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# Electoral queries – Audit Committee update

London Borough of Islington

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## Report sections

- Background
- Appendix one- Summary of queries

## Page

2

5

This report is addressed to the Authority and has been prepared for the sole use of the Authority. We take no responsibility to any member of staff acting in their individual capacities, or to third parties. We draw your attention to the Statement of Responsibilities of auditors and audited bodies, which is available on Public Sector Audit Appointment's website ([www.psa.co.uk](http://www.psa.co.uk)).

External auditors do not act as a substitute for the audited body's own responsibility for putting in place proper arrangements to ensure that public business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for, and used economically, efficiently and effectively.

We are committed to providing you with a high quality service. If you have any concerns or are dissatisfied with any part of KPMG's work, in the first instance you should contact Phil Johnstone, the engagement lead to the Authority, who will try to resolve your complaint. If you are dissatisfied with your response please contact the national lead partner for all of KPMG's work under our contract with Public Sector Audit Appointments Limited, Andrew Sayers, by email to [andrew.sayers@kpmg.co.uk](mailto:andrew.sayers@kpmg.co.uk). After this, if you are still dissatisfied with how your complaint has been handled you can access PSAA's complaints procedure by emailing [generalenquiries@psaa.co.uk](mailto:generalenquiries@psaa.co.uk), by telephoning 020 7072 7445 or by writing to Public Sector Audit Appointments Limited, 3rd Floor, Local Government House, Smith Square, London, SW1P 3HZ.

### Elector rights - background

- The Local Audit and Accountability Act 2014 (the Act) governs the work of auditors appointed to councils and other local public bodies. The Act, and Accounts and Audit Regulations 2015 also cover the duties, responsibilities and rights of councils, other organisations and the public concerning the accounts being audited.
- A local resident, or an interested person, has certain legal rights in respect of the accounts of local councils. As an interested person they can inspect a council's accounts and related documents. A local government elector can also:
  - ask questions about the accounts; and
  - object to them.
- The elector can only ask questions about the accounts at certain times. The Council is required to advertise when the accounts are available for inspection and also give the period for the exercise of public rights during which electors may ask the auditor questions, which here means formally asking questions under the Act.
- Electors can formally ask the external auditor questions about the accounts, under the Act, during the period for the exercise of public rights. They can ask someone to represent you when asking the external auditor questions. Electors cannot formally ask questions, under the Act, after the end of the period for the exercise of public rights. They can ask the council other questions about their accounts for any year, at any time. But these are not questions under the Act.
- The elector can ask the external auditor questions about an item in the accounts for the financial year being audited. However, the right to ask the external auditor questions is limited. The external auditor can only answer 'what' questions, not 'why' questions. The external auditor cannot answer questions about the council's policies, finances, procedures or anything else unless it is directly relevant to an item in the accounts.
- Once the elector has inspected the accounts and asked their questions they can object to the accounts on the basis that an item in them is their view unlawful or there are matters of wider concern arising from the Council's finances that they wish the auditors to issue a report which is in the public interest. The elector must tell the external auditor which specific item in the accounts they object to and why they think the item is unlawful, or why they think that a public interest report should be made about it. The elector must provide the external auditor with the evidence they have to support your objection. Disagreeing with income or spending does not make it unlawful.
- An unlawful item of account is one, for example, that records spending or income that the Council:
  - spent or received without powers to do so;
  - took from, or added to, the wrong fund or account; or
  - spent on something that they had the power to spend on, but the decision to spend the money was wholly unreasonable or irrational. 'Unreasonable' has a special meaning in law in this context. A council acts 'unreasonably' when its actions are so wholly unreasonable that no reasonable person could have made that decision. This is sometimes called acting 'irrationally'.
- The objection must be made in writing but other than that there is no required format.

### What we do once we receive an objection from an elector

- Before we can formally accept an objection, we confirm:
  - the objector is a local elector of the Islington; and
  - the objection relates to an item in the year of account for which the audit is still open. For Islington, the 2013/14 and 2014/15 accounts are still open due to current elector queries (see page 4). Previous year accounts have been closed and electors can not make objections relating to items of account before 2013/14. The auditor cannot issue a certificate to close the accounts of a particular year until all elector queries have been appropriately responded to.
- An auditor or the court cannot challenge a council's decision if it is lawful. Having confirmed the objection is eligible (bullets above) the auditor has to consider whether in their discretion they will accept the objection for consideration. The auditor has a broad discretion as to whether or not to accept an objection for consideration. The grounds, amongst others, on which they may decide not to pursue the objection include:
  - the cost of dealing with it would be disproportionate to the underlying sum (item of account) to which it relates;
  - that it is frivolous or vexatious; and/or
  - it is a repeat of an objection made in a prior year of account.
- If we decide not to go ahead with the objection, we will provide the elector with brief reasons for the decision.
- If the objection is accepted for consideration we will decide appropriate next steps:
  - whether a High Court declaration should be sought; or
  - a public interest report be issued; or
  - If the matter does not warrant either of the above outcomes although it may still be a matter we wish to raise with the Council it may still be a matter that the auditor may wish to raise with the council (in a non-statutory objection recommendation).

### Right to appeal

- An objector can appeal against the external auditor's decision but they may have to pay costs. We will always provide a reason for why we have not accepted an electors' objection.
  - If the elector feels reasons have not been given and the objection is that an item in the accounts is unlawful (as opposed to asking for a public interest report), they can you can ask the external auditor for the reasons in writing; or
  - If they have asked the auditor to issue a report in the public interest and they decide not to do so, they cannot appeal that decision; or
  - If they have asked the external auditor to apply to the court for a declaration that the item of account is unlawful and they disagree with the auditor's decision not to consider your objection or not to seek a declaration, they can appeal but will have to take the matter to court themselves. You must file your appeal in the Administrative Court section of the High Court. If the appeal is not upheld, the elector may have to pay all their costs associated with the appeal, and may also be ordered to pay the external auditor's and council's legal costs.

<p><b>Islington queries</b></p>	<ul style="list-style-type: none"> <li>■ Compared to other London Boroughs, Islington does receive a significant number of elector queries that end up requiring significant work. For 2011/12 and 2012/13 we received six elector queries that resulted in further work.</li> <li>■ Two of these elector queries resulted in formal objections that we accepted. Details of the request and our decision are provided in <b>Appendix one</b> overleaf.</li> <li>■ For the remaining four elector queries we decided following discussions with the elector, the Council and a review of the evidence provided to us not to formally accept an objection. For each of these decisions we formally responded to the elector setting out our reasoning.</li> <li>■ The 2013/14 and 2014/15 accounts are open as an elector has informed us of their intention to make objections to items of account from those years. We have provided the elector with a timescale of the end of January 2016 for providing a formal objection otherwise we will begin the process of closing these years. We also received a further query relating to leasehold charges in 2014/15 that we have not accepted as an objection and have responded to the elector to this effect. At this time we have not agreed a fee to cover the cost of work relating to this elector. The elector still has the opportunity to request objections relating to 2013/14 and 2014/15 however these would only be accepted should they provide us with new information that could change our understanding of the issue raised.</li> </ul>
<p><b>Cost</b></p>	<ul style="list-style-type: none"> <li>■ There is no cost to the elector for exercising their rights. Resulting costs incurred by the Council form part of its running costs. Therefore, indirectly, local residents pay for the cost of electors exercising their rights through their council tax. As auditors, we ensure the Council are provided with details of the time spent responding to elector queries so there is appropriate visibility on the fee. The fee is approved by the Public Sector Audit Appointments Limited (PSAA) and is based on scale rates for each type of grade of staff used by the auditors. The cost is also discounted by 40% in accordance with the framework contract the PSAA has with audit suppliers (i.e. Islington is only being billed 60% of the cost).</li> <li>■ Since 2011/12, Islington has paid £61,597 in fees relating to elector queries. This covers the five queries relating to the 2011/12 and 2012/13 financial statements referred to above. The fees charged only relate to elector questions where we have undertaken detailed work. We periodically receive correspondence from electors however when these do not turn into detailed work the Council does not incur costs. Costs have been incurred on one further query relating to 2014/15 however a fee has not been agreed with the Council nor approved by the PSAA.</li> </ul>

Year	Description of issue	Action	Cost
2011/12	<p><b>Street Properties PFI scheme</b></p> <p>The elector originally requested that we consider issuing a report in the public interest in relation to the Council's management of its Street Properties PFI scheme.</p> <p>The first correspondence from the elector was received in December 2012. The matter was finally resolved in June 2014 but required significant correspondence with the elector over this period before a decision on whether to accept an objection or not could be made.</p>	<p>This objection was not accepted.</p> <p>After receiving written evidence both provided by the elector and the Council, we were minded not to issue a report in the public interest because we did not consider that any significant losses have been incurred and, where any failings existed, the Council has already acted to remedy any deficiencies.</p>	£14,855
2012/13	<p><b>Drayton Park parking</b></p> <p>The elector requested that we apply to the court under section 17 of the Audit Commission Act 1998 for a declaration that income from penalty charge notices (PCNs) issued at Drayton Park are an unlawful item of account on the grounds that the PCNs were issued during a period when the road markings and signed traffic restrictions were changed without the necessary authorisation of a new traffic order.</p> <p>The elector also asked for a public interest report on this matter and asserted that 'given that the Council's intention is permanently to appropriate this money which is the property of others for its own purposes it is contrary to the Theft Act 1968'.</p> <p>This was a particularly complex issue that required a review of a significant amount of documentation provided by the elector and the Council. The complexity of the issue also required us to obtain our own legal advice.</p>	<p>This objection was accepted.</p> <p>Our decision was <b>not</b> to make an application to the court for declaration that an item of account is unlawful because having obtained our own legal advice we considered it unlikely that there is an item contrary to law. Even if we were wrong in this respect, given the value of PCNs issued is £591,600 it was our view that any benefits of an application to the courts would be disproportionate to the costs. The enforcement of the restriction has ceased and the restriction itself removed such that, particularly given the voluntary offer of a refund, this is not an ongoing matter giving rise to any real public interest.</p> <p>Our decision was not issue a public interest. The reasons for this view were essentially the same as those put forward for not seeking a declaration.</p> <p>As part of our work we did acknowledge that the Council could have better advertised the opportunity for refunds on its website.</p>	£32,144
2012/13	<p><b>Drayton Park parking</b></p> <p>A separate elector raised the same issue as above relating to PCNs issued at Drayton Park as an unlawful item and requesting we issue a public interest report.</p>	<p>This objection was withdrawn by the elector following correspondence with us and information provided by the Council.</p>	£3,636

Year	Description of issue	Action	Cost
2012/13	<p><b>Business Rates liability of the National Heritage Library</b></p> <p>The elector requested we consider two issues relating to Business rates. The elector did not formally request either an item be considered unlawful or request a public interest report however we considered their request against the powers and duties of the auditor as set out in statute and the Code of Audit Practice.</p>	<p>This objection was not accepted.</p> <p>After receiving written evidence both provided by the elector and the Council, we determined that one item was outside the scope of our powers and for the second we were not minded to make an application to the court for declaration that an item of account is unlawful nor issue a report in the public interest.</p>	£4,272
2012/13	<p><b>Installation and operation of the heating system in Braithwaite House</b></p> <p>The elector through their representative requested a public interest report in respect of the installation of an alleged 'non-working' boiler system in Braithwaite House.</p>	<p>This objection was not accepted</p> <p>No report in the public interest was issued following a review of the matter. Related to this matter the Council deemed the elector's representative to be vexatious.</p>	£6,690
2014/15	<p><b>Leaseholder service charge</b></p> <p>The elector requested we review the issue of right to buy service charge calculations. The original objection did not state whether the elector was requesting either an item be considered unlawful or request a public interest report.</p>	<p>This objection was not accepted.</p> <p>After receiving written evidence both provided by the elector and the Council, we determined that the elector has provided insufficient information to indicate what item of account is unlawful or what matter should be reported in the public interest to allow us formally accept an objection.</p> <p>While the 2014/15 year remains open, the elector has the right to request the objection be accepted but this would only be accepted should they provide further information that could change our understanding of the issue raised.</p>	Fee not agreed with Council



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