

Comprehensive list of KPMG outputs on LDL due diligence

This list includes all draft reports which may not be relevant or appropriate for release.

It has been compiled by checking email records of Becky Hellard, Paul Jones and Helen Jarvis.

It should be noted that all material provided by KPMG was in confidence and its circulation and use are limited.

There were two distinct phases to KPMG's due diligence work:

- Fieldwork conducted between 11 June – 2 July 2014. KPMG's "draft red flag" report findings identified matters to be queried/resolved as part of discussions between the parties (documents 1 & 2 in the table below)
- "Project router" / "Issues update" document, which highlighted and tracked progress on the issues identified during the due diligence process (documents 3 & 4). This document was then renamed "final report" on 9 October 2014, albeit it was still actually in draft at that stage and was subject to further refinement until the contents were finalised by KPMG with redactions applied on 16 October 2014 (documents 5-14).

There are no other reports or outputs from KPMG. It is important to recognise that the "fuller report" referred to by KPMG is actually the "suite" of documents including the "red flag" due diligence analysis report and the previous iterations of the "Project router" / "Issues update" document.

Ref	Date & time received	From	File name	Title	Notes
1	Fri 27/06/2014 13:28	[REDACTED]	Working draft red flag report on LDL 270614.pdf	DRAFT red flag financial and tax due diligence report 27 June 2014	Draft report based on fieldwork conducted between 11-26 June 2014
2	Wed 02/07/2014 17:34	[REDACTED]	Updated draft red flag report on LDL 020714.pdf	DRAFT red flag financial and tax due diligence report 2 July 2014	Draft report based on fieldwork conducted to 2 July 2014

3	Wed 27/08/2014 17:58	[redacted] <[redacted]>	Prj router updated findings 260814 DRAFT.pdf	Liverpool Direct Limited Issues update document 27 August 2014	Grouped due diligence issues into 9 categories and identified whether resolved, partially resolved or unresolved.
4	Wed 08/10/2014 12:49	[redacted] <[redacted]>	Prj router updated findings 081014 DRAFT.PDF	Liverpool Direct Limited Issues update document 08 October 2014	"still in the draft version"
5	Thu 09/10/2014 08:18	[redacted] <[redacted]> (A) (3) (C)	Prj router updated findings 091014 DRAFT.pptx plus Prj router updated findings 260814 DRAFT.pptx Updated draft red flag report on LDL 020714.pptx	Liverpool Direct Limited Final report 8 October 2014	Working draft of final report which has similar form and content to previous Issues update documents. Covering email explains that John took the view that KPMG "would not alter any of the old slides as it serves as a full record", i.e. in relation to the other two documents resent unchanged.
6	10 October 2014 10:24	[redacted] [mailto:[redacted]] On Behalf Of [redacted]	FINAL Prj Router updated findings 091014.pptx	Liverpool Direct Limited Final report 10 October 2014	KPMG verification of the final balance sheet position was taking place at this time and the status of issues was being updated accordingly.
7	Mon 13/10/2014 14:55	[redacted] [redacted]; on behalf of; [redacted]	FINAL Prj Router updated findings 131014.pdf	Liverpool Direct Limited Final report 13 October 2014	"updated document"
8	Tue 14/10/2014 11:17	[redacted] <[redacted]>; on behalf of; [redacted]	FINAL Prj Router updated findings 131014.pdf	Liverpool Direct Limited Final report 13 October 2014	"The changes have been underlined up to page 6."

9	Tue 14/10/2014 12:36	[REDACTED] < [REDACTED] >; on behalf of; [REDACTED]	FINAL Prj Router updated findings V2 131014.pptx	Liverpool Direct Limited Final report 13 October 2014	
10	Wed 15/10/2014 13:39	[REDACTED] < [REDACTED] >; on behalf of; Hughes, John (TS)	FINAL Prj Router updated findings V2 131014.pdf	Liverpool Direct Limited Final report 13 October 2014	Underlining removed.
11	Wed 15/10/2014 15:25	[REDACTED] < [REDACTED] >	FINAL Prj Router updated findings V2 131014.pptx	Liverpool Direct Limited Final report 13 October 2014	
12	15 October 2014 15:47	[REDACTED] < [REDACTED] >	FINAL Prj Router updated findings V2 131014.pptx	Liverpool Direct Limited Final report 13 October 2014	Final unredacted version.
13	Thu 16/10/2014 10:42	[REDACTED] [REDACTED]	FINAL Prj Router updated findings REDACTED.pptx	Liverpool Direct Limited Final report 13 October 2014	Impact of redaction is to remove detail in the "Issue" column. The issue headlines and status (all resolved bar two immaterial) are visible.
14	Thu 16/10/2014 11:11	[REDACTED] < [REDACTED] >	FINAL Prj Router updated findings REDACTED.pptx	Liverpool Direct Limited Final report 13 October 2014	Final redacted version.

Enquiries to: Kevin Symm
Our Ref: FOI/416875



Liverpool
City Council

Mr [REDACTED]

Email: [REDACTED]

29 February 2016

Dear [REDACTED]

Freedom of Information Act Request 416875

Thank you for your recent request received 23 October. Your request was actioned under the Freedom of Information Act 2000 in which you requested the following –

1. *A complete copy of the full KPMG-LDL report dated 10 October 2014*
2. *Any letters, emails or advice communicated to the Mayor that led him to falsely claim at the Council Meeting that under the Council's contract with KPMG the full report had to remain confidential.*
3. *Copies of all invoices (including the "final invoice") sent by KPMG to the Council in satisfying this Contract, in particular section 9 Annex 2, which reads "Invoices shall be prepared by the Provider... and shall clearly detail the expenditure to which they relate.*

Response:

Liverpool City Council holds information relevant to your request and can confirm the following:

1. The City Council can confirm that there has been no report produced by KPMG in relation to the proposed acquisition of Liverpool Direct Limited.

However, we can confirm that what KPMG assisted with was the establishment of an issues update, which summarised progress on issues identified. These communications were extremely fluid and were of varying sizes due to issues being resolved at various stages. Each issues update is a stated position, at intervals, of the current stage of negotiations, including issues which have been resolved, those which remain and suggested solutions to them.

The draft documents received by the City Council on 9th October included the "Draft red flag" paper and the original "Issues update" document which was subsequently produced and aided the resolution of the discussions for both parties in the production of the final report which we have already disclosed by way of the Engagement letter.

As such there is no document identified by the City Council as the full due diligence Report produced by KPMG in fulfilment of its engagement to provide "Financial and tax due diligence in relation to the proposed acquisition of Liverpool Direct Limited" although subsequent drafts of the "final report" contained some further changes as

KPMG finalised their review and report.

However, the information referred to in this response does, we feel, fall under the remit of your request and, as such; consideration must be given to its disclosure.

As has been confirmed the correspondence between the City Council and KPMG was developed in order to identify solutions to instances raised by way of the Issues update and contains communications which represent information which, in the opinion of the City Council, fall under the remit of what is termed as 'free and frank exchange of views for the purposes of deliberation' in Section 36(2)(b)(ii) of the Freedom of Information Act 2000. To clarify; Section 36 of the Freedom of Information Act 2000, and specifically Section 36(2)(b) which states that information is exempt from disclosure if, in the reasonable opinion of a qualified person (in this instance Liverpool City Council's City Solicitor), disclosure would breach or inhibit one, or more of the following –

- (i) the free and frank provision of advice, or
- (ii) the free and frank exchange of views for the purposes of deliberation

Information may be exempt under section 36(2)(b)(i) or (ii) if its disclosure would, or would be likely to, inhibit the ability of Local Authority staff and others to express themselves openly, honestly and completely, or to explore extreme options, when providing advice or giving their views as part of the process of deliberation.

The rationale for this is that inhibiting the provision of advice or the exchange of views may impair the quality of decision making by the Local Authority. It is in accordance with the above the City Council feels that the release of the information you have requested would be done so in breach of Section 36(2)(b)(i) and (ii)

A requirement in regards to the application of Section 36 of the Freedom of Information Act 2000 obliges that we clearly identify the likelihood of prejudice in relation to the disclosure of the information requested. The City Council feels that the disclosure of this information would inhibit the ability of the City Council and its officers to express themselves openly, honestly and completely, or to explore extreme options, when providing advice or giving their views as part of the process of deliberation.

The issues update is a set of emails which includes discussions which, if made public, would have a direct impact upon the honest provision of advice on the part of City Council officers if those officers felt what they considered to be honest advice would be made public.

Decision-making, especially in regards to the criteria set out in the terms of your request, is an extremely important part of the function of the City Council and its officers must feel free to discuss and explore, either internally or with external staff and organisations, some difficult matters. Any loss or impact upon this freedom would, in the opinion of the City Council, inhibit free and frank discussions in the future, and that the loss of frankness and candour would damage the quality of advice and deliberation and lead to poorer decision making.

The terminology used in these subsections is not explicitly defined in the Act, but the following is taken from the Information Commissioner's Office guidance note

regarding the application of Section 36 of the Freedom of Information Act 2000:

- 'Inhibit' means to restrain, decrease or suppress the freedom with which opinions or options are expressed.
- Examples of 'advice' include recommendations made by more junior staff to more senior staff, professional advice tendered by professionally qualified employees, advice received from external sources, or advice supplied to external sources. However, an exchange of data or purely factual information would not in itself constitute the provision of advice or, for that matter, the exchange of views.
- The 'exchange of views' must be as part of a process of deliberation.
- 'Deliberation' refers to the public authority's evaluation of competing arguments

It is with this in mind that the City Council feels the application of Section 36(2)(b)(ii) appropriate in these circumstances as the information we hold represents an exchange of views for the purposes of deliberation the disclosure of which would impact upon the free and frank exchange of views

2. In regards to this element of your request, the City Council would like to address the points raised in two separate parts. Firstly, it is your opinion that the Mayor made a false statement. In reality the meeting to which you refer was the Mayoral Select Committee of the 29 October 2014 at which the Mayor stated that elements of the report contained information which was, at the time, considered commercially sensitive see link and could not be fully disclosed to the public.

An extract from the Minutes of this meeting is set out as follows –

"The Committee considered a decision of Cabinet at its meeting of 24 October in respect of the future status and ownership of Liverpool Direct Ltd as follows –

- (i) *Cabinet confirm approval to the transfer of ownership in accordance with the financial and legal arrangements set out in the report submitted;*
- (ii) *Cabinet note the service transition and integration roadmap as set out in table 2 of the report submitted;*
- (iii) *Cabinet note that the Company will be wound up following cessation of trading, with all associated costs to be met from within LDL with a further report to be submitted to Cabinet at that stage; and*
- (iv) *this report be referred to a special meeting of the Mayoral Select Committee to be held on 29 October 2014.*

The Mayor introduced the report and referred to the questions and answers that had been produced which had been circulated at the meeting and which are attached to the minutes.

Councillor Steve Radford raised a number of issues in relation to the report produced by KPMG and made reference to the limitations in respect of the information available and that it is indicated within the report that they accept no responsibility for findings within the report, it also refers to the limitations of the reporting system.

The Mayor stated that this was standard process, the Director of Finance and Resources confirmed this and stated that in terms of the limitations of findings the full paragraph within the report explains that this is standard wording when referring to other third party information. KPMG did not undertake the audit as that was done by Price Waterhouse Coopers (PWC). The engagement and role of KPMG was to ensure the balance sheet was correct and there was enough assets and sufficient working capital available or through negotiating additional cash sums. The accounts put together by BT were quite complicated. KPMG have been supporting LCC within these negotiations and agreements.

Councillor Steve Radford thanked the officer for her response and also asked whether there would be any service reviews within LDL taking place or any implications for LDL employees?

The Mayor stated that TUPE does not apply, these are seconded staff and they come back into the City council. PWC audited the accounts and the accounts were signed off in March 2014. The Mayor referred to the savings made as part of the renegotiated agreement and outlined the benefits to the City. LDL staff will be dealt with in the same way as LCC staff.

Councillor Richard Kemp asked –

- Had the Cabinet seen the full report or just an overview?
- How are the shareholder rights of the Council represented in the process?

The Mayor stated that the report had been considered by the Cabinet and agreed. There was commercially sensitive information which was not presented within the paper work in view of the confidential nature of it.

The City Solicitor stated that Liverpool City Council has 3 Members (the Mayor, Assistant Chief Executive and Mr Liam Fogarty) on the board of LDL, the Chief Executive is the lead client and as Monitoring Officer she had been involved in the negotiations that had taken place and was satisfied that the City Council as stake holder was protected.

Councillor Richard Kemp referred to due diligence and the level of assurance standards and referred to the significant limitations in the information.

The Mayor referred to the KPMG report and the fact there was an agreed balance sheet and the steps that had been taken which had been supported by DLA Piper.

The Director of Finance and Resources referred to the explanation given previously in relation to standard wording. In terms of the information on limitations there had to be adjustment to the methodology to achieve the original objectives and this had been agreed.

Councillor Steve Radford referred to the commercial sensitivity of the information not being presented and whether this related to employees.

The Mayor stated that all employees are LCC staff seconded to LDL and they will return to LCC.

The Chief Executive stated that the reference to due diligence was in respect of financial and commercial considerations and had no relationship to staff.

Councillor Janet Kent referred to the third party contracts and when they are due to expire and the fact that a lot of skills will now be coming back into the Council.

The Chief Executive outlined the benefits of the third party contracts which LDL had brought in and some of the side issues which have been negotiated with BT such as a new line of business being brought into the City and BT operating a new building in the City. The SIA will be transferred for BT to run themselves for the remainder of that contract.

Councillor Richard Kemp stated that the press account by the Mayor had mentioned an employee and if voluntary redundancy is to be looked at how is the Council going to establish a base line for making any decisions.

The City Solicitor reminded all present of their legal obligations and the councils obligations in relation to its duty of care to all its employees. General comments in relation to voluntary redundancy policies or schemes the council currently has in respect of redundancy would be acceptable but the Committee should not discuss individual employees.

The Mayor stated that all staff would be treated in a consistent and fair way and would be dealt with in accordance with the agreed procedures and processes of the City Council.

Councillor Tom Crone asked whether some of the money saved from the renegotiation could be used to save the libraries.

The Mayor stated that the member needed to understand how the budget operates.

Councillor Martin Cummins stated that there would be a considerable amount of expertise coming back into the Council and any opportunities should be explored and not missed in terms of generating contracts.

The Mayor stated that has not been ruled out and referred to the positive relationship between BT and the city as it was a global company and also referred to the excellent work of the teams within LDL such as the Benefits Maximisation Team, the fact Care Line had been held up as an exemplar and that the quality of services had improved as well as major improvements in the communication with residents and council tax payers.

Motion by the Chair - That the decision of the Cabinet be supported.

Amendment by Councillor Richard Kemp, seconded by Councillor Steve Radford – That KPMG be invited to a meeting of this Committee to discuss all issues raised

within their report.

*A vote was taken when there appeared –
For the Amendment – 5
Against it – 6*

The Amendment was lost.

The Original Motion was agreed, 10 Members voting in favour and 1 against with 1 abstention.

3. We attach for your reference copies of the only invoices received by the City Council from KPMG in relation to this matter.

In accordance with the application of Section 36 of the Freedom of Information Act 2000 we have not provided all of the information requested. As such we are required to serve you with the following Section 17 Notice.

The City Council will consider appeals, referrals or complaints in respect of your response and these must be submitted in writing to informationrequests@liverpool.gov.uk within 28 days of receiving your response.

The matter will be dealt with by an officer who was not previously involved with the response and we will look to provide a response within 28 working days.


If you remain dissatisfied you may also apply to the Information Commissioner for a decision about whether the request for information has been dealt with in accordance with the Freedom of Information Act 2000.

The Information Commissioner's website is www.ico.gov.uk and the postal address and telephone numbers are:-

Information Commissioner's Office, Wycliffe House
Water Lane, Wilmslow
Cheshire SK9 5AF Fax number 01625 524 510 Telephone 01625 545745
Email – mail@ico.gsi.gov.uk (they advise that their email is not secure)

I trust this information satisfies your enquiry

Yours sincerely



Mr Kevin Symm
Senior Information Officer