

COMMUNITY TRANSPORT

To: **Audit and Accounts Committee**

Meeting Date: **31 July 2018**

From: **Chief Executive**

Electoral division(s): **All Fenland, Huntingdonshire and Ely Divisions.**

Purpose: **This report seeks to provide a comprehensive schedule of the actions agreed and taken to address the issues highlighted by PKF in their investigation report into Community Transport issues.
This report was commissioned by the Chief Executive with advice from the Chief Internal Auditor for the reasons set out in paragraph 2.2 of the report.**

Recommendation: **a) That the Audit & Accounts Committee notes the PKF report and the Management Response.**

b) That the Audit & Accounts Committee receive updates to future meetings until all agreed actions are confirmed as implemented.

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1. BACKGROUND

1.1 The issues considered within the PKF report (a separate agenda item on this agenda) have been long standing concerns / complaints first raised with Cambridgeshire County Council (CCC) in 2013 via the local MP. In summary:

1.1.1 2013 –

- concerns highlighted regarding the operation of the Fenland Association for Community Transport (FACT), Huntingdonshire Association for Community Transport (HACT) and Ely & Soham Association for Community Transport (ESACT), together known as FH&E (FACT, HACT and ESACT) in relation to permits issued by CCC and first Freedom of Information (FOI) Act requests.

1.1.2 2014 -

- Vehicle and Operator Services Agency (VOSA) inspection of FACT. No Further Action;
- referral to Cambridgeshire Police – evidence of fraud not found.

1.1.3 2016 -

- Taxi Association submit a report (Woodcote) to CCC. Various allegations including fraud and misuse of public funds;
- Greenbiro commissioned by CCC to investigate Woodcote allegations. Initial report issued;
- Economy & Environment Committee resolve to remove CCC Dial-a-Ride subsidy on basis of customer survey. Concerns also separately highlighted regarding survey responses and matter referred to the police;
- objection to Greenbiro (not independent) received;
- complaints received regarding FH&E driver training / licensing and Counsel opinion sought. FACT etc representations received;
- Counsel opinion in essence upholding the driver training / licensing complaint. CCC Director contacts relevant operators accordingly;
- PKF Littlejohn commissioned and scope of work commenced. See paragraph 1.2 below for rationale.

1.1.4 2017 –

- scope of PKF investigation agreed with 54 (of 56) issues highlighted by complainants adopted within scope and commenced investigation;
- confirmation sent by CCC that drivers required to hold Certificate of Professional Competence (CPC);
- Department of Transport (DoT) advise nationally in July that Permits 19 or 22 cannot be used to operate commercial services. Further advice (September) recognises implications to Community Transport groups and highlights transitional period acceptable;
- FACT etc progress actions to comply with DoT advice and Taxi Association lodge objection to licensing applications. CCC advises Traffic Commissioner (TC) of ongoing PKF investigations and offers access to PKF. TC does not contact CCC;

- PKF investigation progresses liaising with all key stakeholders.

1.1.5 2018 -

- PKF accuracy checking commences and draft report issued to CCC;
- Counsel opinion sought on State Aid issues. Advice concludes State Aid requirements (across Cambridgeshire) probably breached and advice on remedy;
- June - Key Stakeholders invited to read full draft report and discuss with PKF;
- advice provided to Councillors regarding management of potential conflicts of interest;
- July 31 confirmed as Audit & Accounts Committee date.

1.2. The PKF report was commissioned after careful consideration of a number of factors by the Chief Executive and the Chief Internal Auditor and after discussions with the Leader, Deputy Leader, Chairman of Economy and Environment Committee and the Chairman of Audit and Accounts Committee. Those factors were as follows:

- the complaints to the County Council from the Taxi Association has been made over a number of years and had remained unresolved culminating in the Woodcote report;
- the lack of resolution of these complaints had caused the Taxi Association to lose trust and confidence in the County Council and its ability to resolve these complaints;
- the complaints made by the Taxi Association were extensive and serious and called into question a number of aspects of the operation of the County Council with respect to community transport;
- two complaints had been made to the police in relation to false information being provided to public bodies for the purpose of obtaining or maintaining public funding;
- the commission to Green Biro (an audit consultancy) to carry out an investigation of the issues following the Woodcote report was considered by the taxi drivers to lack independence as the work being commissioned was being led by the officers who were the subject of the complaints by the taxi drivers.

As a result of the above and in discussions with the Chief Executive and the Chief Internal Auditor and the taxi drivers, PKF were identified as an independent organisation with the relevant investigative and forensic expertise to conduct an investigation into the complaints made by the taxi drivers.

1.3 Once it was determined to use PKF to undertake this investigation, quotes were obtained as follows for this commission. The original quote -

- (i) was priced (using hourly rates) at £50,950 plus VAT, initially based upon the scope (as at (ii) below) and assumption that the majority of work would be undertaken by a senior manager @ £200 per hour. The original quote applied a 10% discount to £45,850 plus VAT;
- (ii) outlined 12 investigative issues and that, in summary, their work would investigate 'Cambridgeshire Bus and Taxi Association's (CBTA) main claims' that FH&E -

- vehicles operated without the correct and legally required licensing, offering huge financial and regulatory advantage;
- vehicle purchases and fleet expansion via illegal profiteering, cross-subsidisation of public sector grants, misuse of funding and fraudulent fund raising practices;
- operating on an anti-competitive basis supported and condoned by both county and district councils;
- in favouring FH&E, council officers and councillors wilfully neglect to perform their duty and to adequately investigate reported concerns and as a consequence fail to act against offences.

1.3.1 The original proposal also recognised the need to liaise with the police in relation to matters referred to them and historic investigative reports (eg the Woodcote report).

1.4 Following meetings to agree the detailed scope (including with the complainants) an investigative schedule of 54 issues (expanded to 55 during the investigation) was approved and a revised price quoted of £69,800 again predicated on the belief that the majority of work would be undertaken by the senior manager @ £200 per hour, equivalent to £1,500 per day. Partner level fees (which included technical advice if needed) were quoted at £350 per hour, equivalent to £2,625 per day.

1.5 Throughout the review additional work needed was proposed by PKF and assessed by the Chief Internal Auditor. Where additional work was necessary to properly meet the scope agreed and/or to accuracy check findings with relevant stakeholders, such work was approved.

1.6. As the detail of the report highlights (approximately 300 pages and approximately 30 summary appendices) and its extensive referenced exhibits, the original and revised proposals underestimated the time needed. This was caused by several key factors:

- extent of evidence submitted by complainants;
- number of disparate stakeholders needing liaison;
- unavailability of expected records from the County Council;
- unavailability of expected records from FH&E;
- extensive accuracy checking meetings needed that also ensured confidentiality;
- Department of Transport advice regarding Permit 19 and 'O' License requirements issued;
- requests and need to liaise with Counsel regarding legal advice on specific points.

1.7 Costs as at 31 May are £153,572 of which £87k (57%) was incurred from December when PKF commenced accuracy checking meetings with key stakeholders on draft reports and extracts. PKF costs to be invoiced for June are £25k and their final report was issued on 11 July with costs estimated through July also £25k. Therefore total costs for work up to and including attendance at the Audit & Accounts Committee on 31 July totals £204k.

1.8 PKF's work has however also identified monies due to CCC (and possibly other councils) that significantly reduces the cost of this work as below:

- 1.8.1 approximately £70k income due to CCC in respect of loans made and ESACT start-up capital plus the free loan of a Citroen vehicle;
- 1.8.2 breach of State Aid rules with the potential need to recover public funding provided to FACT and HACT that may exceed £200-300k, albeit the Council, as advised by Counsel, is liaising with the Department of Transport on whether 'remedy' does require recovery of payments made in excess of the de minimis threshold.

2.0 EXECUTIVE SUMMARY

- 2.1 The PKF report provides an independent, comprehensive analysis of the long running complaints submitted in respect of Community Transport operating across the county and funded primarily by the County Council but also District, Borough and Parish & Town Councils, as well as income generated from commercial sources as cited within the complaints.
- 2.2 It is important to highlight that all stakeholders, including the complainants, have recognised the important services that community transport solutions provide to vulnerable and isolated residents across the county.
- 2.3 The County Council fully accepts the findings of PKF and has been working on improving those areas of operation and governance as set out within Appendix 1 that provides a full and comprehensive Action Plan developed for all PKF findings. In accepting the findings, the Chief Executive intends to meet with the complainants to offer an apology for what has happened and to explain the actions which the County Council has taken to address the findings of the report.
- 2.4 There is no doubt that PKF findings have identified areas of Council activity that did not operate to the standards expected and improvements have been agreed and implemented to address those issues as set out in Appendix 1.
- 2.5 In addition to the actions set out in Appendix 1, the Chief Executive has instituted a disciplinary investigation, having taken the advice of the Head of Human Resources in accordance with the County Council's disciplinary procedures.
- 2.6 Additionally, two referrals were made to the police:
- Allegation of Fraud re: FACT – letters submitted in support of grant funding requests;
 - Allegation of Fraud re: FACT, HACT and ESACT – responses to CCC CT customer survey.
- 2.6.1 In respect of the letters the police advise that:-
- 'letters provided in support of this funding application may technically have been false instruments';
 - 'the author was a junior member of staff';
 - 'there is no substantive offence of fraud'.
- 2.6.2 In respect of the surveys the police advise that actions do not highlight criminality and specifically evidence is inconclusive that the CTA was told that it could not complete these

forms on behalf of its members.

2.6.3. Whilst the police conclude there is insufficient evidence to merit prosecution, their conclusions do highlight actions by FACT, HACT and ESACT that on the balance of probabilities support a conclusion that false information was created and submitted with an intent to support requests for public funding consistent with those findings highlighted by PKF.

2.7 In summary the action now taken includes (as set out in detail at Appendix 1):

2.7.1 The FH&E Chair of Trustees is liaising with the Chief Executive and Leader of the County Council to demonstrably progress improved processes within FH&E that meet public sector standards.

The Chief Executive and the Leader, together with advice from the Chief Internal Auditor, are presently considering those processes and actions which are included in Appendix 1 and can be summarised as follows:

- that staffing implications arising are properly addressed;
- processes are improved that enable FH&E to demonstrate that all information included within future public funding requests is accurate and that an effective 'quality assurance' mechanism is in place;
- the separate accounting between:
 - FACT, HACT and ESACT
 - publicly funded and commercial / other operations;
- repayment of loans (including interest) and return of vehicle;
- accurate accounting, reporting and disclosure of:
 - all public funding received (not tendered / commercially secured)
 - membership details including eligibility checks
 - compliance with grant fund conditions and relevant operational information eg demand, journeys etc
 - vehicle details and maintenance
 - driver eligibility and training;
- agreement that data maintained in respect of publicly funded operations shall be accessible and verifiable by public bodies and their auditors. For the avoidance of doubt this includes membership and staff information.

2.7.2 The Council has adopted a new, robust grant funding criteria and monitoring arrangements, including more formal decision making processes involving Councillors and Council Committees where appropriate.

2.7.3 The Council has taken external legal advice to remedy the breach of State Aid funding identified by PKF and commenced more effective liaison with Council colleagues regarding countywide funding to avoid similar issues in future. Consistent with that advice the County

Council is already liaising with the DoT on the remedy needed.

2.7.4 Recovery action has commenced and repayments started for those loans identified by PKF as due to the County Council.

2.7.5 The County Council has also carefully considered the various legal advice and positions regarding the operation of 'commercial' operations under Permit 19 licenses including separate external Counsel opinion. It is evident that there are different opinions on this issue and that recent Counsel advice has not provided clarity. In accordance with advice from PKF the Council will adopt a cautious, prudent approach that:

- is consistent with the management actions at Appendix 1;
- requires all community transport operators and Permit 19 holders to separately account for public funded and commercial operations;
- ensures all providers (either procured or grant funded by CCC) demonstrate they maintain O Licenses for other commercial operations;
- ensures all providers licensed under Permit 19 demonstrate operations are compliant with that license, and the County Council will verify that compliance when issuing Permit 19 licenses and considering grant funding applications.

2.7.6 Whilst some legal advice has highlighted it may be legal for 'not-for-profit' organisations to undertake commercial operations within Permit 19 licences, that advice may not be compliant with Department of Transport guidance. Therefore until such time as a court rules on this matter the County Council will adopt that prudent approach to ensure the Council can demonstrate that no public funds (nor the assets they support) subsidise commercial services / operations.

Source Documents	Location
PKF Report	Room 106, Shire Hall, Cambridge