

Essex County Council

Audit, Governance and Standards Committee

Report into questions asked by full Council in February 2024 concerning certain payments made by the Strengthening Communities Team between 2018 and 2023.

July 2024

This report has been written on the instructions of the Audit, Governance and Standards Committee.

In February 2024 the Council resolved to ask the Committee to carry out an ‘investigation’ and prepare a report expressing their answer to a number of questions.

This is the Committee’s report in response to that request.

Introduction and background

In January 2024 the Council was the subject of attention on social media relating to payments made to external contractors by the Strengthening Communities Team. These payments were mainly for the amplification of corporate communication messages, but there were also some payments made for other things, such as onboarding volunteers who supported vaccination programme, payments for the community to access legal advice support from a community interest company set up by a Citizens Advice Bureau and payments to a local pub for supplying meals during the pandemic.

In late January 2024 the Council voluntarily published information on its website relating to the payments, including confirmation that there had been breaches of policy.

[Spending and Council Tax: Spending on digital community engagement in the pandemic | Essex County Council](#)

The Council received a number of requests for information from the public, media organisations and councillors and these have been answered as far as possible. Some information, particularly the Council’s response to allegations of serious misconduct by officers, either could not be answered or could not be answered in public, since external legal advice confirmed that the Council could neither confirm nor deny these allegations and any response to them. One member of the committee has asked that this report states that he is not satisfied with this.

The Leader of the Council responded to this by making an Executive Statement at the Council meeting in February 2024 and a motion was passed asking this Committee to look into a number of questions.

The Leader made it clear that it was expected that the Committee would look at whatever it wished – a fact already confirmed by the Committee’s own ‘terms of reference’ in the Council’s Constitution. Accordingly, the Committee has also considered a number of matters which were not specifically asked in the resolution passed by the Council.

In particular, the resolution focused on payments made to Mr Simon Harris, but in answering the questions the Committee have considered all the payments which were published on the Council’s website in January 2024.

The Committee have not amended the questions asked by council but, depending on the context, they have always considered the questions with respect to all published payments or, at least with respect to all such payments to 'persons in scope' relating to the use of social media.

Although this report is principally expressed as dealing with payments made to Simon Harris, the answers generally apply to all the 'persons in scope', unless it's obvious that this doesn't apply – for example when the report refers to a specific payment. The 'persons in scope' are:

- Simon Harris
- Jon Morter
- Emmy McCarthy
- Johnny Searle Consulting Limited
- Neel Mookherjee
- Rob Pilley
- Jake Searle
- Central Law CIC
- Better Divorce Course
- The Prince of Wales Pub in Stow Maries

It should be made clear, as we have elsewhere, that the persons in scope were selected because of questions about them. The fact that someone is a person in scope suggests only that that the Council has received questions about them. It does not necessarily suggest that the Council (or anyone else) has made any criticism of that individual.

The Committee considered a report from Council officers on 15 April 2024 which sought to collate information available to the Council, including some information which had been obtained from Mr Harris at the request of Committee Members.

During that meeting the Committee asked a number of questions and for further information. This report has been informed by the report the Committee considered in April 2024 and by the further information they were given.

After the meeting new questions were raised by one member of the Committee relating to a further payee, Trylife Limited. Trylife Limited was not involved in social media, rather its main business was the creation of 'choose your own story' videos, but it did receive significant funds from ECC and the Committee agreed to provide information about payments to them in the appendix. Information about Trylife is appended to this report.

The view of the Head of Communications is that the 'choose your own adventure' videos provided by Trylife were of benefit to Essex schools and youth organisations and his recollection is that they were well received.

Responses to Questions asked in the Council Resolution or by the Committee.

1. By what selection process was Mr Harris initially awarded these contracts, who made the decision and what background checks were made given his reputation as a comedian and prankster?

The Committee acknowledge the information published by officers in January 2024. There is no record of any competitive procurement process taking place. Contracts fall within three categories:

- Contracts for services which were not required to be subject to any competitive process either because:
 - The value was £10,000 or under
 - The contract was covered by a 'waiver' where internal permission was granted to award contracts without competition.
- Contracts which were required to be subject to a competitive process but where officers were unable to find any evidence of a competitive process having taken place. It seems reasonable to conclude that no such process did take place.
- Contracts which took the form of a grant. No competitive process was required for grants.

The Committee were shown a [chart](#) which indicated that much of this work involved creation of a team who worked together but whose members had no contract with each other, their only legal obligation was to the Council, and sometimes those contracts were unwritten. Although they had to work closely with each other, they were also working at arm's length from the council.

The Committee are firmly of the view that the poor definition and unclear legal relationships created the risk of two people being paid for the same work. Although we did not find any evidence that this was the case, the poor records meant that we could not be assured that work was not duplicated. The 'arm's length' feature had strengths and weaknesses; the lack of control by ECC which led to a message being posted on social media which many regarded as inappropriate, illustrates a significant and important weakness.

It is for the Council to decide what it wishes to buy, but the Audit Committee can express a view as to whether the manner in which it was bought was appropriate, which it does in this report.

The nature of this arrangement meant that it could legitimately have been funded via grants or as a procurement of independent contractors.

In many, but certainly not all cases, written contracts do exist, although they are of poor quality (see next section). The contracts issued prior to April 2023 took the form of contracts for services and those after took the forms of grants. Legal advice was that given the absence of previous competition and the commencement of the Subsidy Control Act 2022 - whose 'minimum financial assistance' provisions came into force on 4 January 2023 – this was the most appropriate way to proceed.

With respect to 'background checks' the Committee heard that it would neither be necessary nor appropriate for Mr Harris to have a DBS check as this type of work did not involve regulated activity such as working in person with children or vulnerable adults. It would have been unlawful for the Council to obtain an enhanced DBS check on Mr Harris. The Committee asked about other types of checks that could be referred to. They were told that the Council could seek references or ask to see examples of work.

The Committee were also told that this work was considered innovative although the Committee noted that no other Council appears to have adopted this approach.

2. What precisely were these contracts awarded for, who signed them off, what due diligence was carried out and what value for money was carried out before further contracts or payments were awarded?

The written contracts were published on the Council's website in January 2024. Anyone can therefore inspect the contracts themselves.

As already stated, the contracts themselves generally contain very little information and in some cases are unwritten. Whilst an oral contract is perfectly valid in law and can often be enforced, the lack of a written contract is unhelpful.

The contracts themselves were therefore of very limited value when piecing together what work was done. Some of this information has had to be obtained from observing what happened or by reading other information describing the services rather than from reading the contracts themselves.

The Committee heard that the social media contracts were awarded for amplification of ECC's corporate social media messages on arms-length social media accounts, almost exclusively facebook pages and groups, as this is where most local content in the UK is issued, but also to a very limited extent on Instagram and twitter (as it was then called). These covered many different subjects. The contracts variously covered activities such as

- Administering pages and groups.
- Providing content on relevant topics, though the Committee note that in some cases, such as the Veterans work Mr Harris claims to have told the Council that he was reliant on them providing content for him to amplify and work on as he had no knowledge.
- Reframing ECC content on relevant topics and posting it
- Developing and maintaining links with local Facebook groups
- Encouraging local Facebook groups to pick up content from the relevant Facebook groups to spread on a hyper local basis.

The committee observed that the service contracts were inadequately drafted, failing to specify the obligations of the contracted party and the council's rights to information necessary for evaluating performance. Additionally, it was noted that

in certain instances, these agreements were merely oral, lacking any written documentation to substantiate the terms agreed upon.

The committee observed that unclear legal relationships and poorly defined roles increased the risk of duplicate payments for the same work. While no specific instances were highlighted, the inadequacy of the record-keeping practices made it probable that duplications may have occurred.

As noted previously, there is no evidence of due diligence being conducted prior to these contracts being awarded.

Questions about value for money are considered later in this report.

3. Were declarations of interest correctly recorded by those directly authorising the payments?

No. The Committee have seen failures relating to declarations of interest. The Committee have seen no evidence that any declarations of interests were made and have seen information that several declarations of interest should have been made.

4. Why wasn't the in house ECC Communications Team given the additional resource to carry out the work by Mr Harris given that it was for a corporate public health awareness messaging campaign?

The Committee were informed that this was for work in addition to a corporate public health awareness messaging campaign.

The committee noted that, other than the published briefing notes to cabinet member, there was limited documentation on the rationale behind the contract award, which has obscured understanding of the decision-making process employed at that time. Nonetheless, the following details have subsequently been provided by the Head of Communication to the committee:

- the 'non-corporate' tone was more engaging to some people than the ECC tone.
- The initiative was not aimed at launching a corporate public health awareness campaign, but rather at amplifying existing efforts. At the time, the team were clear they lacked the necessary resources to undertake this work internally.
- An in-house approach would have had to be different and possibly less engaging to some people.

The Committee observed that a significant drawback of this approach, to which the Council had only limited ability to mitigate, was the Council's inability to control the content posted in its name. Citing the example of an inappropriate post, the Committee questioned why the Communications team did not raise concerns. It was clarified that posts were not checked in advance and not all posts were checked.

Without intending any disrespect to the professional opinion of the Head of Communications, the Committee questioned whether in hindsight this was the right thing to do and believed that there was an alternative view that similar work could have been done in house.

The Committee noted that had the work been done in-house, a number of the risks identified in this report would have been reduced or entirely avoided.

Some members of the Committee felt that the Communications Team should have been more involved, notwithstanding the views above.

5. What analysis of the viewing data is available, considering the average view of a typical Facebook page is three seconds, and in particular Mr Harris's Facebook coverage in Essex? The Committee should consider use of an Independent data analyst to be engaged as a witness to the committee to verify how meaningful published reach data is.

The Committee saw the page impression and interactions data that the council has been able to obtain from the Facebook admins. This has been published on the Council's website.

The Committee decided that they did not need a data analyst to understand that page impression data is of limited value, because it simply says that a piece of content has been displayed on someone's device but not whether or not it was read. They were aware from their own experience that many posts may not be read even if they appear on people's screen. Furthermore, the committee members' own analysis provides ample evidence to suggest that while some benefits may have been derived from this undertaking, they are not substantial enough to meet the threshold required for the committee members to be satisfied that value-for-money has been achieved.

It seems very difficult to measure effectiveness of work of this nature when there is no financial outcome and many factors may have influenced case numbers and it is difficult to conclude which campaign was successful (or whether any campaigns were successful).

Although an engagement rate could be calculated – the percentage of page impressions which resulted in an recorded interaction by the user – this rate is itself meaningless without being able to compare it with data from similar sites.

The Committee noted that most of the data covered the last two years – broadly from April 2022, and therefore did not include the height of the pandemic when there was said to have been more engagement. The Committee were told that in all but one case, earlier data was not available.

The Committee noted that the data they saw showed that most posts had little 'liking' or 'sharing' and whilst not every viewer who consumes a page will interact in this way, this must indicate less engagement than would have been the case if more liking or sharing had taken place.

The issue of value for money is considered in question 8, including an analysis of the limited number of followers attracted by some sites.

The Committee asked how ECC normally measures the success of social media campaigns. They were told that there is no standard metric for this and it would be impossible to develop one given that each campaign will have different objectives and success criteria.

6. It has been reported that serious concerns were raised in 2021, why did payments continue until 2023?

The peak of payments coincided with the pandemic and the number of size of payments on social media projects did reduce after this. The pandemic does to a large extent explain the urgent need to set things up for Essex Coronavirus Action and some of the payments for support during the pandemic. However a small number of the payments were prior to the pandemic, and some were for activity which was clearly unrelated to the pandemic. Whilst the Public Health team was obviously under significant pressure in terms of the demands on its resources, this does not excuse non-compliance with rules.

For the 2023/24 year payments covered four areas:

- Essex is United – which is to be handed over to the community. This was the final year of a three year agreement.
- Essex is Green – which is to be handed over to the community.
- Never too Late Mate – which was extended and is to be discontinued.
- Veterans - which was extended and is to be discontinued.

The concerns relating to value for money were raised in 2024. Services of this nature involve a degree of 'embedded' value. We say this because Groups and pages with tens of thousands of members/followers had been created. The Essex is United group has more followers than the ECC Facebook page has followers. Creation of such a group takes time and energy. The incoming Head of Strengthening Communities was aware of the need to review the spend but this was not able to be completed until 2023. A review involved working with the climate action team who were funding 'Essex is Green' and those leading on the Armed Forces Covenant work for the 'veterans' page/group.

The Committee were told that as soon as work stopped on a page or group it would become out of date and cease to be as useful as followers would drift away. Given that the Council did not own the pages, the owners could even delete it. They were told it would take a lot more work to recover pages if the decision to discontinue was taken and then reversed.

7. What is the usual budget for social media and how much has been spent on social media since April 2023?

The Committee were informed that the Council does not have a specific budget for social media and are therefore unable to answer this question. The Council has campaign budgets and this may include an element for social media. The Committee were provided with information about the cost of two campaigns and the social media spend on those campaigns which was published in the [report](#) considered on 15 April 2024.

8. Does the Audit, Governance and Standards Committee consider this expenditure to be value for money, and if so, how?

The Committee notes that in December 2023 officers in Public Health came to the conclusion that the continuing spend did not represent good value for money and decided not to continue it.

The Committee were certain that the payments for social media groups did not represent good value for money.

For instance, The Facebook Group 'This is Your Life' has incurred a total expenditure of £70,000, but it has garnered only 1,300 links and 1,500 followers and exhibits very low engagement. Similarly, the 'Never Too Late Mate' group has spent £15,000, attracted 6,100 likes and 6,900 followers, but has had from minimal engagement in the last two years. In the case of 'Essex is Smoke Free', the group has a mere 174 followers with no engagement, despite a payment of £5,000. Additionally, 'Essex Supports Veterans' has 189 followers, almost no engagement, and has incurred expenses of £15,100.

These figures are low, but for other pages it was much higher, and the overall approach was to spread messages via local facebook groups and that many hundreds of local facebook groups were engaged with, rather than via the page itself. The Committee felt that it was appropriate for the Council to have experimented with this approach.

9. The effectiveness of member scrutiny of this expenditure?

Given the novelty of these arrangements the Committee feels that the reports taken by Cabinet and the Leader should have included more information about the contractual arrangements relating to how the money was to be spent. The Committee understands that the reports related to much wider spending programmes and generally did not set out how procurement was to be undertaken.

The Committee also saw that there were separate briefing notes for Cabinet Members but there was no document which gave the overall picture of the spend.

None of the written information that the Committee saw shows how the services were to be contractually structured. There is no evidence that any of those who saw the reports asked questions on this. The Committee noted that no member of any party appears to have asked for this information either at meetings or when exempting from call-in.

The Committee noted that that no councillor was presented with a single report showing the full extent of the spend. They appreciated that this was not likely to have been visible to anyone outside the Public Health service. They considered that councillors are not expected to query the procurement arrangements of every decision.

One member of the committee points out that almost half the county councillors now in post were not elected until May 2021 and that although the June 2021 Cabinet meeting, which dealt with this, was well attended by non members of the Cabinet, as it was the first meeting with a new council and a new leader, many new members were still learning their role at that point.

10. What learning so far has been taken and what changes made or are being explored in procurement processes?

The Committee were told that this was an innovative and experimental piece of work, albeit one which has not been copied elsewhere. The Committee were told that approach of producing content at arm's length and encouraging local Facebook groups to repost the content had some benefits. It seems clear that:

- It works better in some areas than others; there needs to be year round content and the Council needs to supply messages regularly
- The way that the arrangements were set up created a situation where only these providers were really able to continue it without creating a risk of losing the followers already in place. That was not desirable. It may be understandable at the time when this started, at the height of the pandemic and there was initially a waiver to cover the initial work, but with hindsight more thought should have been given to how long this work would continue, an exit strategy and how it could have transition to a sustainable delivery model.
- Similar Facebook groups were set up to cover other subjects which were not pandemic related. This work started in mid 2020. These groups were not set up appropriately; there was no waiver. This work should have been delayed if the Council was not able to procure it properly, or at least a procurement waiver should have been obtained. Although there was a limited market for this type of work it should have been tested in the market.
- Procurement processes were not followed and clearly ECC needs to ensure that officers' knowledge is reinforced and that compliance with rules is enforced. The Committee noted that they were drawing on a small sample of staff in the public health team and consider that audit work should be undertaken to test whether this is more widespread, though they saw no evidence that it was more widespread.
- In addition changes in procurement processes could be explored.
- In future it is important to have an 'exit strategy' if this type of work is to be commissioned. That could have avoided dispute between those involved about who has 'ownership' of the pages and groups once the council had ceased involvement.

- Not all processes in the Council which lead to recommendations being made have a system for tracking implementation of those recommendations. That has now been improved.

11. **Outside Work**

The Council has a policy which requires employees to obtain consent before undertaking outside work. The policy leaves it to managers to discuss and agree whether it is appropriate for the work to be undertaken, whether it presents conflicts and, if so, how those conflicts could potentially be managed.

12. **Email deletion.**

As part of our work we wanted officers to examine the outlook inbox of employees who had left the council. Their email boxes had been deleted in accordance with standard processes. These processes do allow for emails to be retained but only by request. We were advised that by law there has to be a business need for emails to be retained in accordance with the GDPR principle that information is retained for no longer than necessary.

The Committee noted that emails may have been deleted by the employee concerned. They did question whether, in the cases they looked at, the correct decision was made by line managers.

Recommendations:

The Committee make the following strong recommendations which the Committee expects to be implemented:

- The Council should reinforce compliance with procurement limits.
- Although the thresholds for competitive procurement processes was not a particular issue in this case, nevertheless a review should be undertaken.
- The Council should ensure that oral contracts should be the exception and should not be used for the procurement of complex services.
- The Council should consider whether more references or other background checks should be required when buying services.
- The Council should review whether there is more than can be done to reinforce the importance of completing the declaration of interests process.
- Systems should be reviewed so that everyone approving purchase orders, payments or requesting payments is required to specifically confirm that they do not have any conflict of interests or any relationship with the organisation being paid.
- Guidance should be given that contracts should include key performance indicators and outcomes.
- Guidance on the Council's position on the boundary between grant awards and contracts should be produced.

- The 2024/5 internal audit programme on procurement should include sample testing work aimed at determining:
 - whether or not these are isolated issues; and
 - whether smaller contracts such as these have appropriate specifications
- All decisions to award contracts for more than a de minimis threshold - to be determined by the Section 151 officer - should be in writing or recorded in writing.
- Any funding of content creation at arm's length should have a clear exit strategy, enforceable by a contractual term.
- The checklist for people leaving ECC is amended to ask a manager of appropriate seniority to consider whether or not email should be retained.
- The Director of HR reviews the policy which requires employees to get permission before doing outside work or running businesses, particularly where there was potential for employees to profit from knowhow acquired whilst working for ECC.
- The Head of Assurance and the Committee should review how the committee can be given more information in regular reports to the committee, noting that this may mean that the Committee may need to meet in private more frequently.
- Internal audit should carry out a review of the Council's whistleblowing arrangements.
- The Council should review its whistleblowing arrangements in particular awareness raising of whistleblowing procedures.
- There should be guidance about not using contractors to make payments for others.

In addition there is one recommendation which is not referenced in the public report. That relates to recommendation relating to the training of senior leaders.

The committee will be monitoring responses to and implementation of these recommendations.

Appendix – Payments made to Trylife Limited

As stated in the main report. Trylife Limited did not provide services related to social media and were not in scope of the information published in January 2024.

The original activity was the production of ‘choose your own adventure’ videos posted online. The view of the Head of Communications is that the ‘choose your own adventure’ videos provided by Trylife were of benefit to Essex schools and youth organisations and his recollection is that they were well received.

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Date	Inv date	PO	System approver	Amount	Purpose
01/01/2020	04/12/2019	800079608	Kirsty O'Callaghan	10,000	Social Movement Grant 2019/20
01/10/2019	30/08/2019	8000070882	Paul Ashworth	20,000	Social Movement Grant 2019/20
05/12/2019	04/11/2019	800079608	Kirsty O'Callaghan	10,000	Social Movement Grant 2019/20
05/12/2019	07/11/2019	800079608	Kirsty O'Callaghan	10,000	Social Movement Grant 2019/20
06/03/2020	31/01/2020	8000086155	Kirsty O'Callaghan	10,000	Social Movement Grant 2019/20
09/06/2021	05/05/2021	8000115474	Charlotte Britton	117,500	Digitised Youth Work - Climate Change Programme 2021/2022 Project
13/11/2020	05/10/2020	8000102008	Charlotte Britton	6,000	Delivery support of digital campaign for young people Project
16/07/2021	07/06/2021	8000117539	Kirsty O'Callaghan	100,000	Deliver a youth focussed COVID19 engagement and behavioural change assets, developed in collaboration with young people, from the Contain Management Outbreak Fund [COMF]. Payment will be in two tranches of £50,000, the second payment being six weeks after the first.
16/12/2019	19/11/2019	800079608	Kirsty O'Callaghan	10,000	Social Movement Campaign Grant 2019/20
18/05/2021	07/04/2021	8000112505	Charlotte Britton	10,000	Essex is Green Digital Assets Young People 2020/21 Project
19/12/2019	26/11/2019	800079608	Kirsty O'Callaghan	10,000	Social Movement Campaign Grant 2019/20
25/07/2019	26/06/2019	8000070882	Paul Ashworth	20,000	Social Movement Campaign 2019/20