

## GOVERNANCE AND AUDIT COMMITTEE

### TRADING ADVISORY SUB-GROUP

NOTES of a meeting of the Trading Advisory Sub-Group meeting held at County Hall, Maidstone on Tuesday, 1 September 2009.

PRESENT: Mr R L H Long (Chairman), Mr T Prater and Mr C T Wells.

IN ATTENDANCE: Mr K Harlock (Director of Commercial Services), Mr N Vickers (Head of Financial Services), Mr A Rotolo (Legal Services) and Mr A Tait (Democratic Services).

ALSO PRESENT were Mr G Brown and Mr J Jacobs from the Audit Commission.

#### **1) Terms of Reference (Item 1)**

The Sub-Group noted its Terms of Reference as set out below: -

*“To ensure that the trading activities of the Council are run properly, transparently and fairly.*

*Specifically:*

- 1. Monitor the financial performance and reporting of all trading accounts and all limited companies owned in whole or in part or controlled by KCC.*
- 2. Receive the annual business plans and annual financial accounts of any KCC limited companies.*
- 3. Oversee the establishment of new limited companies through examination of the business case before the company commences trading and make recommendations to the appropriate Cabinet Member.*
- 4. Monitor trading and commercial activities being undertaken by the Council to ensure that they have the right structure.*
- 5. Monitor adherence to the appropriate legal, regulatory and accounting frameworks governing local authority trading activities.”*

The Sub-Group discussed the overarching objective, particularly in respect of the meaning of the word “fairly.” The intention of the Committee had been to achieve what was reasonable within the market place, but it was considered that thought should be given as to whether there needed to be greater clarity in defining this particular word or indeed, whether the over-arching objective was needed at all.

The Chairman confirmed that it was open to members to raise this matter at the Governance and Audit Committee meeting on 16 September.

## **2. Audit Commission Review of Commercial Operations (Item 2)**

The Sub-Group noted that the final recommendation set out in paragraph 2.1 of the Director of Finance's report should read:-

“The Council should evaluate opportunities to address the concerns expressed by some parts of the public about access to information in respect of its commercial operations, subject to the Council's consideration of commercial sensitivity.”

The Audit Commission representatives introduced the report by saying that that the brief for this work had been agreed in December 2008 but that its conclusion had been delayed from the original target date of March/April 2009 to July. They confirmed that they had received full co-operation from KCC staff throughout the process.

Mr Wells referred to paragraph 11 of the main report and asked why Commercial Services paid interest on a nominal amount of £12 million to the Council annually. Mr Vickers replied that this was an arrangement that had been made many years earlier, before Mr Harlock had been in post. The Sub-Group requested a full explanation in time for its next meeting.

In response to a question from Mr Wells, the Audit Commission representatives said that although Commercial Services had to price its contracts in order to achieve a return, there was no requirement to achieve the same return as a private business. It was, though, essential that no cross-subsidisation took place which enabled Commercial Services aim for a lower return.

Mr Harlock said that Kent Top Temps' turnover figure of £14.4 million set out on page 3 of the Audit Commission's report should be understood as an all inclusive figure. Some fifty percent of the turnover was contracted to other agencies which attracted only a very small percentage from this brokerage.

Mr Harlock commented that Kent Top Temps' final profit of £0.26 million for the year 2008/09 was the figure that had arisen after *all* interest charges and expenses had been accounted for. This figure did not necessarily reflect the growth in value of the business itself.

The Chairman asked whether Commercial Services should be measured by return on capital rather than turnover. Mr Harlock agreed to bring this forward.

Mr Wells and Mr Prater both asked whether the proposed action (for Internal Audit to provide an independent review of Council contracts won by Commercial Services or its subsidiaries) was the best way to meet the Recommendation 3. Mr Brown said that the Audit Commission was satisfied

that Internal Audit was independent within KCC. It was a matter for KCC to decide whether in individual cases it would be more suitable for a review to be carried out by an external body.

Mr Vickers said that if someone were minded to criticise the lack of independence of the reviewing body, they would always be able to find grounds to do so even in the event that an external organisation had carried it out. This was because this organisation would still be working to a KCC contract. He nevertheless understood the concern and would draw it to the Director of Finance's attention.

The Sub-Group discussed whether Recommendation 3 should be redrafted to clarify when it would be appropriate to appoint an external reviewer. It was agreed that if such a redraft were to happen, it would be necessary to ensure that it did not achieve the opposite effect to that intended: namely that an external reviewer was not appointed when there seemed to be a good reason to do so.

The Sub-Group agreed that the proposed actions for Recommendation 6 should be amended to read "...the Council will expand the level of disclosure/narrative up to the point where further information would compromise *proper* commercial sensitivity."

The Sub-Group also discussed whether to invite a representative from the business community to sit on a permanent basis (either as a full member or as a permanent attendee). The Clerk advised that it was open to the Sub-Group to invite people to speak to it. However, making a permanent outside appointment or inviting a regular attendee would require a decision by the Governance and Audit Committee.

### **3) Existing Trading Activity (Item 3)**

The Sub-Group noted that the heading on page 13 under "Trading Operations 2009" should read "Income" rather than "Turnover."

The Sub-Group decided that it would like to have a more detailed discussion at its next meeting on the basis of figures which separated out internal and external trading.

### **4) Proposed Annual Work Plan (Item 4)**

The Sub – Group agreed the proposed work plan as a basis from which its more detailed work would be identified.

### **5) Other Business (Item 5)**

Mr Rotolo informed the Group that following a legal case involving the LB of Brent and the insurance mutual established by a Group of London Boroughs he was instructing external counsel to review all of KCC's trading activities.

## **6) Items for next agenda (Item 6)**

The Sub-Committee agreed to the three items proposed:

- a) Draft protocol relating to companies in which KCC has an interest.
- b) Review of the legal status of KCC trading activities post L.A.M.L (see 5 above)
- c) Review of KCC's limited companies' financial accounts.

## **7) Date of next meeting (Item 7)**

Monday, 23 November 2009 at 2.00pm.