2014	18.08.2014	Green	
Management Comments received	15.09.2014	16.10.2014 (initial) 07.11.2014 (follow up with HR)	Red	Management comments were provided late due to internal pressures within the Service. Management informed internal audit of these delays and arranged a meeting at the earliest opportunity. Follow up was required with HR as recommendations impacted this service
Report finalised	14.11.2014	07.11.2014	Green	
Submitted to Audit and Risk Committee	20.11.2014	20.11.2014	Green	



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Internal audit work will be performed in accordance with Public Sector Internal Audit Standards. As a result, our work and deliverables are not designed or intended to comply with the International Auditing and Assurance Standards Board (IAASB), International Framework for Assurance Engagements (IFAE) and International Standard on Assurance Engagements (ISAE) 3000.

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Internal Audit report for Aberdeen City Council

PwC

Contents

1. Executive Summary

Report classification	Total number of findings					
	Critical	High	Medium	Low	Advisory	
High Risk	Control design	-	-	3	-	-
	Operating effectiveness	-	1	-	-	-
	Total	-	1	3	-	-
Responsible Director: Director of Corporate Governance Project Sponsor: Head of Legal and Democratic Services						

Summary of findings

- 1.01 Aberdeen City Council operates in a complex legal environment and is required to comply with a wide range of laws and regulations. To ensure compliance the Council has implemented processes and controls aimed at mitigating the risks of the organisation potentially breaching these laws and regulations. The scope of our review was to assess the design and operating effectiveness of those controls. From this review we have identified areas of good practice; however, we have also identified one high risk and three medium risk findings.

Areas of good practice

- 1.02 In our experience good practice is about embedding legal compliance into day-to-day operations and having legal advisors who are highly engaged with management to support decision making. Given the wide range of laws and regulations the Council must comply with it is difficult to monitor compliance without having this level of engagement. Achieving this requires a culture in which staff see legal compliance as more than just a 'tick-box exercise' or as an obstacle to be overcome. Through interviews with a sample of Heads of Service and with Legal Services it was clear that there was a desire to achieve a greater level of engagement and to change the culture of how Legal Services interacts with the services. However, it is recognised that this kind of behavioural change across an organisation takes time and requires a strong 'tone at the top' from the Corporate Management Team if it is to be successfully implemented.
- 1.03 Other areas of good practice identified include the process for reporting breaches of Data Protection and the new process being implemented for tracking consultations received by the Council for monitoring new laws and regulations.

High risk finding

- 1.04 Ten reports sent by officers to the Council, and its Committees, had incomplete report checklists, indicating they had not been submitted to the Head of Legal and Democratic Services for review. This review is a requirement of the Council's Standing Order 45, and is a key control for the Council in mitigating against the risk of breaches of laws and regulations. The report checklists are being monitored by Democratic Services; however, there is no process in place for following up on failures by report authors to submit completed checklists with evidence of submission to the Monitoring Officer. (Finding 3.01)

Medium risk findings

- 1.05 The Council has no policies, or guidance, which requires the involvement of Legal Services in Council services' senior management team meetings. There are also no policies, or guidance, requiring that Legal Services are consulted and engaged in Council projects. Legal Services has recently undergone a service review that saw a restructure of the service. This new structure was approved by the Council in June 2013 and implemented in January 2014. The primary purpose of this restructure was to improve collaboration between Legal Services and other Council services. Through interviews with a sample of Heads of Service and Legal Managers in Legal Services we identified that there are still challenges in achieving the level of collaboration desired. (Finding 3.02)
- 1.06 The Council has various training materials and courses on laws and regulations available to staff. Although elements of training are in place, there has been no central exercise to gain assurance that all applicable and significant laws and regulations are covered within this. It is also unclear if there is appropriate monitoring of completion rates. (Finding 3.03)
- 1.07 As per the Council's "Financial Regulations Management and Control - Code of Practice (September 2014)", the Head of Legal and Democratic Services (the Monitoring Officer) is responsible for maintaining a register of matters relating to the Fraud, Bribery and Corruption and Whistleblowing. A report summarising these matters is required to be presented to the Audit, Scrutiny and Risk Committee no less than annually. As per the Audit Scotland Interim Report (2013/14), the Audit, Scrutiny and Risk Committee has not yet received this report. At present procedures are not yet in place for ensuring instances of fraud are reported to the Monitoring Officer, (Finding 3.04)

Management comments

Management welcome the findings which should go some way to assist Legal Services ensuring legal compliance across the Council.

2. Background and scope

Background

- 2.01 Aberdeen City Council is required to comply with a wide range of laws and regulations. To ensure compliance it is essential that clear accountability is assigned, robust monitoring controls are in place and projects are assessed for implications. Our review assessed the design and operating effectiveness of the key controls to monitor compliance with laws and regulations. Detailed below is our understanding of those processes and controls in place obtained during our work with Legal Services and a sample of four Heads of Service.

Accountability and ownership

- 2.02 Responsibility for compliance with key laws and regulations is viewed as being part of the day-to-day activities of Council employees. There is an expectation that staff, as qualified professionals, are knowledgeable of their legal obligations relevant to their role. The various processes and controls that Services have in place for managing their day-to-day activities are there to monitor that staff are complying with any laws and regulations.
- 2.03 At the time of the review a protocol was in the process of being implemented to help identify new laws and regulations. As a Local Authority the Council is involved in numerous consultations on laws and regulations being developed by the Scottish Government and other Government agencies. In order to track all consultation requests, any consultations received by the Council will be recorded on a central database maintained by the Chief Executive's Service. The purpose of this database will be to monitor the progress of all responses to consultations and to ensure that the responses sent reflect the views of the Council and not solely of officers.
- 2.04 Registers of breaches of laws and regulations are maintained for specific areas as required by statute, for example for data protection or health and safety breaches. PwC and Legal Services do not consider it practical or desirable to maintain a register of all breaches out with those required by statute. The view is that Legal Services should be engaged with Services to prevent breaches occurring or to identify breaches early before they escalate.
- 2.05 Third-party legal firms are engaged to provide legal advice as required. When seeking to engage a third-party legal firm, Legal Services will follow the Council's procurement processes to obtain quotes and tender if applicable. Where there are longstanding engagements with third-party legal firms these are reviewed on a quarterly basis to monitor costs incurred and expected costs to complete. Quality and delivery of the service provided is also considered as part of the review. At present there is a joint tendering process ongoing with Aberdeenshire Council to develop a framework of legal service suppliers.

Engagement with Council Activities

- 2.06 The Council's Standing Order 45, requires that the Head of Legal and Democratic Services, as a monitoring officer, receives in draft all reports submitted by Chief Officers to the Council, its Committees and sub-Committees. The Head of Legal and Democratic Services is expected to review all reports to identify any legal implications the reports may have for the organisation. Since January 2014 all reports must be accompanied by a report checklist where the report author is expected to record details of when the report was submitted to the monitoring officer. Democratic Services have been recording data on these checklists and the numbers submitted with appropriate monitoring officer input.

Scope and limitations of scope

- 2.07 The detailed scope of this review is set out in Appendix 2 in the Terms of Reference. We have undertaken a review of the design and operating effectiveness of the Council's controls for monitoring compliance with laws and regulations in the areas contained within the Terms of Reference. Our work was undertaken using a sample based approach.

3. Detailed findings and recommendations

3.01 Compliance with Standing Orders on reporting to Council Committees – Control operating deficiency

Finding

The Council's Standing Order 45, 'Reports by Chief Officers', requires that all reports be submitted in draft to the Head of Legal and Democratic Services for review and consultation prior to consideration by the Council, Committees and Sub Committees. Since January 2014, Democratic Services have required that report authors prepare a checklist to record details of when draft reports were sent to the Monitoring Officer. The purpose of these checklists is to enable Democratic Services to monitor compliance with Standing Order 45.

In our review we identified 233 reports that were sent to the Council and its Committees in the period from 1 January 2014 to 31 July 2014. From this population we selected a sample of 30 reports and obtained the report checklist. In ten cases the checklists we inspected did not include details of when the report was submitted to the Head of Legal and Democratic Services. Our sample testing of checklists would indicate that the reports we inspected were not being submitted to the Monitoring Officer in accordance with the requirements of the Council's Standing Orders.

Our findings above correlate with the data collected by Democratic Services. Since March 2014 Democratic Services have been proactively monitoring receipt of checklists and tracking those where consultation with Monitoring Officer was recorded. In the three month period from April to July 92 reports were prepared for the Council and its Committees, of these Democratic Services had identified 19 reports with checklists that did not record any consultation with the Head of Legal and Democratic Services.

When we inquired with key staff in Legal and Democratic Services there was sensitivity around addressing non-compliance with Standing Order 45. Democratic Services have been collating checklist data since March 2014 and indicated that this had not yet been shared with Chief Officers. At present there are no consequences for Chief Officers and report authors who do not comply.

Risks

Monitoring of reports by Chief Officers to the Council, Committees and Sub Committees by the Head of Legal and Democratic Services is a key control in ensuring the Council complies with laws and regulations. The purpose of Standing Order 45 is to mitigate the risk to the Council of reports being approved that are in breach of laws and regulations.

Action plan		
Finding rating	Agreed action	Responsible person / title
High	<ul style="list-style-type: none"> • There will be a formal communication to Chief Officers and report authors about their responsibility for compliance with the Standing Orders when submitting reports to the Council, Committees and Sub Committees. • On approval from the Chief Executive, reports will be removed from the Committee agenda where the Monitoring Officer has not been given the report for review. • Non-compliance with the Standing Orders will be reported to the Corporate Management Team by the Head of Legal and Democratic Services on a quarterly basis. 	Angela Scott, Chief Executive Jane MacEachran, Head of Legal and Democratic Services
		Target date: 30 November 2014

3.02 Legal Services engagement with Council services – Control design deficiency

Finding

Legal and Democratic Services conducted a stakeholder review that was commissioned during the latter part of 2012. The outcome of this was a service review of Legal Services, and the subsequent reorganisation of the service that was presented to a meeting of the Council on 26 June 2013. At this meeting the Head of Legal and Democratic Services was requested to report back to Council in 12 months to advise of the outcomes of the implementation of the new structure. An update was presented to the Council in June 2014 and a further update has been requested for December 2014.

Feedback from the stakeholder review highlighted two key issues:

- The need for closer relationships between Council services and Legal Services, with Legal Services being “embedded” in teams and projects; and
- The perception of Legal Services as risk averse and therefore becoming a block on Council services achieving their objectives.

In our review we interviewed a sample of Heads of Services from across the Council to gauge their view on how they felt the service engaged with Legal Services. We also obtained evidence from the Legal Managers within Legal Services to understand how they were engaging with Council services since the restructure. From these discussions and review of information it is apparent that a change in culture is required across the organisation if the desired level of engagement between Legal Services and Council services is to be achieved.

At present there is no requirement for Legal Services to be consulted or involved in Projects. There is also no requirement for Legal Services to be invited to participate in Senior Management meetings. Our experience of organisations with good practice in monitoring compliance with laws and regulations are those where the legal department is engaged with senior management and operational leads, and where this engagement is seen as part of ‘normal’ day-to-day operations. Council services should be engaging with Legal Services to help them to identify legal risks and to mitigate those risks before the risk exposes the Council to a legal or regulatory breach. The challenge for Legal Services is to provide a solution-focused and constructive approach when engaging with services.

Risks

Where Legal Services is not engaged with Council services, and working with services to identify legal risks, there is a risk that the Council is then exposed to non-compliance with laws and regulations. In relation to projects, this could cause delays and result in financial and reputational damage for the Council.

Action plan		
Finding rating	Agreed action	Responsible person / title
Medium	<ul style="list-style-type: none"> Guidance will be issued to recommend Legal Services attend monthly Senior Management Team meetings across the Council. Through discussions with the PMO Office we are aware that a new governance process is being put in place for all new projects. It is recommended that the Head of Legal and Democratic Services engage with the PMO Office to ensure the new process mitigates the risk of Legal Services not being appropriately consulted at the project appraisal phase. 	Ewan Sutherland , Interim Director of Corporate Governance Jane MacEachran, Head of Legal and Democratic Services
		Target date: 30 November 2014

3.03 Training for staff – Control design deficiency

Finding

The Council has various training materials and courses on laws and regulations available to staff. The most significant example of this is the online learning material for Data Protection. In addition to this, mandatory training in relation to data protection, child protection and ICT security is available for new joiners, and a number of services have identified additional specific mandatory training which is identified on job profiles. Although elements of training are in place, there has been no central exercise to gain assurance that all applicable and significant laws and regulations are covered within this. It is also unclear if there is appropriate monitoring of completion rates.

A draft paper is being prepared to address specific issues in relation to Data Protection training which was identified during the Information Commissioner's Office (ICO) voluntary assessment of the Council during April 2013. While this will improve the monitoring process for Data Protection training there is also a need to reassess training more widely, across the Council, on other areas of legal compliance.

Risks

Staff are not aware of the laws and regulations that impact them in their roles leading to breaches

Action plan		
Finding rating	Agreed action	Responsible person / title
Medium	<ul style="list-style-type: none"> • Legal Services will, in conjunction with Human Resources (HR) and the Services, perform a risk assessment to identify those laws and regulations for which breaches would have a significant impact on the Council. • HR, in conjunction with Legal Services and the Services, will compile a list of all training which addresses the laws and regulations identified in the risk assessment. Where gaps in available training materials exist, additional training will be developed. • HR, in conjunction with Legal Services and the Services, will assess the level of training required for each role. This exercise is already underway by HR but will now include any additional training identified in the risk assessment. • The output of the risk assessment and newly created training material will be used by the Services to update job profiles, ensuring staff have an understanding of the mandatory training required. • Completion of mandatory training for staff will be monitored and an appropriate process implemented for escalating issues with non-completion. Consideration should be given to including an annual sign off on the Your HR system which would be approved by line management during the performances management process. 	<p>Jane MacEachran, Head of Legal Service</p> <p>Jeff Capstick, HR Manager</p> <p>Members of Corporate Management Team</p> <hr/> <p>Target date:</p> <p>30 March 2015</p>

3.04 Fraud reporting procedures– Control design deficiency

Finding		
<p>As per the Council’s “Financial Regulations Management and Control - Code of Practice (September 2014), the Head of Legal and Democratic Services (the Monitoring Officer) is responsible for maintaining a register of matters relating to the Fraud, Bribery and Corruption and Whistleblowing. A report summarising these matters is required to be presented to the Audit, Scrutiny and Risk Committee no less than annually. As per the Audit Scotland Interim Report (2013/14), the Audit, Scrutiny and Risk Committee has not yet received this report.</p> <p>Through discussions with the Head of Legal and Democratic Services it has been noted that procedures are not yet in place to ensure matters are reported to the Monitoring Officer. As a result, the register is not up to date.</p> <p>The Council’s “Policy and strategic Response to Fraud, Bribery and Corruption” is currently being revised and is due to be approved by the Audit, Scrutiny and Risk Committee on 20 November. Internal Audit has reviewed the draft policy and has suggested the following points are included prior to finalisation:</p> <ul style="list-style-type: none"> • Reference to the Head of Legal and Democratic Services (the Monitoring Officer) responsibility to maintain a register of matters relating to the Fraud, Bribery and Corruption and Whistleblowing; and • The procedures for reporting matters to the Head of Finance and the Head of Legal and Democratic Services (the Monitoring Officer). At present the draft policy only states that matters should be reported to line management, or above if the matter relates to line management. 		
Risks		
There is a risk that instances of fraud are not reported to the Monitoring Officer as specified in the Financial Regulations.		
Action plan		
Finding rating	Agreed action	Responsible person / title
Medium	1. The Council’s draft “Policy and strategic Response to Fraud, Bribery and Corruption” should be updated to include the above points prior to finalisation.	Jane MacEachran, Head of Legal Service
	2. The finalised policy should be formally communicated to staff and line management should be reminded of the importance of escalating matters to the Head of Finance and the Head of Finance and the Head of Legal and Democratic Services (the Monitoring Officer).	Jonathan Belford, Corporate Accounting Manager
	3. A paper summarising the matters reported will submitted to the Audit Scrutiny and Risk Committee on an annual basis, commencing February 2015.	<p style="text-decoration: underline;">Target date:</p> <p>Point 1 and 2 - 31 December 2014</p> <p>Point 3 – 26 February 2015</p>

Appendix 1 – Basis of our classifications

Individual finding ratings

Finding rating	Assessment rationale
Critical	<p>A finding that could have a:</p> <ul style="list-style-type: none"> • Critical impact on operational performance; or • Critical monetary or financial statement impact; or • Critical breach in laws and regulations that could result in material fines or consequences; <i>or</i> • Critical impact on the reputation or brand of the organisation which could threaten its future viability.
High	<p>A finding that could have a:</p> <ul style="list-style-type: none"> • Significant impact on operational performance; or • Significant monetary or financial statement impact ; or • Significant breach in laws and regulations resulting in significant fines and consequences ; <i>or</i> • Significant impact on the reputation or brand of the organisation.
Medium	<p>A finding that could have a:</p> <ul style="list-style-type: none"> • Moderate impact on operational performance; or • Moderate monetary or financial statement impact; or • Moderate breach in laws and regulations resulting in fines and consequences; or • Moderate impact on the reputation or brand of the organisation.
Low	<p>A finding that could have a:</p> <ul style="list-style-type: none"> • Minor impact on the organisation's operational performance; or • Minor monetary or financial statement impact; or • Minor breach in laws and regulations with limited consequences; or • Minor impact on the reputation of the organisation.
Advisory	A finding that does not have a risk impact but has been raised to highlight areas of inefficiencies or good practice.

Report classifications

Findings rating	Points
Critical	40 points per finding
High	10 points per finding
Medium	3 points per finding
Low	1 point per finding

Report classification	Points
Low risk	6 points or less
Medium risk	7– 15 points
High risk	16– 39 points
Critical risk	40 points and over

Appendix 2 – Agreed Terms of reference

Background

Aberdeen City Council is required to comply with a wide range of laws and regulations. To ensure compliance it is essential that clear accountability is assigned, robust monitoring controls are in place and projects are assessed for legal implications.

Scope

We will review the design and operating effectiveness of the key controls in place to monitor compliance with laws and regulations. The sub-processes included in this review are:

Sub-process	Objectives
Accountability and ownership	<ul style="list-style-type: none"> • Responsibility for complying with, and monitoring compliance with key laws and regulations is clearly defined between Legal Services and Directorates (including laws and regulations which are cross cutting); • Processes are in place and consistently followed for identifying and risk assessing new laws and regulations; • An escalation process is in place for known breaches. Breaches are reported to management, Head of Legal, Chief Executive and Committee where appropriate. Breaches are risk assessed and action taken where required. • The quality of service provided by third party legal firms is monitored. Performance is measured on attributes such delivery within budget/agreed timescales, expertise, knowledge share etc.
Engagement with Council Activities	<ul style="list-style-type: none"> • Processes are in place and consistently followed to ensure that items sent for Committee or working group approval been assessed and reviewed by Legal Services. Committee are clearly informed of items which have not been through this review; • Legal Services are actively involved in all significant project work across the Council and engaged at the earliest opportunity to ensure the legal requirements are assessed and addressed in a timely manner. If resource constraints exist, processes are in place to influence the timing of such projects or advise the service of the requirement and estimated cost of external consultants; and • There is regular stakeholder engagement to ensure a thorough understanding of the strategic and operational issues within the services.

Limitations of scope

The scope of our review is outlined above. This will be undertaken on a sample basis across a number of services.

Internal control, no matter how well designed and operated, can provide only reasonable and not absolute assurance regarding achievement of an organisation's objectives. The likelihood of achievement is affected by limitations inherent in all internal control systems. These include the possibility of poor judgment in decision-

making, human error, control processes being deliberately circumvented by employees and others, management overriding controls and the occurrence of unforeseeable circumstances.

Audit approach

Our audit approach is as follows:

- Obtain an understanding of the procedures in place through discussion with key personnel, review of documentation and walkthrough tests where appropriate.
- Identify the key risks in respect of monitoring compliance with laws and regulations.
- Evaluate the design of the controls in place to address the key risks.
- Test the operating effectiveness of the key controls on a sample basis.

Key Council Contacts

Name	Title
Ewan Sutherland	Director of Corporate Governance
Jane MacEachran	Head of Legal and Democratic Services
Karen Donnelly	Legal Manager, Commercial and Advice
Alyson Mollison	Legal Manager, Litigation and Licensing

Appendix 3 - Limitations and responsibilities

Limitations inherent to the internal auditor's work

We have undertaken a review of compliance monitoring of laws and regulations, subject to the limitations outlined below.

Internal control

Internal control, no matter how well designed and operated, can provide only reasonable and not absolute assurance regarding achievement of an organisation's objectives. The likelihood of achievement is affected by limitations inherent in all internal control systems. These include the possibility of poor judgment in decision-making, human error, control processes being deliberately circumvented by employees and others, management overriding controls and the occurrence of unforeseeable circumstances.

Future periods

Our assessment of controls relating to compliance monitoring of laws and regulations is as at 1 August 2014. Historic evaluation of effectiveness is not relevant to future periods due to the risk that:

- the design of controls may become inadequate because of changes in operating environment, law, regulation or other; or
- The degree of compliance with policies and procedures may deteriorate.

Responsibilities of management and internal auditors

It is management's responsibility to develop and maintain sound systems of risk management, internal control and governance and for the prevention and detection of irregularities and fraud. Internal audit work should not be seen as a substitute for management's responsibilities for the design and operation of these systems.

We endeavour to plan our work so that we have a reasonable expectation of detecting significant control weaknesses and, if detected, we shall carry out additional work directed towards identification of consequent fraud or other irregularities. However, internal audit procedures alone, even when carried out with due professional care, do not guarantee that fraud will be detected.

Accordingly, our examinations as internal auditors should not be relied upon solely to disclose fraud, defalcations or other irregularities which may exist.

In the event that, pursuant to a request which Aberdeen City Council has received under the Freedom of Information Act 2002 or the Environmental Information Regulations 2004 (as the same may be amended or re-enacted from time to time) or any subordinate legislation made thereunder (collectively, the "Legislation"), Aberdeen City Council is required to disclose any information contained in this document, it will notify PwC promptly and will consult with PwC prior to disclosing such document. Aberdeen City Council agrees to pay due regard to any representations which PwC may make in connection with such disclosure and to apply any relevant exemptions which may exist under the Legislation. If, following consultation with PwC, Aberdeen City Council discloses any this document or any part thereof, it shall ensure that any disclaimer which PwC has included or may subsequently wish to include in the information is reproduced in full in any copies disclosed.

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