

## **Cambridgeshire County Council**

11 July 2018

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## 1 Glossary of terms

ACRE	Action with Communities in Rural England
B&CA	Bus & Coach Association
BSOG	Bus Service Operators Grant
CBCTA	Cambridgeshire Bus Coach and Taxi Association
CCC	Cambridgeshire County Council
CFT	Cambridgeshire Future Transport
CIO	Charitable Incorporated Organisation
CPC	Certificate of Professional Competence
CTA	Community Transport Association
CTF	Community Transport Fund
CTO	Community Transport Organisation
CTS	Community Transport Service
De Minims State Aid	Small amounts of state aid which are deemed to be unlikely to distort competition
DfT	Department for Transport
DPA	Data Protection Act 1968
EIR	Environmental Information Regulations 2004
ESACT	Ely and Soham Association for Community Transport
ESDAR	Ely and Soham Dial-A-Ride
FACT	Fenland Association for Community Transport Ltd
FCA	Financial Conduct Authority
FDC	Fenland District Council
FHE Manager	The manager of FACT, HACT and ESACT
FHE Training Manager	The training manager of FACT, HACT and ESACT

FOI	Freedom of Information
FOIA	Freedom of Information Act 2000
FRS 102	Financial Reporting Standard 102
FSA	Financial Services Authority (now the FCA)
GBER	General Block Exemption Regulations
HACT	Huntingdonshire Association for Community Transport
HDC	Huntingdonshire District Council
IGT	Information Governance Team (at CCC)
IPS	Industrial and Provident Society
ITA	Integrated Transport Authority
ITT	Invitation to Tender
LGSS	LGSS Law Limited
MiDAS	Minibus Driver Awareness Scheme
Mr Humphrey	Vice Chairman of the CBCTA
NCC	Northamptonshire County Council
NOCT	Nene and Ouse Community Transport
PCV	Passenger Carrying Vehicle
PP	Per Procuracionem
PHV	Private Hire Vehicle
PKFL	PKF Littlejohn LLP
PRA	Prudential Regulation Authority
PSDMR	European Commission's Public Service De Minimis Regulation
PSV	Public Service Vehicle
QSGR	Quarterly Steering Group Report
SAR	State Aid Rules

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SGEI	Service of General Economic Interest
SANIS	State Aid Notification Interface System
SORP	Statement of Recommended Practise
TEFU	Treaty on the Functioning of the European Union
Tesco	Tesco PLC
VOSA	Vehicle and Operator Services Agency

## 2 Introduction

- 2.1 This report is confidential and has been prepared solely for Cambridgeshire County Council (“CCC”), it shall not be used for any other purpose, reproduced or disclosed to any other party in whole or in part without our prior written consent. We do not accept any liability to any other party by virtue of the transmission of our report to them. PKF Littlejohn LLP (“PKFL”) does not accept or assume any responsibility, or a duty of care, to any third party for the work it carries out, or the advice it gives or for any opinions expressed, or information included.

### *Scope of work and limitations*

- 2.2 In many cases we have relied upon explanations given to us by CCC officers and the management of Fenland Association for Community Transport Limited (“FACT”), Huntingdonshire Association for Community Transport (“HACT”) and Ely and Soham Association for Community Transport (“ESACT”). Our review was not an audit of the financial statements. Any detailed review procedures that we have carried out were solely to satisfy ourselves as to the reasonableness of the data we have received. We have not attempted to independently verify the information contained in this report. Consequently, our work will not provide any assurance that the financial records or financial information are free from material misstatement whether caused by fraud, other irregularities or error.
- 2.3 PKFL has not verified or otherwise audited the information presented to us or representations made to us. To the extent that the information on which we have relied is not accurate or complete, it may be necessary for us to revise our opinions. If information is made available to PKFL which provides additional evidence regarding the matters referred to in this report, it may be necessary for us to revise our opinions.
- 2.4 We have been provided with information, documents and explanations by CCC, FACT, HACT and ESACT, however, we would comment this did not constitute unlimited access to such information on an unrestricted basis. CCC, Fenland District Council (“FDC”), Huntingdonshire District Council (“HDC”) and the management of FACT, HACT and ESACT have confirmed the factual accuracy of this report where applicable.
- 2.5 The information in this report is based primarily on:

- Information and documents provided by CCC, HDC, and FDC;
- Information and documents provided by FACT, HACT and ESACT;
- Information provided by the Cambridgeshire Bus Coach and Taxi Association (“CBCTA”) and through their spokesperson Mr Humphrey;
- The published financial statements of FACT, HACT and ESACT;
- Information from the Charity Commission’s website;
- The annual returns of FACT to the Prudential Regulation Authority (this is the Authority which regulates the activities of Industrial and Provident Societies. FACT is an Industrial and Provident Society);
- Published information from the Department for Transport (“DfT”), European Union, Traffic Commissioners, the Community Transport Association (“CTA”) and other quasi-governmental organisations;
- Direct correspondence with the DfT; and
- Advice provided by legal Counsel.

2.6 PKF Littlejohn LLP is a leading firm of accountants and business advisers in the UK and the London member of PKF International. We carry out objective and independent investigations on regulatory and other matters. We are regulated by the Institute of Chartered Accountants in England and Wales.

### ***Calculations***

2.7 The calculations, tables and figures within this report are based using computer spreadsheet technology which regularly undertakes calculations to many decimal places before rounding them for arrangement in the presented table, figure or narrative of this report. In occurrences this may give rise to apparent rounding differences between the total figures and its component parts.

2.8 The investigation follows the publication of a report commissioned by the CBCTA into certain allegations concerning the Councils, FACT, HACT and ESACT (“the Woodcote Report”) (See Exhibit MKM 13(1)). These allegations highlighted concerns with the



funding and operation of FACT, HACT and ESACT, and, are detailed in the Scope of Work at Appendix A, which is summarised at Section 3 of this report.

2.9 On Friday 17 March 2017 PKFL was instructed to carry out an independent investigation based on a scope of work which had been previously agreed by CCC, PKFL and the CBCTA via their spokesperson Mr Humphrey.

2.10 This report outlines the findings of the investigation.

### 3 Scope of work

3.1 Our detailed scope of work is set out in our engagement letter at Appendix A. In summary, our investigation covers the following areas:

- Review of grant applications, procedures and supporting evidence;
- Review of Annual Returns and Published Accounts of the Community Transport Organisations (“CTOs”);
- Funding – a review of the Councils’ systems for ensuring that Department of Transport guidance and State Aid Regulations for funding CTOs has been complied with;
- Funding – compare funds allocated to the CTOs to published accounts. Examine the records of the CTOs and document the recorded costs against revenues;
- Expansion and Demand – compare fleet expansion to increase in ridership demand from both community and commercial contracts;
- HACT – investigate the start-up funding and contract / community income of HACT since its formation;
- Licencing – review CCC’s legal advice and responses in respect of permits and licenses. Review CCC’s procedures for issuing Section 19 permits. Review the licensing arrangements at the CTOs;
- Sections 19 and 22 of the Transport Act 1985– ensure the conditions included in permits is adhered to by the CTOs;
- Review and comment on specific commercial contracts operated by the CTOs with particular reference to licensing and permit regulations;
- Review membership procedures for the CTOs and compare to grant conditions in respect of eligibility for membership;
- Obtain details of designated routes and analyse journey metrics for one complete financial year;

- Conflicts of Interests – investigate evidence of conflicts of interest and ensure CCC's procedures are adhered to;
- Complaints Handling – document CCC's procedures and test check if they are complied with;
- Investigate and check that CCC's procedures in respect of awarding transport contracts have been followed, comply with the appropriate guidelines and have been advertised in accordance with procedures and guidelines; and
- Freedom of Information – test check that CCC's systems for FOI requests have been complied with.

## 4 FACT

- 4.1 According to its website, *“FACT operates as a not-for-profit organisation serving the Fenland Area of Cambridgeshire to people who have difficulties using conventional modes of transport”*. Its aim is *“to provide accessible, affordable and safe transport services”*. FACT and its sister organisations, HACT and ESACT, operate what is known as a ‘community transport service’ (‘CTS’).
- 4.2 FACT was registered in the Mutuals Public Register on 24 August 1989 as the ‘Fenland Association for Community Transport Limited’.
- 4.3 The term ‘community transport services’ is not defined in law. It is a generic description capable of being applied to a very wide range of different services. However, the term is most usually applied to services involving the provision, both by and for the benefit of a particular local community, of some form of transportation facility or service. The service may benefit that local community as a whole, or a particular section of that local community (such as the disabled or infirm).
- 4.4 CTSs are often, though not always provided by a local charity or other non-profitmaking body, provided wholly or partly through the labour of unpaid volunteers and provided for the benefit of people in the community who would otherwise be disadvantaged in terms of their access to transport services (e.g. people living in a countryside village that is not served by regular public transport services, or people who suffer from physical or mental disabilities who, for that reason, find it difficult to use public transport).
- 4.5 FACT is a membership organisation; therefore groups/individuals are required to register with FACT before they can benefit from its services.
- 4.6 FACT’s fleet of vehicles ranges from minibuses (with seating capacity of between 12 and 16 passengers, some of which are able to carry up to five wheelchair users) and cars carrying one wheelchair user/two passengers. Many of FACT’s vehicles are fully accessible in order to accommodate wheelchair users and those that find steps difficult to use.

### ***Governance and Management***

- 4.7 The governance of FACT is the responsibility of the Executive (Management) Committee as set out in FACT’s Rules and Memorandum of Articles (Exhibit MKM 4(12)). The Management Committee meetings must take place at least four times a year. The Management

Committee consists of elected and co-opted persons and is responsible for the annual financial statements and the adequacy of accounting records. The day to day management of FACT is the responsibility of the FHE Manager, the FHE Training Manager and the FHE Transport Manager.

- 4.8 On its current website FACT advertises 3 main services for members which are described below.

### ***Group Hire***

- 4.9 FACT advertises a mixed fleet of fully accessible minibuses which are available for any not-for-profit body whose activities are concerned with social welfare, recreation, cultural or similar purposes. Groups have to be members of FACT to use this service. The membership fee is currently £15 paid annually and an additional £1 fee is payable by group members for a Share Certificate, this fee is payable once when first applying to become a member.

### ***Dial-A-Car***

- 4.10 This facility is advertised as a pre-bookable service for members which can be used by individuals who have no access to transport services. The service can be used for individuals for hospital or doctor's appointments, to visit friends/relatives, appointments, holidays etc.
- 4.11 The website states that persons wishing to use this service must be a member of FACT.
- 4.12 Members using the Dial-A-Car service are not allowed to use their bus pass. FACT's website states that charges for this service are currently based on a mileage rate and have been set with affordability/flexibility in mind.
- 4.13 Dial-A-Car is a pre-bookable service and FACT request that members book in advance, as they are unable to take same day bookings. FACT advertise that they are able to provide journeys at weekends, but cannot guarantee driver availability.
- 4.14 An annual membership fee of £10.00 is payable.

### ***Dial-A-Ride***

- 4.15 Dial-A-Ride is advertised as a pre-bookable scheduled service operating throughout the Fenland Area, currently five days a week, for members. It provides a door-to-door service for individual people unable to utilise conventional public transport services. This service is

based on a timetable/route and members holding a valid Cambridgeshire County Council bus pass can travel for free. The membership fee is £10 paid annually.

- 4.16 In addition to the daily Dial-A-Ride service, FACT also offer trips to other places throughout the year. Bookings for these trips can be made from seven days before the trip. Details of these 'Daily Specials' are provided on the FACT website. CCC bus pass members can use this service for free.
- 4.17 In addition to the scheduled service and Daily Specials, FACT run several luncheon outings for their members throughout the year. Members are not entitled to use their bus passes and have to pay the full published price if they would like to use this service. Details of the lunch outings are printed on the FACT website.
- 4.18 CCC has a local agreement (separate from the national scheme) with all Community Transport Operators to reimburse them for lost revenue to allow passengers to travel at half fare. In addition, FACT is party to a separate agreement with Fenland District Council ("FDC") (Exhibit MKM 4(20)) in relation to the concessionary fare scheme. The FDC agreement confirms that FDC will reimburse concessionary fares for Dial A Ride services in respect of half the fare forgone (up to a maximum of £50,000 for 2016-17) which means that travel is free in the FDC area for certain residents. The concessionary fare agreement (paragraph 4.1) states: *"FACT will accept National Concessionary Bus Passes on dial-a-ride services to pass holders will (sic) live in Fenland District Council area. People who qualify for a national concessionary bus pass but live elsewhere in England will not be entitled to use their pass on FACT Services."* One of the conditions contained within the agreement between FDC and FACT is that FACT is required to produce monthly and quarterly ridership figures and statistics in relation to the Dial-A-Ride service (these conditions are similar in most part to the conditions included in the 2014 Grant Funding Agreements). The fares are reimbursed to FACT by the Councils (Refer to Exhibits 13-A-2 and 9-G-1 to 9-G-5).

### **Contracts**

- 4.19 In addition to the above services, FACT also runs a number of contracts on behalf of CCC.

## 5 HACT

- 5.1 According to its website HACT is a registered charity in the Huntingdonshire Area which offers a door-to-door service for people who cannot access local bus routes due to age and disability, people living in rural locations with limited or no access to local bus routes or those without access to a car.
- 5.2 The organisation is registered as a charity with the Charities Commission and has a registration number 1151445. The organisation was registered as a charity on 28 March 2013.
- 5.3 The Aims and Activities of HACT as included in the Charity Commission's website are: *"We will be providing transport to vulnerable members of the community, those who do not have access to transport. We intend to operate education contracts and assist local authorities and other such bodies in the execution of transport services for the benefit of the community. Group hire transport to voluntary and non-profit making groups in the Huntingdonshire area."*<sup>1</sup>

### ***Governance and Management***

- 5.4 As a registered charity the Board of Trustees is responsible for governance of its activities in accordance with its founding constitution (Exhibit MKM 4(21)). Meetings of the board of Trustees are held four times a year. The Board is responsible for the annual financial statements and the adequacy of the accounting records. The day to day management of HACT is the responsibility of the FHE Manager, the FHE Training Manager and the FHE Transport Manager.
- 5.5 On its website, HACT advertises 3 main services which are described below.

### ***Group Hire***

- 5.6 HACT advertises that it has a mixed fleet of fully accessible minibuses which are available for any not-for-profit body whose activities are concerned with social welfare, recreation, cultural or similar purposes.

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<sup>1</sup>  
<http://apps.charitycommission.gov.uk/Showcharity/RegisterOfCharities/CharityWithPartB.aspx?RegisteredCharityNumber=1151445&SubsidiaryNumber=0>

- 5.7 Groups are required to register and become a member of HACT before they can benefit from this service. The current annual membership fee is £20.

### ***Ring and Ride***

- 5.8 This is a pre-bookable scheduled service which operates throughout the Huntingdonshire area five days a week, the service is described as providing a door-to-door service for individual people unable to utilise conventional public transport services. This service is based on a timetable/route and members holding a valid Cambridgeshire County Council bus pass can travel for free. The membership fee is £15 paid annually.
- 5.9 In addition, HACT offers the same type of “Daily Specials” service as noted in paragraphs 4.16 for FACT above.
- 5.10 As for FACT, (refer to paragraph 4.18), HACT is party to separate agreements with CCC and HDC such that members holding a valid bus pass can travel for free, and such fares are reimbursed by the Councils to HACT.

### ***Ring-A-Car***

- 5.11 This service is a facility described as a pre-bookable service which could be used by any member who had no access to transport services. The service is used for members to visit friends/relatives, appointments, holidays etc.
- 5.12 The website stated that persons wishing to use this service must be a member of HACT.
- 5.13 Members using the Ring-A-Car service are not allowed to use their bus pass. HACT’s website states that charges for this service are currently based on a mileage rate and have been set with affordability/flexibility in mind. It states that there is a cancellation fee if the member cancels within 7 days of hire of £10.00. The driver will wait for one hour at your destination, after the hour the waiting time is £1.00 per 15 minutes. All prices that are quoted on the website include VAT.
- 5.14 This service is available 7 days a week if sufficient notice is given for weekend journeys.

### ***Contracts***

- 5.15 In addition to the above services, HACT also runs a number of public contracts on behalf of Councils.



## 6 ESACT

- 6.1 According to its website ESACT is a registered charity in the East Cambs Area of Cambridgeshire which offers a door-to-door service for people who cannot access local bus routes due to age and disability, people living in rural locations with limited or no access to local bus routes or those without access to a car.
- 6.2 The organisation registered as a charity with the Charities Commission on 8 May 2015 and has a registration number 1161583.
- 6.3 The following are the charitable objects of ESACT as included in the Charity Commissions website: *“To provide a community transport service for such inhabitants of East Cambridgeshire and the surrounding area who are in need of such a service because of age, sickness or disability (mental or physical) or poverty or a lack of availability and safe public transport services. To provide group hire services to voluntary and non-profit making groups in the East Cambridgeshire district area. To assist local authorities and other such bodies in the execution of transport services for the benefit of the community. Assist the work of organisations and local authorities in the advancement of education and the protection of health”.*<sup>2</sup>

### ***Governance and Management***

- 6.4 As a registered charity the Board of Trustees is responsible for governance of its activities in accordance with its founding constitution. Meetings of the Board are held four times a year. The Board is responsible for the annual financial statements and the adequacy of the accounting records. The day to day management of ESACT is the responsibility of the FHE Manager, the FHE Training Manager and the FHE Transport Manager.
- 6.5 On its website, ESACT advertises two main services which are described below.

### ***Group Hire***

- 6.6 ESACT advertises that the vehicle seating capacity in its fleet ranges from 12-16 as this is the maximum number of passengers that can be carried under a Section 19 minibus permit.

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<sup>2</sup> Source:  
<http://apps.charitycommission.gov.uk/Showcharity/RegisterOfCharities/CharityWithoutPartB.aspx?RegisteredCharityNumber=1161583&SubsidiaryNumber=0>

Vehicles are available to local community groups/non-profit organisations whose activities are concerned with social welfare, recreation, cultural or similar purposes.

- 6.7 Groups are required to register and become a member of ESACT before they can benefit from this service. The current annual registration fee is £15.00.
- 6.8 Charges are based on a mileage rate.

### ***Dial-A-Ride and East Cambs Connect***

- 6.9 East Cambs Connect is described as a *“bookable, flexible, door to door, mini bus service for EVERYONE living, working and visiting East Cambridgeshire who can’t access scheduled bus services to where they want to go. The service is managed by Cambridgeshire County Council who has contracted ESACT to run the service Monday to Friday from 7am to 7pm”*. A telephone booking line is available Monday to Friday from 9am to 1pm. Members need to book a place on the service at least a day in advance.
- 6.10 The area covered by East Cambs Connect also includes access to WWT Welney which is just inside Norfolk and north of Ely.
- 6.11 The East Cambs. Connect service replaced the ESACT Dial-A-Ride scheme on 3 April 2017. We are informed by CCC that the East Cambs Connect service contract was awarded by CCC to ESACT following a full procurement exercise.
- 6.12 Dial-A-Ride was a pre-bookable scheduled service for members which operated throughout the East Cambridgeshire area five days a week. The service was described as *“a flexible service to people who otherwise wouldn’t be able to get to local services, social groups or amenities.”* The service aimed to *“reach those who are isolated due to rural location or because of mobility.”* The service was based on a timetable/route and users holding a Cambridgeshire County Council bus pass would use the service and pay half fare after registering. The 50% fare reduction for members who used their bus pass was reimbursed to ESACT by CCC (Exhibit 13-A-2). The membership fee was £10 paid annually. This service did not run on Bank Holidays.
- 6.13 The former Dial-A- Ride service had three designated routes described as zones, A, B and C.
- 6.14 Zone ‘A’ provided door to door transport for members living in Coveney, Ely, Little Downham, Mepal, Pymoor, Sutton, Wardy Hill, Wentworth, Witcham and Witchford.

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- 6.15 Zone 'B' provided door to door transport for members living in Aldreth, Fordham, Haddenham, Isleham, Little Thetford, Soham, Stretham, Upware, Wicken and Wilburton.
- 6.16 Zone 'C' provided door to door transport for members living in Barway, Chettisham, Littleport, Prickwillow, Queen Adelaide, Shippea Hill and Stuntney.
- 6.17 In respect of the three zones ESACT provided a daily service each Monday to Friday to Ely. The service did not run on a Saturday and did not run on Bank Holidays. The service started at 9.30 hours and returned at 13.00.
- 6.18 East Cambs Connect covers the East Cambridgeshire District area inclusively (as indicated on the map shown) and customers are able to travel anywhere within that area.



- 6.19 In addition, ESACT run a 'monthly special' for their members in the three zones to St Ives, Cambridge, Huntingdon and St Neots. The service runs on different days depending on which zone the member is located.
- 6.20 ESACT run several luncheon outings for their members throughout the year. Members are not entitled to use their bus passes and have to pay the full published price if they would like to use this service. Details of the lunch outings are printed on the ESACT website.

### *Contracts*

- 6.21 In addition to the above services, ESACT also run a number of public contracts on behalf of Councils.

## 7 Grant Applications

1. *Acknowledge and examine submitted FACT/HACT grant applications, received via FOI request by the CBCTA, to identify and report any repeated patterns of irregularity and use of falsifications. In particular:*
  - i. *Whether the council's procedures for authorisation of grants have been adhered to*
  - ii. *Whether the grant applications were factually correct and supported by appropriate evidence; and*
  - iii. *Taking into account the evidence provided in the Key Forensics Limited report.*
2. *Investigate and report the reason given for any factually incorrect data identified at 1(ii) above and consider the likelihood as to whether "the person making it knew that it was, or might be, untrue or misleading".*

7.1 Mr Humphrey presented PKFL with a number of documents which were obtained by CBCTA members and their supporters, as a result of exercising their rights under the FOI Act 2000.

7.2 The documents relate to applications for grants sent to March, Manea and Wisbech Councils as set out below.

### ***March Town Council***

7.3 The first document presented to PKFL was a request for funding to purchase a 'Lifeline Bus' by FACT. The letter is on FACT headed paper and addressed to one of the councillors at March Town Council. It is dated 28 January 2011 and the salutation reads "*Yours sincerely,*

[the name of the FHE Manager]” between the words yours sincerely and the name of the FHE Manager is a signature (Exhibit DH 1).

- 7.4 The first paragraph of this document states “*FACT is a registered charity*”. CBCTA members say that this information is false. They state that FACT is not a registered charity but was registered under the Co-operative and Community Benefit Societies Act 2014 as an Industrial and Provident Society (“IPS”) registration number IP26756R. They state that at best it could be what is termed an exempt charity.

### ***Charitable Status***

- 7.5 An exempt charity is one that is not regulated by, and cannot register with, the Charities Commission. A charity is exempt if it is:
- Included in Schedule 3 to the Charities Act;
  - A common investment fund or a common deposit fund which permits only exempt charities to participate (see section 4); or
  - Made exempt by some other legislation.
- 7.6 The Charities Commission maintains a registry for all registered charities. Exempt charities are not listed on the registry.
- 7.7 Within Exhibit MKM 4(5) there is a letter from the Charities Commission dated 26 April 1991 stating FACT is an “exempt charity”. In addition, at Exhibit JP 4(1) is a letter from HMRC dated 2 April 2014 stating that FACT is a charity for tax purposes.
- 7.8 The Financial Conduct Authority (“FCA”) acts as the registrar and regulator for ‘Mutual Societies’ and a check of their online register shows that FACT registered with the FCA as an IPS on 24 August 1989. A search of Companies House also shows FACT to be an IPS.
- 7.9 On 1 August 2014, the Co-operative and Community Benefit Societies Act 2014 consolidated and replaced previous Industrial and Provident Societies Acts, including the Industrial and Provident Societies Act 1965. From this point IPSs’ registered, or treated as registered, under the Industrial and Provident Societies Act 1965 were deemed as registered under the Co-operative and Community Benefit Societies Act 2014.

- 7.10 Since the inception of the Co-operative and Community Benefit Societies Act in 2014, only two types of society can now be registered, co-operatives, which exist to benefit their members and community benefit societies, which exist to benefit the community.
- 7.11 Co-operatives can choose different legal structures, including limited companies, community interest companies, community benefit societies or co-operative societies (bona fide co-operatives).
- 7.12 When the FHE Manager was asked about the document (Exhibit DH 1) she indicated that it was prepared by a temporary member of staff and signed on her behalf per procuracionem ("PP"). The FHE Manager advised PKFL that she had given permission to this temporary member of staff to sign documents on her behalf. The FHE Manager concedes that it was her responsibility to check the document for accuracy before it was despatched and she did not. She also concedes that FACT is not a registered charity and that this should not have been written in the letter. She also indicated that the letter heads gave details that FACT was an Industrial and Provident Society. She also stated that the letter was followed up with a personal visit and that she was available to answer any questions at the meeting.
- 7.13 PP is an abbreviation of the Latin word Per Procuracionem meaning by the agency of, or on behalf of. When someone is asked to pp a letter it means that they are signing the letter on behalf of the person who wrote it. They do this by signing their own signature in place of where the author's signature would have been written. The PP entry is a signal to the reader that someone signed the letter on behalf of someone else.
- 7.14 In the case of the letter addressed to March Town Council Exhibit DH 1 the letter does not have the PP annotation.
- 7.15 Mr Humphrey also produced to PKFL (Exhibit DH 11) an email, which appears to be from a member of the Registration Unit of the Charity Commission. The email refers to 'recent correspondence', which the writer had been engaged in with the FHE Manager, regarding FACT's charitable status. The email is undated, however, there is a 'date modified' of 10 December 2011 (see page 4 of Exhibit DH 11).
- 7.16 The email offers advice in relation to Industrial and Provident Societies. The advice states *"As I confirmed in my email of 26 November that at the present time Industrial and Provident Societies, insofar as they are charities, are exempt charities that cannot register*

*with us*". The email gives details of the criteria an organisation must fulfil to get charitable status.

In addition, Mr Humphrey produced a second email (Exhibit DH 12), again this email is undated but a modified date of 7 November 2012 is shown. The owner of the document at the time it was written was employed by the Charity Commission. The email is addressed to one of the trustees of FACT and is in relation to FACT's status.

- 7.17 The email refers to an Annual Return which had been completed by FACT for the Financial Services Authority ("FSA") now the FCA. The email states that FACT had advised the FSA that it was accepted by HMRC, for tax purposes, as a charity. The email points out that *"not all Industrial and Provident Societies are charities"* and goes on to state that *"in order to be a charity, an organisation must be established only for charitable aims for the public benefit"*.
- 7.18 In addition, Mr Humphrey provided PKFL details from the FACT website of the donations page as shown at 13.33 hours on 30 January 2013. The page contains the following information. *"FACT is a registered charity that provides an (sic) essential transport services via specially adapted vehicles to the elderly, disabled and disadvantaged members of our rural Fenlands community. We provide a seven day a week service with twenty drivers catering for the needs of over 5000 residents....."*. Mr Humphrey produces a screen shot of the page of the website as DH 9.
- 7.19 The application form for the Community Transport Minibus Fund (Exhibit DH 11(2)) asks the applicant on page 1 to answer a number of questions including "Type of organisation (e.g. Trust, company limited by guarantee, community interest company)". The response to this question is *"Industrial and Provident Society Number"* (The number is omitted). A second question appears as follows: *"Charity number if applicable"*. The response to this question is - (a dash). This appears to confirm that when this form was completed on 11 December 2014 that there is an acknowledgement from FACT that it was not a registered charity. On page 4 of the document there is a declaration which states "We confirm that the information provided on this form is correct". The name of the person who appears to acknowledge the declaration is the FHE Manager.



### *Membership Numbers*

- 7.20 In addition, the CBCTA indicates that a second statement, within the first paragraph of an undated letter respect of a funding application by FACT to March Council (Exhibit DH 1) is also false and was written with the intention of misleading the recipient of the letter. This statement reads, *“Our service operates 7 days a week with 20 drivers catering for the needs of nearly 5000 members. We are operating with a fleet of twenty vehicles which are becoming old and tired”*.
- 7.21 CBCTA members would say that the service only operates 5 days a week as evidenced in FACT’s own website and that the membership has never reached anywhere near 5000 members.
- 7.22 In relation to the statement “20 drivers cater for the needs of “5000 members”, the FHE Manager takes full responsibility for this statement but again points to the fact that she did not prepare the letter and it was signed PP by the temporary member of staff. She believes that the figure could be a combination of membership and ridership figures but concedes that in any event membership has never reached the 5000 figure (refer to paragraph 7.55 for membership figures). In relation to the statement *“Our service operates 7 days a week”* she indicated that whilst the Dial-A-Ride service does not operate 7 days a week, the Group service is available 7 days a week as long as sufficient notice is given of the requirement.
- 7.23 Mr Humphrey presented PKFL with a second document (Exhibit DH 2), an application by FACT for funding of a “hydraulic lift”. This document is not addressed to any particular organisation but PKFL understands that it was obtained from March Town Council as a result of a FOI request by former District Councillor David Patrick (Cllr Patrick), and is an application for grant funding towards a “hydraulic lift”.
- 7.24 The document contains FACT information including details of its registered address, chairperson and secretary. The document shows a reference number 26756R which is written immediately under the sub heading ‘Charity Number’. This reference number is not issued by the Charity Commission, it is FACT’s Prudential Regulation Authority (“PRA”) registration number. The document is undated but contains an annotated hand-written date on page 1 of “19.3.12”. The letter would appear to post-date the information from the Charity Commission.

- 7.25 The PRA is a United Kingdom financial services regulatory body, formed as one of the successors to the Financial Services Authority. The authority is structured as a limited company wholly owned by the Bank of England and is responsible for the prudential regulation and supervision of banks, building societies, credit unions, insurers and major investment firms. It sets standards and supervises various financial institutions.
- 7.26 In addition, the application claims that the service runs seven days a week and the membership numbers are over 5000.
- 7.27 When questioned about this document, the FHE Manager again states that the document was not prepared by her but by the work experience member of staff.
- 7.28 The FHE Manager accepts full responsibility for the misleading entries, that is - relating to the IPS number which is shown as a charity number; the fact that FACT is not a registered charity; that FACT did not have 5000 members. She has confirmed to PKFL that she did not check the letter prior to it being sent out to March Town Council.
- 7.29 A copy letter and a copy of a donations application form was produced to PKFL by Mr Humphrey (Exhibit DH 3). The letter is on FACT letter headed paper addressed to a member of March District Council. The letter is dated 25 January 2013 and refers to a grant application from March Town Council in support of FACT's Dial-A-Ride Central Service. Following the salutation there is a signature followed by the words fundraiser. This letter does not make any reference to FACT having charitable status nor does it refer to any membership figures.
- 7.30 The copy letter indicates that FACT received funding from March Town Council during the previous year (2012) and invites March Town Council to make a further contribution towards FACT's Dial-A-Ride Central Service.
- 7.31 The donations application form, also contained within Exhibit DH 3, is written on March Town Council's headed paper. The letter is titled 'Donations' and contains a short paragraph explaining the Council's position in relation to donations / grants to charitable and voluntary organisations offering voluntary aid to individuals or organisations within the area of March. The letter appears to be a proforma application form containing a number of typed section headings followed by an area of space to allow applicants to fill in the necessary details for their application. It is noted that under the heading 'CHARITY REGISTERED NUMBER' the words "*Industrial & Provident Society – 26756R*" have been

inserted. Under the heading 'BENEFICIARIES' the following has been written *"Our member base of 2000 which includes many local March groups & organisations that rely on us for transport"*. At 31 December 2013 FACT had 1,142 individual members and 389 group members (Exhibit MKM 4(8)). The amount requested was £1,000. There is no indication as to who completed the application form.

- 7.32 It appears from a hand annotated note (Exhibit DH 3 on page 2) that £500 was awarded. `
- 7.33 A copy letter and a copy of a donations application form was produced to PKFL by Mr Humphrey (Exhibit DH 4). The letter is on FACT letter headed paper addressed to a member of March Town Council. The letter is dated 3 March 2014 and refers to a grant application to March Town Council in support of FACT's Dial-A-Ride Central Service. As with the letter (Exhibit DH 3) following the salutation there is a signature followed by the words fundraiser. This letter does not make any reference to FACT having charitable status but does mention that *"Memberships from March have increased year on year, mainly due to the planned service transport cuts that are happening across the region"*.
- 7.34 The donations application form follows the same format as the one described in paragraph 7.31. It is noted on this occasion that under the heading 'CHARITY REGISTERED NUMBER' the words *"Industrial & Provident Society (Charitable Organisation) 26756R"* have been inserted. This letter post-dates the advice received from a member of the Registration Unit of the Charity Commission. Under 'DETAILS OF THE COST OF THE PROJECT' the following has been written, *"The Dial-a-Ride Central Service has grown over the years"*. Under the heading 'BENEFICIARIES' the following has been written, *"FACT has 1,187 individual members of which 391 are March residents, this includes many wheelchair users FACT looks after many March Groups."* FACT had 1,142 individual members as at 31 December 2013 and 1331 as at 31 December 2014, of which 362 members were resident in March at 31 December 2014 (Appendix K2 and Exhibit 7-G-1).

### **Manea Parish Council**

- 7.35 Mr Humphrey produced to PKFL a number of inter-related documents in relation to an application for funding from Manea Parish Council as Exhibit DH 5. In order to uniquely identify these documents, they have been sub-divided as follows:
- A two-page email initially sent from the FHE Manager to the Clerk of Manea Parish Council on 20 November 2012 (Exhibit DH 5A);

- A letter to the Clerk of Manea Parish Council dated 25 January 2013 (Exhibit DH 5B);
- A two-page email initially sent from the Clerk of Manea Parish Council to the FHE Manager on 28 January 2013 (Exhibit DH 5C);
- A one-page email initially sent to the FHE Manager by the Clerk of Manea Parish Council on 5 March 2013 (Exhibit DH 5D); and
- A one-page email initially sent from the FHE Manager by the Clerk of Manea Parish Council on 7 March 2013 (Exhibit DH 5E).

- 7.36 The two-page document (Exhibit DH 5A) is a series of emails which have been sent between the email addresses of the FHE Manager and a combination of email addresses believed to be used by the Clerk of Manea Parish Council in which it is requested that the FHE Manager be allowed to attend a meeting of the council to inform them about the work of FACT. She was invited to attend a meeting at 7pm on 14 January 2013 (Exhibit DH 5A).
- 7.37 The letter (Exhibit DH 5B) is addressed to Manea Parish Council for the attention of the Clerk and is a request for funding. It is dated 25 January 2013. The letter contains a signature and beneath the signature is the name of the FHE Manager, Manager.
- 7.38 The letter contains a number of statements as follows: *"We desperately need an extra bus and driver on this route to help meet the increasing demand for your residents"; "the Manea passenger journeys are significantly higher year on year"; "high ratio of elderly residents in Manea"*.
- 7.39 According to the 2013 annual accounts Manea Parish Council gave a £300 grant to FACT which was shown in the FACT 2013 accounts as unrestricted funding (Page 19) Exhibit MKM 4(8).
- 7.40 Statistics collated from FACT's Quarterly Steering Group Reports do not show a significant increasing demand for Manea residents. Dial-A-Ride services in Manea remained static in the 2nd and 3rd quarter of 2012 followed by a slight increase of 9 passenger journeys in quarter 4. Passenger journeys continued to decrease in the first quarter of 2013, following the sending of the letter and then fell sharply during quarter 2 of 2013 (see the chart below). In quarter 3 of 2013 PKFL understands there was a realignment of passenger areas, but it appears from the statistics, that there were no major increases in demand and there was a decreasing demand from 2014 onwards.

Pick Up Manea									
Qtr	P.J.*	Qtr	P.J.*	Qtr	P.J.*	Qtr	P.J.*	Qtr	P.J.*
Jan-12	<b>No Data</b>	Jan-13	352	Jan-14	128	Jan-15	123	Jan-16	72
Feb-12		Feb-13		Feb-14		Feb-15		Feb-16	
Mar-12		Mar-13		Mar-14		Mar-15		Mar-16	
Apr-12	422	Apr-13	238	Apr-14	159	Apr-15	118	Apr-16	61
May-12		May-13		May-14		May-15		May-16	
Jun-12		Jun-13		Jun-14		Jun-15		Jun-16	
Jul-12	423	Jul-13	95	Jul-14	136	Jul-15	114	Jul-16	46
Aug-12		Aug-13		Aug-14		Aug-15		Aug-16	
Sep-12		Sep-13		Sep-14		Sep-15		Sep-16	
Oct-12	432	Oct-13	85	Oct-14	146	Oct-15	128	Oct-16	57
Nov-12		Nov-13		Nov-14		Nov-15		Nov-16	
Dec-12		Dec-13		Dec-14		Dec-15		Dec-16	

Appendix K3 P.J.\* = Passenger Journeys

- 7.41 The two-page document (Exhibit DH 5C) contains a series of emails which have been sent between the email addresses of the FHE Manager and the email address believed to be used by the Clerk of Manea Parish Council. The first message dated 28 January 2013 is from one of the email addresses believed to be used by the Clerk and acknowledges receipt of the letter for funding. The writer asks to be provided with details of costs. In a reply from the email address of the FHE Manager the writer states *"We are intending to put another bus and driver for the Manea Dial-A-Ride run, as explained to yourselves the passengers have been steadily increasing and we need to meet this demand."*
- 7.42 Exhibit DH 5D is an email from one of the email addresses believed to be used by the Clerk indicating that Manea Parish Council were unable to support the request for £4,000 as they had set its budget for the financial year 2013/14 before it became aware of the request for funding from FACT.
- 7.43 Exhibit DH 5E is an email from one of the email addresses believed to be used by the Clerk indicating that Manea Parish Council had agreed to give a donation of £200 and that a cheque would be issued at the next meeting. A further donation of £100 was received later in the year (see paragraph 7.39 above).
- 7.44 We are informed by FACT that the additional bus was needed primarily to support a case of special need, which is not reflected in the bare statistics. In the event an additional bus was not purchased for this route.

### *Wisbech Town Council*

- 7.45 Mr Humphrey produced to PKFL two inter-related letters in relation to an application for funding to Wisbech Town Council as Exhibit DH 6. In order to uniquely identify these documents, they have been sub divided as follows:
- Letter for funding dated 24 November 2008 DH 6A; and
  - Letter for funding which has been dated by the applicant as 15 September 2010 DH 6B.
- 7.46 The letter (Exhibit DH 6A) is a typed letter on FACT headed paper addressed to Wisbech Town Council. The salutation reads *"Yours Sincerely, [The name of the FHE Manager]"*.
- 7.47 The letter gives details of a 'charity number' - 26756R, FACT's Prudential Regulation Authority registration number, however the letter does give information at the bottom of the page that FACT is *"Registered as an Industrial and Provident Society No 26756R"*. The writer gives the following information *"Our service operates seven days a week with 20 drivers catering for the needs of 2835 members spread around the Fenland area"*.
- 7.48 The letter (Exhibit DH 6B) is a typed Grant application on Wisbech Town Council headed paper. The name of the applicant is shown as FACT and the details of the contact is shown as the FHE Manager whose position is given as 'Manager'. On page 2 of the document it contains a signature which was believed to be that of the FHE Manager and it is dated 15 September 2010.
- 7.49 The FHE Manager, however, has stated to PKFL that this letter was signed on her behalf by the work experience member of staff. There is no PP to indicate to the reader that it has been signed by someone else other than the FHE Manager.
- 7.50 In the second paragraph of this letter, the following is written *"FACT is a registered charity that provides essential services to the elderly, disabled and disadvantaged members of our community in the Fenlands area of Cambridgeshire. Our service operates 7 days a week with 20 drivers catering for the needs of 4835 members"*. The amount of grant money requested in this application was £17,419 out of a total project cost of £35,419. It is not known from the application whether any grant aid was approved.

- 7.51 FACT's Uniform Resource Locator ("URL") or web address, is [www.fact-cambs.co.uk/](http://www.fact-cambs.co.uk/). The URL has been examined by PKFL and it has been possible to identify 23 archived versions of this site between July 30, 2010 and January 26, 2017.
- 7.52 On 30 July 2010, a snapshot was taken of the site as it appeared 04.25 hours that day (See Exhibit MKM 7(1)). The web site indicates that the Dial-A-Ride service operates 6 days per week, however the site does not give information about how many days the Group Hire and Dial-A-Car services operate (See Exhibit MKM 7(2)).
- 7.53 On 18 August 2012, a further snapshot was taken of the site as it appeared 00.17 hours that day (See Exhibit MKM 7(3)). Again, the site the Dial-A-Ride service operates 6 days per week, but does not give information about how many days the Group Hire and Dial-A-Car services operate (See Exhibit MKM 7(4)).
- 7.54 Between 18<sup>th</sup> August 2012 and the date of the next snapshot at 12.38 hours on 9 January 2013 (See Exhibit MKM 7(6)) it appears that the website design was completely changed however the site still indicated that the Dial-A-Ride service operated 6 days per week (See Exhibit MKM 7(5)). In addition, the site has separate pages for each of its services. FACT advertises that the Dial-A-Car service (See Exhibit MKM 7(7)) and the Group Hire service (See MKM 7(8)) are available at weekends but customers are advised to give as much notice as possible as FACT cannot guarantee driver availability. The information given in the archived sites tend to corroborate the CBCTA members view that FACT's Dial-A-Ride scheme did not operate a 7-day service at the time when the grant applications DA 6A and DH 6B were written. However, as both letters refer to 'our service' and not to our 'Dial-A-Ride' service it could be argued that FACT's statement about a 7-day service is correct as its Dial-A-Car and Group Hire service do operate over a weekend if booked in advance.
- 7.55 In 2012, four years after the date of the first letter DH6A, the CBCTA submitted a freedom of information request for various information including FACT's membership figures. In a report received from CCC, which Mr Humphrey produced to PKFL as Exhibit DH 6C, (FOI request number 7296) the information supplied by CCC shows that FACT had 971 members in 2012. This figure is 1,864 members less than the number quoted in the letter dated 24 November 2008 (Exhibit DH 6A). PKFL can confirm that Exhibit DH 6C is an extract from FACT's Quarterly Steering Group Report ("QSGR") issued in October 2016 produced by CCC's Internal Audit Department as Exhibit 7-G-8. Although this figure is not from the same year as the letter, the following table shows the year on year rise over the period 2012 to

31 March 2017. Whilst it is not impossible that the figures could have been 2835 in November 2008 and 4835 in September 2010 we consider it unlikely.

Dial-A-Ride Members as at	QSGR Jan 2015	QSGR April 2016	QSGR July 2016	QSGR October 2016	GSGR April 2017
2012	971	971	971	971	971
2013	1,142	1,142	1,142	1,142	1,142
2014	1,331	1,331	1,331	1,331	1,331
To 31 March 2015		1,357	1,357		
To 30 June 2015		1,363	1,363		
To 30 September 2015		1,368	1,368		
To 31 December 2015		1,402	1,402		
2015				1,395	1,395
To 30 June 2016			1,418	1,418	1,418
To 30 September 2016				1,423	1,423
To 31 December 2016					1,425
To 31 March 2017					1,428

- 7.56 It is understood that the figures above do not include group membership. The annual figures for group membership in the table below, which has been compiled from FACT's Annual return figures, shows the effect Group Membership would have on the overall membership.



FACT Mutuals Annual Returns and Accounts			
	Number of Members		Exhibit Ref
Date of Document	Beginning of Year	End of Year	
Y/E 31 DECEMBER 2006	281	293	MKM4(1)
Y/E 31 DECEMBER 2007	293	303	MKM4(2)
Y/E 31 DECEMBER 2008	303	317	MKM4(3)
Y/E 31 DECEMBER 2009	317	327	MKM4(4)
Y/E 31 DECEMBER 2010	327	338	MKM4(5)
Y/E 31 DECEMBER 2011	338	349	MKM4(6)
Y/E 31 DECEMBER 2012	349	368	MKM4(7)
Y/E 31 DECEMBER 2013	368	389	MKM4(8)
Y/E 31 DECEMBER 2014	389	416	MKM4(9)
Y/E 31 DECEMBER 2015	416	440	MKM4(10)

7.57 Mr Humphrey also produced to PKFL as Exhibit DH 6D a copy of a reply which the CBCTA received in relation to a further FOI request. The document is a series of emails between the Community Contracts Manager at Cambridgeshire and Peterborough CCG, and the manager of FACT. The name of the signatory has been redacted to comply with Data Protection legislation. At page 6 of the document there is a question from the author as follows, *"Please can we have a little more information on where you are taking these patients"*. On page 8 of the document as part of the reply from FACT's manager details of the membership for the years 2012 to 2015 is given. In relation to 2012, the figure recorded by the FACT manager is 971 members.

7.58 Mr Humphrey produced to PKFL two further applications for grant aid requested by FACT from Wisbech Town Council as Exhibit DH 7. In order to uniquely identify these documents, they have been sub divided as follows:

- Application for Grant B Aid to Outside Bodies to be applied for prior to 3 September 2006 Exhibit DH 7A; and
- Application for Grant B Aid to Outside Bodies to be applied for prior to September 2007 Exhibit DH 7B (signed by FACT on 5 January 2007).

7.59 Application DH 7A is a proforma document with typed headings and spaces for the applicant to populate. Under the heading Name and address of contact person the handwritten text shows the contact as "[the name of the FHE Manager]". Under the

heading 'Number of members in Wisbech and surrounding villages' the written text entry is "497".

7.60 Application DH 7B is also a proforma document with typed headings and spaces for the applicant to complete. Under the heading Name and address of contact person the handwritten text shows the contact as "[The name of the FHE Manager]". Under the heading 'Number of members in Wisbech and surrounding villages' the written text entry is "559" an increase of 52 members on the previous year.

7.61 It is the view of the CBCTA members that the figures contained in the applications DH 7A and DH 7B were inflated and they quote FACT's October 2016 Quarterly Steering Group Report, Exhibit 7-G-8, as a comparison in which the membership figures are shown are approximately 200 members. There is a ten-year difference between the date of the first letter DH7A and the date of the comparison. No data is available to show membership at 2010.

7.62 The following table shows the membership figures for the North route (Wisbech and surrounding villages) as at 30 September 2016.

Walsoken	Wisbech	Walpole Highway	Walpole St Andrew	E I m	Emneth	Fridaybridge	Tydd St Giles	Tydd Gote / Four Gotes Tydd	Totals
14	152	2	1	7	7	8	4	1	196

Source: FACT Quarterly Steering Group Report October 2016 (Exhibit 7-G-8).

7.63 Using data for the same villages, it has been possible to work out the membership figures for the North route at a number of different dates as follows:

- December 2014 - 234 members (Exhibit 7-G-1);
- March 2015 - 206 members (Exhibit 7-G-2);
- September 2016 – 196 members (taken from table above) (Exhibit 7-G-8); and
- January 2017 - 181 members (Exhibit 7-G-10).

7.64 These figures show that the membership figure has been steadily declining on the North route during the period that data is available.

7.65 The Central route has approximately four times the membership of the North route (see table below) this data has been extracted from FACT's Quarterly Steering Group Reports.

Date	Central	North
Dec-14	742	234
Mar-15	784	206
30.03.16	830	196
31.12.16	856	181

- 7.66 If total membership has continued to grow during the period 2006 to 2017 and the total membership of FACT was only 971 members in 2012 (see table at paragraph 7.55) it is unlikely that membership figures in 2006 and 2007 for the North route would have been 497 and 599.
- 7.67 Mr Humphrey produced to PKFL the first page of a letter from FACT to Wisbech Council dated 28 January 2011, requesting funding for a 'Lifeline Bus' (Exhibit DH 8).
- 7.68 The first paragraph indicates that *"FACT is a registered charity"*, that the service *"operates 7 days a week"* and caters *"for the needs of nearly 5000 members"*. The table at paragraph 7.57 and the FHE Manager's previous statements suggests that FACT membership figures were significantly lower than the stated 5000.
- 7.69 In addition, we comment on the FACT and HACT applications to the Community Minibus Fund at paragraph 11.49 et seq.

### **Conclusions**

- 7.70 Our principal conclusions are:
- **Charitable Status**  
In the applications for funding by FACT to March Council (2011) and Wisbech Council (2010 and 2011), and on its website in 2013, FACT stated it was a "registered charity" whereas it is an "exempt" charity and is not registered with the Charity Commission.
  - **Membership Numbers**  
  
i) In the applications for funding by FACT to March Council (2011 and 2012) and Wisbech Council (2010 and 2011) FACT claimed to have approximately 5000 members, whereas individual and group membership as at 31 December 2012 was 1339. The FHE Manager has confirmed the approximate 5000 membership figures

are incorrect.

ii) In the application for funding to March Council (2013) FACT claimed membership of 2000 members compared to individual and group membership at 31 December 2013 of 1531.

iii) In the application for funding to Manea Council (2013) FACT claimed increased demand from Manea residents whereas statistics for passenger journeys show stable or decreasing demand.

iv) In the applications for funding by FACT to Wisbech Council (2006 and 2007) FACT quoted membership in the Wisbech and surrounding villages (the North route) of 497 and 559 for 2006 and 2007 respectively, compared to the available evidence which shows membership (at least) below 300.

v) In the application for funding by FACT to Wisbech Council dated 28 July 2011, FACT claimed to have membership of “*nearly 5,000*” members compared to actual membership of below 1500.

***3. Confirm the Council's procedures to ensure that grant money has been used for the specified purpose, and carry out suitable checks on a sample of successful grant applications by FACT and HACT.***

***Grant Application Procedures***

7.71 FACT, HACT and ESACT have received the following grants, as disclosed in their annual financial statements:

- Annual Grants paid by CCC from its core funding;
- Community Transport Fund Grants;
- Bus Service Operators Grants;
- Lottery Grants; and
- Various grants from district and parish Councils and other bodies.

***Annual Grants paid by CCC***

7.72 Annual Grants paid to FACT, HACT and ESACT for the period 2013 to 2018 from the CCC records are set out below (Exhibit 7-K-5).

	2013/14	2014/15	2015/16	2016/17	2017/18	Total
	£	£	£	£	£	£
FACT	40,265	40,265	40,265	40,265	40,265	201,325
HACT	12,095	12,095	12,095	12,095	12,095	60,475
ESACT	-	-	-	12,270	-	12,270

7.73 HACT has received an annual grant from HDC of £50,000 from 2013.

7.74 ESACT received a grant from East Cambridgeshire District Council of £15,000 in 2016.

- 7.75 Annual grants paid by CCC have been available to CTOs for over 20 years (Exhibit 7-K-2). We are informed by CCC that this funding is decided by members as part of the annual budgeting process. We have not been provided with grant documentation for the years prior to 2013. The documentation made available to PKFL is as follows:
- i. Grant Funding Agreement 1 April 2013 to 31 March 2014 for HACT (Exhibit DH 18(2);
  - ii. Grant Funding Agreement 1 April 2014 to 31 March 2015 for FACT (Exhibit 9-F-7) and HACT (Exhibit 9-F-8);
  - iii. Grant Funding Agreement 1 April 2015 to 31 March 2016 for FACT (Exhibit 9-F-4a), HACT (Exhibit 9-F-5a) and ESACT (Exhibit 9-F-6); and
  - iv. Grant Funding Agreement 1 April 2016 to 31 March 2017 for FACT (Exhibit 9-F-1), HACT (Exhibit 9-F-2) and ESACT (Exhibit 9-F-3).
- 7.76 We set out below the main provisions of the CCC Grant Funding Agreements 1 April 2015 to 31 March 2017. We set out as Appendix C a schedule showing the differences in the relevant provisions of the agreements prior to 2015 (note grants issued by other local authorities are administered by these authorities).

### **Purpose**

- 7.77 The delivery of Community Transport Services as set out at Schedule 1 to the Agreements:
1. *The provision and operation of transport services for people who find it difficult or impossible to use conventional buses, either through mobility difficulties, age or through lack of access to transport.*
  2. *The provision of Dial-A-Ride services in the geographical area specified.*
  3. *The provision of Group Hire services to voluntary and non-profit making groups.*
  4. *The provision of affordable services to its Members on a non-profit making basis.*

### **Operational service requirements**

5. *...a provision of a Dial-A-Ride service 5 days a week, namely Monday through to Friday.*

6. ....operate Dial-A-Ride services on 5 full days a week, ...

*The Recipient shall accept Concessionary Fare passes...and offer Members discounts...*

7. ...the Dial-A-Ride services cannot be as flexible as a taxi or a social car scheme. This will mean determining destinations in advance, and expecting passengers to fit in with those plans...

10. The Recipient may offer Group Hire service to voluntary and non-profit making groups.

11. Passengers will be required to become Members of the Recipient...It is the responsibility of the Recipient to ensure all Members meet the required eligibility criteria i.e. that all passengers, through rural isolation and mobility difficulties, would have difficulty in accessing or using conventional means of transport....

14. The Recipient will continue to seek and pursue additional funding opportunities and means of generating income to cover shortfalls through the provision of the services...

16. The Recipient shall ensure it complies at all times with the provisions of its Section 19 Permit.

## **Structure and Administration of the Recipient**

### **Constitutional Control**

17. Arrangements for membership, election of officers, discussion and recording of decisions must be clearly set out in the Recipients constitutional document.....Representative officers from the Council should be invited to all Management Committee meetings and Annual General Meetings ...in the capacity of independent advisers.

### **Administrative and Financial Management**

18. The Recipient shall comply with all financial and accounting requirements of the Charity and/or Company Law and follow good practice in relation to internal financial control. The Council requests that annual budgets and a 12-month Action Plan be sent through each year....Funding paid under this Agreement must only be used for the purpose set out in this Agreement....”

7.78 Other provisions within the agreement are (references are to the main agreement paragraphs):

- 2.3/2.4 the funding amounts to State Aid (Commission Regulation 1407/2013) and the Recipient warrants that the grant funding and any other third-party funding within the last three fiscal years does not exceed the de minimis limit (Euro 200,000).
- 2.5 the Recipient has to inform the CCC of any other funding for the Community Transport Service, and the purpose of that funding, this is included in the Quarterly reports (Exhibit 7-G-9).
- 3.4 the Grant shall be paid into a separate bank account in the name of the Recipient which must be an ordinary business bank account. All cheques from the bank account must be signed by at least two individual representatives of the Recipient.
- 4.1 the Grant shall be used....in accordance with and in compliance with the requirements set out in Schedule 1.
- 4.2 Where the Recipient has obtained funding from a third party in relation to its delivery of the Community Transport Services...the funding shall be included in the budget that is reported to the Council...
- 4.4 The Recipient shall not spend any part of the Grant on the delivery of the Community Transport Services after the Grant Period (one year from the 1st April).
- 5.2 The Council will pay the Recipient for the Dial-A-Ride fares for those Members who are eligible for a concessionary bus pass.
- 6.1 The Grant shall be shown in the Recipient's accounts as restricted fund and shall not be included under general funds.
- 6.3 The Recipient shall keep all invoices etc. relating to the expenditure of the Grant for a period of at least six years...
- 7.1 This provision requires the Recipient to provide to the CCC – an annual budget and action plan; annual accounts; quarterly reports to include:
  - a) Total number of single passenger journeys undertaken;
  - b) Total miles travelled;
  - c) Revenue received from each service operated;



- d) A breakdown of numbers of individual and group members by parish;
  - e) Total number of group hire bookings, including total number of passengers carried, mileage and revenue received;
  - f) Total number of unmet requests and journeys not operated; and
  - g) Third party funding.
- 
- 7.9 on completion of the grant period the Recipient will provide the Council a final report.
  - 8.1 the Council will carry out an Annual Review.
  - 9.2 All individuals providing the services shall have advanced DBS checks.
  - 19 The Recipient warrants it shall at all times comply with relevant legislation.
  - 20 Insurance needed is – Public Liability of £10mn; Employer’s Liability of £5mn; suitable motor insurance to cover the vehicles and staff used to provide the Community Transport Services.

### ***CCC Procedures to ensure grant money has been used for the specified purpose***

- 7.79 The Annual Grant Agreements (Exhibits 9F1 to 9F8) in respect of Dial-A-Ride services for FACT, HACT and ESACT requires CCC to monitor the use of the grants as follows:
- (a) By the receipt of an annual budget and 12-month action plan for the coming year;
  - (b) By the receipt of annual financial reports by September for the previous financial year;
  - (c) Quarterly reports to include journey, passenger and member statistics;
  - (d) Annual review of the need for the services and the effectiveness of their provision and that the terms of the Agreements are adhered to with FACT and HACT; and
  - (e) By acting as independent advisors at Management Committee meetings and the Annual General Meeting.

## *Conclusions*

7.80 We have carried out our review and testing work as attached at Appendix C and our principal conclusions as regards the use of the funding for the specified purpose are set out below.

- Budget and action plans are not provided to CCC (Exhibit ref 7-K-2 and Scope Item 26). FACT comment that these are available at relevant times for inspection by the CCC observer, whilst at FACT's premises.
- Annual financial accounts and a brief report are provided to CCC.
- Quarterly reports are provided to CCC, however, not all statistics as specified in the 2015/16 agreements onwards are provided (Scope Item 26).
- The Community Transport Officer was unaware of the monitoring conditions in section 7.1 of the Grant Agreement Document (Exhibit reference 7-K-2 point 5). An annual review is not undertaken (Exhibit reference 7-K-2 point 6).
- The Community Transport Officer attends Annual General Meetings of FACT, HACT and ESACT (see Exhibits 7-A-2, 7-B-2, and 7-B-3).
- As the CTOs each operate single bank accounts (that is, there is no segregation of income and expenditure between Dial-A-Ride and contract income and there is no separate accounting for CTS services) it is not possible to check that monies are used for the specified purpose. However, it is evident that the Dial-A-Ride service is provided by FACT, HACT and ESACT.

## *Community Transport Fund Grants ("CTF Grants")*

7.81 CCC received two separate grants from central government to be used to help the community transport sector in any way County Councils' decide<sup>3</sup>

7.82 In relation to FACT and HACT we have been informed of the following CTF grants:

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<sup>3</sup> See email Exhibit 13-C-6a paragraph 2

Date	Description	£	Exhibit Ref	Note
February 2013	FACT radio equipment	25,706	DH 18(8)	Of which £23,136 as a loan
March 2013	HACT start-up funding	202,142	JP 17(9)	Of which £30,000 as a loan and £27,567 VAT repayable to CCC.
July 2013	HACT radio equipment	9,506	DH 18 (7)	Of which £4753 as a loan

7.83 It is understood from The Community Transport Officer that CTF grants have been available from the CCC since February 2013 (see Exhibit MKM 7(11)). An email from the Community Transport Officer at CCC dated 7 February 2013 (see Exhibit MKM 31(1)) to a member of 'Cambridgeshire Horizons' encloses an Application Form (see Exhibit MKM 31(2)) and Eligibility Criteria (Exhibit MKM 31(3)). The email states that the Fund is open to CTSs and other community groups e.g. charities and social enterprises. At inception the Fund amounted to £512,000. The member of 'Cambridgeshire Horizons' has informed PKFL that these details were forwarded to all parishes and community transport providers (Exhibit MKM 31(15)).

7.84 The Evaluation criteria for grant funding are:

- Improve accessibility, to work, education, essential public services and for social purposes, and to look to address the problems of social isolation.
- Supports the long-term viability of existing transport schemes.
- Must demonstrate the need for the proposed improvement.
- Measurable benefits (e.g. additional passengers or number of villages serviced).
- A detailed budget with any matched funding, and how the scheme will be financed beyond the use of the funding. Additional weighting to be given to schemes with an element of matched funding.
- The reason for any loan to grant funding and for revenue elements.
- How the bid benefits the general public in Cambridgeshire either directly or indirectly.

- Information which shows that there is no duplication of services already provided in the area.
- Demonstrate how the scheme integrates with the local transport network.

7.85 Other requirements are:

- The funding must be for capital purchases, or a combination of capital and revenue. There must be at least two quotes for capital purchases.
- The application can be for loan or grant or a combination of both, with greater weighting being given to loan.
- The application should include milestones, outcomes and outputs to enable the CFT to monitor the scheme.

7.86 Applicants for grants under £10,000 needed to only complete the Application Form; for applications, over £10,000 a full business case and budget is needed. Bids are evaluated and recommendations made to the Cambridgeshire Future Transport Member Steering Group, which makes the final decision.

### **HACT**

7.87 HACT was awarded a start-up Capital and Revenue grant and loan in April 2013 from the Community Transport Fund, following the failure of Nene and Ouse Community Transport Limited (“NOCT”) (an unconnected CTO). The payments were authorised by the lead Councillor on the Transport Steering Group (Cllr Orgee) on 13 March 2013 (Exhibit 13-B-3).

7.88 The Application Form (Exhibit 13-B-1) for the grant and loan is supported by a 12-month profit and cash flow forecast (Exhibit 13-B-2). The application requested the following payments:

	£
Purchase of equipment (7 vehicles) and ancillary equipment	139,174.98
Operational cash flow and other revenue costs	35,120.00
VAT to be repaid after 3 months	27,567.97
Total	201,862.95
VAT to be repaid	(27,567.97)
Working Capital Loan	(30,000.00)
Grant	144,294.98

- 7.89 The loan and working capital was to be used by HACT to support both Ring-and-Ride and contracts taken over from its predecessor (as evidenced by the financial forecasts included with the application).
- 7.90 The Application Form includes a section “Monitoring Your Project” which states – “... Cambridgeshire Future Transport and the Member Steering Group will monitor progression and achievements. Please list the milestones against which we can monitor” – this was left blank by HACT.
- 7.91 There is no specific evidence that CCC have procedures to ensure that this grant and loan was used for the specified purposes or monitoring against milestones, other than attendance by The Community Transport Officer at Management Committee meetings, AGM’s (Exhibit MKM 7(11)) and within the Quarterly Reports (Exhibits 7-G-1 to 7-G-13, 7-G-15 to 7-G-17 7-H-1 TO 7-H-18 and 7-I-1 TO 7-I-8). CCC have commented that they consider that this is sufficient.
- 7.92 We have reconciled the payments of grants to HACT to the 2013/14 HACT annual financial statements as follows:

CCC Payment Date	Description	£ (Including VAT)
26/03/2013	Capital start up	161,920.00
26/03/2013	Capital start up	40,222.95
Apr-13	Annual Grant	12,095.00
04/11/2013	Grant/loan for radios	9,506.96
Total		223,744.91

The above payments are shown in the HACT annual financial statements for March 2014 as follows:

	Restricted Grants	Unrestricted Grants	Loan (inc. in creditors)	Total
	£	£	£	£
CCC CFT [SIC]	164,548		30,000	194,548
CCC Radio grant	4,753		4,753	9,506
CCC CFT [SIC]		7,595		7,595
Annual grant		12,095		12,095
Total	169,301	19,690	34,753	223,744

Note: The VAT repayment of £27,567.97 was not treated as a loan in the financial statements, as CCC had confirmed to HACT that it was not required to be repaid. (Scope Item 17).

## Conclusions

- 7.93 CCC did not enter into Grant Agreements with FACT and HACT in respect of radio equipment or the start-up funding.
- 7.94 CCC has no set procedure to ensure grant funding is utilised for the specified purpose.
- 7.95 HACT did not include milestones in its application for the start-up grant and therefore CCC would be unable to review grant funding against targets. CCC did not follow up with HACT on this omission in the application form.

7.96 It is evident from the financial statements of HACT for the year ended 2014 that vehicles and equipment were purchased and that the charity was trading and running the Ring-and-Ride program. Council officials attended management meetings and received quarterly reports which they considered sufficient evidence to prove that the purpose of the grant had been achieved.

7.97 We have tested the radio equipment purchases at Scope Item 33.

### ***Bus Service Operators Grant***

7.98 The BSOG paid to FACT, HACT and ESACT during the period 2013 to 2016 from their published financial statements was:

	2013/2014	2014/2015	2015/2016	Total
	£	£	£	£
FACT App. E and M	32,066	37,544	37,194	106,804
HACT App. G and P	11,666	12,103	17,660	41,429
ESACT Exhibit JP 3(3)	0	0	8,558	8,558

7.99 The Bus Service Operators Grant (BSOG) is a scheme that refunds some of the Fuel Duty incurred by operators of registered local bus services in the United Kingdom. It was first introduced in the Finance Act 1965 (Fuel Duty Rebate) and renamed as the BSOG under the Transport Act 2000. The services must meet the further requirements detailed in the Bus Services Operators Grant Regulations 2002 and 2013.

### ***Eligibility***

7.100 The grant is available for operators of local bus services available for use by the general public which are operated on public roads. The definition of 'local' is that stops should not be more than 15 miles apart.

7.101 The grant is also available to Community Transport Service Operators operating under a Section 19 permit when providing services for the following groups of passengers:

- People aged 60 or over;
- Persons of all ages, who are physically or mentally impaired and persons assisting them;
- People on income support;
- People in receipt of universal credit;
- People on job seekers allowance;
- People in receipt of employment and support allowance;
- People of all ages, suffering a degree of social exclusion by virtue of unemployment, poverty or other economic factors, homelessness, geographical remoteness, ill health, or religious or cultural reasons;
- People of all ages, who believe that it would be unsafe for them to use any public passenger transport services; and
- Carers or persons under 16 years of age accompanying any of the above.

### *Claim Procedure*

- 7.102 The original application form to the DfT required the CTS to declare whether all or some of the services were provided “wholly or mainly for” groups or individuals in the eligible categories set out above (FACT and HACT do not have copies of these forms and DfT BSOG Section have not provided copies).
- 7.103 The CTS claims the BSOG by completing form PSV 452 on a six-monthly basis. Claimants are required to keep accurate records to support claims and as a minimum:
- a) a fleet list of vehicles used during the BSOG period;
  - b) records of kilometres travelled for each vehicle; and
  - c) records of all fuel supplied to the vehicles during the BSOG period in litres



- 7.104 All operators need to record eligible and ineligible mileage. This would normally take the form of log sheets signed off by the driver, and listing odometer readings. Examples of ineligible mileage are:
- Mileage between two ineligible journeys;
  - Mileage moving from an eligible journey to an ineligible one;
  - Mileage from base to an ineligible journey;
  - Mileage to base from an ineligible journey; and
  - Mileage either side of breaks or driver handovers if integral to an ineligible journey.
- 7.105 Section 5 of the form requires the CTS to indicate a “broad estimate” (percentage) of category of persons carried.
- 7.106 Where the total eligible kilometres are over 20,000 then the form has to be certified by a prescribed qualified accountant. The DfT will make periodic checks of the records.

### ***Review of Grant Applications by PKFL***

- 7.107 During PKFL’s on-site visit to FACT, HACT and ESACT we performed a walkthrough of the “vehicle stats spreadsheet” which is the source documentation which allows the respective organisation to populate the application forms for the BSOG claims.
- 7.108 PKFL reviewed and tested a sample of BSOG grant applications and our conclusions are set out below.
- 7.109 The FHE Manager explained that the drivers are provided with specific sheets where they record the mileage every day for every vehicle. A member of the office staff is then tasked with recording the data obtained from the drivers’ sheet onto the “vehicle stats spreadsheet”. The spreadsheet captures the mileage, number of vehicles and passenger numbers and the mileage is subsequently converted to kilometres using the company’s conversion formula. Once the data is included as per the spreadsheet, the non-chargeable inputs are calculated and excluded (e.g. MOT checks and other non-eligible routes).
- 7.110 The fuel usage is compiled from the purchase invoices provided by drivers and the statements from the fuel card companies.

- 7.111 This data is inputted into the “vehicle stats spreadsheet” and the application form completed. The BSOG grant application forms are audited for every period that the grant is claimed before being sent across to the DfT.
- 7.112 In 2017 FACT, HACT and ESACT were subject to a DfT audit and payments of the grants were suspended following a complaint to the DfT by a third party. As a result of the audit there were no adverse comments from the DfT and the BSOG payments, which had previously been withheld, were released.
- 7.113 In September 2015, the DfT issued a letter reminding claimants that school and educational bus services were not eligible for BSOG grants (Exhibit 1-A-18). The DfT have confirmed to PKFL that this letter was only sent to Commercial Operators and not “Community Operators” (Exhibit MKM 3(2)). In respect of Educational Contracts, and following the audit, FACT approached DfT to clarify the definition of a ‘special needs bus and, persons suffering social exclusion by virtue of geographical remoteness. The DfT advised FACT, that in order for Educational Contracts to qualify for BSOG, *“A S19 service carrying ordinary school aged children from geographically remote locations to their school can be eligible for BSOG if the service is “used wholly or mainly by ... persons suffering a degree of social exclusion by virtue of ... geographical remoteness.” In this case” mainly will mean at least 90%... you will need to have at least 90% of the bus as special needs children in order for it to be classed as a special needs bus.”* (Exhibit MKM 3(1)). FACT have advised that they analysed the claims for the period October 2015 to March 2016, and, for all existing and new school journeys / contracts to ensure adherence to the above rules, and determined that all the school based claims were eligible for BSOG, due to geographical remoteness.

### Conclusions

- Our sample testing has confirmed that the BSOG application forms are prepared in accordance with the underlying drivers’ records.

## 8 Annual Returns and Published Accounts

### *4. Obtain the Annual Returns and Published Accounts for FACT and HACT and compare for compliance with founding documents.*

#### **FACT**

- 8.1 Details of FACT's annual reports for the period 2006 to 2015 have been obtained and are produced as follows:

<b>Year End</b>	<b>Exhibit</b>
Year End 2006	MKM 4(1)
Year End 2007	MKM 4(2)
Year End 2008	MKM 4(3)
Year End 2009	MKM 4(4)
Year End 2010	MKM 4(5)
Year End 2011	MKM 4(6)
Year End 2012	MKM 4(7)
Year End 2013	MKM 4(8)
Year End 2014	MKM 4(9)
Year End 2015	MKM 4(10)

- 8.2 FACT was registered in the Mutuels Public Register on 24 August 1989 as the 'Fenland Association for Community Transport Limited'. Its objects at that time were to "(a) *assist the work of organisations and bodies engaged in the relief of poverty, sickness and the disabilities of age, the provision of facilities for recreation or other leisure time occupation within the meaning of Section 1 of the Recreational Charities Act 1958 and any other charitable purpose in Fenland, Whittlesey, March, Wisbech, Chatteris and District, and (b) when necessary, to relieve poverty, sickness and the disabilities of age.*" The provision of transport services is not mentioned. A copy of the original rules of FACT are produced as Exhibit MKM 4(11).

- 8.3 An amendment to the rules was registered on 17 May 2013 (See Exhibit MKM 4(12)) whereby the objects of the Association were changed as follows:

- *to operate transport services for the benefit of the community and the advancement of education, the protection of health in accordance with the aims of Fenland Association for Community Transport;*

- *to serve its members on a non-profit making basis;*
- *to provide Dial-A-Ride services in the Fenland area for people who find it difficult or impossible to use conventional buses, either through mobility difficulties or through lack of access to transport;*
- *To provide Group Hire services to voluntary and non-profit making groups in the Fenland area; and*
- *To assist local authorities and other such bodies in the execution of transportation for the benefit of the community. (Page 3, paragraph 2, entitled 'Objects').*

8.4 In addition, both sets of rules require:

- The Annual Published Accounts to be audited; and
- That *"No portion of the income, property or profits of the Association shall be paid or transferred either directly or indirectly by way of profit to members of the Association"*.

8.5 FACT receives annual grants in respect of Dial-A-Ride services from CCC. CCC and FDC reimburse FACT for members using Dial-A-Ride under the "concessionary fare" agreements. In addition, FACT operate bus contracts on behalf of CCC.

## Conclusions

8.6 Based on our technical review of the Annual Returns and Published Accounts for the period 2006 to 2016 the following are noted:

- The Published Accounts for each year have been audited and the audit reports are not qualified or modified (the Accounts show a "true and fair view", according to the audit reports);
- The Accounting Policy note states that they have been prepared in accordance with Financial Reporting Standard 102 ("FRS 102");
- There is no distributions or payments to members recorded in the Published Accounts;
- In paragraph 1.11 of the Annual Returns the Secretary has replied "Yes" to the following question *"Is the society currently accepted by HM Revenue and Customs*

*as a charity for tax purposes?”*. In addition, there is the requirement to attach the copy of the letter from HMRC confirming charitable tax status, which has been confirmed by the Secretary on each form. The letters are not attached to the Annual Returns although such a letter was requested of and provided by the FHE Manager as Exhibit JP 4(1) dated 2 April 2014 following an application to HMRC dated 24 February 2014 by FACT to be to be treated by HMRC as a charity for tax purposes;

- The 2010 Annual Return includes a letter from the Charities Commission dated 26 April 1991 stating that FACT is “an exempt charity by virtue of the Second Schedule to the Charities Act 1960” (See Exhibit MKM 4(5));
- The Rules and Memorandum of Articles of FACT (Exhibit MKM 4(12)) requires members to be approved at general meetings or the Management Committee may admit to membership any individual persons. We have not seen any minutes of any General Meeting or Management Committee minutes to confirm this (for example Exhibit JP 3(1)). In addition, there is no provision in the Rules for the recording of decisions as required by the Grant Agreements; and
- FRS 102 (“related party transactions”) *states that “Particulars must be given of material transactions the small entity has entered into that have not been calculated under normal market conditions with:*
  - *The small entity’s directors [or members of the governing body]”*

The 2016 financial statements show a grant received of £40,265 from CCC. Given FACT state a principal activity as being services for CCC, this would indicate the position of CCC councillors on the Executive Committee are material, and, a note disclosing “Related Party Transactions” should have been included in the financial statements.

## **HACT**

- 8.7 HACT was registered as a charity with reference number 1151445 on 28 March 2013.
- 8.8 Details of HACT'S annual reports and financial statements have been obtained and are produced as follows:
- Year Ending 31 December 2014 (Exhibit MKM 4(13);
  - Year Ending 31 December 2015 (Exhibit MKM 4(14); and
  - Year Ending 31 December 2016 (Exhibit MKM 4(15).
- 8.9 HACT's Aims & activities are described in their page on the Charities Commission website as follows:
- "We will be providing transport to vulnerable members of the community, those who do not have access to transport. We intend to operate education contracts and assist local authorities and other such bodies in the execution of transport services for the benefit of the community. Group hire transport to voluntary and non-profit making groups in the Huntingdonshire area".*
- 8.10 The charitable objects of HACT detailed on the Charity Commission website are: *"To provide a community transport service for such inhabitants of Huntingdonshire and the surrounding area who are in need of such a service because of age, sickness or disability (mental or physical) or poverty or lack of availability of adequate and safe public transport services."*
- 8.11 The constitution of HACT is produced at Exhibit MKM 4(21).

## **Conclusions**

- We have carried out a technical review of the financial statements for HACT for the year ended 31 March 2016 (Exhibit MKM 4(15)). HACT income is below the mandatory threshold for audit, and therefore scrutiny is limited to an "Independent Accountant's Report" (note the 2014 and 2015 accounts were subject to audit). Our conclusions from this review are set out below.

## *Accounting Framework*

- 8.12 The accounting policies note in the financial statements (page 7) refer to the basis of preparation being the “Statement of Recommended Practice ‘Accounting and Reporting by Charities (SORP 2005)’”. For accounting periods beginning on or after 1 January 2015 there were two Statements of Recommended Practice (SORP 2015). One SORP was based on full application of Financial Reporting Standard 102, the other was based on the Financial Reporting Statement for Smaller Entities. The latter SORP has now been removed for periods beginning on or after 1 January 2016.
- 8.13 The financial statements have not, therefore, been prepared in accordance with UK Generally Acceptable Accounting Practice applicable at that time. The main differences between SORP 2005 (which appears to have been adopted for the HACT 2016 financial statements) and SORP 2015 are:

The required disclosures in the Report of the Trustees have not been made. The minimal information to be disclosed includes:

- Objectives and activities;
- Achievements and performance;
- Financial review;
- Structure, governance and management;
- Reference and administrative details;
- Exemptions from disclosure (if applicable); and
- Funds held as custodian trustee on behalf of others (if applicable).

### *In addition:*

- The income recognition policy is incorrect (page 7 of the 2016 financial statements). Income should be recognised when receipt is considered “probable” rather than “virtually certain”;
- Governance costs is no longer a disclosable category on the Statement of Financial Activities (this category of cost has been included);
- Although not required for smaller charities (being those not requiring an audit), the SOFA requires disclosure of income and expenditure by activity. This would be recognised as good practice for a smaller charity; and

- The format and terminology of the Statement of Financial Activities has changed which is not reflected in the HACT 2016 financial statements.

### *Other Disclosure Observations*

- There should be an explanation as to the nature of what the restricted fund relates to (note 15);
- There is no operating leases note to the accounts;
- There are net current liabilities and therefore there should be a going concern statement in the accounting policies; and
- There should be an explanation/disclosure of the items making up “Other creditors” in the “Creditors greater than one year” category.

### *Review of Income*

- 8.14 Any income earned outside of the charity’s charitable purposes, deemed non-primary purpose trading, should be disclosed as “Trading Activities”. Charities are permitted to undertake non-primary purpose activities, though any income earned over £50,000 is taxable. Charities can normally mitigate payment of corporation tax through channelling any non-primary purpose trading income through a subsidiary and paying up profits to the parent charity under gift aid.
- 8.15 It is noted that the financial statements of FACT included more detailed disclosure of income and expenditure as between grants and contracts than is included in the HACT financial statements.
- 8.16 Thomas Quinn Limited (auditors of HACT) comment that due to a software issue, the accounts referred to the incorrect SORP, however, they consider that the change of SORP would not result in reinstatement of any of the figures stated in the financial statements.

### *Commercial Activities*

- 8.17 Where there are contractual payments from government or public authorities, these are included within “Incoming Resources from Charitable Activities”.
- 8.18 The main issues that ought to be considered under any contracts are:
- Does it constitute non-primary purpose trading (and therefore does the £50,000 threshold become an issue)? If so this would give rise to a potential tax liability.



- Should the income from commercial contracts be recognised as restricted? If a contract specifically requires all income received under it to be spent on a particular purpose of the charity and any unspent income to be returned to the funder or only applied for that particular purpose, then in substance, the income is to be regarded as restricted. Otherwise the income is regarded as unrestricted.

### *Charitable Objects*

- 8.19 As disclosed above the Charitable Objects of HACT, according to the Charity Commission website, are to provide a community transport service.
- 8.20 The constitution of HACT Exhibit MKM 4(21) includes the following objects (paragraph 3):
- *“To operate transport services for the benefit of the community;*
  - *To provide Dial-A-Ride services in the Huntingdonshire Area for people who find it difficult or impossible to use conventional buses, either through mobility difficulties or through lack of access to transport;*
  - *To provide Group Hire services to voluntary and non-profit making groups in the Huntingdonshire Area;*
  - *To assist Local Authorities and other such Bodies in the execution of transportation for the benefit of the community; and*
  - *Assist the work of organisations and Local Authorities in the advancement of education and the protection of health.”*
- 8.21 From the above, one of the charitable objects is to provide contract Transport services for Councils for the benefit of the community, and, therefore such contractual income will fall under this charitable object as a primary purpose and the £50,000 threshold does not apply.
- 8.22 In addition, we note that grants received for the purchase of vehicles (in particular the start up grant received from CCC) has been treated as deferred income. We consider this to be in contravention of the SORP 2005 and 2015 as the grants should have been disclosed fully in the Statements of Financial Activities in full, on receipt.

**5. Investigate and report on the reasons for the changes to declared income streams reported in earlier years and compare to ridership figures.**

***Dial-A-Ride Income 2012 and 2013***

- 8.23 FACT's income from its Dial-A-Ride fares and memberships, according to its annual return submitted to the FCA, was £98,601 for the year to 31 December 2012. The figure is shown in the 2012 profit and loss account as "Dial-A-ride fares and memberships" (see General Income on page 16 of Exhibit MKM 4(7)).
- 8.24 The CBCTA, via FOI request 2302 to FDC, requested that they be provided with information in relation to the following question *"How much money has been paid to Fenland Association [for] Community Transport in bus pass concessions for the following periods. From Jan 1st to December 31st for the following years 2010, 2011, 2012?"*
- 8.25 The response received from FDC was as follows:
- 2010 - £53,477.00;
  - 2011 - £47,849.75; and
  - 2012 - £60,933.25.
- 8.26 The CBCTA, via a further FOI request 3293 sent to CCC, requested that they be provided with information in relation to the following question, *"How much money has been paid to Fenland Association Community Transport in bus pass concessions for the following periods? From Jan 1st to December 31st for the following years 2010, 2011, 2012"*.
- 8.27 The response received from CCC was as follows:
- "Payments to FACT, from Cambridgeshire County Council towards bus concessions did not begin until April 2011. Therefore, the Council does not hold any information before this time. The amount paid to FACT for bus pass concessions between 1 April 2011 and 31 December 2011 was £17,272.25. The amount paid to FACT for bus pass concessions between 1 January and 31 December 2012 was £36,363.25".*

- 8.28 The concessionary bus pass payments received from FDC (£60,933.25) and CCC (£36,363.25) between 1 January and 31 December 2012 was £97,260.50. This shows a difference between the declared figure (£98,601) in the 2012 annual return (see paragraph 8.31) and the spend data provided by FDC and CCC of £1,304.00.
- 8.29 CBCTA members have indicated that FACT's Dial-A-Ride income also includes its membership fees. In 2012, FACT's membership, according to FACT's Quarterly steering group report dated April 2015, was 971 (See Exhibit DH 7C page 3). A snapshot of FACT's website taken on 9 January 2013 shows Dial-A-Ride annual membership fee to be £10.00 on their application form (See Exhibit MKM 5(1) and the Group Registration annual membership fee to be £15.00 (See Exhibit MKM 5(2)). CBCTA stated that this would give FACT an additional income of £9,710 based on a 971-person membership. Therefore the additional membership income when added to the concessions from FDC and CCC would have increased the amount received to £106,970.50. This leaves a shortfall in the declared 2012 annual return of £8,369.50.
- 8.30 The membership figure shown in the Quarterly Steering Group Report (971 members) does not include the Group membership figures.
- 8.31 It is alleged by CBCTA members that when this situation was pointed out to FACT, FACT's remedy in the 2013 annual accounts was to change the 2012 income for Dial-A-Ride fares and Income to show £119,247 (See Exhibit MKM 4(8) page 16 General Income column headed Total Funds 2012) without any apparent explanation.
- 8.32 The increase in the Dial-A-Ride income from the 2012 annual financial statements compared to the comparative figure included in the 2013 annual financial statements of £20,646, is matched by a decrease in the income shown in the 2012 annual financial statements under the description 'Hire of minibuses and cars' as follows:

	Year Ended 31.12.2012
	£
Dial-A-Ride fares and membership (2012 accounts)	98,601
Dial-A-Ride fares and membership (2013 accounts)	119,247
Increased income shown in 2013 accounts	20,646
Hire of minibuses and cars (2012 accounts)	375,106
Hire of minibuses and cars (2013 accounts)	52,825
Education contracts (2013 accounts)	154,551
Day Centres and Social Services (2013 accounts)	145,497
Self-drive hire (2013 accounts)	1,587
	354,460
Reduction in income shown in 2013 accounts	20,646

- 8.33 The entries were made in 2013 to correct nominal ledger concession posting and membership fee errors in the 2012 accounts, and had no effect on ridership figures. Based on auditor's advice the 2013 financial statements showed a more detailed breakdown of income and therefore the posting error was corrected.

### ***Dial-A-Ride Income 2013 and 2014***

- 8.34 In the 2013 accounts (Exhibit MKM 4(8) - page 16), FACT declared a Dial-A-Car income of £43,111, which the CBCTA suggests is a 236% increase over the previous year. In order to check this assertion, it was necessary to check the Dial-A-Car income for 2012. The 2012 accounts (Exhibit MKM 4(7) page 16) shows that FACT declared a Dial-A-Car income of £12,959.
- 8.35 The CBCTA submitted a FOI request to CCC in order to obtain the Dial-A-Car ridership figures and were informed that CCC no longer held the data.
- 8.36 When FACT's profit and loss figures for the year end 31 December 2014 were published (Exhibit MKM 4(9)), the CBCTA noticed that the figure for their Dial-A-Car services for 2013 (Exhibit MKM 4(9) - page 16, column 5), did not match the figures shown in the 2013 profit and loss account (Exhibit MKM 4(8) page 16, column 4). The figure had been changed from £43,111 in the 2013 accounts (MKM 4(8)) to £31,691 in the 2014 accounts (MKM 4(9)), a reduction of £11,420.

- 8.37 In addition, the Dial-A-Ride services income for 2013 shown in the 2014 accounts, did not match the figures shown in the 2013 profit and loss account either. In this case the figure had been changed from £102,832 on the 2013 profit and loss account (Exhibit MKM 4(8) page 16, column 4) to £114,252 in the 'Total Funds 2013' column (Exhibit MKM 4(9) - page 16, column 5) within the 2014 profit and loss account, an increase of £11,420.
- 8.38 FACT comment that these adjustments in the 2014 accounts were made to correct posting errors in the 2013 accounts.

## *6. Investigate abnormalities with declared expenditures for annual fuel usage.*

- 8.39 The CBCTA raised concerns about the level of FACT's fuel expenditure and the figures which were presented in their annual accounts for the years 2014 and 2015 compared to reported income.
- 8.40 In FACT's Profit and Loss Account for the year ended 31 December 2015 (page 16) Exhibit MKM 4(10) it declared expenditure of £124,338 for "Petrol, diesel and oil". This equates to a decrease in costs of £886 from its expenditure on fuel in 2014 (£125,224). When FACT's declared transport income for 2015 is compared against its figures for 2014 the CBCTA suggest that the income has increased in each of the service lines as shown in the table below. They suggest that FACT's fuel usage would also have had to increase.

<b>FACT Income</b>	<b>2015 £</b>	<b>2014 £</b>	<b>Increase £</b>	<b>% Increase</b>
Hire of mini-buses and cars	97,316	73,793	23,523	31.80%
Education contracts	258,066	229,949	28,117	12.20%
Day Care/Social services contracts	277,829	201,138	76,691	38.10%
Dial-A-Car	32,252	31,325	927	2.90%
Dial-A-Ride	114,066	109,206	4,860	4.40%
<b>Total</b>	<b>779,529</b>	<b>645,411</b>	<b>134,118</b>	<b>20.78%</b>

- 8.41 Whilst it may be expected that FACT's usage of fuel would have increased, the total cost of fuel may have not as the prices of unleaded fuel and diesel fell quite considerably between 2014 and 2015. The following table has been created using historic fuel prices<sup>4</sup>. PKFL understands that FACT only purchases diesel.

<sup>4</sup> Source PetrolPrices.com - <https://www.petrolprices.com/the-price-of-fuel.html>

AVERAGE PRICE OF DIESEL FUEL PER LITRE				
	2014	2015	Decrease	% Decrease
January	£1.38	£1.15	£0.23	16.67
February	£1.37	£1.15	£0.22	16.06
March	£1.37	£1.18	£0.19	13.87
April	£1.36	£1.19	£0.17	12.50
May	£1.36	£1.21	£0.15	11.03
June	£1.36	£1.21	£0.15	11.03
July	£1.36	£1.19	£0.17	12.50
August	£1.34	£1.13	£0.21	15.67
September	£1.33	£1.10	£0.23	17.29
October	£1.31	£1.10	£0.21	16.03
November	£1.27	£1.10	£0.17	13.39
December	£1.23	£1.08	£0.15	12.20
Average	£1.34	£1.15	£0.19	14.18

8.42 The price of Diesel fell by an average of 14.18% between 2014 and 2015, down on average over the year by £0.19 pence per litre from £1.34 to £1.15.

8.43 The CBCTA, as a result of sending a FOI request to the DfT, received four of FACT's Bus Service Operators Grant ("BSOG") declarations as follows:

- BSOG completed in respect of FACT for the period 1 October 2013 to 31 March 2014. Produced by Mr Humphrey as Exhibit DH 6(1);
- BSOG completed in respect of FACT for the period 1 April 2014 to 30 September 2014. Produced by Mr Humphrey as Exhibit DH 6(2);
- BSOG completed in respect of FACT for the period 1 October 2014 to 31 March 2015. Produced by Mr Humphrey as Exhibit DH 6(3); and
- BSOG completed in respect of FACT for the period 1 April 2015 to 30 September 2015. Produced by Mr Humphrey as Exhibit DH 6(4).

8.44 They compared the fuel usage on the returns submitted between October 2013 and September 2014 to those submitted between October 2014 and September 2015. The declared fuel usage was for diesel and was as follows:

Date	Litres
01.10.13 to 31.03.14	48,027
01.04.14 to 30.09.14	49,674
<b>TOTAL</b>	<b>97,701</b>
01.10.14 to 31.03.15	58,022
01.04.15 to 30.09.15	59,984
<b>TOTAL</b>	<b>118,006</b>

- 8.45 Using the following two tables, it was possible to calculate the approximate cost of diesel for the above periods in question using the historic fuel prices (Appendix AD) and is summarised below.

BSOG

Date	Litres	Average Price Per Litre	£
01.10.13 to 31.03.14	48,027	1.38	£66,277
01.04.14 to 30.09.14	49,674	1.37	£68,054
<b>TOTAL</b>	<b>97,701</b>		<b>£134,331</b>
01.10.14 to 31.03.15	58,022	1.27	£73,688
01.04.15 to 30.09.15	59,984	1.16	£69,581
<b>TOTAL</b>	<b>118,006</b>		<b>£143,269</b>

## Conclusions

- The 20% increase in income and usage of diesel was counteracted by the 14% decrease in average diesel prices during the period 2014 to 2015. In addition, FACT have commented that they regularly purchase diesel where they identify favourable discounted prices. We have tested the BSOG grant application system applied by management under Scope Item 3.



***7. Investigate the reason for the changing of a declared “106 grant” to a “National Lottery Grant” to address potential breaches of permit 19 regulations in the financial years 2014-2015.***

- 8.46 Under S106 of the Town and Country Planning Act 1990, as amended, contributions can be sought from developers towards the costs of providing community and social infrastructure, the need for which has arisen as a result of a new development taking place. This funding is commonly known as a 'Section 106 grant'.
- 8.47 Paragraph 2, of FACT's 'Notes to the Accounts' contained within their audited accounts for year ended 31 December 2014 is headed 'Deferred grants received' (Exhibit MKM 4(9)).
- 8.48 This section gives details of both the restricted and unrestricted grants received by FACT during the financial year to 31 December 2014. One such grant is identified as a 'Section 106 grant' (see Exhibit DH 7(1) - page 20). FACT declared that it had received £54,565 as a section 106 grant which is shown as restricted.
- 8.49 Tesco was in the process of developing a new food superstore and petrol filling station in Fenland Way, Chatteris. As part of the negotiation process Tesco was looking to find suitable public transport to furnish the needs of its customers. The CBCTA, as a result of a FOI request (FOI 6750), obtained details of various letters giving details of a proposed grant to FACT. The series of letters were handed to PKFL by Mr Humphrey as follows:
- Letter dated 18 March 2009 from a Senior Transport Officer at CCC Exhibit DH 7(2) to a person employed within the Highways and Access Department for CCC;
  - Letter dated 25 March 2009 from the Senior Transport Officer to CCC's Head of Passenger Transport who at that time was the Local Passenger Transport Manager for CCC Exhibit DH 7(3);
  - Letter dated 14 May 2009 from the Senior Transport Officer to person employed within the Highways and Access Department as previously mentioned Exhibit DH 7(4);

- Letter dated 8 July 2009 from the Senior Transport Officer at CCC to an independent Chartered Civil Engineer and a Member of MTC Engineering (Cambridge) Limited Exhibit DH 7(5);
- Letter dated 24 September 2009 from the Senior Transport Officer at CCC to an independent Chartered Civil Engineer and a Member of MTC Engineering (Cambridge) Limited Exhibit DH 7(6);
- Letter dated 20 January 2010 from the Senior Transport Officer at CCC to the person employed within the Highways and Access Department as previously mentioned, Exhibit DH 7(7);
- Letter dated 24 February 2010 to the person employed within the Highways and Access Department as previously mentioned Exhibit DH 7(8);
- Letter dated 25 February 2010 to the person employed within the Highways and Access Department as previously mentioned Exhibit DH 7(9); and
- Letter dated 6 October 2010 from another Senior Transport Officer employed by CCC to the person employed within the Highways and Access Department as previously mentioned Exhibit DH 7(10).

- 8.50 In the letter dated 24 September 2009, CCC's Senior Transport Officer, explained that CCC *"would not support a supermarket hopper bus service that is unlikely to become commercially viable in the long term. This is because once any pump-priming has been exhausted the County Council would be unable to subsidise the service and it would be subsequently withdrawn"* (See Exhibit DH 7(6) page 1 paragraph 2).
- 8.51 He further states, *"It is proposed to provide £50,000 contribution towards FACT (Fenland Association for Community Transport) to offer public transport access to the proposed site. The level of contribution to FACT will need to be sufficient to support a regular service to the proposed store in the long-term. The level of contribution should therefore be discussed in detail with [the name of the Public Transport Manager] and FACT to demonstrate that an appropriate service can be secured based on this level of contribution"* (See Exhibit DH 7(6) page 1 paragraph 4).
- 8.52 He also states, *"In summary I can confirm that revising the public transport proposals is appropriate given the concerns regarding the viability of the originally proposed 'hopper bus' service. In principle, a contribution towards FACT is acceptable, however the level of*

*contribution will need to be agreed once further discussions have taken place with FACT and [the name of CCC's Public Transport Manager]" (See Exhibit DH 7(6) page 1 paragraph 5).*

- 8.53 In a further letter from a Senior Transport Officer employed by CCC dated 20 January 2010 addressed to a Highways and Access Department employee at CCC, he states, *"It is proposed to provide public transport access via the Fenland Association for Community Transport (FACT) service. The developer is proposing to provide a £50,000 contribution to operate a service to the proposed store three times a day, six days a week (Monday to Saturday). Discussion took place with the County Council in September 2009. The County Council agreed that funding a shop hopper bus service for a limited period is unlikely to become commercially viable in the long term within Chatteris. On this basis it is considered that funding community transport access to the proposed store is appropriate to provide bus access to the proposed store. The supporting letter provided by FACT does not identify that the proposed £50,000 contribution will be sufficient to operate the proposed service. However further investigation suggests that FACT are [sic] content with the proposals"* (See Exhibit DH 7(7) page 3 paragraph 3).
- 8.54 The CBCTA provided details of the guidance which is given to Section 19 and 22 licence holders by the DfT in relation to the definition 'not for profit passenger transport'. The guidance states that *'a vehicle being used under a permit must not be used with a view to profit nor incidentally to an activity which is itself carried on for profit'*. The guidance gives the following example: *"For example, a charity won't be operating for profit if it runs a minibus from sheltered accommodation to the local supermarket. But, if the supermarket offered to pay for the service, this service would be operated incidental to an activity which in itself is carried on with a view to profit, i.e. the supermarket. This wouldn't be allowed under a permit"* (See Exhibit MKM 34(2) paragraph 3.2 entitled, 'Without a view to profit ('not for profit')' page 5).
- 8.55 Concerns about this situation were raised by Councillors' Lay ("Cllr Lay") and Clapp ("Cllr Clapp").
- 8.56 Paragraph 2, of FACT's 'Notes to the Accounts' contained within their audited accounts for year ended 31 December 2014 is headed 'Deferred grants received'. This section gives details of the unrestricted grants received by FACT during the financial year to 31 December 2014. One such grant is identified as a 'Section 106 grant' (see Exhibit DH 7(1) - page 20). FACT declared that £54,565, the same amount that was said to have come from the Section

106 grant in the following year's accounts, had come from the "*Big Lottery Fund Grant*" (See Exhibit MKM 4(10) page 20). This grant is shown as restricted.

8.57 The Big Lottery Fund website allows visitors to search for previously funded projects<sup>5</sup>. A search of this site by PKFL found that funding had been granted to FACT on five occasions as follows:

- 08 August 2005 - £116,514 - A Dial-A-Ride service to allow local community of Wisbech North Ward to gain access to the main post office in the centre of Wisbech Town. The distributing body is shown as The Community Fund. A copy of the entry showing this grant from the website has been produced as Exhibit MKM 4(16)
- 26 September 2006 - £9,986 - The purchase new computers and I.T. equipment for its office and to set up a new website. The distributing body is shown as Awards For All (England) Joint Scheme. A copy of the entry showing this grant from the website has been produced as Exhibit MKM 4(17)
- 27 October 1998 - £116,437 - The purchase of two fully adapted vehicles to strengthen the existing community transport services and to employ a co-ordinator to develop and extend the transport scheme. The grant, over three years, will pay for two new minibuses, the salary of the co-ordinator, and a computer. The distributing body is shown as The Community Fund. A copy of the entry showing this grant from the website has been produced as Exhibit MKM 4(18).
- 27 April 2015 - £7,286 – FACT is using the funding to establish and deliver a weekly befriending and social club for older people with transport provided. This will enable beneficiaries to access social activities to meet other people, strengthen friendships and reduce isolation, improving mental and physical wellbeing as well as encouraging greater integration within their local communities. A copy of the entry showing this grant from the website has been produced as Exhibit MKM 4(19).

8.58 The grant of £7,286 has been accounted for in the December 2015 accounts - identified as 'Lottery Grant' within the 'Notes to the Accounts' (See Exhibit MKM 4(10) page 20). However, there have been no other grants from the Big Lottery Fund.

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<sup>5</sup> Source: <https://www.biglotteryfund.org.uk/funding/search-past-grants>

- 8.59 The FHE Manager when asked about the change in classification of the Section 106 grant said that the published accounts were wrong and produced the relevant pages of the 2015 accounts which showed the entry as a Section 106 grant Exhibit JP 7(1). The FHE Manager also produced an email sent from herself to the auditor as Exhibit JP 7(2). The email is dated 25 May 2016 and timed at 11.18. The email states the following, *"Sorry one last thing. The lottery grant I have just read their terms and conditions. We will show your grant as a restricted fund under the description "Big Lottery Fund Grant" cheers [The name of the FHE Manager] Manager"*. The FHE Manager states that the wrong line was changed by the auditors instead of changing the Lottery Grant entry the auditors changed the Section 106 grant entry by mistake. This was confirmed in an email from the Auditors Thomas Quinn produced by the FHE Manager as Exhibit JP 7(3).
- 8.60 A copy of the FACT annual report for 2015 submitted to CCC which contains FACT's 2015 accounts which were amended after submission to the FCA, has been produced as Exhibit 7-A-2. This document on page 14 shows the grant as a Section 106 grant correctly.

### **Conclusions**

- The financial statements filed with the Annual Return for FACT for 2015 were incorrect with regard to the description of Section 106 grant received, due to a confirmed error by the auditors in respect of the description of the grant.

***8. Compare reported status, income and expenditure to underlying data. Reconcile CCC's grant information and contract awards to reported income for FACT and HACT (Note: FACT 2012 financial accounts - fixed asset note omitted, and ensure all grants are accounted for).***

8.61 The FHE Manager was asked about the missing fixed asset note in the FACT annual statements for 2012 and she confirmed that the auditors had left it out in error.

***Conclusions***

- We have agreed the annual financial statements for FACT and HACT to the underlying accounting records for the 2016 year.
- We have agreed annual and capital grant information received from CCC to the accounting records of FACT and HACT for the financial years 2014 to 2016.
- CCC provided us with a list of contracts which included live and expired contracts. We were provided with lists of live contracts by FACT and HACT and these were agreed to the schedule provided by CCC.
- We note that the format of the HACT annual financial statements for 2016 have been abbreviated compared to 2015, with the "Restricted income funds" note (note 13 of the 2015 financial accounts) being omitted from the accounts in 2016.
- We have commented on compliance of the financial statements of HACT with relevant SORPs at Scope Item 4.
- The published balance sheet of FACT for 2012 included fixed assets, however, the relevant fixed asset note to the financial statements was omitted in error.

## 9 Funding

### ***9. Identify the Councils' procedures, to ensure that the Department of Transport guidance for funding Community Transport Organisations have been complied with and check that they have been adhered to.***

- 9.1 Mr Humphrey has provided a copy of the "Department for Transport Guidelines on Community Transport Funding and E.U. State Aid Rules" to PKFL as Exhibit DH 12(1). The document was published on 14 January 2015.
- 9.2 The guidance states that local authorities must decide for themselves whether or not they provide financial assistance for CTS and, if so, how to channel the assistance, which organisations and projects to assist, and how much funding to provide to each of the groups it supports.
- 9.3 The guidance is intended to assist local authorities and other public bodies to ensure that, where they choose to provide funding in support of community transport organisations or projects, they do so having regard to the need to comply with all relevant legal requirements including, in particular, the EU State Aid rules.
- 9.4 It is recognised that the State Aid rules are complex, and the question of whether or not a particular grant to a particular organisation might constitute State Aid can be considered only on a case by case basis.
- 9.5 In providing the guidance, the DfT set out an assessment framework which they suggested should be used to assist local authorities in identifying potential issues under the State Aid rules.
- 9.6 CCC's Community Transport Officer and CCC's Head of Passenger Transport have confirmed they receive relevant information from the DfT and take legal advice as necessary.
- 9.7 The guidance (Page 6 "monitoring") states that *"the CTO should be required to keep accounts that enable the local authority to verify the organisation's costs and revenues of operating the supported CTS and ensure that the grants and revenues received are not being used to cross subsidise other services or activities. .... where the organisation's activities are*

*not limited to providing the supported CTS, the CTS will need to put in place internal accounting mechanisms to ensure that such accounts are available and are prepared in accordance with generally accepted accounting principles..... Local authorities should ensure that public funding which they provide in any form whatsoever in support of community transport services is not used by the beneficiaries to cross subsidise commercial activities.”*

- 9.8 CCC’s Community Transport Officer has confirmed that CCC receives from FACT, HACT and ESACT their annual published accounts and they also receive quarterly reports (QSGRs). He indicated that both he and CCC’s Head of Passenger Transport read the annual accounts to see if anything immediately appeared unusual. He said that he believed the accounts were fully audited (HACT and ESACTS 2016 accounts are subject to an “Independent Examiner’s Report” only rather than a full audit). He noted that he is not experienced in interpreting accounts.
- 9.9 The Community Transport Officer confirmed that he does not know whether any checks are carried out in relation to cross subsidisation and he would not know how to undertake this work himself.
- 9.10 PKFL have established this segregation of accounting information between CTS services and commercial contracts is not carried out by FACT, HACT and ESACT (See Scope item 26) and that all funds are mixed into single bank accounts for each entity.
- 9.11 The Annual Grant Agreements (2015/16 onwards) requires FACT and HACT to disclose the Annual Grants as “restricted income” and this is how it is classified in the 2015 and 2016 annual financial statements. However, CCC’s Head of Passenger Transport has confirmed that a separate check is not carried out by CCC to ensure that Grant Aid is not subsidising commercial contract activity.
- 9.12 We have reviewed grant allocation against EU State Aid de-minimis limits at Scope Item 31.

### **Conclusions**

- CCC does not have any set procedures to ensure that DfT guidelines on the cross-subsidisation of commercial activities does not take place by CTOs which receive grant funding.



*10. Investigate how complaints of restricted grants, being accounted as unrestricted (allowing for cross-subsidisation), were investigated by both the Fenland District Council (“FDC”) and the CCC and report the outcomes received by complainants.*

- 9.13 The FDC Audit is dealt with at Scope Item 46. Complaints to CCC and FDC are dealt with within Scope Item 53.

***11. Investigate the procedures and standards followed by CCC staff to determine whether the correct information is made available to adequately assess whether there is a need for funding and also prevent cross-subsidisation of funding.***

- 9.14 As outlined at Scope Item 9 the DfT provide guidance to local authorities in relation to the provision of financial support for 'Community Transport Services' ("CTS").
- 9.15 As noted in paragraph 9.7, part of the DfT guidance states, *"The CTO should be required to keep accounts that enable the local authority to verify the organisation's costs and revenues of operating the supported CTS and ensure that the grants and revenues received are not being used to cross-subsidise other services or activities, and where the organisation's activities are not limited to providing the supported CTS, it will need to put in place internal accounting mechanisms to ensure that such accounts are available and are prepared in accordance with generally accepted accounting principles"*.
- 9.16 The guidance also states, *"Local authorities should ensure that public funding which they provide in any form whatsoever in support of community transport services is not used by the beneficiaries to cross-subsidise commercial activities"*<sup>6</sup>.

***Annual Grants***

- 9.17 The Annual Grant in respect of FACT has been rolled over for over 20 years and there is no original assessment of need on CCC files (Exhibit 7-K-2).
- 9.18 The CCC Annual Grant in respect of HACT commenced in April 2013. There was no formal review documented of the need for the grant other than the Application for capital and working capital (Exhibit 13-B-1) which included a trading and cash flow projection. Councillor Orgee, the lead Councillor on the Transport Steering Group, authorised the Annual Grant of £11,750 on 13 March 2013 in an email (Exhibit 13-B-3). The Annual Grant was increased to £12,095, CCC's Head of Passenger Transport indicated that an uplift would be added to the grant to take inflation into account. CCC Internal Audit has confirmed that

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<sup>6</sup> Source: Department for Transport guidelines on Community Transport Funding and the E.U. State Aid Rules page 5.

this would not be unusual in the circumstances. We have been unable to ascertain who authorised the increase.

- 9.19 The original HACT Grant application form and accompanying papers are attached as Exhibits 13-B-1 and 13-B-2. The loan and grant was authorised by the Transport Member Steering Committee but no documented proof of this decision has been found.
- 9.20 CCC does receive information from HACT and FACT in the form of Quarterly reports and the brief Annual Report with the annual financial statements.
- 9.21 As set out under Scope Item 3, CCC, in contravention of the Annual Grant Agreements, does not receive budgets or action plans from FACT or HACT, an annual review is not undertaken and not all statistics required by the Agreements are provided.
- 9.22 As indicated under Scope Item 9, there is no review carried out by CCC to ensure cross subsidisation of commercial contracts by CTS operators does not take place.

### *Capital Grants*

- 9.23 The authorisation process by CCC in relation to Capital Grants from the Community Transport Fund are set out at Scope Item 3.

### *HACT*

- 9.24 In respect of CTF Capital Grants, HACT received £202,142 in March 2013 in respect of start-up funding and £9,506 in July 2013 in respect of radio acquisition (Scope Item 3). This followed the financial failure of NOCT and the funding enabled the services (Ring-and-Ride and contracts) to be continued at short notice.
- 9.25 The Application form included trading and cash flow forecasts in respect of both Dial-A-Ride and Commercial Contracts. In interview, CCC's Head of Passenger Transport stated he was aware of the forecasts but he was not aware they were not subject to any detailed scrutiny, and, there were no approaches from alternative suppliers for the service (Ring-and-Ride and contracts). There were no quotes for the capital (vehicle) purchases included with the application, as required by the CTF application process.
- 9.26 Exhibit DH 18(7) is the Application form in respect of the radio purchase. Only one quote is attached (Exhibit 13-G-1) whereas the CCC procedures state two quotes are needed.

## ***FACT***

- 9.27 On 4 February 2013, FACT applied for £25,706.83, requesting £23,136.15 as a loan and £2,570.68 as a grant (refer to Scope item 17 in respect of the loan).
- 9.28 The application form is produced as Exhibit 11-B-5. CCC Internal Audit were unable to find any quotes attached to this bid.

## ***Conclusions***

- For FACT and HACT, there is no formal process to assess the continual need for funding, as required by the Annual Grant Agreements.
- In respect of the CTF start-up grant for HACT the financial failure of NOCT provided the need for the funding. CCC provided funding for both Ring-and-Ride and contract services. However, quotes in respect of the vehicle purchases were not included as prescribed.
- Radio grants required the support of two separate quotes for FACT and HACT, which appears not to have been adhered to.

***12. Investigate and report whether the CCC has, against Department of Transport guidance, created a potential unfair competitive advantage by funding or loaning vehicles to FACT/HACT that have been used to operate the CCC's own commercial contracts.***

***Background***

- 9.29 The CBCTA has given details of guidance provided by the DfT in its document 'Department for Transport Guidelines on Community Transport Funding and the E.U. State Aid Rules', which states (page 6 second paragraph under the heading, 'Monitoring'), *"Local authorities should ensure that public funding in any form whatsoever in support of community transport services is not used by beneficiaries to cross subsidise commercial activities. Otherwise such beneficiaries would have had an unfair competitive advantage over private nonsubsidised commercial operators participating in these tenders."* A copy of the guidance has been produced by Mr Humphrey as Exhibit DH 12(1).
- 9.30 Page 4 of the same document states, *"The CTS must qualify as a SGEI (Services of General Economic Interest) for the purpose of State Aid rules. The CTS in question must therefore not only reflect the local authorities reasonable judgement that those services are required to serve the interests of the community, but they must also be services in relation to which there is market failure'. In other words, public funds should not be used to support the provision of services that market competition would make available on satisfactory conditions (e.g. with regard to service frequency and the fare charges to service users) even without State funding"*.
- 9.31 SGEI are economic activities that public authorities identify as being of particular importance to citizens and that would not be supplied (or would be supplied under different conditions) if there were no public intervention (i.e. there is market failure). Examples are transport networks, postal services and social services.

***FACT***

- 9.32 FACT has not received any grant funding specifically for vehicles in the recent past from CCC. As previously noted (Scope Item 3), as annual grant funding from CCC is mixed in a single bank account with other funding it is not possible to trace whether or not such

funds have been utilised to purchase vehicles for commercial contracts.

### *HACT*

#### *Capital Grants - Start-up Funding*

- 9.33 Exhibit 13-B-1 is the application form from HACT in March 2013 for the start-up grant funding and Exhibit 13-B-2 is the supporting documentation. This application included a funding request for the purchase of 7 vehicles for £161,640 (inclusive of VAT). In addition, HACT was to be loaned a Citroen vehicle from CCC. There is no grant funding agreement in relation to this capital grant. There is no loan agreement in relation to the Citroen vehicle.
- 9.34 As set out at Scope Item 3 CCC provided £202,142.95<sup>7</sup> to fund the start-up of HACT. The funding application requested funds in respect of:

	£
Purchase of 7 Vehicles– net of VAT	134,700
Other Equipment	<u>4,474</u>
	139,174
 Working Capital	 <u>35,120</u>
	174,294
VAT	<u>27,568</u>
	<u>201,862</u>

Note: there is a £280 difference in the amount applied for by HACT and the amount paid by CCC.

- 9.35 The above capital and working capital were to be used for “Ring and Ride” and commercial contracts as set out in the trading and cashflow forecast attached by HACT to the Grant Application Form. The split of annual income in the annual trading forecast enclosed with the application was as follows:

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<sup>7</sup> Payments by CCC 26.03.13 of £161,920.00 and £40,222.95

	£	£
School Contracts		97,722
Other Contracts (less memberships)		<u>167,900</u>
		265,622
Memberships	7,500	
Ring and Ride and reimbursements	13,075	
Grant Hunts HDC	50,000	
Grant CCC	11,750	
Grant BSOG	<u>5,500</u>	
		<u>87,825</u>
		<u><u>353,447</u></u>

- 9.36 All but one contract included in the above income relate to CCC.
- 9.37 The CTF Capital Grant award to HACT enabled it to carry out Ring-and-Ride operations and commercial contracts for CCC by the acquisition of vehicles and working capital. This was known to CCC and CCC's Head of Passenger Transport commented that there were no other parties offering to take over the role of NOCT and therefore emergency powers were invoked (refer to Scope Item 33 re the use of emergency powers).
- 9.38 In addition to the capital grant, an Annual Grant for the year 2013 to 2014 was awarded to HACT by CCC of £12,095. The Grant Agreement is produced as Exhibit DH 18(2).

### ***Contracts Awarded to HACT on Start-up***

#### ***Communications with the CBCTA***

- 9.39 There appears to have been some confusion as to the number of contracts awarded to HACT at its inception as evidence by the trail of FOI requests from the CBCTA and others to CCC (Exhibit MKM 18(2)).

## Contracts Awarded

- 9.40 Based on the information provided in these FOI requests and information provided by CCC and HACT, the contracts awarded to HACT on its start-up were as follows:

Contract No	Type	Estimated annual value	Note
<b>From CCC</b>		£	
PRC4	Education	27,550	(1)
PRC3	Education	26,600	(1)
PTP02	Education	13,683	(1)
PT04	Education	14,250	(1)
PT03	Education	15,638	(1)
925	Education	5,103	(2)
46A	Service Route	63,000	(1)
150	Service Route	54,000	(3)
		<hr/>	
		219,824	
<b>Other</b>		<hr/>	
		30,000	(1)
		<hr/>	
		249,824	
		<hr/>	

Notes:

- 1) Included in the trading and cashflow forecast (estimated value from the trading forecast (Exhibit 13-B-2).
- 2) Estimated value from CCC payment schedule Appendix W.
- 3) It appears that although service route 65 was included in the list of contracts to be taken over, the contract was only awarded in July 2015.

- 9.41 Service 46A, which HACT took over on 1 April 2013, operates 6 days per week starting at 0815 hours and finishing at 1752 hours each day. The timetable suggests that a single bus is in continual use to service this route. A copy of the bus timetable, as seen on the CCC website, is produced as MKM 12(3).
- 9.42 Service 150 which HACT took over on 1 April 2013 also runs 6 days per week. This service starts at 0800 hours and finishes at 1800 each day. The timetable suggests that a single bus is needed to operate this route. It will be needed on a continual basis between 0800 hours and 1436 hours but there is a gap of 2 hours and 46 minutes each afternoon when the bus could be put to another use. A copy of the timetable as seen on the CCC website is produced as MKM 12(2).
- 9.43 It is assumed that the six school routes would all need separate vehicles as children would be going to and coming from school at the same time of the day.



- 9.44 Based on the above, the number of vehicles needed was sufficient to service the number acquired by HACT during the 2013/14 financial year (Exhibit JP 23(1)).

	<b>No. of buses</b>
Education Contracts	6
Service Routes	2
Other	1
Dial-A-Ride Routes	3
Number of vehicles held at 31 March 2014	<u>12</u>

- 9.45 Buses not utilised for school routes in between designated school times could be used for other purposes, and in addition one vehicle can be utilised for more than one school route depending on timing.

- 9.46 The guidance given to organisations operating registered local bus services in England (except London) and Wales from the DfT a copy of which is produced as Exhibit MKM 12(14) states, *“When a council or ITA [Integrated Transport Authority] needs to start a service at short notice (e.g. when another operator has given it up), it can award a short-term contract without going to tender, but must then go out to tender as soon as possible”*<sup>8</sup>. It appears that CCC’s Head of Passenger Transport, did seek legal advice in relation to route 46A Exhibit 13-D-2 and following this advice decided to not follow the DfT guidance, if this in fact was known to him. The award of contracts using emergency powers is dealt with as a separate issue under Scope Item 33.

- 9.47 In addition to the above CCC awarded additional contracts to HACT. As set out at Appendix W the contract income paid to HACT in the 2015 to 2017 years was:

- Year ended 2015: £308,121
- Year ended 2016: £403,294
- Year ended 2017: £342,912

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<sup>8</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/542918/local-psv-service-registration.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/542918/local-psv-service-registration.pdf) (Exhibit MKM 12(14)).

### *Annual Grants*

- 9.48 As previously noted annual grants are 'pooled' in one bank account and not segregated, therefore grants could be used to fund vehicles or working capital.

### *Conclusions*

- Based on the above HACT have been provided with funding by the CCC to operate its own commercial contracts and the use of emergency powers has not been clearly exercised (refer to Scope Item 33).
- As the annual grant funding is deposited in a mixed bank account for FACT and HACT, cost is expended as needed which could relate to working capital or capital expenditure.

***13. Department of Transport guidance “The CTO should be required to keep accounts that enable the local authority to verify the organisations cost’s and revenues of operating the supported CTS” (Woodcote report paragraph 6.3). Check the Council’s grant conditions to ensure this requirement is included and examine evidence of audit or other checks by the CCC to ensure that the CTOs’ grant conditions are complied with.***

9.49 Paragraph 6.3 of the Woodcote report states the following: *“DfT guidance states the CTO should be required to keep accounts that enable the local authority to verify the organisation’s costs and revenues of operating the supported CTS and ensure that the grants and revenues received are not being used to cross-subsidise other services or activities, and where the organisation’s activities are not limited to providing the supported CTS, it will need to put in place internal accounting mechanisms to ensure that such accounts are available and are prepared in accordance with generally accepted accounting principles”*. A numbered copy of the Woodcote report is produced as Exhibit MKM 13(1). The guidance which it is believed the Woodcote report refers to is the Department for Transport Guidelines on Community Transport Funding and the EU State Aid Rules a copy of which has been produced by Mr Humphrey as Exhibit DH 12(1). The quoted section appears on page 6 under the heading ‘Monitoring’.

9.50 Within the Grant Funding Agreement between CCC and FACT / HACT for the period 1 April 2014 to 31 March 2015 (Exhibit 9-F-8) are the following terms and conditions:

9.51 Section 5 Monitoring –

5.1 FACT shall provide to CCC;

- *“Annual financial reports by 30 September 2014 for the previous financial year;*
- *FACT / HACT shall produce monthly analysis statistics on the services stated in sections 3.1 and 3.2 of this Agreement, to be submitted to Cambridgeshire County Council. These shall include;*

- (i) *Total number of single passenger journeys undertaken (a passenger journey is defined as a one way journey, therefore the outward and return parts of a journey are counted as two single passenger journeys); and*
- (ii) *A breakdown of numbers of members per parish served.*
- *CCC also requires FACT / HACT to monitor the numbers of journeys made by Cambridgeshire residents using bus passes, to support the work on concessionary fares."*

9.52 Within the Grant Funding Agreement between CCC and FACT, HACT and ESACT for the periods 1 April 2015 to 31 March 2016 and 1 April 2016 to 31 March 2017 are the following terms and conditions:

- *"3.4. The Grant shall be paid into a separate bank account in the name of the Recipient which must be an ordinary business bank account. All cheques from the bank account must be signed by at least two individual representatives of the Recipient."*

The FHE Manager has confirmed to PKFL that the income has not been paid into a separate bank account. Placing all funding through one account makes it difficult to track and monitor whether the organisations spending is in line with the Terms and Conditions.

- 7.1 The Recipient shall provide to the Council with:
  - "(a) an annual budget forecast and a 12-month action plan for the forthcoming year which shall be broken down into tasks for 3 months, 6 months and 12 months and shall include details of the Recipient's plans to promote and increase use of the dial-a-ride scheme and any fundraising initiatives and the third party funding information as required by clause 4.2;*
  - (b) annual financial reports and independently audited accounts by the 30 September for the previous financial year*
  - (c) quarterly reports on the following service performance indicators, to be submitted within 1 month after end of each quarter, for of the each services operated as set out in Schedule 1:*

- (i) *total number of single passenger journeys undertaken (a passenger journey is defined as a one-way journey, therefore the outward and return parts of a return journey are counted as two single passenger journeys)*
  - (ii) *total miles travelled*
  - (iii) *revenue received from each service operated*
  - (iv) *a breakdown of numbers of individual and group members by parish*
  - (v) *total number of group hire bookings, including total number of passengers carried, mileage and revenue received*
  - (vi) *total number of unmet requests and journeys not operated*
- *7.5 The Recipient shall on request provide the Council with such further information, explanations and documents as the Council may reasonably require in order for it to establish that the Grant has been used properly in accordance with this Agreement.*
- *7.6 The Recipient shall permit any person authorised by the Council such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them.*
- *7.7 The Recipient shall permit any person authorised by the Council for the purpose to visit the Recipient once every quarter to monitor the delivery of the Community Transport Services. Where, in its reasonable opinion, the Council considers that additional visits are necessary to monitor the Community Transport Services, it shall be entitled to authorise any person to make such visits on its behalf.*
- *7.8 In accordance with the requirements of Schedule 1, the Recipient shall invite the Council to all annual general meetings or committee or board meetings of the Recipient and shall give the Council at least 10 days written notice of the same. The Recipient shall ensure that there is a standing item on the agenda for each such meeting to discuss the Recipient's performance under this Agreement and to review the documents provided to the Council in accordance with this clause 7.*

- 7.9 *The Recipient shall provide the Council with a final report on completion of the Grant Period which shall confirm whether the Community Transport Services have been successfully and properly provided.”*
- 9.53 The FHE Manager was asked what audits by CCC had taken place in relation to HACT, FACT and ESACT. The FHE Manager confirmed her participation in the audit undertaken by GreenbiRo Limited (the GreenbiRo report) which was commissioned by CCC in May 2016. She was also able to provide details of three additional audits which had taken place, two in 2013 and one in 2015.
- 9.54 The first audit in 2013 was undertaken by Fenland District Council and was a concessionary fares review. A document entitled ‘Concessionary Fares Review – March 2016’ was produced following the audit. The FHE Manager has provided a copy of the review document Exhibit JP 13(1).
- 9.55 The second audit took place in August 2013. Again, this was undertaken by Fenland District Council. The aims of the audit were to establish whether:
- The processes and procedures used by FACT are aligned with the Section 19 permit system regulated by the Traffic Commissioners;
  - The relevant membership and application criteria is adhered to; and
  - Whether there is a requirement for private hire/Hackney carriage licences regulated by the licensing authority.
- 9.56 A report was completed at the conclusion of the audit entitled ‘Audit Fenland Association of Community Transport’. The FHE Manager has produced a copy of the report as Exhibit JP 13(2).
- 9.57 The audit which took place on 2 May 2015 was an ‘Operator Assessment Review’ conducted by a member of the Vehicle and Operator Services Agency (“VOSA”). A satisfactory outcome was achieved and a copy of VOSA’s report has been produced by the FHE Manager as Exhibit JP 13(3).
- 9.58 These, other than the audit of annual financial statements, are the only audits carried out in the period 2010 – 2016.

## *Conclusions*

- The CCC Annual Grant Agreements do not require the CTS to maintain separate accounting records for CTS activities. However, they do require funds to be paid into a “separate” bank account, and, as noted above FACT, HACT and ESACT did not pay grant funds into separate bank accounts (each has one bank account where all funds were deposited).
- CCC have not carried out an audit to ensure grant conditions are complied with.

***14. Examine CCC spend data to confirm that HACT has correctly categorised income in its accounts and records.***

- 9.59 We have traced Annual Grant information, concession invoices and contract information into the accounting records of HACT and are satisfied that these are recorded in the correct nominal ledger accounts.
- 9.60 The Annual Financial Statements for HACT for 2016 (as compared to the FACT annual financial statements) do not separate Dial-A-Ride income from contract income. These are amalgamated in one line on the Statement of Financial Activities for the year ended 31 March 2016 as “Incoming Resources from Charitable Activities” £531,956 (Exhibit MKM 4(15) page 5).

***Commercial Contracts***

- 9.61 HACT have provided an analysis of income received for the 2014 to 2016 financial years which separately discloses contract income (Exhibit JP 15(3)).

***Conclusions***

- As noted at Scope Item 4, HACT financial statements for 2016 do not conform to the relevant SORP.
- In particular, the initial start-up grant and the other capital grants should have been disclosed in the Statement of Financial Activities, but have been incorrectly recorded as deferred income in the HACT financial statements, which is not in accordance with the SORP.



*15. Investigate and report a breakdown of revenues (including grant funding) and expenditures for FACT/HACT community work to identify whether it requires funding, is breaking even or making a profit. Document and check for the reasonableness of the allocation of indirect costs.*

- 9.62 As previously noted FACT and HACT do not prepare separate accounting records or operate separate bank accounts for CTS and contract services. FACT and HACT have prepared schedules showing the profit and loss for Dial-A-Ride and Ring-and-Ride. The schedule for Dial-A-Ride for FACT for the years 2012 to 2016 is at Exhibit JP 15(1). The schedule for Ring-and-Ride for HACT for the years 2014 to 2016 is at Exhibit JP 15(2).

**FACT**

- 9.63 These schedules of profit and loss for Dial-A-Ride for FACT and Ring-and-Ride for HACT have been prepared by management from the accounting records based on grants received, fares and membership income received, the number of vehicles utilised on those services and estimated operating cost per bus per day. These operating costs are before depreciation and overheads. These schedules show operating costs for CTS operations for both FACT and HACT. We set out below, the detailed assumptions of management underlying the computations.
- 9.64 In order to test these management schedules of profit and loss for Dial-A-Ride / Ring-and-Ride we have analysed the financial statements for FACT and HACT into CTS and contract activities for the 2016 financial years. This analysis takes into account all income and costs (including overheads) for FACT and HACT. The results of this testing are set out at Appendix E (FACT) and Appendix F (HACT).
- 9.65 The FACT profit and loss schedule (Exhibit JP 15(1)) shows the following history of losses from Dial-A-Ride activities:

Year	Loss per year
	£
2012	16,446
2013	10,265
2014	22,008
2015	22,950
2016	30,534

9.66 The assumptions underlying the schedule of profit and loss are:

- Income – consists of the Dial-A-Ride CCC Annual grant, certain grants from other authorities, concession payments, fares and individual membership – but excludes group hire income and FACT excursions/lunches (the latter are paid for separately by customers);
- Operating 252 days a year (52 weeks, 5 days a week less 8 bank holidays);
- 8 vehicles needed to achieve the timetables for Dial-A-Ride only;
- Operating cost per bus per day estimated at £90 for 2016. This has been estimated by management based on the running costs and insurance, wages, repairs and fuel included in the financial records, pro-rated for the number of operating days; and
- In the years 2012 to 2015 this estimated cost increases from £78 per bus per day to £85. This has been estimated by management as set out above (for the 2016 year).

9.67 We have tested these assumptions on the following basis for the 2016 year:

- i) Taken the actual costs for insurance, wages, repairs and fuel from the 2016 financial statements;
- ii) The average number of buses used by FACT for 2016 was 43.5 (see Exhibit JP 23(1) - 41 at the beginning of the year and 46 at the end of the year);
- iii) Drivers wages and diesel are variable costs of £447,386 and £127,701 for the year respectively from the FACT annual financial statements for 2016 (Exhibit 7-A-3). We have estimated these costs on the following basis for comparison purposes:

Computation 1 – based on the average cost per bus.

- iv) Insurance costs and repair costs for the year are £29,644 and £66,582 (see Exhibit 7-A-3) and we have allocated these costs on average cost per bus.

9.68 These computations are set out at Appendix D.

9.69 The results of this testing are set out at Appendix D1 and is summarised as follows for Dial-A-Ride daily trading profit and loss:

For 8 buses	PKF Computation 1	FACT Computation
	£	£
Income per day per FACT	599	599
Total cost per day	488	720
Profit/(loss) per day	111	(121)

9.70 We would comment that:

- The above does not include an allocation of other costs e.g. depreciation of vehicles and overheads – which it would be reasonable to do;
- Group hire income and expenditure is excluded in the FACT schedule and the PKFL computations; and
- Other grant income in 2016 is limited to £2,300 (see analysis below) compared to total other grant income of £119,539 (excluding the CCC grant) in the 2016 financial statements:

Grant Doner	£
YUS	100
Tesco	500
M Anna	100
Gorfield	150
Ardwick	100
WPC	150
Manea	300
Chatteris	150
Whittlesea	750
Total	<u>2300</u>

### *Computation of Profit and Loss including Overheads*

9.71 As set out above, in order to test FACT's allocation of revenues and costs as between CTS and other activities (Contracts) we have set out the 2016 income statement included in the financial accounts split between the two types of activities at Appendix E.

9.72 The assumptions used for this analysis are:

- The BSOG grant has been allocated based on earned income (excludes grants);
- Group hire income for group members – this has been included in CTS income;
- Group hire income for non-group members – this represents recharges to HACT and ESACT and sundry commercial routes;
- Grant income other than BSOG, Fenland Primary Care Trust and the Lottery Funds grants has been allocated to CTS. [Note: The Big Lottery Fund Grant of £43,531 was in relation to the FACT Befriending and Social Club (Exhibit MKM 15(6))];
- FACT consider the average number of vehicles used in the year is 8 for Dial-a-Ride services and 3 for members' group hire giving a total of 11 for CTS services;
- Overheads – the Dial-a-Ride services are labour intensive and take a disproportion of back office costs compared to Contract services (e.g. taking calls, route planning, membership etc.). FACT have estimated 70% of office staff costs, telephone, postage and printing should be allocated to CTS (out of a total of £63,622) with the balance of overheads being allocated in proportion to the number of buses utilised. This is based on the time spent by back office staff on taking Dial-a-Ride bookings, route scheduling, payments, membership administration etc, in comparison to contracts which once set up have little back office staff involvement. We consider these assumptions to be reasonable;
- Depreciation is allocated in proportion to the number of vehicles used; and

- Wages, insurance, repairs and diesel costs have been allocated as set out in PKF Computations 1 (average annual cost per vehicle) to generate the segregated income statements as set out as Computation 2 (Appendix E).

9.73 The result of this analysis is summarised below:

### *Computation 2*

	<b>CTS £</b>	<b>Contracts £</b>	<b>Total £</b>
Earned income	161,032	670,972	832,004
Grants	79,516	80,283	159,799
Total income	240,548	751,255	991,803
Total expenditure	270,875	687,745	958,620
Surplus/(deficit)	(30,327)	63,510	33,183

### *Conclusions*

- FACT CTS activities are loss making in 2016 based on Computation 2 and the inclusion of depreciation and overheads.

### *HACT*

9.74 We have carried out a similar exercise in respect of the schedule prepared by HACT showing the loss for Ring-and-Ride for the years 2014 to 2016. The computation of annual losses from this activity prepared by HACT is set out at within Exhibit JP 15(2) and is summarised below:

	<b>Loss per year £</b>
<b>2014</b>	27,108
<b>2015</b>	10,364
<b>2016</b>	13,465

9.75 The assumptions underlying the schedule of profit and loss are:

- Income – consists of the Dial-A-Ride CCC Annual grant, the HDC Annual grant, certain grants from other authorities, concession payments, fares and individual membership – but excludes excursions/lunches (the latter are paid for separately by customers);
- Operating 252 days a year (52 weeks, 5 days a week less 8 bank holidays);
- 3.5 vehicles needed to achieve the timetables for Ring-and-Ride only;
- Cost per bus per day estimated at £148 for 2016, based on operating costs included in the financial records, insurance, wages, repairs and fuel;
- In the years 2014 to 2016 this estimated cost increases from £143 per bus per day to £148, estimated by management on the same basis as for the 2016 financial year.

9.76 We have tested these assumptions on the following basis for the 2016 year:

- v) Taken the actual costs for transport, employment and vehicle expenses as recorded in the 2016 financial statements (see Appendix F);
- vi) The average number of buses used by HACT in 2016 was 17.5 (see Exhibit JP 23(1) - 15 at the beginning of the year and 20 at the end of the year);
- vii) We have estimated costs on the following basis for comparison purposes:

Computation 1 – based on the average cost per bus (Appendix F).

9.77 The results of this testing are set out at Appendix F1 and is summarised as follows for Ring-and-Ride trading profit and loss per day:

<b>For 3.5 buses</b>	<b>PKFL Computation 1</b>	<b>HACT Computation</b>
	<b>£</b>	<b>£</b>
Income per day per HACT	465	465
Total cost per day	329	518
Profit/(loss) per day	136	(53)

9.78 We note that:

- This does not include an allocation of other costs e.g. depreciation of vehicles and overheads – which it would be reasonable to do;
- Group hire income and expenditure is excluded in the HACT schedule and PKFL computations; and
- Other grant income in 2016 is limited to £59.50 compared to grant income of £70,143 (excluding the CCC and HDC grant) in the 2016 financial statements.

### *Computation of Profit and Loss including Overheads*

9.79 As set out above for FACT, in order to test HACT's allocation of revenues and costs as between CTS and other activities (Contracts) we have set out the 2016 income statement included in the financial accounts separated between the two types of activities (Appendix G).

9.80 The assumptions used for this analysis are:

- The BSOG grant has been allocated based on earned income (excludes grants);
- Group hire income – this has been included on the basis that it is included as a CTS activity;
- Grant income other than BSOG has been allocated to CTS (grants are not being donated to support commercial contracts);
- In addition to the Ring-and-Ride buses of 3.5 vehicles it is estimated by HACT that an additional 1.5 vehicles is needed to support members' group hire (therefore 5 in total out of an average of 17.5 vehicles for the year);
- Overheads – the Ring-and-Ride services are labour intensive and take a disproportion amount of back office costs compared to Contract services (e.g. taking calls, route planning, membership etc.). HACT have estimated 70% of office staff costs, telephone, postage and printing should be allocated to CTS (out of a total of £55,935) with the balance of overheads being allocated in proportion to the number of buses utilised. This is based on the time spent by back office staff on taking Ring-and-Ride bookings, route scheduling, payments, membership

administration etc, in comparison to contracts which once set up have little back office staff involvement. We consider these assumptions to be reasonable;

- Depreciation is allocated in proportion to the number of vehicles used; and
- Costs are allocated as set out in PKFL Computations 1 to generate the segregated income statements as set out as Computation 2 (Appendix G).

9.81 The result of this analysis is summarised below:

### ***PKF Computation 2***

	CTS £	Contracts £	Total £
Earned income	66,706	465,670	532,376
Grants	116,433	15,447	131,880
Total income	183,139	481,117	664,256
Total expenditure	195,242	406,999	602,241
Surplus/(deficit) of income	(12,103)	74,118	62,015

### ***Conclusions***

- HACT CTS activities are loss making in 2016 based on Computation 2 and the inclusion of depreciation and overheads.
- We note that the average cost per bus per day, computed by management, was higher for HACT than for FACT, e.g. for 2016 HACT average cost £148 compared to FACT £90. Management have commented that the reason for this is the higher operating costs for HACT due to the size of the geographical area covered by HACT (approximately 350 sq. miles) compared to FACT (210 sq. miles). They add that the HACT Ring-and Ride service covers approximately 108 villages / towns compared to FACT's 25 villages / towns. This means that FACT can more easily coordinate vehicle usage for Dial-A-Ride with contract services leading to greater efficiencies. We have carried out a comparison of mileage to compare length of service routes for FACT and HACT, which supports the above explanations.



***16. On an annual basis analyse grant funding for FACT and HACT and compare to state aid de minimis limits (potentially to include bus pass concession payments); and compare to the requirements of the CCC for grant conditions.***

***Background***

- 9.82 According to the 'Department of Transport Guidelines on Community Transport Funding and the EU State Rules' (See Exhibit DH 9(1) Page 3 paragraph 2), even in relation to relatively small grants, it is important that local authorities "*consider State Aid compliance and ensure that the use of public funds to provide the grant represents good value and takes account of any potential for distortion of competition*". In order to assist local authorities, the Department of Transport has set out a framework known as 'The Assessment Framework' to help them make the correct decisions.
- 9.83 Grants do not fall under the State Aid rules if they are awarded under the General Block Exemption Regulations ("GBER") (see Exhibit MKM 15(5)). A condition of such aid is that it must be registered with the commission using the State Aid Notification Interface System ("SANIS") within 20 working days of legally committing the aid (Exhibit MKM 15(1)). We are informed by CCC that no such registrations have been made (Exhibit MKM 15(2)).
- 9.84 European State Aid Regulations were as follows during the review period:
- i) Commission Regulations (EC) No 1998/2006 of 15 December 2006 (Exhibit MKM 15(1)), applicable during the period 1 January 2007 to 31 December 2013.
  - ii) Commission Regulations (EC) No 1407/2013 of 18 December 2013 (Exhibit MKM 15(3)), applicable during the period 1 July 2014 to 31 December 2020.

Commission Regulations (EC) No 1998/2006 states that de minimis threshold for "undertakings active in the road transport sector" should be set at €100,000, and, all other undertakings (subject to exceptions) at €200,000 (paragraph 2 of the Regulation). Commission Regulation (EC) No 1407/2013 states that the de minimis threshold for "the road freight transport sector" is maintained at €100,000 for undertakings for "hire and

reward” and for all other undertakings (paragraph 5 of the regulation) it is set at €200,000 (paragraph 3).

### *Section A*

9.85 Section A of the framework deals with whether the grant is capable of being State Aid (E.U. Regulation 1407/2013). The guidance states: In order for a grant to potentially constitute State Aid, it must be:

- provided to an undertaking (i.e. an entity that is involved in economic activity); and
- liable to distort competition and affect trade between EU Member States.

9.86 The guidance states that in relation to the concept of ‘economic activity’ it is important to emphasise that the fact that an organisation is a charity or other kind of non-profit making body does not necessarily mean that it is not involved in economic activity.

9.87 In relation to ‘distortion of competition’ and ‘effect on trade between EU Member States’, the guidance states that the following points should be borne in mind:

- In general, prudence will make it appropriate for a local authority to assume that a grant could be capable of distorting competition and affecting trade between Member States<sup>9</sup> unless the grant can be provided under the European Commission’s general De Minimis Regulation (“the General DMR”). Under the General DMR, grants are assumed not to be capable of affecting trade between EU Member States where the total amount of State support provided to the undertaking in question (including both the proposed grant and any other State support that the undertaking has received, or will receive, within a period of 3 years) does not exceed €200,000 (note: prior to 1 January 2014 the threshold was €100,000).
- The General DMR can be relied upon as the legal basis for providing the grant if the following conditions are satisfied:
  - (a) The amount of the proposed grant is less than €200,000.

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<sup>9</sup> That is so even if the grant recipient is not itself involved in supplying anyone outside of the United Kingdom. That is because, provided that the grant recipient competes in any market in which other market participants are involved in cross border trade, it may be impossible to rule out some effect (even if a very small one) on such trade.

- (b) The undertaking receiving the grant will not receive more than €200,000 of de minimis aid from State sources over any period of three fiscal years.
  - (c) The undertaking must be made aware that it is not permitted to receive aid during that 3-year period that would lead to the €200,000 de minimis threshold being exceeded.
  - (d) The procedural requirements set out in the General DMR are complied with when granting the aid. The procedural requirements are:
    - i) Inform the recipient in writing of the prospective amount of aid and of its de minimis character, referring to the de minimis regulation;
    - ii) Obtain from the recipient full information about any other de minimis aid received during the previous two fiscal years and the current fiscal year; and
    - iii) Only grant the new de minimis aid after having checked that this will not raise the total amount of de minimis aid received by the undertaking during the relevant period of three years to a level above the permitted ceiling (BIS Guidance (Exhibit MKM 15(4) and the GBER Regulations Exhibit MKM 15(5)).
- There have been State Aid cases in which the European Commission has decided that there is no potential effect on cross border trade because all the activities of the body receiving the grant are of 'purely local interest' (i.e. provided for, and of interest only to, people within a small geographical area, and unlikely to be of interest to anyone outside of that area). The Commission's reasoning and practice in this area is, however, not without complexity, and the DfT has advised local authorities to take a cautious approach to relying on the 'purely local interest' line of decisions. Accordingly, their guidance states that local authorities should not rely on a 'purely local interest' argument as their basis for providing CTS funding, without first seeking specialist legal advice regarding State Aid compliance.

9.88 Unless the local authority is satisfied that the proposed grant will not involve State Aid, the authority should proceed to the next section of this Assessment Framework, the €200,000 (previously €100,000) to €500,000 threshold (Section B).

### ***Section B the €200,000 to €500,000 Threshold***

9.89 If CCC were satisfied that the proposed grant would be above the €200,000 threshold Section B of the framework asks, *“Is the proposed grant capable of coming within the European Commission’s higher de minimis threshold that applies to aid given to support an undertaking in carrying out a public service the performance of which has been entrusted to it?”*

9.90 Where the total amount of State support provided to the undertaking exceeds the General DMR’s threshold of €200,000 in any period of 3 fiscal years, but does not exceed €500,000 in any period of 3 fiscal years, then it can be provided under the European Commission’s Public Service De Minimis Regulation (“the PSDMR”) provided that the conditions specified in the PSDMR are complied with. Local authorities are advised to refer to the full text of the PSDMR to ensure that the conditions are complied with. By way of summary, the conditions require that:

- The local authority identifies in a grant letter or other formal document the specific CTS the provision of which is entrusted to the organisation over the period in respect of which the grant is given. The CTS must qualify as a ‘service of general economic interest’ (or ‘SGEI’) for the purposes of the State Aid rules;
- A SGEI is where, in the local authority’s reasonable judgement, the services are required to serve the interests of the community, **and** they must also be services in relation to which there is ‘market failure’. In other words, public funds should not be used to support the provision of services that market competition would make available on satisfactory conditions (e.g. with regard to service frequency and the fares charges to service users) even without State funding;
- The total amount of support from public funds received by the organisation has not exceeded, and will not exceed, €500,000 in any three-year period. The local authority must request express confirmation of this from the recipient organisation; and
- The grant letter or other formal document setting out the terms of the grant must state:

*(a) the amount of the grant in Euros (converted at the conversion rate published by the European Commission at the relevant time); and*

*(b) that the grant is given pursuant to “Commission Regulation No 360/2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest, EU Official Journal 26.4.2012 L114/8”.*

### **Section C Greater than €500,000**

- 9.91 Where these conditions cannot be satisfied, the PSDMR cannot be relied on as the basis for providing the grant, and the local authority should therefore go on to consider Section C.
- 9.92 Section C states that a local authority should proceed with caution when considering the provision of a grant to a CTS that cannot be provided under the PSDMR (because, for example, the amount of funding provided to that CTS would exceed €500,000 within a three-year period).
- 9.93 The advice states that it is essential that the local authority take Specialist State Aid legal advice before providing any such grant.
- 9.94 Some additional guidance is provided but it is for information only, and is given with a caveat that it is not a substitute for taking specialist advice. It is important to note that the European Commission’s Public Service Compensation Decision (“the PSC Decision”, also often referred to as the “Article 106(2) Decision”) cannot be applied to State funding provided for the purpose referred to in Article 93 TFEU, i.e. in order to “meet the needs of coordination of transport”. That is because the legal basis for the PSC Decision is Article 106(2) TFEU, and Article 106(2) does not apply to State Aid for activities falling within the scope of Article 93 TFEU. Local authorities should therefore not seek to rely on the PSC Decision in relation to funding provided to support CTS. It may, however, be possible to provide funding for certain forms of CTS – namely, services provided on a “non-discriminatory and continuous” basis, such as scheduled bus services – pursuant to Regulation (EC) No 1370/2007 (“the Public Passenger Transport Regulation”, or “PPTR”). The PPTR is a Regulation that has Article 93 TFEU as its legal basis. In order for a grant to be provided under the PPTR, a least one of the following conditions would need to be satisfied:
- (1) The average annual value of the funding to be provided to the organisation by the authority in respect of the CTS is less than €1,000,000;

- (2) The CTS to be provided by that organisation, and in respect of which the local authority will provide funding, concerns the provision of transport services covering less than 300,000 kilometres a year;
- (3) The organisation is a small or medium sized enterprise operating not more than 23 vehicles, and the average annual value of the funding to be provided to the organisation by the authority in respect of CTS is less than €2,000,000; and
- (4) The organisation is a small or medium sized enterprise operating not more than 23 vehicles, and the CTS to be provided by that organisation, and in respect of which the local authority will provide funding, concerns the provision of transport services covering less than 600,000 kilometres a year.

9.95 The advice states *“Even where one of these conditions is met, the funding will also need to comply with other requirements set out in the PPTR. Given the complexities of complying with the PPTR requirements, it is essential that Specialist State Aid legal advice is sought”*.

9.96 PKFL were informed by CCC that specialist legal advice in relation to the EU State Rules was sought in relation to the ESACT grant bid and as a consequence the annual grant document was amended.

### **Monitoring**

9.97 The DfT guidelines also state:

- *“Where the recipient has more activities than the supported CTS then it should have internal accounting systems (in accordance with the generally accepted accounting principles) to separate CTS from other activities to ensure no cross subsidisation”.*
- *“Where the funding is for a SGEI (that is market failure) the funding should only be used for SGEI and the LA should ensure that this is the case”.*

### **Grant Funding**

9.98 In the Grant Funding Agreement between CCC and FACT (Exhibit 9-F-7) and HACT (Exhibit 9-F-8) for the period 1 April 2014 and 31 March 2015 no mention is made of State Aid. However, in the two Grant Funding Agreements between CCC and FACT and HACT for the periods 1 April 2015 to 31 March 2016 (Exhibits 9-F-4a and 9-F-5a), and 1 April 2016 to 31

March 2017 (Exhibits 9-F-1 and 9-F-2), at paragraphs 2.3 and 2.4, under the heading ‘Purpose of Grant’, the following conditions are shown:

- Paragraph 2.3 *“The Recipient acknowledges that the Grant funding amounts to state aid and that the aid is being provided under the Commission Regulation (1407/2013) (the “Regulation”) on de minimis aid”*.
- Paragraph 2.4 *“The Recipient warrants that the funding provided pursuant to this agreement and any third-party funding received by the Recipient within the last three fiscal years, does not exceed the threshold for de minimis aid as set out in the Regulation”*.

9.99 We are informed by CCC that these clauses were inserted following legal advice.

9.100 As no Grant Funding Agreements in respect of CTF Capital Grants were put into place between CCC and HACT, no conditions as to State Aid have been set, however, as the grant given to HACT was from the same source as the grants given to FACT, and, that they are similar organisations, one would expect that the Grant funding given to HACT would also amount to State Aid and that the aid was being provided under the Commission Regulation (1407/2013) on de minimis threshold.

### ***FACT and HACT***

9.101 We have been informed by the management of FACT and HACT that they obtained specialist legal advice in respect of EU Regulations (Exhibit MC 31(1)).

9.102 Compared to the EU thresholds of €100,000 (to 31/12/13), €200,000 and €500,000 as set out above, the following tables set out the grant funding for FACT (Appendices H and H1) and HACT (Appendices I and I1). In respect of the computations it is noted:

- BSOG has been excluded based on Counsel’s advice dated 23 May 2018 (Exhibit MKM 16(2));
- Loans have been excluded (on the basis that the difference between commercial interest rates and the rates set by CCC on the loans would not be material);
- Concessionary fares – Counsel notes that these do not amount to State Aid (Exhibit MKM 16(2)). We have included a second computation which includes concessionary fares as required by the Scope Item;

- The State Aid year is April to March. The grant funding shown in the tables below are for April to March for HACT, and January to December for FACT as the information was taken from their respective published financial statements.

### ***FACT (Appendix H and H1)***

<b>FACT comparison of State Funding to State Aid De Minimis Limits. Appendix H1</b>		
Years	Totals	Yearly Totals + Conc Fares
2010 + 2011 + 2012	<b>€233,827.54</b>	<b>€368,740.61</b>
2011 + 2012 + 2013	<b>€238,078.51</b>	<b>€492,448.09</b>
2012 + 2013 + 2014	<b>€243,429.73</b>	<b>€601,056.31</b>
2013 + 2014 + 2015	<b>€227,045.81</b>	<b>€574,135.14</b>

### ***HACT (Appendix I and I1)***

<b>HACT comparison of State Funding to State Aid De Minimis Limits. Appendix I 1</b>		
Years	Totals	Yearly Totals+ Conc Fares
2014	<b>€282,196.07</b>	<b>€314,394.97</b>
2014 + 2015	<b>€386,348.28</b>	<b>€474,609.06</b>
2014 + 2015 + 2016	<b>€464,987.94</b>	<b>€601,938.63</b>

### ***First Legal Advice (Rebecca Haynes)***

- 9.103 CCC took legal advice from Counsel in relation to the grants paid to HACT by CCC in 2013 (Exhibit MKM 16(1)). The conclusions of Counsel are:
- (i) The exemption provisions in relation to PPTP Regulation (EC Reg. 1370/2007) in respect of public transport do not apply;
  - (ii) The Block Exemption (GBER) provisions were not fulfilled;
  - (iii) The grants were subject to the notification requirements as State Aid (they were above the €100,000 de minimis).
- 9.104 FACT grants also exceeded the de minimis limit, therefore, these conclusions would also apply to funding to FACT.

### ***Second Legal Advice (James Goudie Q.C.)***

- 9.105 Counsel's advice to CCC from James Goudie Q.C. dated 25 May 2018 (Exhibit MKM 16(2)) provided the following additional opinions in relation to FACT, HACT and ESACT:



- Paragraph 16(1) – *“At least some of the funding which it has provided to HACT, FACT and ESACT between 2009 and 2017 should be considered to constitute State Aid”*;
- Paragraph 19 - concessionary Fares and BSOG are not State Aid;
- Paragraph 21 – the relevant aid is unlawful if the Treaty on the Functioning of the European Union (“TFEU”) rules were not followed;
- Paragraph 23 – clawback (from the donee’s) will only be applicable over and above the relevant de minimis amount; and
- Paragraphs 18, 24 to 27 – legal arguments exist which could provide reasons that the funding does not amount to State Aid. However, at paragraph 28 Mr Goudie states that the Commission decision in relation to Nottinghamshire and Derbyshire County Councils did not lead him to change the views he expressed in his opinion.

### Conclusions

- The CCC Annual grant conditions prior to 2014/15 did not include a reference to State Aid.
- The CCC Annual grant conditions post 2014/15 referred to State Aid, however, the State Aid conditions above the €200,000 de minimis limits should have also been referred to.
- There was no grant funding agreement in place in respect of the HACT start up.
- The DfT monitoring guidelines for grant funding have not been complied with.
- The grant funding for HACT and FACT exceed the State Aid de minimis limits and are subject to clawback (for amounts above those limits), based on Mr Goudie’s latest advice.
- The computations included above for FACT are based on its financial years (to 31 December). We would recommend computations are prepared based on the EU financial year (March to April).

- The State Aid issues are relevant to CCC, HDC, FDC and other councils, as the computation of State Aid compared to de minimis limits is in respect of all public bodies e.g. HDC provides the major Annual grant funding to HACT. This is a complex area of law, which imparts duties on both the donors and donees. This is of particular importance in regard to future transactions. As regards historic funding, Mr Goudie has provided the following in paragraph 22 of his advice to CCC:

*“(1) Report the position forthwith to the Department of Transport (“DfT”), and liaise with them over the remedy, meanwhile dealing with requests for information;*

*(2) Subject to the DfT, deal with the EU Commission;*

*(3) Subject to that, and review of the amount, claw back the unlawful State Aid”.*

***17. Investigate and report whether loans received by FACT/HACT from the CCC have been repaid and if so when the repayments were made.***

- 9.106 CCC has made one loan to FACT and three loans to HACT.
- 9.107 The first loan was £23,136.15 and was made to FACT and authorised on 4 February 2013.
- 9.108 The second loan was £4,753.00 was made to HACT and was authorised on 29 July 2013.
- 9.109 Both of these loans were made in relation to the purchase of an aerial, in-vehicle radios and a GPS communication system.
- 9.110 CCC has provided details of the two loans which are shown in two schedules, Exhibits 11-B-1a and 11-B-1b.
- 9.111 The loan for £23,136.15 according to schedule produced as Exhibit 11-B-1a was taken out over a three-year period and was subject to interest payments of 1.59% APR. The total interest payable was £367.92 making a total including interest of £23,504.01.
- 9.112 £23,136.15 is the same figure FACT requested in its Community Transport Fund application entitled Communications into the Future (See Exhibit DH 18(8)).
- 9.113 The FHE Manager agrees that the loan was taken out over a three-year period starting on 25 December 2013 and finishing on 25 November 2016 in accordance with the schedule. The FHE Manager confirms that FACT made 36 payments of £642.67 a total of £23,136.15. The FHE Manager said that FACT did not pay any interest payments on this loan.
- 9.114 The FHE Manager was able to produce two invoices from CCC. Both invoices are dated 25 December 2013. The first is invoice number 10489284 for £15,424.10, Exhibit JP 17(1), and the second is invoice number 10489287 for £7,712.05 Exhibit JP 17(2).
- 9.115 The description field of invoice 10489284 gives details of the monthly instalments to be paid "Monthly instalments of £652.89" this would equate to the loan amount £642.67 and the interest £10.22. At the bottom of the page details are shown summarising 24 monthly instalments which show £642.67 i.e. the loan figure only. The total due amount does not include the interest.

- 9.116 The description field of invoice 10489287 shows a similar picture. The invoice gives details of the monthly instalments to be paid “Monthly instalments of £652.89” this would equate to the loan amount £642.67 and the interest £10.22. At the bottom of the page details are shown summarising the remaining 12 monthly instalments which show 11 payments of £642.67 and 1 payment of £642.69 i.e. the loan figure only. Again, the total due amount does not include the interest.
- 9.117 The FHE Manager was also able to show her own calculations which did not include any interest payments (Exhibit JP 17(3)) and a copy of the loan payment schedule (Exhibit JP 17(4)) which shows the interest rate and the amount of interest to be paid.
- 9.118 Exhibits JP 17(1) – JP 17(4) are the only documents FACT has in relation to this loan. The FHE Manager stated that a loan agreement was not provided by CCC.
- 9.119 The combined amount of the two invoices is £23,136.15 the same amount as the loan figure. This suggests that no interest was added by CCC.
- 9.120 CCC has produced an email chain Exhibit 11-B-8 which starts with an email from the email address of CCC’s Community Transport Officer dated 6 November 2013 at 15.21 hours to the CCC Debt Team. The email trail deals with ‘two new customers HACT and FACT’.
- 9.121 Later within the chain is an email from the email address of the Community Transport Officer to the CCC Debt Team. The email is dated 20 November 2013 and timed at 16.26 hours. The email states the following, *“FACT and HACT have asked me for a breakdown of the payments inc interest – please see the attached spreadsheet (both worksheets, 1 for each loan) and the figures which I’ve calculated assuming (a) we build in compound interest, and (b) the interest rate is 1.59% which was the rate on this website which we in this team were advised to us*

*[http://www.dmo.gov.uk/index.aspx?page=PWLB/PWLB\\_Interest\\_Rates](http://www.dmo.gov.uk/index.aspx?page=PWLB/PWLB_Interest_Rates) Please could you confirm my calculations are correct, and that I can send it out to FACT/HACT. Thanks”.*

At 15.28 hours on 22 November there is a return email to the email address of Community Transport Officer copied in to CCC’s Debt Team in the following terms, *“Whilst we seldom charge interest on our debts, your calculations appear to be accurate and in line with the Guide that you attached. Regards, ...”.*

- 9.122 A further email was sent from the email address of the Community Transport Officer at 11.03 hours on 25 November 2013 to the CCC Debt Team in the following terms, *"I've calculated both loans with simple (not compound) interest, if that's the norm, but the T&C's of our loan scheme state that interest will be charged. I have amended the attached spreadsheet. Please could you let me know where we are up to with this, and when payments are due to start? Thanks,"*.
- 9.123 This email suggests that interest was clearly payable, however, this was omitted by CCC when it set up the direct debit.
- 9.124 The loan for £4,753.00 according to schedule Exhibit 11-B-1b was taken out over a three-year period and was subject to interest payments of 1.59% APR. The total interest payable was £75.60 making a total including interest of £4,828.60.
- 9.125 £4,753.00 is exactly the same figure as HACT requested in its Community Transport Fund application entitled Communications into the Future (See Exhibit DH 18(7)).
- 9.126 The FHE Manager agrees that the loan was taken out over a three-year period starting on 25 December 2013 and finishing on 25 November 2016. The FHE Manager confirms that FACT made 36 payments of £132.03 a total of £4,753.08. The FHE Manager said that FACT did not pay any interest payments on this loan. She was able to produce two invoices from CCC. Both invoices are dated 25 December 2013. The first is invoice number 10489289 for £3,168.67, Exhibit JP 17(5), and the second is invoice number 10489290 for £1,584.33 Exhibit JP 17(6).
- 9.127 The combined amount of the two invoices is £4,753.00 which shows suggests that no interest was added by CCC.
- 9.128 The description field of invoice 10489289 gives details of the monthly instalments to be paid "Monthly instalments of £134.13" this would equate to the loan amount £132.03 and the interest £2.10. At the bottom of the page details are shown summarising 24 monthly instalments which show £132.03 i.e. the loan figure only. The total due amount does not include the interest.
- 9.129 The description field of invoice 10489290 shows a similar picture. The invoice gives details of the monthly instalments to be paid "Monthly instalments of £134.13" this would equate to the loan amount £132.03 and the interest £2.10. At the bottom of the page details are shown summarising the remaining 12 monthly instalments which shows 11 payments of

£132.03 and one payment of £132.00 i.e. the loan figure only. Again, the total due amount does not include the interest.

- 9.130 At 11.26 hours the same day there is an email from the email address of the Assistant Accountant (CCS) CFA Finance to the email address of the Community Transport Officer in the following terms *"Hi, I had to raise both invoices in two slots, as in one invoice only 24 instalments are allowed.*

*First line invoice numbers:*

*10489284 (24 instalments) - first due date 25.12.2013*

*10489287 (12 instalments) - first due date 25.12.2015*

*Second line invoice numbers:*

*10489289 (24 instalments) - first due date 25.12.2013*

*10489290 (12 instalments) - first due date 25.12.2015*

*I had told you the due date would be 19 days from today, but I it seems that in case of instalment invoices it always 25th or 5th of the month whichever is first after the 19 days.... Anyway, it happens to be Xmas unfortunately...*

*Kind regards,"*

- 9.131 The Community Transport Officer was interviewed in relation to the setup of the invoices and recalls the need to add the interest element to it. He said he did not have an opportunity to check the invoices after they had been completed.
- 9.132 The Assistant Accountant (CCS) CFA Finance was also interviewed in relation to the preparation of the invoices. She indicated that at that time her involvement in invoicing was only running them through a software package called 'Dataload' to speed up manual invoicing. The department she used to work for did invoicing for various other departments only because they had this data loader package which speeded up invoicing. So, without knowing anything about the content of invoices, she was given the task of running data through the software which uploaded information into CCC's system.
- 9.133 The Assistant Accountant (CCS) CFA Finance viewed the invoices Exhibits JP 17(1), JP 17(2), JP17 (5) and JP17(6) and the email Exhibit 11-B-8 and confirmed that it would have been

the 'GM Invoice request.xls' which was the basis of the content of the invoice. She said the content of the spreadsheet should match the invoice and that it is the invoice requester's responsibility to make sure the information given to the invoice raiser is correct.

9.134 The FHE Manager was also able to show her own calculations which did not include any interest (Exhibit JP 17(7) and a copy of the original quote sent to CCC (Exhibit JP 17(8)).

9.135 These are the only four documents HACT has in relation to this loan.

9.136 Requests have been made to HACT and CCC to produce a loan agreement in order that the full details of the loan could be assessed. No organisation has been able to produce any agreement.

9.137 The third and fourth loans both relate to the 'Launch of HACT' application to the Cambridgeshire Community Transport Fund (Exhibits 13-B-1 and 13-B-2).

9.138 The FHE Manager confirmed that HACT had made an application for funding to the Cambridgeshire Community Transport Fund. She was able to produce a sheet headed Huntingdonshire Association for Community Transport initial costs Exhibit JP 17(9). The sheet gives the breakdown of the setup costs associated with providing a CTO for Huntingdonshire following the collapse of NOCT.

9.139 The setup costs are broken down into three columns for each item of expenditure, the three columns are headed Net, VAT and Gross. The total setup costs on this breakdown are shown as follows:

Net Costs	£144,295.00	
VAT	£27,567.97	
Gross	171,863.00	(rounded up)

9.140 In addition to this amount, a further £30,000 was added to the figure in order that HACT could trade as it was essentially starting off without any working capital. The total amount was therefore £201,863.

9.141 The funding request was structured as follows: HACT would receive £144,295 as a grant, the £30,000 working capital would be received as a loan, to be paid back once HACT was fully operational, the £27,567.97 VAT element was also to be taken as a loan and the expectation was that it would be repaid.

- 9.142 The setup costs also gave details of 7 vehicles HACT was going to purchase some of which had been sourced and some had not. Included in this schedule was also a *“Citroen on loan from CCC”*.
- 9.143 The FHE Manager has confirmed that HACT had received two payments from CCC on 1 April 2013 one of £161,920 and one of £40,222.95. A combined total of £202,142.95. A handwritten note on Exhibit JP 17(9) corroborates this (refer also to Scope Item 3).
- 9.144 The FHE Manager enquired about the repayment of the VAT to CCC on or about 19 June 2013. In response to the request she received an email dated 19 June 2013 from the email address of CCC’s Public Transport Manager copied in to CCC’s Head of Passenger Transport in the following terms (Exhibit JP 17(10)). *“I have spoken to our finance people about the VAT element of the grant provided earlier towards the purchase of vehicles for HACT. They have told me that as CCC do not pay VAT we have already claimed this money back and if you also send us the VAT amount we will in effect be receiving this money twice. You do not, therefore, have to return the VAT element of the grant to us. Thank you, [the first name of CCC’s Public Transport Manager]”*.
- 9.145 CCC’s Head of Passenger Transport in interview conceded that if it was money provided on a loan basis it should have been repaid to CCC.
- 9.146 According to the FHE Manager, CCC has previously never requested the £30,000 working capital loan to be repaid. It currently is shown as a creditor within HACT’s accounts.
- 9.147 In relation to the Citroen vehicle on loan from CCC, PKFL made enquiries of CCC to find out details of the loan terms. PKFL understands, as a result of information received from CCC’s Head of Passenger Transport that CCC purchased two second hand minibuses about five years ago for use on a project that failed. They were then left with two minibuses with no obvious work for them to do. One of the buses was transferred to an operator of a local bus contract who was struggling, but after a while the bus was returned to CCC and it was transferred for use on a social access transport project. The second bus was offered to HACT as part of their set up arrangement and as far as CCC’s Head of Passenger Transport is aware it is still there. He has no recollection of a loan agreement being set up, and states that HACT have been responsible for all the running costs since receiving the vehicle.
- 9.148 CCC Internal Audit were requested to obtain details of the loan agreement but were unable to find one.



## *Conclusions*

- There are no loan agreements between CCC and FACT and HACT in repayment of the loans.
- There is no loan agreement in respect of the Citroen vehicle loaned to HACT by CCC.
- CCC failed to recover interest as agreed on the loans in respect of radio equipment to FACT and HACT as a result of clerical error. However, both loans were repaid, other than this interest element.
- CCC previously failed to pursue the loans to HACT in respect of start-up working capital and VAT (a total of £57,567).

*18. Investigate the allocation of almost a quarter of a million pounds of public funds in 2013 in respect of which FOI requests the Council repeatedly refused to acknowledge any detailed files exist. Investigate whether in providing grants, all funding councils have fulfilled their legal obligation to specify on the offer letter the state aid terms which have been applied to the money given: State Aid Exempt, General Block Exemption Regulation (GBER) or de minimis. Where necessary Investigate whether the relevant grants have been reported to the European Commission.*

- 9.149 Set out at Exhibit MKM 18(2) are the FOI requests and responses in relation to grants received by HACT from its inception.

### *CCC Grants*

- 9.150 We set out below information in respect of the authorisation of the initial capital grant and initial annual grant from CCC to HACT.
- 9.151 On 29 November 2016 Cllr Lay received an email chain from the email address of CCC's Executive Director for Economy, Transport and Environment. The email gave some insight as to the decision-making process and background to the decision to award grants to HACT in 2013 (refer to Exhibit MKM 18(3)).
- 9.152 In an email dated 12 March 2013 and timed at 14:24 hours sent from the email address of the Head of Passenger Transport at CCC, to Mr Tony Orgee ("Cllr Orgee") and Councillor Ian Bates ("Cllr Bates"), CCC's Executive Director for Economy, Transport and Environment and CCC's Head of Passenger Transport refers to a meeting which had been held that morning with three members of FACT (see Exhibit DH 18(14)). The email states "*Hunts [this is believed to be Huntingdon District Council] have committed to move the grant they previously gave Nene and Ouse (Nene & Ouse Community Transport) for the first quarter of the new financial year – (first quarterly payment is £12 500) I have attached the figures that wee [sic] tabled at the meeting. In summary HACT will be a new organisation that appears*

*to start from a professional and experienced basis with the input from FACT. That ambition was clear this morning and gives confidence in the ability that their objectives to consolidate and grow the Dial a Ride in the Huntingdonshire area and also to successful [sic] bid for and run contracts. The attached documents [sic] bids for the following funds £139 174.98 - capital costs to establish HACT including the sourcing and purchase of 8 minibuses, £30 000 for operational cash flow £ 5120 for initial one-off revenue costs Sub total of £174 294.98 Plus VAT of £27 567.97 Grand total is £ 201 862.95 FACT in their bid note that the VAT will be reclaimed and returned to the County Council and hence are asking for that part of the bid as LOAN. My recommendation to you is to approve the bid based on the return of the VAT as noted above and additionally (on terms to be agreed) recover the £30 000 operational cash flow as a loan over a period of time. I look forward to hearing from you. Please do ring me if you have any queries". These figures replicate those in the application form Exhibit DH 18(6).*

- 9.153 Cllr Orgee in his email dated 13 March 2013 supported the recommendation (Exhibit DH 18(14)).
- 9.154 We have been unable to ascertain with clarity who had the authority to make the decision in respect of HACT funding for the reasons set out in the following paragraphs.
- 9.155 The Community Transport Fund was overseen by the Cambridgeshire Future Transport Member Steering Group.
- 9.156 A document entitled 'Community Transport Fund' which accompanied an email produced as Exhibit 13-C-2, describes under the heading 'Process', (in paragraph 2) how any bid from the fund will be dealt with. It says *"the bid will be evaluated by officers at the County Council (in liaison with District Council colleagues) who will then make recommendations to the Cambridgeshire Future Transport Member Steering Group. The Member Steering Group will make the decision on how the fund is allocated."*
- 9.157 A document produced as Exhibit 13-C-1 is the terms of reference for the CFT Governance Group. Within the section headed 'Purpose' the document states *"The group itself is advisory in nature and does not have any executive decision making powers."*
- 9.158 It also says that *"The Governance Group will make recommendations to the County Council Cabinet on the allocation of the Community Transport fund."*

- 9.159 Exhibit 13-C-2 therefore suggests that the Member Steering Group can make the decision to award the funds, Exhibit 13-C-1 suggests it cannot, as it can only make recommendations to the County Council Cabinet.
- 9.160 In an email dated 13 June 2013 from the email address of CCC's Public Transport Manager to the email addresses of Cllr Ian Bates and Cllr Mac McGuire produced by CCC's Internal Audit as Exhibit 13-C-6a. The writer in paragraph 2 states "*The member steering group agreed that the decision-making process on allocating the funding should be delegated to the County lead members*". PKFL understands that Cllr Orgee was a portfolio holder for CCC on the steering group and Cllr Bates was the Chairman, these two councillors were therefore the 'lead members'.
- 9.161 CCC internal audit have been unable to find copies of any minutes from the meetings of the steering group so there is no specific evidence of the delegation of decision-making which was apparently granted to the two lead members from CCC.
- 9.162 The only documentation which appears to exist in relation to the grant funding for the start-up of HACT has been produced by CCC internal audit as Exhibit 13-B-3. This is a series of emails, one of which is from the email address of CCC's Head of Passenger Transport sent on 12 March 2013 at 14:24 hours to the email addresses of Cllr Orgee, Cllr Bates, CCC's Executive Director for Economy, Transport and Environment and CCC's Head of Passenger Transport (as detailed above).
- 9.163 No email has been seen from Cllr Ian Bates giving his approval.
- 9.164 Cllr Orgee was questioned about the setup grant given to HACT. He clearly remembers the need to get HACT up and running. He could not specifically recall the how the decision-making process was recorded but when the email from CCC's Head of Passenger Transport was read out to him together with his reply (see paragraphs 9.147 and 9.148 above) Cllr Orgee indicated that this must have been how he articulated his decision. When asked whether he had the authority to make the decision he said that he believed he did. When asked where that decision would have been recorded (the delegated authority), he was unsure and gave the names of persons who he thought could help in this regard.
- 9.165 Cllr Bates was interviewed in relation to the start-up funds, he also recalls various meetings and discussions that took place. He said that a decision was made to allocate funding as a grant and that he was a party to it. He also believed that he had the authority to make the

decision. He did not specifically know where the decision was recorded. He also suggested a number of people who may be able to help in locating notes of meetings and decisions taken.

- 9.166 The three names put forward by Cllr's Orgee and Bates were, CCC Employees and a member of LGSS.
- 9.167 CCC Internal Audit contacted Democratic Services department, this department has made it clear that would not have minuted the Cambridgeshire Future Transport Member Steering Group, as it is not constitutionally required (notwithstanding the fact that the Terms of Reference of the CFT Governance Group requires this (See Exhibit 13-C-1)). Democratic Services only minute constitutional meetings.
- 9.168 It is therefore unclear whether Cllr's Orgee and Bates had the delegated authority to make the decision to award the start-up funding to HACT.

### *Conclusions*

- There is no grant agreement in existence to support the initial CTF capital grant to HACT and, the relevant EU State Aid Regulations were not brought to its attention. The Annual Grant documentation for HACT for 2013/14 (Exhibit DH 18(2)) does not refer to such regulations, however, subsequent Annual Grant agreements include a reference that the funding amounts to state aid and that is being provided under the Commission Regulation (1407/2013) on de minimis aid.
- Internal Audit have not found any evidence CCC ever reported details of relevant grants to the European Commission (Exhibit MKM 18(4)).

### *HDC Annual Grant to HACT*

- 9.169 HDC has confirmed that an annual grant of £50,000 was given to HACT in the years 2014, 2015 and 2016. This grant income has been recorded in HACT's financial statements as unrestricted income. HDC were unable to provide Grant Agreements to support these grants for the years 2014 to 2016.

## 10 Expansion and Demand

### *19. Identify from the CTO records and report annual ridership figures (passengers, number of journeys fulfilled within towns, number of journeys from isolated villages, mileage and income) for FACT/HACT community based work (Dial-A-Ride, Dial-A-Car, Group Services and Specials) for the years 2010 to 2016.*

- 10.1 The available data for FACT and HACT for community based work has been limited to number of passenger journeys and annual income for Dial-A-Ride. It has not been possible to create the full picture for passengers, number of journeys fulfilled within towns and the number of journeys undertaken from isolated villages for the period 2010 to 2016 due to records no longer being available for the earlier years and only journey data being available. Where information has been available, mainly in the form of quarterly reports obtained from CCC, FDC and FACT / HACT, as much detail as possible has been recorded.
- 10.2 FACT and HACT do not maintain annual mileage figures split between CTS and contract services for management purposes, and therefore they were not readily available for this report (note: total mileage figures are recorded as required for BSOG reporting).

### **FACT**

- 10.3 For FACT, it has been possible to create ridership ("journey") figures for each of its published routes for the three-year period from 2014 to 2016 (year ended 31 December). The analysis of the number of journeys for these routes are attached at Appendix K and are summarised in the following table:

Year	Total	Central	North	North West	West
2014	17,570	8,980	2,352	3,405	2,833
2015	17,746	10,499	1,977	3,353	1,917
2016	18,010	11,190	2,444	2,412	1,964

10.4 In some cases, only monthly or three-monthly figures are available so it has not been possible to break down this data further.

10.5 A summary of annual journeys compared to Dial-A-Ride income is set out at Appendix L and is summarised in the table below:

Year	No. of Journeys	Dial-A-Ride Income	Income per Journey Excluding Grants	Income per Journey Including Grants
	£	£	£	£
<b>2014</b>	17,570	96,657	5.50	9.9
<b>2015</b>	17,746	106,015	5.97	10.7
<b>2016</b>	18,010	108,341	6.01	10.4

*Note: The annual income figures are before grants and Group income.*

## HACT

10.6 For HACT, it has been possible to create ridership ("journey") figures for each of its published routes for the 3-year period from 2014 to 2016 (year ended 31 March). The analysis for these routes are attached at Appendix N and as set out in the following table:

Year	Total	Area 1	Area 2	Area 3
<b>2014</b>	4,208	1,428	1,614	1,166
<b>2015</b>	6,435	2,167	2,347	1,921
<b>2016</b>	6,953	2,377	2,555	2,021

10.7 A summary of annual journeys compared to Dial-A-Ride income is set out at Appendix O and is summarised in the table below:

Year	No. Journeys	Dial-A-Ride Income	Income per Journey Excluding Grants	Income per Journey Including Grants
		£	£	£
<b>2014</b>	4,208	37,094	8.89	34.77
<b>2015</b>	6,435	52,110	8.10	25.35
<b>2016</b>	6,953	54,917	7.90	24.64

*Note: The annual income figures are before grants and Group income.*

***20. Identify from the CTO records and report annual commercial figures (Number of contracts, passengers, journeys, mileage and income) for the years 2010 to 2016.***

- 10.8 Contract income based on the published financial statements for FACT, HACT and ESACT is set out below.

***FACT***

Year	Education Contracts	Day Centres and Social Services	Total	Exhibit Reference
	£	£	£	
<b>2016</b>	284,870	260,333	545,203	7-D-3
<b>2015</b>	258,066	277,829	535,895	MKM 4(10)
<b>2014</b>	229,949	201,138	431,087	MKM 4(9)
<b>2013</b>	207,601	157,977	365,578	MKM 4(8)
<b>2012</b>	154,551	145,497	300,048	MKM 4(8)
<b>2011</b>	-	-	236,847	MKM 4(6)
<b>2010</b>	-	-	257,028	MKM 4(6)

- 10.9 There is no analysis of contracts in the financial statements prior to 2012. The financial year end for FACT is 31 December.
- 10.10 In 2016 FACT had 21 main contracts with CCC and a similar number of lower value contracts (Appendix AE).
- 10.11 Contract journey figures are not maintained for management purposes by FACT.



## **HACT**

<b>Year</b>	<b>Education Contracts</b>	<b>Day Centres and Social Services</b>	<b>Other Contracts</b>	<b>Total</b>	<b>Exhibit Reference</b>
	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	
<b>2016</b>	59,105	109,827	290,178	459,110	JP 15(3)
<b>2015</b>	49,121	40,097	245,094	334,312	JP 15(3)
<b>2014</b>	0	77,313	162,844	240,157	JP 15(3)

10.12 The financial year end for FACT is 31 March. There is no analysis of contracts available in the HACT financial statements, therefore HACT have provided the analysis at Exhibit JP 15 (3).

10.13 In 2016 HACT had eleven main contracts with CCC. The “Other Contracts” in the table above are mainly Bus Service routes (Appendix AF).

10.14 Contract journey figures are not maintained for management purposes by HACT.

## **ESACT**

<b>Year</b>	<b>Education Contracts</b>	<b>Day Centres and Social Services</b>	<b>Total</b>	<b>Exhibit Reference</b>
	<b>£</b>	<b>£</b>	<b>£</b>	
<b>2016</b>	66,416	313,142	379,558	JP 20 (1)

10.15 The financial year end for ESACT is June. There is no analysis available in the ESACT financial statements of contract income. This analysis has been provided by ESACT (Exhibit JP 20 (1)).

10.16 In 2016 ESACT had 5 main contracts with CCC (Appendix AG).

10.17 Contract journey figures are not maintained for management purposes by ESACT.

***21. Create chronological report of all vehicles for HACT and FACT bought and sold since 2010 with mileage at point of purchase and sale (Including whether vehicles have been sold within the group i.e. FACT to HACT etc.), purchase price and at sale, and of how each vehicle was funded, whether through earned revenue, grant funding (which grant) or loan.***

- 10.18 The detailed financial information for vehicles bought and sold for FACT and HACT is not available from FACT and HACT, therefore we set out below, on an annual basis, the source of funding for vehicle purchases.

***FACT***

- 10.19 Set out at Appendix Q and Appendix Q1 are Statements prepared from the published financial statements of FACT which shows how assets were funded. These are summarised below:

	2016	2015	2014
	£	£	£
Cash from trading	33,541	46,697	8,516
Working and share capital	659	(608)	(9,529)
Proceeds of sale of vehicles	9,299	26,524	8,934
Grants	150,651	160,456	181,547
Additions vehicles	241,015	188,075	153,223
Fixed asset additions	15,861	16,293	1,152
<b>Total additions</b>	<b>256,876</b>	<b>204,368</b>	<b>154,375</b>
<b>Vehicle additions in the year (No.)</b>	<b>9</b>	<b>12</b>	<b>9</b>
<b>Vehicle sales in the year (No.)</b>	<b>4</b>	<b>9</b>	<b>4</b>

	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>2010</b>
	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>
Cash from trading	(2,783)	(11,088)	(58,699)	(41,041)
Working and share capital	21,805	22,022	(40,752)	(5,813)
Proceeds of sale of vehicles	34,146	0	1,238	4,202
Grants	99,965	125,991	99,560	140,386
Additions vehicles	117,231	157,889	39,870	107,026
Fixed asset additions	32,840	0	8,880	17,237
<b>Total additions</b>	<b>150,071</b>	<b>157,889</b>	<b>48,750</b>	<b>124,263</b>
<b>Vehicle additions in the year (No.)</b>	<b>8</b>	<b>14</b>	<b>Not known</b>	<b>Not known</b>
<b>Vehicle sales in the year (No.)</b>	<b>8</b>	<b>2</b>	<b>Not known</b>	<b>Not known</b>

*Note: the 2012 additions to vehicles is a balancing figure as they are not included in the financial statements.*

## HACT

- 10.20 Set out at Appendix R, are Statements prepared from the published financial statements of HACT which shows how assets were funded. These are summarised below:

	<b>2016</b>	<b>2015</b>	<b>2014</b>
	<b>£</b>	<b>£</b>	<b>£</b>
Cash from trading / (outflow)	14,529	(22,975)	(43,048)
Working capital	(3,438)	(3,866)	67,679
Proceeds of sale of vehicles	22,533	0	0
Grants	82,023	95,933	289,844
Additions vehicles	133,364	39,266	232,133
Fixed asset additions	0	15,500	13,238
<b>Total additions</b>	<b>133,364</b>	<b>54,766</b>	<b>245,371</b>
<b>Vehicle additions in the year (No.)</b>	<b>7</b>	<b>4</b>	<b>12</b>
<b>Vehicle sales in the year (No.)</b>	<b>2</b>	<b>1</b>	<b>0</b>

- 10.21 There have been no specific monetary loans for vehicle additions. We set out at Scope Item 17 details of “other loans” to FACT and HACT.

## *Conclusions*

- FACT and HACT have not readily available the detailed financial information in respect of individual vehicle purchases and sales which we would expect to be recorded on an annual basis.
- The analyses set out above shows that, on a cash received basis, the major source of funding for vehicle additions for FACT and HACT has been from grant funding.

**22. Investigate annual value of fleet expansion in FACT compared to annual funding received to support community based work (both public and private funding.)**

10.22 FACT's annual fleet expansion has been evaluated between the years 2010 to 2016.

10.23 In 2010 FACT's vehicle net asset value as disclosed in its financial statements was shown as £146,770 and this increased year on year as shown below.

Year	Net Asset Value Vehicles £	Increase / (decrease) £
2010	146,770	-
2011	128,677	(18,093)
2012	181,651	52,974
2013	184,258	2,607
2014	228,697	44,439
2015	265,844	37,147
2016	347,550	81,706

(Refer to Appendix S)

10.24 Figures in relation to the numbers of vehicles FACT owned are not available until 2012, but from this point onwards the number of vehicles steadily increased as shown in the following table:

Year	No. of Vehicles Beginning of Year	No. of Vehicles End of Year	Increase in No. of Vehicles	Grants Received £
2012	21	33	12	125,991
2013	33	33	0	99,965
2014	33	38	5	181,547
2015	38	41	3	160,456
2016	41	46	5	150,651

Exhibit JP 23(1) - for vehicle numbers

Appendix Q and Q1 for grants received.

10.25 Although there are some slight variations on a daily basis, the FHE Manager confirmed to PKFL that FACT requires 11 vehicles to carry out its Dial-A-Ride operation (including members' group hire). Additional vehicles are required to service its 'daily specials' and 'luncheon outings' on the four routes it operates. Additional vehicles are required to cover

vehicles that are off the road for repair or service. The number of vehicles required for each service route will vary depending on the passenger numbers and their specific medical aid requirements such as wheelchairs etc.

10.26 Details of the grants received by FACT is shown in the table below:

Year	Total £	CCC Annual £	Shown as restricted	BSOG £	Other £	Total £	Unrestricted £	Restricted £
			(Note 1)					
2010	140,386	38,019	No agreement in place	18,369	83,998	140,386	79,884	60,502
2011	99,560	38,019	No agreement in place	18,786	42,755	99,560	82,777	16,783
2012	125,991	39,118	No agreement in place	22,373	64,500	125,991	83,712	42,279
2013	99,965	40,265	No agreement in place	30,932	28,768	99,965	91,894	8,071
2014	181,547	40,265	No agreement in place	32,066	109,216	181,547	92,982	88,565
2015	160,456	40,265	Yes	37,544	82,647	160,456	57,155	103,301
2016	150,651	40,265	Yes	37,194	73,192	150,651	52,105	98,546

Note 1: In 2015, the CCC grant agreements required funds to be recorded as “restricted”.

Note 2: Appendix Q and Q1.

Note 3: Refer also to the analysis at Scope Item 21.

***23. Compare the number of members and community journeys being fulfilled and number of vehicles owned annually by FACT. Compare FACT's figures to those of HACT.***

- 10.27 The numbers of individual members and community journeys for both FACT and HACT have been extracted from the 'Quarterly Steering Group Reports' where available and collated (FACT – Appendix K; HACT Appendix N).
- 10.28 FACT's Group Members are recorded on their annual returns (see Exhibits MKM 4(1) – MKM 4(10)). Details have been extracted from the annual return and are at Appendix K1. It should be noted that the group membership figures quoted in the returns are for total members who on their initial application purchased a share certificate and are not group members who have renewed their annual subscription for Dial-A-Ride. Therefore, group members in annual returns are not necessarily active members of FACT.
- 10.29 FACT and HACT provided written details of the starting and closing numbers of vehicles owned by FACT and HACT for the years 2012 to 2016 as (Exhibit JP 23(1)). The details of FACT owned vehicles are shown in a table at paragraph 10.24. Details of the number of vehicles owned by HACT from April 2013 to March 2016 are set out below.

Year	No. of Vehicles Beginning of Year	No. of Vehicles End of Year
2014	0	12
2015	12	15
2016	15	20

Note: 7 vehicles were purchased by HACT in March 2013, on start-up and one Citroen vehicle was given to them on loan by CCC.

- 10.30 A comparison of members, passengers, journey and number of vehicles used for FACT and HACT is set out below:

*FACT (Appendix K)*

Year	Membership (Appendix K2)	No. of Journeys (Appendix K2)	No of Vehicles beginning of Year	No of Vehicles end of Year
<b>2014</b>	1,331	17,570	33	38
<b>2015</b>	1,402	17,746	38	41
<b>2016</b>	1,425	18,010	41	46

*HACT (Appendix N)*

Year	Membership (Appendix N2)	No. of Journeys (Appendix N2)	No. of Vehicles beginning of Year	No. of Vehicles end of Year
2014	681	4,208	0	12
2015	648	6,435	12	15
2016	682	6,953	15	20



***24. Investigate and report the average frequency of use by FACT members (i.e. 0.5 a week) and the number of daily community passengers divided between the numbers of vehicles owned.***

- 10.31 The average frequency of use by FACT Dial-A-Ride members for the years 2014 to 2016 is set out below (refer to Appendix K2):

Year	Number of Members	Dial-A-Ride Journeys	Average Journey per member per week	Average Journey per member per working day
<b>2014</b>	1,331	17,570	0.25	0.05
<b>2015</b>	1,402	17,746	0.24	0.05
<b>2016</b>	1,425	18,010	0.24	0.05

- 10.32 A journey is classed as a one-way ride, so for instance if a member travelled from Elm to Wisbech and return this would count as two journeys.

- 10.33 The number of daily passenger journeys for FACT divided by the number of vehicles cited for CTS use is set out at Appendix T and summarised below:

Year	Journeys	Journeys per day	Number of Vehicles for Dial-A-Ride	Journeys per vehicle per working day
<b>2014</b>	17,570	70	8	8.8
<b>2015</b>	17,746	70	8	8.7
<b>2016</b>	18,010	71	8	8.9

- 10.34 The above analysis excludes group journeys.

***25. Identify the number of vehicles cited for community use, correlate data in respect of passenger demand against fleet expansion. Investigate the funding of vehicles acquired.***

- 10.35 FACT and HACT provided details of the number of vehicles needed for Dial-A-Ride (excluding Group Hire) as follows:

FACT	2012 to 2016	8 Minibuses
HACT	2014 to 2016	3.5 Minibuses

(Refer to exhibits JP 15(1) and JP 15(2)).

- 10.36 The table below sets out the vehicle usage compared to Dial-A-Ride income, journeys (where available) and contract income for FACT (Appendix U) and HACT (Appendix U1):

FACT Comparison of Fleet Usage and Demand					
<b>Dial-A-Ride</b>					
	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>
	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>
Dial-A-Ride fares and membership	121,380	114,066	109,206	114,252	119,247
Less: excursions	(13,039)	(8,051)	(12,549)	(8,069)	(10,528)
Dial-A-Ride Income	108,341	106,015	96,657	106,183	108,719
Journeys	18,010	17,746	17,570	n/a	n/a
Number of Dial-A-Ride vehicles	8	8	8	8	8
252 days a year					
Income per day	430	421	384	421	431
Journeys per day	71	70	70	n/a	n/a
<b>Group Hire</b>					
Group Hire Dial-A-Ride (JP 15(1))	51,791	44,754	38,220	10,063	4,255
No of vehicles group hire D-A-R	3	3	3	1	1
<b>Income per day</b>	206	178	152	40	17
<b>Contracts</b>					
	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>
	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>
Total contract income	650,932	628,760	510,534	463,525	372,105
Number of Vehicles (Average) for contracts	32.5	28.5	24.5	24.0	18.0
252 days a year					
Income per day	2,583	2,495	2,026	1,839	1,477

*Note: For 2012 and 2013 no split available in the financial accounts between Education contracts and day centres. Journey statistics are not available for contracts.*

HACT Comparison of Fleet Usage and Demand			
<b>Dial-A-Ride</b>			
	<b>2016</b>	<b>2015</b>	<b>2014</b>
	<b>£</b>	<b>£</b>	<b>£</b>
Dial-A-Ride fares and membership	60,557	57,593	38,895
Less: excursions	(5,640)	(5,667)	(1,801)
Dial-A-Ride Income	54,917	51,926	37,094
Journeys	6,777	6,435	4,208
Number of Dial-A-Ride vehicles	3.5	3.5	3.5
252 days a year			
Income per day	218	206	147
Journeys per day	27	26	17
<b>Group Hire</b>			
Group Hire	11,789	9,960	8,654
Number of group hire vehicles	1.5	1.5	1.5
Income per day	47	40	34
<b>Contracts</b>			
	<b>2016</b>	<b>2015</b>	<b>2014</b>
	<b>£</b>	<b>£</b>	<b>£</b>
Total contract income	459,610	338,954	240,201
Number of Vehicles (Average) for contracts	12.5	8.5	7.0
252 days a year			
Income per day	1,824	1,345	953

Note: Journey statistics not available for contracts.

***26. For FACT and HACT, identify grant and loan conditions from the CCC - check that they are complied with and that they are used to fund only community based obligations.***

- 10.37 Grant conditions are contained within each grant agreement which are in place with FACT and HACT (refer to Scope Item 3).
- 10.38 The Community Transport Officer has confirmed that it is the responsibility of LGSS Law to draft the annual grant agreements.
- 10.39 CCC provided copies of grant agreements for FACT and HACT in respect of the “Annual Grant” for the delivery of Community Transport Services for the following years:
- 01 April 2014 to 31 March 2015 (FACT Exhibit 9-F-7, HACT Exhibit 9-F-8);
- 01 April 2015 to 31 March 2016 (FACT Exhibit 9-F-4a, HACT Exhibit 9-F-5a);
- 01 April 2016 to 31 March 2017 (FACT Exhibit 9-F-1, HACT Exhibit 9-F-2);
- 10.40 The grant agreements for the 2015/16 and 2016/17 years are in the same form and contain the same conditions but include additional terms and conditions to the 2014/15 grant agreements. The 2014/15 grant agreements for FACT and HACT are also in the same form and conditions. We set out at Appendix C the differences between the 2014/15 grant agreements and the agreements for the later years.
- 10.41 In order to test whether the conditions have been complied with, PKFL prepared an audit programme (Appendix C), where we set out the key conditions to be tested.

***Conclusions***

- 10.42 Our conclusions are:
1. In respect of the 2014/15 grant agreements:
    - There is no reference to State Aid under the EU Regulations;
    - There is no provision to inform CCC of additional funding received from third parties;

- There is no provision for the grant to be paid into a separate bank account and cheques to be signed by two signatories;
  - There is no provision for the funds to be shown as “restricted” in the recipient’s annual accounts;
  - Reporting requirements (as to passenger numbers etc.) are less detailed compared to the later agreements;
  - There is no provision for a final report to be provided to CCC but there is a requirement for an Annual Review meeting between CCC and the recipient; and
  - There is no requirement for the recipient to warrant compliance with relevant legislation.
2. Non-compliance with terms and conditions of the grant agreements by FACT and HACT:
- FACT and HACT do not as a matter of routine, require independent documentary evidence to support applications other than a review of age, location of the applicant, and subsequent verification of bus pass holder by drivers on travel. However, anomalies on applications are challenged, and, memberships could be refused;
  - Grants are not paid into separate bank accounts. Two signatories are required on the accounts the Grants are paid into (Agreement ref para 3.4);
  - An annual budget is not provided to CCC by FACT or HACT (Agreement ref para 18) – FACT/HACT management commented that it is available for the CCC representative to the Board to inspect;
  - Prior to 2015 the annual grants for FACT were shown as unrestricted funds. When the new condition in the grant agreement required it to be included as restricted funds, the grant funding was shown as restricted. It is considered that as the grant could only be used for its specified purpose prior to 2015 (as per the “Purpose” clause in the 2014/15 agreement) it should have been treated as restricted in prior years;

- FACT have requested a list of bus pass concession recipients from CCC to assist them in checking eligibility, however, this has been refused by CCC due to Data Protection legislation (Agreement ref Schedule 1/para 11);
- The rules of FACT should be updated to include provision for minute taking and election of officers;
- FACT financial statements for the year ended 31 December 2016 have been prepared in accordance with Financial Reporting Standard 102, which requires disclosure of Related Party Transactions in the Financial Statements. As Cllr Mac McGuire (CCC councillor) and Cllr Kit Owen (FDC councillor) are on the Executive Committee in that year, we consider that transactions with CCC and FDC should have been disclosed by way of note to the financial statements. Section 33 of FRS 102 *“requires an entity to include in its financial statements the disclosures necessary to draw attention to the possibility that its financial position and profit or loss have been affected by the existence of related parties. As members of the Executive Committee they have “significant influence” and are “related parties” by virtue of their role as Councillors. Therefore, related party transactions with CCC and FDC (“a transfer of resources, services or obligations between a reporting entity and a related party”) should have been disclosed. FACT’s auditors consider that based on a review of FACT’s constitution that the two councillors do not have “significant influence” over FACT;*
- We have included at Scope Item 8 our comments on the HACT financial statements;
- As the Annual Grants are deposited into a single mixed-use bank account (in which CTS and contract income and expenditure is mixed) it is not possible to trace the funds into specific expenditure to ensure the grants have been used for the specified purpose and makes it difficult for the donors to monitor;
- Quarterly Reports – the Agreements (Para 7.1) specifies the following should be included in the Quarterly Reports for FACT and HACT, however our review shows that the following required statistics are not included:
  - i. Total miles travelled;

- ii. Revenue received from each service;
  - iii. A breakdown of group membership;
  - iv. Total number of group hire bookings, including total number of passengers carried, mileage and revenue received; and
  - v. Total number of unmet journeys and journeys not operated.
- Para 7.9 of the Agreements requires a final report which will confirm that the Community Transport Services have been successfully and properly provided. FACT and HACT have provided the annual accounts with a brief chief executive's report. We consider that a report would demonstrate how the financial and ridership targets for the year have been achieved and include relevant financial information and statistics for the CTS services.
  - Para 8.1 of the Agreements requires an Annual Review to be carried out by the CCC with the recipients. The FHE Manager has informed us that she has not attended any Annual Reviews.
  - Clause 20 of the 2015/16 grant agreements for FACT and HACT requires public liability insurance cover of not less than £10m. The level of public liability insurance that FACT and HACT held is £5m, as disclosed in the certificate of insurance produced to PKFL.
  - As a result of this finding, FACT, HACT and ESACT checked their contracts with CCC and became aware and provided evidence to show a lack of consistency some required Public Liability cover of £5m whilst others required £10m. A similar situation occurred with Employers Liability. As a result, FACT, HACT and ESACT increased their cover to £10m for all policies and have provided PKFL evidence of the cover Exhibit MKM 26(1).



***27. Use FACT and HACT previously declared ridership figures and public funding (including Bus pass concession payments) to calculate the public funding per journey over the past 3 years.***

- 10.43 Declared ridership figures have been extracted from the published Quarterly Steering Group Reports produced by FACT (Appendix K) and HACT (Appendix N) for the years 2014 to 2016. The detailed statistics for ridership are attached at Appendices K to K6 for FACT and at N to N5 for HACT.
- 10.44 The figures for FACT follow FACT's accounting period between 1 January and 31 December. The figures for HACT follow their accounting period between 1 April and 31 March.
- 10.45 CCC pay only 50% of the concession fares and the remaining 50% is provided by FDC in relation to FACT and HDC in relation to HACT.
- 10.46 The public funding per journey for the period 2014 to 2016 is set out below.

<b>FACT Public Funding Per Journey</b>			
	<b>2016</b>	<b>2015</b>	<b>2014</b>
	<b>£</b>	<b>£</b>	<b>£</b>
<b>Grants</b>			
CCC Annual Grant	40,265	40,265	39,978
BSOG	7,199	7,255	6,724
Other unrestricted	1,800	2,130	2,830
Other restricted	30,252	34,641	28,036
Total Grants (Appendix L)	79,516	84,291	77,568
Concession Payments (Appendices E, M and M1)	92,729	90,510	83,160
Total grants and concession payments	172,245	174,801	160,728
Number of Journeys (Appendix K)	18,010	17,746	17,570
Grants per journey (£)	4	5	4
Concession payments per journey (£)	5	5	5
Grants and concession payments per journey (£)	9	10	9

(Appendix V) Note: 2016 Grants and Concessions Payments Appendix E. 2014 and 2015 Grants and Concession Payments Appendix X, M and M1.

<b>HACT Public Funding Per Journey</b>			
	<b>2016</b>	<b>2015</b>	<b>2014</b>
	<b>£</b>	<b>£</b>	<b>£</b>
<b>Grants</b>			
HDC Annual Grant	50,000	50,000	50,000
CCC Annual Grant	12,095	12,095	12,095
Capital grants	50,215	42,757	36,621
Other	1,910	4,310	8,359
BSOG	2,213	1,847	1,864
Total grants (Appendix O)	116,433	111,009	108,939
Concession Payments (Appendices G, P and P1)	39,505	40,797	25,932
Total grants and concession payments	155,938	151,806	134,871
Number of Journeys (Appendix N)	6,953	6,435	4,208
Grants per journey (£)	17	17	26
Concession payments per journey (£)	6	6	6
Grants and concession payments per journey (£)	22	24	32

Appendix V1, Note: 2016 Grants and Concession Payments Appendix G, 2015 and 2014 Grants and Concession Payments Appendix P and P1.

## 11 The Formation and Expansion of HACT

*28. Using the CCC spend data calculate and report the percentage of the HACT income that has been generated through the fulfilment of CCC commercial contracts and whether this commercial activity is their principal income source. Report the percentage of increase of income in year's two to four that can be attributed to CCC commercial contracts.*

- 11.1 We have been provided with only two complete sets of payments by CCC to HACT in respect of contracts (Appendix W), for the years ending 2015 and 2016.
- 11.2 Set out below is a summary of the CCC contract spending compared to the total income of HACT (Appendix X).

HACT Contract income from CCC compared to total income			
	2016	2015	2014
	£	£	£
Ring-and-Ride	44,462	48,057	28,980
Ring-and-Ride Membership	10,455	9,720	10,215
Group hire	11,789	9,960	8,654
Other income	465,670	339,031	240,373
Grants	131,880	121,265	118,741
Total	664,256	528,033	406,963
Contract spend from CCC	403,294	308,121	-
Contract spend from CCC as a Percentage of total income	61	58	-
Percentage increase in income attributable to CCC contracts	70	-	-

Source: HACT Exhibit JP 15 (2), annual financial statements and CCC (Appendix W)

***29. Report a yearly breakdown of HACT's fleet expansion from the original 9 vehicles bought for launch in April 2013.***

11.3 HACT commenced trading on 14 April 2013. It acquired 7 vehicles (and one Citroen loan vehicle from CCC) from funding provided by CCC (refer to Scope Item 12). During the first year of trading it acquired 5 additional vehicles.

11.4 The following table shows the expansion of the fleet to 31 March 2016.

<b>HACT FLEET EXPANSION</b>				
<b>Year</b>	<b>No. Vehicles at</b>			<b>No. Vehicles at</b>
	<b>Beginning of Year</b>	<b>Additions</b>	<b>Disposals</b>	<b>End of Year</b>
<b>2014</b>	0	12	0	12
<b>2015</b>	12	4	(1)	15
<b>2016</b>	15	7	(2)	20

*Note: in respect of financial years 1<sup>st</sup> April to 31 March*

*Exhibit JP 23(1)*

***30. Identify the number of vehicles cited for community use and correlate data in respect of passenger demand against fleet expansion. Investigate the funding of vehicles acquired.***

- 11.5 We have compared passenger demand to fleet expansion at Scope Item 25.
- 11.6 We have analysed the funding of FACT and HACT vehicles at Scope Item 21.

### 31. Investigate the start-up and funding of HACT

- 11.7 According to CCC records, HACT made two applications for funding from the Community Transport Fund ("CTF") as follows (See scope item 12):

Application	Grant	Loan	Total	Purpose	Reference
	£	£	£		
Mar-13	144,294.98	57,567.97	201,862.95	7 minibuses plus start-up	Exhibit DH 18(6)
29.07.13	4,753.96	4,753.00	9,506.96	Ariel/radios/GPS Equipment	Exhibit DH 18(7)

- 11.8 As set out at Scope Item 12, this followed the financial failure of NOCT and, we were informed by CCC's Head of Passenger Transport of CCC that there were no alternative tenders to provide NOCT's previous services.
- 11.9 A further grant of £1,500 was applied for on 30 April 2013 and awarded to Eltisley Parish Council by CCC for a bus service to be operated by HACT.
- 11.10 The aim of the CTF is to improve accessibility to work, to education, to help to provide essential public services and for social purposes. The fund looked to address the problems of social isolation by helping to improve transport choices within Cambridgeshire. The fund aims to achieve this by supporting the long-term viability of existing transport schemes and where appropriate help develop new schemes.
- 11.11 The CTF is not limited to existing community transport providers. The fund is also open to charities, social enterprises and community groups including Parish Councils. The organisation requesting funding must be able to demonstrate that it has an interest in transport and is a formally constituted group.
- 11.12 PKFL has been provided by CCC Internal Audit an email from the email address of CCC's Community Transport Officer to the email address of a member of Cambridgeshire Horizons (Exhibit MKM 31(1)). Cambridgeshire Horizons was a not-for-profit organisation responsible for driving forward the delivery of sustainable new communities, with their partners. Their five core objectives were to:
- Coordinate development and infrastructure implementation;
  - Overcome barriers to sustainable development;

- Secure and manage funding for infrastructure;
  - Ensure developments employ high quality sustainable design; and
  - Communicate the wider benefits of the planned development to the wider community.
- 11.13 The subject of the email was 'Community Transport Fund – now open to applications' and gives details to the effect that any organisation within Cambridgeshire or operating within Cambridgeshire which has an interest in transport can submit an application for a grant. Attached to the email was details of how the "weighting" (scoring) methodology would be applied by CCC and an application form. The email asks that the recipient forward on the email to any other contact or group who may be interested in the Fund. A copy of the email is produced as Exhibit MKM 31(1), the application form MKM 31(2) and the eligibility criteria MKM 31(3).
- 11.14 We were informed by a member of Cambridgeshire Horizons Team that details will have been sent to all parishes and community transport providers in Cambridgeshire and as 'Action with Communities in Rural England' ("ACRE") were involved they may also have distributed it to their members (See Exhibit MKM 31(15)).
- 11.15 In 2013 CCC received £512,000 in respect of this Fund.
- 11.16 To access funds, groups are asked to submit an application form to CCC. For projects over £10,000 a full business case including a detailed budget (including any matched funding) should be included with the application, the business case should show how the scheme will be financed beyond the term of the initial funding.
- 11.17 The document states that any bid will be evaluated by officers at CCC in liaison with District Council colleagues who will make recommendations to the Cambridgeshire Future Transport Member Steering Group who ultimately were to decide how the funding is allocated, however, see our comments at Scope Item 18 paragraph 9.168.
- 11.18 The funding for the start-up of HACT came from the CTF.
- 11.19 As early as 18 January 2013 NOCT had started talking to FACT representatives in relation to the financial problems they were experiencing. This is evidenced in an email dated 18 January 2013 in which a member of NOCT gives details about how their accounts could be

viewed via the Charities Commission website. The FHE Training Manager, who is a member of FACT's Board, has produced a copy of this email as Exhibit SS 31(1).

11.20 On 26 February 2013 both FACT and NOCT received an email from the email address of CCC's Head of Passenger Transport entitled 'Nene and Ouse Community Transport'. The FHE Training Manager has provided a copy of the email as Exhibit JP 31(1). The email states the following, *"Dear Sirs, I am advised that the Board of Trustees of the Nene and Ouse Community Transport has decided, as of Friday 22 February 2013, that it will wind up as a separate (freestanding) organisation. I am further advised that the Board of Trustees are investigating amalgamation of Nene and Ouse with/into the Fenland Association for Community Transport"*.

11.21 The email continued, *"If it is known at this stage what do either organisation intend to do with the current contracts that Nene and Ouse Transport hold with Cambridgeshire County Council. These contracts are for Services 65, 46A, 150 and also for PRC3 and PRC4. Your proposals on how you intend to deal with these contracts would also be gratefully received as soon as possible"*. This signifies that CCC were also aware of the financial difficulties NOCT were experiencing from at least 26 February 2013.

11.22 The email was answered by the FHE Manager as follows:

*"Dear,*

*Thank you for your email dated 26 February 2013 to our Chairman, Charlie Jenkins which has been forwarded to me for a response.*

*Fenland Association for Community Transport (FACT) is in discussion with Nene and Ouse Community Transport (NOCT) about a take over of their organisation. The FACT Board are meeting on Monday 4 March 2013 to discuss this matter and vote on such a proposal. Following this meeting we will all be in a better position to advise Cambridgeshire County Council of the way forward.*

*A joint meeting between our two organisations is also in the diary for Tuesday 5th March, to discuss the arrangements for any takeover should the FACT Board agree the proposal on Monday. Again, the outcome of this meeting will enable us to advise Cambridgeshire County Council.*



*However, in order to reassure you that matters are in hand here are some further details about what we are proposing.*

*FACT are looking at a takeover of Nene and Ouse Community Transport, that will see NOCT remain as a separate entity. It will still be a charity, it will maintain its name, but will have a new board. Mandates, legal entries, new bank accounts etc will all need to be formalised as part of any takeover process but in essence NOCT will remain a separate organisation.*

*The current thinking is to look at a possible takeover date of the 1st April. This will see the current NOCT board complete the year end and would make more financial sense. It will also give FACT the time that is needed to get new systems and procedures in place for the takeover.*

*FACT would look to honour the current NOCT contracts that are in place with the CCC our intention would be for the services to continue without any disruption whatsoever. From our understanding the following contracts are in place between NOCT and CCC at present you will note that this is a different list to the one provided in your email.*

*PRC3  
PRC4  
PT03  
PT04  
PTP02  
65  
46A  
150  
925*

*We would however seek to make changes to the NOCT ring and ride service. FACT currently operate a similar type of service to the NOCT ring and ride but in a different manner. As part of any takeover arrangement we would look to implement new arrangements for the ring and ride that are similar to what we already operate. We have a very successful model for this type of service and we would look to use our skills and expertise in this area to make this service as successful as what we are doing here in Fenland.*

*We would like to reassure you that as part of any takeover we would be looking to give the same time and commitment to both organisations.*

*I hope that this information gives you some clarity about the way forward and our possible intentions. I will contact you again next week to update you following the meetings on Monday and Tuesday. In the meantime, if you have any further questions and queries please do not hesitate to contact me”.*

- 11.23 On 28 February 2013 FACT received a further email from CCC enclosing attachments giving details of the routes and timetables for services 46A, 65 and 150. A copy of the email has been provided by the FHE Training Manager as Exhibit SS 31(2). The email states that: *“Contract 46A is due to expire in July 2013, but will be extended until the future transport solution is decided locally as part of the Cambridgeshire Future Transport initiative. This is expected around September / October 2013 (subject to progress).*

*Contract 65 has been surrendered by Nene and Ouse and the last day of operation will be Friday 12 April 2013.*

*Contract 150 is due to expire in April 2014 which is when the future transport solutions in this area are expected to start and funding for existing contracts withdrawn”.*

- 11.24 On 4 March 2013 FACT’s Board of Trustees held an Extraordinary Meeting to discuss the possible takeover of NOCT. The Board in principle approved the takeover, however, they had a number of concerns. The FACT Board were unwilling to formally take over NOCT in the absence of those matters being addressed. The Board listed 13 items which needed resolving to their satisfaction before being committed to the takeover. A copy of the minutes of the meeting has been produced by the FHE Manager as Exhibit JP 31(2).

- 11.25 As a result of the meeting, an email was sent to the email addresses of the following by the FHE Manager at 13.17 the same day:

CCC’s Head of Passenger Transport;

A director of NOCT;

Ian Bates – Cllr;

Tony Orgee – Cllr;

Mac McGuire – Cllr;

The Transport Development Manager– FDC;

The Transport Team Leader – HDC;

Public Transport Manager – CCC;

The Community Transport Officer – CCC;

The Company Secretary – NOCT; and

a further person whose name had been redacted before receipt of the exhibit.

A copy of the email appears on page 1 of the Exhibit JP 31(1).

- 11.26 The email indicated that a Board Meeting had taken place earlier that day and an attached statement confirms the FACT Board's position regarding the possible takeover of NOCT. The FHE Training Manager has produced a copy of the statement as Exhibit SS 31(3).

- 11.27 Amongst the 13 listed items were the following requests which affected CCC and HDC:

Point 8 – *"FACT is aware that NOCT have been successful with a bid to the County Council Community Transport Fund. FACT requires certainty that this funding or similar will be available to the new NOCT Board. This is essential for establishing the new arrangements for the organisation".*

Point 9 – *"FACT needs to secure funding for the transitional arrangements for NOCT. This funding is separate from point 5 above. We will be seeking early meetings with Cambridgeshire County Council and Huntingdonshire County Council [sic] to discuss this matter in detail".*

Point 10 – *"FACT is aware that CCC currently gives an annual grant of (Redacted) to NOCT. FACT requires confirmation that this funding will continue and the next payment will be in April 2013".*

Point 11 – *"FACT is aware that NOCT have a number of service contracts and school contracts. The FACT Board would like some reassurances that these contracts will remain in place as part of any takeover proposal".*

Point 12 – *"FACT is aware that HDC currently gives a quarterly grant of (Redacted) to NOCT. FACT requires confirmation that this funding will continue and the next payment will be in April 2013 and thereafter".*

Point 13 – *“Subject to the above conditions being met, the FACT Board will be committed to the takeover of NOCT. We would like some reassurance from Cambridgeshire County Council and Huntingdonshire District Council that they would support FACT with this new venture. We would like some reassurance that these organisations would not look to establish new arrangements with another organisation when NOCT is operating in a suitable manner.”*

- 11.28 On 5 March 2013 PKFL understands that a meeting took place to discuss the takeover of NOCT. The meeting involved representations from the following organisations:

FACT;

NOCT;

FDC;

HDC; and

CCC.

- 11.29 The note entitled ‘Key Details of 5 March 2013 Meeting’ (Exhibit SS 31(4)) indicated that:

- *“Nene & Ouse Community Transport will cease operating services on 31 March 2013”;*  
and
- *FACT would “establish a new community transport organisation operating services from 1 April 2013. This will be a new charity with a new number, separate bank account etc”.*

- 11.30 At paragraph 3 the note states *“HACT are proposing to take on at 1 April 2013 ALL CCC contracts currently held by Nene and Ouse Community Transport. These contracts are imperative for HACT to have guaranteed income for the first day of trading”.*

- 11.31 A separate note and Action Plan list, produced by the FHE Manager as Exhibit JP 31(3), which contains the two bullet points in paragraph 11.31 above was circulated by the FHE Manager in an email timed at 13.55 hours on 5 March 2013 to the same email addresses as detailed in paragraph 11.25 above. A copy of this email has been produced by the FHE Manager as Exhibit JP 31(4).

- 11.32 The main points within the action plan involving CCC and HDC were as follows:

- Action 1 – Set up meeting with HDC;
- Action 3 – Confirmation needed from CCC that the education, SEN and public transport contracts will be transferred to the new organisation;
- Action 4 - Confirmation needed from CCC and HDC that existing grants will still be available to the new organisation;
- Action 5 - Confirmation needed that CCC grant funding of £82,000 offered to NOCT will still be available to the new organisation.

11.33 From information already given in Scope Item 18, it appears that CCC's Head of Passenger Transport and CCC's Head of Passenger Transport met with the FHE Manager, FACT's Chairman and HDC's Transport Team Leader on 12 March 2013 and circulated to other colleagues' details of the figures that would be required to start up HACT.

11.34 At 12.44 hours the following day, the FHE Manager contacted CCC's Head of Passenger Transport via email asking whether any progress had been made as the buses she had on hold could be sold if a decision was not made. The FHE Manager produced a copy of the email as Exhibit JP 31(6).

11.35 At 13.36 hours the same day, an email was received by the FHE Manager from the email address of CCC's Head of Passenger Transport in the following terms:

*"I have just concluded the necessary conversations with my legal and procurement colleagues at the County Council. There is a way forward and I am able to advise as follows.*

*1. The County Council can terminate the existing contracts with NOCT. If the company has passed the appropriate resolution as to its insolvency or come to an arrangement with its creditors. In its place, the County Council can let on a 12 month basis replacement contracts for all those that are terminated. If Nene has not yet dealt with its insolvency, the Council could terminate the contracts on the basis the contractor has failed to perform the contract satisfactorily.*

*This is necessary to allow the retendering of contracts to replace those that are terminated.*

*If contracts are not retendered then the County council leaves itself open to risk of legal challenge that it is acting in a way to avoid appropriate and necessary contract*

*procurement. If a successful challenge were made then an injunction could be granted to stop the operation of such contracts.*

*The granting of such injunctions would be a disbenefit to the service users, the operator and the County Council.*

*It is unlawful for the County Council to novate (directly pass) to FACT (or HACT) the contracts that are currently operated by NOCT. In addition, it would be cleaner to terminate the contracts rather than agree to an assignment of the benefit of the contracts to FACT.*

*Happy to discuss on the telephone if needed"*

A copy of the email has been supplied by the FHE Manager as JP 31(6).

- 11.36 Cllr Orgee agreed with the recommendation made by CCC's Head of Passenger Transport on 13 March 2013 at 13:27 (see paragraph 9.148).
- 11.37 CCC's Head of Passenger Transport has confirmed during interview that FACT, under the HACT banner, was the only organisation offering a solution to NOCT going out of business. They were willing to take on the contracts under the same conditions and at the same price. CCC are committed to providing transport services to remote communities and vulnerable people and wished the service to continue. HACT needed a commitment that the contracts would be still in place if they took over from Nene and Ouse and it was agreed that they would get them for a period of time. CCC's Head of Passenger Transport believed that the period would be until the contracts expired. The proposal allowed contract continuity when time was running out. PKFL has not had sight of any tender or novation documents in relation to contracts taken over by HACT (Exhibit MKM 31(13)).
- 11.38 CCC's Head of Passenger Transport confirmed that a contract could be advertised in a few weeks but that was not deemed to be the issue. The decision made at the time seemed to be the correct solution for the right reasons.
- 11.39 CCC's Head of Passenger Transport thought that a CTF grant agreement should have been drafted by CCC's Head of Passenger Transport in conjunction with legal. He has not seen one in relation to the start-up of HACT.

### *Conclusions*

- A grant funding agreement or loan documentation was not put in place by CCC and HACT in respect of start-up funding.
- It is not clear how, legally, the contracts were transferred to HACT.

***Record and report any level of public funding (Including loans from CCC and potentially bus pass concession payments) that exceeds state aid de minimis rules;***

- 11.40 The State Aid rules are covered in detail within Section 9 of this report. It would appear that it is the view of CCC that State Aid rules do apply to CTOs as evidenced in various grant agreements at paragraph 2.3. as set out below:
- FACT - produced by CCC internal audit as Exhibit 9-F-1 (start date 1 April 2016) and Exhibit 9-F-5 (start date 1 April 2015);
  - HACT - produced by CCC internal audit as Exhibit 9-F-2 (start date 1 April 2016) and Exhibit 9-F-4 (start date 1 April 2015); and
  - ESACT - produced by CCC internal audit as Exhibit 9-F-3 (start date 1 April 2016).
- 11.41 The wording of the Agreements is as follows: Para 2.3 *"The Recipient acknowledges that the Grant funding amounts to state aid and that the aid is being provided under the Commission Regulation (1407/2013) (the "Regulation") on de minimis aid."*
- 11.42 The FHE Manager has signed each of the grant agreements for the respective organisation confirming she accepted the terms (See Exhibits 9-F-3, 9-f-4b and 9-F-5b).
- 11.43 Grant agreements prior to April 2015 do not have this wording and it would appear therefore that State Aid was not considered by CCC prior to this date.
- 11.44 A series of emails have been obtained by CCC's internal audit which show several messages between CCC's Head of Passenger Transport and LGSS Law Limited ("LGSS") between 14 April 2015 and 4 June 2015 (Exhibit Ref MKM 31(4)). The messages discuss both grant agreements and State Aid. LGSS give advice particularly within the last paragraph on page 3 and the first paragraph on page 4 in which it is said, *"State aid - this is a complex area and would need to be considered on a case by case basis for each organisation receiving grant funding. Whether a particular grant might be classified as state aid would depend on:*
- (1) the level of funding given to that organisation,*
- (2) the nature of the organisation the grant is given to and*



*(3) what other activities that particular organisation carries out. BIS have produced useful guidance on community transport services and state aid - I attach a copy for your reference.*

*I note that the grants awarded for community transport scheme range between £5k - £40k. It is therefore likely that these grants will fall within the "de minimis regulations" in which case the grants would not be classified as state aid. You should be aware though that in order to qualify under the de minimis rules, you must ensure that an undertaking does not receive more than €200,000 (roughly £143,000) in grants from the Council over a three-year period."*

- 11.45 In addition, PKFL received from CCC internal audit an email dated 10 March 2015 from a Paralegal in CCC's Law and Governance team to the email address of CCC's Head of Passenger Transport. The subject was 'County Council Expenditure – Urgent Query' The body of the email was as follows:

*"The Council must appoint a monitoring officer (we have its [The name of the head of LGSS Law for CCC]). He must approve the grant and ensure that it doesn't conflict with State Aid Rules. If we make a grant which conflicts with the Rules then the EU can recover the unlawful aid from the recipient. Repayment can be asked for with interest to public authorities. No doubt if this happens it will cause loss of reputation for the Council. I could not find any sanction which would be imposed upon us for the incorrect grant though.*

*Be aware that others can complain to the EU Commission if they consider a grant has been made inappropriately and the Commission will act on the complaint.*

*Kind regards,*

*(The name of the Paralegal)"*

A copy of the email is produced as Exhibit MKM 31(5).

- 11.46 If the head of LGSS Law is the monitoring officer for CCC, it is his/her responsibility to ensure that CCC did not award grants to CTOs which would take them beyond the maximum amounts allowed by the State Aid Rules. However, he/she can only do this if he/she receives information which would allow him to track the amounts given.
- 11.47 The CTA have circulated a document entitled, 'Getting to grips with the de minimis and State Aid'. On the first page under introduction (4<sup>th</sup> paragraph) it states that there is also a duty on grant recipients to keep a record of the funds granted by the state for the last three

- fiscal years. It says, *“Failure to do this may jeopardise future funding, resulting in ‘claw back’ or in some cases result in legal action being taken against them”*. A copy of the advice is produced as Exhibit MKM 31(6).
- 11.48 FACT took its own legal advice in relation to State Aid in the form of a conference with a barrister (“FACT’s barrister”) at 5 Essex Court. A copy of the attendance notes dated 6 January 2017 relating to the conference has been provided by FACT’s lawyer (Exhibit MC 31(1)).
- 11.49 The advice was obtained following an application made to the Community Minibus Fund (“CMF”) via the DfT for two minibuses one for FACT and one for HACT. State Aid was mentioned on the form completed by the FHE Manager which referred to the annual grants received from Cambridgeshire County Council. The DfT placed the application on hold until the matter of State Aid was resolved.
- 11.50 It was FACT’s barrister’s view that *“FACT and HACT are for the definition of State Aid ‘an undertaking’ as whilst they do not make a profit they are of course engaged in some form of economic activity and should be accepted as such for the purpose of today’s meeting”*. The attendance notes further stated that, *“State Aid must, distort competition and effect trade between EU member states. This is an and not and/or”*.
- 11.51 The €200,000 State Aid limit is mentioned in paragraph 10, page 2 of the attendance note as follows, *“The State Aid must not exceed €200,000, three fiscal years if it does not exceed that then it cannot be included in and of relevance to the DfT. We can say that overall years there has been over €200,000 in State Aid to FACT and indeed HACT since the latter was trading. However, how can the grants received by FACT and HACT effect trade in EU member states”*.
- 11.52 The attendance notes state, *“No local taxi or bus company is involved in cross border trade”* and therefore states *“Our fall-back position could be that whilst over €200,000 is received in grants this cannot effect trade in EU member states”*.
- 11.53 At paragraph 13, page 2, it states, *“Bus companies, coach providers such as Stage Coach etc. and other national companies are pulling out of the area. This is particular prevalent in the Huntingdon area where it was at the Cambridgeshire County Council’s instigation that HACT was formed initially they made a grant of £200,000 so that HACT could purchase six*

*vehicles a fleet which HACT has now increased to 14. Simply there was no provision either by taxis or bus companies to get the elder, infirm and less able about the County”.*

- 11.54 The advice continues on page 3 paragraph 1, *“In fact therefore FACT and HACT are filling a hole left by both coach companies and taxi providers and have no actual competition”*. It is not clear whether the advice given by the barrister relates solely to Dial-A-Ride / Ring-and-Ride services or whether he is also considering what is deemed by the CBCTA to be commercial operations, i.e. the school, day centre and service contracts.
- 11.55 The attendance notes (page 3 paragraph 3) states, *“that the grants received from the various organisations by FACT and HACT have nothing to do with State Aid. Those grants do not distort competition FACT and HACT are plugging a gap in the transport provision market to those less able and infirm”*. As with the previous paragraph it is not known whether FACT’s barrister was only considering the Dial-A-Ride / Ring-and-Ride aspect of FACT and HACT’s business operation and not the commercial contracts undertaken.
- 11.56 The FHE Training Manager provided PKFL with a copy of their lawyer’s instructions to Counsel as Exhibit SS 31(5). The document refers to an enclosure bundle which was not provided to PKFL, however, many of these documents by their very nature have been reviewed by PKFL in the compilation of this Report.
- 11.57 On page 3 of the instructions there is a section headed ‘Issues’, and there is nothing within this section of the instructions which mentions that FACT, HACT and ESACT provide services which are the result of competitive tenders.
- 11.58 On page 4 paragraph 5, the instructions state, *“The minibuses for FACT and HACT are needed to replace aging minibuses and to provide transport in the communities for those who need it the most as is apparent from each organisations website.”* This appears to refer to the Dial-A-Ride offering. There is however, no paragraph within the section headed ‘Issues’ which indicates that FACT, HACT and ESACT also carry out commercial contracts.
- 11.59 The attendance notes at paragraph 12 page 4 states, *“In relation to the SAR (“State Aid Rules”) financial limits if the DfT are of the view that State Aid Rules apply then both FACT and HACT exceed the €200,000 limit.<sup>10</sup> If we are above the €200,000 can we make the €500,000 which is the Public Service De Minis Regulation (“PSDMR”) of €500,000. There has*

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<sup>10</sup> We note the State Aid figures included on the application forms at Exhibits DH11(2) (FACT) and DH 11(3) (HACT) differ from the PKFL computations at Scope Item 16.

*however, been a market failure in that other coach providers cannot provide the service offered by FACT or HACT or have pulled out and the taxi operators simply do not provide that service either. One would have to take into account HACT's set up costs of £200,000 that could again be considered to be aid".*

- 11.60 Paragraph 13 on the same page states, *"It would have been helpful if we had a letter from Cambridgeshire County Council to FACT or HACT to say that the service they provide is plugging a hole in the transport provision for the elderly, disabled, infirm and the young"*. Again, this paragraph makes no mention of the school and service contracts operated by HACT.
- 11.61 On page 5, paragraph 2 of the attendance notes it states, *"The £200,000 set up costs paid to HACT by Cambridgeshire County Council was because of market failure in that they exercised their emergency powers to make a grant where there was no provision"*. This appears to relate to HACT's charitable operation rather than the commercial side of HACT's business.
- 11.62 FACT / HACT's lawyer wrote a letter to the Senior Policy Advisor – Buses and Taxis Division at the Department of Transport on 16 January 2017. A copy of this letter has been provided to PKFL by the FHE Training Manager as Exhibit SS 11(1).
- 11.63 FACT / HACT's lawyer makes out the case that following legal advice from FACT's barrister that *"my client is not of the view that their applications are subject to State Aid and in accordance with the Guidance issued by the Department for Transport on Community Funding and the EU State Aid Rules"* He further stated that *"they are not in competition with any private or public "like for like" transport provider and therefore the provision of the grants that they will receive cannot be considered to be liable to distort competition nor indeed effect trade between EU member states."*
- 11.64 On or about 13 February 2017, a letter was received from the Department of Transport in relation to the letter sent by FACT / HACT's lawyer on 16 January 2017. A copy of the letter has been produced by the FHE Training Manager as Exhibit SS 11(2).
- 11.65 The letter states, (paragraph 3 page 1,) *"We note the argument made in your letter concerning why your clients do not consider the minibuss awards to constitute State Aid. However, the Department does not consider the evidence provided in support of that argument persuasive"*.

- 11.66 The letter continues Page 2 paragraph 3, *“Your letter of 16 January 2017 has not enabled the Department to confirm that FACT and HACT are able to remain within the public funding threshold. We have reviewed the lists of ‘funding’ provided by each organisation, and the totals that appear to come from public sector sources are at levels where the Department would need evidence of non-State Aid status in order to safely discount them.”*
- 11.67 The letter Page 2 paragraph 4 states, *“Ministers have therefore concluded that the Department has to withdraw FACT and HACT’s acceptances to the Community Minibus Fund.”*
- 11.68 Exhibit MKM 16(1) is recent Counsel’s advice to CCC which concludes that the State Aid rules had not been properly applied by CCC in relation to the HACT funding.
- 11.69 PKFL has calculated the level of public funding excluding loans from CCC, (with and without bus pass concession payments and BSOG payments) in relation to FACT and HACT.
- 11.70 In relation to FACT, each of the rolling three-year periods from 2010 onwards exceed the €200,000<sup>11</sup> level. The following table has been extracted from the workings shown at Appendix H.

Years	Totals
2010 + 2011 + 2012	<b>€233,827.54</b>
2011 + 2012 + 2013	<b>€238,078.51</b>
2012 + 2013 + 2014	<b>€243,429.73</b>
2013 + 2014 + 2015	<b>€227,045.81</b>

*Note: The above excludes bus pass concession payments.*

- 11.71 In relation to HACT grant funding since the set up date exceeds the €200,000 level. The following table has been extracted from the workings shown at Appendix I.

Years	Totals
2014	<b>€282,196.07</b>
2014 + 2015	<b>€386,348.28</b>
2014 + 2015 + 2016	<b>€464,987.94</b>

*Note: The above excludes bus pass concession payments.*

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<sup>11</sup> The de minimis level changed on 1 January 2014 from €100,000 to €200,000.

### *Conclusion*

- Based on the above the State Aid de minimis threshold has been breached.
- CCC have taken legal advice with respect to State Aid which is detailed at Scope Item 16. We would also comment that CCC should take additional legal advice in respect of the contractual terms in its grant agreements to ensure that the detailed rules in respect of State Aid, as they apply to recipients, are comprehensively set out.

***Investigate how the decision was made to allocate the CCC “start-up” funding how and who authorised it, and examine whether the proper procedures were adhered to and documented;***

- 11.72 The start-up funding in relation to HACT has been described in detail in Scope Item 12. In respect of authorisation of the grants this is detailed at Scope Item 18.

### ***ESACT***

- 11.73 All details regarding the start-up funding of ESACT have been obtained by CCC’s internal audit department.
- 11.74 At 16.15 hours on 4 March 2015 an email was sent from the email address of CCC’s Head of Passenger Transport to a list of recipients. The subject of the email was ESDAR update. The text of the email (paragraph 2) indicated that FACT had *“requested of the County Council £110,000 to help with the costs of establishing a new organisation. £90,000 of the funds will be used to purchase 3 minibuses to run Dial a Ride services”*. The email continued, *“The County Council will receive the VAT element of that back as soon as FACT have reclaimed it. The other £20,000 will be used to cover other operational costs such as vehicle insurance. The £20,000 will be repaid to the County Council by FACT/the new organisation once they are in receipt of the residual ESDSR funds”*. A copy of the email has been produced by CCC Internal Audit as Exhibit 10-D-1.
- 11.75 On 19 March 2015, a further email timed at 18.05 sent from CCC’s Head of Passenger Transport confirmed that ESACT was being set up and that it would be ready to take over from ESDAR on 1 April 2015. A further short email was sent in relation to the CCC annual grant plus a number sent on 25 March 2015 confirming that ESACT would be covering all the services formerly operated by ESDAR.
- 11.76 ESACT received start-up funding of £85,923 from CCC on 19 March 2015 following the failure of ESDAR. The funding application was for the following:

	£
3 minibuses with CCC to fund 70% of the cost	52,500
Other set-up costs	13,423
Working Capital	20,000
Total	<u>85,923</u>

- 11.77 The Grant application states that 70% of the work will be Dial-A-Ride (refer to Exhibit 10-D-3). This payment was authorised by CCC and paid via FACT on 19 March 2015 (refer to Exhibit 10-D-2).
- 11.78 A document dated 11 March 2015 has been produced as Exhibit 10-D-3. The document is written on ESACT headed paper and confirms that as of 31 March 2015 ESDAR (“Ely and Soham Dial-A-Ride”) would close on 31 March 2015 following a recommendation of its trustees at its annual meeting.
- 11.79 A new service known as ESACT would commence on 1 April 2015 taking over the service left behind by ESDAR (which failed financially). Attached to the note was an estimate of costs which included three vehicles at £25,000 per vehicle of which it was requesting CCC to finance 70% of the cost. Additional set-up costs of £13,423.00 were included as well as £20,000 working capital which was to be returned as soon as ESDAR released their funds (less £12,270 annual grant). There is no evidence of a grant application form or supporting trading forecasts being submitted with this application.
- 11.80 In a letter from CCC’s Head of Passenger Transport, a copy of which has been produced by CCC Internal Audit as Exhibit 10-D-2, he thanks the FHE Manager for the information supplied regarding the level of funding she required to establish ESACT (Exhibit 10-D-1). Based on the information supplied, he informed her that the CCC was able to offer her grant funding of £85,923.00. It was explained that the grant was subject to EU regulation 1407/2013 in relation to State Aid.
- 11.81 CCC’s Head of Passenger Transport confirmed to Internal Audit (Exhibit 10-D-1) that he was unable to find evidence of authorisation by the CFT Governance Group or the Councils leadership.
- 11.82 Attached to the letter (Exhibit 10-D-2) was a Grant Agreement, produced by CCC Internal Audit as Exhibit 10-D-4, which needed to be signed before the release of the funds.



Schedule 3 of the Grant Agreement gives a breakdown of the Grant which included the following:

Cashflow to cover sundries such as vehicle insurance	£20,000.00 – to be returned to Cambridgeshire County Council before expiry of the Grant Period.
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- 11.83 The initial request for funding from ESACT (Exhibit 10-D-3) stated that they would deduct the £12,270 grant funding from the £20,000 working capital loan and just return £7,730. However, no evidence of this agreement being formalised has been found and the final grant agreement does not make any mention of the grant being deducted. The grant agreement states clearly that the full £20,000 was expected by the Council. However, ESACT have informed PKFL that CCC have confirmed that only £7,730 was to be repaid in accordance with the original application for funding (see Exhibit JP 31(8)).
- 11.84 In relation to the funds received from ESDAR on its closure, PKFL have also received a series of emails regarding the closure of ESDAR from CCC Internal Audit. In one of the emails from the email address esdarmanager@outlook.com dated 5 September 2017 to the FHE Manager the writer suggests that the total of money available to release to ESACT would be in the region of “£5.5k” (Exhibit MKM 31(14)). The writer went on to say, *“I Appreciate its not a huge sum”*.
- 11.85 It appears that the amount quoted in email from esdarmanager@outlook.com was questioned by the FHE Manager in an email sent at 10.27 on 15 September 2017 in which she says, *“I agree it’s a long way from £80k”*. This would suggest that ESACT were expecting in the region of £80,000 following the closure of ESDAR.
- 11.86 In a further email from the email address [redacted]@btinternet.com at 17.54 hours the same day the writer said *“Hi, Don’t forget that in addition to the cash there were all the vehicles. They had to be invoiced as otherwise there would have been a very large VAT bill. I have attached the invoice of these vehicles and they were valued at Written Down Value and then the sale price was donated to you. (£76,024.00) in addition to, in excess of £5,000 in cash.”*. A copy of email is produced as MKM 31(14) the invoice is produced as exhibit MKM 31(11).
- 11.87 However, the FHE Manager has confirmed that only two vehicles were introduced into the start-up fleet from ESDAR before being scrapped/retired (due to high maintenance costs).

Although it was indicated that ESACT would receive £80,000 when ESDAR was finally wound up, in fact only £10,000 was received in April 2015 and a final payment of £5,620 was received in September 2017.

- 11.88 No documentation has been found to show how the funding by CCC was approved and it appears that a loan agreement has not been put into place in relation to the recovery of the £20,000 and no record can be found relating to the return of the £20,000 (with or without the grant funding promised to ESACT).
- 11.89 PKFL understands that all the ESDAR Social Services routes were retendered and that service contracts 117,125,129 and 203 were retendered and all awarded to Lords Travel (See Exhibit MKM 31(16)) in April 2015.

### *Conclusions*

- We have concluded on the authorisation of the start-up funding for HACT at Scope Item 18.
- There is no evidence of authorisation for the ESACT start-up funding on the CCC files by the CFT Governance Group or Council leadership.
- There is no signed grant agreement or evidence of a loan agreement with ESACT on the CCC files.
- The unsigned ESACT Grant Agreement dated March 2015 (Exhibit 10-D-4) includes reference to a loan at Schedule 3, however, there is no other documentation in respect of the loan, and, the grant agreement is otherwise silent in respect of loan terms and conditions.

*Record and report whether loans were paid back and give dates of payments to identify if payments have been made retrospectively;*

- 11.90 Loans and the repayment of loans are dealt with at Scope Item 17 and in respect of ESACT at paragraph 11.83 et al above.

***Compare the CCC grant data to the HACT annual returns and investigate any reasons for differences and non-declaration of grants by HACT.***

- 11.91 We have traced CCC annual grant information as recorded in the HACT annual financial statements (2014 to 2016).
- 11.92 We have identified on the 2016 HACT trial balance that the £30,000 working capital loan is included in creditors in the HACT financial statements. We have traced the Capital grants paid in 2013 by CCC to the HACT 2014 annual financial statements. In addition, the VAT loan from CCC of £27,567 has been included in income in the HACT financial statements during the 2014 to 2016 financial years.

***32. Investigate the purchasing of radio equipment by FACT and HACT in 2013. Report on the radio equipment purchased by HACT/FACT and compare to invoices and competing quotations (note it has been reported that a quotation for radio equipment was provided from a non-existent company). Using physical verification of equipment compare against receipts and put side by side invoice price against other suppliers. Report findings along with make and model of equipment and number of units purchased in 2013.***

- 11.93 As set out in the guidance for applications for CTF Capital funding (Exhibit MKM 31(3)) two quotations are needed to support applications.
- 11.94 Based on FOI Request 3348, the CBCTA received details of two applications made on behalf of FACT and HACT for a combination of grants and loans totalling £35,213.79 for the purchase of radio equipment.
- 11.95 The first of these documents produced as DH 18(8) is an application dated 4th February 2013 from FACT for £25,706.83 to purchase Communications Equipment. This was confirmed to represent 100% of the “project cost” and has been broken down as £23,136.15 loan and £2,570.68 grant on a 90% loan to 10% grant basis.
- The second produced as DH 18(7) is an application dated 29th July 2013 from HACT for £9,506.96 to purchase Communication Equipment. This was confirmed to represent 100% of the project costs and has been broken down as £4,753.48 loan and £4,753.48 grant on a 50% grant/loan basis. This application declares that a quotation from “Direct UK Radios” was submitted with the application.
- 11.96 Concerns relating to these applications by the CBCTA were that the costs quoted in DH 18(8) were excessive. Internet searches conducted by CBCTA members suggested that the costs of even reasonably sophisticated equipment for the 35 vehicles FACT owned at the time would attract a price of no more than £10,000 - £12,000. They quoted a web site <http://www.maximonsolutions.com/shop2/two-way-radios-for/taxisand> as a reference.

- 11.97 In respect of costs quoted in Exhibit DH 18(7) for radio equipment in respect of HACT totalling £9,506.96, the CBCTA suggested that FACT would have already purchased a central hub unit in March 2013 which suggested that this application was for radio/GPS vehicle units only. Internet searches by CBCTA members suggested that the cost of these devices range from £150 to £400 for each of the nine vehicles HACT owned at time of application (<http://www.maximonsolutions.com/shop2/two-way-radios-for/taxisand>).
- 11.98 The HACT application Exhibit DH 18(7) states that a quotation from “Direct UK Radios” was submitted. Internet searches by CBCTA members failed to identify a business of this name.
- 11.99 A FOI request was sent by the CBCTA to CCC on 22nd January 2016 requesting details of the quotations and invoices attached to the two grants. On 9th February 2016 CCC responded stating *“Cambridgeshire County Council does not hold any further information for the purpose of the Freedom of Information Act”*.
- 11.100 PKFL has received from CCC Internal Audit a quote dated 25 July 2013 Exhibit 13-G-1 which was submitted with the HACT application (DH 18(7)). The company providing the quotation was Direct Telecom Services Limited (“Direct Telecom”), Generation Business Park, Barham Road, Little Barford, St Neots. There are two business logos at the head of the document, one reads “Direct Telecom Services” and the other “UK Radios” the second logo has details of a website “[www.ukradios.com](http://www.ukradios.com)”.
- 11.101 Direct Telecom is a UK company registered at Companies House with a company number 09829560. Its correspondence address is shown as Barham House, Barford Road, St. Neots, PE19 6YQ. Company House records show two directors associated with this company. PKFL are not aware of that these directors have any connections with FACT, HACT or ESACT.
- 11.102 An internet search on the domain name [www.ukradios.com](http://www.ukradios.com) links back to the St Neots address shown above.
- 11.103 The quotation is broken down as follows:

Equipment	£9,506.96
VAT	1,901.39
Total	£11,408.35

- 11.104 The value of the equipment quote (excluding the VAT) matches the amount requested by HACT in the grant application. The equipment quote includes a Motorola repeater base station with Duplexer and power lead, 11 Motorola MOTOTRBO DM3401 mobile radios, 11 vehicle mounted antennas, 11 vehicle mounted GPS antennas, 11 subscriptions to TRBOnet software, installation and delivery/installation/commissioning.
- 11.105 The FHE Manager was able to produce to PKFL as Exhibit JP 17(8) a copy of the same Direct UK Radios quote which she submitted with her grant request (Exhibit DH 18(7)). Prior to submitting the quote, the FHE Manager did obtain a number of quotes from different suppliers before choosing Direct Telecom Services (however, she was unable to produce documentation in respect of these additional quotes). This company was recommended to her by a transport manager. The FHE Manager stated that it was in the organisations interests to obtain a competitive price as they were having to repay 50% of the cost taken as a loan.
- 11.106 PKFL has been shown one of the vehicles which has fitted one of the radios in question and can confirm that it is a Motorola MOTOTRO DM3401 mobile radio and microphone with mounting kit and power lead as described in the quote. It has been professionally fitted and is stored above the driver's head at the front of the vehicle on a mounted shelf. Vehicles have been fitted with antennas and GPS antennas.
- 11.107 In respect of the FACT grant for radio equipment, CCC internal Audit has confirmed that it could find no evidence of 2 quotes being provided within the information available. FACT have provided a quote from the supplier and the invoice to CCC, however, the original supplier invoice and alternative quotes were not available (Exhibit JP 17(11)). PKFL have physically verified the existence of this radio equipment.

### **Conclusion**

- Capital grant procedures were not adhered to in respect of quotations for both radio grants and loans.

### ***33. Investigate the allocation of contracts to HACT***

- (a) Investigate and confirm whether HACT's original contracts were awarded to HACT without being put out for competitive tender.***
- (b) Investigate and report whether contracts awarded to HACT under "emergency powers" were awarded against regulations and who sanctioned their use.***
- (c) Investigate and report whether evidence exists to demonstrate the CCC had adequate time to put each contract out for competitive tender.***
- (d) Investigate whether contracts awarded to HACT under emergency powers were extended without being put out for tender and who sanctioned these extensions.***
- (e) Document contracts awarded to HACT and whether or not they have been tendered on the basis of "a view to profit".***

### ***Introduction***

11.108 The Government has issued guidance on its website in relation to its public procurement policy. It states, *"The over-riding procurement policy requirement is that all public procurement must be based on value for money, defined as "the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought". This should be achieved through competition, unless there are compelling reasons to the contrary"*<sup>12</sup>.

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<sup>12</sup> Source: <https://www.gov.uk/guidance/public-sector-procurement-policy>



11.109 The website also states that *“Public sector procurement is subject to a legal framework which encourages free and open competition and value for money, in line with internationally and nationally agreed obligations and regulations. As part of its strategy, the government aligns procurement policies with this legal framework, as well as with its wider policy objectives”*.

11.110 Public procurement is also subject to the EU Treaty principles of:

- non-discrimination;
- free movement of goods;
- freedom to provide services; and
- freedom of establishment.

*(Exhibit MKM 33(4))*

11.111 Since the 1970s, the EU has adopted legislation to ensure that the EU public procurement market is open and competitive and that suppliers are treated equally and fairly. The rules cover aspects such as advertising of contracts, procedures for assessing company credentials, awarding the contracts and remedies (penalties) when these rules are breached.

11.112 The EU rules are contained in a series of directives that are updated from time to time. Member states have to make national legislation (regulations) to implement the EU rules in domestic law by certain deadlines. The most recent update of the EU procurement directives was in April 2014.

11.113 Under section 63 of the Transport Act 1985<sup>13</sup>, as amended, English local authorities outside London have a duty provide subsidised bus services where there are no commercial services and where they think it appropriate. Services are tendered and let to commercial operators in return for payment from the council. The powers of local authorities to subsidise public passenger transport services are subject to the detailed tendering provisions laid down in sections 88-92 of the 1985 Act, Department of Transport circular 5/85, and in the Service Subsidy Agreements (Tendering) (England) Regulations 2002 (SI 2002/2090), as amended.

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<sup>13</sup> <https://www.legislation.gov.uk/ukpga/1985/67/contents>

- 11.114 Section 89(1) of the Transport Act 1985 states that an authority responsible for expenditure on public passenger transport services may not enter into an agreement providing for service subsidies under which a local service is to be provided except by accepting a tender invited in pursuance of this section.
- 11.115 Section 91(2) of the Transport Act 1985 states that section 89(1) of the Act shall not apply in any case where it appears to an authority responsible for expenditure on public passenger transport services that action is urgently required for the purpose of—
- (a) maintaining an existing service;
  - (b) securing the provision of a service in place of a service which has ceased to operate; or
  - (c) securing the provision of a service to meet any public transport requirement which has arisen unexpectedly and ought in the opinion of the authority to be met without delay; and that it is necessary for that purpose to enter into an agreement providing for service subsidies in order to secure that service.
- 11.116 Section 91(3) States where by virtue of subsection (2) above any such authority entering into an agreement to which section 89(1) of this Act does not apply, the authority shall as soon as possible invite tenders for the provision of the service which is the subject of that agreement for such period and on such basis as may be specified in the invitation to tender; and sections 89(3) to (8) and 90 of this Act shall apply in any such case as if the invitation had been issued under section 89(2).
- 11.117 Any agreement entered into by virtue of subsection (2) above shall be made so as to remain in force no later than the end of the period of three months beginning with the day immediately following the end of the period allowed for the submission of tenders in accordance with the invitation to tender issued under section (3) above.

### *Emergency Powers*

- 11.118 It was communicated in FOI 5709 that six contracts had apparently been awarded to HACT on an emergency basis on 1 April 2013 which had not been put out to tender (See Scope Item 12 and Exhibit DH 12(4)).
- 11.119 The CBCTA had received two documents, the first was a publication which appeared to have been jointly adopted by both CCC and Northamptonshire County Council ("NCC"). The

document is entitled 'Cambridgeshire Contract Regulations' Fourth Edition which, according to the front page, had been revised on 8 November 2012. It also contains the title 'Northamptonshire Contract Procedure Rules' which according to the front page indicated that Part 4 G had been revised on 8 November 2012. A copy of this document was produced by Mr Humphrey as Exhibit DH 33(1).

11.120 The second document was headed 'Contract Procedure Rules'. This document also appeared to have been jointly adopted by CCC and NCC. It was, according to the front page, adopted by CCC on 29 October 2012. The front page of the document also indicated that this was the Sixth Edition (Revised 01 October 2015); the document had, according to its front page, been adopted by NCC on 29 October 2012. It stated that Part 4 G had been revised 01 October 2015. A copy of this document was produced by Mr Humphrey as Exhibit DH 33(2).

11.121 The two documents spanned the period when the six contracts had been awarded to HACT. CBCTA pointed to Section 2 in both documents which was headed 'Basic Principals'. The basic principles for all procurement activity and contract/supplier management must:

- Achieve Value for Money for public money spent;
- Be consistent with the highest standards of integrity;
- Ensure fairness and transparency in awarding public contracts;
- Ensure that the Council comply with all legal requirements;
- Ensure that Non-Commercial Considerations do not influence any contracting decision; and
- Support the Council's corporate and departmental aims and policies.

11.122 There are a number of exceptions to these rules but one which was of particular interest to the CBCTA and particularly the last sentence was contained at paragraph 3.1.3 which states *"goods, works or services procured in a genuine Emergency (e.g. natural disasters such as flooding or fires, immediate changes to legislation) because of a need to respond to events that were beyond the genuine control of the Council. Any Emergency procurement must be reported to Head of the Central Procurement Team as soon as practical. Any such Contract entered into by the Council must not be for a term of more than six months. Please note that not allowing enough time to go to Tender is not an Emergency"*.

- 11.123 Examination of FOI 5709 Appendix 2, a copy of which has been produced by Mr Humphrey as DH 33(3), identifies a response to an “exemption form” sent from the email address of a procurement staff member on the 28 March 2013 at 12.43 to the email address of the Strategic Procurement Manager at Northamptonshire County Council.
- 11.124 The message states, *“I submit the attached exemption form for urgent approval as the new contract is to start next week. This is an essential bus service and the council has had to obtain a short-term provider for continuity of service whilst we go out to tender”* (Exhibit DH 33(3) and DH 33(4)). This exemption request is in reference to Contract 150 only.
- 11.125 In a return email timed at 14:20 the same day is the following *“you can confirm this is o.k I will sign hard copy next time I am in Cambs.”*
- 11.126 Examination of the attached ‘Exemption Request from Contract Procedure Rules’ form (for Goods/Services/Works is from £30,000 to £100,000) under section 1 identifies the name of the officer seeking Exemption as CCC’s Head of Passenger Transport. The contract Title is identified as *“Contract 150”*. The estimated total value of the goods / services / works to be procured relating to the exemption is shown as *“305 days @ £180.06 = £54,918.30”*. The supplier is shown as *“Huntingdonshire Association for Community Transport”*. The exemption start date and end date is shown as *“1st April 2013 to 3/04/2014”* and the name of the LGSS procurement contact was shown as *“[the name of the procurement staff member sending the email]”*.
- 11.127 Section 3 of the form is headed ‘Exemption Justification’. Two boxes within this section have been marked with an ‘X’ to describe the grounds on which an exemption was being requested. The first was *“Unavoidable temporary extension of existing contractual arrangement to allow preparation for future competition”* the second was *“other”* with a handwritten note *\*See overleaf*. At the bottom of page 2 relating to the handwritten note is the following *“This is not an extension to an existing contract as the current contractor “Nene & Ouse Community Transport are ceasing to trade. Further, the client wishes to award a new short term contract to Hunts Association for Community Transport in order to continue with provision of the regarded essential service whilst we prepare for future competition”*. This short statement has the signature of the procurement staff member dealing with it (dated 27 March 2013).

- 11.128 Also contained within Section 3 is two further questions *“is an exemption being sought from the obligation to advertise?”* Answer *“Yes”*. *“Is an exemption being sought from the obligation to follow a competitive process?”* Answer *“Yes”*
- 11.129 The form states that if the answer to the question is Yes details should be provided, the following is written *“Following advice from legal services, cessation of operations by existing provider does not provide sufficient time to procure replacement contract to start in time. No change to contract cost.”*
- 11.130 The exemption form contains a signature believed to be that of CCC’s Executive Director for Economy, Transport and Environment, it is dated *“27/3/13”*. A second signature, believed to be that of the Head of LGSS Procurement, is also contained on the form as a second authoriser. The date shown against the signature is *“9/4/13”*.
- 11.131 Underneath the signatures the request concludes *“If approved, a signed copy of this form should be kept on file by the Chief Officer as evidence of compliance and the change updated in the Contracts Register”*. A copy of this form has been produced by Mr Humphrey as Exhibit DH 33(4).
- 11.132 The guidance for exemptions for proposed Contracts with a Total Value of £25,000 and not exceeding £100,000 (Exhibit DH 33(2)) must be recorded using the Exemption Request Form located in the central procurement team pages of the intranet. The Officer must secure approval from the Chief Officer and then send to the Central Procurement Team for approval by the Head of the Central Procurement Team. Approval must be obtained by the Officer prior to any procurement activity commencing. The Exemption Request Form will be returned to the relevant department for retention with the Contract records, with a copy retained by the Central Procurement Team.
- 11.133 Based on the two requests, it appears HACT have serviced 9 contracts (refer to paragraph 9.40) identified through information found under *“payments to suppliers”* in CCC’s payment records. In addition to service routes 46A and 150 at least 4 other contracts were awarded to HACT on an ‘emergency basis’. The FOI response 3509 states, *“Contracts 925, PT03, PT04 & PTP02 were awarded to HACT under emergency powers. These contracts were previously operated by Nene and Ouse”*. No emergency exemption forms have been found in relation to these contracts.

- 11.134 In FOI 5851 dated 17 November 2015 (Exhibit DH 12(7)) the Council was asked *“Under the FOI act I would like to ask for the following information. Could I please have all exemption applications and terms and conditions made from the Cambridgeshire county council for permission to issue transport contracts on an "emergency" basis between 1st February 2013 and 1st May 2013”*.
- 11.135 The CBCTA were concerned that the response to this question was *“There is only one exemption that is recorded and that was provided previously under FOI 5709”*.
- 11.136 The response concluded, *“Where transport is needed at short notice and for a short term, it is treated as a short-term contract. As such, there is no requirement for an exemption application”* (Exhibit DH 12(7)).
- 11.137 This information appears to contradict information given in FOI 3509 and FOI 5709 which clearly states that *“Contracts 150, 46A, 925, PT03, PT04 & PTP02 were awarded to HACT under emergency powers”*.
- 11.138 On Wednesday 7 August 2013, CCC advertised via email that it was inviting tenders for the SEN route ON45 Molesworth to Northamptonshire. The email indicated that the contract was scheduled to start in September 2013 but did not give a specific date in September. Interested operators were asked to reply to the email by 10am on Wednesday 14 August 2013 with the following details:
- Company Name; and
  - Daily Price.
- 11.139 As a result of the invitation to tender, nine interested parties sent their quotes as requested. HACT were found to have submitted the lowest quote and subsequently won the contract (Exhibit MKM 33(3)).

### Conclusions

- As noted at Scope Item 12, there is no evidence that the contracts taken over by HACT in March 2013 were put out to tender.
- In respect of the use of Emergency powers, only one contract (Service Route 150) was subject to an Emergency Powers request, the table below summarises this information.

Contract No	Evidence of Application for use of Emergency Powers	Notes	
PRC3	No	3	
PRC4	No	3	
PTP02	No	2	
PT03	No	2	
PT04	No	2	
925	No	2	
46A	No	1	FOI 5709 states bid date 28.02.13
150	Yes	1	FOI 5709 states bid date 28.02.13

Note 1: FOI request 5709, CCC report that contract was awarded to HACT under emergency powers (Exhibit DH 12(6)).

Note 2: FOI request 3509 CCC report that contract was awarded to HACT under emergency powers (Exhibit DH 12(3)).

Note 3: Exhibit DH 12(4) letter to the Director of the Bus and Coach Association from CCC indicates these were awarded to HACT under emergency powers.

### *Adequate time to tender*

- 11.140 The 'Contract regulations', referred to above, states "*Not allowing enough time to go to tender is not an emergency*" (Exhibit DH 33(1) paragraph 3.1.3). The CBCTA state that examination of numerous tender requests from Ed.Contracts@cambridgeshire.gov.uk demonstrate that transport contracts of all types, including "short notice" and "short term" contracts, are sent to commercial companies listed with the Cambridgeshire County Council on a daily basis throughout the year. The start date for each contract can be from immediate to approximately one month.
- 11.141 HACT became registered with the Charity Commission on the 28th March 2013. Information obtained through FOI request 5709, a copy of which has been provided by Mr Humphrey as DH 33(5), indicated that evidence of bid submissions in relation to routes 46A and 150 was provided within Appendix 1 to the FOI request. The appendix, a spreadsheet, a copy of which is produced as DH 33(6), provides details of bid dates for routes 46A and 150. The CBCTA indicates that if bids were placed by HACT on 28th February 2013, this is one month before their registration and the CBCTA states that this is evidence that the offering of these contracts was far from being on an 'emergency' basis. Due to the timescales involved, they

say that this was not an 'emergency' and consequently the contracts should have been put out to commercial tender.

- 11.142 It is not clear if it was HACT that made the bid, just that a bid was made on 28 February 2013. It could be that NOCT placed the bid and was successful. Investigation by CCC Internal Audit suggests that no tender was put out in February 2013 for those contracts. The contracts with Nene & Ouse were terminated on 31st March 2013 following notification from them that they were to cease operations after that date. Replacement contracts were put in place with HACT until engagement with the local community had concluded under the Cambridgeshire Future Transport initiative (See Exhibit MKM 32(2)).
- 11.143 CBCTA indicates that a FOI response from the Traffic Commissioner dated the 30th April 2014 (Exhibit DH 33(7)) indicates the application for Permit 22 authorities was received from HACT on 11th March 2013 and this was further confirmation that adequate time was available to arrange a tendering process for these contracts.
- 11.144 Section 23 of the Contract Regulations (Exhibit DH 33(2)) is headed Receivership / Liquidation and states *"In the event of the Officer becoming aware that a supplier is entering into a change of control, insolvency, bankruptcy, receivership or liquidation the Officer must inform both the Central Procurement Team and the Central Legal Team immediately. The supplier shall only be permitted to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior written consent of the Council. The Council reserves the right to decline a supplier that is deemed to be not suitable. If a suitable alternative is not identified the Contract must be re-Tendered"*. We have not received evidence that the CCC relied on this section of the Regulations but the circumstances did apply.
- 11.145 FACT had been in talks with NOCT over a possible take-over/merger during the early part of March 2013.
- 11.146 It is documented that NOCT were experiencing financial problems. The FHE Manager stated that it was not until Tuesday 12 March 2013, following a meeting of the NOCT Trustees, that a formal decision was taken to cease operations and wind the company up. This information was articulated in an email dated 13 March 2013 to the FHE Manager from NOCT. A copy of the email is produced as Exhibit 13-B-4.



- 11.147 It appears that a meeting also took place on 12 March 2013 attended by the FHE Manager, the Chair of the FACT board; Councillor Jillian Tuck ("Cllr Tuck"), a FACT board member; CCC's Head of Passenger Transport; and the Senior Transportation Officer at Huntingdonshire District Council.
- 11.148 Following the meeting, at 11.56 hours an email was sent from the email address of the FHE Manager to the email addresses of the Head of Passenger Transport CCC, CCC's Head of Passenger Transport and the Senior Transportation Officer at HDC, and it was CC'd to the email address of Cllr Tuck attaching the application forms for the grants and supporting workings.

### *Conclusions*

- This would suggest that CCC had 19 days in which to put out the contract to tender, find a suitable applicant and award the contract. CCC's Head of Passenger Transport has confirmed that there had probably been sufficient time to put the contracts out to tender, however, HACT stated that they would only provide Dial-A-Ride services if the contracts were awarded to them.

***Investigate whether contracts awarded to HACT under emergency powers were extended without being put out for tender and who sanctioned these extensions.***

- 11.149 The guidance given to organisations operating registered local bus services in England (except London) and Wales from the DfT, a copy of which is produced as Exhibit MKM 12(14) states: *“When a council or ITA [Integrated Transport Authority] needs to start a service at short notice (e.g. when another operator has given it up), it can award a short-term contract without going to tender, but must then go out to tender as soon as possible”*<sup>14</sup>.
- 11.150 Set out at Appendix AB is the analysis of contracts awarded to HACT based on CCC records. This shows that two contracts, 46A and 150, were extended and not put out to tender.
- 11.151 CCC’s Internal Audit identified that legal advice had been sought by CCC’s Head of Passenger Transport in relation to this matter on or prior to 22 April 2013. In an email, from the email address of a lawyer at LGSS Law to the email addresses of CCC’s Head of Passenger Transport, CCC’s Head of Passenger Transport and one other person dated 22 April 2013 the writer gives legal advice in relation to route 46A. A copy of the email is produced as Exhibit 13-D-2. The advice states:

*“Further to our recent conversation I can confirm the following:-*

- 1. The value of this contract is around £45K per annum. Therefore, extending it for a further 6 months from July means the value is around £22K per annum. This falls well below the EU threshold.*
- 2. The CFT engagement should take place and have solutions ready by November 2014. At the point those solutions are known the contract will have come to an end and you will need to re-procure if the route is to remain.*

*Risk is as follows:-*

- 1. The cost of a JR [Judicial Review] and engaging Counsel is more than likely to outweigh the value of the 6 month extension and this reduces the risk of challenge.*

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<sup>14</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/542918/local-psv-service-registration.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/542918/local-psv-service-registration.pdf) (Exhibit MKM 12(14)).

2. *The contractors who would challenge are already contracted to CCC and are unlikely to risk that relationship for £22K.*

3. *The fact that the value is below the EU threshold means that there is not likely to be a challenge from the Commission, however we should still comply with the Treaty Principles of competition and transparency and clarity.*

4. *There is a risk of loss of reputation if the extension is made public, this is mitigated somewhat by the Cabinet Decision requiring the contracts to be extended until the CFT engagement is complete. The portfolio holder should be prepared to defend this position. A copy of the Decision on your file would be helpful.*

*In summary:-*

*I think the balance of risk suggests that there is a small risk of challenge. The ITT which was sent out on Friday should be withdrawn by email to all those it was sent to saying simply that it was sent out in error and will be re-tendered in due course.*

*We have a standard clause in our ITTs which states we will not be responsible for the costs of tendering should anyone make noises in that direction. Ensure it is in the ITT which went out.*

*Please do not hesitate to contact me should you require further advice.*

*Kind regards,*

*[first name of the author]"*

- 11.152 It is apparent from the email that followed this meeting, that at least in connection with route 46A, legal advice was sought and a solution was put into place. In a further email dated 22 April 2013 from the email address of CCC's Head of Passenger Transport to the email address of the LGSS lawyer, the writer states "*Jus [sic] a couple of points. The 46A contract is in place until the end of July – prior to the end of July the County will extend that contract for 6 months for the purposes we discussed today. CFT etc. –that takes us to January 2014 by which time the community engagement in the area that the 46A service operates will have been concluded and the locally developed solution implemented – it may not be a conventional bus service.*"

- 11.153 The conclusion that is drawn from this is that CCC's Head of Passenger Transport made the decision to extend service 46A and service 150 following advice from the LGSS lawyer. No documentation has been identified to show how other contracts were extended.
- 11.154 CCC's Head of Passenger Transport has confirmed that the Cambridgeshire Future Transport initiative was a rolling programme which was being implemented as the County needed to save £1.4 million. One of the reasons why the contracts were extended was to avoid having to go to tender and then retender again 4 months later. This was a practical decision taken at the time for reasons which the decision makers thought was the most appropriate.
- 11.155 CCC's Head of Passenger Transport confirmed that it was most likely his decision to extend the contracts in consultation with his head of services.

***Document contracts awarded to HACT and whether or not they have been tendered on the basis of "a view to profit".***

- 11.156 Set out at Appendix AB is the schedule of contracts issued to HACT provided by CCC. CCC were unable to provide tender/contract information as detailed at Exhibit MKM 33(5).

***Tenders with "a view to profit"***

- 11.157 HACT have informed PKFL that they prepare tenders using a full cost recovery method, which is tailored to the requirements of each contract, (the method also applied by FACT and ESACT). Such quotes take into account the total mileage needed (i.e. from the where the bus is located to the start of the route, the route mileage and the return to base), whether or not a personal assistant is needed and the mileage for that pick up, the need for specialised equipment, driver's wages based on estimated journey time and average wages, vehicle costs (vehicles are anticipated to last five years depending on quality) and a contingency to be added for recovery of overhead. As HACT have not retained any tender documentation and supporting calculations it is not possible to test individual tenders. However, as can be seen from Appendix G, contracts operated by HACT generate a surplus.

## 12 Licencing

*34. Determine whether the Council obtained legal advice and /or advice received from the Traffic Commissioners in respect of:*

- Council procedures in respect of issuing permits under Section 19 and 22;*
- Commercial contracts - the need for a Public Service Vehicle operator's licence; and*
- Community Transport Organisations and other suppliers - drivers to be Certificate of Professional Competence rated and have a full vocational PSV Licence.*

12.1 The Transport Department of CCC are responsible for maintaining its knowledge of relevant legislation and government advice in respect of passenger transport, as set out below.

### *Traffic Commissioners Advice*

#### *Section 19 and 22 permits, PSV Licences*

12.2 On 7 August 2013, the Government, through the Traffic Commissioners for Great Britain, issued guidance entitled 'Section 19 and 22 permits: not for profit passenger transport'<sup>15</sup>. A copy of this guidance has been produced as Exhibit MKM 34(2).

12.3 Under normal circumstances, a transport organisation operating in Great Britain must hold either a PSV operator's licence or a private hire vehicle ("PHV") licence if they accept any sort of payment for providing transport to passengers. However, there are exceptions under certain circumstances (see paragraph 12.13 et seq. for details).

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<sup>15</sup> Source: <https://www.gov.uk/government/publications/section-19-and-22-permits-not-for-profit-passenger-transport/section-19-and-22-permits-not-for-profit-passenger-transport>

- 12.4 Section 1(1) of the Public Passenger Vehicles Act 1981 states that a public service vehicle means a motor vehicle (other than a tramcar) which—
- (a) being a vehicle adapted to carry more than eight passengers, is used for carrying passengers for hire or reward; or*
- (b) being a vehicle not so adapted, is used for carrying passengers for hire or reward (see section 12.11 for the definition of for hire or reward) at separate fares in the course of a business of carrying passengers.*
- 12.5 Under section 12(1) of the Public Passenger Vehicles Act 1981 the law states that a public service vehicle shall not be used on a road for carrying passengers for hire or reward except under a PSV operator's licence.
- 12.6 Section 13 of the Public Passenger Vehicles Act 1981 gives details of the two types of classification of PSV operator's licences.
- 12.7 Section 13(1) states that a PSV operator's licence may be either a standard licence or a restricted licence.
- 12.8 Section 13 (2) states that a standard licence authorises the use of any description of public service vehicle and may authorise use either—
- (a) on both national and international operations; or*
- (b) on national operations only.*
- 12.9 Section 13(3) states that a restricted licence authorises the use (whether on national or international operations) of—
- (a) public service vehicles not adapted to carry more than eight passengers; and*
- (b) public service vehicles not adapted to carry more than sixteen passengers when used—*
- (i) otherwise than in the course of a business of carrying passengers; or*
- (ii) by a person whose main occupation is not the operation of public service vehicles adapted to carry more than eight passengers.*

- 12.10 For the purposes of subsection (3)(b)(i) above, it is said that a vehicle used for carrying passengers by a local or public authority shall not be regarded as used in the course of a business of carrying passengers unless it is used by the public service vehicle undertaking of that authority.
- 12.11 Hire or reward is defined in Section 1 (5) of the Public Passenger Vehicles Act 1981, and in addition, VOSA in their 'guide to operator's' page 4 provide the following description: "*Hire or reward is any payment in cash or kind which gives a person the right to be carried, regardless of whether or not that right is exercised. It is also regardless of whether or not a profit is made. The payment may be made to the operator, the driver or any agent or representative acting on behalf of the operator. The payment may be made by the passenger, or on the passenger's behalf. It may be (a) a direct payment (e.g. a fare) or (b) an indirect payment (this could be an exchange for services such as a membership subscription to a club, payment for a bed in a hotel, school fees or payment for concert tickets where travel is included; the payment does not have to be money and the right to travel does not need to be taken up*" (See Exhibit MKM 34(7)).
- 12.12 PSV operators' licences are issued by a Traffic Commissioner.
- 12.13 Section 19 and Section 22 of the Transport Act 1985 allows organisations that operate in Great Britain, without a view to profit, to have a *permit* which exempts them from the need to hold a PSV operator's licence when providing transport for a charge. Under certain specified conditions, the drivers of certain vehicles are also exempt from the need to have a Passenger Carrying Vehicle ("PCV") entitlement on their driving licence.
- 12.14 There are 2 types of permit issued under the Transport Act 1985:
- permits issued under Section 19 - relating to the use of vehicles by educational and other bodies (issued by 'designated bodies' such as local authorities); and
  - permits issued under Section 22 - community bus permits (issued by the Traffic Commissioners).
- 12.15 Section 19 permits are either 'standard permits' for vehicles which are adapted to carry no more than 16 passengers (excluding the driver) or 'large bus permits' for vehicles which are adapted to carry 17 or more passengers. These permits may be granted to organisations that operate vehicles without a view to profit to transport their members, or people whom

the organisation exists to help. Section 19 permit vehicles can't be used to carry members of the general public.

- 12.16 A body is eligible in accordance with Section 19(8) of the Transport Act 1985 if it is concerned with—
- (a) education;
  - (b) religion;
  - (c) social welfare;
  - (d) recreation; or
  - (e) other activities of benefit to the community. The act does not define “other activities of benefit to the community”.
- 12.17 Vehicles adapted to carry 8 or fewer passengers are eligible to operate under Permit 19 authorities only if used to carry passengers at separate fares. This means that if the CTO uses a vehicle adapted to carry 8 or fewer passengers they must charge separate fares. The vehicle must not be available for hire as a whole. CTOs are likely to need a Private Hire Vehicle (“PHV”) licence if they hire the vehicle as a whole. Vehicles used by FACT, HACT and ESACT for group hire will not fall within this category as their vehicles are adapted to carry 8 or more passengers.
- 12.18 Section 22 permits are issued to bodies concerned for the social and welfare needs of one or more communities. They operate vehicles without a view to profit and use those vehicles to provide a community bus service. Unlike Section 19 permit vehicles, community bus services are ‘local bus services’ and can carry the general public. Local bus services are defined as services using public service vehicles for the carriage of passengers by road at separate fares on which passengers may travel for less than 15 miles.
- 12.19 A permit is not specific to one vehicle, so the holder of the permit can transfer it between different vehicles. But a permit can only be used on one vehicle at a time. An organisation can hold more than one permit. An organisation may also hold both Section 19 and Section 22 permits, but a vehicle must only be used under one type of permit at a time. The correct disc must be displayed in the vehicle to show how it is being used at the time.



- 12.20 The Government issued guidance on 7 August 2013 which was updated on 1 February 2018 entitled 'Section 19 and 22 permits: not for profit passenger transport' (See Exhibit MKM 34(2)). There are a number of legal terms which feature in this guidance, one is in respect of any payment made for providing transport and is referred to as 'hire or reward'. The guidance at Section 3 (page 4) describes hire or reward as: *"any payment, in cash or kind, which gives a person the right to be carried on the vehicle, regardless of whether or not that right is exercised. Hire or reward takes place if the journey is organised in a way that goes beyond the bounds of mere social kindness. The payment may be made by the passenger or on the passenger's behalf. It may be a direct payment, e.g. a fare or an indirect payment such as a membership subscription. Where indirect payments are made in respect of other services (rather than specifically for the transport) they're still likely to be viewed by the courts as hire or reward because anyone who hadn't made the payment would have no right to be carried"*.
- 12.21 All passengers and groups using the services provided by FACT, HACT and ESACT on their Dial-A-Ride (FACT and ESACT) and Ring-and-Ride (HACT) services have to be members. Based on the guidance above the three organisations for these services are carrying passengers for hire or reward. For other contracted services, e.g. local bus routes they receive fee paying customers and again they are carrying passengers for hire or reward as a direct fare is made.
- 12.22 The guidance also states that a vehicle being used under a permit *"must not be used with a view to profit nor incidentally to an activity which is itself carried on for profit"*. The advice gives guidance as to what is meant by 'operating without a view to profit'. The guidance states *"those applying for a Section 19 permit must satisfy the issuing body that the transport services aren't run with a view to profit, nor incidentally to an activity which is itself carried on with a view to profit"*.
- 12.23 It also states, at page 11, that *"organisations that are registered as charities usually qualify. However, a business which makes, or seeks to make, a profit would not normally qualify, regardless of how it uses any profits or income surplus"*.
- 12.24 In 2014, Mr James Segan ("Mr Segan"), a barrister at Blackstone Chambers, was asked to provide advice by JA Travel Limited ("JA Travel") and the Bus and Coach Association ("BCA") of which the CBCTA is a member, on three issues concerning whether the United Kingdom's

regulatory arrangements for Community Transport Organisations (“CTOs”) are in accordance with European Union (“EU”) law. In particular, he was asked to advise as to:

*“whether Regulation (EC) No 1071/2009 of the European Parliament and of the Council (“Regulation 1071/2009”) should be construed as requiring CTOs to obtain a full operators’ licence (“O Licence”) for some or all of their services, rather than their being allowed to operate under permits granted under sections 18 to 22 of the Transport Act 1985 (the “1985 Act”);*

*whether the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007 which implement Directive 2003/59/EC, should be construed as requiring the drivers of CTO vehicles in sub-category D1 to obtain a Certificate of Professional Competence (“CPC”); and whether the Motor Vehicles (Driving Licences) Regulations 1999, which for relevant purposes implement Directive 2006/126, should be construed as requiring the drivers of CTO vehicles in sub-category D1 to obtain a drivers’ licence for that category, rather than doing so in reliance upon a full licence for a category B vehicle<sup>16</sup>.”*

- 12.25 A copy of Mr Segan’s advice has been handed to PKFL by Mr Humphrey as Exhibit DH 34(1). We understand this advice was brought to CCC’s attention in April 2016.
- 12.26 In relation to whether CTOs require a full O-Licence, Mr Segan makes reference to EU Legislation and in particular Regulation 1071/2009.
- 12.27 In his advice, he states, *“The domestic licensing regime under the 1981 and 1985 Acts has for many years been overlaid by, and adapted to, various EU law obligations.*

*Since 4 December 2011, the relevant EU instrument has been Regulation 1071/2009. That regulation sets out detailed rules governing admission to the occupation of road passenger transport operator. These rules cover commercial road passenger transport undertakings operating vehicles with seats for 9 passengers, including the driver, or more. According to the regulation, operators must fulfil four criteria to access the profession, being*

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<sup>16</sup> A category B vehicle is a Motor vehicle, other than vehicles included in category A, F, K or P, having a maximum authorised mass not exceeding 3.5 tonnes and not more than eight seats in addition to the driver’s seat, including:

- (i) a combination of any such vehicle and a trailer where the trailer has a maximum authorised mass not exceeding 750 kilograms, and
- (ii) a combination of any such vehicle and a trailer where the maximum authorised mass of the combination does not exceed 3.5 tonnes and the maximum authorised mass of the trailer does not exceed the unladen weight of the tractor vehicle.

- (i) good repute,
- (ii) financial standing,
- (iii) professional competence, and
- (iv) effective and stable establishment in a Member State.

*A transport manager must be designated by each road transport operator.*

*In order to ensure fair competition, Regulation 1071/2009 is intended to apply as widely as possible. Recital (6) of the regulation provides: ‘In the interests of fair competition, the common rules governing the exercise of the occupation of road transport operator should apply as widely as possible to all undertakings. However, it is unnecessary to include within the scope of this Regulation undertakings which only perform transport operations with a very small impact on the transport market’.*

*Article 1 of the regulation gives effect to this objective that it should apply “as widely as possible to all undertakings” by way of the following words:*

*“1. This Regulation governs admission to, and the pursuit of, the occupation of road transport operator.*

*2. This Regulation shall apply to all undertakings established in the Community which are engaged in the occupation of road transport operator. It shall also apply to undertakings which intend to engage in the occupation of road transport operator. References to undertakings engaged in the occupation of road transport operator shall, as appropriate, be considered to include a reference to undertakings intending to engage in such occupation.”*

*It is well-established in EU law that the concept of an “undertaking” does not depend on the existence of a profit motive. On the contrary, even a not-for-profit company will qualify as an undertaking if it is “offering goods or services on the market in competition with other operators”, “...notwithstanding the fact that the offer of goods or services is made without profit motive, since that offer will be in competition with that of profit-making operators”: see Case C-222/04 Ministero dell'Economia e delle Finanze v Cassa di Risparmio di Firenze Spa and ors [2006] ECR I-00289 at §§122-123. This is confirmed specifically by Article 2(4) of the regulation, which defines “undertaking” as: “...any natural person, any legal person, whether profit-making or not, any association or group of persons without legal*

*personality, whether profit-making or not, or any official body, whether having its own legal personality or being dependent upon an authority having such personality, engaged in the transport of passengers, or any natural or legal person engaged in the transport of freight with a commercial purpose”*

*The requirements of Regulation 1071/2009 therefore apply, as a rule, to anyone engaged in the occupation of road transport operator, whether they wish to make a profit or not.*

*These provisions, since they are contained in a regulation, have been directly applicable and effective since 4 December 2011. A regulation, once in force, becomes part of the law of the UK without any need for any further legal step. As the Court of Justice has held, “...the direct application of a Community Regulation means that its entry into force and its application in favour of or against those subject to it are independent of any measure of reception into national law”, so that a Member State cannot adopt or retain any legislation of its own which purports to alter, obstruct or obscure the direct effect of the nature of a regulation: Case 50-76 Amsterdam Bulb BV [1977] ECR-137.*

*It follows that, since 4 December 2011, all undertakings engaging in the occupation of road passenger transport operators, whether for profit or otherwise, have been required by law to obtain an authorisation to do so. An authorisation for these purposes means “...an administrative decision which authorises an undertaking which satisfies the conditions laid down in this Regulation to pursue the occupation of road transport operator. The only such authorisation which exists in domestic statute is an O-Licence”. A copy of Regulation 1071/2009 is produced as Exhibit MKM 27(1).*

- 12.28 As a result of a FOI request (FOI number 6744) CCC provided to the CBCTA a copy of an email trail relating to various requests for advice by CCC’s Community Transport Officer and also a copy of a transcript relating to a public inquiry brought before a Traffic Commissioner, Mr Kevin Rooney (“Mr Rooney”) by Sean Campbell, trading as Campbell’s Mini Bus Hire Limited, on Wednesday 1 June 2016. Mr Humphrey has provided a copy of the email trail as Exhibit DH 34(2).
- 12.29 It appears from the email trail, that CCC’s Community Transport Officer from 22 June 2016 was aware of the public inquiry case brought before Mr Rooney and as a result, CCC’s Community Transport Officer requested advice from the Traffic Commissioners regarding a number of different matters involving Section 19 and 22 permits and drivers licencing.

- 12.30 Mr Rooney in his ruling (Exhibit DH 34(2)) made reference to European legislation Regulation 1071/2009 and the relevant part that covers the requirement to have an O-Licence. He said, *"In the interests of fair competition [you need to think about that, competition – if you were not doing the work, who else would be?], the common rules governing the exercise of the occupation of Road Transport Operator should apply as widely as possible to all undertakings. However, it is unnecessary to include within the scope of this regulation undertakings which only perform transport operations with a very small impact on the transport market."*
- 12.31 In order to qualify this, he said, *"What it is saying is that everyone should be included unless they do not really matter – they are not having any impact"*.
- 12.32 He then said, *"This regulation shall apply to all undertakings established in the community which are engaged in the occupation of Road Transport Operator."*
- 12.33 He then mentioned two possible exemptions *"There are two exemptions there: one where it is not your primary occupation; the other one is somebody involved exclusively in non-commercial work. When I look to try and see a bit further what that might mean, I go down to definitions, Article 2.2, it gives a definition of, "The occupation of Road Passenger Transport Operator." It means: "the activity of any undertaking [any business/sole trader] operating, by means of motor vehicles so constructed and equipped as to be suitable for carrying more than nine persons, including the driver, and intended for that purpose, passenger transport services for the public or for specific categories of users in return for payment by the person transported or by the transport organiser". Simply in return for payment. There is no mention here of whether that payment is enough to provide a profit or not. If money changes hands, it is commercial. You need an O-Licence"*.
- 12.34 The role of the Traffic Commissioner is set out in a document entitled Framework Document: 'Traffic Commissioners Department for Transport including its Agencies'. A copy of this document is produced as Exhibit MKM 34(1).
- 12.35 At paragraph 2.1 it says *"The post of Traffic Commissioner has existed with effect from 1" January 1931. From the outset of the implementation of the licensing system there has been close liaison between Traffic Commissioner's, civil servants and Ministers. Traffic Commissioners have always been required to exercise a number of their powers in public and great emphasis continues to be placed on the need to ensure road safety and fair competition. The roles of the Traffic Commissioners are set out in the Public Passenger*

*Vehicles Act 1981 (the 1981 Act) but the Local Transport Act 2008 introduced further changes and in particular strengthened the independence of Traffic Commissioners through the introduction of a statutory Senior Traffic Commissioner with new powers”.*

12.36 Paragraph 2.3 states *“Traffic Commissioners are appointed by the Secretary of State under section 4 of the 1981 Act as amended. Their role and responsibilities are determined by statutory powers in primary and secondary legislation (as well as European legislation), including:*

- *The Public Passenger Vehicles Act 1981;*
- *The Transport Act 1985;*
- *The Road Traffic Act 1988;*
- *The Goods Vehicles (Licensing of Operators) Act 1995;*
- *The Transport Act 2000;*
- *The Transport (Scotland) Acts 2001 and 2005; and*
- *The Local Transport Act 2008”.*

12.37 Schedule 2 to the Public Passenger Vehicles Act 1981 allows for the appointment of deputy Traffic Commissioners, to whom Traffic Commissioners can and do delegate their work.

12.38 Paragraph 3.1 states, *“The Traffic Commissioners ' purpose is to champion safe, fair and reliable passenger and goods transport.*

- *As regulators and in carrying out their judicial functions, Traffic Commissioners adopt an approach that is designed to ensure that licensed operators comply with the undertakings that are made upon grant of a licence as well as the mandatory requirements for holding a licence.*
- *Operator licensing is designed to properly manage risks to road safety, to protect fair competition and to promote the running of punctual and reliable registered local bus services.*
- *Traffic Commissioners lie at the heart of a fair and proportionate licensing system and represent a modern approach to regulation allowing independent and value for money decision making.*

- *Traffic Commissioners are committed to working with others to improve safety, fair competition and the reliability of road transport."*

### ***DfT Advice 2016 and 2017***

- 12.39 The remit of the CCC Transport Department and the email chain from its Community Transport Officer (see paragraph 12.29) shows that CCC obtained advice from the Traffic Commissioners.
- 12.40 In relation to Section 19 permits there was a change in the conditions for applicants from August 2016. CCC's Community Transport Officer has advised that CCC became aware of the new form (PSV 372) on 24 August 2016 and the revised form was posted on the CCC website on 14 September 2016. Although the new application form was utilised by CCC showing the revised conditions, the DfT advised CCC that they could continue to use the Section 19 Permits they held at that date (Exhibit MKM 12(15)). This meant that from this date Section 19 Permits were issued with incorrect conditions, in particular the new requirement was for the user to operate for *"exclusively non-commercial purposes"* (replacing *"does not authorise the carrying of passengers for hire and reward with a view to profit"*) – refer to Scope Item 39.
- 12.41 In addition to the above on 31 July 2017 the DfT provided additional advice in respect of Section 19 and 22 permits following a recent DVSA decision (Exhibit MKM 40(1)). In summary, if an organisation was not *"engaged in Road Passenger Transport Service exclusively for non-commercial purposes or which have a main occupation other than that of a Road Transport operator"* then
- (i) They would need a PSV Operator's Licence, and,
  - (ii) The operator's drivers would need a CPC and an unrestricted D1 minibus driving licence.
- 12.42 On the 9 November 2017, the DfT provided further advice, that the same organisation could not undertake both commercial and non-commercial work (Exhibit MKM 34(3)). This was again confirmed in a further letter from the DfT dated 27 November 2017 (Exhibit MKM 34(3)(A)).

## *Certificate of Professional Competence and PCV Licences*

- 12.43 In respect of those persons driving minibuses, the Government have provided guidance entitled 'Driving a minibus'<sup>17</sup> this states, *"you might be able to drive a minibus with up to 16 passenger seats using your current car driving licence as long as there's no payment from or on behalf of the passengers (it's not for 'hire or reward')"*. See Paragraphs 12.20 to 12.21 above for the meaning of hire or reward.
- 12.44 Other conditions which have to be met include:
- The driver is 21 or older;
  - The driver has held their driving licence for at least 2 years;
  - The driver meets the 'Group 2' medical standards if over 70 years of age;
  - The driver is driving on a voluntary basis and the minibus is used for social purposes by a non-commercial body;
  - the maximum weight of the minibus is not more than 3.5 tonnes - or 4.25 tonnes including specialist equipment for disabled passengers, e.g. a wheelchair ramp; and
  - The driver is not towing a trailer.
- 12.45 When driving a minibus under these conditions the driver may not receive any payment or consideration for driving other than out-of-pocket expenses. The driver may only drive minibuses in the United Kingdom<sup>18</sup>.
- 12.46 If a person is driving for hire or reward, they will need a PCV entitlement on their driving licence. In order to obtain this, they need to:
- have a full car licence;
  - be over 18 – (there are some exceptions); and
  - get a professional driving qualification called the Driver Certificate of Professional Competence ("CPC") unless the person has 'acquired rights' which means that they

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<sup>17</sup> Source: <https://www.gov.uk/driving-a-minibus>

<sup>18</sup> Source: <https://www.nidirect.gov.uk/articles/driving-passenger-carrying-vehicles-pcv-car-driving-licence>



didn't have to take the Driver CPC initial qualification because of their previous driving experience<sup>19</sup>.

- 12.47 You have acquired rights if you got your vocational licence before the dates shown in the table below:

Type of vehicle	Vehicle categories included	When you got your vocational licence
Bus or coach	D, D1, D+E, D1+E	Before 10 September 2008
Minibus (not for hire or reward)	D1(101)	Before 1 January 1997

### **Legal Advice**

- 12.48 One of the complaints which the CBCTA members set out to CCC, based on the advice received from Mr Segan, was that CTO drivers needed to obtain a CPC and if they were driving passenger vehicles of a relevant class without a CPC they may well be committing criminal offences under regulation 10 of the UK CPC Regulations.

### **August 2016**

- 12.49 On 25 July 2016, it appears the Head of District and Parish Council Law, Litigation and Contracts and Procurement at LGSS Law Limited sent an email to Monkton Chambers requesting urgent opinion on whether community transport association drivers need to obtain a CPC. It quoted the advice received from Mr Segan as follows, *"The complainants (or rather the wider national body of which they are part) have obtained advice from counsel, James Segan, which they are using as evidence that the drivers are acting illegally (attached). The conclusion of this opinion on this point was "if CTO drivers are currently driving vehicles of a relevant class without a CPC they may well be committing criminal offences under regulation 10 of the UK CPC Regulations". However, I also understand that the Dept for Transport & DVSA have said they are not going to implement the regulations with regard to community transport organisations. The DfT have said this is due to CTOs being non-commercial and that "non-commercial" meant something other than "free of charge" and this is the exemption in reg 3 (2) (f) of the UK CPC regulations was available to*

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<sup>19</sup> Source: <https://www.gov.uk/driver-cpc-training/when-to-take-training>

*CTOs. Drivers of vehicles used for the non-commercial carriage of passengers for personal use (the highlighted words are where the complainants have issue with regard to FACT) or driver training vehicles are exempt from holding a CPC. The DfT has confirmed that “non-commercial” applies to Section 19 and 22 permit operations (Exhibit DH34(3)).*

*Section 19 and 22 permit operations. I also understand that a Staffordshire CTO was randomly inspected earlier this year by the DVSA, the council suspended all the CTO contracts and then the DVSA decided to take no action”. A copy of the email has been supplied to PKFL by Mr Humphrey as Exhibit DH 34(3). This confirms that CCC had received a copy of Mr Segan’s advice on or before 25 July 2016 and had decided to seek legal opinion as a result of the complaint made by members of the CBCTA.*

- 12.50 It appears that CCC’s advice was provided by a barrister Rebecca Haynes (“Ms Haynes”) on 3 August 2016. It is Ms Haynes’ view that both Directive 2003/59/EU and the CPC Regulations apply to CTO drivers. A copy of this advice is produced by Mr Humphrey as DH 34(4).
- 12.51 She gave information from Directive 2003/59/EU which introduces CPC’s across the EU. She states, “Subject to some exceptions, all drivers of lorries and buses must pass an initial CPC test...”
- 12.52 She wrote, “Article 2 of the Directive provides however for a list of exemptions and stated that the Directive does not apply to:
- “(f) Vehicles used for non-commercial carriage of passengers or goods, for personal use”.*
- 12.53 She indicated that it was her view that both Directive 2003/59/EU and the CPC Regulations applied to CTO drivers “because, even if the driving activities of a CTO can satisfy the requirement they are “non-commercial” they cannot satisfy the additional requirement that they be for personal use”
- 12.54 Mr Segan in his advice says this in relation to whether CTO drivers need CPC’s: “The exemption from the need to obtain a CPC which is contained in regulation 3(2)(f) of the UK CPC Regulations, which implements Article 2(f) of the EC CPC Directive (“non-commercial carriage of passengers or goods, for personal use”) does not appear to be open to CTO drivers at all, for two reasons. First, as explained above, CTO activities are frequently incapable of being described as “non-commercial”. Secondly and in any event, a driver for a CTO – especially if paid to do so – is clearly not carrying passengers “for personal use”. It

*follows that all CTO drivers must possess CPCs and will be committing a criminal offence if they fail to obtain one”.*

### **June 2018**

12.55 CCC obtained Counsel’s advice (James Goudie QC) in respect of Section 19 and 22 permits in June 2018 (Exhibit MKM 35(3)). Mr Goudie states there are two derogations from EU Regulation 1071/2009 (the need for an O licence for those engaged in road transport operations):

- *“These include (Derogation A) undertakings (as defined) engaged in road passenger transport services “exclusively for non-commercial purposes” or which have a main occupation other than that of road passenger transport operator.*
- *Also, Member States may (Derogation B) exempt from the application of all or some of the provisions of the Regulation those road transport operators engaged “exclusively” in national transport operations having “only a minor impact on the transport market because of the short distances involved.” “*

12.56 Mr Goudie considers *“Derogation B may be capable of applying”*. In addition, Mr Goudie disagrees with the Traffic Commissioners view of 1 June 2016 (as set out above), in that if Derogation B does not apply, then Derogation A can apply. The reasons for this are:

- *At paragraph 17 of his advice he states, “It is to my mind significant that the reference [in Derogation A] is to “purposes”, not to “activities”.”*
- *At paragraph 18 of his advice he states, “A Traffic Commissioner on 1 June 2016 regarded there as being a “commercial activity” whenever “there is money changing hands”. I regard that as not only being directed to the wrong concept but also as being an extreme view as to what is meant by “commercial”.”*
- *At paragraph 19 of his advice he states, “The Commissioner stated that there is a “big difference” between “not for profit and non-commercial”. “Some difference there may be”, but I do not consider it to be “big”.”*
- *At paragraph 20 of his advice he states, “On the contrary, I believe that “not for profit” and “non-commercial” significantly overlap; and that “not for profit” is a good prima facie indicator of non-commercial”*

- 12.57 Mr Goudie also considers that the Commissioner's approach and the DfT guidance of 31 July 2017 is "*not authoritative as to the law*".

### ***Conclusions***

#### ***Legal Advice***

- The information outlined above shows that CCC did obtain legal advice in relation to whether CTO drivers needed to pass an initial CPC test. It is clear from the email sent by LGSS Law, that CCC were already in possession of the advice of James Segan, but it appears that they did not obtain any separate independent advice in relation to whether a full operator's licence was required for all or some of their services at that time (July 2016).
- CCC obtained further legal advice from Counsel in June 2018 in respect of the granting of Section 19 and 22 permits, which indicates that such permits can be issued where reliance is placed on Derogation A or B from the EU Regulation 1071/2009.

***35. Investigate whether the Council has followed this advice and has documented procedures to ensure compliance.***

- 12.58 CCC's Community Transport Officer has advised PKFL that there are no written procedures for issuing permits under Section 19 of the Transport Act 1985 issued by CCC.
- 12.59 Applicants are required to complete a form PSV 372 issued by the Office of the Traffic Commissioner for the CCC to issue a Section 19 permit. A blank copy of the form (used up to 2016) is produced as Exhibit MKM 34(4) and after 14 September 2016 is at Exhibit MKM 34(5). The applicant completes the form and makes a payment of £11.50 per permit.
- 12.60 The new form PSV 372 was issued to applicants from 14 September 2016. The new form requires that the applicant must confirm that he or she is authorised by the body applying for the permit to make a declaration that the body will operate under the following conditions:
- *"The body will operate under this permit within the terms of Section 19 of the Transport Act 1985 and any regulations made under these sections, and that the vehicle will only be used in circumstances where: -*
    - a) the operator has a main occupation other than that of a road passenger transport operator; or*
    - b) it is engaged in road passenger transport for exclusively for non-commercial purposes;*
    - c) and that the laws relating to the driving and operation of vehicles used under this permit shall be observed.*
  - *The body will make proper arrangements to ensure that any vehicle, whether owned or hired in, used under the permit:*
    - a) Will comply with the appropriate construction requirements and conditions of fitness;*
    - b) will be kept in a fit and serviceable condition;*
    - c) regular maintenance inspections will be carried out;*

*d) mechanical faults identified will be rectified promptly and before the vehicle is used again; and*

*e) will be properly insured for the uses authorised by the permit.*

- *Drivers will:*

*a) report mechanical faults in vehicles as soon as possible;*

*b) be a person over 21 years of age who holds the appropriate entitlement to drive; and*

*c) be informed of their legal responsibilities as driver of a vehicle being used under a permit.”*

12.61 The CCC would not need any instructions in relation to Section 22 permits as they can only be issued by Traffic Commissioners.

12.62 CCC's Community Transport Officer has informed PKFL that the department regularly obtains advice from the Traffic Commissioners.

12.63 As noted above Section 19 Permits were issued with the incorrect conditions post 14 September 2016. We are not aware of any checks carried out by CCC to ensure that such permits were used “exclusively for non-commercial purposes.”

12.64 We set out below the action taken by CCC following receipt of the advice outlined in Scope Item 34.

12.65 Following the legal advice of LGSS Law in August 2016 CCC, LGSS Law advised Councillors Lay and Clapp that CTOs would require drivers to have CPCs (Exhibit MKM 35 (1)).

12.66 On 6 February 2017 CCC's Community Transport Officer wrote to all parties which had been granted Section 19 permits enclosing Counsel's opinion and informing them that drivers need CPC qualifications (Exhibit MKM 35(2)).

12.67 On receipt of the DfT advice on 31 July 2017 CCC informed FACT, HACT and ESACT in an email addressed to the FHE Manager dated 11 August 2017 from CCC's Service Director Strategy and Development, that it appeared to CCC that they could no longer operate under Section 19 and 22 licences. CCC's Service Director Strategy and Development called for a

meeting to discuss this matter. The meeting took place on the 25 August 2017 (Exhibit MKM 35(6)).

- 12.68 In respect of FACT, HACT and ESACT these organisations informed CCC on 8 September 2017 that they would apply for a PSV Licence on 10 November 2017, (see Exhibit MKM 35(3), however, on follow up by the Quality Manager Social and Education Transport Team at CCC it appears that this had been delayed (see Exhibit MKM 35(4)). This delay resulted from a DfT “Update for Local Authorities” which required a separate undertaking for commercial work (see Exhibit MKM 34(3)). It was also planned for drivers to obtain PCV licences by 16 February 2018 (Exhibit MKM 35(3)). On 28 December 2017 PKFL was informed by CCC that FACT, HACT and ESACT had submitted Operator’s Licence applications (Exhibit MKM 35(5)).
- 12.69 In respect of the DfT letters dated 31 July 2017 and 9 November 2017, CCC advise that the view the Council took was that the revised guidance only applied to CTOs that held tenders with CCC that had been won through a competitive process. CCC have not insisted that more “traditional” Dial-A-Ride schemes are covered, although the Councils view may change once DfT have completed their review of the legislation next year. CCC’s Head of Passenger Transport stated to PKFL that other organisations, such as the Community Transport Association and Mobility Matters, had a different interpretation even following receipt of the updated guidance as he believed that *“it was still confusing, and wasn’t overly clarified in November”*.
- 12.70 We are informed by FACT and HACT that they had at this time applied for PSV operator’s licences and that all drivers are applying for unrestricted D1 driver’s entitlements where required.
- 12.71 Following receipt of the legal advice from Mr Goudie in June 2018, CCC are considering how this will impact on the procedures for the issuing of Section 19 permits.

***36. Review the Council's procedures for issuing Section 19 permits and checking the CTOs' exemption status for hire and reward licencing. Note any changes in procedures over the past 5 years. Test check these procedures have been complied with as they relate to FACT and HACT.***

- 12.73 As set out in Scope Items 34 and 35, CCC followed DfT advice in relation to issuing Section 19 permits. This advice has changed significantly during 2017, as set out above.
- 12.74 There has been no independent action by CCC to verify the exemption status of FACT and HACT.
- 12.75 A change in the wording of the application form for Section 19 permits was introduced in August 2016 (see paragraph 12.40).
- 12.76 As set out in Scope Item 35, applicants complete a form 372 and, as long as the requirements are fulfilled, a section 19 licence is issued. There are no written procedures issued to Councils which have the responsibility for issuing Section 19 permits.
- 12.77 As set out at Section 34, CCC should take into consideration the DfT guidance of November 2017 (Exhibits MKM 34(3) and MKM 34(3)(A)) and any other legal advice it considers relevant when issuing Section 19 permits. The guidance states: *"Section 19 or 22 permits, as exemptions from PSV Operator Licensing, must only be issued in circumstances meeting both:*
- (a) the conditions set out in the relevant section of the Transport Act; and*
- (b) one of the derogation criteria set out in Article 1(4) of EU Regulation 1071/2009.*
- It is for the organisation applying for such a permit to make its case to the relevant issuing body as to why it meets those conditions and criteria based on the nature of its passenger transport activities and the basis on which it is carrying out those activities".*
- 12.78 In particular, CCC should satisfy itself that where a Section 19 permit is issued to a CTS then *"any charge made to passengers is substantially less than the cost of providing the service and no other payment is made by any other person in exchange for the service. This could*



*include CT services whose fares are heavily subsidised by voluntary donations.”* In addition, based on the guidance, CCC should ensure that the CTS does not undertake both *“commercial and non-commercial work”*. The guidance states that such commercial work should be operated by a separate undertaking using a PSV Operators licence.

***37. In respect of FACT and HACT investigate all drivers' current licensing status, report pass dates of any licences or training and record drivers' previous status.***

- 12.79 As at 10 October 2017 FACT had 38 employees registered as drivers, HACT 14 and ESACT 8.
- 12.80 To examine whether the drivers were licenced, PKFL test sampled 20 of the 60 drivers' records using a random sample list selected by PKFL spread across the three organisations. The random sample list is produced as Exhibit MKM 37(1).
- 12.81 The records of 13 drivers from FACT, 5 drivers from HACT and 2 from ESACT were checked using the random sample method.
- 12.82 The results of the checks are contained in three spreadsheets as follows:
- FACT drivers Exhibit MKM 37(2)
  - HACT drivers Exhibit MKM 37(3)
  - ESACT drivers Exhibit MKM37(4)
- 12.83 In order to protect the private information of individual drivers any information relating to their personal details has been removed, however, in order to carry out the check PKFL were given full access to the selected records in order to verify the information.
- 12.84 All but one of the drivers holds a current CPC. The FACT driver on Exhibit MKM 37(1) who has 'N/A' recorded against the CPC entry does not drive minibuses and therefore does not need the qualification. Dates of when each driver acquired the CPC and when the CPC expires is shown in the three spreadsheets MKM 37(2), MKM 37(3) and MKM 37(4).
- 12.85 In addition to the CPC, all the drivers' other than one had either a D1 (101) or D1 restricted entitlement on their driving licence. The FACT driver who does not have a D1 (101) or D1 entitlement does not drive minibuses and does not need it.
- 12.86 The following guidance was given by the Drivers Policy Group at the DVLA in relation to a question about D1 entitlements and the driving of minibuses (dated 16 October 2013).
- *"Whilst the Department cannot give legal advice, as ultimately, only the courts can give a definitive interpretation of the law, I hope the following information will be helpful.*

- *It is the maximum authorised mass (total weight of the vehicle plus the maximum load it can carry) and the number of passenger seats that are relevant when determining the driving entitlement needed for a particular vehicle.*
- *To drive a vehicle which has 9-16 passenger seats a D1 category is needed. Anyone wishing to drive a minibus for commercial purposes is required to pass a category D1 minibus test and must meet the higher health and driver conduct standards that apply.*
- *Drivers who passed a category B (car) test before 1 January 1997 were automatically granted D1 entitlement (not for hire or reward) with (weight limit does not apply) shown on the driving licence as D1 (101), D1E (101) (119) and C1, C1E (not more than 8.25 tonnes) with a restriction code (107).*
- *The second European Council Directive (No. 91/439/EEC) that introduced higher health standards for Group 2 drivers of (large goods (LGV) and passenger carrying (PCV) vehicles was implemented into the UK legislation on 1 January 1997. From that date drivers no longer acquire automatically the additional entitlements and must now pass the relevant test.*
- *With regards to driving legally the onus is on the driver and employer to ensure the correct driving entitlement is held on the driving licence”.*

- 12.87 A copy of the document which contains the full wording it is produced as Exhibit MKM 37(5).
- 12.88 The D1 (101) applies to those persons with acquired rights and the D1 status is given to those persons who have passed the relevant test.
- 12.89 In addition, all FACT, HACT and ESACT drivers undertake MiDAS training. MiDAS is an acronym for the ‘Minibus Driver Awareness Scheme’, organised by the Community Transport Association. MiDAS is a nationally recognised standard for the assessment and training of minibus drivers. The scheme is designed to enhance driving standards and promote the safe operation of minibuses.
- 12.90 Each driver checked has an up to date MiDAS qualification other than one who has a PCV qualification.

## *Conclusions*

- It is noted, that many of the FACT, HACT and ESACT drivers (See paragraph 12.81), at the time of checking, did not have a full category D or D1 unrestricted entitlement on their licence (which gives unrestricted minibus driving entitlement). On 31 July 2017, the DfT issued guidance to Section 19 and 22 permit holders (see Scope Item 34 above). The guidance states that If an operator's activities include the provision of passenger transport services carried out pursuant to contracts won via competitive tender in contestable markets ("commercial activity"), the operator is required to have a PSV Operator's Licence and therefore the drivers will need a full category D or D1 unrestricted entitlement on their licence.
- As a consequence of the need to hold a PSV Operator's Licence, operators of a Section 19 or 22 permit would not fall within Section 18(2) of the Transport Act 1985 and Regulation 4(2) of the Section 19 Permit Regulations 2009. These sections enable drivers with pre-January 1997 D1 (101 – "not for hire and reward") endorsements on their driving licences to drive minibuses operated under a Section 19 or 22 permits. Accordingly, where a PSV Operator's Licence is necessary then drivers should hold a PCV licence otherwise known as a category D or D1 unrestricted licence.
- It is understood that a meeting was held between FACT and CCC following this advice and FACT, HACT and ESACT have agreed that it will obtain the required PSV Operator's Licences where appropriate. In line with the guidance CCC gave them time to achieve this transition following consultation with DVSA. A project plan was put into place with FACT, HACT and ESACT to obtain their Operator's Licences by mid-February / early March 2018 and to ensure drivers, where an Operator's licence is required, are qualified with the appropriate D or D1 unrestricted minibus driving authorisation.
- On 29 March 2018, were informed by the management of FACT, HACT and ESACT that the Traffic Commissioners office that operator's licences had been awarded to FACT, HACT and ESACT's new trading companies (refer to paragraph 13.45). We are informed at that time that their drivers were continuing to obtain the appropriate driving licences required to drive PSV's on a rolling programme.

***38. Investigate whether there is reasonable concern that any aspect of FACT/HACT/ESACT's operations and/or its drivers are in the scope of hire and reward regulations and advise whether the Council should take professional legal advice.***

- 12.91 As noted in Scope Items 34 and 35, the DfT have issued significant changes to its advice in the 2017 year. We consider it would be appropriate for the CCC to obtain legal advice to ensure that its procedures are amended to assist in ensuring that organisations to which it issues transport grants and contracts are compliant with such grant and contract agreements and relevant legislation.

## 13 Permit 19/22 Systems and Service Level Agreements

### *39. Obtain copies of Section 19 permits (members only) and Section 22 (general public for social and welfare needs of the community) issued by the CCC to FACT and HACT; document conditions included on the permits on date of issue.*

- 13.1 Copies of all Section 19 permits issued to FACT and HACT have been obtained from CCC.
- 13.2 As Section 22 permits can only be issued by Traffic Commissioners, it was not possible to obtain them from CCC. However, copies have been obtained from FACT and HACT.
- 13.3 We would also comment that the details set out below should be read in conjunction with Scope Items 34 and 35 of the report.

### *Section 19 Permits*

- 13.4 According to guidance given by the DfT entitled “Section 19 and 22 permits: not for profit passenger transport” dated 1 February 2018 (Exhibit MKM 34(2)) organisations that provide transport ‘without a view to profit’ can apply for permits under Section 19 of the Transport Act 1985. These permits allow the holder to operate transport services without the need for a full public service vehicle (PSV) operator’s licence.
- 13.5 Section 19 permits are either ‘standard permits’ for vehicles which are adapted to carry no more than 16 passengers (excluding the driver) or ‘large bus permits’ for vehicles which are adapted to carry 17 or more passengers. These permits may be granted to organisations that operate vehicles without a view to profit to transport their members, or people whom the organisation exists to help. Section 19 permit vehicles cannot be used to carry members of the general public.
- 13.6 Copies of 49 standard permits issued to FACT by CCC between 29 April 2014 and 13 September 2016 have been obtained from CCC’s internal audit by PKFL. Details of the 49 permits have been scheduled on a spreadsheet (see Appendix Y). At 1 January 2017, FACT had only 46 vehicles.

- 13.7 Copies of 19 standard Section 19 permits issued to HACT by CCC between 15 March 2013 and 13 September 2016 have been obtained from CCC's internal audit by PKFL. Details of the permits have been scheduled on a spreadsheet (see Appendix Y1).
- 13.8 Copies of 10 standard permits issued to ESACT by CCC between 25 May 2015 and 5 May 2016 have been obtained from CCC's internal audit by PKFL. Details of the permit have been scheduled on a spreadsheet (see Appendix Y2).
- 13.9 Each Section 19 permit is issued by CCC "*granted under Section 19 of the Transport Act 1985 in accordance with the associated regulations*". The permit is subject to conditions specified within it. When issued, the permit must contain the name of the organisation to whom it has been issued. The permit authorises the use of one vehicle adapted to carry not more than 16 passengers for hire or reward in compliance with Section 19 of the Transport Act and associated regulations. The permit does not authorise the carrying of passengers for hire or reward with a view to profit, nor incidentally to an activity which is itself carried on with a view to profit.

### ***Conditions of Section 19 Permits***

#### **13 September 2016 and prior**

- 13.10 The permits issued to FACT, HACT and ESACT have been issued with the same operating conditions which state:
- "The conditions.....are:*
- 1. Any vehicle being used under this permit must display the disc with the identical serial number to this permit.*
  - 2. Only passengers of the following classes shall be carried:*
    - (A) Members of the body holding the permit;*
    - (B) Persons whom the body exists to benefit, and persons assisting them;*
    - (C) Disabled persons or persons who are seriously ill and persons assisting them;*
    - (D) Students of any school, college, university or other educational establishment and staff or other helpers accompanying them; and*

- (E) *Persons living within a geographically defined local community, or group of such communities, whose public transport needs are not met other than by virtue of services provided by the body providing holding this permit."*

The permit holder's attention is drawn to a number of "legal provisions" which are shown on the permit "overleaf" which as follows:

- "(1) Any small bus used under the permit must comply with the conditions of fitness prescribed in regulations for such a vehicle used under a standard permit;*
- (2) Any vehicle used under the permit must be kept in a roadworthy condition;*
- (3) Any person driving the vehicle when used under a permit must meet the relevant driver licensing requirements;*
- (4) The permit does not authorise the carrying of passengers for hire or reward with a view to profit, nor incidentally to an activity which is itself carried on with a view to profit, or in circumstances other than those permitted by Section 19 of the Transport Act 1985; and*
- (5) Any vehicle being used under the permit must be fully insured for the purposes authorised by the permit.*

***Conditions attached under Section 19(7) and Section 20(4) of the Transport Act 1985 "***

13.11 In addition, the application form (PSV 372) requires:

*"Drivers will*

- Report mechanical faults in vehicles as soon as possible*
- Be a person over 21 years of age who holds the appropriate entitlement to drive*
- Be informed of their legal responsibilities as driver of a vehicle being used under a permit"*

13.12 As noted at Scope Item 34, the application forms for Section 19 permits changed on 14 September 2016 i.e. the wording changed from "not for profit" to "non-commercial" organisation, and by inference the "legal provisions" included in the permits also should have changed to the following:



***Amendment to Part 1 Post 14 September 2016***

- *“The body will operate under this permit within the terms of Section 19 of the Transport Act 1985 and any regulations made under these sections, and that the vehicle will only be used in circumstances where: -*
- *the operator has a main occupation other than that of a road passenger transport operator; or*
- *it is engaged in road passenger transport for exclusively for non-commercial purposes;*
- *and that the laws relating to the driving and operation of vehicles used under this permit shall be observed.”*

13.13 As noted above, the Section 19 permits post 14 September 2016 did not reflect these revised conditions (Exhibit MKM 34(6)).

***Section 22 Permits***

13.14 Section 22 of the Transport Act 1985 deals with Community bus permits. The full Section is as follows:

Section 22 (1) In this section and section 23 of this Act—

“community bus service” means a local service provided—

2. *“by a body concerned for the social and welfare needs of one or more communities;*
3. *without a view to profit, either on the part of that body or of anyone else;*  
*and*
4. *by means of a vehicle adapted to carry more than eight but not more than sixteen passengers; and “community bus permit” means a permit granted under this section in relation to the use of a public service vehicle—*

*(a) in providing a community bus service; or*

*(b) in providing a community bus service and (other than in the course of a local service) carrying passengers for hire or reward where the carriage of those passengers will directly assist the provision of the community bus service by providing financial support for it.”*

Section 22 (2) A community bus permit may be granted by the traffic commissioner for the area in which the operating centre for any vehicle used under the permit will be.

Section 22 (3) A traffic commissioner shall not grant a community bus permit unless he is satisfied that there will be adequate facilities or arrangements for maintaining in a fit and serviceable condition any vehicle used under the permit.

Section 22 (4) A body may hold more than one community bus permit but may not use more than one vehicle at any one time under the same permit.

- 13.15 Copies of various documentation in relation to the 6 live Section 22 permits issued to FACT and HACT by the Traffic Commissioners have been obtained from FACT and HACT. Details of these documents have been scheduled on a spreadsheet (see Appendix Y3). FACT and HACT have 6 Bus Service routes.
- 13.16 Guidance given to organisations from the DfT in relation to Section 22 permits (Exhibit MKM 34(2), entitled ‘Further Information, paragraph 7.3), states *“these permits are to enable you to provide a community bus service which must be registered as a local bus service with the traffic commissioner. In addition to providing a bus service you may be allowed to use the vehicle to provide other services for hire or reward where this directly assists the provision of the community bus service by providing financial support for it. This may be useful to generate extra income to subsidise loss-making community bus services. You should advise the traffic commissioner at the time of making your application if you wish to use the vehicle for these purposes, and the request will be considered. The only services that you can provide under this provision are those which don’t require to be registered with the traffic commissioner as a local bus service”*.
- 13.17 Services which do not need to be registered (see Exhibit MKM 12(14) page 7) include:
- *“In England and Wales, school services provided on behalf of the local education authority (LEA) where the LEA is fulfilling its obligation to provide such transport, as long as the only fare-paying passengers carried are:*

- *People receiving education or training at the school or college;*
- *People supervising or escorting them;*
- *People involved with the provision of education or training at these premises.*

*If the service is available to the general public then it must be registered.*

- *Substitution services for railway services which have been temporarily interrupted, provided under an agreement entered into with the Secretary of State, the Scottish Ministers or the National Assembly for Wales.*
- *Free services where there is no payment of separate fares e.g. supermarket services*
- *Services operated under a Section 19 permit;*
- *Excursions or tours which do not operate at least once a week for six weeks in a row;*
- *Private hire journeys.”*

13.18 In addition, the guidance states “*once your permit has been granted you can apply to the traffic commissioner to register a local bus service. Before you start the service you’ll need to supply the traffic commissioner with the details, including route and timetable, normally at least 28 days before you wish to start the service.*”

13.19 A local bus service is described as a PSV (see paragraph 13.21 below for the definition of a PSV) used to carry passengers at separate fares. The route can be of any overall length as long as a passenger can alight within 15 miles (measured in a straight line) of the point where they boarded. Section 2 of the Transport Act 1985 defines local bus services and Section 6 sets out the requirements for the registration of those services.

13.20 Separate fares is defined as an individual payment by each passenger to the driver or other representative of the permit holder for the journey undertaken. Payment may be made on the vehicle or in advance. It may also be by indirect means, perhaps in respect of other services (e.g. tickets to an event where travel is included), or as part of a regular subscription to an organisation. Separate fares are not paid where the vehicle is hired as a whole for a set charge (which isn’t influenced by the number of passengers carried) and passengers, to the knowledge of the driver or permit holder, make no individual contribution.

- 13.21 Section 1 of the Public Passenger Vehicles Act 1981 gives the definition of a PSV as follows:
- *A “public service vehicle” means a motor vehicle (other than a tramcar) which—*  
*(a) being a vehicle adapted to carry more than eight passengers, is used for carrying passengers for hire or reward; or*  
*(b) being a vehicle not so adapted, is used for carrying passengers for hire or reward (see section 12.13 for the definition of for hire or reward) at separate fares in the course of a business of carrying passengers.”*
- 13.22 FACT and HACT operate contracted Service Routes.
- 13.23 A vehicle operating under a Section 22 permit is still a PSV the only difference is that it is exempt from requiring a PSV operator’s licence.
- 13.24 Every application to register, vary or cancel a local bus service is published in the Traffic Commissioners’ fortnightly publication, “Notices and Proceedings”.
- 13.25 When an application to register a local bus service is accepted, details are published on-line at [www.gov.uk/bus-registrationsearch](http://www.gov.uk/bus-registrationsearch) with the exception of services operated under a Section 22 permit. Cambridgeshire local bus services are recorded in the Eastern Traffic Area publication.

### **Section 22 Permit Conditions**

- 13.26 A Section 22 permit is granted to a particular organisation named on the permit under the following conditions. *“It allows that organisation the use of one vehicle either:*
- a. adapted to carry more than eight passengers; or*
  - b. adapted to carry more than eight passengers, but subject to a condition attached under section 23(3) of the Transport Act 1985 prohibiting the use of any vehicle adapted to carry more than 16 passengers.*
- *To provide one or more community bus services (Which must be registered with the Traffic Commissioner or authorised by Transport for London if operating in London).*
  - *To provide passenger services, other than local services, which will give financial support to the community bus service.”*

13.27 The permit is also subject to the following additional conditions:

- *Any vehicle used under the permit must display the disc with the identical serial number to the issued permit. The disc shows the name of the organisation to which it was issued, the serial number and the start and expiry dates.*
- *Any vehicle being used under the permit must comply with the conditions of fitness prescribed under section 23 of the Transport Act 1985.*
- *(where applicable) any traffic regulation conditions attached to the permit*
- *(where applicable) the use of a large bus is restricted to vehicles as stipulated on the permit.”*

13.28 The conditions outlined above are shown on each of the Community Bus Permits issued to FACT and HACT.

13.29 Section 23 of the Transport Act 1985 gives details of further provisions attached to community bus permits as follows:

- “(1) *The requirements mentioned in subsection (2) below shall be conditions of every community bus permit and shall apply in relation to any use of a vehicle under such a permit.*
- (2) *Those requirements are that—*
- (a) *the driver receives no payment for driving except—*
- (i) *reimbursement of any reasonable expenses incurred by him in making himself available to drive; and*
- (ii) *an amount representing any earnings lost as a result of making himself available to drive in exceptional circumstances;*
- (b) *the driver either holds a passenger-carrying vehicle driver’s licence or PCV Community licence (within the meaning of Part IV of the Road Traffic Act 1988) or a public service vehicle driver’s licence or PCV Community licence or fulfils any conditions prescribed in relation to a person driving a vehicle which is being used under a community bus permit; and*
- (c) *any vehicle used under the permit fulfils any prescribed conditions of fitness for such use.*

(3) *A traffic commissioner may at any time attach to a community bus permit granted by him such conditions (or additional conditions) of a prescribed description as he thinks fit for restricting or regulating the use of any vehicle under the permit."*

13.30 However, Section 59 of the Local Transport Act 2008 relaxes the rules in relation to community bus services as follows:

*"Section 59 (4) in relation to subsection (2) (requirements) paragraph (a) (no payment for driver except expenses and loss of earnings) should be omitted."*

### ***Vehicle testing***

13.31 All vehicles under a Section 22 permit are required to be tested annually from the date of registration. Vehicles adapted to carry 9 to 12 seated passengers are Class IV vehicles and may be tested at those MOT testing stations which are authorised to test such vehicles. Vehicles adapted to carry 13 to 16 seated passengers are Class V vehicles and must be tested at approved HGV/ LGV testing stations or specially designated MOT testing stations authorised to test such vehicles. Large buses adapted to carry 17 or more passengers must comply with the Class VI test and must be tested at approved HGV / LGV testing stations or authorised sites (where they're tested by DVSA Vehicle Examiners) (See MKM 34(2) Point 7.7 entitled 'Vehicles used under a permit' under the heading 'Vehicle testing').

***40. Obtain evidence from FACT, HACT and other sources as to the usage of the vehicles licenced under Permit 19 and Permit 22. Carry out analysis to establish if such permits have been solely utilised for permitted use.***

- 13.32 Section 19 and 22 permits are not specific to any one vehicle, so the holder of a permit can transfer it between different vehicles. An organisation may also hold both Section 19 and Section 22 permits, but a vehicle must only be used under one type of permit at a time. The correct disc must be displayed in the vehicle to show how it is being used at the time of the journey. As a consequence, analysis is not possible to ascertain permitted usage in relation to each vehicle.
- 13.33 As previously noted guidance from the DfT has changed significantly cumulating in its recent advice dated 9 November 2017 (Exhibit MKM 34(3)).
- 13.34 Prior to this advice, CCC had obtained legal advice in August 2016 that drivers for CTOs would need to have a CPC qualification to utilise Section 19 and 22 permits. This was communicated to CTOs by CCC's Community Transport Officer in February 2017 (See Scope Item 35). In the meantime, the FHE Training Manager obtained advice from the CTA.
- 13.35 The FHE Training Manager indicated that HACT, FACT and ESACT kept up to date with current advice and from time to time specifically sought advice from different organisations. On 30 August 2016, the FHE Training Manager sent an email to the CTA requesting advice in relation to Driver PCV, D1 and CPC Licensing. In a reply, on behalf of the CTA's Advice Team, he was told the following,
- "There are conflicting interpretations of exemption 2(f) of the CPC regulations and Directive 203/59/EC being given at the moment which stems from ongoing infraction proceedings brought against the UK Government.*
- Unfortunately, we don't feel it's appropriate to be seen to be pre-judging or trying to influence what is a complex legal matter. We believe this process should be allowed to run its course and everyone should continue to work as they have been until any process of review is complete. And unfortunately, we are unable to signpost to a definitive policy position nor advise on its application."*
- 13.36 The FHE Training Manager has produced a copy of the email as SS 40(1).

- 13.37 Despite being advised that they should continue to operate without change until the review was complete, in order to preserve their relationship with CCC, the HACT, FACT and ESACT boards decided to train all of their drivers to gain the CPC qualification (September / October 2016). A test sample obtained by PKFL of the driver records of the three organisations in question confirms that the drivers who are employed to drive vehicles which were subject of the dispute, are all now qualified to the CPC standard.
- 13.38 On 13 October 2016 the FHE Manager sent an email to CCC's Executive Director for Economy, Transport and Environment at CCC explaining that the CTA had been contacted for advice and that FACT had been told and until the law changes those drivers with the category D1 – 101 on their licence could drive legally under whilst operating under Section 19/22 permits. In a reply received from the email address of CCC's Executive Director for Economy, Transport and Environment, the FHE Manager received the following message, *"We have done some further work on this too and we are of the view that whilst there are some challenges at the moment through the courts, the law and guidance is clear and that allows you to operate as you do. The issue is with the interpretation between EU directive and UK law and that is not for us to resolve. So we have gone back to the complainant saying that we will continue to watch the legal position but for now, we are satisfied that you are operating correctly."* (See Exhibit SS 40(2)).
- 13.39 On 22 December 2016 the FHE Manager received a letter from the Remote Enforcement Officer of the DVSA. A copy of the letter has been provided by the FHE Manager as JP 40(1).
- 13.40 The letter indicated that the DVSA had received an allegation that FACT, HACT and ESACT (collectively referred to as "the Associations") were *"operating public service vehicles, within the meaning given by section 1 of the Public Passenger Vehicles Act 1981 (the 1981 Act), in reliance on section 18 of the Transport Act 1985 (the 1985 Act) but in circumstances in which a PSV operator's licence is required pursuant to section 12 of the 1981 Act and Regulation 1071/2009 because the Associations are not undertakings "engaged in road passenger transport services exclusively for non-commercial purposes" for the purposes of Article 1(4)(b) of that Regulation."*
- 13.41 The letter also stated that the complainant had alleged that:
- "1. Vehicles are being driven by drivers in circumstances in which those drivers should (but do not) hold certificates of professional competence issued pursuant to the Vehicle Drivers (Certificates of Professional Competence) Regulations 2007' (the 1999



*Regulations) because the vehicles in question are not "being used for the non' commercial carriage of passengers or goods for personal use" for the purpose of Regulation 3(2X).*

2. *Vehicles of a class included in sub-category D1, as specified by-Regulation 5 of and Schedule 2 to the Motor Vehicles (Driving Licences) Regulations 1999 (the 1993 Regulations), are being driven by drivers in reliance upon licences which authorise them to drive vehicles of a class included in category B, in reliance on the "special case" prescribed by Regulation 7(6) notwithstanding that:*

*(a) those drivers may receive "consideration...other than out of pocket expenses";*

*(b) the Associations may not be a "non-commercial body for the purpose of that Regulation; and*

*(c) the vehicles in question are:*

*(i) not being driven for social purposes;*

*(ii) being driven "for hire or reward"."*

13.42 The letter went on to request a significant volume of detailed information.

13.43 The FHE Manager has advised in response to this letter that after requesting a response on numerous occasions she eventually received a letter dated 27 November 2017 informing FACT, HACT and ESACT that the matter had been reported *"to the Office of the Traffic Commissioner for their final consideration"* (see Exhibit JP 40(2)).

13.44 As previously noted FACT, HACT and ESACT took steps to comply with the latest DfT guidance (Exhibit MKM 35(3)) and all three organisations have now received PSV Operators Licences for new trading companies (Fenland ACT Trading Limited, Huntingdonshire ACT Trading Limited and Ely and Soham ACT Trading Limited).

## **HACT**

13.45 In a FOI reply from the Traffic Commissioners office dated 30 April 2014 (Exhibit MKM 12(1)), the Traffic Commissioners stated that HACT had applied for three Section 22 permits as follows:

Application date	Number of permits requested	Permit Numbers
11 March 2013 (Submitted 06.03.13)	1	CB000575
03 April 2013 (Submitted 25.03.13)	1	CB000589
20 September 2013	1	CB000691

13.46 The HACT contract for routes 46A and 150 commenced 1 April 2013 (FOI 5709 page 5). Examination of HACT's Section 22 records produced by the FHE Manager shows the following:

- An application to register bus service 46A was produced by the FHE Manager as Exhibit JP 39(7). The application to register the route would have to be completed once the permit had been granted by the DfT. The application was made on Department of Transport form PSV350. The proposed start date for the service is shown as "asap 22/04/2013". The document contains a declaration which reads, "I declare that, as far as I know, the information I have given is true and correct". The document contains a signature and a box for a date. The date within the box is "5/04/2013";
- An application to register bus service 150 is at Exhibit JP 39(10). This includes the same dates as the 46A application; and
- The FHE Manager produced six Section 22 permits relating to HACT. Three of these permits were valid in 2013 as follows:

Permit No	Valid From	Expiry	Exhibit	Type
CB000575	25.03.13	24.03.18	JP 39(20)	Permit
CB000589	10.05.13	09.05.18	JP 39(6)	Permit
CB000691	23.10.13	22.10.18	JP 39(9)	Permit

13.47 From the above it appears that HACT was operating at least one service without a Section 22 permit in the period 1 April 2013 to 10 May 2013. If the operator does not have a valid Section 22 permit then they would need to operate the service using a PSV operator's licence which HACT did not possess at this time.

- 13.48 Spend data provided by CCC internal audit as Exhibit 13-A-1, shows that two invoices were submitted on 30 April 2013 for routes 46A and 150 (please see the following table).

PO Number	Transport Type	Contract	Supplier Name	Invoice Date	Invoice Amount
465178	Bus routes	46A Contract	HACT	30-Apr-13	£3,984.70
470138	Bus routes	150 Contract	HACT	30-Apr-13	£3,591.68

- 13.49 It has not been possible to obtain copies of the individual invoices, however, the above table confirms both services to have been in operation in April 2013.

### *Conclusions*

- As noted above Section 19 and 22 permits are not specific to any one vehicle, so it is not possible to analyse permitted usage in relation to each vehicle.
- It appears HACT operated a bus service for a short period in 2013 without a valid PSV operator's licence or Section 22 permit. HACT comment that the Section 22 permit was applied for prior to April, however, the Traffic Commissioner took 36 days to process it (previously it took 13 days).

***41. Investigate the conditions by which FACT operate private commercial contracts, specifically Wisbech Grammar School, whether it is commercial and consequently should be operated under an O-Licence. Investigate how the five vehicles used have been funded (Note the service is advertised to parents to transport their children to and from school; CBCTA has been advised by more than one source that the parents pay FACT directly and do not become a member).***

- 13.50 Wisbech Grammar school on its website page [www.wisbechgrammar.com/Transport](http://www.wisbechgrammar.com/Transport) gives details regarding the bus services the school offers to its pupils. Included as one of its transport providers is FACT. The website states: *"FACT (Fenland Association for Community Transport) have provided home to school minibuses from Downham Market, March, Chatteris, Guyhirn since 2014. FACT offer a door to door or local designated pick up point service"*.
- 13.51 The FHE Manager has confirmed that FACT does provide transport for students attending Wisbech Grammar School. The contract started in September 2015 when the previous incumbents, Judd's Travel and Emblings Coaches had their operator's licences revoked by the regulating Traffic Commissioner.
- 13.52 Wisbech Grammar School approached FACT to take over the route initially providing one bus. Over time, the service was increased with FACT now providing 5 buses to the school in a morning and 4 buses away from the school in the evening. The difference is due to after school clubs whereby parents arrange to collect their children after the club has finished so the child does not need transport home.
- 13.53 The FHE Manager believes that FACT was fully entitled to undertake this work and were authorised to do so using vehicles operating under Section 19 licences. She believes that the section contained within the Government's document 'Section 19 and 22 Permits: not for profit passenger transport' (See Exhibit MKM 34(2)) at paragraph 5.1 (Page 9)) gives this authority. The relevant section is quoted below:

*“There’s no such restriction on the holders of a Section 19 permit from tendering for contracts to provide services which are not classified as local services. This may include, for example, school transport on which members of the general public aren’t carried, or specialised door-to-door services such as Dial-A-Ride”.*

- 13.54 The contract journeys are paid for by the parents and the school.
- 13.55 However, since August 2016 the wording of the conditions of Section 19 permits has changed from *“hire or reward with a view to profit”* to *“exclusively for non-commercial purposes”* (see Scope Item 39), and was reiterated in the guidance issued by the DfT on 31 July 2017, which stated that it would be for the operator to establish to the satisfaction of the issuing body of the Section 19 permit why it meets the relevant criteria. In particular, where contracts are awarded in contestable markets, the operator requires a PSV Operator’s licence.

### **Conclusions**

- As previously noted on 31 July 2017 the DfT clarified the position that such activity now requires a PSV Operator’s licence and for drivers to have the relevant unrestricted D1 licence. On Thursday 29 March 2018 FACT, HACT and ESACT were informed by the Traffic Commissioners that operators licences had been granted to their new trading companies.
- The funding of vehicles by FACT is dealt with at Scope Item 21.

***42. Investigate FACT accepting a £54,000 grant from Tesco Plc to operate a bus service to a new store in Chatteris and other evidence of FACT operating for “profit making” organisations.***

- 13.56 Under S106 of the Town and Country Planning Act 1990, as amended, contributions can be sought from developers towards the costs of providing community and social infrastructure, the need for which has arisen as a result of a new development taking place. This funding is commonly known as 'Section 106'.
- 13.57 In 2014, CBCTA believed that FACT had received a grant from Section 106 monies for £54,000. The CBCTA believed that this money had originated from Tesco Plc (“Tesco”) in order to operate a bus service to a proposed new store in Chatteris and also believed that this amounted to ‘an activity which is itself was carried on for profit’.
- 13.58 The CBCTA cite paragraph 3.2 of the Traffic Commissioners guidance (Exhibit MKM 34(2)) when forming their view (see paragraph 12.22). Paragraph 3.2 gives examples whereby an activity may or may not itself be carried on for profit. The example is as follows: *“A charity won’t be operating for profit if it runs a minibus from sheltered accommodation to the local supermarket. But, if the supermarket offered to pay for the service, this service would be operated incidental to an activity which in itself is carried on with a view to profit, i.e. the supermarket. This wouldn’t be allowed under a permit”*.
- 13.59 In the event, it is understood by PKFL that Tesco announced in January 2015 that the £22million Chatteris store was one of 49 to be axed under a cost-cutting programme<sup>20</sup>, however FACT were able to retain the grant.
- 13.60 As the store was not opened, the service was not operated and therefore there has not been a breach of the Section 19 licensing.
- 13.61 The FHE Manager has confirmed that FACT received a grant payment of £50,000 from Dentan Williams Limited on 18 April 2014 and a further £4,565.44 on 23 September 2014 making a total payment of £54,565.44. The FHE Manager has provided a letter JP42(1) which confirms that £50,000 was received on 18 September 2014. Hand written

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<sup>20</sup> Source: <http://www.wisbechstandard.co.uk/news/business-news/tesco-still-in-talks-to-sub-let-mothballed-chatteris-store-1-4506501>

annotations on the letter show the additional £4,565.44 was received on 23 September 2014. FACT have confirmed they are in consultation with Chatteris Council to utilise these funds, and that the developer has confirmed the funds can be retained by FACT.

### *Conclusion*

- This grant is currently shown as a deferred grant in FACT's annual financial statements, and is held on deposit account.
- Had the "Tesco" bus service been operated, FACT would not have been able to do so using a Section 19 permit based on the DfT guidance issued in July 2017.

***43. Check to ensure that FACT and HACT verify the eligibility of their members. Review the conditions for grants to ensure that FACT and HACT need to verify the eligibility of membership, and confirm how this is authenticated by the Council.***

- 13.62 FACT, HACT and ESACT have a joint policy document entitled Dial-A-Ride / Ring-and-Ride processes and procedures. The purpose of the document is to list the processes and in particular the documents each organisation will use in relation to the service they provide.
- 13.63 In order to become a member of one of the three organisations, the prospective member must fit a certain criterion to register.
- 13.64 The policy document states that the service is not available to the general public, to become a member there is a small annual subscription and prospective members must meet at least one of the following criteria:
- Public transport is very limited in the area which they are living;
  - Public Transport does not meet their needs (for example, hospital appointment, dentist);
  - There is no public transport available;
  - They have no access to a car during the day;
  - They have difficulty in using public transport due to a disability or fragility.
- 13.65 There are four ways in which a member of the public can join one of the three organisations:
- Via the website;
  - When the manager visits a residential housing scheme, local club, society etc.;
  - Via telephone speaking to one of the members of staff who records the details of the caller and arranges a payment method either over the phone or by post; or
  - Via post by completing a membership form and posting it to the office with the appropriate membership fee in the form of a cheque.



- 13.66 When the membership form is received by FACT, HACT or ESACT the following steps are taken:
- The form is stamped with the date it has been received;
  - The application is assessed to ensure that the applicant meets the membership criteria;
  - The income is recorded on an income sheet;
  - The membership form is allocated a membership number, the date of joining is recorded as well as the area in which the new member lives;
  - A welcome pack is sent to the member with their unique membership number, this number has to be quoted when the member makes a booking;
  - If a new member is a wheelchair user, with a specialist wheelchair, a home visit may be arranged to ensure that the wheelchair and equipment is suitable/compatible with the transport available.
- 13.67 The Annual grant agreement issued by CCC requires the recipients to ensure the eligibility of members.

### *Conclusions*

- FACT and HACT do not as a matter of routine require independent documentary evidence to support applications other than a review of age and location of the applicant, and subsequent verification of bus pass holder by drivers on travel. However, anomalies on applications are challenged, and, membership could be refused.
- In relation to the individual passenger, as the service is a door to door facility the driver is able to confirm the address of the new member when they collect them.
- Many of the members are elderly and the largest proportion are CCC bus pass holders. Periodic checks are made of the bus passes by the drivers to ensure that the bus pass concession is still in date, however, bus passes are not checked on every occasion.

- The FHE Manager has stated that a request was made to CCC to obtain details of HACT, FACT and ESACT members who had been issued with a CCC bus pass to make their checking procedure simpler, but CCC had declined to provide these details due to the constraints of the Data Protection Act (“DPA”).

***44. Obtain copies of commercial contracts awarded to HACT, FACT and ESACT by Councils. Establish if the conditions of the contract have been adhered to. Document licensing regulations which FACT, HACT and ESACT utilises to complete these contracts.***

- 13.68 The contract award systems for the CCC are out lined at Appendix Z.
- 13.69 We have reviewed contract conditions as set out at Appendix Z1.
- 13.70 Testing was carried out in relation to the terms of two contracts, Contract MG10, a Special Educational Needs contract between Wisbech and Meadowgate School, and Contract CRO7 a Mainstream Education Transport contract between Sixteen Foot Bank and Charteris.
- 13.71 FACT could demonstrate compliance with each of the terms as shown on Appendix Z1 with the exception of a written Continuity Business Plan and that they had not supplied the name of a Personal Assistant and relief to the CCC.
- 13.72 FACT, HACT and ESACT's continuity business plan focused on how they planned to develop their services over the following three years rather than what they would do if a complete disaster recovery situation was imposed upon them, such as a fire at their premises. Although no written plan was in place, steps had been taken to ensure that the business would be able to function, subject to their vehicles not being destroyed. Vehicle keys are locked in a fireproof cabinet and the routine backup of data takes place weekly and is stored in three different offsite locations. The management would be able to deploy staff from home based premises until alternative accommodation could be found. If the workshops were destroyed, repairs on vehicles would be deferred to local garages. Following the review FACT, HACT and ESACT intend to add the Disaster Recovery aspect to their Business Continuity Plan.
- 13.73 In respect of supplying the name of the Passenger Assistant ("PA") and relief to CCC, FACT stated that they used to do this this whenever the Council requested the information but had not received any request for a number of years. PKFL was informed that it is necessary from time to time to substitute both PA and Driver due to unplanned absences, e.g. sickness etc. but it is the norm for both the nominated personnel to be present as much as possible

for consistency purposes. If there is a need to substitute a member of the team, substituting both the driver and the PA would be exceptional. They informed PKFL that all their Drivers and PA's are aware of the profound effect change can have on the passengers.

- 13.74 HACT, FACT and ESACT have relevant policies in place in relation to the Health and Safety at Work Act 1974, Equality Act 2010, Human Rights Act 1998 Data Protection Act 1998 and Bribery Act 2010. The policies were produced to PKFL for inspection and are available on display at their business premises in March.
- 13.75 All drivers have a MIDAS certificate and periodically undertake further training as required. All drivers are required to read and sign a copy of the code of conduct, PKFL had access to the records and were able to check that this aspect of the contract was been adhered to.
- 13.76 Drivers and PA's are checked annually by the Disclosure and Barring Service ("DBS") to ensure suitability for the post.
- 13.77 CCC monitors compliance in relation to school contracts by conducting spot checks.
- 13.78 FACT, HACT and ESACT adhere to CCC's Code of Conduct for Drivers and Passenger Assistants of Education and Social Care Transport. A copy of this guidance was made available and is produced as Exhibit MKM 44(1).
- 13.79 Our review of contracts indicate that a PSV Operator's licence is required in respect of HACT contract 46A which it has with CCC. In respect of other contracts we have reviewed, this requirement is not specified other than "necessary consents" are required by the service provider.
- 13.80 FACT, HACT and ESACT utilise Section 19 and 22 permits to operate contracts.

### **Conclusions**

- As noted above, the contracts require a Continuity Business Plan which has not been documented, and, names of PAs are not provided to CCC as required under the contracts.
- We note above that HACT's contract with CCC in respect of route 46A required a PSV Operator's licence which it did not have; this contract was operated under a Section 22 permit. HACT have applied, and been granted, Section 22 permits

historically, as they considered they were entitled to do so in view of their charitable status and charitable objectives.

***45. Obtain from FACT and HACT details of designated routes. Obtain from FACT and HACT details of journeys made by vehicles over the last complete financial year and compare to designated routes - report on any anomalies. Obtain records of bus concession journeys and establish how such journeys are verified by reference to eligibility. Compare the records to claims from the CCC.***

- 13.81 FACT's Dial-A-Ride service operates on four set routes: North, North West, Central and West.

### ***FACT - NORTH SERVICE***

- 13.82 The North Route is a door to door service catering for people living in the villages of Elm, Emneth, Friday Bridge, Walpole Highway, Walsoken and Wisbech. It operates three times daily between Friday Bridge and Wisbech each Monday and Friday. The journey starts at Friday Bridge at 09:30, 11:30 and 14:00. It returns from Wisbech at 12:30, 15:00 and 16:30. The service does not operate on Bank Holidays. The cost of a return journey is £5.00 unless the member has a valid bus pass in which case the journey is free.
- 13.83 A separate single service on the North route catering for the villages of Tydds also operates to Wisbech each Monday to Friday commencing at 11:00 and returning at 13:30 hours. The cost of a return journey is £5.00 or free to holders of a valid bus pass.
- 13.84 Full details of the service have been obtained in a leaflet published by FACT (See Exhibit IA 4).
- 13.85 In addition, FACT offer their North Service Members Dial-A-Ride Specials, additional days out throughout the year and luncheon outings. Full details of these outings and associated costs are available in the printed leaflet (See Exhibit IA 4).

### ***FACT - NORTH-WEST SERVICE***

- 13.86 The North-West service provides a door to door service for the villages of Gorefield, Guyhirn, Leverington, Murrow, Newton, Parson Drove and Wisbech St Mary. The service

operates an outbound service three times a day Monday to Friday excluding Bank Holidays. The service commences at Guyhirn at 09:30, 11:00 and 13:00, there are two return journeys from Wisbech at 13:00 and 1600. The cost of a return journey is £5.00 however, the service is free to members with a valid bus pass.

13.87 Full details of the service have been obtained in a leaflet published by FACT (See Exhibit IA 3).

13.88 In addition, FACT offer their North-West Service members Dial-A-Ride Specials, additional days out throughout the year and luncheon outings. Full details of these outings and associated costs are available in the printed leaflet (See Exhibit IA 3).

### ***FACT - CENTRAL SERVICE***

13.89 The Central service operates provides a door to door service for the villages of Chatteris, Christchurch, Doddington, Manea, March, Welney and Wimblington. The service operates three times a day Monday to Friday. The service commences at Welney at 10:30, 12:00 and 14:00 and returns from March at 10:25, 11:55 and 13:55. The cost of a return journey is £5.00 and is free to bus pass holders. The service does not operate on Bank Holidays.

13.90 Full details of the service have been obtained in a leaflet published by FACT (See Exhibit IA 2).

13.91 In addition, FACT offer their Central Service Members Dial-A-Ride Specials, additional days out throughout the year and luncheon outings. Full details of these outings and associated costs are available in the printed leaflet (See Exhibit IA 2).

### ***FACT - WEST SERVICE***

13.92 The West Service operates for the benefit of people living in the villages of Benwick, Coates, Eastrea, Turves and Whittlesey, and are free to bus pass holders.

13.93 The West route provides a number of alternative services on different days of the week. A service commencing at Benwick to Peterborough departs at 09:30 on a Monday, Wednesday and Friday returning from Peterborough at 14:00. The cost of a return journey is £5.00. The service does not operate on Bank Holidays.

13.94 Each Tuesday the West service travels from Benwick to Wisbech and Kings Lynn collecting members from Coates, Eastrea, Turves and Whittlesey en-route. The cost of a return

journey to Wisbech is £5.00, the cost of a return journey to Kings Lynn is £15.00. The service commences at Benwick at 09:30 and returns at 14:00 from Kings Lynn and 14:25 from Wisbech. The service does not operate on Bank Holidays.

- 13.95 Each Thursday the West service travels from Benwick to March collecting members from Coates, Eastrea, Turves and Whittlesey en-route. The cost of a return journey to March is £5.00. The service commences at Benwick at 09:30 and returns at 14:00. The service does not operate on Bank Holidays.
- 13.96 Full details of the service have been obtained in a leaflet published by FACT (See Exhibit IA 1).
- 13.97 In addition, FACT offer their West Service members Dial-A-Ride Specials, additional days out throughout the year and luncheon outings. Full details of these outings and associated costs are available in the printed leaflet (See Exhibit IA 1).
- 13.98 HACT's current Ring and Ride service has three designated routes. Described as areas one, two and three.

### ***HACT - AREA 1***

- 13.99 Area one provides door to door transport for members living in Alconbury, Alconbury Weston, Alwalton, Barham, Brington, Buckworth, Bythorn, Caldecote, Chesterton, Conington, Coppingford, Denton, Elton, Farcet, Folksworth, Glatton, Great Gidding, Haddon, Hamerton, Holme, Keyston, Leighton Bromswold, Little Gidding, Molesworth, Morborne, Norman Cross, Old Weston, Sawtry, Sibson, Stepple Gidding, Stibbington, Stilton, Upton, Water Newton, Winwick, Woolley and Yaxley.
- 13.100 HACT provides a Monday to Friday service on area one as follows: Peterborough (Mondays, Tuesdays and Thursdays), Huntingdon (Wednesdays) and Stamford (Fridays). The service does not run on a Saturday and does not run on Bank Holidays. The service starts in Alconbury at 09:30 hours and returns at 13:30 hours for all routes. The cost of the journey varies between £6.50 and £7.50 depending on where the member is picked up and the final destination. Valid bus pass holders travel free. The service does not operate on a Bank Holiday.
- 13.101 Full details of the service have been obtained in a leaflet published by HACT (See Exhibit IA 5).



- 13.102 In addition, HACT offer their Area 1 Service members Dial-A-Ride Specials, special outings throughout the year and luncheon outings. Full details of these offerings and associated costs are available in the printed leaflet (See Exhibit IA 5).

### ***HACT - AREA 2***

- 13.103 Area two provides door to door transport for members living in Abbotsley, Brampton, Buckden, Catworth, Covington, Diddington, Easton, Eaton Ford, Eaton Socon, Ellington, Eltisley, Eynesbury, Grafham, Great Gransden, Great Paxton, Great Staughton, Hail Weston, Hilton, Kimbolton, Little Paxton, Offord Cluny, Offord Darcy, Papworth Everard, Perry, Southoe, Spaldwick, St Neots, Staughton Highway, Stonely, Stow Longa, Tilbrook, Toseland, Waresley and Yelling.
- 13.104 HACT provides a Monday to Friday service on Area 2 as follows: Peterborough (Mondays and Tuesdays) Huntingdon (Wednesdays) St Neotts (Thursdays) and Cambourne (Fridays). The service does not run on a Saturday and does not run on Bank Holidays. Each service starts at 09:30 hours and returns at 13:30. The cost of the journey varies between £6.50 and £8.00 depending on where the member is picked up and the final destination. Valid bus pass holders travel free.
- 13.105 Full details of the service have been obtained in a leaflet published by HACT (See Exhibit IA 6).
- 13.106 In addition, HACT offer their Route 2 Service members Dial-A-Ride Specials, special outings throughout the year and luncheon outings. Full details of these offerings and associated costs are available in the printed leaflet (See Exhibit IA 6).

### ***HACT - AREA 3***

- 13.107 Area three provides door to door transport for members living in Abbots Ripton, Bluntisham, Broughton, Bury, Colne, Earith, Fenstanton, Fenton, Godmanchester, Great Raveley, Great Stukeley, Hartford, Hemingford Abbots, Hemingford, Grey, Holywell, Houghton, Huntingdon, Kings Ripton, Little Raveley, Little Stukeley, Needingworth, Oldhurst, Pidley, Ramsey, Ramsey Forty Foot, Ramsey Heights, Ramsey Mereside, Ramsey St Mary, Somersham, St Ives, Upwood, Warboys, Wennington, Wistow, Wood Walton, Woodhurst and Wyton.

- 13.108 On Area 3 HACT provides a Monday service to Friday service as follows: St Ives (Mondays), Peterborough (Tuesdays), Huntingdon (Wednesdays) St Neots (Thursdays) and Cambourne (Fridays). The service does not run on a Saturday and does not run on Bank Holidays. The service starts at 0930 hours and returns at 13.30 hours for all routes. The cost of the journey varies between £6.50 and £7.50 depending on where the member is picked up and the final destination. Valid bus pass holders travel free.
- 13.109 Full details of the service have been obtained in a leaflet published by HACT (See Exhibit IA 7).
- 13.110 In addition, HACT offer their Route 3 Service members Dial-A-Ride Specials, special outings throughout the year and luncheon outings. Full details of these offerings and associated costs are available in the printed leaflet (See Exhibit IA 7).

### *Conclusions*

- It is not possible to collate the information of journeys for each vehicle as this is not recorded centrally other than as the daily driver's log. Therefore, it has not been possible to compare routes to journeys by each vehicle.
- Members pre-book journeys on the Dial-A-Ride / Ring-and-Ride systems and such bookings are logged each day and checked against membership records to enable to enable daily drivers' sheets to be prepared which gives details of passengers, pick-up and destination. The driver then records whether or not the passenger was a bus pass holder or paying customer. These are then utilised to claim concession fares from CCC, FDC and HDC. We have tested a sample of bus pass concession journey into concession claims from Councils and, have not identified any errors or omissions.

## 14 Conflict of Interests and Complaint Handling

*46. Examine early complaints raised with local authorities by CBCTA members (including those reported in the MP meeting and confirmed by Stephen Barclay MP in writing) and the FDC Audit and assess whether the Council's procedures were followed and, the individual concerns were adequately investigated to the appropriate standard and answered accordingly.*

- 14.1 We have detailed the complaints procedures and examined four specific complaints at Scope Item 53.
- 14.2 The CBCTA state they raised concerns with the FDC and CCC regarding FACT.
- 14.3 CBCTA cite one example which relates to an audit into FACT undertaken by FDC in August 2013.
- 14.4 On 25 February 2013, a meeting was called by MP Steve Barclay ("Mr Barclay") and was attended by representatives of FACT, Cllr Tuck, local taxi firms and representatives of both CCC and FDC.
- 14.5 Following this meeting on 19 March 2013, Mr Barclay wrote a letter to FDC confirming details of what had been agreed at the meeting, (Exhibit DH 14(1)). The letter states *"At our meeting on 25th February attended by a FACT Board Member, local taxi firms, FACT, and representatives of Fenland District and Cambridgeshire County Councils, you agreed to carry out two specific actions. These were:*
- *To carry out an immediate audit of FACT memberships to ensure FACT is compliant with its membership criteria and application process.*
  - *To check that grant funding for the Dial-A-Ride scheme is ring fenced and is not being used to cross subsidy other parts of the FACT operation."*
- 14.6 In the letter, Mr Barclay also referred to additional matters which had been agreed at the meeting namely that FACT would *"cease to advertise in the Thompson Directory or to suggest through their branding on vehicles that it offers luxury travel"*.

- 14.7 FDC responded to Mr Barclay's letter on 4th April 2013 stating that *"The purpose of the audit will be to ensure there is no cross over into Private Hire legislation under the Local Government (Miscellaneous Provision) Act, 1976"* (See Exhibit CP1). It is understood that no further correspondence was received from stakeholders regarding the scope or purpose of the audit following this letter, prior to the commencement of the audit. Reference to the scope of the audit is contained at page 2 of 9 of the report (Exhibit 46(3)). The scope was therefore different to that requested by Mr Barclay as set out above (see bullet point 2 at paragraph 14.5).
- 14.8 The FDC complaints procedure is set out at paragraph 14.58, Scope Item 53.

### Conclusions

- The results of the audit were published in August 2013 (Exhibit DH 46(3)). The audit covered the issues set out in the revised scope as detailed in the letter of 4<sup>th</sup> April 2013. The format of the audit is outlined on page 5 of 9 and states a questionnaire checklist of practice and procedures used by FACT was used including a review of the booking records against stated practices. The audit concluded that *"FACT does not qualify for any further licensing under Private Hire, Hackney Carriage legislation."*
- In order to check eligibility criteria, the auditor took a sample of 5 random bookings in the previous six months and checked them to a "bus pass holders list" and a map of the bus routes compared to the individuals locality. The author noted at page 4 of the report that *"In conducting the audit, consideration has been given to the Department of Transport publication 'A note for evidence on the Private Hire Licensing' "*. We have established that FACT do not carry out due diligence on applications other than by exception (e.g. where age of applicant is below the bus pass criteria level), refer to Scope Item 43.
- On 9th February 2014, an email of complaint was sent to FDC by the former Taxi Association chairman and Councillor David Patrick. Mr Humphrey has produced a copy of the letter in question as Exhibit DH 46(2). The complaint was in response to the results of the audit. The complaint detailed a number of areas of concern namely:
  - (1) The Council appointing an officer to assist with an audit into FACT whilst the same officer was also listed in the FACT 2012 accounts as a Committee Member to the organisation she is to investigate. This person was FDC's Transport Manager. FDC

have commented that the Department Manager Transport should not have been listed as a Committee Member in 2012 as the role was at all times Observer / Advisor.

(2) Other concerns were not addressed by the audit.

- The complaint from David Patrick was responded to by FDC on 24 February 2014. This reply responds to points raised in the complaint including clarifying the roles of the officers involved, advertising for taxi work and eligibility. It also clarified that the *“Licensing Section of the Council determined the scope and scale of the audit”*. It is noted that the complaint included additional points not outlined in Stephen Barclay’s letter summarising the meeting of 25<sup>th</sup> February 2013 or the scope circulated by FDC in the letter dated 4<sup>th</sup> April 2013.
- FDC comment that they were not provided with any response to FDC’s complaint response of 24 February 2014, therefore they presumed that the complainant did not feel it necessary to escalate their response to the next stage of the complaints process (see Scope Item 53).

***47. Investigate and report any conflict of interest issues and the signed FACT trustee declaration surrounding CCC's Community Transport Officer's role in issuing Permit 19 authorities to an organisation he is reported to be a board member of.***

- 14.10 CCC's Community Transport Officer is responsible for issuing and signing Permit 19 authorities on behalf of the Council.
- 14.11 At Section 6.1 of the Grant Funding Agreement between CCC and FACT covering the period between 1 April 2014 and 31 March 2015, CCC agrees to provide a member "*to act as an independent advisor at Management Committee Meetings and the Annual General Meeting*" (See Exhibit 9-F-7). This member is CCC's Community Transport Officer.
- 14.12 It is PKFL's understanding that it is routine for CCC to provide independent advisors at Management Committee Meetings of outside bodies.
- 14.13 In each of FACT's annual returns to the FSA/FCA between 2006 and 2012 CCC's Community Transport Officer's name appears within the entry relating to the Committee of Management. His name does not appear within this section in any of the annual returns from 2013 onwards. The entries on the returns are not signed by CCC's Community Transport Officer nor any other individual to acknowledge their position. CCC have confirmed that once this error in respect CCC's Community Transport Officer's position on the annual returns was identified it was rectified.
- 14.14 Within FACT's annual returns between 2006 and 2015 there is a section entitled 'Reports and Accounts'. Within this section there is a page giving details of key contacts such as the Executive Committee, Staff, Auditors, Bankers etc. CCC's Community Transport Officer is shown within the section headed 'Executive Committee'. His position is shown as Advisor/Observer.
- 14.15 The CBCTA were concerned that CCC's Community Transport Officer had been declared a board member of FACT and potentially had a conflict of interest.
- 14.16 CBCTA's concerns were further heightened in respect of CCC's Community Transport Officer's position after they had received documentation from FDC as a result of FOI request

2619. The request was to be provided with information in relation to the number of grants that had been made to FACT between 2010 and 2012.
- 14.17 The CBCTA were provided with details of 4 grant applications made by FACT. On each of the applications details of the trustees of FACT were provided which included those of CCC's Community Transport Officer together with a signature.
- 14.18 Copies of the applications have been provided by Mr Humphrey as follows:
- Exhibit DH 47(1) Application for funding form for year 2012-13 (page 91 extracted);
  - Exhibit DH 47(2) Application for funding form for year 2010-11 (page 26 extracted);
  - Exhibit DH 47(3) Application for funding form for year 2011-2012 (page 83 extracted); and
  - Exhibits DH 47(4) Application for funding form from FDC Rural Grants which was received by FDC on 31 November 2012 (page 57 extracted).
- 14.19 It appears that all four applications contain the same duplicated form. PKFL believes this to be the case due to a number of similarities contained within them. All four forms are headed "Trustee Declaration", followed by "Fenland Association for Community Transport Ltd", followed by "Application Number: 5004395". The trustee names are the same, are typed in capital letters and appear in the same sequence within the table which is embedded into the document. The signatures appear in the same places too. At the bottom of the form are the words "Page 3 of 3". This document has been submitted to FDC without the trustees being aware that it has been inserted into the application pack. This has been confirmed with the FHE Manager.
- 14.20 What was of concern was that a signature believed to be that of CCC's Community Transport Officer is present on an application with the reference number 5004395. Enquiries to try and identify what this application number relates to have been unsuccessful.
- 14.21 The FHE Manager was questioned regarding her knowledge of application number 5004395 and was unable to assist. The application must have been at least 5 years ago due to the application dates from which the forms were extracted.

- 14.22 When CCC's Community Transport Officer was questioned about the document he stated that he believed that the signature was his, but was concerned that it had been used on four separate applications for funding without his knowledge. After viewing the document, he said that he could now fully understand why the CBCTA had come to the conclusion that he had been acting as a Trustee. He said he was never asked by FACT whether they had his permission to use the form and said he had no knowledge that it had been used for funding applications. He indicated that if FACT had made such a request, he would not have given his permission. He said that although the signature appeared to be his, he did not recall signing the document in the form shown to him and questioned whether someone had copied and pasted one document into another. The original of the document has never been found and therefore this is a possibility. Even if the signature page had been inserted into other documents for the purposes of a grant application, the Trustee / Signature template has been signed.
- 14.23 In an application for funding to FDC, dated 17 January 2012 and signed by the FHE Manager, there is a document headed 'Background' (See DH 1(2)). At page 3 of this document under the heading 'Management and People' details are given regarding the Executive Committee. It says, "FACT currently has the following Executive Committee". A brief biography of the eight persons including CCC's Community Transport Officer are given. This additional evidence suggests that at the time of the submission to FDC (2012) CCC's Community Transport Officer was considered to be an Executive Committee member. It is not known who compiled the background history. The application also contains a copy of the signed Trustee/Signature template with the reference number 5004395 as previously noted above.

### ***Conclusions***

- CCC's Community Transport Officer's role as set out above, is as an Advisor / Observer to FACT. It has not been made clear in the documentation (annual returns prior to 2012) and grant applications that he is not a decision maker in relation to FACT. The annual financial statements include him as an Executive Committee member, which is misleading, as he has no decision making capacity.
- It is uncertain how CCC's Community Transport Officer's name and signature appeared on the application for grants detailed above.



- CIO's must demonstrate how potential conflicts of interest are identified, monitored and managed. The constitution sets out, in paragraph 7, how conflicts should be managed. We have not obtained any evidence to show how such conflicts have been managed.

***48. Investigate how complaints relating to this matter were investigated by both the FDC and the CCC and report the outcomes received by complainants.***

- 14.24 On 7 February 2014 Cllr Patrick sent an email to CCC's Head of Passenger Transport, the Head of Passenger Transport Services at CCC, in the following form *"Please find attached from each of the years reports from 2006 to 2012 which clearly show [the name of CCC's Community Transport Officer] listed as a committee member of the FACT board. As you are aware my issue is that a committee member who is an officer at Cambridgeshire County Council is the signatory of the Section 19 permits issued by CCC on behalf of the department of transport. David Patrick"*.
- 14.25 On 21 February 2014, a reply was sent to Cllr Patrick from the email address of CCC's Head of Passenger Transport in the following form, *"Dear Mr Patrick, Many thanks for bringing this to my attention. It was also very helpful to talk to you at the recent briefing event for our contractors. The annual returns, as you rightly say do refer to my colleague [the name of CCC's Community Transport Officer] as a member of the Management Committee at FACT. I have discussed this with FACT and they recognise that this is a mistake and will correct it for future Annual Return forms. Elsewhere in the FACT documentation such as the Annual report and also on the FACT website it is stated that [CCC's Community Transport Officer] is an Adviser to the Board. In this light and with the error by FACT corrected I feel that [the first name of CCC's Community Transport Officer] role is clear and as such his role as a County Council Officer, is not compromised"*. A copy of the email correspondence has been provided by Mr Humphrey as DH 48(1).
- 14.26 As set out above, a condition of the Grant Funding Agreements between CCC, FACT and HACT is that CCC will provide an independent adviser at Management Committee Meetings and the Annual General Meeting. PKFL understands that CCC officers will often undertake these roles.
- 14.27 FDC do not issue Section 19 permits.

*49. Interview CCC's Community Transport Officer to confirm the signature on the evidence is his, and then if positive, investigate and report on why the Green Biro report stated his confirmation of his trustee status was declared in error.*

14.28            This has been dealt with in Scope Items 47 and 48.

***50. Investigate whether all appropriate declaration of interest forms have been completed by members of staff (particularly within the council strategic transport and procurement departments) and of all councillors sitting on the FACT/HACT/ESACT board or employed by them and whether any current declarations have been entered post Woodcote Report.***

**CCC**

- 14.29 All CCC councillors are required to abide by the CCC Code of Conduct, which sets out the standards of conduct expected of members of the council. The Code of Conduct applies to all councillors and to co-opted members of committees. The Code of Conduct forms part of the Council's Constitution. Details of the Code of Conduct is available on CCC's website. A copy of the Code of Conduct is produced as MKM 50(1). In addition, CCC also publish on their website a reminder to members about declaring any Disclosable Pecuniary Interests' ("DPI"). A copy of the reminder is produced as Exhibit MKM 50(2).
- 14.30 Part 2 of the Code of Conduct deals with 'Disclosable Pecuniary Interests' ("DPI"), 'Registration of Disclosable Pecuniary Interests' and 'Disclosable Pecuniary Interests in Matters Considered at Meetings'.
- 14.31 Paragraph 8.1 states, *"If you attend a meeting and have and are aware that you have a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at that meeting:*
- a) if the interest is not entered in the Authority's register of members' interests, you must, subject to sub-paragraph 9 below, disclose to the meeting the fact that you have a Disclosable Pecuniary Interest in that matter. If you have not already done so, you must notify the Authority's Monitoring Officer of the interest before the end of 28 days beginning with the date of the disclosure, and*
- (b) whether the interest is registered or not you must not – unless you have obtained a dispensation from the Authority's Monitoring Officer:*

*(i) participate, or participate further, in any discussion of the matter at the meeting; or*

*(ii) remain in the meeting room whilst the matter is being debated or participate in any vote taken on the matter at the meeting apart from making representations, giving evidence or answering questions, prior to the commencement of the debate on that matter”.*

14.32 DPs are set out in Chapter 7 of the Localism Act 2011 and have been incorporated into CCC’s Code of Conduct at Appendix ‘A’.

14.33 One of the DPs included within Appendix ‘A’ relates to ‘Contracts’. It states, “Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—

*(a) under which goods or services are to be provided or works are to be executed; and*

*(b) which has not been fully discharged”* is disclosable as a pecuniary interest.

14.34 For the avoidance of any doubt, the Localism Act 2011 gives the following definitions:

- “*body in which the relevant person has a beneficial interest*” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;
- “*director*” includes a member of the committee of management of an industrial and provident society;
- “*relevant authority*” means the authority of which M is a member; and
- “*M*” means a member of a relevant authority.

14.35 HACT and ESACT are charitable incorporated organisations (“CIO”) (see the relevant entries on the Companies House website). A CIO:

- is an incorporated form of charity which is not a company;
- only has to register with the Charity Commission and not Companies House;
- is only created once it is registered by the Commission; and it

- can enter into contracts in its own right and its trustees will normally have limited or no liability for the debts of the CIO.

14.36 The law describes charity trustees as “*the persons having the general control and management of the administration of a charity*” (Charities Act 1993, section 97). Sometimes the charity’s trustees are given other titles, such as governors, councillors, management committee members or directors. What matters is the role, not the title.

### **FDC**

14.37 FDC publish on their website a document entitled ‘Part 5 – Codes and Protocols’ which sets out the standards of conduct expected of members. A copy of this document is produced as MKM 50(3). Paragraphs 8 and 9 of the document deals with DPI’s and disclosure of DPI’s. The guidelines are similar to those contained in the Code of Conduct for CCC.

### **HDC**

14.38 HDC councillors are required to abide by the HDC Code of Conduct, which sets out the standards of conduct expected of members of the council. Details of the Code of Conduct is available on HDC’s website. A copy of which is produced as MKM 50(4). At Section 4 of the Code of Conduct it stipulates that members have a DPI if it is mentioned in Appendix ‘A’ to the Code of Conduct. Appendix ‘A’ of the HDC code mirrors Appendix ‘A’ from CCC’s Code of Conduct as described in paragraphs 14.32 to 14.34 above.

### **ECDC**

14.39 ECDC Member Code of Conduct is contained within Part 5 of the Council’s Constitution. A copy is available to view and download from their website. A copy is produced as MKM 50(5).

14.40 Sections 7 and 8 give information in relation to DPIs and when they should be reported. It stipulates that members have a DPI if it is mentioned in Appendix ‘A’ to the Code of Conduct. Appendix ‘A’ of the ECDC code mirrors Appendix ‘A’ CCC’s Code of Conduct as described in paragraphs 14.33 to 14.35 above.

### *Trustees of FACT, HACT and ESACT*

- 14.41 Appendix 'AC' gives details of the trustees of FACT, HACT and ESACT as detailed in the statutory returns or disclosed in the yearly financial statements.

### *Trustee Declarations and Council Meetings*

- 14.42 PKFL has checked the members interest registers as recorded by CCC, FDC, HDC and ECDC. Only one recorded declaration in relation to any matters concerning FACT, HACT and ESACT has been registered. The declaration in question was made by Councillor John Clark ("Mr Clark") who stated that he is a partner in two companies, John Clark's Garage and March MOT Centre. The declaration indicates that these companies carry out MOT testing and undertakes some repairs for FACT. From an email attached to the declaration, it appears that the entry was added to the register on 24 May 2016. A copy of the declaration of interest made by Mr Clark is produced as Exhibit MKM 50(8).
- 14.43 If a member attends a meeting who has or is aware that they have a DPI in any matter being carried on, or to be considered at that meeting, then (unless given dispensation by the monitoring officer) the member must not participate, remain in the room whilst it is debated or vote on the matter. A member must comply with the statutory requirements and their authority's requirements to disclose and withdraw from participating in any matter in which they have a disclosable pecuniary interest.

### *Council Officers*

- 14.44 The DPI rules set out above do not apply to Council officers. CCC have a code of conduct which applies to all employees, and requires notification of potential conflicts to their manager or Head of Service.

### *Conclusions*

- 14.45 The Code of Conduct for Members is contained within each Council's constitution and all councillors agree to abide by it when they take up the office of councillor. All councillors are also obliged to complete a register of interests which is published online and their membership of outside bodies is also declared and available online.

- If a councillor who is also a board member of FACT, HACT or ESACT becomes aware that a contract is going to be discussed at a Council meeting in which he or she is a member of the council awarding the contract then he or she should declare that they have a DPI and leave the meeting.
- Grant funding is also likely to fall within the meaning of a DPI.
- Based on the above we consider that the following Councillors should register their interests as Board members of FACT, HACT and ESACT as a disclosable pecuniary interest due to their beneficial interest as a member of the committee of management of an industrial and provident society (FACT) and a CIO (HACT and ESACT). They should also take the appropriate action where the issue of a contract or grant to these bodies is under consideration by any of their respective councils:

Cllr M McGuire (CCC);

Cllr Owen (FDC);

Cllr Butcher (FDC); and

Cllr King (CCC / FDC).



***51. Investigate and check that the Council's procedures in respect of awarding transport contracts have been followed, comply with appropriate guidelines and have been advertised in accordance with procedures and guidelines.***

- 14.46 The CCC contract award system is set out at Appendix Z.
- 14.47 We have reviewed a sample of recent Invitations to Tender ("ITTs"). The ITTs included a detailed specification, timetables for tenders and assessment criteria. Once submitted the ITTs are subjected to a detailed evaluation process weighted for quality / technical attributes and cost. Advertisement of the ITTs is via the Councils ProContract system and by email to interested parties.

***Conclusion***

- The sample tested confirmed that in normal circumstances procurement procedures and guidelines are followed. However, as noted above in relation to the HACT start-up, contracts procurement procedures were not followed.

***52. Investigate favourable invoice terms for the FACT group  
i.e. whether they are favourable over other suppliers.***

- 14.49 The FHE Manager was asked about the payment terms for FACT, HACT and ESACT invoices. She indicated that whilst payment terms were shown on invoices as 10 days she stated that CCC paid when they were ready and not necessarily within the time frame FACT, HACT and ESACT had quoted on their invoices. There was no pre-arranged agreement.
- 14.50 CCC's payment terms are that suppliers will be paid within 30 days from receipt of the invoice (See Exhibit MKM 52(6) paragraph 10.2). This may be a shorter period depending on how quickly it is processed.
- 14.51 PKFL carried out a random sample check of five invoices containing the urgent stamp (see table below). Of the random sample the longest numbers of days from receipt to payment was 15 the shortest number of days was 2.

Invoice No.	Date of Invoice	Invoice Exhibit No	Date Received	Date Paid	Amount £	No of days to payment	Exhibit No
3655	30.04.15	1-B-1	01.05.15	12.05.15	1,431.50	12	MKM 52(1)
3744	26.05.15	1-B-28	26.05.15	03.06.15	1,100.68	9	MKM 52(2)
3808	30.06.15	1-B-40	01.07.15	03.07.15	1,573.80	2	MKM 52(3)
3905	23.07.15	1-B-68	23.07.15	29.07.15	1,062.40	7	MKM 52(4)
4051	30.09.15	1-B-84	01.10.15	15.10.15	1,328.00	15	MKM 52(5)

***Conclusions***

- A number of invoices from FACT have an 'Urgent' stamp annotated on them. Enquiries by CCC Internal Audit have established that this mark was applied by staff working within either Education Transport or other teams receiving invoices. If an invoice is received by CCC from a supplier containing a shorter payment terms than CCC's 30 day terms, previously they would be stamped as urgent and ask P2P (the Payment department) to speed up payment if possible. However, following a letter from CCC's Executive Director for Economy, Transport and Environment all suppliers were informed that after Monday 31st October 2016 CCC would no longer be able to process invoices on shorter payment terms (See Exhibit MKM 52(7)). It is understood that this system would have been applied to any supplier submitting invoices with shorter payment terms, not just FACT and its sister organisations.

- It does not appear that FACT, HACT and ESACT receive terms which are more favourable than any other supplier of goods and services.

*53. In respect of 3 complaints to the CCC and 1 complaint to the FDC, ensure they were dealt with in accordance with Council complaints procedure and follow appropriate guidelines. Investigate the specifics of each complaint have been followed up and dealt with as appropriate and report whether the outcomes received by complainants addressed all issues raised.*

### ***Cambridgeshire County Council***

- 14.52 If a member of the public wishes to register a complaint against CCC he or she can do so via a number of different methods as detailed below (CCC's website):
- Complete an online form at [www.cambridgeshire.gov.uk/contact-us](http://www.cambridgeshire.gov.uk/contact-us);
  - Telephone 0345 045 5200;
  - Use the Mincom service on 01480 376743;
  - Write to Feedback at Customer Services, at Cambridgeshire County Council; or
  - Contact a County Councillor.
- 14.53 All complaints are sent to the appropriate department who will try and resolve the matter straight away. If this cannot be done, CCC will investigate the complaint and aim to respond to the complaining party within 10 working days other than adult social care complaints which are responded to within 25 days. If CCC cannot provide a full response within the timescales given, a member of staff is required to write to the complainant explaining the reason and give a date by which a full response will be sent.
- 14.54 If a complainant is not happy with the response to the complaint, they can ask for a senior manager to review it. This is stage two of a three stage corporate complaints procedure. This review can be commissioned by the complainant writing to the person who responded to their initial complaint.
- 14.55 If the senior manager's response does not satisfy the complainant, they may ask the Chief Executive to review the case. This is the final stage and the Chief Executive will aim to

respond within 10 working days. The Chief Executive's decision will be the final response from the County Council.

- 14.56 This process applies to all corporate complaints but does differ for children's and adult social care services cases.
- 14.57 Any complainant still unhappy with the decision is invited to ask the Local Government Ombudsman to conduct an independent investigation. Details of how to contact the Local Government Ombudsman are available on CCC's website.

### ***Fenland District Council***

- 14.58 Complaints in relation to FDC are laid out in a document known as the 3C's pack which can be found on their website.
- 14.59 Members of the public wishing to lodge a complaint can get in touch with FDC by:
- Completing an online form on FDC's website at [www.fenland.gov.uk/threecs](http://www.fenland.gov.uk/threecs);
  - Emailing them at [3cs@fenland.gov.uk](mailto:3cs@fenland.gov.uk);
  - Phoning their contact centre on 01354 654321;
  - Completing the form attached to the policy on the website and returning it to the 3Cs Manager, Fenland Hall, County Road, March, PE15 8NQ;
  - By attending in person at one of their Fenland @ your service shops or Community Hubs; or
  - Via a local councillor, who will make sure that the complaint is dealt with through the council's normal procedures.

14.60 Once FDC receives the complaint it will record the complainant's comments as a complaint.

14.61 FDC's complaints process can be up to three stages long as follows:

### ***Stage 1***

- 14.62 If the complainant is unhappy with the service they have received they will try to resolve the problem immediately, if this is not possible they will acknowledge the receipt of the complaint within five working days. FDC aim to investigate the complaint and notify the

complainant of the outcome within 10 working days. If they need longer, FDC will notify the complainant either by email, phone or in writing.

### **Stage 2**

- 14.63 If the complainant is not satisfied with the response they have received in Stage 1, FDC will take the matter further by referring it to a service manager in the area of business in which the complaint is made. FDC will aim to give the complainant a full answer within 10 working days. If they need longer, FDC will let the complainant know either by email, phone or in writing.

### **Stage 3**

- 14.64 If the complainant is still not satisfied with the response given at Stage 2, FDC will refer the matter to a Corporate Director who will respond in full within 15 working days. If FDC needs longer, they will let the complainant know either by email, phone or in writing.
- 14.65 If the complainant is still not happy with the outcome of their complaint at the end of FDC's 3Cs procedure, they invite the complainant to contact the Local Government Ombudsman. FDC provide details of the address, telephone number and email address of the Local Government Ombudsman at the bottom of the 3C's pack which can be found on their website.

### **CCC Complaint 1**

- 14.66 On Monday, July 11, 2016, the CBCTA sent a formal complaint to CCC via Cllr Lay in the form of an email. A copy of the email is produced as DH 53(1).
- 14.67 Their complaint concerned the legal requirements for HACT, FACT and ESACT to obtain O Licenses, for drivers to hold CPCs and for drivers under the age of 37 to have undertaken PSV D1 training. The CBCTA suggested that these requirements were statutory and sited the report of Mr Segan (see paragraph 12.26 et seq.), the DVLA and Traffic Commissioner Mr Rooney (see paragraph 12.30 et seq.) as evidence of these requirements.
- 14.68 The CBCTA suggested that such licences are required on the grounds of safety and as drivers working for these organisations were employed on home to school contracts, the CBCTA believed that such matters should be addressed "*as a matter of the utmost urgency*".

- 14.69 The CBCTA suggested that the Council had not checked the licences of the CTO drivers in question and that some of these drivers could be committing offences by driving without the appropriate licence. They indicated that the Council had a legal and fiduciary duty to safeguard children and they were not considering their role appropriately.
- 14.70 Later the same day, Cllr Lay sent an email to CCC's Monitoring Officer enclosing a letter giving details of a complaint put together by Mr Humphrey and other members of the CBCTA. A copy of the letter is produced by Mr Humphrey as DH 53(2).
- 14.71 On 7 December 2016 the head of LGSS Law responded to Cllr Lay by email as follows:
- "As you know an investigator has been appointed and has undertaken an initial review and has identified some areas for further investigation. When the next phase of the investigation has been completed a report will be submitted to Graham [Hughes] and I to consider what if any further action is required."* I am told that no further correspondence has been received by Mr Humphrey. A copy of the email is produced as DH 53(3).

### **CCC Complaint 2**

- 14.72 Early in 2014 (PKFL has no specific date) Cambridgeshire Times Editor, presented the former Chief Executive of CCC with a complaint raising some of the Taxi industries concerns surrounding the operations of FACT (Exhibit DH 53(6)). This was based on the issues raised by Mr Humphrey at that time.
- 14.73 The former Chief Executive wrote back to Mr Humphrey on 11 July 2014 following an investigation carried out by CCC's Executive Director for Economy, Transport and Environment. A copy of the letter is produced by Mr Humphrey as DH 53(4).
- 14.74 Whilst the views of the former Chief Executive may not be consistent with those of Mr Humphrey, the three points raised in the complaint have been addressed and CCC's complaints policy has been followed.
- 14.75 Mr Humphrey has confirmed that he did not progress his claim to the Local Government Ombudsman.

### **CCC Complaint 3**

- 14.76 The third complaint was sent direct to CCC's Head of Passenger Transport by email on 9 August 2013 (Exhibit DH 53(5)).

- 14.77 The complaint does not fit any of the accepted methods of receipt (see paragraphs 14.54 above) for accepting official complaints nor does the email mention the words 'official complaint'.
- 14.78 CCC's Head of Passenger Transport sent an email reply to Mr Humphrey on 27 August 2013 acknowledging receipt of the email on 9 August 2013 following a period of leave and that he would reply to the email as soon as possible.
- 14.79 CCC's Head of Passenger Transport replied in full on 27 August 2013. His reply refers to Mr Humphrey's 'concerns' not 'complaint' so it appears that it was not recorded as an official complaint. A copy of the email trail is produced as DH 53(5).
- 14.80 CCC Internal Audit has confirmed that CCC do not have a central register to record complaints (see Exhibit MKM 53(1)). Each complaint is dealt with by the relevant department.
- 14.81 Mr Humphrey has confirmed to PKFL that the complaint was not progressed to the next level.

### ***FDC Complaint 1***

- 14.82 On 26 March 2013, a letter was handed to FDC by representatives of the taxi industry (see Exhibit DH 53(7)). Although this does not strictly fit one of the accepted methods of delivery, it was accepted as a complaint.
- 14.83 The CBTCA letter contained the following complaints:
- Earlier complaints that FACT had been taking taxi centric work had been ignored;
  - FACT had allegedly purchased a luxury bus and advertising for taxi centric work;
  - Issues over permit 19 applications;
  - FACT allegedly operating commercial contracts in breach of Section 19 permit conditions;
  - FACT allegedly accepting membership applications from a healthy professional;
  - FACT manager allegedly quoting for Taxi centric work and inviting an individual to apply for group membership;
  - FACT allegedly advertising the organisation as a registered charity and exaggerating its work when asking for donations;
  - FACT allegedly claiming to be registered as a charity with the HMRC and using an invalid registration number;
  - Discrepancies in accounts; and
  - FACT allegedly advertising as a taxi provider on a number of internet based sites.



- 14.84 An undated reply responding to the issues raised in the letter dated 26 March 2013 was sent to an address which we understand is Mr Humphrey's business address (See Exhibit DH 53(8)). The letter is signed by a member of FDC.
- 14.85 The reply does not deal with the individual items of concern on a point by point basis. It did indicate that CCC was responsible for dealing with Section 19 permits. It also signposts the complainant to the pending audit which was published in August 2013 and the scope of that audit which included the issue of eligibility (See Exhibit DH53(8) paragraph 4). The issue of advertising was addressed by FDC in a response to Councillor Patrick in February 2014 (See Exhibit DH 46(4)).
- 14.86 Mr Humphrey has confirmed that he did not progress his claim to the next stage.

### *Conclusions*

#### *CCC*

- In respect of the CCC complaints they appear to have been dealt with in accordance with CCC procedures, however, we have not had sight of how the CCC complaint 1 was resolved (if at all).

#### *FDC*

- The reply does not deal with the individual items of concern on a point by point basis. It did indicate that CCC was responsible for dealing with Section 19 permits. It also signposts the complainant to the pending audit which was published in August 2013 and the scope of that audit which included the issue of eligibility (See Exhibit DH53(8) paragraph 4). The issue of advertising was addressed by FDC in a response to Councillor Patrick in February 2014 (See Exhibit DH 46(4)).

## 15 FOI Requests

*54. By reference to Council procedures, investigate and report the handling of FOI requests 5709, 3509, 3348, and 5779. Assess more recent examples provided by the CBCTA as to whether the CCC has operated in breach of the FOI Act and whether information has been denied the CBCTA which it had a right to view and whether the CCC redacted the information in line with the ACT.*

- 15.1 Since January 2005 the Freedom of Information Act (2000) ("FOIA") and the Environmental Information Regulations (2004) ("EIR") have given the public rights of access to information held by public authorities. These rights of access are designed to help to create a culture of openness and dialogue with the community, partners and other stakeholders.
- 15.2 In order to deal with subject access requests, CCC put into place a Freedom of Information and Environmental Information Regulations Policy. The document is designed to support the Council in meeting its legal obligations as set out in the Act and Regulations. The policy also underpins the Council's Values, in particular that of accountability and its aim is to demonstrate the Council's commitment to openness. Some of the main points within the policy are shown below. A copy of the full policy is produced as MKM 54(1).
- 15.3 The Council has given an undertaking to meet its legal obligations to respond to all request for information and will supply that information, subject to the limited exemptions / exceptions as specified by law.
- 15.4 Requests can be made by anyone regardless of their age, nationality, location, profession, motives or history. Requests will be dealt with in an applicant blind manner, i.e. each will be treated equally regardless of who is making the request. The exception to this is where an individual requests information about themselves. Such requests are dealt with under the subject access provisions of the DPA.
- 15.5 Requests can be for any information that is held by the Council, regardless of how the information was produced or obtained. It includes information about or obtained from other organisations including contracts, partnership information and agreements.

- 15.6 A request under the FOIA must be:
- Written (Letter, email or fax acceptable);
  - Legible;
  - Provide a name;
  - Provide an address for response (email acceptable); and
  - Describe the information sought sufficiently for the Council to identify it.
- 15.7 EIR does not require the request to be made in writing, however such requests must be recorded and logged.
- 15.8 The requestor does not have to mention any legislation in their request and they are not required to know Council process, procedures and jargon to describe the information requested.
- 15.9 All requests will be logged and responded to in accordance with the Council's procedures and supporting guidance for handling requests. The procedures will be updated from time to time.
- 15.10 Requestors will not be required to explain the purpose of their request; however, the Council may apply restrictions on the re-use of information it provides. Information from or belonging to other organisations will usually be provided if appropriate for the response, however, the use of this information will be restricted by them (e.g. Ordnance Survey mapping). It is the requestor's responsibility to ensure that any re-use of information complies with copyright restrictions.
- 15.11 CCC will monitor the requests made in order to identify information regularly sought by the public. The Council will pro-actively publish information requested on its website.
- 15.12 CCC will not create new information in order to respond to a request. However, it will provide related information and provide advice in order to assist the requestor obtain the information sought.

### ***Governance team***

- 15.13 Public Interest tests must be approved by the Corporate Director - Customer Service and Transformation. Exemptions under Section 36 of the FOIA must also be approved by the Monitoring Officer (i.e. non-disclosure in the public interest).

### ***Request Handling Procedures***

- 15.14 The Information Governance team is responsible for issuing procedures for the handling of requests. Procedures will identify roles, responsibilities and timescales for handling and responding to requests.

### ***Fees Policy***

- 15.15 CCC maintains a separate fees policy for charging for access to information.
- 15.16 The Council will not normally provide information where the cost to the Council for locating and retrieving the information exceeds the appropriate limit as specified by the Secretary of State under section 12 of the FOIA (currently £450 or 18 hours). However, the Council will, wherever possible, assist requestors in refining their requests in order to obtain the information sought.

### ***Provision of the Information***

- 15.17 Wherever possible information will be provided in the format requested.
- 15.18 All requestors will be made aware of the Councils review process for handling FOI and EIR requests. Procedures for undertaking reviews will be issued and maintained by the Information Management team. Reviews will be undertaken independently of the officers responsible for handling the request.
- 15.19 Requests for review must be received within 40 days of the provision of information or issue of a decision notice.
- 15.20 CCC aims to complete reviews within 40 working days from receipt of the review request.
- 15.21 A guide to the publication scheme will be maintained and published by the Information Management team.

### ***FOI's 3339, 3509 and 5709***

- 15.22 The CBCTA was concerned about the information which had been received as a result of a number of FOI requests. The first request for information which was answered by CCC on 21 October 2013 and given the FOI Number 3339 (Exhibit MKM 54(2)). The details of the request was, *"How many contracts have been awarded by Cambridgeshire County Council if any to "Huntingdon Association for Community Transport" since 1st January 2103?"* The answer given to this question by the IGT was, *"There have been five contracts awarded to HACT since 1 January 2013"*.
- 15.23 Following receipt of this information, the CBCTA followed up with a further FOI request in which one of the questions related to the details of contracts awarded. CCC's IGT wrote back on 17 December 2013 (FOI 3509) giving details of the following five contracts that had been awarded:
- ON45;
- 925;
- PT03;
- PT04 and
- PTP02.
- 15.24 A copy of the response is produced as MKM 54(3).
- 15.25 On 6 October 2015 CCC's IGT replied to a FOI request which again related to the number of Council transport contracts which had been awarded to HACT since its formation in March 2013. PKFL understands that this request was submitted by a Director of the B&CA.
- 15.26 The response on this occasion from the CCC's IGT was given in a number of appendices. A copy of the reply is produced as Exhibit MKM 54(4). CCC issued FOI number 5709 to this response.
- 15.27 Appendix 1, which is produced as Exhibit MKM 54(5) contained details of six contracts together with the start and end dates of each contract. Two of the contracts, 150 and 46A, had not been disclosed in either FOI 3509 or FOI 3339. The CBCTA were also concerned that

within the FOI response 5709 sent to the Director of the B&CA, the Council failed to include all the contracts disclosed to the CBCTA.

- 15.28 The differing responses lead the CBCTA to believe that CCC had tried to avoid having to declare that it did not hold the permissions to issue the contracts on an emergency basis (the issue surrounding the awarding contracts under emergency powers is dealt with in detail within Scope Item 33 of this report).
- 15.29 Two contracts (PRC3 and PRC4) awarded to HACT were not disclosed to either the CBCTA or the Director of the B&CA in the three FOI's mentioned above.
- 15.30 As a result of these suspicions, the Director of the B&CA sent an email to CCC requesting that a review be undertaken. PKFL has not seen the contents of the email sent by the Bus and Coach Association only the response which indicates that this is how the request for a review was received (Exhibit MKM 54(6)).
- 15.31 Mr Humphrey has informed PKFL that the first attempt to have FOI 5709 reviewed was ignored and he indicated that it took two reminders and 17 weeks for the CCC to produce the results of an internal review. PKFL enquired with members of the IGT as to why it took so long to undertake the review, the explanation given was the team was receiving a large volume of requests at that time and the team was under resourced due to sickness and maternity leave of one of their members.
- 15.32 On 10 February 2016, a letter was sent by CCC's Information Governance Manager addressing the points raised by the Director of the B&CA which had been covered in the review (MKM 54(6)).
- 15.33 The Information Governance Manager apologised that no mention had been made in FOI 5709 regarding the home to school contracts that had been awarded to HACT. This information had been previously published on CCC's website but CCC's Information Governance Manager conceded that no information had been given in FOI 5709 as to where this information could be found.
- 15.34 CCC's Information Governance Manager reiterated that all HACT contracts details had been released previously under FOI references 3339 and 3509 and supplied web links for that information to be accessed.

- 15.35 However, we note at Scope Item 12 that Education contracts PRC3 and PRC4 were also taken over by HACT on its inception, and these have been omitted from the FOI requests.
- 15.36 A third question related to contracts 150 and 46A and whether these contracts had been granted under emergency powers. It was apparent that a signed authority was in place in respect of service 150 (see Scope Item 33), however, in relation to contract 46A, the reply sited in FOI 5709 was *"The Council does not hold the documentation for the 46A."* The Director of the Bus and Coach Association requested why the Council could not give the information. The Information Governance Manager responded as follows: *"No information is held for the purposes of the Freedom of Information Act."* PKFL has made extensive enquiries to establish whether any signed authority was in place, which confirmed that the statement from the Information Governance Manager appears to be true. PKFL has not been able to obtain a copy of the exemption certificate for contract 46A, nor has it been able to obtain copies of exemption certificates for contracts 925, PT03, PT04, PTP02, PRC03 and PRC04 all allegedly awarded on an emergency basis.
- 15.37 The last review question asked for details to be provided regarding the contract period for routes 150 and 46A, details were duly supplied in the response by the Information Governance Manager. A copy of the full response is produced as Exhibit MKM 54(6).
- 15.38 Following the receipt of the letter, Mr Humphrey was still concerned after reading part of the response to question 2 which states, *"In addition, the "Payments to Suppliers" information that is published on the Council's website shows all payments to named suppliers. Whilst there may only be one contract in place, it is usual for there to be multiple invoices submitted by individual suppliers under single contracts. Therefore, information that is published as "Payments to Suppliers" cannot be used as an indication of the number of contracts that are in place with any one provider."* Mr Humphrey and the CBCTA felt that there was a real possibility that the CCC had still not declared all the contracts which HACT had been awarded. This view appears to be founded, see paragraphs 15.27 and 15.29, as contracts PRC03 and PRC04 had not been disclosed to either the CBCTA or the Director of the B&CA in the three FOI's. In addition, it appears that the first request was answered incorrectly.

### ***FOI requests 3294 and 3348***

- 15.39 On 10 October 2013 CCC's IGT responded to two requests for information in the form of a letter produced as MKM 54(7):
- (1) *"Please list all funding the council has awarded to HACT, including copy of applications and conditions of grants."*; and
  - (2) *"Please give purpose for funding."*
- 15.40 The request was allocated the FOI number FOI 3294 and the IGT responded as follows: *"Cambridgeshire County Council has awarded HACT a grant of £11,750 from its core funding to support community transport dial-a-ride schemes. There is a standard service level agreement in place for this funding; please see APP1, attached."* A copy of APP1 is produced as Exhibit MKM 54(8). The reply also said *"In addition, there have been grants totalling £179,048.46 given from the Council's Community Transport Fund. Please see the attached application form and assessment criteria, APP2 and APP3."* A copy of App2 is produced as MKM 54(9) and APP3 as Exhibit MKM 54(10). App2 was an unpopulated application form which applicants are required to fill in if they are requesting grant funding.
- 15.41 On 7 November 2013 IGT responded to a further request for information in the form of a letter produced as MKM 54(11) (FOI 3348).
- 15.42 The question asked was, *"Following previous FOI request 3294, Could I please have a copy of HACT'S and FACT'S actual applications for the Community Transport fund?"*
- 15.43 The request was allocated the FOI number FOI 3348 and the IGT responded as follows: *"Please see the attached documents, APP1, APP2 and APP3 for copies of the FACT and HACT application forms that have been submitted to the Community Transport Fund. In addition to the application forms, please also see the attached spreadsheet, APP4, which provides information about what the grant will cover with regard to APP1, the launch of HACT."* Copies of the documents are produced as follows:
- App1 Exhibit MKM 54(12);
  - App2 Exhibit MKM 54(13);
  - App3 Exhibit MKM 54(14); and
  - App4 Exhibit MKM 54(15).



- 15.44 In addition, the letter stated *“Please note that some information has been withheld under section 43(2) which states that where release of information is likely to have an adverse effect on the commercial interests of any body, including a local authority, the information may be withheld if it is found to be in the public interest to do so. A public interest test has been conducted and in this instance, has found in favour of withholding some information.”*

### ***FOI request 5779***

- 15.45 On 28 October 2015, CCC’s IGT released information in response to a request for information from a third party (Exhibit MKM 54(18)). The FOI number allocated to this request was FOI 5779.
- 15.46 On 26th March 2016, the third party wrote to the Information Commissioners Office (“ICO”) registering a formal complaint against CCC. The full details of her complaint are contained within a letter produced as Exhibit MKM 54(16). In it she referred to FOI requests 3294, 3339, 3348, 5709 and 5779 and particularly the apparent lack of *“information held by the council for the allocation of almost a quarter of a million pounds of public funds (Including FACT application) is three application forms, a generic “Funding agreement” and a three page document giving general information relating the Council community fund.”*
- 15.47 Following a review by the ICO a Decision Notice was sent to the IGO at CCC and they produced three further documents. Two documents were in connection with matters outside the scope of this review and one was in relation to FOI 3348. A copy of this document is produced as Exhibit MKM 54(17). This additional document is an unredacted copy of FACT’s application for grant funding for communications equipment which had previously been supplied in a redacted form (See Exhibit MKM 54(14)).
- 15.48 Several members of CCC’s IGT were interviewed in relation to the FOI matters subject of this section. They indicated that when a request for information is received, there is no central depository from which they can extract information. They request the information sought from the respective team within CCC who holds the data in this particular case Transport. The IGT can only report back to the requester details of the information that has been supplied to them.
- 15.49 At the time the CBCTA, the Director of the B&CA and the third party were making their requests, it is understood that the IGT was under resourced through sickness and maternity leave and were struggling to deal with the information requests that were coming in to the

Council on an almost daily basis. This is the reason given for their inability at times to provide information within the timeframes allowed or in some cases not at all.

- 15.50 The (“ICO”) has issued a 30 page guide on the public interest test as it relates to the Freedom of Information Act. A copy of this guidance is produced as MKM 54(19). Paragraph 67 of this guidance states that Public authorities must carry out a balancing exercise to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure. If it does not, the information must be released. The ICO is available to make judgements on decisions made by Public Authorities when a request does not meet the expectations of the requester.
- 15.51 If a member of the public has a concern about accessing information from a public body, that person has the right to make a complaint to the ICO. If the ICO thinks the organisation has not complied with any of its obligations, they can give the organisation advice and ask it to solve the problem. This is what happened in respect of the complaint submitted by a third party.

### *Conclusions*

- The information provided under the FOI requests in respect of the HACT contract awards at start-up were incorrect and lead to protracted correspondence which could have been avoided if the correct information had been provided initially.
- Two contracts (PRC3 and PRC4) were transferred to HACT but have been omitted from all relevant FOI responses.
- FOI 3509 incorrectly referred to the use of emergency powers.
- In relation to redaction of information, CCC’s IGT complied with the legislation by applying the public interest test and in their view redaction was justified under section 43(2) of the Act as they believed that without redaction the information was likely to have an adverse effect on the commercial interests of FACT. This was a subjective test which was subsequently overruled by the ICO and the unredacted information was produced as requested.

## 16 Advertising

### *55. Investigate whether FACT was deliberately advertising on Google and Thomson Local website under the actual headings of Taxi, Minicab, Cab, and Private Hire.*

- 16.1 In February 2014 FDC sent an email to Cllr David Patrick in relation to allegations that FACT was advertising on Google for “Private Hire” and “Taxi Services” (refer to Exhibit DH 46(4). Screen shots of the adverts are produced as Exhibit DH 55(1).
- 16.2 Thomson Local offer a free business listing service whereby businesses who register will gain access to the following:
- A free listing;
  - Their company will appear in searches on thomsonlocal.com for their industry group;
  - The listing will display key contact information for their customers;
  - There will be an increased visibility on Google and Bing;
  - The listing will provide a link to their website from thomsonlocal.com; and
  - Precise directions to their business premises will be shown from any location.
- 16.3 Although these facilities are freely available, FACT have informed PKFL that they never knowingly requested or subscribed to advertise through any Thomson Local service.
- 16.4 Google offer a similar free listing service whereby businesses can register to obtain a free site.
- 16.5 FACT has informed PKFL that during 2013-2014 they switched the development and maintenance of their websites from an external provider to an in-house solution to reduce the increasing costs of hosting and web content maintenance.
- 16.6 FACT have indicated that they used the services of a technical web developer (who had no experience of the transport industry) to remotely develop their website. During the IT development stage, FACT validated the web page design and content, the IT developer administered the changes, and the system was re-tested. Members of FACT were trained

on a web based maintenance tool that allowed them to manipulate and publish their own content on-line which allowed them to reduce costs. It was during this time the Google search engine allegations were received.

- 16.7 FACT informed PKFL that following the allegations they found that their web-developer had set some random transport industry based search terms (i.e. bus, car, taxi, minibus, coach, bike etc.) in the web-page meta title, tags and description when developing/testing the product.
- 16.8 Web page meta data sits in the background within the website coding and is not visible without technical knowledge on how to find it. Major search engines use these meta tags to locate internet page content and if meta tags are present, search engines will display information relating to the meta data. It is quite possible that this is the reason for the content found by the CBCTA.

### *Conclusions*

- It is clear from the screen shots produced at Exhibit DH 55(1) that search engines were bringing back details which suggested that FACT was a business associated with the words 'taxi' 'mini-cab' 'cab' and private hire. PKFL has been unable to establish whether in 2012, when these allegations were made, whether FACT was registered as a free user with Thomson Local or Google. FACT have commented that they have never knowingly subscribed to Thomson Local or Google.

## 17 Appendices

Appendix A	Letter of Engagement
Appendix B	Side Letter CBCTA
Appendix C	CCC Annual Grant Conditions
Appendix D	FACT Review of Dial-A-Ride Costs
Appendix D1	FACT Comparison of Dial-A-Ride Costs
Appendix E	FACT Allocation between CTS and Contracts 2016 Computation 2
Appendix F	HACT Review of Dial-A-Ride Costs
Appendix F1	HACT Comparison of Dial-A-Ride Costs
Appendix G	HACT Allocation between CTS and Contracts 2016 Computation 2
Appendix H	FACT Comparison of State Funding to State Aid de Minimis Limits
Appendix H1	FACT Summary of Comparison of State Funding to State Aid de Minimis Limits
Appendix H2	FACT Exchange Rates
Appendix I	HACT Comparison of State Funding to State Aid de Minimis Limits
Appendix I1	HACT Summary of Comparison of State Funding to State Aid de Minimis
Appendix I2	HACT Exchange Rates
Appendix J	ESACT Comparison of State Funding to State Aid de Minimis Limits
Appendix J1	ESACT Exchange Rates
Appendix K	FACT Total Number of Passenger Journeys 2014 to 2016
Appendix K1	FACT Membership Statistics
Appendix K2	FACT Summary of Membership and Journey Statistics
Appendix K3	FACT journeys Central
Appendix K4	FACT journeys North

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Appendix P1	HACT Allocation between CTS and Contracts 2014
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Appendix S1	HACT Annual Value of Fleet Expansion 2014 to 2016
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Appendix U1	HACT Comparison of Fleet Usage and Demand 2014 to 2016
Appendix V	FACT Public Funding Per Journey 2014 to 2016

Appendix V1	HACT Public Funding Per Journey 2014 to 2016
Appendix W	HACT Payments to HACT by CCC 2014 to 2017
Appendix X	HACT Contract Income from CCC Compared to Total Income 2014 to 2016
Appendix Y	FACT Section 19 Permits issued by CCC
Appendix Y1	HACT Section 19 Permits issued by CCC
Appendix Y2	ESACT Section 19 Permits issued by CCC
Appendix Y3	Section 22 Permits FACT and HACT
Appendix Z	CCC Contract Award Systems
Appendix Z1	FACT Contract Conditions Audit Program
Appendix AA	NOCT Contracts
Appendix AB	HACT Contracts
Appendix AC	Analysis of Trustees Declarations of Interest
Appendix AD	Fuel Comparison
Appendix AE	FACT Service Route, Grant and Concessionary Reimbursement Payments from CCC
Appendix AF	HACT Service Route, Grant and Concessionary Reimbursement Payments from CCC
Appendix AG	ESACT Service Route, Grant and Concessionary Reimbursement Payments from CCC

## 18 Schedule of Exhibits

DH 1 Request for grant from FDC

DH 1(2) FDC Rural Capital Grant Payment

DH 2 FACT Donation Request

DH 3 FACT Donation Request March Town Council

DH 4 FACT Donation Request March Town Council

DH 5A Request to attend Meeting Manea PC

DH 5B FACT Grant Application Manea PC

DH 5C FACT Grant Application Manea PC

DH 5D Email from Manea PC

DH 5E Email agreeing to give a £200 donation

DH 6(1) BSOG 01.10.13 - 31.03.14

DH 6(2) BSOG 01.04.14 - 30.09.14

DH 6(3) BSOG 01.10.14 - 31.03.15

DH 6(4) BSOG 01.04.15 - 30.09.15

DH 6A FACT Funding Request to Wisbech Town Council

DH 6B Wisbech Town Council Funding Request

DH 6C FACT Report Jul, Aug Sept 2016

DH 6D Email re PCT Grant

DH 7(1) FACT Annual Return YE 31.12.14

DH 7(2) Letter re Food Store Chatteris

DH 7(3) Letter re Food Store Chatteris

DH 7(4) Letter re Food store Chatteris



DH 7(5) Letter re Food store Chatteris

DH 7(6) Letter re Food Store Chatteris

DH 7(7) Letter re Food Store Chatteris

DH 7(8) Letter to a Highways and Access Department employee at CCC dated 24.02.10

DH 7(9) Letter to a Highways and Access Department employee at CCC dated 25.02.10

DH 7(10) Letter to a Highways and Access Department employee at CCC dated 06.10.11

DH 7(A) Wisbech Grant Application

DH 7(B) Wisbech Application form for Grant Aid

DH 7(C) FACT Quarterly Steering Group Report April 2015

DH 8 Letter to Wisbech Town Council for funding

DH 9 Extract from FACT website

DH 9(1) DfT Guidelines on CT and EU State Aid Rules

DH 11 Email to the FHE Manager re charitable status

DH 11(2) FACT application to the Community Transport Minibus Fund

DH 11(3) HACT application to the Community Transport Minibus Fund

DH 12 Email re Charitable Status

DH 12(1) DfT Guidance on State Funding

DH 12(3) FOI 3509 Contracts awarded to HACT

DH 12(4) FOI 5709 Internal Review re 5709

DH 12(6) FOI 5709 Council Contracts HACT

DH 12(7) FOI\_5851\_2015 HACT contracts emergency

DH 14(1) Letter from Stephen Barclay MP

DH 18(2) Grant Funding Agreement CCC and HACT

DH 18(6) Launch of HACT Application Form

DH 18(7) Communications into the Future Application Form

DH 18(8) Communications into the Future Application Form

DH 18(14) Email correspondence Cllr Alan Lay and CCC's Executive Director for Economy,  
Transport and Environment

DH 19(1) Passenger Stats FOI request 2677 (1) FDC

DH 19(2) Passenger Stats FOI request 2677 FDC

DH 33(1) CCC Contract Regulations

DH 33(2) Contract Procedure Rules

DH 33(3) Email to a member of the procurement team

DH 33(4) Exemption Request

DH 33(5) Routes 46A and 150 being let on an emergency basis

DH 33(6) Spreadsheet showing contracts awarded to HACT since March 13

DH 34(1) Barrister James Segan's opinion

DH 34(2) Email correspondence with Traffic Commissioners

DH 34(3) Email from LGSS Law re urgent new instructions

DH 34(4) Barrister Rebecca Hayes Advice

DH 41(1) FOI 7296 Emails between CCC's Community Transport Officer and the FHE  
Manager

DH 46(2) Letter sent to FDC CEO re FDC Audit

DH 46(3) Audit - Fenland Association of Community Transport

DH 46(4) Email from FDC to Cllr David Patrick

DH 47(1) 2619 - App 1

DH 47(2) FOI 2619 App 2

DH 47(3) FOI 2619 App 3

DH 47(4) FOI 2619 App 4

DH 48(1) Official Complaint to CCC and their response

DH 53(1) Details of complaint sent by Cllr Lay to the Head of LGSS Law

DH 53(2) Details of complaint

DH 53(3) Email from the head of LGSS Law to Cllr Lay

DH 53(4) CEO Letter

DH 53(5) CCC's Head of Passenger Transport e-mail Complaint

DH 53(6) Complaint to CCC's former Chief Executive

DH 53(7) Letter to FDC

DH 53(8) Letter to Dave's Cars

DH 55(1) Screen shots re Taxi and Private Hire advertising by FACT

JP 3(1) Minutes of FACT AGM 15.04.15

JP 3(2) Certificate of Motor Insurance for FACT, HACT and ESACT

JP 3(3) ESACT analysis of income

JP 4(1) FACT letter to HMRC

JP 7(1) Notes to the Accounts YE 31.12.15

JP 7(2) Email from the FHE Manager

JP 7(3) Email from Thomas Quinn Accountants to the FHE Manager

JP 13(1) Concessionary Fares Review March 2016

JP 13(2) FDC Audit of FACT August 2013

JP 13(3) Operator Assessment Report Sheet

JP 15(1) FACT Dial a Ride Grant

JP 15(2) HACT Ring-and-Ride Grant

JP 15(3) HACT Analysis of Income

JP 17(1) CCC Invoice number 10489284

JP 17(2) CCC Invoice number 10489287

JP 17(3) The FHE Manager's Calculations

JP 17(4) Loan Payment Schedule from CCC

JP 17(5) CCC Invoice number 10489289

JP 17(6) CCC Invoice number 10489290

JP 17(7) The FHE Manager's Calculations

JP 17(8) Radio Quote

JP 17(9) HACT Setup Calculations

JP 17(10) Email from CCC's Public Transport Manager dated 19.6.2013 re VAT

JP 17(11) Invoice regarding radio purchase

JP 20(1) ESACT Analysis of Income

JP 23(1) FACT / HACT Number of vehicles

JP 26(1) Barclays Mandate for FACT

JP 26(2) Barclays Mandate HACT

JP 31(1) NOCT Email giving details of Boards decision

JP 31(2) FACT Minutes re Meeting held on 04.03.13

JP 31(3) Meeting Note and Action Point List

JP 31(4) Meeting Note 5 March 2013

JP 31(6) Email from the FHE Manager re NOCT

JP 31(7) Trial Balance to 03.06.2016

JP 31(8) Letter re closure of ESDAR

JP 39(6) HACT S22 Permit CB000589

JP 39(7) HACT Application to Register a Bus Service

JP 39(9) HACT S22 Permit CB000691

JP 39(10) HACT Application to Register a Bus Service

JP 39(20) Community Bus Permit issued to HACT

JP 39(21) Letter to ACT confirming the issue of a Section 22 bus permit

JP 40(1) DVSA letter informing of complaint

JP 40(2) DVSA Reply 27 Nov 2017

JP 42(1) Letter re Section 106 Contribution

SS 11(1) Letter from FACT's lawyer to the head of the DfT Buses and Taxis Division

SS 11(2) Letter from Buses and Taxi Division to Kenneth Bush Solicitors

SS 31[1] Email dated 18 January 2013

SS 31[2] Email dated 28 February 2013

SS 31[3] FACT Notes of meeting held on 4 March 2013

SS 31[4] Key details of 5 March 2013 meeting

SS 31(5) Instructions to Counsel to advise

SS 40(1) Email re Driver PCV D1 & CPC Licensing

SS 40(2) Email indicating that FACT was operating correctly

MC 31[1] Attendance Note 6 January 2017

1-A-18 DfT Letter 15.09.15 RE BSOG and School-Services

1-B-1 FACT Invoice number 3655

1-B-28 FACT Invoice number 3744

1-B-40 FACT Invoice number 3808

1-B-68 FACT Invoice number 3905

1-B-84 FACT Invoice number 4051

7-A-2 Minutes of FACT AGM held on 15 April 2015

7-A-3 FACT Annual Report 2016

7-B-2 Minutes of HACT AGM held 15 July 2014

7-B-3 Minutes of HACT AGM held 14 July 2015

7-D-3 FACT Profit and Loss 31 December 2015

7-F-1 ESACT Annual Return 2016

7-G-1 FACT Quarterly Report January 2015

7-G-2 FACT Quarterly Report April 2015

7-G-3 FACT Quarterly Report July 2015

7-G-4 FACT Quarterly Report July 2016

7-G-5 FACT Quarterly Report January 2016

7-G-6 FACT Quarterly Report April 2016

7-G-7 FACT Quarterly Report July 2016

7-G-8 FACT Quarterly Report October 2016

7-G-9 FACT Quarterly Report January 2017

7-G-10 FACT Quarterly Report April 2017

7-G-11 FACT Quarterly Report October 2014

7-G-12 FACT Quarterly Report July 2014

7-G-13 FACT Quarterly Report April 14

7-G-14 FACT April 2014 Meeting Minutes

7-G-15 FACT Quarterly Report October 2013

7-G-16 FACT Quarterly Report July 2013

7-G-17 FACT Report July, August and September 2013

7-G-18 FACT Quarterly Report October 2015

7-H-1 HACT Quarterly Report July 2013

7-H-2 HACT Quarterly Report April 2015

7-H-3 HACT Quarterly Report July 2015

7-H-4 HACT Quarterly Report October 2015

7-H-5 HACT Quarterly Report January 2016

7-H-6 HACT Quarterly Report April 2016

7-H-7 HACT Quarterly Report July 2016

7-H-8 HACT Quarterly Report October 2016

7-H-9 HACT Quarterly Report January 2017

7-H-10 HACT Quarterly Report April 2017

7-H-11 HACT Quarterly Report October 2014

7-H-12 HACT Quarterly Report July 2014

7-H-13 HACT Quarterly Report April 2014

7-H-14 HACT Quarterly Report January 2014

7-H-15 HACT Quarterly Report October 2013

7-H-16 HACT Quarterly Report July 2013

7-H-17 HACT Quarterly Report April to June 2013

7-H-18 HACT Quarterly Report January 2015

7-I-1 ESACT Quarterly Report July 2015

7-I-2 ESACT Quarterly Report October 2015

7-I-3 ESACT Quarterly Report January 2016

7-I-4 ESACT Quarterly Report April 2016

7-I-5 ESACT Quarterly Report July 2016

7-I-6 ESACT Quarterly Report October 2016

7-I-7 ESACT Quarterly Report January 2017

7-I-8 ESACT Quarterly Report April 2017

7-K-2 Meeting notes re FACT investigation 11 May 2017

7-K-5 Grant Transaction Listing

9-F-1 FACT Grant Agreement 2016-2017

9-F-2 HACT Grant Agreement 2016-17

9-F-3a ESACT 2016-17 grant signed

9-F-4a FACT Grant Agreement 2015-2016

9-F-4b FACT signed Grant Agreement 2015-2016

9-F-5a HACT - Grant Agreement 2015-2016

9-F-5b HACT Grant Agreement signed 2015-2016

9-F-6 ESACT Grant Funding Agreement 2015-2016

9-F-7 FACT Grant Funding Agreement 2014-2015

9-F-8 HACT Grant Funding Agreement 2014-2015

9-G-1 Email re concessionary reimbursements

9-G-2 Cabinet Paper from February 2011

9-G-3 Resolution from Cabinet Meeting February 2011

9-G-4 Concessionary Reimbursement May 2016



9-G-5 Minutes from committee meeting May 2016

10-D-1 Email re approval of ESACT money

10-D-2 Letter to the FHE Manager regarding ESACT funding

10-D-3 Letter from the FHE Manager to CCC

10-D-4 FACT Final Grant Agreement

11-B-1a - CT Fund Loans 2015

11-B-1b - CT Fund Loans 2015 CCC requesting funding

13-B-1 Setup of HACT application for community transport funding

13-B-2 HACT initial costs and cash flow budget

13-B-3 HACT set up communications with Members

13-B-4 FW Nene & Ouse Community Transport Email

11-B-5 Application form for communications equipment

11-B-8 - RE 2 new customers 2 x direct debit form please

13-A-2 Meeting notes 13.06.2017

13-C-1 FW governance group TOR new Draft

13-C-2 FW Community Transport Fund - now open to applications

13-C-6(a) FW Community Transport Fund

13-D-1 FW Cancellation of Request for Quotation - Contract 46A

13-D-2 FW HACT Route 48A

13-E-1 FW Eltisley bus service

13-G-1 Direct Telecom Services Invoice

IA 1 Service Leaflet for FACT's West Service

IA 2 Service Leaflet for FACT's Central Service

IA 3 Service Leaflet for FACT's North-West Service

IA 4 Service Leaflet for FACT's North Service

IA 5 Service Leaflet for HACT's Area 1 Service

IA 6 Service Leaflet for FACT's Area 2 Service

IA 7 Service Leaflet for FACT's Area 3 Service

MKM 1(1) Community Transport Minibus Fund Application Form re FACT

MKM 3(1) Bus Service Operators Grant

MKM 3(2) Email from BSOG re September 2015 letter

MKM 4(1) FACT Annual Return 2006

MKM 4(2) FACT Annual Return 2007

MKM 4(3) FACT Annual Return 2008

MKM 4(4) FACT Annual Return 2009

MKM 4(5) FACT Annual Return 2010

MKM 4(6) FACT Annual Return 2011

MKM 4(7) FACT Annual Return 2012

MKM 4(8) FACT Annual Return 2013

MKM 4(9) FACT Annual Return 2014

MKM 4(10) FACT Annual Return 2015

MKM 4(11) FACT Rule Book

MKM 4(12) Amended rules

MKM 4(13) HACT Annual Return 2014

MKM 4(14) HACT Annual Return 2015

MKM 4(15) HACT Annual Return 2016

MKM 4(16) Lottery Grant for £116,514

MKM 4(17) Lottery Grant for £9,686

MKM 4(18) Lottery Grant for £116,437

MKM 4(19) Lottery Grant for £7,286

MKM 4(20) Concessionary Fares Agreement FDC and FACT 2016/17

MKM 4(21) HACT Constitution

MKM 5(1) Dial-A-Car / Dial-A- Ride Registration Form

MKM 5(2) Group Membership Form

MKM 7(1) Snapshot of FACT webpage 04.25 30.07.10

MKM 7(2) Details re Group Hire and Dial-a-Car services

MKM 7(3) Snapshot of FACT webpage 00.17 August 18 2012

MKM 7(4) Snapshot of website see MKM 7(3)

MKM 7(5) Snapshot showing timing of FACT website 1238 09.01.13

MKM 7(6) Snapshot of website see MKM 7(5)

MKM 7(7) FACT's Dial-A-Car service as shown on the website

MKM 7(8) FACT - Group Hire

MKM 7(9) Email re Community Transport Fund from CCC Internal Audit

MKM 7(10) Spreadsheet taken from Appendix showing Manea passenger stats

MKM 7(11) Capital Grants

MKM 11(1) Bus Service Operators Grant \_ Stone King Solicitors

MKM 12(1) FOI Traffic Commissioner

MKM 12(2) Route 150 Timetable

MKM 12(3) Route 46A Timetable

MKM 12(14) Operating registered local bus services in England Guidance

MKM 12(15) Email from Bus Registrations team re S19 permits

MKM 13(1) Numbered copy of the Woodcote Report

MKM 15(1) Block Exemption Commission Regulation 1998/2006

MKM 15(2) Email re Scope Item 18 European Commission

MKM 15(3) Commission Regulation 1407-2013

MKM 15(4) BIS State Aid Manual

MKM 15(5) Commission Regulation (EU) No 651\_2014 of 17 June 2014

MKM 15(6) Email re Lottery Fund Grant of £43,531 to FACT

MKM 16(1) Advice from Counsel Rebecca Haynes re State Aid

MKM 16(2) State Aid Legal Opinion James Goudie QC

MKM 18(2) Freedom of Information requests and responses received from HACT since its inception

MKM 18(3) HACT set up emails

MKM 18(4) Email from CCC re State Aid

MKM 26(1) Evidence of Insurance cover FACT, HACT and ESACT

MKM 27(1) Regulation (EC) No 1071\_2009 of the European Parliament and of the Council

MKM 30(2) Community Transport Permits

MKM 31(1) email regarding Community Transport

MKM 31(2) Community Transport Fund - Application Form

MKM 31(3) Community Transport Fund – Aims and Objectives

MKM 31(4) Series of emails re legal advice

MKM 31(5) Email from LGSS Law re State Aid

MKM 31(6) Getting to grips with de minimis and State Aid

MKM 31(8) Closure of ESDAR transfer of funds

MKM 31(11) invoice

MKM 31(12) Follow up actions re ESDAR

MKM 31(13) Education transport contracts passed to HACT

MKM 31(14) Update on ESDAR

MKM 31(15) Email re Cambridgeshire Horizons

MKM 31(16) Email re ESDAR contracts 117, 125, 129 and 203

MKM 32(1) HACT bid re ON45 Contract

MKM 32(2) Email re Service Routes 46A and 150

MKM 33(3) ON45 Bids

MKM 33(4) Guide to the 2014 Public Procurement Directives

MKM 33(5) List of HACT Contracts from CCC

MKM 33(6) Email Education Transport Contracts

MKM 33(7) ITT re Route 46A

MKM 33(8) Invitation to Tender

MKM 34(1) Framework document Traffic Commissioners, DfT including its Agencies

MKM 34(2) Section 19 and 22 permits not for profit passenger transport

MKM 34(3) Letter dated 9 November 2017 from Dft Update to LAs on CTO's

MKM 34(3)(A) Letter dated 27 November 2017 from DfT

MKM 34(4) Application for a Section 19 Small Bus (minibus) Permit

MKM 34(5) PSV 372 Application for a standard or large bus permit

MKM 34(6) S19 permit 080009

MKM 34(7) PSV Operator Licensing Guide

MKM 35(1) FACT - CPC Licensing etc.

MKM 35(2) Email re counsel's advice on CPC's

MKM 35(3) James Goudie QC Opinion Section 19 and 22 permits

MKM 35(4) Email giving CCC's stance on contract work

MKM 35(5) Email re FACT, HACT and ESACT submitting Operator's Licence applications

MKM 35(6) Email re Section 19 and 22

MKM 37(1) Random Selection

MKM 37(2) FACT Drivers Log

MKM 37(3) HACT Drivers Log

MKM 37(4) ESACT Drivers Log

MKM 37(5) D1 101 Restrictions

MKM 40(1) Letter dated 31.07.17 from DfT re changes to permits

MKM 44(1) Code of Conduct for drivers and passenger assistants

MKM 50(1) CCC Members' Code Conduct

MKM 50(2) CCC Declarations of Interest Guidance

MKM 50(3) FDC Codes and Protocols

MKM 50(4) HDC Code of Conduct for Members

MKM 50(5) East Cambridgeshire DC Codes and Protocol

MKM 50(6) DPI Disclosure Cllr John Clark

MKM 50(8) Register of Members Interest FDC

MKM 50(9) CCC Employee Code of Conduct

MKM 52(1) Screen Shot Invoice No 3655

MKM 52(2) Screen Shot Invoice No 3744

MKM 52(3) Screen Shot Invoice No 3808

MKM 52(4) Screen Shot Invoice No 3905

MKM 52(5) Screen Shot Invoice No 4051

MKM 52(6) Budget Holder Information Pack

MKM 52(7) 2016 CCC Payment Terms Letter

MKM 53(1) Central Complaints Register

MKM 54(1) Freedom of Information and Environmental Information Regulations Policy ...

MKM 54(2) FOI 3339\_Number of HACT contracts

MKM 54(3) FOI 3509\_details of HACT contracts, 4 contracts given under emergency powers  
2013

MKM 54(4) FOI 5709 2015 contracts and emergency

MKM 54(5) FOI 5709 Contracts awarded to HACT since Mar 2013

MKM 54(6) FOI 5709 Letter to the Director of the B&CA re Internal Review

MKM 54(7) FOI 3294 Grant Funding Agreement between CCC and HACT

MKM 54(8) FOI 3294 Response to Request for Information - Grant Funding Agreement

MKM 54(9) FOI 3294 CTF Application Form

MKM 54(10) FOI 3294 CTF Conditions

MKM 54(11) FOI 3348 Response to Request for Information

MKM 54(12) FOI 3348 CTF Application Form Launch of HACT

MKM 54(13) FOI 3348 CTF Application Form HACT Communications Equipment

MKM 54(14) FOI 3348 CTF Application Form FACT Communications Equipment

MKM 54(15) FOI 3348 HACT Setup Costs

MKM 54(16) ICO complaint letter regarding FOI 5779

MKM 54(17) CCC responding to ICO decision notice

## Project Icarus

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MKM 54(18) FOI 5779 HACT funding 2015

MKM 54(19) Freedom of Information Act PI Test