



Northern Ireland

Public Services

Ombudsman

Investigation Report

Investigation of a complaint against Antrim and Newtownabbey Borough Council

NIPSO Reference: 17073

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The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities. She may also investigate and report on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

Where the Ombudsman finds maladministration or questions the merits of a decision taken in consequence of the exercise of professional judgment she must also consider whether this has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. The Ombudsman may recommend a remedy where she finds injustice as a consequence of the failings identified in her report.

The Ombudsman has discretion to determine the procedure for investigating a complaint to her Office.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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EXECUTIVE SUMMARY

I received a complaint about the actions of Antrim and Newtownabbey Borough Council (the Council) in relation to the provision of stewarding services to the Council for Armed Forces Day on 18 June 2016.

Issues of Complaint

I accepted the following issue of complaint for investigation:

- Whether the Council followed proper procurement procedures for providing stewarding services for Armed Forces Day.

Findings and Conclusion

The investigation of the complaint identified maladministration in respect of the following matters:

- The Council's failure to obtain a quote from the complainant's company to provide stewarding services at Armed Forces Day did not meet the requirements of the Council's Financial Regulations.
- The actions of the Events Assistant in advising Company A to keep its quote under procurement thresholds and the failure to disclose her former connection with Company A were inappropriate.

I am satisfied that the maladministration I identified caused the complainant to experience the injustice of a loss of opportunity to have his proposal considered by the Council. He also experienced the injustice of frustration and uncertainty and outrage based on his belief that the Council's procurement in this case was improper.

Recommendations

I recommended that the Council:

- Provides a sincere and meaningful apology to the complainant for the failure to obtain quote from his company. I consider this apology should be delivered face to face in a meeting between the Council and the complainant. At the meeting, the Council should provide details on the lessons learned from this investigation and a commitment that the complainant will have fair and equal access to all future competitions. The Council should provide the apology and offer to meet the complainant within one month of the date of my final report;
- Provides him with a payment of £500 by way of a solatium which should be paid within one month of the date of my final report;
- Provides training to relevant staff on best procurement practice and the employee code. This training should be completed within three months of the date of my final report.

THE COMPLAINT

1. I received a complaint about the actions of Antrim & Newtownabbey Borough Council (the Council) regarding its procurement of stewarding services for Armed Forces Day on 18 June 2016. In May 2016 the complainant was advised by the Council's Events Assistant that his company would be sent the bid documents. However the Council later advised that the contract had already been awarded in February 2016 to another supplier. The complainant alleges that the Council has not followed correct procedures regarding the procurement of services for this contract.

Issues of complaint

2. The issue of complaint which I accepted for investigation was:

Whether the Council followed proper procurement procedures for providing stewarding services for Armed Forces Day.

INVESTIGATION METHODOLOGY

3. In order to investigate the complaint the Investigating Officer obtained from the Council all relevant documentation, together with the Council's comments on the issues raised by the complainant. This documentation included information relating to the Council's handling of the complaint and the documentation relating to the Armed Forces Day event. It also included correspondence between the Council and complainant and the Council and the supplier. I also reviewed the various invoices and quotations provided to the Council by this supplier.

Relevant Standards

4. In order to investigate complaints of maladministration, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case.

The general standards are the Ombudsman's Principles:

- The Principles of Good Administration¹
- The Principles of Good Complaints Handling

These are set out in full in the Appendices to this report.

5. The specific standards are those which applied at the time the events occurred and which governed the exercise of the administrative functions of those organisations and individuals whose actions are the subject of this complaint.

The specific standards relevant to this complaint are:

- The Council's Financial Regulations
 - Code of Conduct for Local Government Employees
6. I have not included all of the information obtained in the course of the investigation in this report. However, I am satisfied that everything that I consider to be relevant and important has been taken into account in reaching my findings. The complainant and the authority were both given the opportunity to see and comment on a draft of this report before the final version was issued.

¹ These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

MY INVESTIGATION

Detail of Complaint

7. The complainant stated that the Council's Events Assistant initially misled him during discussions in May 2016 that his company would be able to quote for the event contract. However he later learned that the contract had already been let to another supplier (Company A) in February 2016. He also complained that the Council did not follow its own procurement rules by receiving a quote from the supplier that breached the £3000 limit. He further complained that the Council entered into negotiations to keep the bid below £3000 in order to avoid a formal tender process and that this was improper. The complainant was concerned that the Council's process was designed to evade the Council's rules on tendering and to allow the award of a contract to a single company. In doing so, he believes the Council failed to secure value for money in the procurement of stewarding services for the event. He also stated that since complaining to the Council his company no longer receives requests to quote for Council contracts and believes it is being victimised for highlighting the Council's malpractice.

Evidence Considered

8. As stated previously, in investigating this complaint I have considered the standards required by the Council's Financial Regulations. I consider the following extracts of these regulations to be of particular significance to the issue of complaint:

'Identifying the value of the expenditure

7.3 In determining the estimated cost of the purchase the following shall apply:-

a) officers shall not sub-divide work which could reasonably be treated as a single contract:

b) the total estimated value of orders for a year for a given type of goods, works

or services should wherever practicable be amalgamated for the purpose of determining the appropriate procurement procedure to be taken...

i) VAT is excluded for threshold purposes

7.4 Where expenditure is likely to exceed £3,000 (excluding VAT) the Council's Policy on Quotations and Tenders must be followed before raising an order.

Quotations and Tenders

7.5 The thresholds for quotations and tenders are as follows:

- *Below £3,000: no formal quotations required*
- *Between £3,000 and £7,999: minimum of three written quotations required...*

Conflicts of Interest:

7.18 It is important that there are no conflicts of interest or the perception of bias at any stage in the procurement process. Any staff with an involvement in the procurement process who has any connection between themselves and potential bidders should disclose this to their line manager at the earliest opportunity.'

9. I have also considered the obligations imposed on Council employees by the Local Government Reform Joint Forum Code of Conduct for Local Government Employees (November 2014). I will refer to this as the Employee Code. I consider the following extracts from the Employee Code to be of relevance to the issue of complaint:

2.2 Principles of Conduct

This code builds on, and is in keeping with, the seven principles of public life articulated by the Nolan Committee on Standards in Public Life (established in October 1994) and the five further principles of conduct that have been adopted by the Northern Ireland Assembly, both emphasise that those in public life should practice:

- **Public Duty** – uphold the law and to act on all occasions in accordance with the public trust placed in them and act in in the interests of the community as a whole.
- **Selflessness** – act in the public interest at all times and take decisions based solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their families or their friends.
- **Integrity** – not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties
- **Objectivity** – in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- **Accountability** – are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness** – be as open as possible about all decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands it.
- **Honestly** – act honestly. Have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership** – promote and support these principles by leadership and example in order to establish and maintain the trust and confidence of the public, to ensure the integrity of their council in conducting business.

- **Equality** – promote equality of opportunity and not discriminate against any person by treating people with respect regardless of race, age, religion, gender, sexual orientation, disability, political opinion, marital status and whether or not a person has dependants.
- **Promoting Good Relations** – act in a way that is conducive to promoting good relations by providing a positive example for the wider community to follow and that seeks to promote a culture of respect, equality and embrace diversity in all its forms.
- **Respect** – Employees and Councillors are reminded that it is acknowledged that the exchange of ideas and opinions on policies may be robust but this should be kept in context and not extended to individuals being subjected to unreasonable and excessive personal attack. They should keep in mind that rude and offensive behaviour may lower the public's regard for, and confidence in, Councillors and councils, they should therefore show respect and considerations for others at all times.
- **Good working relationships** – Councillors and Employees are servants of the public, and are interdependent upon one another. But their responsibilities are distinct. The working relationship between Councillors and Employees must at all times be professional, courteous and based on mutual respect and trust. Neither party should seek to take unfair advantage of their position. All Councillors and Employees are responsible for ensuring they understand what behaviour is required of them, complying with their respective Codes of Conduct. Both share a responsibility for understanding sensitivities and feelings of others and avoiding behaviour that could cause offence or distress.

10. The Employee Code further requires staff conduct to meet certain standards:

4.1 Standards of Behaviour, Impartiality and Conflicts of Interest

Council employees...are expected to conduct themselves with integrity and

honesty in carrying out their duties and must provide the highest possible standard of service to the public...

...Responsibility is placed on every member of staff for disclosing to an appropriate manager or officer of the council every potential conflict of interest in which he/she may be involved.

In general employees' private interests must not be such as to have the potential for allegations of impropriety or partiality to be sustained thereby bringing the Council into disrepute...

11. The Employee Code also refers to potential conflict of interest as follows:

...4.4 Potential Conflict of Interest Situations

As specified in paragraph 4.1 page 4.1, page 4 – Standards of Behaviour, Impartiality and Conflict of Interest, staff are expected to conduct themselves with integrity, impartiality and honesty and their private interests should not be such as to have the potential for allegations of impropriety or partiality to be sustained thereby bringing the Council into disrepute. In particular attention is drawn to the following situations where potential conflicts of interest can occur.

Relationships with Contractors, Planning Applications and those applying for Council Grant

All relationships with external contactors or potential contractors or applicants for planning consent or grant must be made known to the appropriate manager. Similarly any beneficial interest or license must be made known to the appropriate manager.

Orders and contracts, grants and planning decisions must be decided on merit and no special favour should be shown in the procurement process to any business or potential suppliers particularly those run by, for example, persons to whom the employee owes (or is owed) an obligation, partners or persons where a family relationship is deemed to exist.

Employees who deal with, engage or supervise contractors or process or determine applications under delegated powers with whom they have previously had, or currently have, a relationship in a private or domestic capacity, should declare that relationship to the appropriate manager as soon as they are aware...

...4.15 Breaches of the Code of Conduct

Any breach by any employee of any part of the Code of Conduct or its supporting policies and guidance may render the employee liable to disciplinary proceedings. It should be noted that a breach of the Code and its supporting policies and guidance will be subject to the provisions of the council's disciplinary or other related procedures.'

The Council's response to Investigation enquiries

12. I note that in response to the complaint, the Council acknowledged that the Events Assistant ought to have advised the complainant that Company A had been identified and that the Council was awaiting their final quote. The Council stated it appreciated the confusion which resulted for the complainant as a potential supplier and apologised for this miscommunication. In response to enquiries made by the Investigating Officer, the Council referred to its Procurement Control Limits contained in the Financial Regulations (paragraph 8 refers) which specify that under £3,000 no quotations are required. The Council confirmed that this threshold was not exceeded throughout the process. The Council explained that Company A had provided similar services to the Council for key events. Therefore officers had a knowledge and understanding of the range of services they could offer. The Council also stated that during the planning process the army personnel involved in the Armed Forces Day event were also aware of Company A's expertise. They had indicated that Company A would be appropriate for this event given the heightened security considerations. The Council stated that when the Events Assistant asked for quotations for the event, she conveyed verbally the requirements to Company A which informed its subsequent submission. However the Council stated that as the planning

process progressed a further email was sent by the Events Assistant on 16 May 2016 outlining the event requirements.

13. The Council clarified that its Financial Regulations allow a quotation to be sought 'verbally' from a company where the cost of purchase is expected to be below £3,000. The Council also clarified that it can invite a company used previously by it for similar events to quote. The Council explained that at the 'Armed Forces Day' Working Group meeting on 29 February 2016, Company A was identified as a suitable service provider due to its previous experience of providing services to the Council. However, at this stage the Working Group had not decided which company would be used and the Events Assistant subsequently sought a quote from Company A. The Council added that had the quote from Company A exceeded £3,000, it would have had to follow its Policy on Quotations and Tenders.
14. The Investigating Officer also sought clarity about how the quote from Company A was developed. The Council explained that on 26 February 2016 a pricing schedule was received from Company A for one member of staff at cost of £180. This information was necessary to provide an indication of costings. On 16 May 2016 a revised pricing schedule was provided by Company A following further identification of requirements for nine staff and one supervisor at a cost of £1,789.80 for the event. On 7 June 2016 a further invoice was received from Company A based on 15 staff and one supervisor at a cost of £2,999.00 (including VAT) which included a discount of £54.83. The Council stated this invoice reflected the event requirements having completed the overall planning with specialist military and PSNI personnel. A purchase order was then raised for £2,999. However the Council added that a final invoice dated 21 June 2016 was received from Company A for £2,816.38 (including VAT) due to deductions for early finishing.
15. The Council was asked to provide details regarding the number of events held in preceding years where external stewarding services were provided. I have summarised the Council's response below:
 - Year 2013-14: ten events were held using a combination of three companies,

however Company A was not included. None of these events exceeded the Council's procurement threshold of £3,000, the highest contract being £2,339. The total expenditure was £8,196.35.

- Year 2014-15: ten events were held using a combination of four companies, including Company A who covered three events. None of these events exceeded the Council's threshold of £3,000, the highest contract being £2,010. The total expenditure was £9,597.38.
- Year 2015-16: thirteen events were held using a combination of five companies, including Company A who covered five events. No event exceeded the Council's threshold of £3,000, the highest contract being £2,010. The total expenditure was £11,801.21.
- Year 2016-17 (1 April 2016 – 30 June 2016): in this period eight events were held using a combination of eight companies, including Company A who covered two events. One event exceeded the Council's threshold of £3,000, which was £4,290 in respect of Euro 2016. However this initially comprised of 3 separate football matches that were less than £3000. It did not require quotations at this stage as it was unforeseen that there would be another football match that brought the expenditure for the Euros to a total of £4,290. The total expenditure was £12,872.20.

16. The Council also confirmed that the complainant's company have not been invited to quote for stewarding events post June 2016. I noted it was awarded the contract for the 'Garden Show Ireland' in May 2016, however in May 2017 this contract was awarded to another company.

17. As referred to above, paragraphs 7.3 of the Financial Regulations requires the Council wherever practicable to amalgamate the total value of the relevant contracts for the purposes of the Council's determination of the appropriate procurement procedure. As part of my investigation, enquiries were made of the Council as to why it was not considered appropriate to amalgamate the provision of stewarding services in this instance. The Council responded that no event exceeded £3,000 and it was not practicable to amalgamate these events as a number had not been secured by the Council and therefore the relevant details were not known 12 months in advance. The Council asserted that it was

reasonable and proportionate in the exercise of due diligence regarding rate payers money, to seek quotations for these events. The Council rejected the contention that it could have projected its yearly events based on events in history. The Council stated this was not feasible as many of the 2016 events were exceptional and a one off such as the Queen's Birthday celebrations and Armed Forces Day. The Council confirmed that these were not 'regular' events and were all confirmed at different stages of the year. Therefore they were not delivered annually as part of a regular plan of events.

18. As part of my investigation enquiries were also made of the Council regarding whether it complies with Central Procurement Directorate (CPD) NI Procurement Policy and in particular Procurement Guidance Note (PGN 04/12) 'Procurement Control Limits and the Basis of Contract Awards'. The Council stated it is not required to comply with CPD Guidance as it applies its own procurement policy. The Council further stated that where events and future expenditure is unknown, it is not feasible to contract for such services speculatively and so has therefore not split purchases in this manner.
19. I note with concern this assertion given that, in an earlier investigation of a complaint into the actions of the Council, it advised that *'this Council chooses to follow CPD guidance as best practice.'* The Investigating Officer therefore sought clarification from the Council on this conflicting information. The Council responded that it is not required to comply with CPD guidance as a local government entity and accordingly has its own procurement policy. However, the Council confirmed that, in developing its policy, it considered CPD material as a source of best practice and where it considers it appropriate, will incorporate elements of that guidance into its own policy. The Council confirmed that it did not choose to replicate the Procurement Control Limits as set out in PGN 04/12 when arriving at its own tender threshold, as it is entitled to depart from these. Further enquiries were made of the Local Government Auditor in relation to the applicability of CPD guidance in this context. The Local Government Auditor's staff confirmed that the applicable standards were those set out in the Council's Financial Regulations.

20. In relation to the previous employment of the Event Assistant with Company A, the Council stated that this dated back to April 2004 and was on a 'casual' basis. The Council confirmed that having been employed by a recruitment agency, she undertook the role of Events Assistant working on the Armed Forces Day event for the Council from January to June 2016. The Council confirmed that she did not make her line manager aware of her previous working with Company A because she did not consider it to be relevant given the time that had elapsed and the fact that she held a casual position. The Council confirmed that therefore she did not consider any conflict of interest had arisen. The Council added that her working with Company A only became known to council staff at an advanced stage of the planning for the Armed Forces Day event. The Council questioned the relevance of this enquiry given her previous work with Company A was over 13 years ago on a casual basis. The Council therefore would not have expected her to disclose this fact due to the time period which had lapsed and it did not consider she had a direct or indirect financial, economic or other personal interest in Company A.
21. In relation to the appropriateness of the Events Assistant's conduct in advising a potential supplier of the £3,000 threshold for procurement, the Council stated she was simply clarifying the threshold limit to Company A and had also sought to confirm the services that could be supplied. The Council considered it was then up to Company A to confirm if it wanted to pursue the offer of a contract for services. The Council also considered it appropriate that the Events Assistant had sought a quote from Company A prior to the Working Group meeting as this would be a normal part of the role as event organiser. The Council confirmed it officially sought to provide indicative costs for a full range of services to enable the working group to define the required budget and how this might be secured. The Council confirmed that no other quotes were sought from other potential suppliers but noted out that there is no requirement to do so under the Council's Procurement control limits as contained in the Financial Regulations.

The complainant's response to the draft report

22. In relation to the Events Assistant's contact with him, the complainant disagreed with the Council's explanation that this was a 'miscommunication'. He

considered it was a conscious decision to mislead him because he had inconveniently contacted them while a predetermined tender was being set up in breach of the rules. He stated that there is no indication of why the staff member only chose to seek a quote from Company A, who she had a past relationship with. The complainant considered this to be clear evidence of a personal bias towards Company A.

23. The complainant also stated his company was not invited to tender for any council events in 2016 or to date after he made his complaint. He pointed out that he had not received a single request for a quotation in 18 months and he believes this to be clear evidence of victimisation of his company. He subsequently informed me that he had recently received a tender to work at an event over the Christmas period in Antrim. He stated he had no confidence in bidding for this event as since making the complaint he had no offers of work. However, since the issuing of the draft report the Council had now sent him an invitation.

The Council's response to the draft report

24. In response to my draft report the Council reiterated that it did not agree that the failure to obtain a quote from the complainant represents a breach of the Council's Financial Regulations. The Council stated the Financial Regulations place no requirement on officers to obtain a formal quotation as it states this is not required for purchases below £3,000. The Council also stated had it been practically able to estimate the value of services required for all events, there would still have been no requirement on the Council to specifically invite the complainant to quote for these services. The Council did not agree that he suffered a loss of opportunity to have his quote considered, as the Financial Regulations are not prescriptive as to who should be invited to quote.
25. The Council explained that the reason it has set a threshold is because the costs of administering a formal procurement process below this threshold are considered to outweigh the potential benefits to be derived from pursuing a formal procurement process. The Council further explained that this approach seeks to ensure value for money as the cost and time invested in securing value

for money should be proportionate to the absolute value of those goods and services. The Council considered that applying a formal procurement process when it was not required to do so would waste resources without yielding any further savings to the ratepayer. It would also create expectations for suppliers that they can reasonably be expected to be contacted on all occasions to bid for work.

26. The Council accepted that the more quotations are sought, the higher the level of confidence that Council has secured value for money. However the Council highlighted there is some risk in applying this logic as there would be no need for any thresholds as procurements would always be carried out via a tender exercise. The Council did accept however that the communication with the complainant could have been better and there are lessons to be learned in this regard.
27. In relation to the amalgamation of procurement services, the Council clarified that there was no active decision not to consider the aggregate costs incurred in respect of stewarding services. The Council explained that following the merger of Antrim and Newtownabbey Borough Councils on 1 April 2015, the new Council initiated a review of expenditure by type to prioritise which goods and services should be amalgamated to secure best value for the ratepayer. Those services which were likely to exceed the tender threshold were prioritised in the first instance. As a result, the Council identified a number of goods and services which were amalgamated for procurement purposes. The Council explained that stewarding was not identified or prioritised as a service to be amalgamated due to the low levels of expenditure. The Council added the estimated annual spend on stewarding services is £12,000 representing 0.03% of the Council's total procurement spend.
28. The Council further explained the practical difficulties involved in amalgamating stewarding services, such as the use of multiple officers involved in various locations across the Borough. The Council also highlighted that individual officers would not be expected to be aware of all proposed spend of a similar nature being transacted by other departments of the Council. This could only ever be performed in a corporate context by a Central Procurement function,

which as previously stated had identified and prioritised other larger goods and services to be amalgamated.

29. However, the Council stated that due to the lessons learned from this issue, it proposed to pursue a formal cross-cutting procurement approach for stewarding services by proceeding to tender for this service in the near future. The Council stated that this tender will be for at least a 2 year period and will be in place from 1 April 2018. The Council indicated it would provide the complainant with details of its e-sourcing platform to ensure that they can register and have fair access to this procurement exercise.
30. As a result of the Council's comments, the Investigating Officer sought further information from the Council in relation to its review of expenditure for the purpose of prioritising and amalgamating goods and services. The Council were asked to provide evidence that stewarding was not identified as a service that required further attention in relation to procurement. In response, the Council provided a list of contracts that were reviewed at the time of the merger to evidence the work undertaken in both aligning contracts and establishing new contracts reflective of the larger organisation. The Council also provided a table of its current listing of contracts that shows contracts above and below the tender threshold of £30,000. I note stewarding services was not included in either of these lists of contracts.
31. In relation to the invitation to quote for the Christmas event, the Council confirmed that it invited the complainant to quote for Enchanted Winter Garden Event this year and not last year as this was the first year that formal stewarding was required. The Council provided a copy of its invitation letter dated 13 November 2017. I note this stated that the Council officer seeking quotations for this event had no knowledge of the complaint made to the Ombudsman. The Council stated that there had previously been little requirement for stewarding services at this event and that it was purely coincidental the invitation had coincided with the issuing of the Ombudsman's draft report. The Council provided an assurance that the invitation to quote for this event was made in good faith and was a genuine opportunity for him to supply stewarding services

for this event.

ANALYSIS AND FINDINGS

The handling of the complainant's proposal to quote for the Armed Forces Day event

32. I have found that the Council's Events Assistant had identified Company A at an early stage as the most suitable supplier to provide stewarding services for Armed Forces Day. I note that she had obtained an initial quote from Company A for one member of staff before final staff numbers were known. I also note that in May 2016 the complainant made contact with the Council and the Events Assistant advised that she would revert to him directly regarding a quote. However, she did not revert to the complainant and rather in this intervening period sought an updated quote from Company A. In response to the complaint the Council apologised to the complainant as the Events Assistant ought to have informed him that a supplier had already been identified. I welcome the Council's remedial action to remedy the failing to provide correct information by providing him with an apology. I also welcome the Council's acceptance that the communication with him could have been better.
33. I note that at the time the complainant made contact with the Events Assistant on 8 May 2016 the Council had already identified a preferred supplier for this event. However, at this stage the Events Assistant had received an initial quote from Company A and had not raised a purchase order to confirm the contract with that supplier. However, I am not aware of anything to prevent the Assistant from obtaining a quote from the complainant for the purposes of comparing it with the Company A quote. I note Section 7.1 of the Council's Financial Regulations state *'the primary objective of the Procurement Procedures is to obtain best value for money spent on goods and services having due regard to the needs of the organisation/service.'* Although the Financial Regulations did not require the Assistant to actively seek other quotations, she had a quote that fell within the relevant procurement threshold from Company A and the complainant had also offered his services. I do not accept the Council's view that having considered

another quote would amount to a formal procurement process and would have wasted further resources. On the contrary, the administrative costs would have been minimal as the complainant had approached the Council directly. I therefore consider she ought to have requested a quote from him as a comparison with the existing quote in order to obtain best value. I consider this would have demonstrated her efforts to obtain value for money as required in the Council's Financial Regulations.

34. In considering the complaint I have had regard to the Principles of Good Administration. The First Principle requires public bodies to 'Get it Right' by following existing policy and procedural guidance. I consider the failure to obtain a quote from the complainant does not meet the requirements of the Council's Financial Regulations.

Finding: This failure to follow the Council's Financial Regulations (in particular 7.1) does not comply with the First Principle of Good Administration, and constitutes maladministration. As a consequence of this maladministration, I am satisfied that the complainant experienced the injustice of a loss of opportunity to have his company's quote considered by the Council for the Armed Forces Day event.

35. I have considered the manner in which the Council procured stewarding services for the Armed Forces Day event. The complainant has queried the process the Council used to procure the awarding of this contract to Company A. I note the Council's Financial Regulations clearly state that no formal quotations are required for expenditure below £3,000. However the Council's regulations also state that officers should not sub-divide work which could reasonably be treated as a single contract and that total estimated value for services for a year should wherever practicable be amalgamated.

36. The Council has stated it was unable to amalgamate the procurement of stewarding services for events because many were irregular and it would not be possible to plan these in advance. I find it difficult to accept the Council's reasoning as to why it cannot amalgamate its stewarding services into a single contract in relation to the ongoing regular events identified by it as part of my

investigation. I consider the Council ought to be able to project its expenditure on these services for the coming year based on an average of previous year's events and to seek the relevant number of quotations according to the total expenditure. I consider the amalgamation of these contracts would ensure the Council's adherence to fairness, transparency and better value for public money. Secondly, the Council has provided my Office with conflicting information as to whether it follows CPD guidance. I note that the Council does not follow CPD guidance and has used it to develop their own policy. However I do not accept that the Council was unable to amalgamate the contract for stewarding services for this reason, particularly as it is required to do so by virtue of paragraph 7.3 of its own regulations.

37. In response to my draft report, the Council stated that when it merged in 2015 it prioritised the amalgamation of other larger contracts for services. Stewarding services was not prioritised as it represented a much lower level of expenditure. The Council also provided for the first time evidence of its other contracts that were prioritised for amalgamation. I am critical of the Council for not providing this information as part of my investigation enquiries. However I am satisfied based on this new evidence that the Council has demonstrated a strategic approach to prioritising larger contracts to achieve value for money. I also welcome the Council's commitment to pursuing a formal tender process for stewarding services in the near future. The Council has also confirmed in response to my draft report that the complainant will be provided with the necessary details to bid for this tender. These commitments on the Council's part are as a direct result of the lessons it has learned from my investigation.
38. I note that the complainant also complained of the appropriateness of the Assistant advising Company A to ensure their costs were below £3000. I have found that the Assistant had emailed Company A and in return received an invoice with a discount of £54.83 applied totalling £2,999. I note the Council's Financial Regulations at 7.3 state that '*VAT is excluded for threshold purposes*'. Therefore I consider it was not necessary for Company A to reduce its invoice as the total amount of the invoice without the discount applied would have fallen below the £3,000 threshold. It would appear that the Assistant was not aware of the

Council's Financial Regulations. There is a concern that this action was motivated by the need to ensure the quote was below the threshold to avoid the need for any further quotations. I consider it was inappropriate for the Events Assistant to have advised Company A in this manner. In light of this, I conclude her actions would give rise to a perception of bias in the procurement process.

39. Furthermore considering the Events Assistant's previous connection with Company A, I consider her conduct ought to have complied with Section 4.1 of the Employee Code and she ought to have disclosed this fact to her line manager. I do not accept the Council's assertion that it would not have expected her to do so as she was employed some 13 years previously and this was on a casual basis. I note the Council's Financial Regulations (paragraph 8 refers) requires staff to disclose '***any connection (my emphasis) between themselves and potential bidders***'. In addition, 4.4 of the Employee code states (paragraph 9 refers); '***All relationships (my emphasis) with external contactors or potential contractors or applicants for planning consent or grant must be made known to the appropriate manager***'. The Council's regulations do not provide exceptions for the circumstances of the present case.

40. I consider the actions of the Events Assistant in advising Company A to keep its quote under procurement thresholds and the failure to disclose her former connection with Company A to be inappropriate. The First Principle of Good Administration requires organisations to 'Get it right' which requires all administrative actions to comply with relevant regulations or policies.

Finding: I conclude the Events Assistant's actions as a member of Council's staff did not meet the requirements of the First Principle, which constitutes maladministration. I am satisfied that as a consequence of this maladministration, the complainant has experienced the injustice of frustration, uncertainty and outrage from a belief that the Council's actions were unfair and improper.

41. I note his concern that his company is being victimised as it no longer receives any requests to quote from the Council. My investigation has established that it provided services for two Council events in April and May 2016. However I note

that it did not receive any further requests to quote the following year. In response to my draft report, the complainant confirmed that although he had not received any requests to quote from the Council, he had now received an invitation to quote for an event over the Christmas period. He believed this request was in response to the issuing of my draft report and is further evidence of victimisation. The Council has rejected his view of victimisation on the basis that it had not previously required stewarding services for this event. The Council confirmed this in a letter to the complainant and assured him the invitation to quote was made in good faith and was not as a result of my draft report. Victimisation is defined in the Oxford English dictionary as *“the action of singling someone out for cruel and unjust treatment.”* The complainant believes because he complained to the Council that he was no longer invited to tender for event services. The Council has provided an explanation for the complainant not being invited to previously tender for the Enchanted Winter Garden event, which I consider to be reasonable.

Finding: I therefore conclude that there is no evidence of victimisation towards the complainant and his company in this respect.

42. It is my view that in this instance the Council and its staff failed to follow procurement procedures as set out in its Financial Regulations in the award of a contract for the provision of stewarding services for the Armed Forces Day event. I also consider the actions of the Events Assistant to be inappropriate and to raise a potential perception of bias in favour of Company A. I note that the complainant was not given the opportunity to quote for the Armed Forces Day event despite the fact that no contract had been awarded when he made contact with the Council. I am satisfied the actions of the Council were attended by maladministration and did not demonstrate that best value for public money was sought or achieved in this instance. I consider the Council's decision in this instance to award the contract to Company A to have been attended by maladministration since it did not comply with its Financial Regulations. I therefore uphold the complaint.

CONCLUSION

43. In investigating this complaint I have found maladministration in relation to the following matters:

- The Council's failure to obtain a quote from the complainant to provide stewarding services at Armed Forces Day did not meet the requirements of the Council's Financial Regulations
- The actions of the Events Assistant in advising Company A to keep its quote under procurement thresholds and the failure to disclose her former connection with Company A were inappropriate.

I am satisfied that the maladministration I identified caused the complainant to experience the injustice of a loss of opportunity to have his proposal considered by the Council. He also experienced the injustice of frustration, uncertainty and outrage from a belief that the Events Assistant's actions were unfair and improper. I am not satisfied that there is evidence of victimisation on the part of the Council.

Recommendations

I recommend that the Council:

- Provides a sincere and meaningful apology to the complainant for the failure to give him the opportunity to consider his quote. I consider this apology should be delivered in a face-to-face in a meeting. At the meeting, the Council should provide details on the lessons learned from this investigation and a commitment that the complainant will have fair and equal access to all future competitions. The Council should provide the apology and offer to meet the complainant within one month of the date of my final report;
- Provides the complainant with a payment of £500 by way of a solatium for the injustice identified which should be paid within one month of the date of my final report;

- Provides training to relevant staff on best procurement practice and the employee code. This training should be completed within three months of the date of my final report.

I welcome the Council's agreement to provide an apology, payment of £500 as a goodwill gesture and to provide the necessary training to its staff. I am pleased to note the Council's acknowledgment of learning lessons from my investigation of this complaint.

Marie Anderson

MARIE ANDERSON
Ombudsman

March 2018

APPENDIX ONE

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

APPENDIX TWO

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

Getting it right

- Acting in accordance with the law and relevant guidance, and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure, in the right way and at the right time.

Being Customer focused

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.
- Providing honest, evidence-based explanations and giving reasons for decisions.

- Keeping full and accurate records.

Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants.

Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.

OFFICIAL - SENSITIVE